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SCHOOL OF LAW

**THE WORLD BANK AND ITS DEVELOPMENT OPERATIONS IN AFRICA: A
CRITICAL EVALUATION OF ITS HUMAN RIGHT ACCOUNTABILITY
MECHANISMS**

By MEGNOT TATEK

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By MEGNOT TATEK

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The World Bank and its Development operations in Africa: A Critical assessment of its Human Right Accountability Mechanisms

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Declaration

Megnot Tatek, hereby declare that this research paper is original and has never been presented in any other institution. To the best of my knowledge and belief, I also declare that any information used has been duly acknowledged.

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Acronyms

CAO:	Compliance Advisory Ombudsman
CAS:	Country Assistance Strategies
IBRD:	International Bank of Reconstruction and Development
ICCPR:	International Covenant on Civil and Political Rights
ICESCR:	International Covenant on Economic, Social and Cultural Rights
ICJ:	International Court of Justice
ICSID:	International Center for Settlement of Investment Disputes
IDA:	International Development Association
IEG:	Independent Evaluation Group
IFC:	International Financial Corporation
IFIs:	International Financial Institutions
IMF:	International Monetary Fund
MIGA:	Multilateral Investment Guarantee Agency
ODs:	Operational Directives
Ops:	Operational Policies
PRSPs:	Poverty Reduction Strategy Papers
SAPS:	Structural Adjustment Programs
RTD:	Right to Development
UDHR:	Universal Declaration of Human Rights
WB:	World Bank

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Abstract

The World Bank through its policies and development projects has caused a substantial effect on socio-economic rights especially in Africa. The study critically examines the impact of the World Bank's policies and developmental projects on socio-economic rights in Africa. In this scrutiny, the writer argues that the Bank's Structural Adjustment Programs and the Poverty Reduction Strategy Papers violate a number of socio-economical rights of the local population in Africa. The study also investigates the Chad-Cameroon Pipeline, the UG-Bujagali Private Hydropower Development Project in Uganda and the Niger Delta Contractor Revolving Credit Facility in Nigeria private development projects to show how private projects financed by the Bank have devastating effect on certain important socio-economic rights in Africa. All these in turn make the issue of human rights accountability very fundamental. The study thus critically assesses the efficiency of the existing institutional human rights accountability mechanisms in addressing human rights issues including self-regulatory, the quasi-independent IBRD/IDA Inspection Panel, IFC/MIGA Compliance Advisory Office (CAO), and Independent Evaluation Group (IEG) and argues that the voluntary mechanisms adopted by the World Bank are not adequate to close up the issue of human rights accountability. Therefore, the study evaluates the non-institutional human rights accountability mechanisms drawing upon the sources of international law, a serious and systematic attempts are made to identify and classify the nature and content of human rights obligations applicable to the World Bank and concludes that it is possible to establish a human rights obligation of the WB in support of international human rights accountability.

Key Words: World Bank, Human Rights, Development, Structural Adjustment Programs, Poverty Reduction Strategy Papers, Human Rights Accountability, Inspection Panel, CAO and the IEG.

Chapter One

Introduction

1.1 Background of the Study

Creating space in the international legal regime to take account of the role of non-state actors like the World Bank(herein after called WB) in the realization of human rights and their accountability for the violations of human rights, remains a critical challenge facing international human rights law today. This is for the reason that under traditional approach to human rights law, non-state actors are considered to be beyond the direct reach of international human rights law.¹ Recent years however have seen a remarkable expansion in the economic and political power of non-state actors in both domestic and international settings. The increase in private power at the municipal level in the form of corporations and other associations is surpassed only increase in power of international intergovernmental organisations like the WB and International Monetary Fund (herein after called IMF) and international corporations at the international level.² This in turn brings accountability in to the picture. Accountability is a notion that has traditionally meant the answerability of someone who performs a duty or who works in an official capacity.³

Accountability requires that: (1) people or institutions are given certain objectives; (2) there is a consistent way of assessing whether they have met those objectives; and (3) consequences exist or both cases in which they have not do so.⁴ It should be noted that, the importance of international human rights accountability must be understood in the context of the rising power of non-state actors in general, and that of the WB in particular for the reason that it poses a

¹ M. Ssenyonjo, “The Applicability of International Human Rights Law to Non-State Actors: What Relevance to Economic, Social and Cultural Rights?”, The International Journal of Human Rights, Vol. 12 No 5, (2008), P. 725

² N. Wahi, “Human Rights Accountability of the IMF and the WB; A Critique of Existing Mechanisms and Articulation of a Theory of Horizontal Accountability”, U.C. Davis Journal of International Law and Policy, (2006), P. 5

³ Ibid. In the context of international intergovernmental organisations, which undoubtedly are part of the international superstructure over the state, there is only indirect accountability to individuals. This is because most of these organisations solely monitor State behaviour and ease international regulation; they do not exercise public power over individuals directly. However, Wahi argues that, this is not the case with the WB and the IMF based on the claim that, these institutions are exercising “governing” power directly over individuals within their member states.

⁴ J. E. Stiglitz, “Democratizing the International Monetary Fund and World Bank: Governance and Accountability, An international Journal of Policy, Administrations and Institutions”, Vol.16 No.1,(2003), P. 111

normative challenge to the existing vision of international law today as being primarily a vertical order that governs the rights and obligations of sovereign states.⁵ Up to now States have been alleged as the only major sources of power in the international realm. The increasing power of non-State actors like the WB however makes us to rethink the international human rights arrangement, which is the only dominion where international law directly protects individuals against political absolutism and state power.⁶ Today, when power has both extended and in some measure shifted from state to non-state actors like the WB, there is a necessity to expand international human rights protection against these other actors. In this regard, it is worthy of mentioning that one major reason that motivates the writer to conduct the research is the fact that due to the current global economic crises, individual states have lost their grip on economic power which in turn resulted a shift in power from states to IFIs such as the WB and the IMF. Therefore, international law increasingly is aware of the horizontal relations of human rights that even IFIs (like the WB) have some direct rights and duties in international law.

As far as human rights issues are concerned, the WB had its first major wrangle in the 1960s, when the UN General Assembly passed a sequence of Resolutions successfully tempting, urging and calling the WB to stop lending to South Africa and Portugal because of their respective apartheid and colonial policies. The Bank maintains on its non political character and approved a number of loans in defiance of the UN Resolutions.⁷ In 1970s, the Bank saw a major increase of activities. The emphasis on large scale infrastructure projects and economic growth gave way to the broader pattern of poverty alleviation. This was followed by a shift from projects to policy based lending. Structural Adjustment programs loans took off in the 1980s with the need to create adequate enabling environments for economic development and make reforms politically viable.⁸ The boundary between political and economic issues even became increasingly distorted, and in 1989, a study on the long term development prospects of Sub-Saharan Africa overtly pointed out the importance of good governance as a condition for development. Even

⁵L. H., Ricard, C. Pugh, O. Schahter and H. Smit, (eds.,) International Law: Cases and Materials(4th ed., 2001), P. 23

⁶Arts 55 and 56 of the United Nations Charter, impose upon the United Nations and its members legal obligations to promote respect for and observance of human rights. See, Charter, Charter of the United Nations, adopted 26 June 1945, 892 UNTS 119signed June 26, 1945.

⁷M. Darrow, Between Light and Shadow: The World Bank, the International Monetary Fund and International Human Rights law (2002), P. 150

⁸G. Brodnig, The World Bank and Human Rights: Mission Impossible? (<http://www.hks.harvard.edu/cchrp/.../Brodnig HR & World Bank. pdf>), last visited on February 3, 2012, P. 4

more significantly, the study included rigorous respect for the law and human rights in its concept of governance.⁹In 1990s, the Bank adopted Safeguard Policies which deals with environmental, social and legal implications of the Bank's operations.¹⁰ Two of these policies, involuntary settlement and indigenous peoples, are of direct relevance for the issues of human right accountability and cover some of the most contentious aspect of the Bank operations. In 1994, as a reaction to the constant and perpetual criticisms on its human right accountability mechanism, the Bank established the Inspection Panel. This quasi-judicial organ of the Bank represents an appealing addition to the landscape of human rights institutions as, for the first time; individuals harmed by the activities of the Bank were given some form of recourse.¹¹

However, the Bank's coercive use of conditionality through its policies is without doubt has played a role in reshaping the policies of the debtor state and thus deprives the latter from taking care of its own matters.¹²Taking in to account of the role of coercion even in democratic states it is evident that the actions of intergovernmental organizations like the WB which is independent of states have a significant harmful effect on the lives of peoples in Africa. Besides, the WB has also been under attack for violating human rights, particularly socio-economic rights through its development projects in Africa since development is essential for the enhancement of human rights particularly socio-economic rights. Thus, when the activities of the WB led to the denial of fundamental human rights, this in turn necessitates the need for human rights accountability.¹³

1.2 Statement of the Problem

The action of the WB unquestionably has a profound effect on human rights by way of its development activities in Africa. The WB has continued to see human rights as one more item of its laundry list of development objectives, not as a set of principles or obligations to which it

⁹World Bank, Sub-Saharan Africa – From Crisis to Growth: A Long-Term Perspective Study (Washington, D.C.: World Bank, 1989)

¹⁰Darrow, Cited at Note 7, P. 5, See also, The WB Safeguard Policies (<http://www.worldbank.org/institutional/manuals/textonly.html>) last visited on February 3, 2012

¹¹ E. R. Carrasco and A. K. Guernsey, The World Bank's Inspection Panel: Promoting True Accountability Through Arbitration College of Law, Available at (<http://ssrn.com/abstract=1104718>), last visited on April 19, 2012), P. 3

¹² Wahi, Cited at Note 2, p. 5

¹³Ibid. In this Case, Both institutional and non-institutional mechanisms can be used for establishing direct human rights accountability. Institutional accountability mechanisms include self-regulatory and quasi-independent accountability mechanisms to make sure that the World Bank's operations and policies are coherent with the human rights of the people. Non-institutional accountability mechanisms on the other hand imply independent human rights accountability at the municipal and international levels.

should be held accountable and thus has a long and contentious relationship with human rights. In the past, the Bank has been maintaining not to have any human rights obligations shilling behind its charter. The Bank never acknowledged in real terms that it has a specific role to play in relation to human rights as legal principles, or as legal obligations. Yet it has known that the WB is a forceful player, goes beyond financing development projects. Therefore for the most part, the Bank's impact on the livelihoods of people particularly in the African continent is very substantial.¹⁴ It is worthy of note in this regard that, the Bank insisted on its non political character and approved a number of loans in defiance of the UN Resolutions. In this respect, Article IV/10 of the International Bank for Reconstruction and Development (hereinafter called the IBRD) and Articles 5 section (6) of the International Development Association (hereinafter called the IDA) Articles of Agreement reads that the Bank and its officers shall not interfere in the political affairs of any member; nor shall they be influenced in their decisions by the political character of the member or members concerned. Thus, only economic considerations shall be pertinent to their decisions, and these considerations shall be reflected impartially in order to achieve the purposes stated in Article I.¹⁵ However, the Bank's charter may not be as preventive as is frequently claimed by its management. The Articles of Agreement are emaciated and have allowed the Bank enough space to alter and adapt over time.¹⁶

What is more, both the IBRD and the IDA neither define the term economic development for the purpose of their collective development mission¹⁷ nor the term political consideration.¹⁸ In the absence of any precise direction the result is that, the Bank itself is left to decide the scope of the term economic consideration and hence the width of its mandate and conversely what matters should be excluded as political.¹⁹ In addition, through inspecting on the centrality and interrelatedness of human rights vis-à-vis related development issues, it is reasonable to observe that the WB cannot consider the problem of poverty of developing countries without bearing in mind the issues of refugees, environmental degradation, the capacity of the state to effectively

¹⁴ Brodnig, Cited at Note 8, P. 2

¹⁵ The Articles of Agreement for the International Bank for Reconstruction and Development 1944 (as amended effective February 16, 1989) (hereinafter IBRD Article), Article IV/10 (<http://www.go.worldbank.org/w01PGBIMF0>) last visited on Feb.4, 2012

¹⁶ K. Horta, Rhetoric and Reality: Human Rights and the World Bank, Harvard Human Rights Journal / Vol. 15 (2002) P. 229

¹⁷ Darrow, Cited at Note 7, P. 149. See also A. Sen, Development as Freedom, (1999)

¹⁸ Id., P. 150

¹⁹ Ibid.

and equitably manage its resources, population policy, and human rights, including the status of women, indigenous peoples and minorities.²⁰ Likewise, the inclusion of the issue of ‘good governance’ by the Bank represents a shift in the position of the Bank and is connected with the enjoyment of human right.²¹ Hence, the move by the WB to embrace ‘Good Governance’ as part of the development paradigm severely contradicts the notion of political prohibition under the Bank’s article of agreement and therefore should be accounted for human rights impacts of its policies and operations.

On the top of that, it is essential to critically evaluate the human rights accountability mechanisms of the WB primarily based on two different factors. First, the WB has gained a predominant position in the international relations and the impact of its policies is vast and affects large sector of the world populations in developing countries particularly in Africa.²² Therefore it goes without saying that, the Bank’s impact on the life of people in African states is extremely substantial. As far as the human rights impact of its policies are concerned, it is important to mention that, the main criticism is directed to the Bank’s structural adjustment programs (herein after called SAPs)²³ and subsequently on Poverty Reduction Strategy Papers.

²⁰Id., P. 22. The Bank has introduced structural adjustment lending in 1980 in response to the sensitive balance of payment crises in many of its borrowing member countries in the late 1970. See I. F. I. Shihata, The World Bank in a Changing World (1991), P. 58

²¹ B. Ghazi, The IMF, the World Bank and the Question of Human Rights, (2005) P. 163 In this case, the governance agenda promoted by the Bank to reform the systems of governance is a politically delicate endeavour that has traditionally been considered outside its core mandate. The Bank’s founding charter prohibits it from taking into account political considerations when designing aid programs. See C. Santiso, “Good Governance and Aid Effectiveness: The World Bank and Conditionality”, The Georgetown Public Policy Review, Vol. 7 No. 1 (2001) , P. 4 See also Fantu Cheru, The PRSP In Ghana, Second Meeting of the African Learning Group on the Poverty Strategy Papers (PRSP-LG) (http://www.uneca.org/prsp_final/Ghana.pdf) last visited on March 15, 2012, P. 8. Moreover, The World Bank has developed its post-conflict policies through an evolving set of internal initiatives and “Operational Policies.” OP 2.30 recognizes that “violent conflict, within or between countries, results in loss of life and destruction of assets, contributes to social and economic disintegration, and reverses the gains of development, thereby adversely affecting the Bank’s core mission of poverty reduction. See K. E. Boon “Open For Business ”: International Financial Institutions, Post -Conflict Economic Reform, And The Rule Of Law, New York University Journal of International Law & Politics Spring 2007, P. 5

²² Brodnig, Cited at Note 8, P. 2. One of the Major Policies of the Bank is that of SAPs. The Bank’s structural adjustment agenda in Africa can be directly traced to the continent’s entanglement in the debt trap following the 1980-1982 worldwide economic recessions and the consequent fall down of world commodity prices. B. Ibhawoh, “Structural Adjustment, Authoritarianism and Human Rights in Africa”, Comparative Studies of South Asia, Africa and the Middle East, Vol. XIX No. 1, (1999), P. 158

²³To support their weakening economies and increase production capacities, many African countries sought refuge in external loans from the Fund, the Bank and individual Western nations. However the problem is that, the Bank increased the level of the conditions required for loans and credits to developing countries. This set of conditions became institutionalized Conditionality relates the Bank’s financial support to execution of a program of reforms critical for the country’s economic and social development and has been regarded as Structural Adjustment Programs hereinafter called SAP. Ibhawoh, Cited at Note 22, P. 158... conditions usually reinforce the level of

(Herein after called PRSPs)²⁴ SAPs have a significant impact on human rights. For instance, an independent expert of the commission on human rights has claimed that structural adjustment programs have had distinct and in general adverse impact on human rights at the economic and social level as it attached a series of conditionalities.²⁵ More importantly, SAPs can be seen as opposing to some state obligation under international instruments such as, the international convention on economic, social and cultural rights, the convention on the right of the child and the UN declaration on the right to development.²⁶ Coming to the PRSPs, although the new aspect of PRSPs is its participatory and governance components PRSPs have also been the target of criticisms because of the conditions attached with it.²⁷ For instance, as noted in a report by the Bank staff as well as NGOs' criticism of PRSPs shows that PRSP imposes conditionalities which

country ownership needed to make sure the implementation of reforms. See also G. Anders, The Normativity of Numbers : World Bank and IMF Conditionality, 31 PoLAR: Political and Legal Anthropology Rev. 187 November, 2008, P. 2

²⁴ S. Fujita, "The Challenges of Mainstreaming Human Rights in the World Bank", The International Journal of Human Rights, Vol. 15, No. 3, (2010), P. 381. After growing public critiques, the Bank shifted its focus in 1999 from SAPs as being the only appropriate response to a new approach: Poverty Reduction Strategy Papers hereinafter called PRSPs. Thus, in December 1999, the Boards of the WB and the IMF approved the PRSPs approach to reduction of poverty in low-income countries. Poverty Reduction Strategies were anticipated to be country-driven, results-oriented, comprehensive and long-term in perspective, and to foster domestic and external partnerships in line with the principles that underpin the Comprehensive Development Framework (CDF). See J. Kiringai and D. K. Manda, The PRSP Process In Kenya, Economic Commission for Africa Second Meeting of the African Learning Group on the Poverty Reduction Strategy Papers, (2002), Available at (www.uneca.org/prsp/docs/prsp_final/kenya.pdf) last visited on March 21, P. 2

²⁵ Darrow, Cited at Note 7, P. 69. It is very immense to mention that the consequence of SAPs in many African countries has been spiralling inflation and a striking reduction in the living standard of the people. See also, Cited at Note 22, P. 159. Employing a one-size-fits-all approach, the structural adjustment policy promoted by the WB has involved reduction in public expenditures and this in turn jeopardizes socio-economic rights. See Whai, cited at note 2, p. 9

²⁶ Ghazi, Cited at Note 21, P. 49. It should be noted that SAPs have been criticized for lack of transparency and public participation in their design. Drastic economic measures such as privatization of public services or cuts in subsidies for products necessary for the population may result social unrest and turmoil.

²⁷ S. Adejumbi, Governance and Poverty Reduction in Africa: A Critique of the Poverty Reduction Strategy Papers 2006, Available at (<http://www.lanic.utexas.edu/project/etext/llilas/cpa/spring06/welfare/adejumbi.pdf>), last visited on January, 16, 2012, P. 19. The WB stated in a report prepared for the United Nations International Conference on Financing for Development, held in Monterrey in March 2002 strengthen this by saying « One lesson from experience is that reform does not usually succeed without strong local ownership and a broad-based approach, which includes a consideration of institutions, governance, and stakeholder participation - a lesson that has provided the impetus for the Poverty Reduction Strategy Paper (PRSP) process». See J.P. Cling, M. Razafindrakoto, F. Roubaud, The PRSP Initiative: Old Wine in New Bottles?, 2002, Available at (http://www.www.dial.prd.fr/actu_recherche/PRSPs.PDF) last visited on March 10, 2012, P. 4. Thus, the economic (as well as political and social) "shock therapy" of the old-style, crudely conditional Structural Adjustment Programs (SAPs) has given way to the apparently more subtle difference, participatory, partnership-oriented Poverty Reduction. See D. Kinley, Human Rights and the World Bank: Practice , Politics, and Law Legal Studies Research Paper No. 07/11, 1997, (<http://www.ssrn.com.html>), last visited on January 21, 2012 P. 363

are similar to that of SAPs.²⁸ Therefore, the WB's coercive use of the conditionality arrangement in determining the fiscal and monetary policies and shaping the development decisions of debtor countries constitutes not only an expansion but, in fact, a transfer of '*public decision making*' power from states as it is clear that the actions of intergovernmental organizations (like the WB), which are independent of states, have a significant coercive impact on the lives of the people within developing countries in Africa.²⁹ Again, when such coercion results in severe refutation of basic human rights, the call for accountability becomes very important.³⁰ Second, if we look at the human right impact of the WB's development operations in Africa, the Bank has involved a fair share of controversy over its human rights scorecard. A number of high-profile projects such as the Chad-Cameroon Pipeline have highlighted the Bank's considerable, direct and frequently damaging involvement in areas of human rights in Africa.³¹ All these in turn bring about the need for accountability for human rights violations by the WB for its development activities in Africa. Consequently, the research addresses the following questions:-

1. What institutional accountability mechanisms are there with respect to the human rights impacts of the WB operations in Africa?
2. Do the existing accountability mechanisms within the WB sufficient to coup up with the human rights obligations under the international human rights law?

²⁸ Fujita, Cited at Note 24. Moreover, there are serious constraints to the extent to which PRSPs is engendering structural changes in governance, promoting democracy or reconstituting politics in African countries. In this case, there are three areas of concern on this. First is the nature and quality of participation going on and how far it represents the voices and interests of the poor. The second is on the issue of national ownership of PRSPs, and the third, is the extent to which a key element of PRSPs- its macro-economic framework is in a sense inconsistent to the logic of social welfare and may avert the object of good governance. Adejumobi, Cited at Note 27, P. 19. If we look at the participation elements of PRSP for instance, as mentioned, the PRSPs are expected to be country-driven, prepared and developed transparently with the broad participation of civil society. Yet the "*template*" for preparing the PRSP, i.e., what it should contain, is designed by donors, which gives no emphasis about the authenticity of national ownership. The Highly Indebted Poor Countries (HIPC) Initiative: A Human Rights Assessment of the Poverty Reduction Strategy Papers (PRSP), Report submitted by Mr. Fantu Cheru, Independent Expert On the Effects of Structural Adjustment Policies and Foreign Debt On the Full Enjoyment Of All Human Rights, Particularly Economic, Social and Cultural Rights, Economic and Social Council, E/CN.4/2001/56 18 January 2001, Para. 31

²⁹ Wahi, Cited at Note 2, P. 5. In addition, the World Bank and the IMF have exercised broad de facto legislative powers through policy and technical assistance programs that have pushed their de jure mandates into domestic matters normally reserved to sovereign states. These expanding post-conflict activities illustrate the increasing relevance of IFIs not only to domestic law and legal reform but more broadly to international peace and security. Boon, Cited at Note 21, P. 2

³⁰ Ibid.

³¹ Ghazi, Cited at Note 21, P. 44

3. If not does the WB has a human rights obligation under the international human right law and if the answer is positive what kind of Human Rights norm is applicable to it?

1.3 Research Methodology

To achieve the research, I have used a qualitative research methodology, principally composed of literatures, legal documents, Scholarly articles, Article of agreements, guiding principles, policies and programs, reports released on the subject matters, and practices of a selected countries is utilized as the case may be.

The findings that this research would arrive at are meant to be identified exclusively on the basis of the analysis of the conceptual, legal and institutional framework of the WB in relation to its human rights accountability mechanisms. To answer the research questions the study critically assess the effectiveness of the WB's institutional accountability mechanisms including the, safeguard policies of the WB, IBRD/IDA inspection panel, the Multilateral Investment Guarantee Agency(hereinafter called MIGA) and International Financial Corporation(hereinafter called IFC), Compliance Advisory Office(hereinafter called the CAO) and the WB Independent Evaluation Group (hereinafter called the IEG). It should be mentioned that the study also analyze the non-institutional human rights accountability mechanisms in relation to the WB's development operations in Africa. To that end, the Chad-Cameroon Pipeline UG-Bujagali Private Hydropower Development Project in Uganda and the Niger Delta Contractor Revolving Credit Facility in Nigeria are also selected to substantiate the analysis and to show the practical human right implications of the WB activities in its development operations in Africa. The research would make use of the elements of the case as long as they are relevant to show the respective human rights impacts of the WB development operations in Africa.

1.4 Objectives of the Research

To assess whether or not the WB has human rights obligations under the international human right law and determine the kind of Human Right norm applicable to the WB; To show some of the human rights implications of the WB policies and project operations in Africa, Critically, assess the existing human rights accountability mechanisms in the operations of the WB in Africa. Last but not least, to point out gaps, if any, under the existing human rights accountability mechanisms of the WB operations.

1.5 Scope of the Research

To begin with, it is worth of note that most analysts observed that, the term ‘WB’ and ‘the Bank’ refers properly only the IBRD and the IDA. For current purpose, the two most relevant members of this group are the IBRD and the IDA (collectively referred to as ‘the WB’) and thus detail discussion on the structure and mandate of the WB is limited to these entities.

The research has the general objective of assessing the human rights obligations of the WB in its development operations in Africa and its human rights accountability thereof. To this effect, the research would employ the two main policies of the Bank namely, SAPs and PRSPs with the view of showing the impact of these policies particularly on selected socio-economic rights within specific countries in Africa. Therefore, the human rights analysis of these policies is confined only to those countries and no more.

The research also would use three selected cases, namely, the Chad-Cameroon Pipeline Project, UG-Bujagali Private Hydropower Development Project in Uganda and the Niger Delta Contractor Revolving Credit Facility in Nigeria private development projects financed by the WB that are relevant to critically evaluate the institutional human right accountability mechanisms of the WB in its developmental operations in Africa. It has to be noted however that the research does not conduct independent study of these cases as it requires time and resource beyond the theme of the research. The case analysis is restricted only to private sector development and privatization projects, as opposed to a complete coverage of all the WB Group’s lending and project work, are considered. This focus was reasonable on several grounds.³² First, previous research of the WB and the Castan Centre for Human Rights Law indicates that private sector development and privatization issues are important loci of more general debates over the nature of development. Second, there was a strong sense that these were areas in which the WB Group was encountering significant public criticism. Third, the three cases are selected as they are ranked on the ‘top Twenty’ IBRD/IDA and IFC projects which

³²D. Kinley & T. Davis, Human Rights Criticism of the World Bank’s Private Sector Development and Privatization Projects, Legal Studies Research Paper No. 08/53, 2008, Available at (<http://ssrn.com/abstract=1133179>) last visited on March 21,2012) P. 2

have been subjected to criticism by NGOs, local community groups, analysts and the Bank itself by attracting the highest level of condemnation.³³

It is also worthy to mention that the critical evaluation of the World Bank institutional accountability mechanisms is confined exclusively to the quasi judicial body of IBRD/IDA Inspection panel, IEG and the IFC/MIGA's CAO. Though the discussions on the legal, conceptual and institutional framework of the WB in relation to its human rights accountability mechanisms could apply to the WB's activities elsewhere, it has to be noted that this research would deal although not as a whole with the context in Africa. Hence, the findings of the research and the arguments thereof are limited to the African context, no more.

1.6 Limitations of the Study

Limitations that are encountered by the Study are: As mentioned in the scope, any detail analysis on the mandate and structure of the WB is limited to the two bodies (IBRD and IDA); Moreover, a critical evaluation of the WB human rights accountability mechanisms pertaining to project lending is confined on three private development projects financed by the WB exclusive of other public projects funded by the latter with limited emphasis to the quasi judicial body of IBRD/IDA Inspection panel, the IEG and the IFC/MIGA's CAO. Besides, there are only few international instruments and almost no significant existing jurisprudence pertaining to the international human right obligations of international financial institutions (herein after called IFIs) in general and the WB in particular. Hence, this may be considered as a limitation in conducting the study.

1.7 Organization of the Study

The research is comprised of four chapters. The brief description of the chapters would be as follows: The first chapter is devoted to the proposal of the research. It is meant to clarify the issues that the study would explore, the methodology it applies and the scope it addresses.

The second chapter deals with issues directly related with the WB. In this respect, this chapter would briefly discuss issues on formation, objectives, mandate and the evolution in the mandate of the WB. This part is meant to highlight the general concepts in relation to the WB, the

³³ Id., P. 5 These projects are the point at which the work of the IBRD/IDA and the IFC most frequently intersects, thus broadening the applicability of any findings to come out of the present study.

discussions would be brief and only to the extent relevant to introduce the readers to the theme of the study.

Chapter three introduces the readers to the discussions on the relationship of the WB and the human rights. It explores the implications of the activities of the WB with respect to human rights in Africa. As a result, the chapter would mainly deal with previous and the existing policy frameworks and their practical human rights implications while the WB engages in development activities in Africa. In addition, the chapter makes use of some selected cases studies in Africa to show the relationship and the impacts of the WB's operations in relation to human rights in Africa. The case studies will help to show how and to what extent the development operation of the WB has impacted the enjoyment of human rights in Africa.

The fourth chapter is the main part of the study. On the basis of the discussions within the preceding chapters and particularly the discussion on the relationship between human rights and the WB's development operations under chapter three, this chapter investigates the existing accountability mechanisms of the WB in relation to the human rights obligation under the international human right regime. Through such analysis, this chapter would discuss the legal and conceptual foundation of the human rights accountability of the WB and investigates into the existing accountability mechanisms of the WB and their adequacy thereof with respect to the international human right law. Finally, this chapter provides the research findings and the recommendations thereof.

Chapter Two

The World Bank: Brief Description

2.1 Introduction

The purpose of this chapter is to explain the factors triggered for the establishment of the WB followed with a brief discussion of the WB groups. It is also the intention of this chapter to highlight the purpose and the legal mandate of the Bank in addressing its Article of agreement as it stand at present. The function of the present chapter is thus to give the readers a good insight about the WB in general so as to make the following chapters much comprehensive. In doing so, the writer will spend some time to discuss the factors behind the establishment of the WB. Followed by the discussion on the purpose and mandate of the WB and finally the study will emphasize the transformation of the WB mandate over time and how the issues of human right become imperative.

2.2. Factors behind its Formation

To begin with, the great crisis and depression in the 1930s resulted in important economic and financial consequences.³⁴ The situation led to a general lack of confidence in paper money and a demand for gold beyond what national countries could supply.³⁵ As a result State's stock gold and currencies that could be changed in gold thereby were contracting the amount and frequency of monetary transaction between nations. Governments assumed that by reverting the pre-war standard business would simply continue as usual. However, immediately following the war, the capitalist world economy entered in fact hard time.³⁶ Most importantly, it worsened the level of unemployment and lowered living standards.³⁷ Between 1929 and 1932 price of goods fell by 48 percent worldwide and the value of international trade fell by 63 percent.³⁸ In reaction to these

³⁴Ghazi, Cited at Note 21, P. 1

³⁵Ibid. The United Kingdom and a Number of other Nations are Were Forced to Abandon the Gold Standard, Which By Defining the Value of Each Currency In terms of A Given Amount of Gold, had For Years Given Money A Known and Stable Value.

³⁶ R. Peet, Unholy Trinity: The IMF, the World Bank and WTO, (2003) , P.30

³⁷ Ghazi, Cited at Note 21, P. 1 Unemployment and union activities were seen as internal threats with the potentials for undermining social normality, stability peace and what little economic success remained. For instance, Between 1932 and 1933 unemployment in the USA reached 27 per cent and in Germany 44 percent , See, Peet, Cited at Note 36, P. 31

³⁸Id., P. 2 At the End of the World War II, Subsequent to the New World Situation and the White Keynes Proposals, the Need For an Organization that Would Supervise the Newly Proposed System Become Clear.

growing problems, difference attempt has been made to boost international economic cooperation among developed capitalist countries through series of conferences.³⁹ What ended the inter-war economic crisis was not the series of conferences but rather the Second World War.⁴⁰ Because, modern warfare entails mass modern production, carefully planned by the state, which was also the primary consumer of machinery of warfare produced. In this regard, production was for rapidly apparent, immediate, political objectives, rather than market oriented consumption. The war therefore brought together economics and politics and set the stage for Bretton Woods.⁴¹

The other important aspect in relation with the creation of the Bretton Woods institutions (which WB is a part) was the change in global economic order. In response of the traumas of Great depression, western governments had to resolve between 'domestic independence and international stability'.⁴² Yet also unlike the inter-war period governments were become responsible for creating a stable international economic order and averting to the destructing economic nationalism of the 1930s. Accordingly, the new international economic regime would be different from the laissez-faire regime of the nineteenth century and the protectionist regime of the 1930s.⁴³ It is worthy of mention however that the conference held at Bretton Woods was held possible, according to one commentator by three conditions.⁴⁴ First, power was concentrated, with small number of states, in North America and Western Europe, making decision for the entire world system. The communist Eastern Europe states, with their centrally planned economies, uphold deliberate policy of segregation from the World economies and ultimately have their own international regime. Furthermore, the dominant Euro-American states

³⁹Peet, Cited at Note 36, P. 31

⁴⁰Id., P. 32

⁴¹Ibid. The war intertwined economics and politics that the classical liberalism had long separated and in turn leads for the creation of the Britton Woods.

⁴² Id., P. 36

⁴³Ibid. In this case, unlike the liberalism of the nineteenth century, the government of nation states would have much role in the economy subject to international rules, in a compromise between domestic autonomy and international norms.

⁴⁴Ibid. The Commentator subscribes the view that the third world countries were not fully integrated in to a world economy. They neither managed nor controlled. Moreover, weakened by the war, Japan remained subordinate and external to management and decision making. Furthermore, the dominate Euro-American states were also not challenged by countries what came to be called the Third World, a great number of which are still emerged as independent states.

were also not challenged by countries what came to be called the Third World, a great number of which are still emerging as independent States.⁴⁵

The second condition making the Bretton Woods possible resided in the common interest shared by the powerful states, mainly their beliefs in capitalism and specifically, by the end of the II World War, classical liberalism tempered by Keynesianism.⁴⁶

The third condition was the new readiness and capability of the USA to assume leadership after the Second World War. At this juncture, the American economy enjoyed market principally in consumer goods, great productive capabilities, and a strong currency. Hence, at the end of Second World War, following to the new world situation (the weakening of Great Britain's power and the emergence of the US as a major global power and the White-keyens proposal) the need for an organization that would supervise the newly proposed system is very clear. Accordingly nations led by US and UK, met at Bretton Woods, New Hampshire, on 1-22 July 1944 to discuss economic plans for the Post war peace.⁴⁷ In reaction governments required to secure peace and prosperity through international economic cooperation. Such cooperation would be based on the world market, in which capital and goods can move freely, regulated by global institutions operating in the general interest of greater stability and predictability. As a result the IMF and the IBRD were formed as organization during Bretton Woods' conference.⁴⁸

2.3 Brief Description of the World Bank Group

The WB Group consists of five separate legal entities: the International Bank for Reconstruction and Development (IBRD); the International Development Association (IDA); the International Finance Corporation (IFC); the Multilateral Investment Guarantee Agency (MIGA); and the

⁴⁵Ibid.

⁴⁶Ibid, For Instance, Both the U.K. and U.S. delegations thus concentrated on creating an international monetary system that would be acceptable in their respective domestic political arenas. The discussions focused almost exclusively on complicated matters that were vital to such a system--e.g., rules relating to an international currency and multilateral clearing mechanism, drawing rights, par values, a transition period during which restrictions could be maintained on current account transactions, and the governance of the IMF See, also E. R. Carrasco, "Income Distributions and The Bretton Woods Institutions: Promoting An Enabling Environment For Social Development", Transnational Law & Contemporary Problems Vol. 6 (1996), P. 4

⁴⁷ Id., P. 27. The delegates to the Bretton Woods Conference considered a draft agreement prepared in April 1942 by Harry D. White of the U.S. Treasury and a draft that was prepared in June 1944 by the United Kingdom, principally by Lord John Maynard Keynes, who chaired the U.K. delegation to the Bretton Woods Conference. See K. Hudes, S.S. Schulte, The Gentleman's Agreement: Multilateralism or Hegemony? ILS Journal of International and Comparative Law Spring, 2009, P. 3

⁴⁸See Generally the Outcome Document of the Bretton Woods Conference.

International Centre for Settlement of Investment Disputes (hereinafter called the ICSID).⁴⁹ It should be noted that, most commentators observed that, the term ‘WB’ and ‘the Bank’ refers properly only the IBRD and the IDA.⁵⁰ Therefore, for current purpose, the two most relevant members of this group are the IBRD and the IDA (collectively referred to as ‘the WB’) and thus detail discussion on the structure and mandate of the WB is limited to these entities. To begin with the IBRD was established in 1944 with the objective that it would assist to reconstruct war-damaged economies and generally encourage growth in less developed member countries.⁵¹ The IBRD was considered by the US government as one of the two pillars of the world economic system in the post war era, along with the IMF.⁵² The IBRD focuses on middle income and creditworthy poor countries ‘to support sustainable, equitable and job-creating growth, reduce poverty and address issues of regional and global importance’.⁵³

Coming to the IDA, it was created in 1960 in return to the demands from a growing group of under developed countries for a more liberal type of development fund.⁵⁴ The IDA give loans to countries that are not regularly credit worthy in international financial markets.⁵⁵ The third entity i.e. the IFC was created to promote and present financing, through loans, guarantees and equity participation to private enterprises in its member countries. The IFC also plays an important catalytic role, mobilizing funds from other sources in excess of its own.⁵⁶

⁴⁹See The Article of Agreement for the International Development Association, (as amended effective February 16, 1989), art. II Section I (a). See also Ghazi, Cited at Note 21, P. 19

⁵⁰Peet, Cited at Note 36, P.112

⁵¹ The IBRD’s Articles of Agreement, Cited at Note 15, art. I See also Shihata, Cited at Note 20, P. 8.

⁵²Shihata, Cited at Note 20, P. 8. The International Bank for Reconstruction and Development (IBRD) and the International Monetary Fund (IMF) were created as a result of negotiations rendered at a conference held at Britton Woods. The IMF’s task was to provide short term financial assistance for countries suffering balance of payment problems while the Bank was given two tasks to provide long term financing for the post war reconstruction of war damaged economies and the promotion of economic development in the under developed world. See M.A Williams, *Conventions, Treaties and Other Responses to Global Issues*, Vol. II The World Bank P. 1

⁵³See Generally the IBRD Article of Agreement, cited at note 15. It works with its members to achieve equitable and sustainable economic growth in their national economies and to find solutions to urgent regional and global problems in economic development and in other important areas such as environmental sustainability. It pursues its overriding goal—to overcome poverty and improve standards of living—primarily by providing loans, risk management products, and expertise on development-related disciplines and by coordinating responses to regional and global challenges. (See <http://www.worldbank.org/ibrd>.) last visited on April 21,2012 See also Fujita, cited at note 24, P. 376

⁵⁴Darrow, Cited at Note 7, P. 11With 138 members, the IDA has emerged as the Most Important Single Source of Development Finance for Low –Income Countries. Shihata, Cited at Note 20, P. 11

⁵⁵ Peet, Cited at Note 36, P.112

⁵⁶Shihata, Cited at Note 20, P. 10

In 1965, the IBRD succeeded in preparing a convention on the settlement of disputes linked to transnational investments which was intended to provide trustworthy conciliation and arbitration facilities at the international level.⁵⁷ The convention which became effective in 1966, created fourth Bank member, the International Center for Settlement of Investment Disputes the ICSID.⁵⁸ The ICSID was created to smooth the progress of settlement of investment disputes between governments and foreign investors.⁵⁹ It should be noted however that, the jurisdiction of this institution, requires the mutual consent of the parties to the disputes and the jurisdiction is extends to legal disputes, occurring directly out of investment between a member state and a national of another member state⁶⁰

In September 1985, the WB Board of Governance began a process of creating a new investment in insurance affiliate by approving the MIGA.⁶¹ Operational since 1988, the MIGA has two objectives, its main missions is to boost the flow of developed countries capital and technology for developing countries under the condition in line with their developmental need, policies and objectives on the bases of fair and stable standards for the treatment of foreign investment. The second objective of the MIGA is to complement national and private agencies supporting foreign direct investment through their own investment insurance programs.⁶² Finally, it should be noted that, the WB lends money: it does not make grants. Theoretically all loans must be repaid.⁶³ There are two types of loan.⁶⁴ The first is for the developing countries that are competent to pay near- market interest rates. In this regard; international investors buy bonds issued by the WB in order to finance the operation.⁶⁵ The second type is for the countries that are not credit worth in

⁵⁷ Convention on the Settlement of Investment Disputes Between States and Nationals of Other States, available at http://icsid.worldbank.org/ICSID/StaticFiles/.../CRR_English-final.pdf. (hereinafter called ICSID) last visited on April 16 2012 See also, Cited at Note 20, P. 11

⁵⁸ Ibid. The Convention entered into force on October 14, 1966, when it had been ratified by 20 countries. As at April 10, 2006, 143 countries have ratified the Convention to become Contracting States.

⁵⁹ Id., See art. 1(2) of the ICSID Convention.

⁶⁰ Id., See art. 25(1) of the ICSID Convention.

⁶¹ Convention Establishing the Multilateral Investment Guarantee Agency, Available at <http://www.miga.org/whoweare/index.cfm?stid=1788> last visited on June 16, 2012. See also Ghazi, Cited at Note 21, P. 32

⁶² Id., See art. 2 of the ICISD Convention , Cited at Note 57

⁶³ See The IBRD's Articles of Agreement, Cited at Note 15, article III and The IDA's Article of Agreement, Cited at Note 49, article I

⁶⁴ Ghazi, Cited at Note 21, P. 19

⁶⁵ See, The IBRD's Articles of Agreement, Cited at Note 15, article IV Section V

the international market and are therefore incapable to pay near- market interest rates and the loan is guaranteed by the IDA.⁶⁶

2.4 The World Bank Mandate

2.4.1 The International Bank for Reconstruction and Development (IBRD)

As mentioned, the IBRD was formed alongside the IMF at Bretton Woods in 1944, mostly to finance post-war reconstruction in Europe. The aim was both to foster international trade and progressive improvement in the global standard of living.⁶⁷

Coming to the mandate of the IBRD/WB, the purposes of the IBRD as provided under Article 1 of the articles of agreement are: To help in the reconstruction and development of territories of members, to support private foreign investment by means of guarantees or participations in loans and other investments made by private investors, to promote the long-range balanced growth of international trade and the maintenance of symmetry in balances of payments, to organize the loans made or guaranteed by it in relation to international loans through other channels and to carry out its operations with due regard to the effect of international investment on business conditions in the territories of members.⁶⁸ Although the reconstruction of war devastated Europe has remained a key focus of the Bank's work, the Bank's Articles of Agreement proclaims that one of the purposes of the Bank is 'the encouragement of the development of productive facilities and resources in less developed countries'.⁶⁹ Today, the Bank 'has sharpened its focus on poverty reduction as the overarching goal of all its work'.⁷⁰ The IBRD has since greatly

⁶⁶ See The IDA's Article of Agreement, Cited at Note 49, article 2 Section II. It should be noted that, the IBRD makes the "hard" loans, the resources for which come mainly from the proceeds of a vigorous IBRD borrowing program on public financial markets worldwide. The "soft" loans (fewer in number and overall volume) come from the IDA, drawing from resources that are contributed by the wealthiest countries. See J. W. Head, " Law and Policy In International Financial Institutions: The Changing Role of Law In the IMF and The Multilateral Development Banks", Kansas Journal of Law and Public Policy, (2008), P. 2

⁶⁷ The International Bank for Reconstruction and Development (IBRD), Commonly Called the WB Was created as part of the revised institutional structure for the world economy at the end of the Second World War. Initially focused on reconstruction from the late 1940s it increasingly turned its attention to financing economic development and it is currently the main multilateral sources of development assistance. See Williams, Cited at Note 52 p. 2 . See also Shihata, Cited at Note 20, P. 8

⁶⁸ The IBRD's Articles of Agreement, Cited at Note15, Art. 1

⁶⁹ Id., art. 1(i). See also Fujita, Cited at Note 24, P. 376

⁷⁰ Fujita, Cited at Note 24, P. 376. When the attention of the WB focused on developing countries in the 1950s, it become clear that the poorest developing countries required in order to be able to afford to borrow capital. As a result, initiative had launched by the US to set up an agency to lend to the very poor developing nations on highly consensual terms. In view of that, IDA was established in 1960 to provide lower-cost financing to economically less

outgrown the dreams of its designers and early supporters.⁷¹ It operates now in developing countries where per capita income and the general level of development are low enough to justify the IBRD support but where the countries are however deemed to be service their debt to the IBRD.⁷² The financing of specific projects is still required to be the main task of the IBRD but it also covers loans and guarantees for any well defined fruitful purpose in the economic or social fields.⁷³ The IBRD makes development loans, guarantees loans and offers analytical and advisory services.⁷⁴ It borrows at low interest rate by selling private bonds in private capital market in the first world countries and makes near-market interest loans to credit worthy countries in the third world and elsewhere.⁷⁵ It must be clear that, loans granted by the IBRD is based on fairly conventional terms, but the loans normally have a grace period of five years, and repayable over fifteen to twenty years.⁷⁶ According to the Bank, the IBRD lends only to credit worthy borrowers and only for the projects that promise high real of economic return to the country. The bulk of the Bank's funds are thus lent for project; the residue involves Structural Adjustment Loans.⁷⁷

2.4.2 The International Development Association (IDA)

The IDA was established in 1960 to render loans to poor countries not deemed to be credit worthy to borrow from the IBRD.⁷⁸ The IDA thus was created with the objective of supporting the poorest Countries in the World.⁷⁹

developed countries ("LDCs"), which rocketed to prominence with the demise of colonial holdings by European powers. See also Head, Cited at Note 66

⁷¹Shihata, Cited at Note 20, P. 8

⁷²Ibid. See also The IBRD's Articles of Agreement, Cited at Note 15

⁷³Ibid. The IBRD operations are mainly loans made to governments and governmental agencies. See, Ghazi, Cited at Note 21, P. 21 See also Article 3, section 4 of the IBRD's Article of agreement gives the conditions on which the Bank may guarantee or make loans.

⁷⁴Peet, Cited at Note 36, P.112. IBRD obtains most of its funds by issuing bonds in international capital markets. In fiscal 2011 it raised USD 29 billion by issuing bonds in 26 currencies. Because of its standing in the capital markets and its financial strength, IBRD was able to borrow these large volumes on very advantageous terms despite volatile market conditions. See The WB Annual Report 2011, cited at note 72

⁷⁵Ibid.

⁷⁶See The IBRD's Articles of Agreement, Cited at Note 15, Section 8. See also Darrow, Cited at Note 7, P 10

⁷⁷Darrow, Cited at Note 7, P. 11 In this Case, the Project Cycle is Lengthy, Often Taking Several Years to Complete. It Incorporates, a Number of Stages: Identification, Preparation, appraisal, Implementation, Supervision and Evaluation.

⁷⁸Art. 1 of the IDA's article of Agreement Pointed out that the purposes of the Association are to promote economic development, enhance productivity and thus raise standards of living in the less-developed areas of the world included within the Association's membership, in particular by providing finance to meet their important developmental requirements on terms which are more flexible and bear less heavily on the balance of payments than

As far as membership to the ID is concerned, a country should be a member of the IBRD before joining the IDA⁸⁰ In this regard, members of the IDA are classified as “part I” members (mostly developing countries contributed to the replenished of the IDA funds) and “part II” members (mostly developing countries.)⁸¹ As mentioned, the IDA was created to deal with the needs of poor countries by providing finance on consensual terms. Unlike the IBRD, the IDA, does not have a share capital but relies on voluntary contributions which are regularly replenished by its donor members.⁸² That is to say, the majority of IDA’s funds are contributed by its richer members, although some developing countries contribute as well. In this case, the IDA receive transfer from the net earnings of the IBRD, and repayments of its credits⁸³ while the IDA can also provide financial support directly to private enterprises, all IDA credits because they are at concessional have been given to governments or, in a few cases, to intergovernmental agencies. It has turn in to the most exclusive source of development for low-income Countries.⁸⁴

The IDA makes bigger development credits to Member States with per capita incomes below about USD 1,855 per annum. It provides these Member States with development credits for similar purposes and in similar form to IBRD financing but on considerably more attractive terms.⁸⁵ On the whole its financing is provided interest-free, although subject to a service charge, for twenty to forty years with a ten-year grace period.⁸⁶ It should be clear however that the IDA credits are made only for governments, over a thirty five to forty years repayment period with a ten year grace period on the repayment of the principal. The IDA provides the poorest developing countries with long term loans with zero interest. However, although there is no interest charge, the credit bear a small service charge, which as at 2002 was 0.75 per cent on the

those of conventional loans, thereby furthering the developmental objectives of the International Bank for Reconstruction and Development (hereinafter called "the Bank") See also Shihata, Cited at Note 20, P. 11

⁷⁹The International Development Association (IDA), the World Bank’s fund for the poorest countries, is the largest multilateral channel of concessional financing to the world. Its funding supports countries’ efforts to foster economic growth, reduce poverty, and improve the living conditions of the poor. This fiscal year 79 countries were qualified to receive IDA assistance. See <http://www.worldbank.org/ida> See also Ghazi, Cited at Note 21, P. 24

⁸⁰ See IDA’s Articles of Agreement Cited at Note 49, art. 2

⁸¹ Ghazi, Cited at Note 21, P. 24

⁸² Shihata, Cited at Note 20, P. 11, See also Ghazi, Cited at Note 21, P. 25

⁸³ Darrow, Cited at Note 7, P 12

⁸⁴ Shihata, Cited at Note 20, P. 11 Unlike the IBRD, its financing includes a growing portion provided for purposes other than specific projects.

⁸⁵ D. D. Bradlow, International Law and the Operations Of International Financial Institutions, Washington College of Law Research Paper No. 2011. (<http://www.ssrn.com/abstract=1851849>) last visited on Jan. 10, 2012, P.10 The IDA Receives Transfers Form the Net Earning of the IBRD, and Repayment of Its Credits. IDA Credits are made only to Governments. See Ghazi, Cited at Note 21, P. 25

⁸⁶ See IDA’s article of Agreement, Cited at Note 49, article 2 Section II

distributed balance. The grace period and maturity of the credits are so long that it is virtually grant aid.⁸⁷

Both the IDA and IBRD nonetheless, have the same staff and go after the same policy guidelines and similar procedures concerning project evaluation and execution.⁸⁸ Above all, the purpose of the IDA is to assist that of the IBRD.⁸⁹ Both the IDA and the IBRD are mandated to endorse economic development, increase productivity and thus raise the living standards in the poorest member States by providing the finance to meet their developmental requirements on terms which are more flexible, generous, impact less heavily on the Countries balance of payments than payments of the IBRD loans.⁹⁰

2.5 Evolution of the World Bank's Mandate

Over the years, the Bank has gradually expanded its understanding of what factors qualify as economic considerations within the meaning of its Articles.⁹¹ In its early years, when the Bank's position was that development referred to economic growth, it interpreted economic considerations as including only those issues that were directly relevant to the financial and technical feasibility of the projects it was funding and to the project's impact on the economic growth potential of the Member State.⁹² During the 1950s the World Bank, along with other conventional institutions, evidenced in a rising interest in broader issues of income distribution and poverty. This was partly because the Bank presidents in fact went to the third world countries and saw for themselves the conditions existing there along with the Bank's missions.⁹³ Thus, lending in the 1950s in Africa was directed to transport infrastructure to support the colonial extraction of minerals. At this time, no loans could go to African colonies without being guaranteed by the colonial power. Still, the amount was not insignificant and amounted to

⁸⁷Ghazi, Cited at Note 21, P. 25 Officially, by supporting to build human capital, policies, institutions, and infrastructure, the IDA tries to help efficient and effective programs to reduce poverty and improve the quality of life in its poorest member countries needed to bring about equitable and sustainable growth. See also Darrow, Cited Note 7, P 12 Yet the IDA, because it provides funding on such generous terms, is not self-sustaining. Consequently, its capital is regularly replenished by its Member States. See Bradlow, Cited at Note 85, P. 10

⁸⁸ Fujita, Cited at Note 24, P. 376

⁸⁹ Bradlow, Cited at Note 85, P. 10

⁹⁰Ibid.

⁹¹D. D. Bradlow, The World Bank, the IMF, and Human Rights, available at (<http://www.ssrn.com/abstract=1710636>) last visited on January 5, 2012 P. 55

⁹²Ibid. It should be noted that throughout its existence, the World Bank faced a tension between a narrow, technocratic self-understanding as an economic development agency and various efforts to broaden its mandate. Brodnig, Cited at Note 8, P. 4

⁹³ Peet, Cited at Note 36, P.115

roughly 10% of lending in the 1950s with four-fifths going to South Africa, the Federation of Rhodesia and Nyasaland and the Belgian Congo.⁹⁴

In the 1960s, the WB moved in to ‘development planning’. In this case, the prevalent conception was economic growth was the most imperative element in a country’s development equation and that growth was both essential and sufficient a host of other problems, including such social questions like unemployment and poverty.⁹⁵ Thus, in addition to physical infrastructure projects, the Bank began to fund development activities related to health, education, agriculture, and housing.⁹⁶ From 1968-81, the WB saw a major extension of activities. That is to say, the weight on large-scale infrastructure projects and economic growth gave way to the broader model of poverty alleviation.⁹⁷ For instance, in the 1970s the Bank focused on infrastructural support and brief flirtations with income distribution, basic needs and poverty reduction.⁹⁸ All in all, in 1970s the operations of the Bank were concentrated on financing specific projects.⁹⁹

When one look at the operations of the Bank in the 1980s, the decline in international business during the early 1980s led to the waning of developing countries’ trade conditions which exacerbated their cumulative debt problem.¹⁰⁰ The Bank therefore introduced SAPs in the 1980s to specifically address this issue.¹⁰¹ It was a shift from projects to policy-based lending.¹⁰² The Bank argued that structural reforms would ensure debtors' capacity to continue paying their debts beyond the short term.¹⁰³ The major problem posed by SAPs however is their conditions. At this

⁹⁴ H. Stein, The World Bank the IMF in Africa: Strategy and Routine in the Generation of a Failed Agenda, 2004, available at (<http://www.citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.198.7116...pdf>) last visited on February 12, 2012, P. 9

⁹⁵ Darrow, Cited at Note 7, P. 14

⁹⁶ Bradlow, Cited at Note 91, P. 56

⁹⁷ Brodnig, Cited at Note 8, P. 4

⁹⁸ Stein, Cited at Note 94, P. 4

⁹⁹ Shihata, Cited at Note 20, P. 25

¹⁰⁰ Fujita, Cited at Note 24, P. 380

¹⁰¹ Ibid. In essence, the SALs were and still are an attempt to mix together large quantities of untied aid considered to be urgently needed in the debt crisis. In this regard, the recipient country was expected to carry out important reforms of its economy as a condition for receiving this money.

¹⁰² Brodnig, Cited at Note 8, P. 4

¹⁰³ Report by the Independent Expert, Mr. Fantu Cheru, submitted in accordance with Commission decisions 1998/102 and 1997/103, Effects of structural adjustment policies on the full enjoyment of human rights, Economic and Social Council, E/CN.4/1999/50, 1999. At this point, it is important to mention that, the main argument against the process of SAPs is that structural adjustment programs (SAPs) have reflected the liberalization of policies towards a particular type of package, mainly focusing on macroeconomics, liberalization public sector reform and the liberalization of markets and trade. This process resulted in the adoption of one-size-fits-all economic policies, which were often poorly adapted to a country's specific needs, which lacked broad popular support, and which failed

juncture, the Bank's conditionalities have an overwhelming effect on human rights in general and socio-economic rights in particular of the African peoples.¹⁰⁴ In the early 1990s, the Bank reinforced and extended its operational policy framework. The increasing complexity of activities made it essential to cover in a more systematic fashion various operational parameters. This included an increased importance on participation of stakeholders as well as the "safeguard policies", which deal with environmental, social and legal implications of Bank operations.¹⁰⁵ Two of these policies - involuntary resettlement and indigenous peoples – are of direct relevance for human rights issues and cover some of the most controversial aspects of Bank operations.¹⁰⁶

Since the 1990s, the Bank has also been trying to correct the inclination to over emphasize the economy and to develop a new development approach which takes into account non-economic aspects of development such as the society and environment.¹⁰⁷ Even though the Bank has no clear human rights policy, the changing model of development as encompassing human rights necessitate the Bank to consider human rights issues as part and parcel of its operations. Therefore, in 1994, as a response for the call for accountability mechanism by the Wapenhans Report, the Bank established the Inspection Panel. This quasi-judicial organ of the Bank represents an interesting addition to the scene of human rights institutions as, for the first time; individuals harmed by the activities of the Bank were given some form of recourse.¹⁰⁸

In October 1996, the WB and IMF reached an agreement on the first comprehensive debt reduction mechanism for the poorest countries the Heavily Indebted Poor Countries (hereinafter called HIPC) debt initiative.¹⁰⁹ As a result, a joint Initiative launched by the BWIs at the end of

to make poverty reduction a priority. See Fantu Cheru, "Building and Supporting PRSPs in Africa: What Has Worked Well so Far? What Needs Changing?" *Third World Quarterly*, Vol. 27, No. 2 (2006), P. 355

¹⁰⁴ Concerning the criticism that SAPs have a distressing effect on the realization of socio-economical rights, the Bank responded by admitting that there were harmful effects with the SAPs and said 'the protection of the poor segments from the undesirable effects of adjustment policies are being strengthened at present and are certain to gain greater importance in the years to come'. See Fujita, Cited at Note 24, P. 380

¹⁰⁵ See Generally the operational policies of the World Bank. See also Brodnig, Cited at Note 8, P.5

¹⁰⁶ See Generally the operational policies of the World Bank. See also Brodnig, Cited at Note 8, P.5

¹⁰⁷ Fujita, Cited at Note 24, P. 387

¹⁰⁸ R. Shams, *The World Bank as an International Financial Institution*, HWWA Discussion Paper, available at <http://www.hwwa.de>, last visited on June 12, 2012 P. 16. In 1994 the board of executive directors empowered an independent inspection panel to hear complaints from groups that would be directly affected by bank projects. Reporting requirements were enacted substantially opening records and documents to the public. Project managers were required to file, and periodically update, a public information document (PID). Each PID would contain a section devoted to "environmental aspects" of the project.

¹⁰⁹ Cheru, Cited at Note 103, Para. 106. The initiative is envisioned to reduce the debt of 41 heavily-indebted countries (33 in Africa, 4 in Latin America, 3 in Asia and 1 in the Middle East) over a period of about six years to a

1999 sets the fight against poverty at the heart of development policies. Under this Initiative, low-income countries wishing to apply for financial aid from either of the organizations, or for debt relief under the HIPC, are required to draw up poverty reduction programs known as Poverty Reduction Strategy Papers (PRSPs).¹¹⁰ However, PRSPs have been criticized for imposing conditionalities the same as SAPs¹¹¹ seeing that it has had perverse effects on human rights and thus undermines the domestic democratic processes by superseding public policy-making.¹¹²

On the other hand, the evolution in the WB's perception of its own mandate has been described as "mission creep," evolving from post war reconstruction, through several conceptions of economic development, to a broader policy platform that includes the implementation of public health programs and many other initiatives that would not have been considered legitimate under the narrow interpretation of the Bank's economic mandate that prevailed at its inception.¹¹³ The main development with respect to human rights issues in the WB is the adoption of Tilburg Guiding Principles on WB, IMF and Human Rights in April 2002. By virtue of this Guiding Principles both the WB, for the first time, acknowledged in an explicit way that the organizational autonomy does not entail immunity from the international law and that they are

level that each country can afford, called a "sustainable" level. At the end of the last decade, three factors forced the WB to change its outlook and to look for a renewal of its approaches and practices in the developing countries. The first reason was the acute consciousness of the increase of the poverty incidence in many parts of the world. The second one was associated to the failure in most countries of structural adjustment policies and the questioning of the Washington Consensus on which they are based. The third factor was the crisis in legitimacy of the Bretton Woods Institutions (BWIs) who had to answer the rising criticisms from civil society and various protest movements. Cheru, Cited at Note 103, Para. 106. The HIPC initiative is designed to reduce debts to sustainable levels for poor countries that pursue economic and social policy reforms is used particularly in cases where traditional debt-relief mechanisms will not be enough to help countries exit from the rescheduling process. See Cheru, Cited at Note 28, Para. 12

¹¹⁰Ibid. It should be noted that PRSP principles represent a fundamental rupture with past practice, both in terms of the way policies are designed and in their content, their funding and performance indicators. In all these aspects, the failure of previous strategies required the BWIs to formulate policies based on largely opposing principles. Thus, after growing public critiques, the WB and the IMF shifted their focus in 1999 from SAPs as being the only appropriate response to a new approach: Poverty Reduction Strategy Papers (PRSPs). See Fujita Cited at Note 24, P. 381

¹¹¹Fujita Cited at Note 24, P. 381

¹¹² Id., P. 9. One commentator even warns against the abuse of conditionality that the extension of the practice of conditionality from the occasional circumstances of crisis management to the unchanged process of general economic policy-making has implied a transfer of sovereignty which is not only unprecedented but is often dysfunctional.

¹¹³ A. Mcbeth, "A Right By Any Other Name: The Evasive Engagement Of International Financial Institutions With Human Right' *The Geo. Wash. Int'l L. Rev.*, Vol. 40, (2009), P. 1114

bound to comply with international human rights obligations.¹¹⁴ The Guiding Principle further asserts that the responsibility for implementing human rights is universal and concerns all state and non-state actors. It provides for the WB's international obligations to take full responsibility for human rights respect in their operations.¹¹⁵ To this effect, the WB is required to integrate human rights considerations into all aspects of the operational and internal functioning.¹¹⁶

2.6 Conclusion

The great depression of the 1930's highlighted the importance of a new global economic order to have stability and predictability in the realm of international economic paradigm. This in turn leads to the establishment of the WB alongside with the IMF in 1944. In general the WB Group consists of five separate legal entities with multiplicity of mandates. However, although the WB mandate has evolved through time and its human rights role showed flexibility and significant improvement, the Bank never affirmed in concrete terms that it had a specific role to play in relation to human rights. However, the policies and operations of the Bank could have a detrimental effect most importantly on socio-economic rights. Hence, in the next chapter, I will discuss the human right impact of the Bank's policies and operations in Africa. With regard to the policy lending of the WB a detail analysis will be made pertaining to the Bank's SAPs and more importantly the PRSPs and their effect on socio-economical rights in Africa. Concerning the project lending of the Bank, the effect of three privately financed projects namely the Chad-Cameroon Pipeline project, the UG-Bujagali Private Hydropower Development Project in Uganda and the Niger Delta Contractor Revolving Credit Facility in Nigeria private development projects financed by the WB will be used to demonstrate the adverse effects of the Bank sponsored projects.

¹¹⁴ Tilburg Guiding Principles on the World Bank, the IMF and Human Rights, Tilburg University, Netherlands, April 2002, Para., 6

¹¹⁵ Id, Para., 5

¹¹⁶ Id, Para., 24

Chapter Three

The Human Right Impact of the World Bank Policies and Project Operations in Africa

3.1 Introduction

For several decades, the WB has claimed in its economic nature of and its own Articles to refute any human rights obligations. It hides behind the restrictive interpretation of its Articles asserting that operational mandate does not cover the field of human rights. But through its development policies and operations, the Bank has a considerable influence on human rights in general and socio-economic rights in particular in Africa. The primary aim of this chapter is to examine the effects of the Bank-supported structural adjustment policies and most importantly poverty reduction strategy papers as well as three privately financed projects on economic and social rights of different societies in Africa. In course of such examination, the author has sought to focus on the Bank's mandate as laid down in its Articles of Agreement and developed through subsequent practice; analyze the current status of such mandate against the backdrop of evolving development paradigms. Moreover, a brief assessment has been undertaken on the nexus between human rights and development in the view of showing that the Bank's responsibility of promoting and protecting of human rights is implicit in its mandate. Attempt has also been made to show the existing arguments regarding the continuing relevance of human rights to the agenda pursued by the Bank. In doing so the chapter has began with the concise introduction on the WB and human rights. The writer believe that brief overview on the WB activity pertaining to human rights will help to realize the reader that how human rights issues are of particular importance in the Bank's official business.

3.2 The World Bank and Human Rights

The actions of the WB irrefutably have a thoughtful effect on human rights in both positive and negative ways.¹¹⁷ Regardless of years of internal and external pressure and the institution's adoption of a number of social and environmental policies, the Bank maintains no comprehensive or consistent approach on the policy and operational levels pertaining to human rights.¹¹⁸ However, human right issues arise in a potentially wide range of the Bank's activities.

¹¹⁷ Mcbeth, Cited at Note 113, P. 1101

¹¹⁸ G. A. Sarfaty, "Why Culture Matters In International Financial Institutions: The Marginality Of Human Rights At the World Bank", The American Journal Of International Law, Vol. 103,(2009), P.648 See also Horta, Cited at

Accordingly, any dialogue on human rights implications to the WB's activities would be incomplete without a concise analysis of the ways in which its policies and activities can impact positively and negatively, and directly or indirectly up on the realization of human rights.¹¹⁹ In this regard, we can classify the criticism against the WB in to two broad categories. The first is criticism directed against its policy prescriptions including SAPs and afterwards the PRSPs¹²⁰ and the second is criticism directed against the project operations of the WB.¹²¹ The SAPs are considered for the purpose of reduction of public expenditure, cuts in subsidies, to enhance market and trade liberalization and to encourage privatization.¹²² The practice of providing structural adjustment loans came into being in the 1980s, slowly leading to macro- economic policy reform and substantial reengineering of public sector policies and institutions.¹²³ However the impact of SAPs and latter on PRSPs of the WB on social, economical and political conditions in Africa have been the subject of widespread debates.¹²⁴ It is broadly acknowledged that the policies of the Bank may very much influence, directly or indirectly, the realization of human rights in general and socio-economical rights in particular in Africa. In this case, the loans and its conditions may interfere with the capacity of member states to fulfill their human rights obligations in general and socio-economical rights in particular.

Likewise, if we look at developmental projects financed by the Bank, particularly, in projects in Africa, a number of high-profile projects such as the Chad-Cameroon Pipeline have highlighted the Bank's substantial, direct and often harmful involvement in areas of human rights in Africa.¹²⁵ Thus although the Bank in some cases plays a constructive role in promoting economic, social, and cultural rights, it has never assume an orderly evaluation of the impact of its operations on human rights in order to support its claims.¹²⁶ Plenty of evidence demonstrates

Note 16, P. 228. See also G. H. Uriz, "To Lend or Not To Lend: Oil, Human Rights, and the World Bank's Internal Contradictions", Harvard Human Rights Journal / Vol. 14 (2001), P. 209

¹¹⁹ Darrow, Cited at Note 7, P. 53

¹²⁰ Wahi, Cited at Note 2, PP-7-9

¹²¹ Ibid. We can mention the Chad-Cameroon Pipeline UG-Bujagali Private Hydropower Development Project in Uganda and the Niger Delta Contractor Revolving Credit Facility in Nigeria.

¹²² Ghazi, Cited at Note 21, P. 47

¹²³ S. K. Guha, World Bank: Striving to Promote or Undermine Human Rights? Journal of Indian Law And Society Vol. 2, P. 267

¹²⁴ Ibhawoh, Cited at Note 22, P. 158

¹²⁵ Brodnig, Cited at Note 8, P. 164

¹²⁶ F. Mackay, "Universal Rights or A Universe Itself? Indigenous People's Human Rights and the World Bank's Draft Operational Policy 4.10 on Indigenous Peoples", AM. U. INT'L L. REV. Vol.17, (2002), P. 530

that in many cases the Bank policies and operations have had harmful impacts on not only civil and political rights, but also on the enjoyment of economic, social, and cultural rights in Africa.¹²⁷ This in turn necessitates accountability for human rights violations by the WB for its development activities in Africa.

3.2.1 The interrelation between Development and Human Rights

To begin with, it has been known that the WB's impact on matters of people's economic and social welfare was profound, as indeed one would expect given the Bank's goals to alleviate poverty and bolster standards of living. Having that said, development thinking has, at least in certain quarters, always seen the relevance and importance of human rights. In this regard, when the UN Economic and Social Council was established under the UN Charter it had functions and powers that linked equally to '*international economic, social, cultural, educational, [and] health matters*', and to '*promoting respect for, and observance of, human rights and fundamental freedoms for all*' (Article 62).¹²⁸ The very fundamental nature of what development means to the individual was originally captured in Article 25 of the UDHR 1948.¹²⁹

The interdependency of the human rights and development has also been expressly recognized in a UN Declaration in 1986.¹³⁰ Moreover, the 1993 Vienna Convention and Programme of Action called the right to development a universal and inalienable right and an integral part of fundamental human right.¹³¹ The right to development has also been given prominence mandate

¹²⁷ Ibid. This has prompted, among others, the U.N. Committee on Economic, Social and Cultural Rights, the intergovernmental body that monitors the U.N. Convention of the same name, to comment on the impact of Bank operations on human rights.

¹²⁸ D. Kinely, Civilizing Globalization: Human Rights and the Global Economy, Cambridge University Press, 1999, P. 93

¹²⁹ According to this article, everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control. See Universal Declaration of Human Rights, G.A. Res. 217A (III), U.N. GAOR, 3d Sess., U.N. Document, A/810, 1948, art. 25. It should be noted that, This expression of development goals in human rights terms was repeated in various subsequent UN human rights treaties, in particular the International Covenant on Economic, Social and Cultural Rights 1966, the Convention on the Elimination of All Forms of Discrimination against Women 1981 and the Convention on the Rights of the Child 1990, and variously reiterated in numerous statements of each of their overseeing committees. Kinely, Cited at Note 128, P. 93

¹³⁰ See the U. N Declaration on the Right to Development in 1986. The interrelation between development and human rights was first renowned in the final communiqué of the first World Conference on Human Rights held in Teheran in 1968 pronounced that 'the achievement of lasting progress in the implementation of human rights is dependent upon sound and effective national and international policies of economic and social development' Kinely, Cited at Note 128, P. 94. See also Proclamation of Teheran, Final Act of the International Conference on Human Rights, Teheran, 22 April to 13 May 1968, UN Doc. A/CONF. 32/41 at 3 (1968), para. 13.

¹³¹ Vienna Convention and Program of action U. N Doc. A/CONF 157/23 (1993)

of the high commissioner for human rights,¹³² and the general assembly required the high commissioner to set up a new branch whose primary responsibilities would include the promotion and the protection of the right to development.¹³³ Development is defined by Sen as a course of expanding real freedoms. For Sen Development consists of the subtraction of various types of unfreedoms that leave people with little choice and little opportunity of exercising their reasoned agency. In this regard, the removal of substantial unfreedoms . . . is constitutive of development.¹³⁴ Therefore to make possible development that can lead to meaningful freedom, a mere increase in economic growth is not enough. The coincidence of human rights with development thus implies that there is something called development, which can be identified, measured and implemented.¹³⁵

In general, it is appropriate to think of human rights and development research is related because of the two predominant tendencies of the 1990s.¹³⁶ The first tendency is that the demands of developing countries for social provisions increasingly won support as internationally accepted norms or entitlements. This is reflected in the UN social summit Meeting in Copenhagen in 1995 in the fight against poverty and for peoples participation, and in the World Conference on Human Rights in Vienna in 1993.¹³⁷ In the latter's final declaration, the indivisibility and interdependence of all human rights including civil, cultural, economic, political and social as fundamental tenets of international human rights law, are constantly reaffirmed.¹³⁸ One can say that the indivisibility and interdependence nature of rights has finally given a normative recognition. In other words, when the concept of development is considered comprehensive enough to embrace civil and political rights as well as economic, social and cultural rights and they are seen as among the essential elements for the development process.¹³⁹ The conference

¹³² G.A Res. 48/141, U.N. GAOR, 48th Sess., No.49, at 261, U.N. Doc.A/48/141(1993).

¹³³ G.A Res. 50/141, U.N. GAOR, 50th Sess., No.49, at 296, U.N. Doc. A/50/141(1995). U.N. Doc.A/50/241(1995).

¹³⁴ Stuart Corbridge, "Development as freedom: the spaces of Amartya Sen", *Progress in Development Studies* vol. 2,3 (2002), P. 187

¹³⁵ N. J. Udombawa, "The Third World and the Right To Development: Agenda For the Next Millennium", *Human Right Quarterly*, Vol. 22, (2000), P. 757. Besides, Although development is simply defined as economic well- being of the individual and the society at large, development, from the whole text of the foregoing, can be defined simply as the fulfillment of human potential

¹³⁶ H. O. Sano, *Development and Human Rights: The Necessary, but Partial Integration of Human Rights and Development*, *Human Rights Quarterly*, Vol.22, (2000) , P. 736

¹³⁷ Ibid. The Interdependence and Interrelatedness of Human Right has Finally Been Given a Normative Recognition.

¹³⁸ The United Nations General Assembly resolution 32/130 of 16 December 1977

¹³⁹ Fujita, Cited at Note 24, P. 387 See also Jack Donnelly, *Human Rights as Natural Rights*, *Human Rights Quarterly*, Vol 4. No. 3 (1982), P. 402

thus gave the right to development international legitimacy or ever more perceived as a right, whereas earlier it had been perceived as an instrument of solidarity.¹⁴⁰ The second tendency is that reinforces the closer connection between human right and development efforts is the increasing weight placed on good governance and democratization.¹⁴¹

On April 1998, when the U.N. Commission on human rights adopted by consensus a resolution on the right to development (hereinafter called RTD)¹⁴² recommending to the Economic and Social Council the establishment of a follow up mechanism consisting of an open ended working group was to monitor and evaluate the progress of the independent expert and report back to the commission. As a result, the independent expert was to present the to the working group at each of its session a study on the current state of progress in the realization of the right to development as a bases for a focused discussion, taking in to account, among other things, the deliberations and suggestions of the Working group.¹⁴³

Moreover, the commission decided in 2003 to request its sub- commission on the Promotion and Protection of human rights to prepare a concept document establishing options to the right to development and their feasibility, among others an international legal standard of a binding nature, guidelines on the implementation of the right to development and principles for development partnership, based on the declaration on the RTD, including issues which any such instrument might addresses.¹⁴⁴

It is worthy to mention however that, despite the progress made on such right, there is a great deal of debate over the normative aspect of the RTD as well as the exact bearers of the rights and duties of RTD. The point is the ‘right to development’ (RTD) remains unfinished business in terms of international law, isolated in a Declaration since 1986, its path to binding Covenant status having been effectively blocked by a combination of political opposition, textual

¹⁴⁰ Sano, Cited at Note 136, P. 736. The Conference thus emphasized once more that social and economical rights have the same status as civil and political rights. That is to say, during the 1990’s development was increasingly perceived as a right, whereas before that it had been perceived as instrument of solidarity.

¹⁴¹ Ibid. The central point is that democratization as a political culture or behavioral norm in which individuals’ and groups’ right possibilities to be heard are protected and established as a norm in the political process.

¹⁴² Commission On Human Rights Res. 72, U.N. ESCOR, 44th Sess., U.N. Doc. E/CN 4/1998/177 (1998) at 229

¹⁴³ Id., at 233 Dr. Arjun Sengupta, a prominent Indian economist, was appointed Independent expert and by 2004 he produced eight reports while the open ended working group had held five sessions.

¹⁴⁴ Kinely, Cited at Note 128

ambiguity and purported impracticability of implementation and enforcement.¹⁴⁵ Much of the dispute centers on the uncertainty of the allocation of development responsibilities and rights in the text of the Declaration itself.¹⁴⁶ The situation has not been put aside by the emphasis that Arjun Sengupta (the former UN Special Representative on the RTD) placed on the right being simply ‘*a process of development which leads to the realization of . . . human right[s]*’,¹⁴⁷ largely because such a portrayal does nothing to resolve the accountability dilemma between states.¹⁴⁸

One major problem is that there are diverging sentiments on political and moral arguments about the legal obligations of the international community to provide assistance under international human rights law.¹⁴⁹ For instance, the U.S. one of the strong opponents of the right raised a conceptual objection on the right to development. One manifestation of that objection is that, in 2003, the U. S. delegate Danies Roben explained the U.S. negative vote in part because there is no globally accepted definition of such right.¹⁵⁰ In this case, the principal contribution to the conceptual debate from the U.S. has been to declare that the RTD is a synthesis of rights, without any particular additional cement.¹⁵¹

It should be noted that, the Independent Expert doesn’t agree with the sentiment that the RTD can be perceived completely as a “synthesis of right.” In his fifth report, he pointed out that: The right to development is a multifaceted of right to a process of development; it is not just an “umbrella” right, or the sum of a set of rights and the integrity of these rights implies that if any one of them is dishonored, the whole composite of rights is also violated....¹⁵²

¹⁴⁵ Id., P. 106. See also K. Iqbal, The Right to Development in International Law The Case of Pakistan, Routledge Taylor & Francis Group London and New York (2010) P. 4

¹⁴⁶ Articles 2 and 3 of the Declaration provides individuals the status of an active participant and beneficiary of the right, while at the same time stipulating that ‘all human beings have a responsibility for development’, and that ‘States have the right and the duty’ and the ‘primary responsibility’ to advance development, as well as having the ‘duty to co-operate with each other in ensuring development.’ See the U. N Declaration on the Right to Development in 1986, Cited at Note 132

¹⁴⁷ A. Sengupta, ‘On the Theory and Practice of the Right to Development’ (2002) 24(4) Human Rights Quarterly 837, P. 846.

¹⁴⁸ Kinely, Cited at Note 128, P. 107

¹⁴⁹ Ibid.

¹⁵⁰ Statement by Joel Danies U.S. Representative to the U.N. Human Rights Commission, Comment on the Working Group on the Right to Development, 59 Sess. (2003), available at <http://www.humanrights.usa.net/statements/0425RtoD.html> (last visited April 21, 2012).

¹⁵¹ Stephen Marks, the Human right to Development: Between Rhetoric and Reality, 17 Harv. Hum. Rts. J. 137 2004, P. 148

¹⁵² Fifth Report of the Independent Expert on the Right to Development, Mr.Arjun Senguta, Submitted in accordance With Commission Resolution 2002/69, at 5, 6, U.N. Doc.E/CN.4/2002/WG.18/692002).

The other criticism is that no tangible enforcement mechanism has yet been established for the right to development under a treaty-based system.¹⁵³ But legal scholars like Mesenbet Assefa argues that the Working Group, through the Special Task Force, serves as a supervising organ for different development actors, including developed countries, IFIs and other inter-governmental organizations conforming with the principles of the right to development. According to him, the practice of the Working Group and the Special Task Force on the Right to Development reveals that a supervisory mechanism may be developed in the structure of the right.¹⁵⁴ What is more is that, although there are intrinsic limits to what international human rights law really demands in this respect, the eponymous committee that oversees the International Covenant on Economic, Social and Cultural Rights has stressed the potential inherent in the articles of the Covenant that refer to “*international cooperation*” as an influential basis for the Committee on which to base its exertion on globalization and based on which states parties could contribute to create an environment whereby economic globalization does not lead to the infringement of economic, social and cultural rights.

To consolidate this point the independent expert on the RTD, Mr. Arjun Sengupta, in his second report pointed out that, RTD as being an inalienable human right, and as such, the right cannot be taken or bargained away.¹⁵⁵ He also added that the principle which asserts the RTD as a human right has by now gained universal acceptance, through the Vienna Declaration of Human Rights and Program of Action in 1993.¹⁵⁶

Moreover, Amarta Sen, in his book ‘*Development as Freedom*’, clearly elaborates on how human rights are integrated into development.¹⁵⁷ The point is the Rights-Based Approach to

¹⁵³ Mesenbet Assefa Tadege, Reflections on the right to development: Challenges and prospects, the African Human Rights Journal Volume 10 No. 2. 2010, P. 16

¹⁵⁴ Ibid. It should be noted that although a High Level Task Force on the Implementation of the Right to Development was established by the UN in 2004, which acquired some impetus from linking the RTD to the achievement of the Millennium Development Goals by 2015, it remains the case that, whatever value the RTD has today, it lies more in rhetorical argument than in any sense of legal entitlement or obligation. See Kinely, Cited at Note 128, P. 107

¹⁵⁵ Report of the Independent Expert on the Right to Development, Dr. Arjun Sengupta, pursuant to General Assembly resolution 54/175 and Commission on Human Rights resolution E/CN.4/RES/2000/5, Para. 4

¹⁵⁶ Id., Para. 5

¹⁵⁷ According to Sin, this integration of human rights into development occurs at two levels. Firstly, the different types of basic freedoms are causally interdependent. For example, the civil freedom of association enables people to participate in decisions that affect their ability to benefit economically and socially from the process of development. Secondly, and in addition to this instrumental linkage, there exists a more fundamental ‘conceptual integrity’

development has become the rational continuation to the concept of Sustainable Development.¹⁵⁸ This feature of Rights-Based Approach to development is that '*all human rights are part and parcel of development*'.¹⁵⁹ As a result, a number of international organizations and programs have reviewed their existing policy and adopted Rights-Based Approach. The UNDP¹⁶⁰, UNICEF¹⁶¹ and the European Union (EU)¹⁶² can be mentioned. The U.N. high commissioner for Human Right has also issued a guideline on a human right approach to poverty reduction strategies in 2002.¹⁶³ According to the office of the high commissioner for human right, the crucial idea underlying the adoption of a human rights approach to poverty reduction is that policies and institutions for poverty reduction should be based unequivocally on the norms and values set out in the international law of human rights.¹⁶⁴ Therefore, the close analysis of the interrelation between human rights and development shows the two notions are entangled with one another and thus cannot be separated.

3.2.2 The Mandate of the World Bank and the issue of Human Rights

In the past the WB has claimed that it is unable to make human rights considerations in its policy because that would violate the Articles of Agreement of the Bank.¹⁶⁵ In other words, while there

between all human freedoms and, beyond that, with other elements of development process. See Generally, Amarta Sen, Cited at Note 17

¹⁵⁸ In this regard the Brundtland commission defined sustainable development as "development that meets the needs of the present without compromising the ability of future generations to meet their own needs." See M. u. Haq, Reflections on Human Development, Oxford University Press, (1995) P. 78

¹⁵⁹ Ibid. Moreover, according to the independent expert Mr. Arjun Sengupta, a rights-based economic growth as a human right appears to be new and is unrecognized in the international human rights discourse. But as a component element of the process of development, recognized as the human right to development, it is a coherent and natural extension of all the other rights to be achieved over time as a process in which no rights can be violated. Arjun Sengupta, Development cooperation and the right to development, available at [http://www. A Sengupta- Human Rights and Criminal Justice for the ... 2003- harvardfxbcenter.org](http://www.ASengupta-HumanRightsandCriminalJusticeforthe...2003-harvardfxbcenter.org) last visited on June 3, 2012 P. 4

¹⁶⁰ UNDP, Human Development Report 2000: Human Rights and Human Development (New York, Oxford University Press, 2000), available at <http://www.undp.org/hdr/2000>, last visited on December 1, 2010.

¹⁶¹ UNICEF's Programming Framework, available at <http://www.unicef.org/program/rights/mainmenu.html>, is guided by Convention on the Rights of the Child (CRC) and Convention on the Elimination of all forms of Discrimination against Women (CEDAW). last visited o April 21, 2012

¹⁶² EU-Cotonou Partnership Agreement (2000-2020), EU's Framework for Development Cooperation with 77 Countries in Africa, the Caribbean and the Pacific was signed in 2000.

¹⁶³ See Generally, a guideline on a human right approach to poverty reduction strategies, Office of the High Commissioner for Human Rights, 2002

¹⁶⁴ Id., P. 1 In this regard, it includes whether explicit or implicit, norms and values shape policies and institutions. In 2003 it formulates a proposed 'common understanding' among UN agencies as to the human rights based approach to development cooperation. It pronounced that all development programmes should promote human rights objectives; that international human rights laws 'guide all development cooperation and programming in all sectors and in all patterns of the programming process', and that development will enhance the capacities of the duty-bearers, as well as of the rights-holders.

¹⁶⁵ Ibhawoh, Cited at Note 22, P. 164

may be various reasons for the WB's rejection to include human rights concerns in its operational policies (herein after called Ops) and lending operations, the main factor that the Bank has been claiming not to have any human rights obligations stems from Article IV section 10 and Article III section 5(b) of its Articles of Agreement which prohibits the Bank from engaging in any political activity.¹⁶⁶ To elaborate the point further, as per Article IV/10, the Bank argued, it is purely financial institution whose role assisting economic development in the member states without taking into account any political deliberations. Human rights are thus seen as political issues and Articles of the Bank specifically prohibit all but economic considerations.¹⁶⁷ In the same manner, based on Article III 5(b) the Bank argued that, it has the obligation to make sure that the proceeds of any loan are used only for the purposes for which the loan was granted, solely based on economic considerations without taking in to account to political or other noneconomic influences or considerations.¹⁶⁸ In this regard the Articles of both the IBRD and IDA state that: The Bank and its officers shall not interfere in the political affairs of any member, nor shall they be influenced in their decisions by the political character of the member or members concerned. Only economic considerations shall be relevant to their decisions, and these considerations shall be weighed impartially in order to achieve the purposes stated in Article I.¹⁶⁹ This provision is generally known as the WB's "political prohibition" and is the source for much of the debate surrounding the permissible role of human rights within the WB's mandate.¹⁷⁰

The problem is that, the Articles of Agreement lack a proper definition of key concepts such as 'development', 'political' and 'economic', the uncertainty having fuelled a rather long-drawn conflict both inside and outside the Bank about human rights issues in Bank operations.¹⁷¹ Besides, the criticism is that, although economic consideration may easily to protect from political ones in the context of financing specific projects, in broad sense economic

¹⁶⁶The IBRD Articles of Agreement, Cited at Note 15, Article IV/10

¹⁶⁷ Ibhawoh, Cited at Note 22, P. 164

¹⁶⁸ The IBRD Articles of Agreement, Cited at Note 15, Article III 5(b)

¹⁶⁹ See IBRD's Articles of Agreement, Cited at Note 15, art. 5, Section, 10, and the IDA's Articles of Agreement, Cited at note 49, art. 5, Section 6,

¹⁷⁰ Mcbeth, Cited at Note 113, P. 1108

¹⁷¹ Guha, Cited at Note 123, P. 270. That is to say, neither the term economic consideration nor political considerations are defined by the Bank. This in turn gives the discretion for the Bank to decide what issues are economical or political as it thinks fit. The World Bank's Articles clearly require the Bank to base its decisions only on economic consultations and to not take political factors into account in its decisions. See, the IBRD's Articles of Agreement Cited at Note 15, Article IV/10 and the article of agreement for the IDA art. V, Sec. 6. See also Bradlow, Cited at Note 91, P. 54

considerations do extend to the manner in which the state manage its resources, and may thus become difficult to isolate from political considerations, especially in policy based lending. This implies a possible entanglement of economic and political considerations.¹⁷² Moreover, it can be argued that, the political prohibition under the Bank's article of agreement has also led to a number of false distinctions between policy areas that the WB deems legitimate for its involvement and those it does not.¹⁷³ For instance, "economic" reforms, such as reduced employment security for government employees, reduced access to welfare payments, and increased privatization, sometimes limit the accessibility of essential services cause significant social consequences, often affecting the realization of economic, social, and cultural rights and the untouchable "political" policy areas frequently have economic consequences.¹⁷⁴

It is worthy to note that in addition to the above factors, other factors relating to the Bank's internal culture, have significantly contributed for the restrictive interpretation of its Articles of Agreement making human rights outside the play field of the Bank's operations. These additional factors could be discussed in the following two ways. Firstly, the Bank's decision making power is vested in organs, particularly the Board, whose decisions were taken by subjective voting, rather than on a one-country one-vote basis.¹⁷⁵ The Board operates by consensus and disagreements on such issues of human rights have simply resulted in inaction. Secondly, a key obstacle was the clash of expertise among the Bank's staff, in particular, interpretive gaps between lawyers and economists over how to define human rights and justify their relevance to the Bank's mission. Lawyers consider human rights as ends, that is, legal obligations that derive their legitimacy from international law. The economists, however, value human rights as a means towards achieving other objectives like economic development.¹⁷⁶

¹⁷² Shihata, Cited at Note 20, P. 70

¹⁷³ Mcbeth, Cited at Note 113, P. 1108. For example, on the issue of using conditionality to realize policy change within a receiver government, former WB general counsel Ibrahim Shihata has defended the World Bank's "delicate balance," which pushed policies to improve economic policy, "including in particular those policies that made government more efficient by reducing its size and its control over the economy while being careful not to assert any mandate to introduce political reform or to question the political form of its borrowing member governments.

¹⁷⁴ Id., P. 1109-1115 It should be noted that, the political prohibition was intended to ensure that the IBRD used economic criteria in approving loans, rather than allowing the process to be used for political leverage. However, the development of the bank's mandate called mission creep refers to the shifting of activities away from an organization's original mandate. In this regard, one could distinguish between the Bank's explicit mandate and multiple implicit mandates, which can cover a range of poverty-reduction-related issues.

¹⁷⁵ Sarfaty Cited at Noted 123, P. 655

¹⁷⁶ Id., P. 650

What strikes the most is however the fact that the Bank article of agreement doesn't define the term "development" although as mentioned the mandate of the Bank is to advocate for economic development.¹⁷⁷ At the same time, the Bank contends that as specialized economic organizations it has a limited mandate and this in turn restricts its permissible activities to the economic aspects of the development process. Other aspects of the development process thus fall outside the scope of the Bank's permissible range of activities.¹⁷⁸ Yet, the evolving notion of what constitutes development, together with the Bank's past practice of integrating non-economic issues into its work suggest that there are no major legal obstacles to adopting a rights-based approach to development.¹⁷⁹

Besides, the Bank's development discourse has changed over time. This is because, following the publication of the 1987 report by the World Commission on Environment and Development, which popularized the concept of "*sustainable development*," and the 1992 United Nations Conference on Environment and Development, known as the Rio Earth Summit, the WB began to move away from a single-minded preoccupation with economic growth rates.¹⁸⁰ In addition, to make a strong case for the integration of human rights concerns with the purposes and objectives of the Bank, it is possible to demonstrate that development represents a bundle of interconnecting concepts of very broad environmental, socio-economic, legal and institutional implications, including the protection and promotion of human rights.¹⁸¹

The relation between human rights and development is thus growing clearer among the concerned actors including the WB as the latter follows a holistic approach to development.¹⁸² The Bank emphasizes the interdependence of all elements of development –social structural, human, governance, environmental, economic and financial- and put up on the partnerships for its implementation.¹⁸³

¹⁷⁷ Shihata, Cited at Note 20P. 71

¹⁷⁸ Ibid.

¹⁷⁹ Guha, Cited at Note 123, P. 272

¹⁸⁰ Horta, Cited at Note 16, P. 244

¹⁸¹ Brodnig, Cited at Note 8, P. 9. See also Guha, Cited at Note 123, P. 271

¹⁸² Ghazi, Cited at Note 21, P. 173

¹⁸³ Ibid. See also, S. M. Lankford, "Human Rights and Development: a Comment on Challenges and Opportunities from a Legal Perspective", Journal of Human Rights Practice Vol. 1 Number 1 (2009), P. 53, There is a

On top, the increased international inquiry of the WB on human right grounds corresponds with a general trend among multi- and bilateral development actors, including U.N. Specialized Agencies, to adopt a “rights-based approach” to development or to tie their programmatic work to human rights standards.¹⁸⁴ A rights-based approach to development is one that explicitly ties development policies, objectives, projects, and outputs to international human rights standards necessitating that development be directed towards fulfilling human rights.¹⁸⁵

In addition, encouraged by concerns over the effectiveness of aid, the WB has considerably expanded its policy frontiers by endorsing good governance as a core element of its development strategy.¹⁸⁶ Good Governance surfaced in 1989 in the WB’s report on Sub-Saharan Africa, which characterized the crisis in the region as a crisis of governance.¹⁸⁷ The importance of governance issues was solidified, and the most recent capital replenishment for the concessionary lending arm of the Bank, IDA, openly introduced governance conditionality and the IDA12

documented overlap between human rights and development evident in the principles that are now prominent in the mainstream of development policy. Principles like participation and consultation, inclusion, cohesion, good governance, accountability and equality or equity, are well established in development discourse, but they also constitute the tenets of a rights-based approach to development with roots in human rights philosophy or conventions.

¹⁸⁴ Mackay, Cited at Note 126, P. 533

¹⁸⁵ Id., P. 534. In this context, one may point out, in line with proclamations of scholars such as Dr. Amartya Sen, that the rights-based approach to development has now become the logical manifestation to the concept of sustainable development with its “triple bottom line” of economic, social and environmental sustainability. See Generally Sen, cited at note 17

¹⁸⁶ Uriz, Cited at Note 118, P. 204. Good governance appeared on the World Bank’s agenda; one of the themes of the Bank’s 1991 Annual Development Economic Conference was “Good Governance” (WB1992b). On the relationship between development and governance, the Bank interpreted governance to indicate the manner in which power and authority are exercised for development “in the management of a country’s economic and social resources” With the focus on the structures of the state and its institutions as they relate to public administration and law, the Bank as the external agency lays down these conditions purportedly to ensure transparency, accountability, and good management practices. See V. P. Nanda, The “Good Governance” Concept Revisited, The ANNALS of the American Academy of Political and Social Science available at <http://ann.sagepub.com> last visited on June 5, 2012, P. 272 -73

¹⁸⁷ It then represented an important u turn from previous policy of the Bank, prompted in large part by the experience in Africa. The main thrust behind its introduction in the Bank’s corporate policies resides in the continuing lack of effectiveness of aid, the feeble commitment to reform of recipient governments and the persistence of endemic corruption in developing countries. See Santiso, Cited at Note 21, P. 5. In addressing governance, the Bank calls into question the ability, capacity and willingness of political authorities to govern effectively in the common interest. There is heightened awareness that the quality of a country’s governance system is a key determinant of the ability to pursue sustainable economic and social development. As a condition for lending development assistance, the Bank requires the recipient government to show effective performance and to promote further reforms. The rationale is that with good governance that is, fighting corruption, nepotism, bureaucracy, and mismanagement and transparency, accountability, and proper procedures, aid would be effectively used to achieve the objective of reducing Poverty. See Nanda, Cited at Note 186

Agreement¹⁸⁸ noting that good governance is significant to the economic development process and to the effectiveness of development assistance, whereby governance is understood to contain four dimensions: accountable and competent public institutions, transparent economic and social policies and practices, a predictable and stable legal framework and participation by affected groups and civil society.¹⁸⁹ Hence, soon after the IDA's embraced governance as a performance condition,¹⁹⁰ the Comprehensive Development Framework, (hereinafter called the CDF) adopted in 1999, look for to promote a long-term, holistic vision of development among borrowing countries and WB representing a significant departure from the old economic/political dichotomy.¹⁹¹

At this point, the most remarkable element of the Comprehensive Development Framework is its acknowledgement that leaving out the protection of human and property rights, and a comprehensive framework of laws, no equitable development is feasible.¹⁹² Thus, the interpretation of 'development' became more comprehensive; the Bank should come to recognize the relevance of the linkage between development and human rights.¹⁹³ Therefore, the separation between economics and politics began to break up as the Bank realized that the success of its projects was tied to stable government institutions in borrowing countries. This understanding thus forced the Bank to adopt the notion of "*good governance*" to support intervention in political affairs. In an attempt to overcome the alleged legal constraints imposed by the Articles of Agreement, the Bank justified its interference into the political sphere as a means to create more market-friendly institutions.¹⁹⁴ All this implies that the dichotomy between

¹⁸⁸ The IDA12 Agreement Additions to IDA Resources: Twelfth Replenishment - A Partnership for Poverty Reduction, available at <http://www.worldbank.org/ida/ida12/ida12report.pdf>. last Visited on April 7, 2012

¹⁸⁹ The agreement further stipulates that governance is a broad-based concept designed to include all factors that impact on a country's ability to assure sustained economic and social development and reduce poverty and noted that addressing those factors is compatible with IDA's mandate, including its political affairs provision. Good governance thus became an allocation standard for IDA resources, which represent the majority of loans to least-developed countries. Brodnig, Cited at Note 8, P. 6-7

¹⁹⁰ Guha, Cited at Note 123, P. 269. See also Brodnig, Cited at Note 8, P. 7

¹⁹¹ Mcbeth, Cited at Note 113, P. 1114

¹⁹² Brodnig, Cited at Note 8, P. 7. one must consider human rights issues as part of a more holistic approach to development in the WB operations and such considerations must not be confined to passive inaction but ought to extend to the adoption of a policy framework that mainstreams human rights concerns.

¹⁹³ Fujita, Cited at Note 24, P. 387

¹⁹⁴ Uriz, Cited at Note 118. The approaches used to make stronger good governance in developing countries remain strikingly similar to those used to promote economic reform. Aid conditionality, i.e. conditioning aid on a number of prerequisites and promises of reform, has been extended from the economic realm to the political arena. See Santiso, cited at note 21, P. 3

political and economic by the Bank appears to be not sustainable and thus human right is intertwined with the bank's mandate.

Likewise, although the Bank has usually chosen involvement in socio-economic sectors over politico-civil ones¹⁹⁵ the nexus between civil and political rights and economic social and cultural rights lies at the heart of the right to development. In its preamble the declaration on the RTD provides that all human rights and fundamental freedoms are indivisible and interdependent and that, so as to promote development, equal notice and urgent consideration should be given to the implementation, promotion and protection of civil, political, economic, social and cultural rights...¹⁹⁶

Additionally, one of the reports from the Working Group on the RTD calls on the IFIs to give main concern to action-oriented approach to the right to development in its multidimensional aspect.¹⁹⁷ Thus the writer argues that as a development agency, the WB should automatically undergo the integration of human rights with its objectives. The writer also asserts that another important reason for integrating human right in to the WB mandate is the realization of the Millennium Development Goals (hereinafter called the MDGs). It is evident that there is an overlap or intersection between human rights objectives and the Millennium Development Goals. The latter replicate a human rights agenda such as rights to food, education, health care and decent living standards, as the UNDP's Human Development Report 2003 put it.¹⁹⁸ Therefore, no doubt that as a development agency the WB can play a crucial role to meet the MDGs targets particularly in Africa.

¹⁹⁵Guha, Cited at Note 123, P. 272. As has been noted by Ibrahim Shihata, "while there are limits on the possible extent to which the WB can become involved with human rights, especially those of civil and political nature, the bank certainly can play, and has played, within the limits of its mandate, a very significant role in promoting various economic and social rights." See also generally Ibrahim F.I. Shihata, Prohibition of Political Activities in the Bank's Work: Legal Opinion by the Senior Vice President & General Counsel, July 12, 1995 (World Bank).

¹⁹⁶ See the preamble on the Right to Development, Cited at Note 136

¹⁹⁷ Report of the Intergovernmental Group of Experts on the Right to development on its second session, UN Doc. E/CN.4/1998/29, available at <http://www.unhchr.ch/html/menu2/10/e/wgrtd.htm#3wg>. last Visited on April 12, 2012

¹⁹⁸ UNDP, Human Development Report 2003: Millennium Development Goals: A Compact among Nations to End Human Poverty (New York and Oxford: Oxford University Press, 2003), p. 29. The Millennium Declaration of 2000 set out an ambitious international agenda to tackle peace and security, development, human rights, and the environment. The Eight Development Goals were published in a single list and called Millennium Development Goals: Eradicate extreme poverty and hunger, Achieve universal primary education, Promote gender equality and empower women, Reduce child mortality, Improve maternal health, Combat HIV/AIDS, malaria and other diseases, Ensure environmental sustainability and develop a global partnership for development. See Human Rights and the Millennium Development Goals in Practice: A review of country strategies and reporting, United Nations Office of the High Commissioners For Human Rights, New York and Geneva, 2010, P. 1

We can also analyze the issue of human rights from the prospective of the Bank's policies and operations given the major role played by the Bank in extending its influence on the livelihoods of people in the developing world, by means of structural adjustment lending and PRSPs. Human rights have also become of increasing concern to the Bank's private sector development projects, especially in respect of the work of its associate agencies, the IFC and MIGA.¹⁹⁹ Hence, the writer argues that, the Bank should be held responsible for all aspects of its influence and should not be exempt from the international human rights legal regime since the Bank is specialized agency of the United Nations and consequently is required to act in conformity with the U. N Charter.

3.2.3 Legal Interpretation of the Mandate of the World Bank

The question that arises here is whether or not human rights issues are 'political' affairs and thus barred from any consideration by the WB's article of agreement? This in turn led us to interpret the Bank's article of agreement.

There are three basic approaches that exist for treaty interpretation under international law. The first, centers on the actual text of the agreement and emphasizes the analysis of the word used. The second looks the intention of the parties adopting the agreement as solution ambiguous provisions and can be termed the subjective approach in the contradiction to the objective approach of the previous approach. The remaining approach adopts a wider prospective to the other two and emphasizes the object and purpose of the treaty as the most important backcloth against any particular treaty provision should be measured.²⁰⁰ In this regard, Articles 31(deals with General Rules of Interpretation²⁰¹) and article 32 (deals with Supplementary means of Interpretation²⁰²) of the Vienna convention reflect the fundamental rules of interpretation for the present purposes.²⁰³ As far the intention approach of treaty interpretation is concerned, one might pose questions such as what was the intention of states for creation of IFIs like the WB? Did they

¹⁹⁹ Kinely, Cited at Note 128, P. 137 Indeed, Peter Woicke, the former Executive Vice-President of the IFC, referred to the agency's task of 'navigat[ing] a path through human rights, as one of the burning issues of our day'.

²⁰⁰ M. N. Shaw, International Law, (6th ed., 2001), PP. 932-933 It should be noted that, any true interpretation of a treaty in international law will have to consider all aspects of the agreement, from the words employed to the intention of the parties and the aims of the particular document. It is not possible to exclude completely any one of these components.

²⁰¹ See Vienna Convention on the Law of Treaties, May 23, 1969, article 31.

²⁰² Ibid.

²⁰³ Darrow, Cited at Note 7, P. 116 Be noted that, the Result of a Project imitated by the International Law Commission in 1949, It is Generally accepted that the Vienna Convention Largely Represents a Codification of Pre-existing Norms of Customary International Law. See Ghazi, Cited at note 21

take no notice of the inclusion of human rights on purpose in order to avoid them in their work?²⁰⁴

It is true that the independence of these institutions vis-à-vis the United Nations may have been intended to protect them from being politically instrumentalised. This does not however in any way lead us to conclude that the states are intended to avoid the principles of the United Nations Charter.²⁰⁵ The Bank as a specialized agency of the United Nations has obligations²⁰⁶ and thus must respect the purposes and principles in the UN Charter, including the human rights purposes as stated in Article 55, as elaborated in the Universal Declaration of Human Rights (herein after called the UDHR) and the body of international human rights law built upon it.²⁰⁷ For instance, one of the principles of the United Nations under Article 1 sub (3) of the charter is to attain international cooperation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without difference as to race, sex, language, or religion.²⁰⁸

The dynamics of an organization and its development as well as the development of the international system and law, also affects the interpretation of the WB mandate.²⁰⁹ The principal criteria governing the interpretive relevance of institutional practice under Article 31 (3) (b) of the Vienna Convention emphasizes the implication of subsequent practice in the application of treaty which establishes the agreement of the parties regarding interpretation.²¹⁰

The other important issue with in relation to the interpretation of the WB mandate is whether there is enough “margin” to take in to account in the interpretation of the Bank’s constituent

²⁰⁴ Ghazi, Cited at Note 21, P. 115

²⁰⁵ Ibid. The WB was created at the end of World War II in the same spirit that created the United Nations. The aim of the Bank is international collaboration in financial and development fields.

²⁰⁶ See Agreement Between the United Nations and the International Bank for Reconstruction and Development, Art. IV(2), Sept. 16 & Nov. 15, 1947, 16 UNTS 346, 348. See also Sarfaty, Cited at Note 118, P. 658. See also F. Coomas, ‘Application of the International Covenant on Economic, Social and Cultural Rights in the Frame Work of International Organizations’, Max Planck Yearbook of United Nations Law, Volume 11, (2007), P. 369. See also Macbetch, cited at note 201, .P1106

²⁰⁷ Ibid. See also Bradlow, Cited at Note 91, P. 63 See also Horta, Cited at Note 16, P. 230.

²⁰⁸ See Charter of the United Nations, Cited at Note 6

²⁰⁹ Ghazi, Cited at Note 21, P. 116

²¹⁰ See Vienna Convention on the Law of Treaties, Cited at Note 201, article 31 (3) (b). See also Darrow, Cited at Note 7, P. 116. The main criterion governing the interpretive relevance of institutional ‘practice’ under article 31 (3) (b) of the Vienna convention appears to be self- evident requirement that the practice be within the frequent (broad purpose) of the organization. Ghazi, Cited at Note 21, P. 119

document? Or would that be ultra vires for the Bank? ²¹¹ In advisory opinion concerning the United Nations, the ICJ stated when the organization take action which warrants the contention that it was appropriate for the fulfillment of one of the stated purpose of the United Nations; the presumption is that such action is not ultra vires the organization.²¹² In the context of the WB there is no doubt that human rights issues are important to its activities as a specialized agency of the United Nations and its charter can be interpreted as human rights friendly.

3.3 Criticism directed to the World Bank's policies in Africa

3.3.1 World Bank Structural Adjustment Programs (SAPs) and Its Human Rights Implications in Africa

The economic crisis, which manifested by the early 1980s in many African countries, had been motivated by the involvement of the World Bank and the IMF in the design of economic policies in those countries. Thus, SAPs was born.²¹³ As the WB Study shows, Structural adjustment is a process whereby a national economy is opened by means of the depreciation of the actual exchange rate in the course of a mixture of demand and supply side policies.²¹⁴ Adjustment, in the view of the Bank, aims at setting the economy of a country back on a path of sustainable growth when it is faced with a macroeconomic crisis characterized by weak internal and external balances.²¹⁵ Likewise, the WB argues that, SAPs are essential to bring a developing country from economic recovery and growth and the Bank believes that economic growth driven by foreign investment, to be the key to development.²¹⁶

It is important to mention however that, SAPs are not intended to achieve social well being; it simply hoped by donors like the WB that applying free market principles to a developing economy will improve social welfare in the process. This process of adjustment describe by many Bank officials to developing countries, is one of “*scarifies*” of “*present pain for future*

²¹¹ Ghazi, Cited at Note 21 P. 117

²¹² Ibid.

²¹³ Adejumobi, Cited at Note 27, P. 11

²¹⁴ Ibhawoh, Cited at Note 22, P. 158

²¹⁵ Ibid. To support their weakening economies and increase production capacities, many African countries sought refuge in external loans from the IMF, the WB and individual Western nations. As a result of the debt crisis of the early 1980s, the IMF and the WB increased the level of the conditions required for loans and credits to developing countries. This set of conditions became institutionalized and has been labeled Structural Adjustment Programs (SAP).

²¹⁶ Ghazi, Cited at Note 21, P. 46

gain’’ according to NGOs.²¹⁷ The key characteristics of WB and IMF SAPs however includes trade and financial liberalisation, harsh monetarism, exchange decontrol and currency devaluation, removal of government subsidies and price controls, reduced social spending, and privatisation of state assets.²¹⁸ In this case, in sub-Saharan Africa as a whole, 35% of the WB’s financing during the last half of the 1980s fell into the category of ‘adjustment,’ an amount in excess of US\$1 billion per year.²¹⁹ Debt repayments intensified due to the higher interest rates, and by 1984, the net financial resource transfer to Third World went negative for the first time, by the end of the decade reaching negative \$50 billion a year.²²⁰ However, despite widespread public and official resistance to adjustment, the WB and its allies held fast, insisting that not only are SAPs working, but they are a compulsory element of long-term transformation.²²¹

On 12 March 1994, the Bank released a progress report on Africa, *Adjustment in Africa: Reform, Results and the Road Ahead*, to defend its failed policy of structural adjustment. By manipulating selective data of cross-country analysis and without revealing the major objection to the report's conclusion from internal Bank economists, the Bank insisted that African countries which implemented SAPs in the 1980s experienced greater positive growth than those that did not.²²² However, what is interesting is that two years earlier, a draft WB study, entitled “*Why structural adjustment has not succeeded in sub-Saharan Africa*”, stated that WB adjustment lending has not significantly affected growth and has contributed to a statistically significant drop in investment ratios.²²³ This is therefore a sharp contrast to the Bank’s claim that those African states effectively executed SAPs are enjoyed spiralled growth. It should be noted that, the period of structural adjustment was marked by the multiplication of

²¹⁷ Ibid.

²¹⁸ Patrick Bond and G. Dor, Neo liberalism and Poverty Reduction Strategies in Africa, Discussion paper for the Regional Network for Equity in Health in Southern Africa (EQUINET) March 2003, (<http://www.equinetafrica.org/bibl/docs/DIS4trade.pdf>) last visited on March 20, 2012) P. 7

²¹⁹ Ibid.

²²⁰ Ibid. By the late 1980s, after about a decade’s experience in approximately three dozen African countries, critics more forcefully questioned macroeconomic reform. A debate regarding whether two WB reports--Africa’s Adjustment and Growth in the 1980s and Sub-Saharan Africa: From Crisis to sustainable Growth, both published in 1989--adequately explained the continent’s dramatic declines in standards of living, terms of trade and ability to service debt. Therefore, Bank claim that during the late 1980s, countries which adopted orthodox macroeconomic reforms grew more quickly was thus seriously doubted.

²²¹ Cheru, Cited at Note 103, Para. 54

²²² Ibid.

²²³ Ibid. Of the six countries the Bank put forward as adjustment “successes” Ghana, the United Republic of Tanzania, the Gambia, Burkina Faso, Nigeria and Zimbabwe - four had failing rates of investment and two had negative GDP growth rates during their respective adjustment periods.

"conditionalities."²²⁴ However, the effect of SAPs on human rights in a number of African countries was devastatingly dramatic as it attached series of conditionalities.²²⁵ However, the counter of argument by the WB is that conditionality associated with the Bank's financial support for implementation of a program of reforms critical for the country's economic and social development and the conditions usually strengthen the level of country ownership needed to ensure the realization of reforms supported under adjustment loans.²²⁶

Generally, the negative effect of SAPs on human rights can be attributed to two mechanisms.²²⁷ First, SAPs undermine recipient governments' legitimacy and their governing capacity. This is because, on the one hand, governments have to use coercive methods to carry out SAP policies given the disapproval of SAPs. But at the same time the unpopularity of SAPs reduces the government's capacity to realize policies. On the other hand, SAPs reduce the government's legitimacy because conditionalities attached to SAPs may involve ineffectiveness.²²⁸ In this regard, the radical economic measures such as the privatization of public services or cuts in subsidies for products vital to the population may result social unrest and turmoil. In turn, to restore law and order governments may resort to coercive means, which may results to even more authoritative methods.²²⁹ More importantly, the Committee on Social, Economical and Cultural rights has clearly reaffirmed the impact of structural adjustment on socio-economic

²²⁴ Roubaud et al. Cited at Note 27, P. 7.

²²⁵ Whai, Cited at Note 2, P. 9. One of the Major criticism is that conditionalities disregard of the individual circumstances of each debtor state in imposing one-size-fits-all policies and for their unquestioned devotion to a particular politico-economic theory of development that has over the years failed to create development in a majority of the debtor states.

²²⁶ Anders, Cited at Note 23, P. 4. Some observers also noted that, countries facing rigorous market-based adjustment programs have sometimes chosen expenditure reductions that hurt the poor. Increasingly, the Bank has relied on charter provisions (relating to raising the productivity and living standards of labor) to include loan conditionalities. The conditions protect and even increase spending benefiting the poor, such as for primary education, basic health care, nutrition, water supply, and sanitation. See N. Wendt, *The IMF and WB Response to Criticisms*, 9 *Transnational Law & Contemporary Problems* Spring, 1999, P. 4

²²⁷ H. Bartilow, *Structural Adjustment Programs and Human Rights: The Counterintuitive Effect of Democracy* (http://www.papers.ssrn.com/sol3/.../SSRN_ID1905641_code1696255.pdf?...1) P. 4 Paper presented at the 2011 annual meeting of the American Political Science Association, September 2, 2011, in Seattle, Washington, USA. last visited on March 16, 2012 P. 6

²²⁸ In order to secure the observance of African countries with the adjustment policies, a set of conditionality measures was put in place which tied their adherence to the reform implementation and performance targets set for them to the disbursement of critical funds needed by the countries to stabilize their economies and finance their quest for recovery. These conditionality clauses were essential to the economic, political and social consequences of adjustment as were the main policy instruments of the adjustment framework itself. See A. O. Olukoshi, *Structural Adjustment and Social Policies in Africa: Some Notes*, Draft Paper Prepared for the GASPP 4 Seminar on Global Social Policies and Social rights, New Delhi, India, 8 - 10 November, 2000.

²²⁹ Ghazi, Cited at Note 21, P. 49

rights.²³⁰ Also, in many countries which was overwhelmed by war and internal conflict, adjustment-induced social unrest provided the initial impetus for ethnic, tribal, religious fundamentalist and nationalist frenzy circumstances which eventually led to armed conflict.²³¹ Scholarly research has also revealed the link between SAPs and the incidence of conflict and disorder.²³²

In the African context, although the crisis in Somalia and the genocide in Rwanda were largely attributed by the international media to “clanism” and “ethnicity”, as one commentator puts part of the blame on the draconian economic policies of the IMF and the WB which removed all official economic safety nets and left the Rwandan economy in shambles after the disintegration of the international coffee market in the late 1980s.²³³ Second, the economic liberalization policies prescribed by SAPs may violate socio-economic rights. That is to say, although SAPs have been criticised on many grounds, it is the implications of adjustment policies on economic and social rights that has been the centre of much attention and have been elaborately examined in several studies.²³⁴ For instance, Danilo Turk, former Special Rapporteur on the Realisation of Economic, Social and Cultural Rights, explained in 1991 how SAPs affect the realisation of human rights such as the right to work, the right to food, the right to health and so forth.²³⁵

²³⁰ See General Comment 2 (1990) on International technical assistance measures (Art. 22), Para. 9. The CESCR reiterates that ... in the examination of the reports of States parties is the adverse impact of the debt burden and of the relevant adjustment measures on the enjoyment of economic, social and cultural rights in many countries. The Committee recognizes that adjustment programmes will often be unavoidable and that these will frequently involve a major element of austerity. Under such conditions, however, endeavors to protect the most basic economic, social and cultural rights become more, rather than less, urgent. States parties to the Covenant, as well as the relevant United Nations agencies, should thus make a particular effort to ensure that such protection is, to the maximum extent possible, built-in to programmes and policies designed to promote adjustment... an approach, which is sometimes referred to as "adjustment with a human face" or as promoting "the human aspect of development" requires that the goal of protecting the rights of the poor and vulnerable should become a basic objective of economic adjustment.

²³¹ Cheru, Cited at Note 103, Para. 58. In the last two decades no less than 19 countries were caught up in violent conflicts and stubborn civil wars. Countries like Angola, Mozambique, Sudan, Somalia, Rwanda, Burundi, Chad, and later Sierra Leone, Congo and Liberia were puzzled with wars. In those countries, the state collapsed completely, and resources that could have been earmarked for development went into war project. See Adejumobi, Cited at Note 27, P. 10

²³² Id., Para. 83

²³³ Ibid. With the price of coffee plummeting and the Rwandan franc frequently devalued, the general population was left destitute and impoverished. This, according to the commentator, created conditions in which power hungry officials and leaders could sow the seeds of civil war and genocide.

²³⁴ Ibhawoh, Cited at Note 22, P. 164

²³⁵ Fujita, Cited at Note 24, P.380. The Bank responded by admitting that there were negative effects with the SAPs and said the protection of the poor segments from the adverse effects of adjustment policies are being reinforced at present and are certain to gain greater importance in the years to come. Simultaneously, however, it said that The

Therefore, the Bank's structural programs had a real effect on socio-economic rights in Africa. To sum up, the 1980s experiment with 'structural adjustment' planning whereby harsh and instant austerity measures in respect of public spending, monetary supply and fiscal accountability were imposed upon states as conditions of any assistance rendered either by the WB is now widely regarded as a failure. I should therefore say that in terms of economic and social rights, the policies of the Bank in Africa are frequently disastrous.

3.3.2 World Bank Poverty Reduction Strategy Papers (PRSPs) and its Human Rights Implications in Africa

In September 1999, the IMF and the WB declared a new way of doing business here by poor country governments would develop their own long-term development plan by involving a wide spectrum of stakeholders and would put this forward to the IMF and WB in the form of a Poverty Reduction Strategy Paper (PRSP).²³⁶ There are five core principles underlying the PRSP approach, which are drawn from the WB's CDF: -²³⁷ Being country driven: owned and managed by the government of the country concerned, involving broad-based participation by civil society and the private sector in all operational steps and policy discourse: Being results orientated: promising, at least in principle, better prioritization and a focus on outcomes that would benefit the poor. Planning is to be completed within a common fiscal framework: Being inclusive and long-term in perspective: integrating macro-economic, structural, social and social elements-recognizing the multidimensional nature of poverty: Being prioritized: so that implementation is possible, in both fiscal and institutional terms: Being partnership oriented: involving coordinated participation of development partners (bilateral, multilateral and non-governmental), thus fostering greater accountability and democracy in decision making: This promises to

Bank's record in meeting the requirements of economic and social entitlements of the populations of its developing member countries is remarkable, in spite of some possible adverse effects on the poor in certain cases. See also Shihata, Cited at Note 20, P. 101. Besides, an increasing number of voices within Africa, as well as many non-governmental groups and United Nations organizations such as UNICEF and the ILO, have been warning that the living conditions of the poor are deteriorating to intolerable levels sometimes because of the structural adjustment programmes. For example, increasing malnutrition, falling school enrolment and rising unemployment threaten the social fabric of adjusting countries. See Cheru, Cited at Note 103, Para. 57.

²³⁶ Cheru, "Building and Supporting PRSPs in Africa: What Has Worked Well so Far? What Needs Changing?" Cited at note 103, P. 356

²³⁷ Guha, Cited at Note 123, P. 269. See also, Brodnig Cited at Note 8, P. 7. See also Cheru, "Building and Supporting PRSPs in Africa: What Has Worked well so Far? What Needs Changing?" ,Cited at Note 103, P.356. For a number of documents and other resources on the CDF, see The Bank's website at <http://www.worldbank.org/cdf> last Visited on April 23, 2012.

democratize recipient donor relationships, by replacing the politics of 'paternalism' with the politics of 'partnership' and 'mutual accountability'.²³⁸

It is essential to note that, the PRSPs preparation involves a two-stage process. Countries must first prepare an interim PRSP (I-PRSP), which is proposed as a roadmap for preparation of the full PRSP. The I-PRSP paves the way for the country to qualify for its 'decision point' and interim support (or a loan) from the WB/IMF.²³⁹ The essence of PRSPs was therefore to make sure the proper use of resources to be released through debt relief for poor countries. The WB and the IMF have since designed new lending profiles to support the implementation of PRSPs- the Poverty Reduction Support Credit (PRSC), and the Poverty Reduction and Growth Facility (PRGF) respectively.²⁴⁰

The point is PRSPs provide the foundation for WB funding to developing countries, through their "Country Assistance Strategies" (Hereinafter called CAS). A CAS lays down the Bank's analysis of the country's development situation and a selective program of planned Bank Group support that is adapted to the country's needs, against the backdrop of the government's development objectives and strategy, the Bank's ongoing portfolio, and the activities of other development partners.²⁴¹ In order to bring different stakeholders into the CAS process, the project leaders of a country hold workshops and roundtable deliberations with members of civil society ("nongovernmental stakeholders") to create the strategy.²⁴²

Evidently with PRSPs, the WB has tailored its approach of economic policy design and intervention in developing countries. It has moved from betrothing a whole policy package that characterized the SAP era, with a new emphasis on the process of making those policies. This

²³⁸ Cheru, "Building and Supporting PRSPs in Africa: What Has Worked Well so Far? What Needs Changing?" Cited at Note 103

²³⁹ Ibid., It should be Noted that PRSPs are to be carry out in two phases.

²⁴⁰ Adejumobi, Cited at Note 27, P. 12 It is worthy of noting that, the importance of PRSP at the international level is also underlined by the fact that donor agencies are increasingly redesigning their aid portfolios and coordinating it in support of the PRSPs. Part of the commitment under the Monterrey Consensus is that donors and Western countries endorsed the Rome Declaration on Harmonization in February 2003, which encourages donors to correspond their development assistance to developing countries to be centered on the implementation of the PRSPs.

²⁴¹ M. V. Totaro, "Legal Positivism, Constructivism, and International Human Rights Law: The Case of Participatory Development", *Virginia Journal of International Law*, Vol. 48 (2008), P. 749

²⁴² Ibid.

new approach (PRSPs) may be explained by two reasons. First, is that the new approach of PRSPs benefited from the failure of SAP. SAP could prompt national ownership and legitimacy because of its explicit external nature and rigid policy content. The same prescription subsisted for every country in economic crisis. There was therefore a pressing need to modify the approach in designing those policies if they are to obtain public acceptability and ownership. The second reason for a change in policy approach was the stunning pressure and criticisms, which followed by the WB with the failure of SAP.²⁴³

Moreover, adopting a participatory process for defining and monitoring the PRSPs certainly has a great potential for strengthening democracy and thus brings national ownership. Furthermore, PRSP principles signify a fundamental rupture with past practice, both in terms of the way policies are designed and in their content, their funding and performance indicators.²⁴⁴ In this case, the independent expert Mr. Fantu Cheru, opined that the PRSP is breaking new grounds by laying critical foundations in economic governance that 20 years of donor supported bogus democratic consolidation initiatives in Africa have failed to produce and the disengage between the ritual and bogus multiparty elections and the reality of people's lives on the ground is finally but slowly being addressed through the PRSP process.²⁴⁵ In Uganda, for example, the PRSP has created a more open political environment where previously sensitive issues (e.g. land ownership, women's empowerment, security, corruption and governance) are now part of the policy dialogue.²⁴⁶

On the other hand, although one out of the five core values of PRSPs is to be country driven examination of the eight Interim PRSPs (I-PRSPs Including Benin, Chad, Ghana, Kenya, Mozambique, Senegal, Tanzania, Zambia) and the one full PRSP (Uganda) from Africa demonstrates a serious problems.²⁴⁷ One major problem in this regard is that, although the

²⁴³ Adejumobi, Cited at Note 27, P. 13

²⁴⁴ Roubaud et al. Cited at Note 27, P. 1-2

²⁴⁵ Fantu Cheru, Building and Supporting PRSPs: Achievements and Challenges Of Participation, A note prepared for the World Bank Course on Building and Supporting PRSPs, June 12, 2002, P. 1

²⁴⁶ Ibid. The PRSP is therefore about economic reform as well as governance in the broadest sense. It is work in progress and everyone involved is continuously gaining new insights on how to improve the process of inclusive decision-making and national ownership.

²⁴⁷ Cheru, Cited at Note 28, Para.23 One thing must be clear PRSPs do not entirely shift ownership to the countries, though. While a country basically controls the design of a PRSP, this plan must be submitted and approved by the

PRSPs are believed to be country-driven, prepared and developed transparently with the broad participation of civil society, the “template” for preparing the PRSP, i.e., what it should contain, is designed by donors, which says very little about the legitimacy of national ownership.²⁴⁸ That is to say, citizen participation in the preparation of the I-PRSPs has not been transparent in several of the countries reviewed with the exception of Uganda’s full PRSP.²⁴⁹ In Ghana, Tanzania and Kenya, for example, the contents of the policy matrix that is part of the I-PRSP were never made public during the national consultations.²⁵⁰ Hence, it is worthy of assessing the process of participation in some countries in Africa so as to determine whether or not the application of PRSPs really advocates national ownership.

In the case of Ghana for example, the independent expert Fantu Cheru stated that the Interim-PRSP for the country was drawn from the WB’s 2000-2003 country Assistance Strategy Document. In this respect, the I-PRSP had not anything to do with poverty; and it was all about securing additional donor resources given the uneven state of Ghana’s economy after the 1999 elections, which came on the heels of the vivid disintegration in the economy’s terms of trade and staggering oil prices.²⁵¹

In Tanzania, civil society organizations were demanding the government for more active participation throughout the PRSP process. Yet, they were brought into the process in a superficial and half-hearted manner. This is because; the Government developed the I-PRSP internally, while civil society groups were involved in a separate process, convened by the Tanzania Coalition for Debt and Development (TCDD).²⁵²

WBBoard of a country can qualify for debt relief under the Highly Indebted Poor Country process. The WB in this sense has a final say in PRSPs. See Totaro, Cited at Note 241

²⁴⁸ Cheru, Cited at Note 28, Id., Para. 31

²⁴⁹ Id., Para. 32 While civil society groups have been invited to participate extensively in discussions on the social policy-planning component of the I-PRSP, they have effectively been excluded when it comes to discussions on the content of macroeconomic policy choices.

²⁵⁰ Ibid. It should be noted that, in a few other countries, consultations took place only with concerned line ministries, although the policy documents state that such consultation shall take place in the course of the preparation of the full PRSP.

²⁵¹ Cheru, Cited at Note 28, P. 6. It was not surprising that the joint Boards of the IMF and the WB approved the I-PRSP in August 2000 considering the document’s intellectual roots. In return, Ghana was granted an IMF loan--Poverty Reduction and Growth Facility (PRGF), formerly known as the Enhanced Structural Adjustment Facility (ESAF)

²⁵² Cheru, Cited at Note 28, Para. 33. It is important to note that however, key macroeconomic and structural adjustment issues were addressed in secret negotiations, occurring in parallel to the PRSP consultations. At a later

If we look at the participation aspects of PRSPs in Kenya, regardless of the fact that consultations were broad based, the domination of the process by government officials in some of the districts tended to limit the space for the common people to air their views freely.²⁵³ The donors, NGOs civil society and the private sector had one representative each in the PRSP Secretariat. Although not a serious problem, the dominance of the secretariat by government officials could easily overshadow representation from the civil society.²⁵⁴

The PRSP consultations were all done in a rushed manner, not allowing for true discussion to take place and participation was not generally continued beyond the initial process of drawing up the PRSP. For instance, in Burkina Faso, Malawi, Ghana and Mozambique, the involvement of sectoral ministries, legislators, decentralized administration, and civil society groups in the PRSP formulation process was less than satisfactory, as these governments rushed the process in order to secure highest benefit from debt relief under the enhanced HIPC Initiative. However, at the other extreme, it has been said that, Ethiopia, Rwanda, Kenya, Mali and Zambia have also made best efforts to expand the scope for participation of a wide spectrum of stakeholders.²⁵⁵

Coming to Ethiopia, the government of the Federal Democratic Republic of Ethiopia (FDRE) submitted an (I-PRSP) to the IMF and the WB in September 2000.²⁵⁶ The I-PRSP outlined the poverty reduction measures that the government planned to implement policy reform programs and institutional changes that must be put in place to realize poverty reduction.²⁵⁷ Concerning the

stage, the civil society working groups managed to participate in the sharing sessions on the documents already prepared by the Government.

²⁵³ J. Manda et al, Cited at Note 24, P. 5

²⁵⁴ Ibid. Another reason for poor participation of civil society in Africa is that many African governments remain wary about the motives of civil society organizations and are reluctant to open up the political space for substantive dialogue to take place. See Cheru, “Building and Supporting PRSPs in Africa: What Has Worked Well so Far? What Needs Changing?” Cited at Note 103, P. 365

²⁵⁵ Ibid.

²⁵⁶ Abebe H. Gebreal The Process of PRSPs in Ethiopia, Second Meeting of the African Learning Group on the Poverty Reduction Strategy Papers, ([http:// www.uneca.org/prsp/docs/prsp_final/ethiopia.pdf](http://www.uneca.org/prsp/docs/prsp_final/ethiopia.pdf)) last visited on March 21, 2012 2002, P. 1

²⁵⁷ Ibid. Before Implementation, the I-PRSP was presented to a nationwide public debate and discussion by a cross-section of civil society, regional and local governments and donor communities. The policy document was able to be developed in to the full PRSP by incorporating the views and suggestions of the different stake holders in the poverty alleviation in Ethiopia. Moreover, remarks and explanations for enhancement were provided by independent institutions of civil society, including Christian relief development association (CRDA), Forum For Social Studies (FSS) the Ethiopian Economic Policy Research Institute (EEPRI) and donor community as

process of PRSPs in Ethiopia, a diverse group of institutions of civic society, including NGOs, the private sector, independent research and policy institutes, professional associations, trade unions, women groups and donor organizations have formally participated in Ethiopia's PRSPs process.²⁵⁸ In Ethiopia consultations took place in 171 districts. The district consultations were complemented with consultations at the provincial levels, which were then followed by consultation at the federal level.²⁵⁹ However, critics of PRSPs in Ethiopia argues that although the widespread consultation process was the first of its kind in the country, to what extent the views were taken on board should be considered against the Government's position on the value of the PRSP.²⁶⁰ It insisted from the beginning that the country has been pursuing poverty reduction strategies well before the PRSPs initiative and there was nothing new as such, except for involving the public and sharpening the poverty focus. In this case, a review of the Government's own consultation reports discloses that the contribution of the consultations was in fact not that significant.²⁶¹

Conversely, as envisaged under the Sustainable Development and Poverty Reduction Program document Ethiopia developed an Interim Poverty Reduction Strategy Paper (I- PRSP) in 2000 and initiated the full-PRSP known as Ethiopia's Sustainable Development and Poverty Reduction Program (hereinafter called the SDPRP) in 2002 that targets economic growth averaging 7% a year in order to reduce poverty by half in 2015.²⁶² The consultations in this stage

represented by the development Assistance Group. In this regard, some of the initial suggestions provided by these organizations have helped in the preparations of the full PRSPs.

²⁵⁸ Id., P. 2

²⁵⁹ Cheru, "Building and Supporting PRSPs in Africa: What Has Worked Well so Far? What Needs Changing?" Cited at Note 103, P. 365 In this case, the commitment of both the federal and regional governments to a wide public involvement in the PRSP process was a key to the success of the PRSP process. At the beginning, the government did not seem to be particularly keen about subjecting the I-PRSP to wide public discussion and consultation. However, a gradual shift in government's stance and conviction on the need for public participation and consultation in the process and the realization that civil society can make meaningful contribution to the PRSP helped to formulate a policy that replicated a broad constituency. See Abebe H. Gebreal, Cited at Note 256, P. 3

²⁶⁰ Amdissa Teshome, Agriculture, Growth and Poverty Reduction in Ethiopia: Policy Processes Around the New PRSP (PASDEP), A paper for the Future Agricultures Consortium workshop, Institute of Development Studies, 20-22 March 2006, Available at ([http:// www.future-agricultures.org/pdf%20files/Ag_policy_Ethiopia.pdf](http://www.future-agricultures.org/pdf%20files/Ag_policy_Ethiopia.pdf)) last visited on April 16,2012 P. 5

²⁶¹ Ibid.

²⁶² Assessing the Impact of the Poverty Reduction and Growth Facility on Social Services, The Case of Ethiopia, Repot by African Forum and Network on Debt and Development, Available at (<http://www.opendocs.ids.ac.uk/opendocs/bitstream/.../AFRODAD-270160.pdf>) last Visited on April 3,2012 P. 12. In 2002/03, Informed by the MDGs and in the Context of the Heavily Indebted Poor Countries Inittives (HIPC), Ethiopia prepared and launched SDPRP, soon after wide range public consultations in 2001. The strategy focused on

are conducted at various levels contributed to the preparation of the strategy. However some commentators argue that, the contributions were no further than endorsing the policies and strategies the government has been following well before the PRSP initiative. This process thus represents a typical top down approach.²⁶³ As mentioned by Abebe H/Gebreal, major existing development strategies and policies remained intact despite long and sustained public discussions by way of attempting to induce the government to revisit some of them to aid poverty alleviation in the country.²⁶⁴

Nevertheless, if we look at the SDPRP to a large extent, includes the most important policy issues that need to be employed to reduce poverty.²⁶⁵ As far as policies, and strategies envisaged under Sustainable Development and Poverty Reduction Program is concerned, the aim of development strategy is *‘to promote rapid, broad-based and equitable growth by focusing on rural development and improvement in physical and human capital, and deepening the devolution process to empower the people and expand the choices and control that people have over their lives’*.²⁶⁶ Yet Four core policies and strategies have been recognized as *‘building blocks’* for poverty reduction: (a) Agriculture Development lead Industrialization (ADLI) , (b) Judicial and Civil Service Reform, (c) Decentralization and Empowerment and (d) Capacity Building.²⁶⁷

improving human and rural development, food security and capacity building through the transformation of the agricultural sector; reforms in both the justice system and the civil service; decentralization and empowerment and capacity building in the public and private sector. See Development Strategies That Work: Country experience Presented at the ECOSOC Annual Ministerial Review. Available at (<http://webappso1.un.org/nvp/indpolicy.action?id=52>) last Visited on August 16, 2012, P. 1

²⁶³ Amdissa Teshome, Cited at Note 260

²⁶⁴ Abebe H. Gebreal, Cited at Note 256, P.4 For example, the ADLI development strategy, the state (public) ownership of land and land lease policies, were subjects of dispute as it created a lot of contest and disagreement by different stake holders. Despite arguments for the revision of these and other similar policies so as to reduce poverty through the enhancement of private sector development, the however remained insistent by keeping these policies intact for an alleged reason that the suggested would go against the objectives of bringing about a broad-based development and poverty reduction.

²⁶⁵ Id., P.6 Its content largely shows the concern and interests of a diverse cross section of civil society institutions and donors that take part in the process of preparing the policy document. In this regard, the SDPRP presents an authoritative poverty profile of the country supported by empirical and statistical data. It provides sufficient analysis of the magnitude and the severity of poverty thought the country. It also a comprehensive policy document that suggests a careful thought of the outset of measures to reduce poverty.

²⁶⁶ Ibid.

²⁶⁷ Id., P. 7 In this Case, although the (SDPRP) was built on four pillars, primary emphasis was given to ADLI as the agriculture sector is the sources of the countries livelihood. See Development Strategies That Work: Country experience Presented at the ECOSOC Annual Ministerial Review, Cited at Note 279.

It is imperative to mention however that, in October 2005, the second phase of the PRSPs process, a Plan for Accelerated and Sustained Development to End Poverty (hereinafter called the PASDEP), has been put into effect as a guiding strategic framework for the five-year period 2005-2010.²⁶⁸ The a Plan for Accelerated and Sustained Development to End Poverty carries forward important strategic directions practiced under the Sustainable Development and Poverty Reduction Program, pertaining to human development, rural development, food security, and capacity building as it also embodies some bold new directions.²⁶⁹ In this regard, the main objectives of the Five-Year Development Plan under a Plan for Accelerated and Sustained Development to End Poverty is to lay out the directions for accelerated, sustained, and people-centered economic development as well as to pave the groundwork for the attainment of the MDGs by 2015.²⁷⁰ To that end, the strategy underpins eight pillars at the core of the PASDEP.²⁷¹ The PASDEP on the other hand describes the participatory process behind the preparation. In this case, the participatory poverty assessment and a community report card exercise (conducted by a local civil society organization) helped outline the agenda and over more than a year, consultations were held with development partners, civil society, and regional

²⁶⁸ The PASDEP represents the second phase of the Poverty Reduction Strategy Program (PRSP) process, which has begun under the Sustainable Development and Poverty Reduction Program (SDPRP), which covered the past three years, 2002/03-2004/05. Ethiopia: Building on Progress Plan for Accelerated and Sustained Development to End Poverty (PASDEP) (2005/06-2009/10) Volume I: Main Text, Ministry of Finance and Economic Development (MoFED), September, 2006 Addis Ababa, P. 1. The Government of Ethiopia (GOE) finalized its second full PRSP, the Plan for Accelerated and Sustained Development to End Poverty (PASDEP), 2005/06-2009/10 together with the World Bank's IDA and IMF. See Joint IDA-IMF Staff Advisory Note On the Poverty Reduction Strategy PAPER For Accelerated And Sustained Development To End Poverty (PASDEP), WB Document, Available at <http://www-wds.worldbank.org/.../Rendered/.../404060Replacement.txt> August) Last Visited on June 23, 2012) 2, 2007 See also Assessing the Impact of the Poverty Reduction and Growth Facility on Social Services, The Case of Ethiopia, Cited at Note 262

²⁶⁹ Ibid. The PASDEP carries forward important strategic directions pursued under the Sustainable Development and Poverty Reduction Program (SDPRP) -related to infrastructure human development, rural development, food security, and capacity-building- but also embodies some bold new directions. Assessing the Impact of the Poverty Reduction and Growth Facility on Social Services, Primarily among them is a major focus on growth in the coming five-year period with a particular emphasis on greater commercialization of agriculture and enhancing private sector development, industry, urban development and a scaling-up of efforts to achieve the Millennium Development Goals (MDGs).

²⁷⁰ See, Ethiopia: Building on Progress Plan for Accelerated and Sustained Development to End Poverty (PASDEP), Cited at Note 268, P. 44

²⁷¹ Id., P. 46 The eight strategies are: Building all-inclusive implementation capacity; A massive push to accelerate growth; Creating the balance between economic development and population growth; Unleashing the potentials of Ethiopia's women; Strengthening the infrastructure backbone of the country; Strengthening human resource development; Managing risk and volatility; and, Creating employment opportunities. See, Ethiopia: Building on Progress Plan for Accelerated and Sustained Development to End Poverty (PASDEP), Cited at Note 268

political leaders and officials, first to identify priorities and then to seek feedback on the initial draft.²⁷²

Nonetheless, it is worthy to note that, the Council of Ministers and the House of Peoples Representative have adopted the Growth and Transformation Plan (hereinafter called the GTP) as the national planning document of the country for the period 2010/11- 2014/15.²⁷³ The Growth and Transformation Plan is designed to carry forward the important strategic directions pursued in the PASDEP and by sustaining the 11 per annum economic growths, the government intention to achieve the MDGs targets by 2015, and its longer term vision of being a middle income country by 2020-2023.²⁷⁴ The GTP has four main objectives: To maintain at least an average real GDP growth rate of 11% and attain MDGs; expand and ensure the qualities of education and health services and achieve the MDGs in the social sector; establish suitable conditions for sustainable nation building through the creation of a stable democratic and developmental state; and ensure the sustainability of growth by realizing all the above objectives within steady macroeconomic framework and thus adopts seven strategies to achieve it.²⁷⁵

Coming back to the issue of participation, as participation is an essential principle of human rights and is inherent to inclusion of democracy at local, national and international levels, information sharing is a critical element of participatory processes whether at the planning, implementation or monitoring stages of the PRSPs.²⁷⁶ An effective participatory process is a key

²⁷² See Joint IDA-IMF Staff Advisory Note On the Poverty Reduction Strategy PAPER For Accelerated And Sustained Development To End Poverty (PASDEP), Cited at Note 268

²⁷³ See Federal Democratic Republic of Ethiopia Growth and Transformation Plan Volume I: Main text, Ministry of Finance and Economic Development November 2010 Addis Ababa, P. 1 According to the This Joint Staff Advisory Note (JSA N) reviews Ethiopia's Growth and Transformation Plan, Since September 2010, country -wide consultations led by senior officials were held at the regional and local levels, and those at the federal level were chaired by the prime minister. Consultative meetings also took place with private sector participants, higher education institutions, civil society organization (including professional, religious, women, and youth associations), and development partners. However, there was little opportunity to discuss the key goals, priorities, approaches, and financing options, but the government has indicated that the plan is subject to budget availability and it will disuses financing with the donor community. See, The Federal Democratic Republic of Ethiopia: Joint Staff Advisory Note on the Growth and Transformation Plan 2010/11–2014/15, IMF Country Report No. 11/303, October 2011, P. 1

²⁷⁴ Ibid.

²⁷⁵ Ibid. The seven strategies includes sustaining rapid and equitable economic growth, maintaining agriculture as major sources of economic growth, creating conditions for the industry to play key role in the economy, enhancing expansion and quality of infrastructure development, building capacity and deepen good governance and promote gender and youth empowerment and equity.

²⁷⁶ P. Andrea and C. Fergusson, Human Right, Health and the Poverty Reduction Strategy Papers, Health and Human Rights Publication Series, Issue No. 5, (http://www.ohchr.org/.../Publications/HHR_PovertyReductionsStrategies) 2008, P. 14

factor in the success of any PRSPs. It amplifies ownership and control over development processes in Africa and helps to make sure that interventions are responsive to the situations of the people they are intended to benefit.²⁷⁷ As a result one might argue that a number of human rights are threatened if not violated by PRSPs. Therefore participation in policy formation is a human right. Therefore, people should be enabled to reflect on their own problems and to articulate their own ideas for solutions to such problems. Only if this is done can development be seen as a beneficial process, one that creates conditions for people and societies in Africa to identify their own desires, mobilise resources and collectively shape their prospect.²⁷⁸

In addition, the proponents of participatory development as human rights argue that participatory development norm somehow creates corresponding legal obligations.²⁷⁹ At this juncture, Mary Robinson former high commissioner for human rights stresses the legitimate function served by rights language. Under this concept, the shift in development discourse from social justice principles to human rights implies a turn from the inspirational towards to the obligatory.²⁸⁰ That means the WB has the obligation to make sure that there is a genuine participation by the civil societies in Africa to guarantee national ownership.

Most importantly, the right to participation is an important constituent of the right to self-determination. In that way all peoples have the right to choose the form of their political systems, government, constitution and policies and States have a duty to promote the realization of the right for all people, globally, and this includes a duty to abstain from interfering with internal affairs of other States. By itself unnecessary pressure exerted upon a state by another state, or a group of states, or by international organizations (like the WB) to pursue particular political, economic or social models or policies, threatens to violate that right.²⁸¹ Thus, given the high levels of aid dependency in most of Africa, promoting African 'ownership' of the policy process is not a simple matter. This is for the reason that, the country studies point out that the principle

²⁷⁷ Ibid. For Instance, art. 23. At this juncture, the right of all citizens of a country to take part in public affairs is enshrined in article 25 of the ICCPR. See International covenant on Civil and Political Rights, Adopted and opened for signature, ratification and accession by GA UN Res. 2200A (xxI), December 16, 1966.

²⁷⁸ Fantu Cheru , “Debt, adjustment and the politics of effective response to HIV/AIDS in Africa”, Third World Quarterly, Vol. 23, No 2, (2002) P. 309

²⁷⁹ Totaro, Cited at Note 241, P. 761

²⁸⁰ Id., P. 762

²⁸¹ Davis et al., Cited at Note 32, P. 43

of 'national ownership' is being undermined by the tendency of donors like the WB to pursue their own agenda, and demand their own information, largely not related to the government in question's own Poverty Reduction Strategy processes.²⁸²

The other major problem pertaining to PRSPs is that the same as the period of Structural adjustment conditionalities do exist in the era of PRSPs. That is to say, although the period of structural adjustment was identified by the multiplication of "conditionalities" imposed by the IFIs like the WB, conditionalities do not vanish in the PRSPs framework, they are merely "internalized" in order to obtain desired debt relief; countries are required to define home-grown economic strategies that are consequently validated by the WB.²⁸³ At this point, Mr. Fantu Cheru, independent expert on human rights in submitting the report on Highly Indebted Poor Countries Initiative(HIPC): Human rights assessment of the Poverty Reduction Strategy Papers (PRSPs) subscribe the view that; *What the architects of the HIPC initiative failed to realize is that it was the failure of two decades of structural adjustment programmes (SAPs) to help countries "export their way out of the crisis", and their inability to service their debts and the social erosion that followed that gave the impetus for the establishment of the HIPC initiative. Increasing malnutrition, falling school enrolments and rising unemployment have been attributed to the policies of structural adjustment. Yet these same institutions continue to prescribe the same medicine as a condition for debt relief, dismissing the overwhelming evidence that SAPs have increased poverty.*²⁸⁴

Therefore, the conditionalities related with both SAPs and PRSPs may also violate economic, social and cultural rights. As mentioned PRSPs, have the same effect on human rights as SAPs when it comes to conditionalities. For instance, the fact that PRSPs increases malnutrition the same as SAPs means it violates the right to food. This is because, article 11 of the ICESCR recognizes people's right to have adequate food in part fulfilment of the protection and

²⁸² Cheru, Cited at Note 28, Para. 27

²⁸³ Roubaud, et al, Cited at Note 27, P. 7

²⁸⁴ Cheru, Cited at Note 28, Para. 27. Thus, for the independent expert, all the PRSPs hammer the same drum as the SAPs on the need for reorganizations, downsizing, cost-recovery and paying teachers less as a condition to grant loans. As the conditionalities attached by SAPs may weaken the legitimacy of the government because of the disapproval of such programs by the public at large and this in turn may lead to a human right violation as governments have no alternative but to use coercive means to keep law and order. Id., Para. 28

promotion of the right to an adequate standard of living.²⁸⁵ It should be mentioned that, according to the special reporter on the right to food Mr. Jean Ziegler the Bretton Woods institutions (including the WB) resist in practice the right to food by means of the Washington Consensus, stressing liberalization, deregulation, privatization and the compression of State domestic budgets, a model which in many cases produces greater inequalities.²⁸⁶

The same is true for the right to education this is for the reason that conditionalities embraced by PRSPs without doubt could have an effect on the falling school enrolments which in turn infringes the right to education. It should be mentioned however that, article 26 of the UDHR declares that all people have the right to education. In like manner, article 13 of the International Covenant on Economic Social and Cultural Right (hereinafter called the ICESCR) recognizes the right of everyone to education and sub article (2) (a) of the same underpins that primary education shall be compulsory and available free to all. It is worthy to mention that the first Special Rapporteur on the Right to Education, Ms. Katarina Tomaševski, during her mandate (1998-2004) militated against the policies of the WB, the main international funding source in the area of education, which has always supported the introduction of school fees even in primary school.²⁸⁷ The Special Rapporteur, added that *“the introduction of key human rights standards requires changes in the Bank’s operative rules”* She therefore pleaded for reducing the debt and increasing international financing for education with a view of reversing retrogression regarding the right to education, especially in Africa..²⁸⁸

It is also significant to point out that the CESCR has made comments on the obligations of actors other than state parties. It has made it clear that the IFIs in particular the WB should pay greater attention to the protection of the right to education in its leading policies, credit agreements, structural adjustment programs and measure taken in response to the debt crises.²⁸⁹ Therefore, the writer argues that conditionalities attached with PRSPs violates socio-economic rights the same

²⁸⁵ The International Covenant on Economic, Social and Cultural Rights, Adopted and opened for signature, ratification and accession by GA Res. 2200A (XXI) of 16 December 1966, art. 11

²⁸⁶ M. Ozeden, Debt and Human Rights Consequences for human rights of the debt of the countries of the South and the current state of its treatment within the United Nations bodies, Available at (<http://www.cetim.ch/en/documents/bro8-dette-A4-an.pdf>), last visited on March 5, 2012, P. 18

²⁸⁷ Id., P. 19

²⁸⁸ Ibid. In dealing with trade rights, which promote education as a commercial service, the Special Rapporteur has often affirmed that the right to education is a human right, thus schooling should remain a public Service.

²⁸⁹ Darrow, Cited at Note 7, P. 132

as SAPs in Africa. Besides, examining the process of PRSPs participation in some countries in Africa clearly shows that it fails to promote national ownership. As the independent expert for human right put it, the Strategic Framework for Poverty Reduction is nothing more than a fresh form of structural adjustment.²⁹⁰ Hence, the writer asserts that for PRSPs to move ahead, it must deduce a domestic democratic character. What Africa's development partners like the WB should encourage is a commonly shared vision of economic and social development by the people, which they can be committed to, rather than a disguised external policy overstated with political clichés of participation and fake national ownership.²⁹¹

3.4 The World Bank and the Impacts of its Private Development Operations on Human Rights in Africa: Case Studies

The impact of the WB's development operations in Africa has been under attack for violating human rights. In other words, it has been observed that, a number of projects in Africa have indicated the Bank's extensive, direct and habitual damaging involvement in areas of human rights in Africa.²⁹² The purpose of this section is to describe the major criticisms directed at the WB's three private sector-oriented projects in Africa, and then subject those criticisms to human rights analysis. Therefore, this sub-section will identify the key criticisms made of IBRD/IDA and IFC private sector development and privatization projects with related to the three cases and then analyzes those allegations from the perspective of international human rights law. To that end, the Chad-Cameroon Pipeline UG-Bujagali Private Hydropower Development Project in Uganda and the Niger Delta Contractor Revolving Credit Facility in Nigeria are chosen.

3.4.1 Chad-Cameroon Petroleum Development and Pipeline - Chad-Cameroon

The Chad–Cameroon Petroleum Development and Pipeline Project was developed by the oil consortiums comprising ExxonMobil (40 percent), Petronas (35 percent), and ChevronTexaco (25 percent) and the governments of Chad and Cameroon with the support from the WB and other lenders from 1993 to 1999.²⁹³ It should be mentioned that because of the high level of

²⁹⁰ Cheru, Cited at Note 28, Para. 21-35 It very immense to note that None of the I-PRSPs attempt to integrate major international human rights principles - namely the Convention on the Rights of the Child, the International Covenant on Economic, Social and Cultural Rights, and a number of ILO labour conventions.

²⁹¹ Adejumobi, Cited at Note 27, P. 24

²⁹² Ghazi, Cited at Note 21, P. 44

²⁹³ S. Pegg, "Can Policy Intervention Beat the Resource Curse? Evidence From the Chad-Cameroon Pipeline Project," *African Affairs*, vol. 105, 2005, P. 7. ExxonMobil owns 40 per cent of the private equity, Petronas 35 per cent and Chevron 25 per cent. See also World Bank, Chad-Cameroon Petroleum Development and Pipeline Project, Project Overview webpage, http://www.worldbank.org/afr/ccproj/project/pro_overview.htm. last visited on April

danger associated with operating a major infrastructure project in a highly underdeveloped state, initially ExxonMobil refused to take part without the support of the WB.²⁹⁴ The oil consortium requested that the WB's lending agency, the International Finance Corporation, provide loans for the project. The political legitimacy related with Bank sponsorship, once protected, would also help the consortium obtain private funding.²⁹⁵

The implication of the WBG's (includes IBRD, and IFC) role is also evident in three main areas political risk mitigation; credit mobilization; and what might be termed 'resource curse risk mitigation'.²⁹⁶ In other words, in the Chad/Cameroon context, the Bank would be a lender, development promoter, and risk mitigator.²⁹⁷ The Bank's three technical assistance projects; the Petroleum Environment Capacity Enhancement Project in Cameroon, the Management of the Petroleum Economy Project and the Petroleum Sector Management Capacity Building Project in Chad were its attempt to improve the resource curse and to justify this not just as a commercially viable oil project but as a poverty reduction project.²⁹⁸ The pipeline project is seen by the WB as

21, 2012. ExxonMobil is the lead company, owning the largest share of the investment. See Amnesty International, Contracting out of Human Rights: The Chad–Cameroon pipeline project (Amnesty International, UK, September 2005) Available at [http:// www.amnesty.org/en/library/info/POL34/012/2005](http://www.amnesty.org/en/library/info/POL34/012/2005), last visited on May 19, 2012, P. 10-13. Yet The consortium and the governments of Chad and Cameroon set up two joint-venture companies, the Chad [Tchad] Oil Transportation Company (TOTCO) and the Cameroon Oil Transportation Company (COTCO), to own and operate the sections of the pipeline in Chad and Cameroon respectively. See Generally Chad-Cameroon Project Appraisal Document –PAD.

²⁹⁴ A. M. Leibold, "Aligning Incentives for Development: The WB and the Chad-Cameroon Oil Pipeline", The Yale Journal of International Law Vol. 36(2011), P. 172

²⁹⁵ Ibid. Because of its important role in offsetting the risk of investing in an underdeveloped country, the WB thus had considerable leverage at the initial stages of the project. In fact, the viability of the project appeared to hinge on the World Bank's decision of whether to approve loans for the project.

²⁹⁶ See Pegg, Cited at Note 293, P. 8. The Bank's own project appraisal document, the international financial press and the oil consortium all emphasized that the private sector simply would not participate unless this project first assured WB approval. Bank participation thus was seen as providing the oil companies with a degree of political risk mitigation, and the WB Group's 'seal of approval' was basic for securing additional lending from commercial banks and governmental agencies.

²⁹⁷ Uriz, Cited at Note 118, P. 199

²⁹⁸ The project is developing the Bolobo, Komé, and Miandoum oil fields in the Doba region of southern Chad and transporting the oil through a 1,070-kilometre pipeline to a floating storage and offloading vessel near Kribi, Cameroon. The Chad–Cameroon pipeline project is the largest single private-sector investment in sub-Saharan Africa. Financially, the oil consortium contributed \$2.2 billion, commercial banks and export credit agencies contributed \$600 million, and capital markets financed \$400 million. The WB Group funding for the project comprised \$93 million in loans from the International Bank of Reconstruction and Development (IBRD) to finance each government's stake in the project; \$100 million in direct loans from the International Finance Corporation (IFC) to the oil consortium; and the IFC's mobilization of \$300 million in financing from commercial banks. Pegg, Cited at Note 293, PPs. 7-8. See also Leibold, Cited at Note 294. The total cost of the project is US\$3.7 billion, (Exxon Mobil established in October 2004 that the total project cost had risen to \$4.2 billion. J. H. Keenan, "Chad-Cameroon Oil Pipeline: WB& ExxonMobil in last Chance Saloon" Review of African Political Economy, Vol. 32,

a means of bringing about economic development and ‘poverty alleviation’ in both Chad and Cameroon and particularly Chad.²⁹⁹ It is worthy of mentioning however that, many NGOs lobbied against the project, arguing that Chad lacked the institutional ability to manage oil revenue without falling victim to the resource curse.³⁰⁰ Moreover, both Chadian and international NGOs articulated their concern to the WB prior to the project’s endorsement the fact that the government of Chad did not respect human rights and was overwhelmed by corruption.³⁰¹ In the face of these criticisms the project is approved by the WBG’s executive directors on 6 June 2000.³⁰² On the other hand, in response to these criticisms, the Bank required the consortium participants to hold public consultation sessions with communities that would be affected by the construction of the pipeline. Yet sources indicate that this consultation process was severely

No. 104/105(2005), P. 396. A consortium of oil companies are extracting oil from the Doba oilfields in southern Chad and transporting it 1,070 kilometres by pipeline to Cameroon’s Atlantic coast in one of the largest private-sector investment projects in Africa. The consortium is led by the US Company, ExxonMobil, and includes Chevron, another US corporation, and Petronas, the Malaysian state oil company. See Amnesty International, *Contracting out of Human Rights: The Chad–Cameroon pipeline project*, cited at note 293, P. 7. See also Uriz, Cited at Note 118, P. 213. Financially, the oil consortium contributed \$2.2 billion, commercial banks and export credit agencies contributed \$600 million, and capital markets financed \$400 million. The WB Group funding for the project comprised \$93 million in loans from the International Bank of Reconstruction and Development (IBRD) to finance each government’s stake in the project; \$100 million in direct loans from the International Finance Corporation (IFC) to the oil consortium; and the IFC’s mobilization of \$300 million in financing from commercial banks.

²⁹⁹ Amnesty International, *Contracting out of Human Rights: The Chad–Cameroon pipeline project*, Cited at Note 293, P. 13

³⁰⁰ Leibold, Cited at Note 294, P. 172. Chadian and Cameroonian civil society organizations and the broad international coalition of NGOs supporting them called for a moratorium on financing the project. The position of many NGOs were that the project should not go ahead until the legal context and the technical capacity had been put in place to ensure that oil revenues would be used for social development and for the protection of the environment. See The Chad-Cameroon Oil and Pipeline Project: A Call for Accountability, Environmental Defense, USA June 2002, Available at <http://allafrica.com/.../pdf>, last visited on May 12, 2012, P. 1

³⁰¹ 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 concentrated project preparations were under way. Horta, Cited at Note 16, P. 236. Moreover, although Chad ratified the principal human right treaties the human right situation in Chad is far from satisfactory. Local and International NGOs continue to denounce serious human right violations. Fundamental freedoms are not routinely respected in Chad, the law recognizes them but institutions do not guarantee their enforcement. The security forces have often attacked journalists and opposing politicians. See Uriz, Cited at Note 118, P. 219. Leibold, Cited at Note 294, P. 173. The level of killings and other serious human rights violations by government forces in Chad has raised concern in international human rights bodies. Chad was considered under the UN Commission on Human Rights confidential 1503 procedure for gross and systematic abuses of human rights. In 2003 the commission made its findings public in resolution 2003/81, stating that ‘Chad has an obligation to realize all the international and regional instruments to which it is a party. See Amnesty International, *Contracting out of Human Rights: The Chad–Cameroon pipeline project*, Cited at Note 293, P. 15

³⁰² See The Chad-Cameroon Oil and Pipeline Project: A Call for Accountability, Cited at Note 300. On June 6, 2000 the World Bank's Board of Executive Directors approved the Chad/Cameroon Oil and Pipeline project which will have extensive consequences for the people and the environment of Chad and Cameroon for generations to come.

defective.³⁰³ However, although the Bank imposed public consultation as one of the three set of conditions along with environmental impact assessment and revenue management plan because of the Bank's Operations Manual required public consultation in terms of social impact measures³⁰⁴ the consultation sessions consisted of propaganda-like videos highlighting the positive aspects of the pipeline.³⁰⁵ In addition, the consortium presented more comprehensive information in a nineteen-volume set of environmental studies; but, half of all Chadians are uneducated, and most could not even access the materials. As a result, the capability of such consultative meetings to foster a meaningful discourse between the consortium and affected communities is therefore highly questionable.³⁰⁶

Regarding the environmental impact assessment, monitoring has taken a variety of forms.³⁰⁷ In November 1998, the Bank asked the consortium to address some insufficiencies in their environmental assessment to bring it into accordance with the WB Operations Manual.³⁰⁸ The oil consortium funds the External Compliance Monitoring Group (ECMG) to monitor its compliance with the project's environmental management plan, and its reports are publicly available. (The ECMG is under direct contract with the International Finance Corporation the private-sector lending arm of the WB group).³⁰⁹ The International Advisory Group (IAG) also makes regular field visits to Chad and Cameroon and publishes its reports on compliance with environmental and social safeguards.³¹⁰ It should be mentioned that prior to the project's

³⁰³ For instance, visits to affected communities were unannounced, and Esso employees were supplemented by armed guards. See Leibold, Cited at Note 294, P. 173 these "consultations" in the oil producing region usually took place in the presence of armed military guards. Villagers in the region are traumatized by major massacres committed by the military in 1998 and 1999. See The Chad-Cameroon Oil and Pipeline Project: A Call for Accountability, Cited at Note 300, P. 7

³⁰⁴ Uriz, Cited at Note 118, PP 220-222

³⁰⁵ Leibold, Cited at Note 294, P. 173 That is to say, as an important tool of the consultation process consisted of a twenty-minute video shown in the villages. But the video's explanation takes place at a very fast pace with relatively loud background music and stresses only the positive exposure of the oil project. Government officials appear in the video, confidently assuring that oil extraction will actually take place. This certainty expressed by officials in a country always subjected to authoritarian rule turns the video into propaganda, rather than information or consultation. See Uriz, Cited at Note 118, P. 221

³⁰⁶ See The Chad-Cameroon Oil and Pipeline Project: A Call for Accountability, Cited at Note 300, P. 2. See also Leibold, Cited at Note 294, P. 173

³⁰⁷ Pegg, Cited at Note 293, P. 10

³⁰⁸ Uriz, Cited at Note 118, P. 222

³⁰⁹ Keenan, Cited at Note 298, P. 398

³¹⁰ Pegg, Cited at Note 293, P. 10. The WB established an International Advisory Group (IAG) of five independent experts to monitor the execution of social and environmental safeguards of the project. See The Chad-Cameroon Oil and Pipeline Project: A Call for Accountability, Cited at Note 300, P. 2

approval, ExxonMobil conducted research on the oil sites and created an environmental assessment.³¹¹

In 1999, the consortium used this information to create an environmental management plan (EMP), which was presented to the WB but not made public. One major absence of the EMP was its overemphasis on worker health and lack of attention to impacts on the greater region.³¹² Moreover, as mentioned one out of three technical projects established by the Bank to address the resource curse is the Petroleum Sector Management Capacity-Building Project (PSMCBP).³¹³ This project has three main aims: (1) to administer the development of...petroleum resources in an environmentally and socially sound manner...; (2) to curtail and ease the potential negative environmental and social impacts of the project on the oil-producing region and to reinforce local capacity there; and (3) to set up an effective framework for further sound private investment in the petroleum sector....³¹⁴ However, the Inspection Panel found the Bank not in compliance with Operational Directive 4.01 on environmental assessment for its failure to conduct a cumulative effects assessment and a regional environmental assessment.³¹⁵ Therefore, a number of environmental problems have subsequently plagued the project. For instance, the issue of dust generated by project trucks travelling along unpaved roads was noted by the ECMG in its first field report published in March 2001.³¹⁶

³¹¹ Leibold, Cited at Note 294, P. 182

³¹² Ibid. The IAG Final Report however commented on the disturbing lack of environmental data: The absence of some baseline studies, or their lack of depth, and the resulting dearth of information and related standards in the EMP, made monitoring, evaluating, and mitigating the Project's impact in the field more difficult, and also meant that some of the Project's direct and indirect effects will never be fully known.

³¹³ Pegg, Cited at Note 293, P. 14

³¹⁴ Ibid. However, despite all measure taken however, in the south one village Chief claimed that, because of oil operations in the region, "cows are dying and babies are dying". See, Leibold, Cited at Note 294, P. 182 Moreover, although in terms of the PSMCBP's environmental and social performance, environmental problems started before construction commenced. See Pegg, Cited at Note 293, P. 14

³¹⁵ See The Inspection Panel, Investigation Report: Chad-Cameroon petroleum and pipeline project (Loan No. 4558-CD); Petroleum Sector Management Capacity Building Project (Credit No. 3373-CD); and Management of the Petroleum Economy (Credit No. 3316-CD) (The Inspection Panel of the WB Group, Washington, DC, 2002) available at <http://siteresources.worldbank.org/EXTINSPECTIONPANEL>. Last visited on June 12, 2012. The Request for Inspection (the Request) was Submitted on March 22, 2001 by Mr. Ngarlejo Yorongar, a Member of Parliament in Chad's National Assembly and an Active Opposition Leader Who Was acting for himself and on behalf of more than 100 residents (the Requesters) in the vicinity of three fields of the pipeline project. The Requesters alleged that the pipeline project constituted a threat to local communities, their cultural property and the environment and people in the oil field region (in the Doba basin area) were being harmed, or likely to be harmed, because of absence, or adequacy, of environmental assessment and compensation: and that proper consultation with and discloser of information to the local communities had not taken place. See par. 3

³¹⁶ Id., P. 15 It should be noted that, the principal body charged with monitoring environmental performance is the Committee for Monitoring and Evaluation of the Pipeline Project, hereinafter called CTNSC). Noting the CTNSC's limited staff and resources, the Inspection Panel expressed their concern that CTNSC will not be a credible

Coming to the last condition imposed by the WB, in response to the widespread criticism of the project, the WB made its acceptance of the loan agreement contingent upon Chad's approval of a Revenue Management Law (hereinafter called RML). This law was designed to avert Chadian officials from abusing oil revenue.³¹⁷ Chad's Revenue Management Law (Law 001/PR/99) comprises a number of different elements. The law specifies that Chad's oil revenues must flow through audited offshore escrow accounts through establishing a monitoring body, the (Petroleum Revenues Oversight and Control Committee, (CCSRP), to control and monitor the use of petroleum revenues.³¹⁸

In 2004, Chad was already putting inadequate funds toward priority sector spending, with money twisted in favour of public works, which are especially susceptible to corruption. Chad's compliance increasingly worsened, and by 2005 the revenue management law was under vigorous attack. In response to fiscal problems, the Chadian Parliament proposed a law amending the RML in order to get rid of the Future Generations Fund and vehemently opposed by the WB, the law passed on December 29, 2005. At the result, the WB took swift action, announcing in January 2006 that it would withhold new loans and grants to Chad and suspend the disbursement of all International Development Association funds.³¹⁹ Eventually the friction between the WB and President Déby became unsustainable. On September 9, 2008 the WB announced that it was withdrawing from the Chad-Cameroon Oil Pipeline project altogether. As

independent monitoring force by the time this project is operational in Chad' and found the WBG's management not in compliance with the institutional/capacity requirements of Operational Directive 4.01 on environmental assessment, 'particularly in respect to CTNSC.

³¹⁷ Leibold, Cited at Note 294, P. 175, The WB required Chad to adopt sound management for oil Revenue. The government of Chad presented a revenue management law. This crucial law was passed after a three-hour session by 108 votes in fever and no opposition. See Ghazi Cited at Note 21, P.44

³¹⁸ The law also spells out how Chad's petroleum revenues must be used. Gross revenues to Chad comprise royalties, taxes, and dividends, and part of these go to the IBRD and the European Investment Bank for debt servicing. Pegg, Cited at Note 293, P. 11. The Government of Chad Adopted a Revenue Management Law and Established an Oversight Committee, Which Includes Representatives from Civil Society, to Ensure Transparent Use of Oil Revenues for Poverty Alleviation. See The Chad-Cameroon Oil and Pipeline Project: A Call for Accountability, Cited at Note 300, P. 2. See also Leibold, Cited at Note 294, P. 175. The law specifies that oil royalties are to be deposited into an offshore escrow account that saves ten percent for future generations and divides the remaining ninety percent among several sectors. Of the royalty revenue available for current spending, eighty percent is earmarked for key priority sectors (public health, social affairs, education, rural development, infrastructure, the environment, and water resources), fifteen percent is set aside for the state's recurring operating costs, and the remaining five percent is to be spent on development in the oil producing Doba region. See, Leibold, Cited at Note 294, P. 175

³¹⁹ Leibold, Cited at Note 294, P. 178

part of its withdrawal terms, the Bank required that the government of Chad repay its loans to the IBRD and the IDA.³²⁰

The Chad/ Cameroon project forced the Bank to consider human right questions despite earlier refusal on the grounds that such issues were outside its mandate. This implies that the Bank has permitted itself a liberal interpretation of its mandate to justify political intervention in political affairs when such action advances its pro-market agenda.³²¹ As far as human rights are concerned, the Chad-Cameroon projects provoked a massive controversy. This is because it violates human rights particularly that of socio-economic rights. Therefore, let us see how the project affects some important socio-economic rights.

3.4.1.1The Right to Participation

To begin with, there has been a failure to properly consult with affected populations, as the result of that the project design has not fully accounted for all potential problems.³²² That is to say, the most constant criticism directed at the project is that, the Bank, its private partners and the recipient states failed to consult adequately with affected populations during project design and implementation processes.³²³ However, the right of all citizens of a country to participate in public affairs is enshrined in article 25 of the International Covenant on Civil and Political Rights (hereinafter called the ICCPR) which states that [e]very citizen shall have the right and the opportunity, without ... distinction ... and without unreasonable restrictions (a) to take part in the conduct of public affairs, directly or through freely chosen representatives; (b) to vote and to be elected at genuine periodic elections...; (c) to have access, on general terms of equality, to public service in his country.

The failure to consult the affected population is also violates peoples' right to self determination. In this case, the important international human right regimes in dealing with the right to self-determination are the ICCPR and ICESCR. By including the right to self-determination in article 1 of both covenants (hereinafter called common article 1) clearly provides: “*All peoples have the*

³²⁰ Id., P. 179

³²¹ Uriz, Cited at Note 118, P. 220

³²² Davis et al., Cite at Note 32, P. 7. See also Uriz, Cited at Note 118, P. 221

³²³ The Inspection panel has said full and informed consultation is impossible if those consulted perceived that they could be penalized for exercising their opposition to, or honest opinions about, a bank financed project. See The Inspection Panel, Investigation Report: Chad-Cameroon petroleum and pipeline project, cited at note 315, Para.26

right to self determination by virtue of that right they freely determine their political status.’³²⁴

Yet as the scope of self-determination encompasses economic self-determination the second paragraph of both Covenants on the right to self-determination underpins as follows: “*The people may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic cooperation, based upon the principle of mutual benefit, and international law.*”³²⁵ It should be noted that, without the right to self-determination, most civil and political rights, and potentially many economic and social rights cannot be realized.³²⁶

Therefore the affected populations in this example may phrase their claims in human rights terms, or they could argue that their right to freely “pursue their economic, social and cultural development”, accorded to them under both the ICESCR and ICCPR has been breached. This is, of course, a major danger with any high impact construction project that threatens to cause major environmental and social change without the full approval of the populations to be affected. Thus the failure to consult with such groups in turn violates people’s right to self-determination.

3.4.1.2 The Right to Health

In terms of the social impact of the projects, the project has an overwhelming effect on the health of the local population. As mentioned Exxon Mobil is reported to have filled the ditches with cement bags mixed with cement and topsoil. This not only forms a dam, averting the water percolating through the trench, but the washout of the cement means that water resources along the route are being polluted by calcium hydroxide.³²⁷ Such act of Exxon Mobil in this case not only violates the right to health but also the right to clean environment and the right to water. This is for the reason that environmental, water and health rights are often viewed as being intimately connected to the right to clean environment.³²⁸ On the other hand, the right to health is

³²⁴ See, International covenant on Civil and Political Rights and International Covenant on Economic, Social and Cultural rights, Cited at Note 285

³²⁵ Id., Article 1, paragraph 2

³²⁶ Davis et al, Cited at Note 32, P. 42, See also General Comment 12 (Twentieth session, 1999) The right to adequate food (art. 11), May 1999. Which states that “its realization is an essential condition for the effective guarantee and observance of individual human rights and for the promotion and strengthening of those rights,” para1.

³²⁷ Keenan, Cited at Note 298, P. 402

³²⁸ Davis et al., Cited at Note 32, P. 48 For example, the UN Committee on Economic, Social and Cultural Rights (hereinafter called CESCR) has stated that: Environmental hygiene, as an aspect of the right to health under article 12, paragraph 2 (b), of the Covenant [ICESCR], encompasses taking steps on a non-discriminatory basis to prevent threats to health from unsafe and toxic water conditions. For example, States parties should ensure that natural water resources are protected from contamination by harmful substances and pathogenic microbes. See General Comment

enshrined in article 12 sub (1) of the ICESCR. It provides: The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. If we look at the effect of the Chad Cameroon pipe line in the context of the HIV/AIDS pandemic for example, non-governmental organizations (NGOs) repeatedly warned the WBG of the dangers that could go with an increase in single males from outside the region living away from their families coupled with an expansion of prostitution to take advantage of oil wages. In this regard, the Inspection Panel found that there is no program or plan to develop the Government of Chad's health care infrastructure.³²⁹ The enhancement of all facet of environmental and industrial hygiene; Thus, socially, the project's potentially greatest long-term impact is its effect on public health of the local communities.

3.4.1.3 The Right to Water

The right to water is integrated in the obligation placed on states by article 11 of the ICESCR to ensure that people are able to access adequate food and water in part fulfillment of the protection and promotion of the right to an adequate standard of living.³³⁰ The right is further adumbrated by the CESCR extensive General Comment 15. Therein, the right is expressed as including the freedom to maintain access to water supplies, and the freedom from interference by, for example, arbitrary disconnection or contamination.³³¹ Therefore polluting water resources is without doubt a violation of the right to water.

3.4.1.4 The Right to Property

Concerning the right to property, it is clear that Chadian and the Cameroon governments not only have the obligation to ensure that individuals or communities whose housing and tenure conditions will be affected by state actions are properly involved in the decision-making process, but also adequately compensated and/or relocated.³³² With respect to compensation for affected Communities, the pipeline in Chad is located in the south of the country, where the federal

No. 15 (2002) The right to water (arts. 11 and 12 of the International Covenant on Economic, Social and Cultural Rights), November 2002, CESCR, para. 8. UN Doc. E/C.12/2002/11.

³²⁹ Ibid.

³³⁰ See International Covenant on Economic, Social and Cultural Rights, Cited at Note 285, art. 11. See also Davis et al., Cited at Note 32, P. 48

³³¹ Ibid., See also Committee on Economic, Social and Cultural Rights, See also General Comment No. 15, Cited at Note 328, para. 10.

³³² Davis et al., Cited at Note 32, P. 54

government is nearly completely not present. The International Advisory Group referred to this absence as both “alarming” and “disturbing” in its January 2009 Report.³³³ Compensation for communities in the south of Chad can be conceptually organized into two basic forms: direct compensation to affected communities (direct payments for property purchased or materially altered) and community donations (payments to communities near the pipeline that may be affected by Esso’s activities).³³⁴ But, there is a contentious debate in Chad over whether the compensation delivered to communities in southern Chad has been fair and equitable. For example, in one village, villagers noted that because each plot of land had previously supported eight to ten people, fair compensation should be made to continuously provide for all of these people in the future.³³⁵ Lack of adequate compensation thus is contrary to the right to property enshrined under ICESCR. Therefore, the Chad/Cameroon projects to highlights the importance of human right consideration in the WB development activities as the adoption of a human right policy enhances the credibility of the Bank’s development operations in Africa.

3.4.2 UG-Bujagali Private Hydropower Development Project – Uganda

The IFC and IDA have provided loans and guarantees to AES Nile Power Limited (AESNP) to construct, own and operate a hydropower plant on the Victoria Nile River.³³⁶ The developer, AES Nile Power, a local subsidiary of the giant US Corporation called AES Inc, was part of a consortium that included Veidekke of Norway and Skanska of Sweden.³³⁷ With an estimated

³³³ Leibold, Cited at Note 294, P. 179

³³⁴ Ibid.

³³⁵ Ibid. Compensation is one important element to determine that whether or not the dispossession of a certain property is fair and thus in conformity of the law.

³³⁶ Davis et al Cited at Note 32, P. 8

³³⁷ AES Nile Power planned to own, operate and construct the hydroelectric facility, a 100-kilometre transmission line and two substations. The project will sell electricity to the Uganda Electricity Transmission Company Limited under a 30 year Power Purchase Agreement but AES pulled out of the project in 2003 at the result a new private partner is being required. See The Role of European Investment Bank (EIB) and European Export Agency (ECAs) In Bujagali Dam (Uganda) and Gibe III (Ethiopia) A Paper Presented By National Association of Professional Environmentalists (NAPE) and African Rivers Network (ARN), 2009 (http://www.bothends.org/.../1Bujagali_dam_Uganda_and_Gibe_III_Ethiop) last visited on April 16,2012 PPs. 6-9. Financially the European Investment Bank’s contribution (in 2007) was 130 million USD. The contribution of the WBGroup amounts to 360 million USD in loans and guarantees) and the African Development Bank (USD 110 million). The project was being developed by Bujagali Energy, a joint venture between Kenya-based Industrial Promotion Services (IPS) and US-based Sithe Global Power, with construction by Italy’s Salini. See T. Barčik , Raising the Bar On Big Dams(http://www.bankwatch.org/documents/raising_the_bar.pdf) last visited on January 12, 2012. P.2. The total Project cost is estimated to be around US\$750 million. The International Development Association (IDA) is to support the proposed Project through a guarantee of up to US\$115 million for payment of interest and repayment of the principal amount of a loan to BEL (the IDA Guarantee). The Project is also to be

capacity for 250 MW, Bujagali was strongly pushed by its proponents as the most cost-effective dam of all those planned. Pushing the Bujagali dam idea was helped or justified by the constant shortage of electricity and by the enormous poverty in the country.³³⁸ The proponents of the project asserted that the dam would promote industrialisation and power the rural poor to socio-economic development and prosperity.³³⁹ It is worthy of mentioning however, Bujagali is one of the most controversial dam projects in recent years. For example, international NGOs (especially Friends of the Earth and the International Rivers Network); local NGOs (especially the National Association of Professional Environmentalists of Kampala, (NAPE) and the Uganda Save Bujagali Crusade (SBC) which has made an application before the WB's Inspection Panel) have sharply criticized Bujagali the project.³⁴⁰ The high-profile project has been criticized on many grounds including eco-systems, the adverse effects of the project on the Bujagali Falls, agricultural land and the local watershed and will result in long term soil degradation and the degradation of forests and fisheries, no sectoral Environmental Assessment was conducted, lack of adequate to consult local populations, the detrimental effect of the project on the environment and resettlement impacts economic grounds, as well as for its lack of protections for endangered fisheries, its potential to harm Lake Victoria, and its incapacity to bring affordable power to Uganda's majority.³⁴¹

On July 25, 2001 the Panel had received a Request for Inspection submitted by the National Association of Professional Environmentalists of Kampala and other local institutions and individuals with related to the project. In response to the claim the WB Inspection Panel released a report suggesting Bujagali, by all stands, was an expensive undertaking whose electricity would be too costly to be afforded by the poor majority of Ugandans, combined with corruption by those in charge and the civil society Concerns.³⁴² A few months after the WB Inspection

financed through, *inter alia*, an International Financial Corporation (IFC) loan and a Multilateral Investment Guarantee Agency (MIGA) Guarantee. In total, the WB Group's financial support to the Bujagali Project is to be up to US\$360 million. IDA's Board of Executive Directors approved the proposed IDA Guarantee on April 26, 2007.

³³⁸ Ibid. The 250 MW hydropower project on the Victoria Nile in Uganda is the largest private power project in Sub-Saharan Africa and the largest private investment in East Africa. The Bujagali Power Purchase Agreement – an Independent Review, International Rivers Network, (<http://irn.org/programs/bujagali/bujagalippa.pdf>) Last Visited on April 16, 2012, 2002, P. 2

³³⁹ Ibid. It should be noted however that, Bujagali is one of the most controversial dam projects in recent years.

³⁴⁰ Davis et al Cited at Note 32, P. 9

³⁴¹ Barčík, Cited at Note 337, P. 25

³⁴² The Role of European Investment Bank (EIB) and European Export Agency (ECAs) In Bujagali Dam (Uganda) and Gibe III (Ethiopia) Cited at Note 337, P. 7. On March 5, 2007, the Inspection Panel received a Request for

Panel released a report.³⁴³ The Panel report finds that in preparing the Bujagali project, the Bank's management violated the following Operational Policies: OP 4.01 on Environmental Assessment, OP 4.04 on Natural Habitats, OD 4.30 on Involuntary Resettlement, OP 10.04 on Economic Evaluation of Investment Operations, OD 13.05 on Project Supervision (regarding the Power III Project), BP 17.50 on Disclosure of Operational Information and the Operational Manual on Disclosure of Factual Technical Documents. OP 4.01, OD 4.30 and particularly OP10.04 were violated on several accounts.³⁴⁴ Despite this finding by the Panel, in 2007 Bujagali dam re-emerged as Bujagali II with Uganda Government as sole sponsor and advocate.³⁴⁵ However, on March 5, 2007, NAPE and others in Uganda filed a complaint with the WB Inspection Panel, citing concerns about potential violations of Bank policies on Bujagali.³⁴⁶ NAPE and other local NGO's state that the proposed Project is based on flawed assumptions and data that have little or no bearing to the current situation" and are thus insufficient.³⁴⁷ After visiting the project in Uganda,³⁴⁸ and cautiously reviewed the claims the Panel has disclosed its

Inspection related to the Uganda: Private Power Generation Project, also known as Bujagali Hydropower Project (the "Project" or the "Bujagali Project"). The Project includes the proposed construction of the Bujagali hydropower plant as well as the Interconnection Project, (which will construct transmission lines, a new substation at Kawanda, and the extension of the substation at Mutundwe financed by the African Development Bank (AfDB). The Request was submitted by the Ugandan National Association of Professional Environmentalists (NAPE) and other local organizations and individuals. The Request raises a number of environmental, hydrological, social, cultural, economic and financial concerns, and contends that a failure of the Bank to follow its own operational policies and procedures in the design and appraisal of the Project will result in serious harm to the people living in the Project area and to the environment. A separate request relating to this Project was submitted to the independent recourse mechanism (IRM) of the African Development Bank (ADB) See Generally, The Inspection Panel Investigation Report Uganda: Private Power Generation (Bujagali) Project 44977-UG (Guarantee No. BOI30-UG) Available at http://www-wds.worldbank.org/.../2008/...20080910035348/... last visited on June 12, 2012

³⁴³ Ibid.

³⁴⁴ A Review of the World Bank's Inspection Panel Report on the Bujagali Hydropower Project International Rivers Network, June 10, 2002(http://www. www.internationalrivers.org/files/IRN_comment.pdf) last visited on April 10, 2012 P. 2

³⁴⁵ Ibid. See also The Role of European Investment Bank (EIB) and European Export Agency (ECAs) In Bujagali Dam (Uganda) and Gibe III (Ethiopia) Cited at Note 337, P. 7

³⁴⁶ Barčík, Cited at Note 337, P. 27 On March 5, 2007, the Inspection Panel (the "Panel") received a Request for Inspection (the "Request") dated March 1, 2007 related to the proposed Uganda: Private Power Generation Project (the "Project").

³⁴⁷ The Inspection Panel Report and Recommendation On Request for Inspection, Re: Request for Inspection UGANDA: Private Power Generation Project (Proposed) Par. 5 (<http://www.siteresources.worldbank.org/EXTINSPECTIONPANEL/.../UgandaeligibrepoMay3FINAL.pdf>) last visited on April 16, 2012 , Par. 5. They also raise various sets of concerns related to hydrological risks, climate change, and cumulative impact evaluation; Kalagala Falls "offsets"; economic analysis, options, and affordability assessment; information disclosure, transparency and openness about the Project; dam safety; indigenous peoples, cultural and spiritual issues; compensation, resettlement and consultations; and terrestrial and aquatic fauna. According to the NGO's, the claims they present in the Request constitute a violation of Bank operational policies and procedures.

³⁴⁸ Id., Paras. 41 and 42

findings. With regard to compensation for the displaced people, the panel verified the allegation that the affected people in the area around the Bujagali Dam have not or inadequately been compensated. In this respect, local affected people interviewed by the Panel reiterated and elaborated on their concerns set forth in the Request for Inspection. During its visit, the Panel was also able to verify some of the problems faced by them.³⁴⁹ Let us see some rights that are violated due to the activities with related to the Bujagali Dam.

3.4.2.1 The Right to Adequate Standard of Living

Article 11(1) of the ICESCR obligates the States Parties to recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the permanent improvement of living conditions. The States Parties will take suitable steps to ensure the realization of this right, recognizing to this effect the essential importance of international cooperation based on free consent.³⁵⁰ As it is clear from this article, the right to an adequate standard of living encompasses the rights to adequate food, clothing and housing, and continuous improvement of living conditions.³⁵¹ The UDHR contains a similarly broad definition of One notable difference between the two is that the ICESCR recognizes the right to health in a separate article.³⁵² In this regard, article 25 of the UDHR provides, in paragraph 1, that: Everyone has a right to a standard living adequate for the health and well being of himself and his family including food, clothing, housing and medical care and necessary social services....³⁵³ Yet, in the case of the Bujagali Dam people are displaced from their homes without adequate compensation. This is a clear infringement of the right to property/ownership.

3.4.2.2 The Right to Adequate Housing

The right to adequate housing is also capable of application in the private sphere. The CESCR has stated that this right guarantees something more than having a roof over one's head or shelter

³⁴⁹ Id., Para. 79

³⁵⁰ See, the International Covenant on Socail, Economic and Cultural Rights, Cited at Note 285, art. 11(1)

³⁵¹ D.M. Chirwa, Towards binding economic, social and cultural rights obligations of non-state actors in international and domestic law: A critical survey of emerging norms, thesis submitted in full fulfillment of the requirements for the degree Doctor Legum in the Faculty of Law of the University of the Western Cape, (2005), Available at (http://www.etd.uwc.ac.za/usrfiles/modules/etd/.../etd_init_8148_1174557113.pdf (last visited on March. 3, 2012) , P. 388

³⁵² *Ibid.*

³⁵³ See, Universal Declaration of Human Rights, Cited at Note 129, art. 25 (1), See also, Shihata, Cited at Note 20, P. 117

viewed exclusively as a commodity. It protects the right to live anywhere in security, peace and dignity.³⁵⁴ The CESCR has recognized that many occasions forced evictions occur in the pretext of development such as dam construction projects, development and infrastructure projects, and large scale energy projects.³⁵⁵ Thus, the CESCR has stated that States, in particular, while noting that development projects financed by international agencies have resulted in forced evictions, it has stated that ‘international agencies should scrupulously avoid involvement in projects which, for example ... involve large scale evictions or displacement of persons without the provision of appropriate protection and compensation.’³⁵⁶ More importantly, ICESCR underlines that; IFIs promoting structural adjustment should ensure that such measures do not compromise the enjoyment of the right to adequate housing.³⁵⁷

The right to adequate housing also requires that legal security of tenure is conferred upon lawful occupiers of land. It is thus well recognized at international law that a lack of security of tenure in one’s home and forced evictions are among the most disempowering violations of human rights, causing grave and disastrous harm to the basic civil, political, economic, social and cultural rights of large numbers of people, both individual persons and collectivises.³⁵⁸ When we come to Bujagali Dam, the Assessment of Past Resettlement Activities and Action (APRAP) discovered some shortcomings in Housing condition and the Panel observed physical problems and deterioration with some of the houses and structures. The Panel is also concerned that no physical action is planned with regard to houses at the resettlement site.³⁵⁹ This in turn violates the right to adequate housing as part of the right to adequate standard of living under article 11 of the ICESCR.

³⁵⁴ General Comment No 4 (1991) ‘The right to adequate housing 9art 11(1) of the Covenant)’ adopted by CESCR at its 6th session, 13 December 1991, para 7, See also, Chirwa, Cited at Note 351, P. 390

³⁵⁵ General Comment No 7 (1997) ‘The right to adequate housing (art 11(1) of the Covenant): Forced evictions’ adopted by CESCR at its 16th session, 20 May 1997, paras 7 & 8. See, also Chirwa, Cited at Note 351, P. 391

³⁵⁶ Chirwa, Cited at Note 351, P. 391, See also, General Comment No 7, Cited at Note 355, para 18.

³⁵⁷ Id., P. 392, See, also General Comment No 7, Cited at Note 355, para. 19.

³⁵⁸ Davis et al Cited at Note 32, P. 53, See also Commission on Human Rights, Sub-Commission on Prevention of Discrimination and Protection of Minorities, Study concerning the right to restitution, compensation and rehabilitation for victims of gross violations of human rights and fundamental freedoms, Final report submitted by Mr. Theo van Boven, Special Rapporteur, paragraph 21, UN Doc. E/CN.4Sub.2/1993/8.

³⁵⁹ Generally, the Inspection Panel Investigation Report Uganda: Private Power Generation (Bujagali) Project, Cited at Note 342, Para. 3(g).

3.4.2.3 The Right to Healthy and Clean Environment

The Panel comments that Bujagali Falls is an extremely valuable natural site, which is important to both present and future generations³⁶⁰ after people interviewed by the Panel during its eligibility visit reiterated that the inundation of Bujagali Falls would be a great loss locally and to the country, with highly adverse ecological, cultural, social and economic impacts.³⁶¹ The panel therefore recognised the decline in lake and river water levels and the threat of climate change based on new information.³⁶² This in turn violates of the right to a clean and healthy environment. As mentioned environmental, water and health rights are often viewed as being intertwined to the right to clean environment.³⁶³ Indeed it is a feature of these three sub-categories of rights that their enunciation at international law has not been in the form of separate, free-standing rights.³⁶⁴ In this case, article 12 (b) of the ICESCR recognise the right to clean environment as an important part of the right to health.

To wind up, the Bujagali project review is subject to a variety of criticisms, expressed in terms that we can categorized under such headings as resettlement and land ownership, the environment, water access economic and social impacts (including issues relevant to culture, indigenous peoples). More importantly, it clearly shows how much the operational level of the Bank's operation could have a detrimental effect on standards of living, the environment, on peoples' access to basic utilities like water and land.

3.4.3 Niger Delta Contractor Revolving Credit Facility – Nigeria

To begin with, with the population of Nigeria totalling over one hundred and twenty million people, a large proportion of whom are estimated to live in extreme poverty, this was seen as a chance for the WB to fulfil its commitment to poverty eradication and develop programs in Nigeria to achieve this.³⁶⁵ One of the major projects developed by the WB was in partnership with Shell- the Niger Delta Contractor Revolving Credit Facility. This project, for which the IFC (One of the WB group invested \$30 million, was set up to provide capital financing to small and

³⁶⁰ The Inspection Panel Report and Recommendation On Request for Inspection, Re: Request for Inspection UGANDA: Private Power Generation Project, Cited at Note 347, Par. 52

³⁶¹ Id., Para. 65

³⁶² Id., Para.

³⁶³ Davis et al Cited at Note 32, P. 53

³⁶⁴ Ibid.

³⁶⁵ The Extractive Industries Review (EIR) Regional Consultation Workshop for Africa, Testimonials and Consultation Report, 2003 (<http://www.irispublic.worldbank.org/.../All.../volume4asiaexecsummary.pdf>) P. 10 last visited on April 6, 2012

medium-sized Nigerian contractors, to work with the oil industry. The IFC is provided a credit facility in order that small to medium-sized local contractors, who give services to Shell, can access competitively priced term funding that will enable them to consolidate and grow their businesses by competing for larger contracts. It will be administered by a local Nigerian bank (Diamond Bank)³⁶⁶

But, critics argues that the IFC in partnership with Shell, without addressing the legacy of Shell's involvement in Nigeria, as claims of human rights violations and lack of conformity with minimal environmental standards.³⁶⁷ Besides, Nigerian contractors had not benefited, as promised, from the credit facility, and local conflicts were rife, as impoverished communities, whose livelihoods have been shattered, scrambled for contracts for jobs.³⁶⁸ Without sources of additional employment, economic growth lags for citizens in the Delta while profit grows for the oil majors. The official unemployment rate for the oil industry centre of Port Harcourt is 30 percent, but human rights groups have pegged real unemployment at 75 percent and even as high as 95 percent in some areas.³⁶⁹ Even for those who get the job international standards on employment and labor conditions have not been met by Shell contractors in Nigeria.³⁷⁰ Therefore, the IFC have failed to widely consult with affected parties over project design.

Moreover, international and local environmental NGOs have accused the Bank for failing to meet its own environmental safeguard policies and encouraged environmentally destructive practices, particularly in relation to fisheries and farming³⁷¹ which ultimately caused an adverse impact on water supplies, with associated health implications, from the by-products of oil production (as well as any direct spillage).³⁷² For instance, in May 1998, the U.N. Committee on Economic, Social and Cultural Rights considered Nigeria's initial report under the Convention on Economic Social and Cultural Rights. The committee "*note[d] with alarm the extent of the devastation that oil exploration has done to the environment and quality of life in the areas such*

³⁶⁶ Davis et al Cited at Note 32, P. 10

³⁶⁷ Ibid.

³⁶⁸ The Extractive Industries Review, Cited at Note 365, P. 11

³⁶⁹ The Degradation of Work Oil and Casualization of Labor in the Niger Delta, The Solidarity Center (http://www.solidaritycenter.org/files/pubs_nigeria_degradationofwork.pdf) last visited on April 10, 2012 P. 10

³⁷⁰ Davis et al Cited at Note 32, P. 11

³⁷¹ Id., P. 10

³⁷² Id., P. 11 By having Diamond Bank administer the project IFC safeguards have been circumvented.

*as Ogoniland where oil has been discovered and extracted without due regard to the health and well-being of the people and their environment,” and recommended that “[t]he rights of minority and ethnic communities—including the Ogoni people—should be respected and full redress should be provided for the violations of the rights set forth in the Covenant that they have suffered.”*³⁷³ It was the beginning of oil exploration and production in the Niger Delta that led to the environmental pollution and degradation of the region. The activities linked with the various stages of oil exploration and production affected the environment negatively and petroleum production led to pollution. The pollution affects the soil and causes infertility. It damages the human health, animals and water.³⁷⁴

Conversely, a government-backed judicial inquiry concluded that Shell “does not owe any legal obligation to the ... Community to provide any socio-economic or social amenities, but emphasized that the company was indebted to pay adequate compensation for lands acquired for oil operations and for crops and trees on such lands; to pay adequate compensation for damage done to farms by oil spillage/blow-out; to pay adequate compensation for pollution of water, rivers and streams by oil spillage and such other liabilities as may be stipulated by law. Instead, the compensations paid for these deprivations are just pittance, meagre pittance, on which the people cannot subsist for even six months, and they become frustrated with life.”³⁷⁵

What is more, the CAO received a complaint against the Revolving Credit Facility from the Environmental Rights Action NGO.³⁷⁶ They made a formal complaint to the office of the CAO, and took the evaluation team on a tour of problem areas in July 2001. They visited Ogbudu to witness a fresh oil spill from Shell that had contaminated the community’s water supply; they visited Ogoniland to see the impacts of Shell’s activities on the area; and to Nembe to see the

³⁷³ The Price of Oil: Corporate Responsibility and Human Rights Violations in Nigeria’s Oil Producing Communities”, Human Right Watch, 1999, P.6

³⁷⁴ F. C. Anyim, C.O. Ikemefuna and J. O. Ekwoaba, “Conflict and Environmental Challenges Facing the Oil Companies in Nigeria, Niger-Delta Region, International Journal of Business and Management Tomorrow, Vol. 2 No. 3 (2012) P. 4

³⁷⁵ The Price of Oil Corporate Responsibility and Human Rights Violations In Nigeria, Cited at Note 373, P. 93

³⁷⁶ Davis et al Cited at Note 32, P. 10 Established in 1999, the IFC-MIGA compliance advisor /ombudsman (CAO) is an independent post, which is appointed by the WB president and reports directly to the president. The purpose is to develop the most appropriate mechanism allowing individuals and communities affected by the IFC and MIGA projects to raise their concern directly. See, Ghazi Cited at Note 21, P. 223

obliteration caused by community conflicts.³⁷⁷ At the time, the CAO, Meg Taylor, told them she was very concerned. But, the report then issued by her office told them how Shell had enhanced its image; how the company was highly regarded globally; how Shell were a victim of the Nigerian crisis; and the company was just doing business. However, the organization were not satisfied and asked for a delay, or moratorium, on projects.³⁷⁸ As one commentator put it, the IFC had recognized the reputational risk of partnering in the project with Shell, and had ignored standing social and environmental concerns in extending financing. In conclusion, the commentator contested the validity of the credit facility as a project in the interests of relieving poverty, given the level of pain experienced by communities from oil developments in the region.³⁷⁹ Let us see some rights that are violated or threatened to be violated at the result of the project.

3.4.3.1 The right to Participation

To begin with, article 1 of both covenants clearly provides: *All peoples have the right to self-determination by virtue of that right they freely determine their political status.*³⁸⁰ It is very immense to mention that the right to participation is an important component of the right to self-determination. Yet the right to self-determination extends to the right to participate in one's country resources. In terms of human right analysis the failure of IFC to widely consult with affected parties over project design given the reputation of the Shell in Niger Delta tantamount to the violation of people right of self-determination which recognises that peoples have a right to economic self-determination, by virtue of which they may freely dispose of their natural resources and wealth enshrined under common article 1 of the twin covenants.³⁸¹

³⁷⁷ The Extractive Industries Review, Cited at Note 365, P. 12

³⁷⁸ Ibid.

³⁷⁹ Ibid. However, as part of the United Nations' attempts to create a code of conduct for TNCs, in 2000 the Secretary-General of the United Nations, Kofi Anan, announced the creation of the highly publicized Global Compact, an initiative launched with the aim of encouraging corporations to voluntarily adopt nine fundamental principles on human rights, labor, and environmental protections. In this regard, the Global Compact directly appeals to private corporations to adopt and adhere to principles that are already widely accepted by U.N. member states, via the Universal Declaration of Human Rights, the International Labour Organization's Declaration on Fundamental Principles and Rights at Work, and the 1992 Rio Declaration of the United Nations Conference on Environment and Development. Therefore, the Bank as a Specialized agency of the U.N. has the obligation to make sure that Shell is adopted the global compact in conducting its activities. See C. Ochoa, Advancing the Language of Human Rights In A Global Economic Order: Analysis of Discourse, Boston College Third World Law Journal Winter, 2003, No. 57, PPs. 5-6

³⁸⁰ See, the International Covenant on Civil and Political Rights, Cited at Note 277, Common art. 1.

³⁸¹ Ibid.

3.4.3.2 The Right to Health

Article 12 (1) of the ICESCR recognizes the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. In this respect the has stated unambiguously: While only States are parties to the Covenant and thus ultimately accountable for compliance with it, all members of society individuals, including health professionals, families, local communities, intergovernmental and non-governmental organizations, civil society organizations, as well as the private business sector have responsibilities regarding the realization of the right to health. The CESCR has pointed out the obligation of the state party not only in their internal system but also in the international system. It reiterated that, State parties have an obligation to ensure that their actions as members of international organizations take in to account the right to health. Accordingly, State parties which are members of the IFIs notably the IMF and the WB....should pay a great attention to the protection of the right to health in influencing their leading policies, credit agreements and international measure for these institutions.³⁸²

3.4.3.3 The Right to Water

As mentioned, article 11 (1) of the ICESCR, provides that States Parties to recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the permanent improvement of living conditions. With respect to access to safe drinking water in the Niger Delta we have seen how oil spillage/blow-out; in the Niger Delta led to pollution of water, rivers and streams by oil spill. However, this is a clear violation of the right to water. The CESCR sought to remind states of this in its General Comment on the right to water: States parties should ensure that their actions as members of international organizations take due account of the right to water. Accordingly, States parties that are members of IFIs, notably the International Monetary Fund, the WB, and regional development banks, should take steps to ensure that the right to water is taken into account in their lending policies, credit agreements and other international measures.³⁸³ This implies the significance of socio-economic rights to non-state actor like the Bank although it does not go further to mention whether or not they are bound by international human right laws.

³⁸² Darrow, Cited at Note 7, P. 132, See also, General Comment No. 14 Para. 39

³⁸³ See, General Comment No. 15: The Right to Water, Para. 36, Cited at Note 328.

3. 5 Conclusion

All the above analysis shows how the lack of a clear policy on human right as well as the contrast between the Bank's rhetoric pertaining to human rights with the reality of its practices subverts the Bank's overall development mission. As we have seen the Bank taken a very restrictive approach to address human rights that considers political, yet the above case studies highlighted that the Bank's biased interpretation of its mandate is untenable partly because the Bank intervenes (in the case of Chad-Cameroon pipe line project) into the kind of issue that the WB generally deems to be political rather than economic matter. Most importantly, the Bank activities (both its policy and project lending) have an overwhelming impact in human right in general and socio-economic rights in particular. This in turn underlines that the Bank should be legally accountable for human rights violations prompted by its policies and operations in Africa. Hence, in the next chapter the writer will identify and critically analyze the existing institutional accountability mechanisms within the WB in the case where the WB's policies and operations in Africa affects the human rights of the peoples in Africa. The analysis is also extend to non-institutional accountability mechanisms based on international legal obligations to take full responsibility to respect for human rights on the situations where its own policies and operations have a negative impact on the enjoyment of socio-economic rights in Africa.

Chapter Four

A Critical Evaluation of the World Bank's Human Rights Accountability Mechanisms

4.1 Introduction

It is widely known that the policies and the operations of the WB may affect the realization of human rights in general and socio-economic rights in particular in Africa. As mentioned in preceding chapter criticisms directed against policy prescriptions shows that coercive uses of conditionalities by the Bank have a significant harmful impact on the lives of many peoples in Africa. It follows that, in cases where these coercive uses of conditionality amounts to the dispossession of basic human rights the needs for accountability become indispensable. In a similar manner, criticisms directed against the manner of operation of the WB shows that developmental projects financed by the Bank frequently have an effect on people's socio-economic right and thus call for human rights accountability. In general as the discussion in the previous chapter discloses the unremitting power being exercised by the WB requires human rights accountability. Therefore, this chapter will critically evaluate the institutional as well as the non-institutional accountability mechanisms. In doing so, this chapter will critically assess the effectiveness of the WB's safeguard policies to seal the issue of accountability. A close analysis will also be made to the efficacy of the IBRD/IDA inspection panel, the MIGA/IFC, CAO and the WB Independent Evaluation Group (IEG) in dealing with human rights issue rose due to the non-compliance of the Bank's own OPs and procedures. The chapter will also examine the non-institutional accountability mechanisms that the WB is subjected with. Finally, the writer will put his own prospective in the form of recommendation on the way forward to enhance the legal accountability of the WB.

4.2 Critical Evaluation of the World Bank's Institutional Accountability Mechanisms

The institutional respond of the WB to the demand for greater human accountability was at first is that of rejection. The Bank articulated its inability to address human rights issues on the ground that there is an explicit prohibition on interference in the political affairs of any member

of the organization.³⁸⁴ This argument, however, has not gained acceptance among critics. The writer asserts that, it is hardly credible for organization that attach non-economic conditions to their funding that relate to governance, corruption, budgetary allocations, and the relationship between the state and markets, to argue that it is not influenced by social and political considerations. But still although the WB attitude towards to human rights become more and more flexible, it has not yet accepted in real terms that it is indeed bound by human rights principles and norms. Further, the Bank has inconsistency approach on human rights and this entails that the Bank's argument on the issue of political prohibition is not tenable. At this juncture, the track record of the Bank's practice shows continuing of incoherence approach on human rights. That is to say, on one hand the Bank has taken in to account human right considerations in some cases. For example, the Bank changed its lending policies in the wake of grave human rights violations. In this regard, soon after the execution of Ken Saro-Wiwa and eight other Ogoni activists in Nigeria in 1995, the IFC, the private lending arm of the WB, which is also bound by the political prohibition, decided to cancel a \$3 billion liquefied natural gas project that Saro-Wiwa had opposed.³⁸⁵ Likewise, in September 1999, the Bank froze an annual \$1 billion program loan to Indonesia on the grounds of corruption.³⁸⁶

The Bank on the other hand does not taken in to account any human right considerations for example, in Venezuela in 1989 or in Mexico in 1994.³⁸⁷ However, the unwavering outside pressure has influenced the WB to think up institutional accountability mechanisms for taking human rights concerns into account. In this case, the institutional accountability mechanisms embraced by the WB can be classified in to four. These are self-regulation and quasi independent

³⁸⁴Wahi, Cited at Note 2, P. 11. Based on Article IV/10 and Article III 5(b) of its Articles of Agreement the Bank argued that it is prohibited from engaging human rights.

³⁸⁵Uriz, Cited at Note 118, P. 216, See also Miller-Adams, *The World Bank: New Agendas in a Changing World*, (1999) P. P. 105

³⁸⁶*Ibid.* At the same time, the Bank's Indonesia Director declared that the Bank welcomed the Indonesian government's decision to allow peacekeepers into East Timor. *The WB Freezes All New Loans to Indonesia*, World Bank, Development News, at <http://wbln0018.worldbank.org/news/devnews.nsf> last visited on April 4, 2012

³⁸⁷Wahi, Cited at Note 2, P. 11. See also D. D. Bradlow, *Rapidly Changing Functions and Slowly Evolving Structures: The Troubling Case of the IMF*, 94 *Am. Soc'y Int'l L. Proc.* (2000) P. 157

mechanism of the IBRD/IDA Inspection panel, the MIGA/IFC, CAO and the Independent Evaluation Group (IEG)³⁸⁸

4.2.1 The Effectiveness of Self-Regulation

Self-regulation has been defined as a regulatory activity carried out by specific organizational units in order to avoid or get rid of incorrect behavior within their internal structures, or within the structures from which they operate and it may take place at the level of standard setting, or at the level of monitoring and enforcement of standards, or both.³⁸⁹ Therefore, self-regulation is an important tool to foster the transparency and accountability of a certain organization. In this section the study critically evaluate the effectiveness of the WB's operational guidelines as a means of self-regulation.

4.2.1.1 The Efficacy of World Bank's Operational Guidelines

The fact that the WB 's articles of agreement has silent on human rights means, we have to critically asses the Bank's commitment to human rights in the voluntary mechanisms of code of conduct that the Bank has established for itself, namely the operational policies.³⁹⁰ OPs are short focused statements that pursue from the Bank's article of agreement, the general conditions and policies approved by the Board to set up the limits for the conduct of operations and describe the situation under which exception to policies are suitable and state who may authorize

³⁸⁸ Wahi, Cited at Note 2, P. 11It is immense to note that in an Effort to address Accountability Issues, the World Bank's Operations Evaluation Department (first established in 1973 and renamed the Independent Evaluation Group in 2005), to assesses policies. Schulte et al., Cited at Note 47, P. 6

³⁸⁹ Ibid. There are both advantages and disadvantages to self-regulation. The advantages of self-regulation include flexibility in the evolution of rules, as well as the revision of rules based on experience and internalization of rules within the relevant target group, thereby creating a sufficient target base. But there are also negative effects associated with this. Flexibility may weaken the authority of the relevant external rules, domestic or international, and it may also result in ad hoc, selective, and arbitrary revision of rules in pursuit of organizational self-interest, to the complete neglect of external social concerns. Moreover, It is important to mention that International Organizations generally, and Bretton Woods institutions specifically, lack checks and balances or oversight mechanisms that are known cornerstones of democracies. This is a result of the absence of separation of powers known in state circumstance, but strange in the context of international organizations On the contrary, the Bretton Woods institutions' organizational structure features a rudimentary accountability system based on its internal hierarchy. Hence, WB staff is responsible to its President and the Managing Director WB President report to the WB Board of Executive Directors. The WB Board of Executive Directors is watched over by the IMF/WB Board of Governors. See Schulte et.al. Cited at Note 47, P. 4

³⁹⁰ Corporate codes of conduct are a set of principles, which define the ethical standards, values and business practices the adhering company wishes to follow in its operations. The form the codes take varies widely. Some hold very general principles while others can be quite detailed and specific. The content of the codes also varies widely. For instance in the case of IFIs, the internal codes applied to both the activities of the IFIs themselves and other actors. IFIs are public international organizations that provide loans, guarantees and/or insurance to corporations and states in furtherance of trade and investment in developing countries. See Chirwa, Cited at Note 351, P. 240

exceptions.³⁹¹ The WB's OPs are supplemented by the Bank Procedures (hereinafter called BPs) and Operational directives (herein after called ODs). The BPs elucidate how Bank staff carry out the policies set out in the OPs by spelling out the procedures and documentation required to ensure the Bank wide consistency and quality.³⁹² In general, the WB has 10 major Social and Environmental safeguard policies that are pertinent in development projects.³⁹³ These are: Environmental Assessment (OP/BP 4.01) the Natural Habitat (OP/BP/4.04) Pest Management (OP/BP 4.09) Indigenous Peoples (OP/PB 4.10) the Cultural property (OP/BP 4.11) Involuntary Resettlement (OP/4.12); Forests (OP/4.36) Safety of Dams (OP/4.37) and Disputed Areas (OP 7.60).³⁹⁴ There are other policies which are important in development projects. These include: the Disclosure of information policy 2002; Poverty Reduction (OP 1.00) Water Resources Management (4.07) and Gender and Development (OP/4.20).³⁹⁵ Even though there being no legal impediment to the approval of an operational policy on a specific topic, an operational policy on Human Rights does not exist.³⁹⁶ The WB has, however, adopted some OPs BPs and ODs concerned with the human rights insinuations of its operations. These include OP 4.01 on Environmental Assessment,³⁹⁷ OD 4.10 on Indigenous Peoples,³⁹⁸ OP 4.12 on Involuntary

³⁹¹Operational Manual Definitions, Available at <http://wbln0018.worldbank.org/Institutional/Manuals/OpManual.nsf/definitions?OpenPage> last visited on May 16, 2012).

See also Ghazi, Cited at Note 21, P. 59 and Wahi, Cited at Note 2, P. 11

³⁹² Ibid. Bank Procedures explain how Bank Staff Caries out the Policies set out in the Ops. They Spell Out the Procedure and Documentation Required Bank wide Consistency and Quality. Operational Directives On the Other Hand Contain A Mixture of Policies, Procedures and Guidance. The Ops are being replaced by OPs/BPs/GPs. See Ghazi, Cited at Note 21, P. 59. See also Wahi, Cited at Note 2, P. 11

³⁹³E. Kasimbazi, Compliance With Safeguard Policies of the WB and African Development Bank , Available at ([http://www. www.iaia.org/.../CS6-4_Kasimbazi_Compliance_with_Safeguard_Pol..](http://www.iaia.org/.../CS6-4_Kasimbazi_Compliance_with_Safeguard_Pol..)), last visited on April 21, 2012) P. 2

³⁹⁴Ibid. The compliance with the safeguards is at two levels. The first one is at the banks' level which requires the banks to conform to their own safeguard policies and procedures when funding development projects. The second is at the borrowers' level which also requires them to comply with the banks policies when executing the projects.

³⁹⁵ Ibid. The IFC safeguard policies were made up of the following WB Operational Policies and Directives: (i) Environmental Assessment (Operational Policy [OP] 4.01) (ii) Natural Habitats (OP 4.04) (iii) Pest management (OP 4.09) (iv) Cultural property (OP 4.11) (v) Indigenous peoples (OP 4.10) (vi) Involuntary resettlement (OP 4.12) (vii) Forests (OP 4.36) (viii) Safety of dams (OP 4.37) (ix) Projects on international waterways (OP 7.50) (x) Forced labor and harmful child labor. See Mcbeth, Cited at Note 113, P. 1134. However, In 2006, the IFC replace its safeguard policies with a social and environmental sustainability policy and a set of performance standards. See Mcbeth, Cited at Note 113, P. 1136

³⁹⁶Wahi, Cited at Note 2, P. 11 The Operational Guidelines Give a Picture of Problems that WB Operations have Encountered: Environment, Cultural Property, Ingenious Peoples, Involuntary Settlement, Gender Issues etc. Some of These Issues are Clearly Human Rights Related. Yet no specific ODs has been Released On Human Rights in the WBOperations. See Ghazi, Cited at Note 21, P. 60

³⁹⁷OP 4.01 on Environmental Assessment, available at <http://wbln0018.worldbank.org/Institutional/Manuals/OpManual.nsf/OPolw/9367A2A9D9DAEED38525672C007D0972?OpenDocument> (last visited on April 21, 2012)

Resettlement³⁹⁹ and BP 4.20 on Gender and Development.⁴⁰⁰ It should be mentioned however that only reference to human rights was made in Operational Directive 4.10 on Indigenous peoples it stated that: the policy adds to the Bank's mission of poverty reduction and sustainable development by guaranteeing that the development process fully compliments the dignity, human rights, economies, and cultures of Indigenous Peoples.⁴⁰¹ However in practice the Bank has not always adhered to its ODs. For instance, as we have seen from the Chad-Cameroon pipeline project there had been no involvement of the Bagyeli or Bakola peoples in the compensation package scheme in violation of OD 4.20.

Conversely, OP 4.01 on Environmental Assessment demands the Bank to take on environmental screening of each project to make sure that each state has conducted an environmental assessment of the project to make sure protection of the natural environment, human health and safety, and social aspects of development.⁴⁰² In this case, the writer argues that, this is another signal that the consideration of the full body of human rights law should be a main concern in the planning, evaluation and execution of development projects that has not been the effect of the safeguard policies to date. Rather, the policies tend to be applied barely and in isolation. Nonetheless, in its environmental assessment process, the Bank uses three categories to classify its projects.⁴⁰³ However as mentioned above in the case study, the writer argues that the Bank has

³⁹⁸OD 4.10 on Indigenous Peoples, available at [http://wbIn0018.worldbank.org/Institutional/Manuals/OpManual.nsf/0/0F7D6F3F04DD70398525672C007D08ED?](http://wbIn0018.worldbank.org/Institutional/Manuals/OpManual.nsf/0/0F7D6F3F04DD70398525672C007D08ED?OpenDocument) Open Document (last visited on April 21, 2012)

³⁹⁹OP 4.12 on Involuntary Resettlement, available at [http://wbIn0018.worldbank.org/Institutional/Manuals/OpManual.nsf/0/CA2D01A4D1BDF58085256B19008197F6?](http://wbIn0018.worldbank.org/Institutional/Manuals/OpManual.nsf/0/CA2D01A4D1BDF58085256B19008197F6?OpenDocument) Open Document (last visited on April 21, 2012)

⁴⁰⁰OP 4.20 on Gender and Development, available at [http://wbIn0018.worldbank.org/Institutional/Manuals/OpManual.nsf/0/CA2D01A4D1BDF58085256B19008197F6?](http://wbIn0018.worldbank.org/Institutional/Manuals/OpManual.nsf/0/CA2D01A4D1BDF58085256B19008197F6?OpenDocument) Open Document, last visited on April 21, 2012

⁴⁰¹Operational Directive 4.10 on Indigenous peoples Cited at Note 398. It acknowledged that: the Banks objective towards indigenous peoples as for all people in its member countries is to ensure that the development process fosters full respect for their dignity, human right and cultural uniqueness. See Ghazi, Cited at Note 21, P. 60

⁴⁰²OP 4.12 on Involuntary Resettlement, Cited at Note 399

⁴⁰³OP 4.01 on Environmental Assessment, Cited at Note 397. It should be noted that, the Bank usually categorizes the proposed project into one of four categories, depending on the type, location, sensitivity, and scale of the project and the nature and magnitude of its potential environmental impacts. See Para. 8. Category A is concerned with projects that are possibly to have momentous unfavorable environmental impacts that are sensitive, diverse, or unprecedented. These impacts may affect an area broader than the sites or facilities subject to physical works. EA for a Category A project examines the project's potential negative and positive environmental impacts, measure up to them with those of rational options (including the "without project" situation), and recommends any measures needed to prevent, minimize, mitigate, or compensate for adverse impacts and improve environmental performance. See Para. 8 (a). For such projects, OD 4.01 requires the borrower to consult with affected groups and NGOs during

unable to effectively engage with the affected local population. For instance, although the Bank has imposed public consultation as one of the three set of conditions along with environmental impact assessment as we have seen on Chad-Cameroon Petroleum Development and Pipeline project, the consultation process was disingenuous. Thus one of the main criticisms against that project is the lack of adequate consultation with affected populations during project design and implementation processes. The Bank thus failed to comply with its own safeguard policies.

The writer also argues that although the purpose of the environmental policy is to avert unnecessary harm to the local population and to the environment, as disclosed in the case studies above the Bank's track record on the environment has been very poor. For example in the Chad-Cameroon project, the Inspection Panel unveils that the Bank not in compliance with OP. 4.01 on environmental assessment for its failure to conduct a cumulative effects assessment and a regional environmental assessment. A number of environmental problems have subsequently overwhelmed the project. Likewise, in the case of Bujagali project the Panel report finds that in preparing the project, the Bank's management violated a number of Ops including OP 4.01 on Environmental Assessment. In like manner, Niger Delta Contractor Revolving Credit Facility project local environmental NGOs have held responsible the Bank for failing to meet its own environmental safeguard policies given the devastating blow of the Shell operation on the environment.

More importantly, as we have seen in the above case studies associated to specific operations of the WB in Africa, the Bank has already insipid key provisions of these policies and is not determined to allow further changes which will make it harder to hold the Bank accountable for the impacts of its operations. For instance, in the area of civil and political rights, a number of

at least two stages of the EA process: 1) during the preparation of terms of reference for assessment and 2) once a draft assessment has been prepared. See MIGA's Environmental and Social Review Procedure, available at http://www.miga.org/projects/index_sv.cfm?stid=1589 2001, last visited on April 21, 2012. In this regard, for a Category A project, the borrower is responsible for preparing a report, normally an EIA (or a suitably comprehensive regional or Sectoral (EA) that includes, as necessary, elements of the other instruments referred to in para. 7. Keenan, Cited at Note 298, P. 402. Category B are classified proposed projects whose potential unpleasant environmental effects on human populations or environmentally important areas--including wetlands, forests, grasslands, and other natural habitats--are less adverse than those of Category A projects. These impacts are site-specific; few if any of them are irreparable; and in most cases mitigatory measures can be planned more readily than for Category A projects. See OP 4.01 on Environmental Assessment, Cited at Note 397. Para. 8 (b) Category C proposed projects are likely to have minimal or no adverse environmental impacts. Beyond screening, no further EA action is required for a Category C project. See OP 4.01 on Environmental Assessment, Cited at Note 397, Para. 8 (c)

provisions of the Ops pertaining to required levels of participation of project-affected groups are relevant. Clauses vary considerably, ranging from general encouragements to actively involving beneficiaries and NGOs⁴⁰⁴ to fairly specific requirements that insist on regular consultations by the borrower.⁴⁰⁵ Similarly, while references to natural resources appear intermittently in the OPs⁴⁰⁶ there is no express right of the people to their natural resources and to be in charge of the terms of their utilization. At the result the writer argues that, the Bank should recognize on its operational policy of people's right of economic self-determination to freely enjoy and dispose their natural resources. Moreover, the operational guidelines plays insignificant role to address the human rights issues raised by the Bank as it has been revealed that only OP 4.20 on Indigenous Peoples gives an explicit reference to human rights. Thus it is clear that most Ops/ODs do not incorporate any or a wide range of human rights principles in their provisions to comply with the standards of international human rights. This shows that the idea of voluntary standards itself inherently limits the effectiveness of these standards and thus cannot ultimately bring genuine accountability of the Bank.

4.2.1.2 The World Bank Inspection Panel

There are two major forces driving the establishment of the WB's inspection panel. First, the creation of an operations inspection function in the WB came as a response to a new Bank's management's concerns with the efficiency of the Bank's work.⁴⁰⁷ Up on taking office in September 1991, the new president of the Bank Lewis T. Preston observed that the Bank's had been questioned in spite of it's generally recognize high standards. As a result a task force headed by an experienced senior manager, Willi A. Wapenhans, was convened in February 1992 to examine the Bank's portfolio. The task force concluded, inter alia, that the bank should

⁴⁰⁴OP 4.15 on Poverty Reduction, para. 39 at <http://wbln0018.worldbank.org/Institutional/Manuals/OpManual.nsf/ODirw/0F7D6F3F04DD70398525672C007D08ED?OpenDocument> (last visited on April 21, 2012)

⁴⁰⁵OP 4.01 on Environmental Assessment, Cited at Note 397, para. 15. See also OD 4.30 on Involuntary resettlement, para, Cited at note 427 and OD 4.10 on Indigenous Peoples, Cited at Note 398, paras. 8 and 14.

⁴⁰⁶OP No 4.04 on Natural Habitats, at <http://wbln0018.worldbank.org/Institutional/Manuals/OpManual.nsf/BProw/62B0042EF3FBA64D8525672C007D0773?OpenDocument>, last visited on April 21, 2012) recognizes that conservation of natural habitats and precautionary approach to natural resource management by the Bank and the borrowing countries is necessary to ensure environmentally sustainable development. BP No 4.36 on Forests, at <http://wbln0018.worldbank.org/Institutional/Manuals/OpManual.nsf/BProw/0AE075DC916559D985256C79000BDEF0?OpenDocument>, last Visited on April 21, 2012)

⁴⁰⁷I. F.I. Shihata, The World Bank Inspection Panel: In Practice 2nd ed. Oxford University Press, 2000, P. 1

advance the performance of its portfolio through changes in its own policies and practices.⁴⁰⁸ The second major force driving the establishment of the Inspection panel was the fear reflected mostly by external parties that considered the Bank as less accountable for its performance and less transparent in its decision. This concern was driven by mounting criticism from NGOs.⁴⁰⁹ The Inspection panel was therefore created by the Bank's Executive Directors on 22 September 1993⁴¹⁰ in an attempt to increase the Bank's accountability and enhance conformity with, *inter alia*, with its social and environmental policies.⁴¹¹

4.2.1.2.1 Evaluation of the Mandate of the Inspection Panel

The resolution establishing the panel clearly pointed out in its last paragraph that its work covers both (IBRD) and (IDA)⁴¹² It is important to note that, the Panel is not authorized to investigate Bank compliance regarding actions of other parties (such as the borrowing government, the implementing agency, a corporation, the IFC, or the MIGA).⁴¹³ Nonetheless, the resolution explicitly mention that the panel is only at liberty to accept requests related to the action or omissions of the Bank (Both IBRD and IDA) to follow its own Ops and procedures with respect to design, appraisal, or implementation of a Bank supported projects.⁴¹⁴

4.2.1.2.1.1 Subject Matter Jurisdiction

The panel can only be sized of requests with related to project operations as adjustment operations are not covered in the resolution.⁴¹⁵ Thus the resolution is utterly concerned with the Bank's serious violation of its own policies that might cause harm to the environment or more importantly to people in the countries where projects financed or to be financed by the Bank are

⁴⁰⁸ Id. P. 2 In this case, an internal review of the Bank's operations (Wapenhans Report) highlighted the disconnect between policy guidance and implementation on the ground. The WB Inspection Panel was created in 1993 as part of an effort to bring greater public accountability to WB lending.

⁴⁰⁹ I. F.I. Shihata, *The World Bank and Non- Governmental Organizations*, 25Cornell International Law Journal 623(1992) , See also Shihata, Cited at Note 20

⁴¹⁰ Int'l Bank for Reconstruction and Dev. & Int'l Dev. Ass'n., Resolution, The World Bank Inspection Panel No. IBRD 93-10 and IDA 93-6, (Sept. 22, 1993) [hereinafter Inspection Panel Resolution], available at http://siteresources.worldbank.org/EXTINSPECTIONPANEL/Resources/Resolution_March2005.pdf (establishing the Inspection Panel) (last visited on June 16, 2012)

⁴¹¹ S. R. Roos, *The World Bank Inspection Panel In Its Seventh Year: An Analysis of Its Process, Mandate, and Desirability With Special Reference to the China (Tibet) Case*, *Max Planck Yearbook Of United Nation Law*, Vol. 5, 2001, P. 474

⁴¹² See Resolution, Cited at Note 410

⁴¹³ Guernsey et al, Cited at Note 11, P. 18

⁴¹⁴ See Resolution, Cited at Note 410, Para. 12

⁴¹⁵ Ibid., See also Shihata, Cited at Note 20, P. 37

located.⁴¹⁶ As it can be seen from the reading of paragraph 12 and 14 lit (a)) of the resolution there are limits on the subject-matter jurisdiction of the Inspection Panel, as its procedures only authorize the Panel to review Bank compliance with its (1) OPs, which set up the parameters for the conduct of operations [and] also clarify the conditions under which exceptions to policies are allowed and. . . who authorizes exceptions; (2) Bank procedures, which clarify how Bank staff perform the policies set out in the [operating procedures] by spelling out the procedures and documentation required to ensure the Bank's wide consistency and quality; and (3) ODs, which include a mixture of policies, procedures, and guidance.⁴¹⁷

According to one legal scholar, the Inspection Panel has failed to provide an effective accountability mechanism as the panel can only review Bank compliance with loan agreements and OPs, BPs and ODs, but not compliance with Guidelines and best Practices that are explicitly excluded by the Panel's constituent resolution and it is also not competent to establish violations of international law.⁴¹⁸ For instance, in the case of Chad-Cameroon pipeline project, the panel recognized that the Request and Response contain conflicting assertions and interpretations about the issues, the facts, compliance (made by the Requesters and management response) with Bank policies and procedures and possible harm and noted that the Panel is neither able to address these contradictory statements in the period available to it to prepare and submit this report on eligibility to the Board, nor is allowed to do so pursuant to the 1999 Clarifications of the Resolution. Thus, the Panel can only address these issues during the course of an investigation. It should be noted that, according to the Conclusions of the Board's Second Review of the Inspection Panel dated April 20, 1999, when the Panel makes a field visit to establish eligibility it will not report on the Bank's failure to comply with its policies and procedures or its resulting material adverse effect...⁴¹⁹

For this reason, the writer asserts that the panel is not providing effective accountability mechanisms to redress the wrong committed by the Bank in violating let alone international human rights law but also its own policies and procedures. More to the point, the lack of

⁴¹⁶ Ibid., See also Shihata, Cited at Note 20, P. 37

⁴¹⁷ See Resolution, Cited at Note 410 Guernsey et al Cited at Note 11, P. 17. See also Wahi, Cited at Note 2

⁴¹⁸ Wahi, Cited at Note 2, P. 13

⁴¹⁹ The Inspection Panel Report and Recommendation on Request for Inspection Chad: Petroleum Development and Pipeline Project (Loan No. 4558-CD); Management of the Petroleum Economy Project (Credit No. 3316-CD); Petroleum Sector Management Capacity-Building Project (Credit No. 3373-CD), available at <http://siteresources.worldbank.org/EXTINSPECTIONPANEL/>..., last Visited on June 21, 2012, Para. 38

adjustment operations from the resolution means there is no legal remedy for a person whom right might be affected directly or indirectly by the policy of Bank in the countries where adjustment operations are financed by the Bank are situated. As a result the writer argues that one major limitation on the panel's authority is the absence of jurisdiction where the Bank's adjustment operations violate people's human right. Thus one of the major setbacks of the jurisdiction of the inspection panel is the limitation on its mandate and this without doubt put at risk the competence of the panel.

On the other hand, once the Panel has received the request, the procedure can be divided into three phases: registration, eligibility, and investigation.⁴²⁰

4.2.1.2.1.2 The Registration Criteria

The registration element is where the Panel makes the Bank and the public aware that a requestor has filed a complaint and completes a quick review to make sure that the group has standing and that the Panel has jurisdiction over the claim.⁴²¹ The Panel's operating procedures do not offer a detailed timeline within which this registration review must take place, but they do require that the Panel promptly register the Request or ask for further information, or find the Request outside the Panel's mandate.⁴²² The Panel observations in this first step is as an "administrative" one, and its main reason are to prevent complaints that are evidently outside its mandate, that are anonymous, or that are clearly frivolous.⁴²³

4.2.1.2.1.3 Eligibility Criteria in General for Application

If we look at the resolution, it provides for certain eligibility criteria which, in any case, must be met to establish the panel's competence or "jurisdiction." To that end, the 1999 clarifications for the application of the resolution expressly stipulate the following eligibility criteria':

1. The aggrieved party consists of two or more persons with common interest or concerns, who are in the borrower's territory.⁴²⁴

⁴²⁰Guernsey et al, Cited at Note 11, P. 19

⁴²¹World Bank, Inspection Panel, Operating Procedures, available at (<http://www.inspectionpanel.org> (follow "Policies and Procedures" hyper link, then click on "Panel Operating Procedures") (containing the operating procedures adopted by the Panel on Aug. 19, 1994) III, last visited on April 10, 2012

⁴²² World Bank, Inspection Panel, Operating Procedures, Cited at Note 421, para. III.A.16

⁴²³ Guernsey et al, Cited at Note 11, P. 19

⁴²⁴ See, Resolution Cited at Note 410, Para. 12, See also the 1999 Clarification of the Board's Second Review of the Inspection Panel, Para. 9 (a)

2. The request asserts in substance that a serious violation by the Bank of its operational policies and procedures has or expected to have material adverse effect on the requestor.⁴²⁵
3. The requestor claims that its subject matter has been brought to Management and it has failed to demonstrate that it had either followed the Bank's policies and procedures.⁴²⁶
4. The matter is not related to procurement.⁴²⁷
5. The related loan has not been closed or significantly disbursed.⁴²⁸
6. The panel has not made a recommendation before on the subject matter or if it has the request asserts that there is new evidence or circumstances not known at the time of the prior request.⁴²⁹

As mentioned under paragraph 12 of the resolution a request for inspection has to be submitted by an affected party in the territory of the borrower which is not a single individual. This according to the study is one of the most serious weaknesses of the Court as it denies direct access to Individuals to seek remedy from the panel.⁴³⁰ In this regard, the writer strongly argues that although the panel is not a court of law where the responsibility of the Bank can be invoked, it was established to improve the accountability of the bank at least for the observance of its policies and procedures. Hence, the panel should serve as possible as a forum for protecting citizens including individuals of the borrower state from the inappropriate actions of the Bank.

⁴²⁵ See Resolution Cited at Note 410, Para. 12 and 14 lit. (a)) See the 1999 Clarification of the Board's Second Review of the Inspection Panel, Cited at Note 424, Para. 9 (b)

⁴²⁶ See Resolution Cited at Note 410, Para. 13. See also the 1999 Clarification of the Board's Second Review of the Inspection Panel, Cited at Note 424, Para. 9(c), Claimants should have already raised their concerns with the Bank staff or management and have failed to receive a satisfactory response. See Whai, Cited at Note 2, P. 13

⁴²⁷ See Resolution cited at note 410, Para. 14 lit.(b)) See the 1999 Clarification of the Board's Second Review of the Inspection Panel, Cited at Note 424, Para. 9(d)

⁴²⁸ See Resolution Cited at Note 410, Para. 14 lit.(c)) See the 1999 Clarification of the Board's Second Review of the Inspection Panel, Cited at Note 424, Para. 9(e)

⁴²⁹ See Resolution Cited at Note 410, Para. 14 lit.(d)) See the 1999 Clarification of the Board's Second Review of the Inspection Panel, Cited at Note 424, Para. 9(d). It is worthy to mention that when the Panel receives a Request for Inspection, it must determine that the Request falls within its jurisdictional mandate and that the Request meets certain other criteria before issuing its recommendation to the Board of Executive Directors that an investigation should be authorized. This preliminary phase of the inspection process is called the eligibility phase, because it is during this period that the Panel establishes whether the Request fulfills the pre-conditions set forth in the Resolution to warrant substantive evaluation. See Accountability at the World Bank: The Inspection Panel 10 Years On, The International Bank for Reconstruction and Development / The World Bank, 2003, P. 18

⁴³⁰ See, Resolution cited at note 410, Para. 12

Having that said, as mentioned under the resolution, the term “affected party ...which is not a single individual” covers “a community of persons such as an organization, association, society or other grouping of individuals” living in the project area.⁴³¹ The request for inspection can either be presented by an aggrieved party itself or by a representative acting for and on behalf of the affected party.⁴³² Although the representative should, usually, be local, foreign representatives may be permitted to file a claim if appropriate representative is not locally available.⁴³³ On the other hand, once the eligibility phase begins, the panel forwards the complaint to the Bank’s President. As a representative of the Bank’s Management, the President must respond to the Panel’s inquiry within twenty-one business days,⁴³⁴ providing evidence that the Bank has complied, or intends to comply with the Bank’s relevant policies and procedures.⁴³⁵ When the Panel receives Management’s response, it has another twenty-one business days to evaluate whether Management has truly remedied, or intends to remedy, the problem.⁴³⁶ One factor that the Panel may think when deciding whether to recommend an investigation is whether

⁴³¹ See Resolution Cited at Note 410, Para. 12. The 1996 Clarification defines a group as “any two or more persons who share some common interests or concerns.” Second, the group must claim that “an action or omission of the Bank to follow its own operational policies and procedures during the design, appraisal and/or implementation of a Bank-financed project”—which includes both project lending and development policy lending will have an “actual or threatened material adverse effect on [their] rights or interests.” In other words, there must be a clear connection between the harm that the affected people are suffering, or about to suffer, and the Bank’s policy. See Review of the Resolution Establishing the Inspection Panel 1996 Clarification of Certain Aspects of the Resolution. See also Guernsey et al, Cited at Note 11, P. 13

⁴³² Ibid. In addition to constituting a “group” of two or more people, the Requester must also be an “affected party” who lives in the territory of the borrower. The Requester must live in the area affected by the project and must believe that he or she has been or may be affected in a materially adverse way. See Accountability at the WB The Inspection Panel 10 Years On, cited at note 429, P.19

⁴³³ Ibid. In most cases, the Requester has been an NGO representing a group of individuals who claim to be adversely affected by the design or implementation of a project. However, the Requester does not need to have legal status to be eligible. The term “Requester” includes an aggregate of individuals as well as an organized group. . See Accountability at the World Bank: The Inspection Panel 10 Years On, cited at note 429, P. 19

⁴³⁴ World Bank, Inspection Panel, Operating Procedures, cited at note 421, para. IV.27. A period of 21 days has been set by the resolution for the panel to determine the above requirements. This period was deemed Reasonable because of the understanding that the Panel would not be running the investigation at this stage but would only assess the situation on the bases of prima facie evidence backing the requester’s allegations, Management’s response to the panel, and the other information the panel may obtain from the requesters, Bank, and files. See also Shihata, Cited at Note 20, P.74

⁴³⁵ Ibid.

⁴³⁶ Id., para. IV.29. The Inspection Panel may independently agree or disagree, totally or partially, with Management’s position and will proceed accordingly. See the 1999 Clarification of the Board’s Second Review of the Inspection Panel, Cited at Note, 424, Para. 3

Management “*dealt appropriately with the subject matter of the request . . . and confirmed clearly that it has followed the required policies and procedures.*”⁴³⁷

Thus, it is after reviewing the claimant’s request, Management’s response, information from third parties, and any preliminary findings,⁴³⁸ the Panel will make a recommendation to the Board indicating “whether the matter should be investigated” more carefully.⁴³⁹ It should be noted however that, under the resolution establishing the Panel, only the Board had the authority to formally permit the Panel to proceed with an investigation.⁴⁴⁰ This means there can be no investigation other than that accepted by the Executive Directors themselves.⁴⁴¹ At this point, although the 1999 clarification pointed out that following the Panel’s recommendation, the Board will authorize an investigation without making a judgment on the merits of the claimants’ request, and without discussion. The writer argues that the Board is the final arbiter as it still embraces the power to determine technical eligibility criteria.⁴⁴² Thus it is the Board that is in the end charged with determining whether the panel should or should not proceed to conduct an investigation. A study of the claims brought before the Inspection Panel shows that the Bank’s response to the claims tends to be defensive, denying violation of any policies, challenging claimants’ eligibility, and in some cases challenging the panel’s findings.⁴⁴³ Therefore the writer

⁴³⁷ Id., Para. V.33 (a)–(b). The Inspection Panel will convince itself as to whether the Bank’s compliance or evidence of intention to comply is adequate, and reflect this assessment in its reporting to the Board. See the 1999 Clarification of the Board’s Second Review of the Inspection Panel, Cited at Note 424, Para. 5.

⁴³⁸ Id., Para.V.A.31 (a)–(d). The Panel also has the power to conduct a preliminary study, which may entail a visit to the project site. The idea behind such a visit is to ensure that the Panel makes “an informed recommendation about an investigation to the Board” Prior to submitting its recommendation in this initial phase, the WB panel typically undertakes a preliminary assessment, including a site visit, to gather more information regarding the request. See Guernsey et al, Cited at Note 11, P. 22

⁴³⁹ Id., Para.V.C.37. According to the 1999 Clarification, the Management its direct response to the demand, including any steps it intends to take to address its failures, if any, to the Panel. As part of the Response to the request for inspection, Management will provide evidence to the Panel. See the 1999 Clarification of the Board’s Second Review of the Inspection Panel, Para. 2 and 3. However, the salient feature of the IRM Under the African Development Bank is independent from the Bank’s management and operations. The Independent Review Mechanism African Development Bank Annual Report 2010, African Development Bank Compliance Review and Mediation Unit, Available at [http:// www.afdb.org/irm](http://www.afdb.org/irm) Last Visited on June 3, 2012, P. 9.

⁴⁴⁰ Id. Para. VI.39

⁴⁴¹ Ghazi, Cited at Note 21, P. 219. The borrower and the Executive Director representing the borrowing (or guaranteeing) country shall be consulted on the subject matter both before the Panel’s recommendation on whether to proceed with the investigation and during the investigation. See, Resolution Cited at Note 410, Para. 22 All decisions of the Panel on procedural matters, its recommendations to the Executive Directors on whether to proceed with the investigation of a request, and its reports pursuant to paragraph 22, shall be reached by consensus and, in the absence of a consensus, the majority and minority views shall be stated. See, Resolution cited at note 410, Para. 24

⁴⁴² See the 1999 Clarification of the Board’s Second Review of the Inspection Panel, Cited at Note 424, Para. 9

⁴⁴³ Whai, Cited at Note 2, P. 358

argument goes, the role of the Panel is to provide the Bank with internal accountability (ensuring the Bank is accountable to its member states) but it does not necessarily ensure that the Bank is externally accountable to those affected persons by its operations. This is borne out in the Panel process: The Board evaluates the Panel's recommendations for investigation, while Bank management often proposes remedial action plans to the Board to avoid the investigation process. Thus management aims to propose remedies to the environmental and social problems they helped to create (through designing the loans in the first place).⁴⁴⁴

Some even go far to argue that after the Panel receives the claim, the Bank rarely considers the affected communities' desires for resolution. In essence, the panel is compliance-oriented and problem-solving is not a principal focus.⁴⁴⁵ Hence, the writer argues that entrusting the final authority with the Board to make this determination undermines the independent nature of the Panel. More importantly, the fact that the panel is unable to investigate a claim well beyond the safeguard policies and procedures with human rights implications in turn makes the panel incompetent to be the final referee in dealing with the question of human rights accountability in line with the obligations of international human rights law. Moreover, the Executive Directors can be "politically motivated" in their role as policy makers for the institution and should not be allowed to make a final say under a system that is allegedly independent from the Bank.⁴⁴⁶ More to the point, even if the Executive Directors gave a green light for the panel to investigate the claim the role of the panel is limited to decide whether or not the action of the Bank is consistent with its policies. Quoting the operating procedures: "*The panel is allowed to accept a request for*

⁴⁴⁴ See also S. Park, Assessing the Accountability of the World Bank Group, School of International and Political Studies, Deakin University, available at <http://www2.warwick.ac.uk/fac/soc/csgr/events/workshops/.../park.pdf>, last visited on June 16, 2012, P. 18

⁴⁴⁵ Guernsey et al, Cited at Note 11, P. 5 Some argue that the Bank has attempted to circumvent the Panel's operations as a means of preventing socially and environmentally disastrous projects coming to light, where Bank management promote remedial action plans to the Board to patch up problem projects rather than a full scale independent Panel Investigation. See also Park, Cited at Note 444 P. 17. When We Look at the Asian Development Bank's (Hereinafter Called ADB) experience in setting up its accountability mechanisms, the ADB Accountability Mechanism heralded a new dimension of accountability mechanism as it overhauled the previous system of inspection (investigation) to encompass both problem-solving and compliance review. Thus, the review of the Inspection Function examined the policy to consider the application of private sector operations as they were not covered under the policy. See also R. E. Bissell and S. Nanwani, Multilateral Development Bank Accountability Mechanisms: Developments and Challenges, Manchester Journal of International Economic Law, Volume 6, Issue 1: 2-55, 2009, P. 8. The same is true under the African Development Bank, the Independent Review Mechanism (IRM) Which was established by the Bank Group Boards of Directors' Enabling Resolution of 30 June 2004 has the Power to conduct a compliance review or problem-solving exercise. See also The Independent Review Mechanism African Development Bank Annual Report 2010, Cited at Note 439, P. 9-10

⁴⁴⁶ Roos, Cited at Note 411, P. 487

inspection ...which claim that an actual or exposed material adverse effect on the affected party's rights or interests take place directly out of an action or omission of the Bank to follow its own operational policies and procedures during the design, appraisal and/or implementation of the Bank financed project.''⁴⁴⁷

Therefore, the writer asserts that only project activities contrary to the policies and procedures of the Bank can be taken in to an account without a formal recognition and human rights issues thus could be rejected. Moreover, the OP left no maneuver to the request for inspection due to action or omission of the Bank's partners. Besides, no emphasis whatsoever is given to the human rights impacts of policy lending by the Bank on the local population in Africa. Most importantly, the OPs don't talk about any external obligations of the Bank which without doubt must be considered. But the question is what if human rights issues impede compliance with Bank Policies? Does the Bank forced to review the project? To answer these questions it is worthy of discussing the Chad- Cameroon project as the inspection panel had to look in to the question of human rights in relation with such project that the study referred to in the previous chapter.

In the Chad Petroleum Development and Pipeline Project (2002) claim, the Inspection Panel addressed whether the Bank was bind to consider the overall governance and human rights situation of a borrowing country in designing and implementing its projects. The "Requesters" in the Chad Petroleum Development alleged that the project was violating indeterminate ODs on governance and human rights.⁴⁴⁸ In response, the Bank Management insisted that its mandate to consider human rights issues was barely limited by its Articles of Agreement. Management thus argued that given that the Articles of agreement requires the Bank to focus on economic considerations and not on political or other non-economic influences, human rights issues could be pertinent to the Bank's work only if they may have a "*significant direct economic effect on the project.*"⁴⁴⁹ The Management also believed that the project could accomplish its development objectives despite the political oppression in Chad; it concluded that it was not

⁴⁴⁷ See World Bank, Inspection Panel, and Operating Procedures Cited at Note 421, Subject Matter of Requests, Scope 1. See also Ghazi, Cited at Note 21, P. 219

⁴⁴⁸ S. Herz and A. Perrault, Bringing Human Rights Claims to the World Ban Inspection Panel, available at (<http://www.bicusa.org/en/Document.101841.aspx>),last Visited on May 19, 2012, P. 5 See also Inspection Panel, Investigation Report Chad: Petroleum Development and Pipeline Project, Management of the Petroleum Economy Project, and Petroleum Sector Management Capacity Building Project, P. 210 (2002).

⁴⁴⁹ Ibid., See also Inspection Panel, Investigation Report Chad: Petroleum Development and Pipeline Project, Cited at Note 448, P. 212.

required to take human rights into account.⁴⁵⁰ The Inspection Panel however rejected this narrow formulation by reiterating it is important to take in to account that human rights not only when they have a direct economic effect on the project, but also when they hinder the execution of the Project in conformity with the Bank's policies.⁴⁵¹ Applying this standard, the Panel found that the human rights situation in Chad raised serious questions about the Bank's compliance with its policies on informed and open consultation.⁴⁵² Besides, the Management fails to recognize the interdependence of human rights⁴⁵³ and permits itself to qualify what human rights are important to development purposes, and also which one has "significant direct economic effect."⁴⁵⁴

The panel also pay attention of the fact that on more than one instance when political oppression in Chad appear harsh, the Bank's president in person intervened to help free local opposition leaders, including the representative of the requesters, Mr. Yorongar, who was reported as being subject to torture.⁴⁵⁵ Thus, the panel realized that it has the duty to examine whether the issue of human right violation in Chad were in turn averts the execution of the project in line with the Bank's policies. However, although the Chad Petroleum Development Report shows that the Panel's inclination to review the adequacy of the Bank's efforts to tackle governance and related human rights concerns that could impact implementation of a project in a way compatible with Bank policies this doesn't give any indication on the obligations of the WB according to international human right standards.⁴⁵⁶ Hence, the writer maintains that the mechanism fails to give affected people a true voice in the outcome of an investigation because it has no room for international human right norms which without doubt grants better normative standards than the OP to the aggrieved parties.

⁴⁵⁰ Id., P. 6 See also Inspection Panel, Investigation Report Chad: Petroleum Development and Pipeline Project, Cited at Note 448, P. 212. Strikingly, Bank management often denies that problems exist. See also Park, Cited at Note 444, P. 18

⁴⁵¹ Ibid. See also Inspection Panel, Investigation Report Chad: Petroleum Development and Pipeline Project, Cited at Note 448, P. 215

⁴⁵² Ibid. See also Inspection Panel, Investigation Report Chad: Petroleum Development and Pipeline Project, Cited at Note 448, P. 217

⁴⁵³ Sano, Cited at Note 136, P. 736

⁴⁵⁴ Ghazi, Cited at Note 21, P. 222

⁴⁵⁵ Ibid. The Panel does not specify if the president's intervention was due as its official capacity or at personal level. Moreover, the panel doesn't mention how the situation of human rights interacts with the observance of the Bank's policies.

⁴⁵⁶ Id., P. 223

In Bujagali project, the Panel found that the critical policy requirement to consult all displaced persons was abandoned- a decision undermining much of the policy objectives.⁴⁵⁷ It is important to point out that, the time allocated to public consultation process was very shortened, and the Assessment of Past Resettlement Activities and Action (APRAP) failed adequately to assess and inform the previous Resettlement Action Plan (RAP) to make sure compliance with Bank standards and also to understand that the effects on the people of the original displacement, and of the ensuing delay, were not fully reflected in the Assessment of Past Resettlement Activities and Action (APRAP).⁴⁵⁸

Hence, for the writer this demonstrates that the process of public consultation is not well accommodated the opinion of the affected population. On the critical question of livelihood restoration, the Panel concluded that the Project did not comply with the mandate of Bank policy to improve or at least to restore, in real terms, the livelihoods and standards of living of the people displaced by the Project and many affected also people believe that other promises made under the prior project were not kept.⁴⁵⁹ Although the Management accepts the Panel's findings, it still believes that the Bank is making every effort to apply its policies and procedures and to pursue its mission statement in the context of the Project.⁴⁶⁰ Thus, the writer argues that a close review of the WB's Inspection Panel report on the Bujagali Hydropower Project shows how immense the issue of human rights to the Bank and therefore makes norms of international human rights law very relevant in order to deliver effective remedy to the aggrieved parties as the panel does not necessarily ensure that the Bank is externally accountable to those affected by its operations.

Nonetheless, following the Board's approval of the Panel's investigation request, the Panel supposedly begins investigating soon thereafter. No fixed timeline is included in the operating procedures.⁴⁶¹ Panel investigations however typically consist of visits to the project site, interviews with the affected people or their representatives, and conversations with government

⁴⁵⁷ See Generally, the Inspection Panel Investigation Report Uganda: Private Power Generation (Bujagali), cited at note 342

⁴⁵⁸ Ibid.

⁴⁵⁹ Ibid.

⁴⁶⁰ International Bank for Reconstruction and Development International Development Association, Management Report And Recommendation In Response to the Inspection Panel Investigation Report of the UGANDA: Private Power Generations (BUJAGALI) PROJECT (IDA GUARANTEE NO. B0130-UG), Report No. IDA/R2008-0296, INSP/44977-UG, November 7, 2008, P. 40

⁴⁶¹ World Bank, Inspection Panel, Operating Procedures, Cited at Note 421, para. VII.42(a)–(b)

officials and the authorities in charge of the project.⁴⁶² After the decision on whether the Bank is in adherence with its policies and procedures, the Inspection Panel presents its findings to the Bank's Management and the Board.⁴⁶³ The Panel does not advise remedial measures⁴⁶⁴ and it does not have the power to issue sanction, stop a project, or give financial compensation for harm suffered.⁴⁶⁵ The Board reviews the Panel's findings in combination with Management's recommendations and it is then required to contact the initial Requester within two weeks of bearing in mind the Panel's report and Management's response, notifying him or her of the investigation's results and "the action decided by the Executive Directors, if any."⁴⁶⁶

There is however various criticisms of the Panel's work and critics often question whether the Panel in fact increases the WB's accountability. The writer shares the criticism that the Panel is not in a position to provide a true accountability mechanism for the following reasons: First, the Panel's work is not transparent in a sense that it doesn't give a fair access to the aggrieved parties in the step of the process. For instance, the aggrieved parties are not allowed to deal with the management response following the end of the 21 days⁴⁶⁷ nor they allowed knowing the decision of the Panel.⁴⁶⁸ Thus, despite the fact that the Management is able to have its recommendations considered by the Board, the original requestors are pushed aside as the Board "*ignores the experience, knowledge, and desire of the people who prompted the process in the first place*" Coupled with the Management bias inherent in the Bank's relief process, there are a number of structural barriers to filing complaints, and parties may find that the Panel has barred their claim on procedural grounds.⁴⁶⁹ Second, It is also difficult to the aggrieved parties to make a claim before the Panel. This is because the resolution establishing the Panel has come up with a

⁴⁶² Id., Para. VII

⁴⁶³ Id., Para. VIII 97

⁴⁶⁴ See Resolution, Cited at Note 410, Para. 22

⁴⁶⁵ Guernsey, et. al. Cited at Note 11, P. 24

⁴⁶⁶ World Bank, Inspection Panel, Operating Procedures, Cited at Note 421, para. X.55

⁴⁶⁷ See Resolution Cited at Note 410, Para. 19

⁴⁶⁸ Id., Para. 24

⁴⁶⁹ Guernsey et al, Cited at Note 11, P. 34 Unequal access to panel procedures: Once claimants file their request for inspection, they largely lose control of the panel process. There is no opportunity for claimants to comment on management's response, nor do claimants have access to information before significant decisions are made about their claim. There is no right for the claimants to appeal either the panel recommendation or the Board's decision about how to respond to their claim. Moreover, once the panel has submitted a final report to the Board, the Bank management has the opportunity to provide recommendations to rectify the policy violations, but the claimants do not have a similar right to suggest remedial measures. See Wahi, Cited at Note 2, P. 13

more stringent and rigorous procedure which creates structural obstacles.⁴⁷⁰ In addition from the narrow scope of the Panel's jurisdiction and various eligibility hurdles for filing claims, the technical nature of the process also makes practical impediments for the panel's operation.⁴⁷¹ Another structural restraint is that the panel cannot investigate projects where the loan has been more than 95% disbursed.⁴⁷² Last but not least, the Bank has no authority to award compensation. In this case, the incapability to grant relief is the major problem of the Inspection Panel. The point is the Panel has only the power to recommend in relation to the Bank adherence with its own policies and procedures.⁴⁷³ Thus, the Panel is generally excluded from proposing and providing remedies. All these in turn fade the role of the panel to provide a valuable accountability mechanism for the Bank and thus seal the issue of accountability.

4.2.1.3 IFC-MIGA Compliance Advisor/ Ombudsman (CAO)

To begin with, as mentioned, it is not up to the Inspection Panel to consider claims involving the IFC and MIGA, complaints rather be addressed to the new CAO for the IFC and MIGA. This position was created to be a flexible and solution-oriented rather than problem-solving mechanism.⁴⁷⁴ The CAO Office at IFC and MIGA was created in 1999 in response to a request filed with the WBIP on a private sector operation supported by IFC in the Pangué Hydroelectric Dam Project in Chile in 1995 and civil society lobbying for an accountability mechanism at IFC and MIGA as the activities of these two institutions are not covered by the WBIP.⁴⁷⁵

The CAO is the independent recourse mechanism of the IFC and MIGA for environmental and social concerns. The CAO's mandate is thus to assist IFC and MIGA to address complaints of people affected by projects in a manner that is fair, objective and constructive and to enhance the

⁴⁷⁰ See Resolution Cited at Note 410, Para. 12

⁴⁷¹ Wahi, Cited at Note 2, P. 13

⁴⁷² Ibid. Art. 14 (c) of the Resolution Provides that Requests filed after the Closing Date of the loan financing the project with respect to which the request is filed or after the loan financing the project has been substantially disbursed.

⁴⁷³ See Resolution Cited at Note 410, Para. 22

⁴⁷⁴ See Operational Guidelines for the Office of the Compliant Advisor/ Ombudsman, available at ([http:// www.cao-ombudsman.org](http://www.cao-ombudsman.org)), last visited on April, 2012, Para. 1.1. See also, D. L. Clark, A Citizen's Guide to the World Bank Inspection Panel (2nd Ed. Center for International Environmental Law October 1999) (<http://www.ciel.org/Publications/citizensguide.pdf>, last visited on March 19, 2012, P. 11

⁴⁷⁵ Nanwani, et al., Cited at Note 445, P. 9. Like the Inspection Panel, the CAO becomes involved in an IFC/MIGA related project when it receives a complaint from peoples adversely affected by that project. Like the Panel, the CAO Office attempts to make sure the validity of the claim. From this point on however, the Panel and the CAO take very different steps to resolve the dispute. While the Inspection Panel investigates whether the Bank has met its own safeguard policies, the CAO undertakes an approach of direct involvement and conciliation. Park, Cited at Note 444, P. 23.

social and environmental outcomes of projects in which these institutions play a role.⁴⁷⁶ The post was established in 1999.⁴⁷⁷

Three Roles have been entrusted to the CAO⁴⁷⁸

1). Ombudsman role (CAO Ombudsman): Responding to complaints by individual(s), group(s) of people, or organization(s) that are affected by IFC/MIGA projects (or projects in which those organizations play a role) and attempting to determine fairly the issues rose, with a flexible, problem-solving approach. The focus of the CAO ombudsman role is on helping to resolve complaints, ideally by improving social and environmental outcomes on the ground (see section 2)

2). Compliance role (CAO Compliance): Overseeing audits of the social and environmental performance of IFC and MIGA, particularly in relation to sensitive projects, to ensure compliance with policies, guidelines, procedures, and systems (see section 3).

3). Advisory role (CAO Advisor): Providing a source of independent advice to the President of the WB Group and the management of IFC and MIGA. The CAO Advisor will give advice with related to broader environmental and social policies, guidelines, procedures, strategic issues, trends, and systemic issues. The emphasis is on improving performance systemically (see section 4).

The CAO is autonomous from the line management of IFC and MIGA and reports directly to the President of the WB Group and is not part of the line management structure of either IFC or MIGA.⁴⁷⁹ The CAOs office staff is recruited directly by the CAO, and is independent of the

⁴⁷⁶ See Operational Guidelines for the Office of the Compliant Advisor/ Ombudsman, Cited at Note 474. See also Clark, Cited at Note 474

⁴⁷⁷ Ibid. The Office of the Compliance Advisor/Ombudsman (CAO) is an independent accountability mechanism for the International Finance Corporation (IFC) and the Multilateral Investment Guarantee Agency (MIGA), established by the WB Group in 1999. The office became operational in May 2000. See Assessment Report Complaint regarding COMSUR/Don Mario Mine Bolivia Office of Compliance Advisor/Ombudsman of the International Finance Corporation and the Multilateral Investment Guarantee Agency, available at (<http://www.cao-ombudsman.org/.../AssessmentReportFinalSent12-05-03.pdf> last visited on May 12, 2012 www.cao-ombudsman.org/.../CAO-Marlin-assessment-English-7Sep0.

⁴⁷⁸ Id., Para. 1.1.2 It Is the Ombudsman Role that Is the Most Innovative of the Three. Ms. Meg Tayler, a National Of New Guinea, was appointed as the First CAO At the End of 1999. See Ghazi, Cited at Note 21, P. 224

⁴⁷⁹ Id., Para. 1. 3. 2. See also Clark, Cited at Note 474, P. 2

management structure of the IFC and MIGA and it can also directly recruit consultants and specialists from outside the WB to help in performing the task of the office.⁴⁸⁰

4.2.1.3.1 The Scope of the Work of the CAO

4.2.1.3.1.1 The Ombudsman Role

The CAO Ombudsman's main objective is to help resolve issues rose about the social and environmental impact of IFC/MIGA projects and improve outcomes on the ground. It is not possible to solve all problems, but the CAO's approach provides a process through which parties are more likely to find equally acceptable solutions. The aim is to point out problems, recommend practical remedial actions, and tackle systemic issues that have contributed to the problems, rather than to find fault.⁴⁸¹ In the exercise of the CAO ombudsman role, the CAO Ombudsman may recognize and deal with complaints from individuals, group(s) of people, or organization(s) that believe they are, or may be, affected by the social and environmental impacts of IFC/MIGA projects.⁴⁸² Concerning complaints, any individual, group, community, entity, or other party who believes it is affected or potentially affected by the social and/or environmental impacts of an IFC/MIGA project can present a complaint to the CAO Ombudsman.⁴⁸³ Complaints must explain that the complaint (or those whom the complaint has written authority

⁴⁸⁰Ibid.

⁴⁸¹ Id., Para. 2.1 The Ombudsman role was Established respond and mediate problems regarding people adversely affected by IFC/MIGA related projects. The Ombudsman role is considerably different than the quasi-judicial Panel process established by the Bank although both the Inspection Panel and the CAO were established to ensure accountability. See also Park, Cited at Note 444, P. 23. In this regard, the CAO Office is able to influence the resolution of problem projects through direct mediation between parties (affected communities, IFC/MIGA, private corporations, and even the host government) and attempts to limit the damage to the community and the project. This is in contradistinction to the Inspection Panel, which "finds fault" and apportions blame to Bank operation departments on discovering non-compliance. Park, Cited at Note 444, P. 24

⁴⁸²Ibid. Of the three functions, the ombudsman role is the most crucial in terms of external accountability although both the compliance and advisor functions inform internal accountability and feed back into mitigating future claims by external stakeholders. The aim of the ombudsman function is very different to the Panel. It aims to resolve problems and recommend "practical remedial action" in conjunction with addressing "systemic issues that have contributed to the problems rather than finding fault " (IFC 1999a: Appendix; emphasis added). While the Inspection Panel investigates WB project operations and determines whether peoples were adversely affected as a result of WB non-compliance with its own safeguard policies, the CAO Office acts as an independent problem solving and mediating office. . See also Park, Cited at Note 444, P. 23

⁴⁸³Id., Para. 2.2.2. It Worthy of mentioning that An individual is not allowed to file a claim and this common feature runs through all other MDB accountability mechanisms except for IFC/MIGA's CAO Office. See Nanwani, et al., Cited at Note 445, P. 11

to represent) has been affected, or is likely to be affected, by actual or potential social /or environmental impacts on the field.⁴⁸⁴

The grounds on which a complaint may be made have been broadly defined to give confidence those with concerns about a project to seek redress and if complaints raise issues of policy and do not relay to a specific project, the CAO may deal with the issues raised by the complaint in its advisory role.⁴⁸⁵ The CAO has the discretion to determine whether a complaint is accepted.⁴⁸⁶ In this case, complaints must be real, in a sense that, complaints that are hateful, unimportant, or which have been generated to gain competitive advantage, will not be accepted.⁴⁸⁷ According to the Operational Guideline 3.2.2, the complaint must present the proof of violation.⁴⁸⁸ If the complaint put forward adequate evidence then the Operational Guideline 4.1 identifies three responses to a complaint namely facilitation, mediation and investigation.⁴⁸⁹ It is important to note again that the CAO's ombudsman function is based on the desire to resolve disputes rather than apportion blame, with a flexible approach suited to achieving outcomes in particular cases, emphasizing the role of mediation. At this point, while OPs, procedures, and guidelines are important in defining the standard within which complaints are assessed, review is not limited to a strict consideration of whether the WB agencies were in compliance, as it is for the Inspection Panel.⁴⁹⁰

However, the writer would like to point out that that flexibility can also understate the importance of human rights as entitlements that cannot simply be switched away. For instance, for some legal scholars the extent that the WB safeguards policies upheld by the Inspection Panel enact human rights obligations; the Panel's to some extent restrictive policy focus may be preferable.⁴⁹¹ Assessments will be carried out in a flexible manner and may include any mixture

⁴⁸⁴Ibid. Complaints may be made on behalf of those who believe they are affected by a project. But the complainant should clearly identify the people on whose behalf the complaint is made and provide precise evidence of authority to represent them.

⁴⁸⁵Id., Para. 2.2.1

⁴⁸⁶Id., Para. 2.3.2

⁴⁸⁷Id., Para. 4.1 See also Ghazi, Cited at Note 21, P. 227

⁴⁸⁸That is to say, the complaint carries the "Burden of Proof." In this case, we can say that it is difficult for the affected to gain access to information and being able to gather enough evidence. See Ghazi, Cited at Note 21, P. 227

⁴⁸⁹See Operational Guidelines For the office Of the Compliant Advisor/ Ombudsman, Cited at Note 474, Para. 2.4.1

⁴⁹⁰McBeth, Cited at Note 113, P. 1151

⁴⁹¹Ibid. For Instance, An external review of the CAO found that some NGOs prefer aspects of the Inspection Panel's approach to the CAO's ombudsman role: When pressed, NGOs who are asking for the "teeth" of an

of the following activities: Reviewing IFC/MIGA files, meeting with the complainant, other affected people and communities, IFC/MIGA staff, sponsors, government officials of the country where the project is located, and representatives of local and international nongovernmental organizations. Visiting project sites: When planning a visit, the CAO Ombudsman will notify IFC/MIGA, the sponsor, complainants, and other relevant stakeholders of its plans; and Holding public meetings in the project area⁴⁹²

4.2.1.3.1.2. Complaint Audit Role

Coming to complaint Audit, the compliant audit is a systematic, documented verification process of objectively obtaining and evaluating evidence to determine whether environmental and social activities, conditions, management systems, or related information are in conformance with the audit criteria.⁴⁹³ The compliance audit can be initiated by the request of management or by the Ombudsman.⁴⁹⁴ The purposes of CAO auditing are to ensure compliance with policies, standards, guidelines, procedures, and conditions for IFC/MIGA involvement and thereby improve social and environmental performance.⁴⁹⁵ At this point it is important to mention that the CAO's role potentially provide a forum for pursuing systemic problems that lead to negative social or environmental outcomes, including violations of human rights. This is because the CAO's mandate is not limited to the proper application of WB policies, unlike the Inspection Panel's mandate, compliance audits can avoid the frustration the Inspection Panel evidenced regarding its inability to address the human rights concerns like the case in the Chad-Cameroon pipeline project.⁴⁹⁶ But the writer argues that in order to have effective accountability system the Bank needs to adopt a scheme of independent accountability to take on human right issues arising out of its activities.

inspection panel in fact want process certainty, even though they admit that the adjudicative outcome of the Inspection Panel in some cases may give little approval on the ground.

⁴⁹² See Operational Guidelines For the office Of the Compliant Advisor/ Ombudsman, Cited at Note 474, Para. 2.3.3

⁴⁹³ Id., Para. 3.2

⁴⁹⁴ Id., Para. 3.3.1

⁴⁹⁵ Id., Para. 3.1 The CAO's compliance role evaluates of IFC and MIGA's compliance with environmental and social safeguards and their attempts to improve their operations and policies. This may entail informal analysis by the CAO Office or it may become a full-scale compliance audit. See also Park, Cited at Note 444, P. 22

⁴⁹⁶ Mcbeth, Cited at Note 113, P. 1150

4.2.1.3.1.3. Advisory role

With respect to the advisory role, in performing his/her advisory role the CAO will give a remark on the sufficiency of policies, guidelines, or procedures, or the interpretation or application.⁴⁹⁷ That is to say, he/she advises the President and Management of both institutions in dealing with particular projects and on broader environmental and social policies.⁴⁹⁸ Be noted that, the CAO's advisory role may be initiated by the president or IFC's or MIGA's management, or on the CAO's own initiative.⁴⁹⁹

4.2.1.3.2 The CAO and Human Rights Issues

Human Rights issues underscore most of the complaint that the CAO is empowered to observe. The office the CAO thus has to deal with this issue.⁵⁰⁰ It should be noted that, the office of CAO adopts international and human right standards to the point that those standards are included in the Bank Group Safeguard Policies, and to the extent that the CAO's Ombudsman function is to ensure project compliance with the Bank's policies.⁵⁰¹

In this regard, when the CAO reviewed the safeguard policies in 2003, it noted the relevance of international legal standards, particularly human rights standards, and criticized the safeguard policies for failing to make use of them: With the exception of the child labor policy, no other policies make explicit mention of international agreements, norms or standards to which countries and the WB Group ascribe. In some cases, where sponsors are unclear as to the relation between IFC policies and national regulations, international principles may give helpful context and reference points. . . . IFC policies could thus attain greater traction if they referenced international standards."⁵⁰² According to the writer this recognition implies that the operations of IFIs such as the WB and their partners are not disconnect from the extent of international law, including elements of human rights law pertinent to the operations in question. For instance as

⁴⁹⁷ See Operational Guidelines For the office Of the Compliant Advisor/ Ombudsman, Cited at Note 474, Para. 4.1.1. The Purpose of Advisory Role is that advisory (to advise the President and Management of both institutions in dealing with particular projects and on broader environmental and social policies). See Nanwani, et al., Cited at Note 445, P. 16

⁴⁹⁸ See Nanwani, et al., Cited at Note 445, P. 16

⁴⁹⁹ See Operational Guidelines For the office Of the Compliant Advisor/ Ombudsman, Cited at Note 474, Para. 4.2.1

⁵⁰⁰ Ghazi, Cited at Note 21, P. 230

⁵⁰¹ Ibid. Yet the CAO can and does comment on the adequacy of MIGA/IFC policies and their application in practice; the CAO make suggestions about international standards and practices, in an effect to bring the Bank standards in line with international ones.

⁵⁰² Mcbeth, Cited at Note 113, .P.1135. See also Compliance Advisor Ombudsman, World Bank, Review of IFC's Safeguard Policies 37 (2003).

mentioned, the indigenous-peoples policy (i.e. OP 4.20) acknowledges an overarching aim that development projects should be a means toward “poverty reduction and sustainable development,” inter alia, by ensuring respect for dignity and human rights. Therefore the writer argues that human rights consideration should be the primary concern with related to development projects. But again the safeguard policies of the Bank contribute very little to the realization of human rights accountability of the latter as they are confined to a certain subject matter. For the writer this in turn undermined the role of the CAO to make the IFC/MIGA truly accountable to their action. Besides, the aim of the ombudsman function is very different to the Panel in a sense that it seeks to resolve problems and recommend practical remedial action in conjunction with addressing systemic issues that have contributed to the problems rather than finding fault.

What's more is that, the CAO has recognize that the Bank Charter precludes member states from getting involved in political matters but, as a coral reef grows, bit by bit the Bank group has overtime included human right issues in to the operations(e.g. Good Governance, Reduction of Harmful Child Labor), not previously addressed.⁵⁰³ Thus, the Bank should not read its mandate narrowly when addressing human right issues.

4.2.1.4. The Independent Evaluation Group (IEG)

The IEG is entrusted with assessing the activities of IBRD and IDA (the WB), the work of IFC in private sector development, and MIGA's guarantee projects and services. In this case, the Director-General of IEG reports directly to the World Bank Group's Board of Directors. The purposes of evaluation are to give an objective consideration of the results of the Bank Group's work and to identify and disseminate lessons learned from experience.⁵⁰⁴

When it comes to efficiency, IEG is, however, less independent than the World Bank's Inspection Panel. In this regard, the guarantees of independence for inspectors on the World Bank's Inspection Panel are missing for IEG.⁵⁰⁵ Although publications need not be changed at

⁵⁰³Ghazi, Cited at Note 21, P. 230. There remains however, a gap between what the Bank includes in its safeguards, and international human right standards. This is problematic, for it is possible that the Bank labor standards, for example, could be less stringent than an ILO standard, even if in a country that is a signatory to the ILO treaty.

⁵⁰⁴The Independent Evaluation Group (IEG), available at <http://www.ieg.worldbankgroup.org/> last visited on September, 16, 2012

⁵⁰⁵ For Instance, the Director General of the IEG does not continue employment with the World Bank after tenure in that position. See Schulte et al., Cited at Note 47, P. 6

the wish of World Bank management nor the Board, the IEG's actual objectivity has been called into question when IEG failed to protect a whistleblower who was fired in retaliation for correcting an inaccurate evaluation to the Board. For this reason, the Chair of the World Bank's Audit Committee recently determined that an external audit of the World Bank's internal controls was necessary.⁵⁰⁶ The World Bank had previously relied upon IEG to certify the World Bank's internal controls.⁵⁰⁷ However, the writer asserts that concerning the human rights violations of the WB at the result project activities, the IEG has played almost no role to address the issue of human rights accountability. According to the IEG, private sector investment projects and advisory services are mainly assessed against absolute economic and financial performance criteria and the extent to which they contribute to private sector development. What we can grasp from this is that, no emphasis has given to human right norms to evaluate the backdrop of development activities by WB.

To sum up, as the above analysis discloses that the voluntary mechanism adopted by the WB is not sufficient to close up the issue of accountability as it fails to conform to the obligation of international human rights law. The writer thus argues that since the Panel, the CAO and IEG face similar challenges in ensuring accountability given that their role is limited to chive internal accountability, in order to implement effective accountability system, the WB must be both internally and externally accountable. Then the question is does the WB have a human rights obligation under the International Human Right Law and if the answer is positive what kind of Human Right norm is applicable to it? To that end, it is important to discuss the non-institutional accountability mechanisms.

4.3. Non-Institutional Accountability Mechanisms

4.3.1. World Bank as a Subject of International Law

The fact that there is a great deficiency of institutional accountability mechanisms pertaining to human right issues means there is a need to explore alternative mechanisms of accountability. Thus, this Section examines the merits of international legal accountability of the WB and discusses attempts to establish such accountability based on international human rights law.

⁵⁰⁶ Ibid.

⁵⁰⁷ See The Independent Evaluation Group (IEG), The World Bank , Review of Internal IDA CONTROLS, INDEPENDENT Evaluation BY IEG, Approach Paper (July 10, 2006), available at [http://lnweb90.worldbank.org/oed/oeddoclib.nsf/DocUNIDViewForJavaSearch/40198CB36C53E297852571C40070183B/\\$file/ida_controls_approach_paper.pdf](http://lnweb90.worldbank.org/oed/oeddoclib.nsf/DocUNIDViewForJavaSearch/40198CB36C53E297852571C40070183B/$file/ida_controls_approach_paper.pdf), last visited Feb. 21, 2012

The writer believes that, the first important step to answer the question that whether or not the WB have a human rights obligation under the international human Right law is to look at what international law says about the obligation of IFIs like the WB.

Concerning subject-object-addressee in human rights, historically, human rights relations generally, and to ESCR in particular, are conceptualized as ‘vertical’ in the sense that they involve the obligation of a governing actor (the state or agents of the state) towards individuals (or groups of individuals) within a state’s jurisdiction.⁵⁰⁸ This is based on the principle of state responsibility to guarantee human rights on the basis that the state/individual relationship involves unequal power dynamics between the parties.⁵⁰⁹ This is based on Verticality thesis.⁵¹⁰

In contrast, the proponents of horizontality thesis pursue two different lines of argument.⁵¹¹ The first line of argument challenges the implied assumption behind the vertical approach to rights that private power placed in the realm of the “market” rather than in the domain of “politics” is not difficult in the way that public power is, and should be considered immune from the reach of bills of rights.⁵¹² The second line of argument is made by those who accept the existence of a public-private division, but nevertheless make a pragmatic argument for the application of rights against private parties based on two different but related premises.⁵¹³ The writer argue that the coercive use conditionality and its arrangement by the WB signifies a shift in governing power from the states to the non-state actors like the Bank and a contraction of the political and

⁵⁰⁸M. Ssenyonjo, Cited at Note 1, P. 725. Under traditional approaches to human rights generally, and to ESCR in particular, NSAs are considered to be beyond the direct reach of international human rights law. See also M. Ssenyonjo, ‘Accountability of Non-State Actors in Uganda for War Crimes and Human Rights Violations: Between Amnesty and the International Criminal Court’, Journal of Conflict & Security Law, Vol.10, No.3 (2005), pps.405–34

⁵⁰⁹ Id., P. 726 A state’s potential to abuse its position of authority to the detriment of an individual’s interests was the basis for human rights to insulate the latter against state interference.

⁵¹⁰ However, many questioned the public/private divide of human rights law, on the basis state centric approach which subscribes the view that only states are capable of qualifying as subjects of international law. See E. D. Brabandere, ‘Non-state Actors, State-Centrism and Human Rights Obligations’, Leiden Journal of International Law, Vol. 22(2009) ,P. 192

⁵¹¹ Wahi, Cited at Note 2, P. 380

⁵¹² Id., P. 381Therefore, there is no such thing as a pre-political private sphere, a state of nature that precedes the state. The private sphere itself is constituted by the state in the sense that it is dependent on the state for the provision and enforcement of the norms, which regulate relations within that sphere.

⁵¹³ Ibid. The first premise relates to the emergence of large private institutions like voluntary associations, trade unions, corporations, multinationals, universities, churches etc. exerting massive power as an example of organized private power in society which is in principle as oppressive and potentially as illegitimate as the power of the state. The second premise is that with the onset of privatization, there has been a significant blurring of the public and the private sectors.

economic independence of the states. Therefore, there is a need to increase the application of human rights against IFIs like the WB. Moreover, the WB functions as an international body with legal personality due to the nature of the specific powers granted under its Articles (particularly the power to conclude agreements governed by international law, and the provisions establishing its relationship with other international organisations), its entitlement to particular privileges and immunities, and the fact that it operates widely within the international sphere subjected it to international law.⁵¹⁴

According to some legal scholars, the Bank's status as an international legal person entails its role as both a subject and an object of international responsibilities and obligations, possibly including obligations incumbent upon the organization under international agreements and customary international law.⁵¹⁵ Thus, it is a settled principle that international organisations are subjects of international law, possessing international legal personality like states, though possessing characteristics different from states.⁵¹⁶ An international organisation can be said to possess international legal personality if it satisfies the following conditions: (1) It is independent in functioning from its member states; (2) It possesses the capacity to create international rights and obligations; (3) It possesses the capacity to bring or defend international claims.⁵¹⁷ Let us see first the functional and financial independence of the WB. In this case, the WB is independent from its member states both financially and with respect to its functions and activities. Art. 1 Section 2 of the Agreement between the United Nations and WB states, "*By reason of the nature of its international responsibilities and the terms of its Articles of Agreement, the Bank is, and is required to function as an independent international organisation.*"⁵¹⁸

Thus, the financial independence of the Bank stems from the fact that it uses its capital funds and money rose from private investments to finance its loan activities and administrative costs and therefore does not depend on annual appropriations by national legislatures for funds. The Bank's financial independence of the Bank is thus expressly acknowledged in the Bank's agreement with

⁵¹⁴Sarfaty, Cited at Note 118, P. 657

⁵¹⁵ Ibid.

⁵¹⁶ Wahi, Cited at Note 2, P. 15

⁵¹⁷ See, Agreement between the UN and the IBRD, Cited at Note 206

⁵¹⁸ Ibid. See also the IBRD's Articles of Agreement Cited at note 15, art. 1 § 1.

the UN.⁵¹⁹ The functional independence of the Bank on the other hand is evident from Art. 5, Section 5 (c) of the Bank's Article of Agreement, which provides that the officers and staff of the Bank shall be utterly independent of the influence of member states in performing their activities and shall owe their duty entirely to the Bank to the exclusion of any other authority.

Coming to the second condition of capacity to create international rights and obligations, it is clear from the WB's Articles of Agreement that members regarded the Bank as an entity that would have rights and obligations with respect to them. At this juncture, the last paragraph of article 1 of the WB's Articles of Agreement states, it is the Bank, and not the members, shall be directed in all its decisions by the purposes set forth above. The rest of the Articles of Agreement is largely committed to the mutual rights and obligations of the Bank and member states in respect of capital subscriptions, use of funds, and financial operations of all kinds.⁵²⁰

In this case, in the Advisory Opinion on Reparation for Injuries of the International Court of Justice ICJ leaves open the prospect of reassessing the categories of subjects in international law beyond the realm of the state.⁵²¹ The court suggested that a subject of international law is an entity 'capable of possessing rights and duties'.⁵²² The ICJ therefore reiterates the possibility of horizontal applications of human right obligations based on capability approach. At this point, the Court held that the UN had international legal personality because this was indispensable in order to achieve the purposes and principles specified in the Charter. That is to say, it was a necessary inference from the functions and rights the organization was exercising and enjoying. Therefore, what makes eligible a certain international intergovernmental organization as a subject of international law is its capacity to bring international claim. The possession of international personality thus meant that the organization was a subject of international law and

⁵¹⁹Ibid. In this regard, Art. 8 § 4 of the UN-WB Agreement provides, UN agrees that in the interpretation of Art. 17, para. 3 of the Charter, which provides that the General Assembly shall examine the administrative budgets of the specialized agencies with a view to making recommendations to those agencies, it will take into consideration that the Bank does not rely for its annual budget upon its members, and that the appropriate authorities of the Bank enjoy full autonomy in deciding the form and content of the Bank's budget.

⁵²⁰Art. 2 § 1 of the WB Articles of Agreement provides that membership shall be open in accordance with such terms "as may be prescribed by the Bank." Art. 2 S. 2(b) provides that the capital stock of the Bank may be increased when the Bank deems it advisable by a three-fourths majority of the total voting power. Art. 2 S. 3(b) provides that the Bank shall prescribe rules laying down the conditions under which members may subscribe shares of the authorized capital stock of the Bank in addition to their minimum subscriptions.

⁵²¹Reparation for Injuries Suffered in the Service of the United Nations, Advisory Opinion of 11 April 1949, [1949] ICJ Rep. 174

⁵²²Id, at 179

capable of having international rights and duties and of enforcing them by bringing international claims.⁵²³ It has been noted that, the Bank has the status of a specialized agency of the United Nations and as a result is required to act in conformity with the U. N .Charter based on the relationship agreement between the U.N and the two Bretton Woods institutions.⁵²⁴ At this point, article 58 of the Charter clearly pointed out that the Organization shall make recommendations for the harmonization of the policies and activities of the specialized agencies. In addition, the human rights obligations established within, creating at least some minimum human rights standards on the basis of Articles 55–57 of the UN Charter.⁵²⁵

It is essential to note however that, although in the agreements between the UN Economic and Social Council (ECOSOC) and the IMF and the WB, entered into in accordance with Articles 63 and 57 of the UN Charter establishing the latter's status as U.N. specialized agencies, greater autonomy and liberty is left to the two institutions from the UN and neither human rights nor even Articles 55 and 56 of the U.N. Charter are referred to, Article 103 of the UN Charter links the two institutions' Articles to the Charter.⁵²⁶ As such it has a direct influence on the way in which human rights come into play in terms of policies of the IMF and the WB. Therefore, the WB Articles of Agreement should be interpreted and applied in a manner that respects all human rights.⁵²⁷ This according to the writer makes the Bank as a subject of international human rights law since the Bank as a specialized agency of the U.N based on the a relationship agreement it has made with the latter.

Regarding the legal personality of international organizations, the International court of Justice in the reparation for injuries case, derived the objective international legal personality of the U.N. from the intent of the members, either directly or implicitly. Such personality was objective

⁵²³ Shaw Cited at Note 200, P. 1298

⁵²⁴ See, Agreement between the UN and the IBRD, Cited at Note 206

⁵²⁵ Charter of the United Nations, Cited at Note 6, arts 55-57

⁵²⁶ Ssenyonjo, Cited at Note 1, P. 741

⁵²⁷ Ibid., The independent status of the WB under its relationship agreement with the UN cannot be interpreted to discourage the promotion and fulfillment of human rights nor to undermine their obligations to respect human right purposes and principles of the charter. See, Darrow, Cited at Note 7, P. 125 Concerning its relations with other international organizations, in Article V, section 8 of the IBRD Article of agreement are as follow: A. The Bank within the terms of this agreement, shall with any general public international organizations having specialized responsibilities in related fields. B. In making decisions on loans or guarantees relating to matters directly within the competence of any international organization of the type of specified in the preceding paragraph and participated in primarily by members of the Bank, the Bank shall give considerations of such organization. . Ghazi, Cited at Note 21, P. 119. See also Sarfaty, Cited at Note 118, P. 658. See also Mackay, Cited at Note 126, P. 570. See also Mcebth, Cited at Note 113, P. 1106.

in the sense that it could be maintained as against non-members as well, of course, as against members.⁵²⁸ Moreover, the ICJ in the reparation case, briefly introduced earlier in the discussion of international legal personality of the U.N. demonstrated a liberal approach towards the finding of implied powers.⁵²⁹ The Court has done so where it can be shown that the power claimed and is directed at attaining the purposes and functions given to the organization by its constituent instrument. The court however has not sought to imply power only from explicitly given powers or from particular stated provisions of the constitutive instrument but has implied powers by taking in to account the general purpose of the organization and the conditions of international life.⁵³⁰ Therefore, the consequence of personality is that the U.N. is subject to international law and competent of possessing right and duties and that it has the capacity to uphold its international personality by bringing international claims. Consequently this capacity also includes the possibility to claim reparation damages caused to its agents or persons entitled through the organization.⁵³¹

Last but not least for international organization to possess international legal personality it must have the capacity to bring or defend international claims. In this case, Art. 9 (c) of the WB 's Articles of Agreement provides that cases of disagreement between the WB and its members must be submitted to arbitration before three arbitrators--one appointed by the Bank, another by the member, and an umpire who, unless the parties otherwise agree, shall be appointed by the President of the ICJ. This without a doubt shows the Bank's capacity to bring and defend international claims before any judicial organ. Hence, the WB is an international organisation can be supposed to possess international legal personality as it fulfils the above three fold conditions.

⁵²⁸Shaw, Cited at Note 200. Objective personality is not dependent upon prior recognition by the non-member concerned and would seem to flow rather from the nature and functions of the organization itself. It may be that the number of states members of the organization in question is relevant to the issue of objective personality, but it is not determinative.

⁵²⁹Darrow, Cited at Note 7, P. 137. The Court on Reparation for Injuries derived the objective international legal personality of the UN from the intention of the members, either directly or implicitly. Such personality was objective in the sense that it could be subscribed as against non-members as well, of course, as against members. Objective personality is not dependent upon prior recognition by the non-member concerned and would seem to flow rather from the nature and functions of the organisation itself. Reparation for Injuries Suffered in the Service of the United Nations, Advisory Opinion Cited at Note 521

⁵³⁰ Ibid. 'The rights and duties of an entity such as the [UN] Organization must depend upon its purposes and functions as specified or implied in its constituent documents and developed in practice' See, Shaw, Cited at Note 200, P. 1303

⁵³¹Ghazi, Cited at Note 21, P. 107

After demonstrating that the WB is subject to international law capable of assuming international human right obligation the next question is that what kind of human rights obligations are the WB should be bound by? So as to answer this question the writer would like to mention that, the question to what extent IFIs are bound by international human rights standards is not a simple issue. That is to say, it is not a mere investigation about finding simply the applicability of human right norms to the WB but the issue entails also the nature and extent of human right norms applicable to the latter. At this point, the source of international human right obligation for the present purpose can be referenced to those articulated within Article 38 of the statute of international court of justice, i.e. treaty law, customary international law and general principle of law along with *jus cogens*.

4.3.2. The application of human right treaties to the World Bank

To start with, treaties are either created norms or codified customary norms.⁵³² In the U. N. system, we can trace the formal evolution of human rights, first in the charter, second in the UDHR and then in the international covenants and subsequent documents. If we look at the U. N. charter, it affirms certain human right principles to be regarded by the international community.⁵³³

Moreover, Article 56 of the same charter states that, all Members vow to take collective and separate action in cooperation with the Organization for the attainment of the purposes lay down in article 55. At this point, the writer argues that since states that established the international financial organizations like the WB are members of the U. N, the Bank should not engage in any way to disregard the purposes and principles enshrined in the charter. Most significantly, as specialized agencies of the U.N., the Bank is bound by the objectives and principles of the U.N., Charter and the human rights obligations established therein and this in turn extends the application of treaty obligation to the WB. However, there is a counter arguments for instance, scholars like Skogly explains, that the involvement of specialized U.N., agencies with the treaty bodies has generally been quite modest. Skogly added that, the WB and IMF are not parties to

⁵³²See Vienna Convention on the Law of Treaties, Cited at Note 201

⁵³³Ghazi, Cited at Note 21, P. 134. See also Charter of the United Nations, Cited at note 6, article 55 states among other things that universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.

the treaties and thus have few compliance obligations as such.⁵³⁴ But the writer still maintain the view that taking on the status of specialized agency means the Bank is obliged to adhere to the principles and objectives of the charter and the human rights obligations established therein since most of which are emanated from the mainstream international human right treaties.

At this juncture, the two most important covenants is of great weight are the ICCPR rights and ICESCR. In elaborating the importance of the two covenants the former director general of the Bank Shihita subscribe the view that the substantive rules embraced in the international conventions on human rights may thus replicate or contribute to the making of international law which are not only valid *erga omnes* but also preemptory in nature “*Jus Cogens*”.⁵³⁵ It should be mentioned however that, one argument frequently used to deny that human rights law applies to the IFIs like the WB is the assertion that international human rights treaties bind only states parties.⁵³⁶ It is clear that human rights treaties are primarily deal with States and that IFIs like the WB cannot, directly at present, be parties to the existing human right treaties.⁵³⁷ For instance, the general obligations envisage under article 2(1) of the ICCPR and the ICESCR are bind only States [parties] and do not, by itself, have direct horizontal effect as a matter of international law. As such, IFIs are now only bound to the extent that obligations accepted by States can be applied to them by States. The result is that a wide range of actors other than States, including IFIs, notably the WB generally is considered not to be bound directly by international human rights law.⁵³⁸

But there are two basic problems with this line of argument.⁵³⁹ First, though it is true that IFIs like the WB, as international legal persons, are not parties to any of the international human rights treaties and do not have the capacity to ratify them, this does not in any way entails that principles and obligations of international human rights law cannot apply to IFIs like the WB. Hitherto, many of the principles set out in international human rights treaties have crystallized as norms of customary international law although the manner in which norms of customary international law apply to non-state actors is a matter of current controversy. At a minimum,

⁵³⁴J. Fitzpatrick, Book Review, “The Human Rights Obligations of the World Bank and the International Monetary Fund” by S. I. Skogly, *The American Journal of International Law*, Vol. 96, No. 2 (2002), P. 502

⁵³⁵Ghazi, Cited at Note 21, P. 135, See also Shihata, Cited at Note 20, P. 101

⁵³⁶ Mcbeth, Cited at Note 113, P. 1110

⁵³⁷ Ssenyonjo, Cited at Note 1, P. 726

⁵³⁸ Ibid.

⁵³⁹ Mcbeth, Cited at Note 113, P. 1110

customary norms influence the interpretation and application of other rules and instruments of international law, including the Articles of Agreement governing the WB and IMF, which are multilateral treaties.⁵⁴⁰ Treaty provisions might however be indirectly relevant to the extent that the customary law rules or general principle of international law binding on IFIs including the WB as a subject to international law.⁵⁴¹ It should be mentioned at this point that the application of customary international law to IFIs like the WB will be discussed the subsequent sub-section.

The second problem with this line of argument according to the writer is that although the IFIs like the WB are independent legal persons, they are also composed of member states, all of which have in any case some human rights and obligations deriving from the U.N. Charter and customary international law, and all of which have ratified at least one significant human rights treaty. The obligations thus assumed by member states include an obligation, at a minimum, not to do anything in the course of their engagement with an international institution that would impede the realization of human rights in general and socio-economic rights in particular.⁵⁴²

Thus, the writer thus would like to point out that it is possible to apply treaty obligations to IFIs like the WB despite there is no convergence of sentiments in doing so. It must be clear however that detail analysis with regard to the application of human rights treaties to the WB is confined to a profound investigation of the nature and extent of obligation of the latter with regard to the ICESCR as the policies and programs the WB (both SAPs and PRSPs) are mostly affects the enjoyment of Socio-economic rights. This does not however mean that reference with related to the ICCPR will not be given when needed. Therefore, the question remains even after accepting that the WB is responsible for treaty obligations pertaining to human rights whether such responsibility extends to economic, social and cultural rights as well. For this reason it is worthy of spending some time to analyze the obligation of the WB in relation to socio-economic rights. In general terms human right obligations can be classified in accordance with the requirement to

⁵⁴⁰ Ibid.

⁵⁴¹ Darrow Cited at Note 7, P. 130

⁵⁴² Mcbeth, Cited at Note 113, P. 1111. This means that NSAs are only indirectly accountable through states, while the states will be directly liable for human rights violations committed by NSAs within their respective jurisdictions. NSAs are thus, by definition, placed at the limits of the international human rights legal regime. The main argument against the direct application of human rights obligations to NSAs stresses that this would carry the risk that states might defer their responsibility to these actors, which might weaken existing state obligations and accountability.

‘protect respect, and fulfill’⁵⁴³ Thus let us see the obligation of the WB with related to socio-economic rights in the context of the three obligations.

4.3.2.1. The Duty to Protect

The duty or obligation to ‘protect’ requires the duty holder to take measure to prevent third parties from obstructing the enjoyment of the right.⁵⁴⁴ A key issue is do the states, as members of specialized agencies like the IBRD or IDA have an obligation as state parties to the ICESCR, to uphold these treaty norms, when they take part in decision making about lending and aid conditions for poor countries? In this case, the writer would like to raise the human right effects of conditional lending policies of the WB as part of Structural Adjustment Programs and most importantly the Poverty reduction Strategy papers. Such loans may be dependent on the restructuring the reallocation of government expenditure and the budget of developing countries, particularly African states are required to spend more resources on restructuring foreign debt. If such reforms lead cuts in spending for social services, the enjoyment of the right to health, housing, education, employment of vulnerable group, the whole society is at risk. For example, the U.N. Special Rappourter on the right of education, Ms. K. Tomasevski, has pointed out that the price of debt servicing in Uganda, in terms of domestic budgetary reallocation and export promotion, was impoverishment of the population. She also referred to the conflicting types of international obligations of the Government of Uganda faced: debt repayment and human right obligations⁵⁴⁵ Therefore, whenever the policies of the Bank deprive peoples from exercising their fundamental human rights it then tantamount to interference.

In this instance, with respect to international actors like the WB, it has been observed that: when member states of the WB decide up on policies, programs and projects that impact up on the level of basic services in developing states, especially in African countries, they must take in to account and respect the relevant international human right instruments that apply to state and themselves as they may be held accountable for their acts or failure to act under article 2 (1) of the ICESCR as state parties. If not, a state’s failure to take into account its human rights

⁵⁴³Darrow Cited at Note 7, P. 131. See also The Maastricht Guidelines on Violations of Economical, Social and Cultural Rights, 20 Human Rights Quarterly (1998), P. 693

⁵⁴⁴Ibid. The obligation to protect requires, from the state and its agents, the measure necessary to prevent other individuals or groups from violating the integrity freedom of action, or other human right of individual –including the deterrence of infringements of his or her material resources. . See, Gahazi, Cited at Note 8, P. 125

⁵⁴⁵Coomas, Cited at Note 206, P. 381

obligations when entering into agreements with IFIs like the WB would amount to a violation of the obligation to respect human rights.⁵⁴⁶ In Gahazi's view, Article 2(1) of the ICESCR could provide the basis for an obligation of the members of the organization to ensure the application of human rights through the WB and IMF. His idea is further hold up by the fact that approximately 70 to 80 per cent of the members of these institutions are parties to both UN Covenants on Human Rights, a fact that would appear to indicate that the members are in a good position to promote these rights through international cooperation.⁵⁴⁷ In the context of IFIs like the World Bank, obligations to protect against human right violations might arise in practice in a number of ways including through sub-contractor situations, or cases where stake holders at country level are victimized for participating in consultation on IFIs supported projects or programs, or more generally in connection with leading, credits and structural adjustment policies.⁵⁴⁸ Therefore, based on the above analysis the writer argues that the WB has the obligation to protect violation of human rights in general and socio-economic rights in particular since the former has a significant influence on the recipient state and on its other partners in the case of private lending.

4.3.2.2. The Duty to Respect

The obligation to respect requires the states and its agents (Like the WB) to refrain from doing anything that violate the integrity of the individuals or her or his freedom.⁵⁴⁹ The obligation to respect also means a duty for the state to refrain from any action that that might obstruct the

⁵⁴⁶ See, M. Darrow, "Review Article Human Rights Accountability Of the WB And IMF: Possibilities and Limits Of Legal Analysis", Social and Legal Studies, (2003) , P. 135. For Instance, In 2001, the Committee on Economic, Social and Cultural Rights encouraged Sweden, as a member of IFIs, in particular the WB and IMF, to "do all it can to ensure that the policies and decisions of those Organizations are in conformity with the obligations of States parties to the Covenant, in particular the obligations contained in articles 2.1, 22 and 23 concerning international assistance and cooperation". See Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Paul Hunt on the Promotion and Protection of All Human Rights, Civil, Political, Economic, Social and Cultural Rights, Including the Right to Development, Human Rights Council, A/HRC/7/11/Add.25 March 2008, Para. 94

⁵⁴⁷ A. Lindroos, Book Review, M. Darrow. "Between Light and Shadow, The World Bank, The International Monetary Fund and International Human Rights Law" and B. Ghazi "The IMF, The World Bank Group and the Question of Human Rights" EJIL Vol.17 (2006), P. 1040. The Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Paul Hunt emphasizes that Sweden's representatives on the Boards of Governors should ensure that their votes and other activities are informed by Sweden's international human rights obligations, including its human rights responsibility of international assistance and cooperation in health. See Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health Cited at Note 546, Para. 98

⁵⁴⁸ Darrow, Cited at Note 7, P. 132

⁵⁴⁹ Gahazi, Cited at Note 8, P. 125

realization of socio-economical rights.⁵⁵⁰ It may be argued that states also have an obligation from directly interfering with the enjoyment of socio-economical rights of persons in another country.⁵⁵¹ Coming back to the obligation of IFIs like the WB with respect to the ICESCR, it has been argued that the WB has an obligation not to impose policies or to implement programs that would cause presently enjoyed human rights to be violated or that would deteriorate a situation where human rights are not yet fully respected. It also suggests that a debtor state's efforts to meet its own obligations to realize progressively rights protected by the ICESCR should not be a basis for the denial of financial assistance by the WB or IMF.⁵⁵² As a point of principle the human rights '*baseline*' for the Bank can be taken to be a duty of caution to ensure as far as practicable that its actions do not impact negatively up on the abilities of its borrowing members (in particular African states) to implement their own validly assumed international human rights obligations. In line with the relevant jurisprudence of the CESCRC a duty of this kind may be argued to arise from the requirement for the IFIs to interpret their article of association in a manner consistent with the United Nation Charter, with the UDHR as an authoritative guide of interpretation. An obligation to respect fundamental human rights also impacts IFIs directly as a matter of general international law.⁵⁵³ Thus, the writer is of the view that the WB's should refrain from adopting policies or engage in any way destructing human rights in general and socio-economic rights in particular.

4.3.2.3. The Duty to Fulfill

The obligation to fulfill requires the state to make the measures so as to make sure, for each person under its jurisdiction, opportunities to maintain satisfaction of those needs, recognized in the human right instruments, which cannot be protected by personal efforts.⁵⁵⁴ When we look at this obligation from the prospective of IFIs like the WB, the duty to fulfill human rights might possibly happen, for example, in the context of procedural duties to cooperate with certain

⁵⁵⁰Coomas, Cited at Note 206, P. 380 The obligation to protect requires, from the state and its agents, the measure necessary to prevent other individuals or groups from violating the integrity freedom of action, or other human right of individual –including the prevention of infringements of his or her material resources. . See, Ghazi, Cited at Note 21, P. 125

⁵⁵¹Coomas, Cited at Note 206, P. 384

⁵⁵²Fitzpatrick, Cited at Note 534, P. 502

⁵⁵³Darrow, Cited at Note 7, P. 132

⁵⁵⁴Ghazi, Cited at Note 21, P. 125 One Scholar believes that the obligation to fulfil incorporates both the obligations to facilitate and an obligation to provide.

human right organs.⁵⁵⁵ For instance, at the 25th session, the ESCR committee with the French high council for international cooperation held an open ended discussion on Economic, Social and Cultural Rights within the development activities of international institutions.⁵⁵⁶ On the occasion Mr. Hunt, the Rapporteur of the committee, restated the need for closer cooperation of the IMF and the WB with the committee.⁵⁵⁷ More importantly, Mr. Texier, expert member of the committee, emphasized that the covenant's rights should be part of the IFIs policy and employed in their programs. He added that these rights could not be additional to the SAP.⁵⁵⁸ To sum up, the writer asserts that as a subject of international law, IFIs such as the WB potentially has the possibility to have all human right obligations. The argument is that the Bank has the same obligation as states to protect, respect and fulfill and thus should be accountable for its activities as per the norms of international human rights law.

Other Scholars like Skogly analyzes the applicability of "*minimum core obligations*" a concept developed by the Committee on Economic, Social and Cultural Right and concludes "that the obligations stemming from the Charter, customary international law and general principles are of a negative or neutral character, and that the minimum obligation is not to violate international human rights law as expressed in the United Nations Charter and customary and general principles of law."⁵⁵⁹ However the writer argues that considering that the policies and programs the WB (both SAPs and PRSPs) are mostly affect the enjoyment of Socio-economic rights, the WB should have the same obligation as states to protect, respect and fulfill and thus should be accountable for its activities as per the norms of international human rights law. Thus, for the writer the next important question is whether the responsibility WB extends to customary international law beyond treaty obligations?

4.3.3. Customary International Law

Custom is a very key source of human rights. What is more is that custom can provide a base for the codification of human right standards. But through practice and *opinio juris*, custom may also

⁵⁵⁵Darrow, Cited at Note 7, P. 132

⁵⁵⁶Ghazi, Cited at Note 21, P. 100

⁵⁵⁷Ibid.

⁵⁵⁸Ibid. The Representative of the IMF stated that his organization is not a party to the negotiation on the covenants, as this fell outside its mandate. He also added that the covenants addressed state obligations. He also refuted the fact that the IMF is bound by these obligations because not all its members are members of the convention. These statements motivated a strong reaction from several experts.

⁵⁵⁹Fitzpatrick, Cited at Note 534, PPs. 502-3

produce non-written binding norms.⁵⁶⁰ In this regard, the evidence of practice and *opinio juris* is numerous. The main evidence of customary law is to be created in the actual practice of states and rough idea of state practice can be collected from published materials newspapers reports action taken by the states and statement made by the government spokesperson to parliament to the press, at the international conference and at the meeting of international organizations' and as well from the state's law and judicial decisions because the legislature and the judiciary form part of a state just as the executive does.⁵⁶¹ However, there is no convergence as to the application of international customary law to IFIs such as the WB. In this instance, for the proponents of a voluntary approach to international law, as customary law evolves through inter-state practice it could be argued that IFIs, as self-governing actors under international law are not bind by customary international law they are not participated.⁵⁶² However, like any other actors and as the activities of IFIs like the WB extended to human right themes, they have had the opportunity to influence or give their opinion on, customary norms of general practice and *opinio juris*.⁵⁶³ In this case, the writer argues that the fact that there is no agreement as to the exact application of international customary law to IFIs like the WB it doesn't mean that international customary law is not applicable to IFIs.

4.4. Municipal legal accountability of the World Bank

The possibility of bringing claims against the WB for human rights violations at the municipal level appears to be attractive because of greater enforcement at the municipal level; there are several impediments that exist to prevent the bringing of such claims. The most significant among these is the international law doctrine of jurisdictional immunity of international organizations.⁵⁶⁴

4.4.1. The Principle of Functional Immunity of International Organizations

The theory of jurisdictional immunity of international organizations rests on the hypothesis that an international organization can only in reality operate in the common interest of all member

⁵⁶⁰ Ghazi, Cited at Note 21, P. 129. In this regard, the position of Ghazi all subjects of international law take part in the process of custom creation through practice and opinion juris.

⁵⁶¹ Id., P. 130

⁵⁶² Id., P. 133

⁵⁶³ Ibid. IFIs have been convey to participate in international conferences, to work of various organs and committees dealing with human right issues. In the spirit of international cooperation it is not arguable that they did not take the opportunity to participate on the debate on these rights even if they did not considered to be bound by these rights.

⁵⁶⁴ Wahi, Cited at Note2, P. 17

states take part in it, if it is not subject to the control or jurisdiction of any individual member state.⁵⁶⁵ It is usually dealt with by means of a treaty, providing such immunities to the international institution located on the territory of the host state as are regarded as functionally necessary for the fulfilment of its objectives.⁵⁶⁶ It should be noted however that, article 7 Section 3 of the WB's Articles of agreement permits judicial proceedings against the WB in a court of competent jurisdiction in the territory of a member in which the Bank has an office, has appointed agent for the purpose of accepting service or has issued or guaranteed securities.⁵⁶⁷ Yet, it further provides that members or persons acting for or derive claims from members may not bring action against the WB. This implies that, no state can bring an action against the WB but there is a constitutive waiver in the WB article of agreement in the suit against individuals.⁵⁶⁸

The writer would like to indicate however that, the above provision has not been used for bringing claims for human rights violations against the WB. More to the point, such actions have rarely been successful because municipal courts have been hesitant in diminishing the scope of the immunity available to these organisations.⁵⁶⁹ As a result although there is some scope for bringing claims for human rights violations against the WB in municipal courts these actions are likely to have only limited success at the municipal level because a large number of the debtor countries have authoritarian regimes that deny human rights to their people. Even in those

⁵⁶⁵Ibid. It is Worthy of mentioning in this regard that, International organizations may, however, waive immunity either expressly or by implication based on the provisions contained in their constituent document. The term "constitutive waiver" refers to a waiver that is deemed to exist by virtue of a provision within the international organization's constituent instrument permitting suits against the organization in municipal court. International law allows suits against international organizations to the extent of the provision, which may be restricted to particular types of suits and to particular municipal courts.

⁵⁶⁶Shaw, Cited at Note 200, P. 776. It should be noted that, as far as the place of functional immunity of international organization under customary rules are concerned; the position is far from clear.

⁵⁶⁷Art 7 Section 3 of the WB Articles of Agreement provides, Position of the Bank with regard to judicial process: Actions may be brought against the Bank only in a court of competent jurisdiction in the territories of a member in which the Bank has an office, has appointed an agent for the purpose of accepting service or notice of process, or has issued or guaranteed securities. No actions shall, however, be brought by members or persons acting for or deriving claims from members. The property and assets of the Bank shall, wheresoever located and by whomsoever held, be immune from all forms of seizure, attachment or execution before the delivery of final judgment against the Bank.

⁵⁶⁸Wahi, Cited at Note 2, P. 18

⁵⁶⁹Ibid. See also *In Mendaro v. World Bank*, 717 F.2d 610 (C.A.D.C., 1983), the court upheld the Bank's claim of immunity against allegations of sexual harassment and discrimination by the plaintiff on the ground that the diversity in local employment policies rendered it impossible for the Bank to adopt the policies of its member states. Similarly, in *Morgan v. International Bank for Reconstruction and Dev.*, 752 F. Supp. 492 (D.D.C., 1990), the court granted jurisdictional immunity to the WB against a claim for alleged wrongful arrest, false imprisonment and intentional infliction of emotional distress.

countries which guarantee rights to their people, the immunities granted to these institutions in their constituent instruments, the principle of functional immunity in international law and the existence of express municipal laws denying people the right to bring suits against these institutions may severely limit individuals' ability to bring human rights claims against these institutions.⁵⁷⁰ Moreover, International Organisations such as the WB are usually immune from the jurisdiction of domestic courts. The WB's charter explicitly provide for such immunity in connection with their core operational activities.⁵⁷¹ This makes the prospect of bringing claims against the WB not viable. Therefore, for the writer the way out is to create non-institutional international human rights accountability system as the latter doesn't encounter the issues of functional immunity.

4.5 Conclusion

The writer concludes that the above analysis casts doubt on the merits of application institutional accountability mechanisms of the WB pertaining to human right issues. This is for the reason that the safeguard policies as well as the inspection panel, the CAO and the IEG failed to provide an effective accountability mechanism to address human right issues. This in turn led us to resort to international human rights accountability. In this regard, the WB is subject to international law, possessing international legal personality and therefore obliged by the rules of international law including human rights law. Above all, as specialized agencies of the UN, the Bank is bound by the objectives and principles of the UN Charter and the human rights obligations established therein and this in turn extends the application of treaty obligation to the WB most of which are emanated from the mainstream international human right treaties. The fact that policies and programs which WB mostly affects the enjoyment of Socio-economic rights means the WB must have the same obligation as states to protect, respect and fulfill and thus should be accountable for its activities as per the norms of international human rights law. Hence, it is possible to establish human rights accountability of the WB based on the norms of international human rights law.

⁵⁷⁰ Id., P. 19

⁵⁷¹ It may be noted that the World Bank's charter however explicitly waives this immunity from the jurisdiction of domestic courts in relation with the Bank's issuance of securities on the private markets for the purposes of raising capital. See IBRD Articles of Agreement, Cited at Note 15, art. VII (3); IDA Articles of Agreement, Cited at Note 49, art. VIII (3). It is only in connection with the Bank's issuance of securities that domestic law, e.g., The law of the capital market on which securities is offered, applies to the Bank.

4.6 Conclusion

To begin with, the activities of the WB have a thoughtful impact on human right particularly in African countries. In this regard, the question of human rights accountability is triggered based on two basic reasons. The first important reason is the human rights repercussion of WB policy lending. From side of its policies the WB has been accused of violating or threatening to violate pertinent socio-economic rights in Africa as it adopts coercive use of conditionalities in determining the fiscal and monetary policies of the debtor state in the name of economic reform. The other essential reason is that a number of private development projects sponsored by the WB disclose the harmful involvement of the Bank activities in the areas of human rights in Africa. Therefore, the purpose of the paper is to critically evaluate the WB human rights accountability mechanisms. To that end, the study asses the role of the WB safeguard policies in addressing issue of accountability. It also investigates the efficiency of the IBRD/IDA inspection panel, the IFC/MIGA CAO and the IEG in dealing with the question of human rights. It is also the purpose of the paper to look over the non-institutional human rights accountability mechanisms to make the WB accountable for human rights violations for its activities.

On the other hand, it is essential to look at the factors that necessitate the establishment of international financial institutions. In this case, Bretton woods were a reaction to ‘state’ protectionism of the 1930s. But most importantly, the great depressions of the 1930s, and the devastating effect of the II world war in turn leads to the change in the international economic order encouraged enough to vanish the economic conditions dominated in the west and paved the way for the new economic regime as a system of governance for the world in crisis by establishing the Bretton Woods institutions. The International Bank for Reconstruction and Development (IBRD) and the IMF (IMF) thus were created as a result of negotiations rendered at a conference held at Bretton Woods. The IMF’s task was to provide short term financial assistance for countries suffering balance of payment problems while the IBRD /WB was given two tasks to provide long term financing for the post war reconstruction of war damaged economies and the promotion of economic development to the under developed world. Later, the IDA/WB has emerged as the most important single source of development finance for low income countries.

In respect to the evolution of the WB mandate, all the way through its existence, the WB encountered a tension between a contracted, technocratic self-understanding as an economic development agency and various efforts to expand its mandate. The above brief description of the Bank's operations in the second and third chapter yet demonstrates the wide range of human rights issues particularly socio-economic rights that can arise from the Bank's activities as its mandate dramatically expands through the years. Therefore, the increasing involvement of the Bank in the affairs of the debtor's states shows that human right issues are imperative to the Bank's activities.

However, the Bank has continued to see human rights as an additional thing of its development objectives, not as a set of principles or obligations to which it should be held accountable. That is to say, the WB has been claiming that its operational mandate does not cover the field of human rights. In this case, the main reason that the Bank has been claiming not to have any human rights obligations emanated from Article IV section 10 and Article III section 5(b) of its Articles of Agreement which prohibits the Bank from engaging in any political activity. Hence, the Bank argued, it is purely financial institution whose role assisting economic development in the member states without taking into account any political deliberations. Human rights are thus seen as political issues and Articles of the Bank specifically prohibit all but economic considerations. Therefore, the Bank doesn't consider human rights as part of its mandate and thus frequently refused strive to respect, protect and promote human rights in its operations.

What strikes the most is however, the fact that the Bank article of agreement doesn't define the term "development" despite the mandate of the Bank is to advocate for economic development. At the same time, however the Bank contends that as a specialized economic organization it has a limited mandate and this in turn restricts its permissible activities to the economic aspects of the development process. Other aspects of the development process thus fall outside the scope of the Bank's permissible range of activities. However, one strong argument against any endeavor to exclude human rights from the domain of the Bank's operations is the interdependency of the human rights and development. This is because development stands for a bundle of interconnecting concepts of very broad environmental, socio-economic, legal and institutional implications, including the protection and promotion of human rights. More importantly, the

right to development has considered as an integral part of fundamental human right as it is expressly recognized in a UN Declaration in 1986 and the Vienna Convention and Programme of Action. In addition, the concept of development is now entirely re-conceptualized. Development is not measured only in economic terms. The point is, human rights are incorporated to development and the rights-based approach to development is a widely accepted norm. In this case, a rights-based approach to development is the notion that explicitly ties development policies, objectives, projects, and outputs to international human rights standards necessitating that development be directed towards fulfilling human rights. Moreover, a rights-based approach to development has now become the logical manifestation to the concept of sustainable development. Hence, there is a need for the consideration of all human rights issues as part of a more holistic approach to development in the operations of the Bank, and such considerations must extend to the adoption of a policy framework that mainstreams human rights concerns.

Therefore, the Bank's claim that human rights are political issues and thus not bound by any human rights obligations appears to be not sustainable. The result is that as a development agency, the WB should explicitly acknowledge its duty to respect, protect and promote human rights in relation to the developmental activities it undertakes.

What's more, the measure by the IDA, the lending arm of the Bank to embrace governance as a performance condition and the adoption of the CDF, to promote a long-term, holistic vision of development among borrowing countries and WB also represents a significant departure from the old economic/political dichotomy. Furthermore, the WB activities has been shifted away from the organization's original mandate to include the implementations of diffident programs and initiatives that would not have been otherwise regarded justifiable under the narrow interpretation of the Bank's economic mandate that existed at its setting up. This in turn shows that the classification between economic and political considerations is incoherent.

On the top of that, through its policies and development activities the Bank's impact on the livelihoods of people in the African countries is substantial. It is related with the human rights ramification of WB policy lending. In this regard, SAPs are criticized for spiralling inflation and a striking reduction in the living standard of the African people. Besides, employing one-size-fits-all approach, of the SAPs marked by conditionalities in turn jeopardizes socio-economic

rights. SAPs have also been criticized for lack of transparency and public participation in their design. More importantly, SAPs can be seen as opposing to some state obligation under international instruments such as, the international convention on economic, social and cultural rights. Following to a mounting public critiques, the Bank changed its focus in 1999 from SAPs as being the single appropriate policy to a new approach: PRSPs. However, PRSPs are too has also been the mark of criticisms as they imposes conditionalities which are similar to that of SAPs. Thus, the Bank has warranted wide interventions in African countries through the use of loan conditionalities, which function as a law-making tool that permits the Bank to intervene in genuinely political affairs contriving its mandate.

Equally, the WB's coercive use of the conditionality arrangement in determining the fiscal and monetary policies and shaping the development decisions of debtor countries constitutes not only an expansion but, in fact, a transfer of public decision making power from states. In this regard, although the PRSPs are expected to be country-driven, prepared and developed transparently with the broad participation of civil society close examining the process of PRSPs participation in some countries in Africa clearly shows that it fails to promote national ownership. Thus, we can see that the activities of the WB without doubt have human right implications.

In addition, the case studies related to private development projects of the Bank in Africa including the Chad-Cameroon Pipeline project, the UG-Bujagali Private Hydropower Development Project in Uganda and the Niger Delta Contractor Revolving Credit Facility in Nigeria demonstrate the adverse effect these projects on the environment and most importantly on a number of socio-economic rights of the local communities in Africa. All these draw attention that the Bank must be held accountable for human rights infringements in order to avert and redress violations committed by it in this spheres. This in turn makes the issue of human rights accountability very crucial. On the whole, the actions of the Bank without doubt have a considerate effect on human rights in general and socio-economic rights in particular as critics towards the policy prescription as well as project operations of the WB are often shown discontent for their thoughtful harm in Africa. At this point, as the analysis of the last chapter pointed out due to unvarying external pressure, the Bank has forced to come up with institutional accountability mechanisms to address human right issues arising out of its operations.

In general, the WB has four important institutional accountability mechanisms namely self-regulation, the IBRD/IDA inspection panel, the IFC/MIGA CAO and IEG. In this case, as part of the voluntary self-regulation mechanisms the Bank has established for itself, namely the operational policies. OPs are precise statements that follow from the Bank's article of agreement and the general conditions and policies approved by the Board. It should be noted that the purpose of OP is to set up the limits for the conduct of the Bank's operations. The WB's OPs are complemented by the Bank Procedures (BPs) and Operational directives (ODs). On the whole, the WB has 10 major social and Environmental safeguard policies that are applicable in development projects. However, not a distinct operational policy on human right has been taking up by the Bank and the only reference to human rights was made in one OD. Hitherto, the WB has adopted some OPs and ODs concerned with the human rights repercussions of its operations. However, different case studies related to specific operations of the WB in Africa unveils that the Bank has already bland key provisions of its policies, procedures and directives. Therefore, unless the Bank is prepared to adopt its safeguard policies, procedures and directives in line with international human rights norms, internal self-regulation in the current form cannot secure proper accountability mechanism pertaining human right issues driven by the activities of the Bank.

Regarding the WB inspection panel, although the panel was established to make sure the compliance of the Bank's action with its own policies and procedures, the panel has failed to provide an effective accountability mechanism with related to human rights issues. This is for the reason that, the panel has no competency to ascertain violations of international human rights as the panel established to oversee the Bank's (IBRD's and IDA's) observance to their own OP and procedures with related to design, appraisal, or implementation of the Bank supported projects in the form of compliance review mechanism without the mandate of problem solving. Moreover, even though the panel has expected to be a watch dog of the Bank, it has no jurisdiction on the adjustment operations of the Bank. This implies that there is no legal remedy for the aggrieved persons in Africa who's right might be affected directly or indirectly by the policies of Bank in the countries where adjustment operations are financed are situated. Therefore one of the major impediments on the jurisdiction of the inspection panel is the restriction on its mandate and this

in turn put in jeopardy the ability of the panel to provide a real accountability mechanism to redress human right issues. Even in the instances where the Bank violates its own policies and procedures the panel is not equipped to provide effective remedy for a number of reasons:

First and for most, the panel has no power to investigate the claim by itself even if it is convinced that the matter is worthy of proceeding rather it is the board that has the authority to give the go-ahead for the panel to conduct an investigation. Thus, even if the panel is entrusted to make a recommendation for a compliant to be investigated, it is the discretion of the board to accept or reject the recommendation given by the panel as it still embraces the power to determine technical eligibility criteria.

Second, even if the board accepts the panel's recommendation the role of the panel is limited to decide whether or not the action of the Bank is consistent with its policies. For that reason, only activities contrary to the policies and procedures of the Bank can be taken in to an account without a formal recognition, human rights issues could be rejected. Yet, in determining the compliance of the Bank's action with its own policies and procedures the Panel can only render findings to the Board. Thus, the panel has no authority to grant a relief in cases of violation.

Third, it is also difficult to access panel's procedures for the aggrieved party. Particularly, once the affected parties (or their agents) have called an inspection, the parties are not given the chance to address the Panel's findings, Management's response, or review any of the information about their claim before to the Board decision on how to proceed. This in turn violates the principle of equality of arms. All these avert the panel from rendering a true accountability mechanism in addressing any allegation of human right violation by the Bank.

The CAO is no different, even if it has the power to deal with human rights issues, the office of CAO adopts international human right standards to the point that those standards are included in the Bank Group Safeguard Policies. In this regard, the CAO has three roles namely, the Ombudsman role, compliance audit role and advisory role. The CAO's Ombudsman function is to ensure project compliance with the Bank's policies. Regarding the advisory role, in performing his/her advisory role the CAO can give a remark on the sufficiency of policies,

guidelines, or procedures, or their interpretation or application. Concerning the role of the complaint Audit, the compliant audit is a systematic, documented verification process of objectively obtaining and evaluating evidence to determine whether environmental and social activities, conditions, management systems, or related information are in conformity with the audit criteria. However, when we come to human rights accountability, the safeguard policies of the Bank contribute very little to the realization of human rights accountability of the latter because they are confined to a certain subject matter. For the writer this in turn undermined the role of the CAO to make the IFC/MIGA truly accountable to their actions. Besides, the aim of the ombudsman function is very different to the Panel in a sense that it seeks to resolve problems and recommend practical remedial action in conjunction with addressing systemic issues that have contributed to the problems rather than finding fault. Therefore, it is not possible for the CAO to consider human rights standards not embraced by safeguard policies. Last but not least, the IEG doesn't employ the mechanism for human rights accountability and this in turn deprives the IEG to effectively address human rights issues. All these indicate that the voluntary systems adopted by the WB are not enough to close up the issue of accountability.

Therefore, the deficit in the institutional accountability mechanisms in turn leads us to look into the application of international human right law to the activities of the WB. It is important to mention in this regard that the ICJ has reaffirms the possibility of horizontal application of human right obligation to IFIs actors like the WB. In this case, the WB is a subject of international law, possessing international legal personality and thus bound by all obligations under international law including human rights law since the WB fulfils the three fold tests. These are the functional independence of the WB from its member states, its capacity to create international rights and obligations and lastly its ability to bring or defend international claims. The functional independence of the Bank is evident from Art. 5, Section 5 (c) of the Bank's Article of Agreement, which provides that the president, officers and staff of the Bank shall be utterly independent from the influence of member states in performing their activities and shall owe their duty entirely to the Bank in the exclusion of any other authority. If we look at the condition of capacity to create international rights and obligations, it is clear from the reading of the last paragraph of article 1 of the WB's Articles of Agreement states, it is the Bank, and not the members, shall be directed in all its decisions by the purposes set forth above. In this regard,

as specialized agencies of the UN, the Bank is bound by the objectives and principles of the UN Charter and the human rights obligations established therein and this in turn extends the application of treaty obligation to the WB. Moreover, although human rights treaties are primarily deal with States and that IFIs like the WB cannot, directly be parties to the existing human right treaties, the principles and obligations of international human rights law may still be applicable to the Bank since many of the principles set out in international human rights treaties have crystallized as norms of customary international law. The WB has also the capacity to bring or defend international claims as it is explicitly envisaged under Art. 9 (c) of the WB 's Articles of Agreement.

Most importantly, considering that the policies and programs the WB (both SAPs and PRSPs) are mostly affect the enjoyment of Socio-economic rights, the detail analysis to the application of human rights treaties to the WB with regard to the ICESCR discloses that the WB has the same obligation as states to protect, respect and fulfil and thus should be accountable for its activities as per the norms of international human rights law. Hence, it is realistic to establish human right accountability of at the international level without requiring a change in the doctrine of international law. Therefore, the writer concludes that it is feasible to create a human rights obligation in support of international human rights accountability. Accordingly, the study has come up with the following findings: -

First, the above analysis has demonstrated that the WB institutional accountability mechanisms are not transparent to any external body. This is because, the WB doesn't have any procedure to report its performance to external stakeholders (like the U.N. human rights council) to guarantee neither the observance of its own operational guidelines nor its compliance with international human rights law pertaining to the human right issues well beyond the safeguard policies, as internal supervising alone is not enough to warrant effective accountability system. The absence of independent accountability thus means the Bank has the final say not only to comply with its own safeguard policies but also on broader human right issues while caring out of its operations.

Second, except one the Bank's OD the WB safeguard policies do not incorporate a wide range of human rights principles in their provisions. On the other hand, the WB inspection panel has

neither the competency to ascertain violations of international human rights nor the jurisdiction to entertain individuals compliant against the Bank's adjustment lending. Concerning the CAO, although the authority of the CAO allowed it to consider international human rights it is difficult for CAO to consider human rights standards not gripped by the safeguard policies. IEG it doesn't at adopt the mechanism for human rights accountability. With regard to although the IEG is entrusted with assessing the activities of IBRD and IDA (the World Bank) the work of IFC in private sector development, and MIGA's guarantee projects and services, IEG is less independent than the World Bank's Inspection Panel and the guarantees of independence for inspectors on the World Bank's Inspection Panel are missing for IEG. But most importantly, in the case of human rights violation of the WB at the result project activities, the IEG has played almost no role to address the issue of human rights accountability. Due to these limitations, the study identifies that the institutional accountability mechanisms adopted by the WB is not sufficient to deal with human rights issues emanated from its policies and operations.

Third, based on a narrow and restrictive reading of the Articles of Agreement, the Bank disclaims the relevance of human rights to its activities. However, the mandate of the WB doesn't mention human rights in a manner excluding of human rights consideration. Besides, through extensive interpretation of the mandate particularly based on articles 31 and 32 of the Vienna convention on the making of treaties, it is possible to allow human rights considerations to be taken into account. A human-rights oriented interpretation is also in line with the Bank's own practice, which has continuously stretched the mandate of a financier of economic development. Last but not least, although the Bank argues that it is a purely financial institution whose role facilitating economic development in the member states without taking into accounts any political considerations, it has proved that the Bank's approach to political affairs has been far from coherent. For instance, the WB has embraced governance as a performance condition of the recipient state. In other words, good governance agenda has become one of the main objectives of the WB which without doubt is a political issue. Therefore, if the WB seeks to promote responsible development, the Bank needs to acknowledge that its activities affect political affairs of the state and adopt a coherent human right policy to facilitate socially beneficial interventions.

4.7 Recommendation

The following measures are recommended to enhance the WB accountability mechanism:

- The study identifies that it is feasible to interpret the WB's article of agreement in line with the norms and principles of international human rights law based on the basic approaches for treaty interpretation under international law particularly by applying the Vienna convention on the making of treaties. That means the political prohibition clause that the Bank has been shilling behind not to have a human rights obligation is no more sustainable. Hence, it is possible to foster the human right accountability of Bank by using human right based interpretation. But most importantly, the changing pattern of development as encompassing human rights necessitates the Bank to consider human rights issues as an essential part of its operations. This in turn required alteration of the article of agreement of the WB as the agreement is not a static document; it needs to cope up with evolving nature of development and human rights.
- The activities of the WB in one way or another have a significant impact on the human rights of individuals and groups in Africa. There is no legitimate reason to claim that developmental activities and human rights are separate. The point is economic activities inevitably have implications on the enjoyment of human rights. The WB thus needs to have a clear human rights policy both for policy lending and project operation that encapsulates human right norms and principles. Concerning the WB project operations, although the WB has adopted some Ops, BPs and ODs concerned with the human rights implications of its operation not a single operational policy on human right has been taking up by the Bank and the only reference to human rights was made in one OD. That is to say, with the exception of one operational directive, the WB safeguard policies do not integrate any human rights principles in their provisions. Thus, safeguard policies of the WB including all operational policies and procedures should be reformulated in a way to deal with human right issues comprehensive enough. The WB therefore not only should adopt operational policy on Human Rights but also should take on BPs and ODs for project operations that would integrate human right concern with respect to design, appraisal, or implementation of a Bank supported project and a clear human right guideline in the case of policy lending. Besides, like other U.N. agencies, the Bank

should adopt a right based approach to development as the latter has become the rational outcome to the concept of Sustainable Development.

- Moreover, the three case studies namely the Chad-Cameroon Pipeline UG-Bujagali Private Hydropower Development Project in Uganda and the Niger Delta Contractor Revolving Credit Facility in Nigeria highlighted the detrimental effects of the Banks project activities in the areas of the environment and for the most part on socio-economic rights of the local population. Therefore, the Bank not only need to adopt operational policy on human rights for its project operations but above all, should set human rights as a condition or criterion for its private partners (which in most cases are turn out to be international multilateral corporations) in order to make sure their compliance with environmental standards but most importantly to international human right norms while they engaged in their project activities.
- To enhance the WB institutional human rights accountability system, WB inspection panel in addition to the power to scrutinize the Bank's compliance with its own safeguards policies, procedures and directives, should be given a compulsory jurisdiction with the authority to investigate any allegation by itself without the interference of the Board and grant a relief to the aggrieved party if there is indeed a human right violation of the Bank's safeguard policies but also the mandate of problem solving in cases where the activities of the Bank involves a wider human right issues beyond safeguard policies. Additionally, the panel should be accorded jurisdiction on the adjustment operations of the Bank as an internal institutional mechanism that monitors the impact of the Bank's policy lending on human rights, and that enable victims to have redress for violation of rights by such activities.
- The far reaching human right impacts of the policies and operations of the Bank require an independent human rights accountability structure. In other words, while the Panel, the CAO and the IEG face similar challenges in ensuring accountability, in order to be successful, human rights accountability mechanisms must be both internal and external. In this regard, as the above analysis demonstrated the WB is a subject of international law

with the possession of international legal personality. This implies that the WB is bound by international human rights law including treaty obligations and particularly by the international covenant on economic social and cultural rights (ICESCR). Therefore, the same as state parties to the ICESCR, the Bank can be subjected to the jurisdiction of the Committee on economic, social and cultural rights concerning the obligations under the same instrument. Thus, in this way it is possible to create independent accountability mechanism through treaty based bodies. Yet, the fact that the WB is the specialized agency of the U. N means it is also reasonable to establish charter based human right accountability mechanism for the obligations envisaged under the Charter.

- Besides, as part of the charter based system; the U.N. human rights council could play a decisive role to foster the human right accountability of the WB since the Council shall be responsible for promoting universal respect for the protection of all human rights and fundamental freedoms. In this case, the Human Rights Council has at its disposal a number of tools for addressing human rights violations. One of the important tools in this regard is a system of special procedure mandate. One of the immense instruments under special procedure is a thematic mandate, intended to examine, monitor, advice and publicly report on major phenomena of human rights violations through designated special Rapporteurs/independent experts or working groups. In the view of the writer it is possible that a new thematic mandate can established on assessing the human rights effects of activities of the International Financial Institutions and thus appoint a special Rapporteur/independents expert or establish a working group to this effect. Since special Rapporteurs are not employees of the UN but are able to access states, media, non-governmental organizations(NGOs),and victims through official UN channels, special rapporteurs/independent experts thus can be regarded as persons working on behalf of individual human beings without any measure and make an allegiance only with their conscious. The role of the working group can also be very immense in assessing the effect of the Bank activities on human rights. Therefore, to realize this I think States elected to the Human Rights Council should commit to fully implementing the Council's mandate, including the responsibility to prevent and address violations by the international financial institutions at the result of their activities.

- A further means of enhancing the human rights accountability of the WB is by means of developing a 'guiding principle' to impose on the WB, straight under international law, the same variety of human rights duties that States have accepted for themselves under treaties they have signed. I believe that the guiding principle can create a greater coherence between the mandate of IFIs and the norms of international human rights law. The guiding principle can also serve as a common standard for the activities of IFIs like the WB and IMF.

- In addition, member states (share holders) to the WB have the obligation to ensure that the latter is indeed rendering its activities in line with international human right obligations. This is because; Member States have various human right obligations based on different international instruments. Therefore, those States should have a policy of opposing any activities (whether it is policy or project lending) by the Bank in violation of international human right laws and when representatives of member States determine the policies of the two IFIs, they are bound by their States' international obligations, including those arising from international human rights law as the activities of the Bank is attributable to them. More to the point, Member states (share holders) of the WB are bound by the extra-territorial application of human rights. For instance, the Maastricht Principles which builds on the Maastricht Guidelines on Violations of Economic, Social and Cultural Rights imposed Extraterritorial Obligations on States in the Area of Economic, Social and Cultural Rights. In this regard, the same instrument provides that extraterritorial obligations of States are extended to acts and omissions of non-State actors (including international financial institutions like the WB) acting on the instructions or under the direction or control of the State. Therefore, the share member states should ensure that the activities of the WB in any where are consistent with international human rights law. In this way, it is possible to make the WB held responsible for its adverse activities with human right implications.

- A different way of creating non-institutional human rights accountability of the WB is through appointing a Special Representative to the U.N. Secretary-General on the issues of human rights and international financial institutions. This is particularly important due

to the remarkable expansion of economic power of IFIs following the existing global economic crisis. The fact that more and more states are struggling as the result of the present financial calamity to make their house in order means, it is difficult for them to economically engage in a by lateral way as they used to before. On the other hand, the level of multilateral cooperation is increasing to address the enormous economic turbulence that the World is facing now. In this regard, IFIs such as the WB and the IMF are playing a leading role to tackle the global economic turmoil and I believe that the more they become influential, the better to make them answerable to their activities. Therefore, more than ever, it is essential to give much emphasis to IFIs like the WB so as to make them accountable for human right violations arising out of their activities.

- Through coercive use of conditionality the WB is interfering what is clearly regarded as an internal matter of the states. This in turn deprives the states from exercising their decision making power pertaining to important economic and social issues. However, instead of imposing on the recipient states its own program of poverty reduction, the WB must encourage states to come up with their own economic and social development plan by giving policy space. In other words, states particularly in Africa must be permitted to design different models and strategies of economic and social policies depending on their social conditions and the visions of those societies.
- Last but not least, it is also advisable to appoint a president who has a track record of promoting or advocating human rights. This is because, as a chief of the operating staff, he/she may play a crucial role for the systematic incorporation of human rights or to constantly taken in to account human rights to make the Bank agenda more flexible. For instance, one major force driving the establishment of the WB Inspection panel was the result of a swift action taken by President to improve the accountability of the Bank. In addition, the Bank internal culture, have significantly kept human rights out of the spot light. Thus, as a human rights advocate without doubt, the president would contribute a lot to validate the importance of human rights to the Bank's operation.

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