

Discussion Paper

Human Rights Criticism of the World Bank's Private Sector Development and Privatization Projects

A Discussion Paper

Prepared for the
Special Adviser (Human Rights),
Managing Director's Office (MDH),
The World Bank

by
Professor David Kinley

&
Dr Tom Davis

The Castan Centre for Human Rights Law,
Monash University, Australia

February 2004

Human Rights Criticism of the World Bank's Private Sector Development and Privatization Projects

February 2004

Discussion Paper prepared by:

Professor David Kinley
Dr Tom Davis

Research assistance: Joanna Kyriakakis & Natalie Bugalski

The Castan Centre for Human Rights Law
Faculty of Law
Monash University VIC 3800
Australia

Ph +61 3 9905 3327
Fax +61 3 9905 5305
Castan.Centre@law.monash.edu.au
<http://law.monash.edu.au/castancentre>

Contents

Glossary of terms

Executive Summary	i
-------------------	---

Introduction

Purpose of the Discussion Paper	1
Research Method	2

Empirical Analysis

Introduction	5
‘Top Twenty’ most criticized IBRD/IDA and IFC projects	5
Key findings	24

Human Rights Analysis

Introduction	39
‘Human rights’ criticisms	41
Implications of the non-use of human rights language	60

Implications

Legal Implications	67
Program Implications	85

Appendix 1 – ‘Top Twenty’ Projects (full details)	103
---	-----

Appendix 2 – Database search hits	142
-----------------------------------	-----

Appendix 3 – Global ratification of UN human rights instruments	156
---	-----

Appendix 4 – Ratification of UN human rights instruments by countries in the study	165
---	-----

Appendix 5 – Ratification of UN human rights instruments by developing and least developed countries	167
---	-----

Glossary of terms

CAO	Compliance/Advisor Ombudsman – IFC
CCPR	Committee on Civil and Political Rights
CDF	Comprehensive Development Framework
CEDAW	Convention on the Elimination of Discrimination against Women
CESCR	Committee on Economic, Social and Cultural Rights
ECA	Export Credit Agency
ESIA	Environmental and Social Impact Assessment
FDI	Foreign Direct Investment
HURIST	Human Rights Strengthening Project
IAG	International Advisory Group
IBRD	International Bank for Reconstruction and Development
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
IDA	International Development Association
IFC	International Finance Corporation
IFI	International Financial Institution
IGO	Inter-Governmental Organization
IMF	International Monetary Fund
IP	Inspection Panel – World Bank
IPDP	Indigenous Persons Development Plan
MIGA	Multilateral Investment Guarantee Agency
MNC	Multinational Corporation
NGO	Non-governmental Organization
OHCHR	Office of the High Commissioner for Human Rights
PRSP	Poverty Reduction Strategy Paper
SME	Small to Medium Enterprise
UDHR	Universal Declaration on Human Rights
UNCHR	United Nations Commission on Human Rights
UNDP	United Nations Development Programme
UNHCHR	United Nations High Commissioner for Human Rights
UNHRC	United Nations Human Rights Committee
WBG	World Bank Group

Executive Summary

The brief this Discussion Paper fulfils is to provide an account of the major criticisms directed at the World Bank's private sector-oriented projects, and to determine what, if any, consequences for the protection of human rights are revealed by those criticisms. The approach adopted in this paper is first to identify key criticisms through empirical research and then to subject them to human rights analysis. This provides the basis for a clear account of the legal and programmatic implications for the Bank, today and in the future, of those human rights obligations and duties raised, directly or indirectly, by the critics of the Bank.

It is not within this Discussion Paper's brief to weigh up the substantive pros and cons of the public criticisms it identifies. Instead, the paper conveys a sense of what this debate between the Bank and its critics might look like if rendered in human rights terms. The World Bank is no stranger to criticism of its projects, especially in respect of its privatization and private sector development projects. Critics point to the environmental, social and cultural damage that certain projects have caused, which for some appears not just to be a product of the individual projects themselves, but symptomatic of a broader policy failure within the Bank to engage with the social consequences of its actions. In fact, and somewhat surprisingly, both the Bank's critics and its defenders seldom employ human rights language in their reasoning and rhetoric, and where they do, it is only fleetingly and often lacking in any real substance. This is surprising because of so much of what the Bank does can be, and is, supportive of the objects of international human rights standards, especially in respect of economic, social and cultural rights. It is a central theme of this Discussion Paper that for the Bank to embrace this fact alone would be a very significant step towards it being better able not only to respond to its critics, but also, crucially, to deliver upon its own objectives as most recently expressed in the Millennium Development Goals.

In arriving at this conclusion the Discussion Paper first provides an empirical analysis of the private sector development and privatization projects being criticized, the nature of that criticism and the critics themselves. A number of findings are produced by this study, including: that large-scale construction projects receive the largest amounts of criticism, that the failure to adequately consult with the populations affected by a project is the most common criticism, and that there is relatively clear demarcation between the types of critics who focus on construction projects (such as the BTC pipeline project) and those who are responding to privatization programs.

A human rights analysis of the major criticisms is then carried out, highlighting how these claims can be characterised as falling under several human rights groupings, including: 'due process' rights; environmental, health and water rights; rights to shelter and land ownership; rights to economic well-being and labor, and the right to political expression. Also considered in this section are some of the implications of using human rights 'language' to express these critiques.

The Discussion Paper concludes with a discussion of the legal and program implications for the World Bank of the obligations and duties arising out of the human rights interpretation of the type of criticism the Bank's projects are receiving. The Legal Implications section examines the Bank's direct engagement with the international human rights law regimes, as well as its indirect liabilities through the legal obligations placed on its state and private partners.

The Program Implications section examines how a human rights-based approach to development, which takes on board the legal implications identified earlier, might offer alternative ways of engaging with the key Bank themes such as privatization. It then focuses on the macro, meso and micro policy issues associated with any move the Bank may make to more explicitly acknowledge the centrality of international human rights law to its work. It concludes that, in addition to altering established approaches toward program and project design and implementation, there is a cultural change within the Bank that needs to be instigated over the long-term for the very real development consequences of human rights observance to be recognized and accommodated within its operations.

Introduction

Purpose of the Discussion Paper

This Discussion Paper identifies the key criticisms made of IBRD/IDA and IFC private sector development and privatization projects and then analyzes those allegations from the perspective of international human rights law. The intent is not to assess the validity of this criticism but rather to clarify the potential legal obligations and duties of the World Bank in relation to these critiques, as well as the indirect responsibilities it accrues through its partnerships with private corporations and developing country governments. Another goal is to engender debate within the Bank over the program implications of these obligations and responsibilities.

Three sets of questions are addressed in this paper. The first set seeks to gauge the level and nature of the human rights-related criticism directed at IBRD/IDA and IFC private sector development and privatization-related projects. They ask:

- Which projects are attracting the highest levels of criticism?
- Which sorts of entities are voicing this criticism? NGOs? Community activists? IGOs? Developing country governments? Other commentators?
- What claims are being made?

The second series of questions go to the international human rights law character of the highest profile accusations by asking:

- What is the international human rights law significance of these claims?
- Which human rights are involved?
- Who is breaching them?
- Who is responsible for protecting them?

The final questions investigate the implications of these human rights law findings for the Bank:

- What *direct* human rights law obligations should World Bank managers consider in their decision-making?

- What *indirect* human rights law obligations must the WBG consider in relation to its partnerships with private sector corporations and developing state governments and agencies?
- What direction does this analysis provide for future strategic, policy and operational development within the WBG, focussing on the IBRD/IDA and the IFC?

Research Method

A combination of empirical and legal research methods were relied on by the authors of this paper in answering the above questions.

To begin with, empirical data was gathered through a document search process. Information was collected on the extent, sources, objects and substance of the criticism directed at the IBRD/IDA and IFC's public sector development and privatization projects. Key terms and information from source materials were entered into a 'relational' database that connected them with projects. Answers to search queries were then generated from this database. It is important to note from the outset that the intent of this empirical research was to get a sense of the weight and nature of the criticism the Bank is receiving in these areas, it was not to determine the validity of this criticism or its impact on public opinion of the Bank in both donor and borrower member countries.

Given the volume and breadth of criticism directed at the World Bank – from the 2001 marches in Washington, DC, to applications by small groups to the Inspection Panel – and given the time restrictions on this study, a series of parameters were imposed on the document search. The first restriction was that only private sector development and privatization projects, as opposed to a complete coverage of all the World Bank Group's lending and project work, were considered. This focus was justified on several criteria. One, 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. Also, previous research of the World Bank 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. Finally, there was a strong anecdotal sense that these were areas in which the World Bank Group was encountering significant public criticism.

A second research parameter was that the data gathering process would focus on private sector development and privatization projects where the IBRD/IDA and/or the IFC worked in partnership with private corporations (preferably multinational corporations (MNC)) and developing country governments.

Third, the focus of the criticism had to be a specific project as opposed to, for example, a structural adjustment loan or general Bank policy. A clear division between such activities is not always made

by critics, nor the Bank, and some exceptions to this restriction were allowed where the activity was consistently framed in project terms in the critiquing documents – the Argentina water privatization program being an example.

Fourth, only sources of criticism dated from 1 January 2000 were recorded (Bank project documents, however, could originate from an earlier date).

Fifth, the search was limited to three sources of documentation: the World Bank (especially the Inspection Panel and the Compliance/Advisor Ombudsman's Office reports, as well as Bank-sponsored research), NGOs (Internet web-pages, published reports and media releases) and print media (newspapers, wire services and journals (both academic and non-academic)). In respect of NGO-sourced material, a quasi-'snowball' sampling method was used to locate and prioritise the NGOs – the start point being international, well-established organizations such as OXFAM or Friends of the Earth – on the basis of their networks, i.e. the number of other organizations listing them as partners. While this tended to emphasize the importance of coordinated NGO campaigns, that tendency was ameliorated to a significant extent by the use of the two other information sources.

Even within such parameters there exists a large quantity of data. This is most obvious in respect of NGO web-pages and news wire services, where a single media release may be posted in a large number of fora. In those cases, not all items were logged on the database. Instead, a representative sample of documents in terms of numbers and character were included based on search term 'hits' in newspaper databases (Lexis-Nexis), journal databases (Expanded Academic ASAP, ProQuest and Lexis) and the Google internet search engine (which uses PageRank software based on 'snowball' sampling methods).

To provide a manageable sample group for qualitative analysis, it was decided to rank the 'Top Twenty' projects on the basis of the level of public criticism as assessed by the number of articles in which a project was mentioned by a basket of major newspapers such the New York Times, the Washington Post and the London Times, among others. Also recorded were those Bank-supported projects that received sufficient criticism to be picked up under this research method, but which did not meet the search criteria to the level necessary to be included in the 'Top Twenty'. This ranking system is based on the assumption that criticism of a project which appears in mainstream newspapers should be given greater weight than that appearing on an NGO's Internet webpage. While this downgrades somewhat the position of Internet-conducted campaigns, it recognizes the key role of major newspapers in public policy agenda-setting, as well as their importance to policy communities and networks.

In order to ensure a sense of the 'counter-factual' was present, records were kept of those projects that had received a high level of public criticism, but from which the Bank had dropped out of or opted not to support. There was also an attempt to identify projects that had received positive publicity. Given the nature of development activism it is not surprising that it was far harder to

locate well-publicized success stories than the opposite and the Bank's Operations Evaluation Department and Quality Assurance Group assessments were therefore included in this data. Sufficient information was gathered, however, to provide some perspective on the degree to which the projects identified as falling within the search parameters represented the Bank's usual practice.

As a final check, ten international and Australian NGOs that represented a mix of environmental advocates, 'bank-watch'-style analysts and advocates and development practitioners were asked to review the list of the 'Top Twenty' projects.¹ The NGOs were requested to nominate projects they believed should be included on the list. There was broad agreement that the listing represented the activities that concerned them the most. Seven additional projects were also identified by this NGO group and then assessed against the research parameters, although none was ultimately included in the 'Top Twenty' list.

In finalizing the empirical analysis of the data, a process of triangulation between the three information sources – the World Bank, NGOs and the print media/commentary – was employed in order to ensure as balanced a portrayal of the core claims as possible. This meant that claims noted by one source only were not recorded.

Having established an empirical base, this study then analysed those findings from the perspective of international human rights law. This legal research approach evaluates the impact on human rights jurisprudence of international instruments (especially the UN Declaration on Human Rights and the six main UN human rights instruments), existing case law and commentary. The criticism of Bank projects is then evaluated against that jurisprudence. The legal research is rounded out by reference to the process of international law-making (especially the respective roles of states and inter-governmental bodies) and recent substantive changes in relation to the activities of corporations in the developing world.

Before entering into the substance of this Discussion Paper, a brief note on nomenclature is required. When setting out the specific details and critiques of the projects discussed in this paper, the IFC and the IBRD and IDA are referred to by name. However, when discussing these institutions, and the World Bank Group in general, in the analysis and implications sections of the paper, all three institutions are grouped together under the heading of the World Bank, or, simply, the Bank. The assumption here is that issues arising out of the public criticism of private sector development and privatization projects have similar application to all the institutions under study.

¹ These NGOs were: Friends of the Earth International; OXFAM UK; OXFAM/Community Aid Abroad; Human Rights Watch; Amnesty International; BICUSA; Business and Human Rights Resource Centre; AidWatch; the Australian Council for Overseas Aid; World Vision.

Empirical Analysis

Introduction

A guiding principle for the World Bank's decision-making on loans and projects is that sustainable economic growth is the best means for reducing poverty in line with the Millennium Development Goals. On the basis of this, the Bank supports and advises developing country governments, enters into partnerships with private corporations and takes on significant financial risk. Development, however, is a highly contentious field of endeavour, with the relationship between the concept of 'sustainability' and the 'economic growth model' being the focus of intense debate. Given this intellectual environment, and given the significance of the Bank's investment to the developing world, it would be surprising if the World Bank were not a lightning rod for criticism. As it is, it has become a primary target for a whole host of critics, irrespective of how well-founded their accusations.

This section of the Discussion Paper describes and then analyzes the 'Top Twenty' IBRD/IDA and IFC projects (chosen on the basis of the research method discussed in the previous section) that have been subjected to criticism by NGOs, local community groups, analysts and the Bank itself since 2000. A brief explanation of each of those twenty projects is provided. The purpose here is not to debate the accuracy of every claim – although there is little doubt that some critiques are better researched and better argued than others – the intent is merely to convey the core elements of the accusations made against the Bank and, where relevant, against the governments or corporations with which the Bank has chosen to partner.

'Top Twenty' most criticized IBRD/IDA and IFC projects:

1. Baku-Tbilisi-Ceyhan Pipeline – Azerbaijan, Georgia, Turkey (11251 (IFC))

The Project: The IFC is providing financial backing, along with design and management support, to a consortium building a pipeline from the Caspian Sea (the Azeri-Chirag-Deepwater Gunashli (ACG) Phase 1 Oil Field Project) to the Mediterranean.

Key Critics: Environmental and 'bank-watch' Northern and International NGOs (e.g. Netherlands Commission for Environmental Impact Assessment, CEE

BankWatch, FOE International, the Bretton Woods Project, the Kurdish Human Rights Project, the Baku Ceyhan Campaign, Transparency International); international human rights groups (especially Amnesty International UK); local community groups and NGOs.

Key Criticisms:

- Unconscionable legislation has been passed by the state parties (under pressure from the MNCs and Export Credit Agencies involved in the project) preventing new environmental or health legislation that might impact on project revenue and also exempting the project company from a number of environmental, labor and tax laws.
- The IFC's consultation processes, especially in relation to environmental and social impact analyses, have not been properly carried out and all relevant project information has not been fully disclosed.
- MNCs have accommodated corrupt officials in order to ensure the project goes ahead. The project as a whole supports governments with poor human rights records.
- The project's design and construction plans fail to meet international and World Bank environmental standards. Environmental degradation will result from the building the pipe over a large number of fragile eco-systems (including rivers/water catchments, deserts and a wildlife protection area). After construction there is a high potential for spillage, either accidentally, through seismic activity, or as the result of sabotage by ethnic or religious groups opposing the pipeline governments.
- There is a substantial risk of lowered water quality where the pipeline crosses catchment areas – something that raises an additional concern in Georgia, where a well-established mineral water industry is threatened.
- This project will tend to create enclave economic growth only, thus leading to increases in economic inequality rather than broad-based poverty alleviation. Local economies and social systems will be placed under undue pressure by the sudden intrusion of large-scale multi-national investment.
- Legislation providing for a quick land acquisition has been passed that threatens to reduce compensation and local input into the resettlement program's design.
- Nomadic pastoralists and other local groups will be prevented from accessing all their traditional lands – this has adverse implications for their societies and cultural systems, which are tied into certain modes of land usage.
- State parties have attempted to prevent local opposition to the project.

2. Chad-Cameroon Petroleum Development and Pipeline (TDPE44305)

The Project: The IBRD and IDA are providing loans and project support for a consortium that will develop Chad's Doba oil fields, construct a 1,050 km buried pipeline from Chad to Cameroon's Atlantic Coast and install in Cameroon an offshore marine export terminal.

Key Critics: International NGOs, especially environmental groups (e.g. Friends of the Earth International) and some church-based organizations (e.g. Catholic Relief Services), as well as local coalitions of NGOs and community groups (e.g. the Chadian Association for the Promotion and Defense of Human Rights), and partnerships between Northern and Southern NGOs (e.g. Friends of the Earth-Cameroon).

Key Criticisms:

- State partners have intimidated local populations into accepting the project, causing some civil unrest – with this unrest merging into the ongoing civil war in Chad.
- This project is supporting regimes with poor human rights records and well-documented corruption.
- There is evidence both state partners have received illegal payments from companies seeking project-related contracts. Also, revenues from the project are at risk of being siphoned off to government ministers and their supporters.
- Domestic legal standards have not been met in the project-enabling legislation passed by the respective national governments.
- There has been a failure to disclose all the environmental and social impacts associated with this project, and a failure to properly consult with affected populations, with the result that the project design has not fully accounted for all potential problems.
- Resettlement has been undertaken, under the laws passed in relation to the project, without adequate compensation being provided.
- The pipeline goes through large sections of rainforest and over numerous rivers and wetlands. There is the strong chance of environmental degradation during the pipe's construction and oil leaks during its operation. There is significant potential for health problems among the local population.
- Unequal and unsustainable economic growth will emerge from a project such as this, and local economies and societies will be strained by the influx of outside workers.
- International standards on employment conditions have not been met in relation to local workers employed by the project and its associated businesses.

3. Cochabamba Water Privatization (Bolivia)

[related to the Major Cities Water Supply and Sewerage Rehabilitation Project (P006172)]

The Project: The IBRD was implicated by critics, on the basis of its initial involvement through the Major Cities Water Supply Project and its structural adjustment loan to the Bolivian national government, in the city of Cochabamba's water privatization, even though there was not a specific Bank privatization project running. The level and publicity of the criticism against the Bank was such (as is the Bank's ongoing role in privatization in Bolivia) that, for the purposes of

this Discussion Paper, it was decided to include this activity in the study. In this we were guided by the Bank's own Development Communications Division, which appears to take the line that the Bank's simply saying at the time of the Cochabamba disturbances that it was not a Bank project was, if not disingenuous, at least an inappropriate (and ineffective) way of managing public perception.

Key Critics: La Coordinadora para la Defensa del Agua y Vida (a local community group with union links); The Democracy Center (run by expatriate Americans); Northern NGOs, such as the Center for International Environmental Law; associated NGO analysts and academics; extensive media coverage.

Key Criticisms:

- Aguas del Tunari (of which US-based multinational Bechtel was a major shareholder) was granted the Cochabamba water concession without a competitive selection process being run.
- The consortium was permitted to raise tariffs by 38% immediately and by an additional 20% once the connection to the Misicuni Dam had been made. Tariffs were raised by an average of 35% (although some consumers faced increases of closer to 50%). These tariffs were unconscionably high. For some sections of the population upwards of a quarter of their income would have had to go on water supply payments.
- In some cases citizens were prevented from accessing their own, private wells by the company.
- There was little or no community consultation in relation to the water privatization process.
- The World Bank supported, in its general country assessments, full cost recovery by private providers of water, thus encouraging an approach to tariffs that failed to properly consider the social good.
- Local politicians ensured that only a privatization process that included completion of, and connection to, the Misicuni Dam would be considered because they stood to make money if further investment was put into that project.
- When the water tariff increases sparked off demonstrations martial law was declared; the police and military forces fired live ammunition and tear gas at protestors in efforts to put down lawful opposition to the project.
- Local community leaders of the protests were arbitrarily jailed and harassed by the authorities.

4. UG-Bujagali Private Hydropower Development Project – Uganda (UGPE063834)

The Project: 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. The project will sell electricity to the Uganda Electricity

Transmission Company Limited under a 30 year Power Purchase Agreement. AES pulled out of the project in 2003 and a new private partner is being sought.

Key Critics: 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 made an application before the World Bank's Inspection Panel). The Inspection Panel criticized some of the ways in which Bank guidelines were implemented in the course of project planning

Key Criticisms:

- The reservoir created as part of the project will drown local eco-systems, including the Bujagali Falls, agricultural land and the local watershed and will result in long term soil degradation and the degradation of forests and fisheries.
- The Bank's Environmental Impact Assessments did not fully meet the Bank's own standards, especially in relation to the cumulative environmental impact of the dam. No Sectoral Environmental Assessment was conducted.
- There was a failure to consult adequately with local populations about the likely environmental and resettlement impacts.
- The Bank failed to meet its own guidelines in relation to resettlement, with inadequate administrative arrangements being put in place for moving and compensating local populations.
- The Ugandan Government has been accused of corrupt practices in relation to the initial bidding process for the project. Concerns have also been raised in relation to the Ugandan Government's overall corruption record and the potential for a project this size to encourage further corruption.
- Sustainability questions have been raised in opposition to initial predictions of economic growth – especially given the impact on agricultural activities, fisheries and tourism.

5. Ghana Water Privatization Program (PO50619, PO50616, PO56256)

The Project: The IBRD and the IDA through a Country Assistance Strategy, credits and projects are assisting the Government of Ghana to lease 74 urban water systems (divided into two Business Units) to two private companies to operate and manage. Pre-qualified bidders for the leases are major transnational corporations, including Vivendi and Bi-water. Improved range and quality of water supply is promised.

Key Critics: Local Ghanaian NGOs (such as the inter-linked Ghana National Coalition Against Privatisation of Water and the Integrated Social Development Centre (ISODEC)), institutes and coalitions, as well as some Christian groups and

anti-globalization Northern NGOs, have been the key groups to take an interest in this project.

Key Criticisms:

- The Bank is pushing the Government of Ghana, through loan conditionality, to make the existing water system more attractive to private providers by restricting access to that sector of the population who can afford increased tariffs. This will ensure the system is profitable, or at least able to cover costs, prior to its sale, but does not meet social and health needs.
- The Bank is insisting that disbursement of the loan will only begin when there is clear evidence from the Government of Ghana of a commitment to private sector participation – this has forced the Government to accede to the bidding corporations' demands that the Government lower the level of investment it is requiring from providers, under the terms of the concession, for the rehabilitation and improvement of the water system.
- Only half of Ghana's population currently has access to a regular, safe water supply and the privatization process thus far does not indicate that level of access will be increased significantly.
- The tendering process for the right to operate the water system has not been transparent; the first tender process has been nullified and another process begun.
- There have been indications that prepaid water meters will be used in some urban areas; this is a violation of human rights.
- The lack of employment in Ghana will not be assisted by privatizing public services so that multinational corporations can run them.

6. Niger Delta Contractor Revolving Credit Facility – Nigeria (IFC 10683)

The Project: The IFC is providing a credit facility in order that small to medium-sized local contractors, who provide 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).

Key Critics: International and local environmental NGOs, corporate watchdog-style NGOs, anti-globalization groups and human rights NGOs have been engaged in a long running NGO campaign against Shell in Nigeria. In 2001 the CAO received a complaint against the Revolving Credit Facility from the Environmental Rights Action NGO.

Key Criticisms:

- The Bank has not met its own environmental safeguard policies and is encouraging environmentally destructive practices, especially in relation to fisheries and farming.

- There is an adverse impact on water supplies, with associated health implications, from the by-products of oil production (as well as any direct spillage).
- There is significant evidence of corruption and mismanagement on the part of the Nigerian national government and the governments of the oil-producing states/provinces. There have been long-running concerns over the national government's failure to ensure an equitable spread of the wealth from oil revenue.
- The Bank and Shell's agreeing to deal with the Nigerian Government encourages its use of coercion and, in some cases, arbitrary detention and killing in silencing opponents to the regime. The Nigerian Mobile Police have also employed oppressive tactics in protecting Shell's investments.
- The IFC failed to assess the history, activities and reputation of Shell in Nigeria or to widely consult with affected parties over project design. By having Diamond Bank administer the project IFC safeguards have been circumvented.
- There was insufficient transparency over the selection of Diamond Bank.
- International standards on employment and labor conditions have not been met by Shell contractors in Nigeria.
- The IFC's failure to consult with affected minority groups has exacerbated ethnic and social tensions incited by the operation of Shell and its contractors within Nigeria.

7. Yanacocha III Gold Mine – Peru (IFC 9502)

The Project: An IFC loan will help the Yanacocha gold mine complex in Peru (in which the IFC has an equity position of 5%) open up an additional mine at the La Quinoa deposit, along with a leach pad and ancillary facilities.

Key Criticisms: International and Northern-based environmental NGOs. Local community groups have been supported by these NGOs and have also engaged in ongoing protests against the mine, as well as taking their complaints to the World Bank. The CAO has also been involved in mediation over the Choropampa mercury spill incident.

Key Criticisms:

- The mine uses 'cyanide heap leaching' to extract gold from ore, with serious implications for local water supplies and eco-systems, along with health repercussions for local populations. Expansion of the mine will open up new water catchments to the possibility of mine-related pollution.
- In 2001, one of the mining company's trucks spilled mercury while passing through the town of Choropampa. There is now an ongoing dispute between local residents, the mine and the IFC over the mine's operation.
- Local populations have not been consulted with or fully informed as to the mine's environmental impact.

- Accusations of corruption in the relationship between Newmont and Peruvian officials have not been adequately investigated by the IFC.
- The local municipality's declaration of their wish to limit further expansion of the mine has been ignored by the IFC.
- The IFC didn't recognize the local population as 'indigenous' for the purposes of their impact assessments, even though the Peruvian Constitution deems them 'indigenous'.
- Contractors from outside the region and the urban migration of those displaced from their land by the mine has led to fracturing of local social structures.
- Extraction industry employment is not sustainable, although the environmental effects of the mine which will last well after it has closed.
- People forced to migrate following the mine's opening in 1993 have not been adequately compensated.

8. Lesotho Highlands Water Project – Lesotho, South Africa (P001396 & P001409)

The Project: Phase 1A involves construction of the Katse dam in Lesotho, a tunnel system across to South Africa and the 'Muela hydropower station supplying electricity to Lesotho. Phase 1 B includes construction of the Mohale dam, a weir at Matsoku, a tunnel system to the Katse dam and another tunnel system to South Africa's Vaal River System.

Key Criticisms: International and Northern NGOs with an environmental and World Bank focus, such as the International Rivers Network; local NGOs, although they have not been as successful in gaining publicity for their claims. There has been significant international press coverage of the corruption cases.

Key Criticisms:

- Several Northern corporations have been convicted in Lesotho courts for bribing the Lesotho Highlands Development Authority. The World Bank did not adequately investigate the activities of contractors to the project once bribery allegations became known.
- The resettlement and compensation plans prepared as part of the project design, while adequate in conception, have not been able to accommodate the larger than anticipated numbers of people (approximately 30,000) affected by the project. Insufficient consultation with affected populations on this issue resulted in broad-based community dissatisfaction and protests in 2001 that led to people being beaten by local police.
- Watersheds for over 40% of the country will be affected by the time the project is completed. There are also significant problems in respect of soil erosion and river ecosystems.
- Significant areas of agriculturally productive land have been flooded, with implications for the economic sustainability of local populations.

- The marked economic inequality between foreign contractors and local workers, along with fast-paced economic change, threatens traditional authority and family structures.
- 1998 protests against the Lesotho government, and, indirectly, the water project, were put down with the help of the South African military
- Attempts to protest against working conditions or to unionize have been suppressed.

9. Manila Water Privatization Program – The Philippines (IFC 11232)

The Project: The IFC provided a loan and advisory services to the Philippines Government to privatize the water and sanitation sector. The Manila metro area was divided into two zones and tendering the supply systems out to two private providers with the Manila Water Company Inc (partnered with Bechtel) winning the East Zone concession and Mayniland Water Services Inc (partnered with Suez) winning the West Zone.

Key Critics: There has been a high level of local antagonism toward the privatization outcomes, with a number of local NGOs developing in response (e.g. the Philippine Water Vigilance Network (Bantay Tubig)). International NGOs and media have been interested in the involvement of MNCs in the program.

Key Criticisms:

- The Philippines Government raised tariffs, without increasing services or meeting social need, prior to the division and sale of the system in order to make it more attractive to private buyers.
- The World Bank wanted the water supply system privatized because the Metropolitan Waterworks and Sewerage System had an outstanding loan from the Bank.
- The Mayniland Water Services Inc has been accused of over-charging customers more than 2,000m pesos in total.
- There was a lack of consultation with the affected population and insufficient investigation as to what their true water supply needs were; no alternative to privatization was canvassed.
- Tariffs have been raised by the private providers to such an extent that the poorest citizens are effectively precluded from accessing regular, clean water supplies. The private companies have not met the conditions of their contracts and have instead profit-taken at the expense of the quality and coverage of their service.
- In order to protect profits, the private providers have prevented communal pump-sharing, thus directly denying the access of the poorest citizens to clean water.
- As a result of the privatization process, large numbers of MWSS employees (approximately 3,000) lost their jobs and there no program for re-training or re-hiring was implemented.

10. Nam Theun Hydroelectric Project (02) – Laos (P076445)

The Project: An IBRD/IDA Partial Risk Guarantee and Credit is being sought by the Nam Theun 2 Electricity Consortium to build a dam on the Nam Theun River, along with a reservoir, a hydro-powerhouse and a transmission line to the Thai national grid. The electricity generated will be sold for foreign exchange. Ownership will be transferred to the Laos Government after 25 years. A final decision to support this project has yet to be made by the Bank.

Key Criticisms: International environmental NGOs and development-oriented NGOs have been major critics of this project – local groups have had a far lower profile. The project has also attracted a significant degree of academic analysis.

Key Criticisms:

- The dam will cause large-scale degradation to existing river and catchment eco-systems. A pristine tropical forest, one of the last in South-East Asia, is also threatened.
- Logging in the reservoir area in preparation for the dam has already had a serious impact that eco-system and is contravention of the World Bank's own standards.
- There are estimates that approximately 4,500 indigenes will be forced to relocate, even though they have not been consulted on this.
- The Laos Government is preventing any major dissent against the project being heard.
- The project has not met the World Commission on Dams guidelines or the World Bank's own standards on consultation and information exchange with affected populations.
- Agreed guidelines on logging in the reservoir area were not upheld by the Laos Government.
- Important river fisheries on which approximately 150,000 people depend will be adversely affected by the dam.
- There are concerns that there is not a sustainable demand for the electricity to be generated by the project.

11. Land Reform and Poverty Alleviation Pilot Project– Brazil (PO06475)

The Project: An IBRD loan helped set up a Land Purchase Fund to finance market-based land purchases for approximately 15,000 poor farm families across five of Brazil's North-East states. The project worked in conjunction with other capacity building initiatives.

Key Criticisms: Applications to the International Panel were received from a coalition of local advocacy groups, calling itself the National Forum for Agrarian Reform and Rural Justice, and were supported local civil society organizations, church representatives and representatives from the Federal Congress. Several

international NGOs, such as Environmental Defense International, have also taken an interest in this project.

Key Criticisms:

- The land opened to purchase under the project was often not sufficiently productive to warrant the debt incurred, and resulted in an unfair market developing. Some of the land should have been appropriated under the less expensive Federal Government land reform process.
- The loan repayment arrangements are such that a large number of families have run into serious debt servicing problems and were for too long denied access to existing micro-credit facilities (although this is now rectified).
- There was inadequate consultation with the affected populations in the design of the project and its implementation, with the result that a large number of participants went into the scheme without realizing the extent to which they would be liable for loan repayments and the loan conditions they were required to meet.
- The project has failed to recognize the extent to which rural elites influence governance in the Brazilian States and the power they have to impede State-based, as opposed to National, land reform.
- The project design has been dominated by the concerns of Brazilian governments not the communities affected.

12. Puerto Quetzal Power Project – Guatemala

[Investment Agreement, Puerto Quetzal Power Corp. and International Finance Corporation (Mar. 31, 1993)]

The Project: The IFC provided a loan to help finance Puerto Quetzal Power Corporation, backed by Enron, to build a barge-mounted electricity generation plant in order to sell electricity to Empresa Eléctrica de Guatemala S.A. This was part of the \$761m worth of loans in total the IFC provided to Enron in finance for operations in the developing world.

Key Critics: The US Senate Committee of Finance and the US Internal Revenue Service reports have been picked up by the international media, resulting in considerable public exposure of this.

Key Criticisms:

- The main criticism of the Bank in relation to this project is that it became involved with an investment partner, Enron that engaged in illegal tax avoidance. In the aftermath of the collapse of Enron, this project received considerable publicity as a result of the US Senate investigation in Enron's activities in Guatemala.

13. Grupo M – Dominican Republic, Haiti (IFC 20744)

The Project: An IFC loan has been provided for the phased development of a Manufacturing Export Zone on the border between the Dominican Republic and Haiti. 40 'factory units' will be built on the site by Grupo M and leased by companies producing apparel, footwear and other products. Part of the loan is also to provide finance for Grupo M's own apparel manufacturing operation.

Key Critics: International union groups have been lobbying the IFC against their supporting this project. Local unions, NGOs and community groups have also expressed opposition to the project.

Key Criticisms:

- Workers from Grupo M who have argued for fairer employment conditions or who have attempted to unionize have been sacked. Using its own private security force, the company has intimidated workers who seek to speak out about working conditions or seek to organize or collectively bargain.
- The governments of both countries have shown themselves in the past to be either unable or unwilling to ensure international labor standards are met.
- Development of this kind tends to only result in enclave growth and does not diminish economic inequality.
- The zone is located on high quality agricultural land that is central to the livelihoods of the local population and can be cultivated in a sustainable manner.
- The use of military and police to protect the free trade zone and ensure the appropriation of land has effectively led to the denial of the affected population to have any critical input into the project implementation process.

14. Reform Project for the Water and Telecommunications Sectors – Paraguay (and Argentina) (P007926)

The Project: An IBRD loan was provided for institutional development assistance, advancing decentralization of infrastructure responsibilities, establishing a regulatory framework to oversee both public and private providers, privatization and improving the quality and range of sewerage infrastructure in Asuncion. This project is linked to Yacyreta Hydroelectric Project – P007926 was one of the funding sources for that project, as was the SEGBA v Power Distribution Project (Argentina) P005968.

Key Critics: Local community activists and NGOs with some support from Northern and international NGOs have been the key players in criticising this project; there has also been a significant level of academic analysis.

Key Criticisms:

- Plans to raise the water level of the Yacyreta dam by another 23 feet will displace thousands of people beyond those who have already been dislocated.
- There have been allegations of corruption in relation to the decision to build the dam in the location that was selected.
- It is claimed that the dam is polluted, especially from sewerage waste, and is responsible for the large number of health problems, including malaria, dengue fever; diarrhea, anemia, parasitic infection and skin diseases.
- When it became clear the Bank's safeguards and conditions were not being met it failed to act on that information in a prompt and adequate manner.

15. Argentina Water Sector Reform Program – Argentina (P005945, P005977, P006046)

The Project: This is a series of projects, linking in with general structural adjustment programs and loans, relating to the capacity-building and privatization of the Argentinian water supply system. The first projects were aimed at the privatization of the Buenos Aires water service; later projects are now attempting to encourage the same changes in regional and medium sized cities.

Key Critics: Local NGOs and community groups/activists have been instrumental in ensuring criticism of this program has garnered significant publicity. International academic institutions and NGOs focussing on globalization and water rights have also picked up on these criticisms (e.g. International Institute for Environment and Development – Latin America).

Key Criticisms:

- Critics argue that after 10 years of a privatized water supply in Buenos Aires there have been large tariff increases (well over 100 per cent) but little improvement in enabling the poor to have improved access to regular, clean water supplies.
- Aguas Argentinas (of which the Suez owns 46%) focuses only on those services and areas that guarantee good profit margins.
- The question of water access is also tied into that of land ownership in that the poorest communities are often those without formal property rights (e.g. outlying squatter settlements) and therefore without the legal means to pressure both state and private providers into providing services.
- There are claims the tendering process and the tariff-setting process have been corrupted; the Environment Minister responsible for much of the decision-making on the Buenos Aires water privatization has been charged with 'illicit enrichment'.
- Argentina's regulatory institutions lack the capacity to adequately monitor private providers and ensure consumer redress in relation to service failure.

- The privatization process was entered into largely as a result of World Bank pressure and designed to fit the Bank's privatization template – alternative approaches were not considered seriously.
- Over 7,000 workers lost their jobs as a result of the privatization.

16. Pangu Hydroelectric Project – Chile (IFC 2067)

The Project: The IFC provided funding to Chile's largest electricity corporation, and subsidiary of the Spanish parent company, ENDESA, to commence a long-term plan to construct six hydroelectric dams along the Bio Bio River. The first dam to be constructed, between 1992 and 1997, was the Pangu Dam. The next, and currently under construction, is the Ralco Dam. This is not being supported by the Bank.

Key Criticisms: A coordinated campaign involving international environmental and human rights NGOs and local community activists grew up around this project. While the Pangu Dam has been completed for several years, the Ralco Dam project is now incurring criticism from similar organizations, with the World Bank being targeted because the Pangu project prepared the way for the Ralco Dam. The Inspection Panel was unambiguously critical of a number of aspects of the Pangu project.

Key Criticisms:

- Members of the indigenous Pehuenche community were forced off their traditional lands by the Chilean government, their ongoing opposition has resulted in civil conflict between them and private militias funded by corporations associated with the dam project. More members of the Pehuenche community are now facing resettlement as part of the Ralco Dam building process.
- There was a general failure on the part of the IFC and its private partners to consult with the affected parties over the terms and processes of resettlement.
- The Chilean Government has forceably prevented indigenous peoples to express their opposition to the projects.
- The IFC failed to fully prepare and implement all environmental and social safeguards required for the sustainable operation of this project. They also failed to release all appropriate project-related information to affected populations.
- The Pangu project resulted in large areas of forest and eco-system inundation and the Ralco Dam now threatens to do the same thing.

17. Gas Sector Development Project- Bolivia-Brazil Gas Pipeline (P006549)

The Project: The IBRD is providing a loan and a Partial Credit Guarantee to a consortium to construct 557 km of gas pipeline connecting Rio Grande in Bolivia to Corumba in Brazil, and then 2,593 km of pipeline in Brazil from Corumba to

Porto Alegre and the building of the Penapolis compression station.

Key Critics: A coordinated campaign by international, Northern and Southern environmental NGOs has formed in opposition to this project (e.g. World Wildlife Fund, Friends of the Earth, Amazon Watch). Local community activist groups and some indigenous groups have also publicly opposed the project (e.g. Chiquitano Indigenous Organization).

Key Criticisms:

- The IBRD is partnering with private corporations that have a record of environmental abuse and it is failing to properly implement its own standards in relation to environmental and social protection and is failing to appropriately consult with affected populations.
- The MNC's involved exerted undue pressure on the Brazilian and Bolivian Governments in approving project-enabling legislation that protected the corporations' interests.
- This project involves the destruction of areas of primary tropical rainforest ecosystems. Soil erosion associated with the pipeline construction has not been controlled.
- The infrastructure required to construct and maintain the pipeline also opens the area up to loggers, miners and short term farmers, with correlated adverse environmental impacts.
- The pipeline runs through lands owned by indigenous peoples and there have been no substantial measures to redress the economic and social problems associated with its construction and operation.

18. Papua New Guinea Governance Promotion Adjustment Loan (P069771)

The Project: This IBRD loan supports PNG's reform program, and builds on ongoing structural adjustment activities, in relation to economic management, governance and anti-corruption measures.

Key Critics: While there hasn't been a large coordinated campaign opposing this project, there have been a number of local NGOs and opposition groups whose claims are being picked up by environmental NGOs and the media in Australia and the Pacific (e.g. Eco Forestry Forum, Australian Conservation Foundation).

Key Criticisms:

- The World Bank has imposed a privatization regime onto PNG as a condition of further loans and assistance without fully exploring the specific circumstances of PNG's governance and society – many of the problems relating to privatization in PNG can be linked back to the uncritical use of such 'templates'.
- The PNG government was required to meet certain environmentally sound criteria in relation to its forestry management before receiving all of the loan, but the Bank has

failed to meet its own standards on this and allowed the loan go through even though those conditions have not been met.

- The Bank's failure to insist on loan criteria that placed a moratorium on further logging concessions being granted has exposed PNG to greatly increased reduction in its forests and associated bio-systems.
- Large demonstrations in May 2001 against the PNG Government's privatization activities resulted in three people being shot by security forces.

19. Coal and Forestry Sector Guarantee Facility Project – Russia (P057893)

The Project: An IBRD/IDA Partial Risk Guarantee project provides for Guarantee Contracts (managed by the Federal Center for Project Finance) to be issued to private investors in the coal and forestry sectors that minimise the interference of the Russian Government in private transactions where the Government, for example, raises taxes, alters licences or confiscates goods.

Key Criticisms: Several local and European-based NGOs have been lobbying the IFC and conducting a public campaign on the twin issues of IPDP and forestry safeguard compliance.

Key Criticisms:

- The Bank has failed to prepare an IPDP for this project even though it is acknowledged that, given the location of much of the coal and forestry industries, indigenous peoples will be affected. Instead, the Bank has placed the onus on the private investors to submit plans with their applications. The key problem here is that the consultation requirements the Bank places on itself in the preparation of IPDPs are not placed on private investors.
- No attempt has been made by the Bank to meet its upgraded forestry safeguards in the preparation of the project framework. As with IPDPs, too much responsibility has been placed on the private investors to incorporate safeguards into their proposals.

20. Corredor Sur Toll Road Project – Panama (IFC 8526)

The Project: The IFC supported ICA Panama on a Build-Operate-Transfer project (transfer occurring after thirty years) to complete a 19.5 km toll highway linking the central business district of Panama City to eastern districts and the city airport. Property development, called 'Punta Pacific', involving land-fill and mainland areas is also part of the project.

Key Criticisms: A combination of Northern NGOs (e.g. Centre for International Environmental Law) and local NGOs have come together in a loose network in opposition to this project.

Key Criticisms:

- In 2000 the Central American Water Tribunal found the builders and owners of the project, as well as the Government of Panama, culpable of causing environmental degradation (especially of the Panama Bay ecosystem) and related health problems among the local population.
- The landfill islands created as part of the Punta Pacific development affect the Bay's ecosystem, especially in relation to the dispersal of sewerage outflows.
- A civil law suit has been brought against the company on behalf of people who allege their property was damaged during the course of the highway's construction, or had its value significantly reduced as a result of the project, for which they have thus far received little or no compensation.
- The Ministry of Finance is being investigated for the illegal sale of land in relation to the project (the redevelopment associated with the former airport).
- There was lack of transparency regarding the arrangements between the Government of Panama and ICA during the course of the project.
- Residents forced to resettle as a result of the project were not able to collectively bargain with ICA and in a number of cases received inadequate compensation.
- There have been claims of intimidation against residents who were reluctant to leave and there has been ongoing low-level conflict with those residents who have remained.

This list of twenty projects provides only a partial snapshot of the nature of the Bank's exposure to human rights-related criticism. There were a number of projects logged in the research as receiving criticism, but which did not, for a variety of reasons, meet the criteria for making the 'Top Twenty' list. And there were other projects, equally, if not more, criticized from which the Bank either withdrew or into which it did not enter. Both lists are set out below.

Projects with Bank involvement that did not meet all search criteria

Basic Resources International Ltd. Oil (Guatemala)

Bogoso Gold Limited (Ghana)

Bulyanhulu Mine (Tanzania)

Chixoy Dam (Guatemala)

Drummond Coal involvement in Colombia

Ghana Australian Goldmines (Ghana)

Kumtor Gold Mine (Kyrgyzstan)

Lihir Gold Mine (Papua New Guinea)

Pak Mun Dam (Thai)

Sadiola Hill Gold Mine (Mali)

South African Water Privatization Program

Syama Gold Mine (Mali)

Zambia Consolidated Copper Mines (ZCCM) Privatization Program

Criticized projects not supported by the World Bank

Arun III Hydro-electric Project (Nepal) (The Bank withdrew this from consideration in 1998)

Camisea Pipeline (Peru)

Ilisu Dam (Romania)

Konkola Copper Mines (Zambia) (The IFC has suspended its involvement in this project, but may re-activate it if a new private partner is prepared to invest in it.)

Narmada Dam (India) (The Bank exited this project in 1993)

Three Gorges Dam (China)

Qinghai Resettlement Project/Western Poverty Reduction Project (China) (China rescinded its request for assistance and the Bank's Board of Executive Directors decided not to support this project in 2000)

Yadana natural gas pipeline (Burma) (The Bank exited this project in 1998)

As can be seen above, key projects the Bank evaluated and then pulled out of, or elected not to support include such large scale initiatives as the Three Gorges Dam project (China), the Narmada Dam project (India), the Yadana natural gas pipeline (Burma), the Arun III Hydro-electric Project (Nepal), the Western Poverty Reduction Project and the Qinghai Resettlement Project (China). Other activities that received considerable criticism, but with which the Bank was never involved, include: the Ilisu Dam (Romania) and the Camisea gas pipeline (Peru). The majority of these were major construction projects, and all incurred significant public criticism, especially the Narmada and Three Gorges dam projects.

Similarly, the Bank-supported projects that have been criticized, but were not listed in the 'Top Twenty' because they did not meet all the research criteria, are all either extraction industry, hydro or privatization projects. The key examples here are the Pak Mun Dam project (Thailand) (excluded because it did not involve private partners), the Chixoy Dam (Guatemala) (excluded on the basis of timeliness, although low-level criticism is still ongoing), the Kumtor gold mine (Kyrgyzstan) (excluded because the only criticism was in the form of a tort-based action), the Bulyanhulu gold mine (Tanzania) (excluded because it was MIGA-funded only), and the water privatization program in South Africa (where the Bank had only a tenuous involvement with the key elements of the program). On the whole, those projects not included in the final list indicate that the 'Top Twenty' sample is a relatively robust indication of the types of private sector-oriented development projects that are receiving substantial criticism. It may be that they also represent the most-criticized projects across the board, but it is not the object of this paper to determine that.

On the question of whether the composition of the above lists reflects the Bank's own evaluation of project quality, the Bank's Operations Evaluation Department's 2002 Annual Review of Development Effectiveness makes for interesting reading (bearing in mind this does not cover the IFC's activities). The Review found that the Energy and Mining sector and the Water Supply and Sanitation sector received the lowest project performance satisfaction ratings (adjusted for disbursements) of all the Bank's sectors, with the Energy and Mining Sector receiving the largest share of Bank disbursements of any sector (18 per cent). Only one of the projects listed in the 'Top Twenty' – the PNG Governance Promotion Adjustment Loan – was included among the specific operations evaluated for the 2002 Annual Review. This suggests that there are a number of projects in the Energy and Mining and the Water Supply and Sanitation sectors that the Bank itself deems as not being fully satisfactory, yet which are not garnering significant public criticism. While the Bank's Quality Assurance Group's project quality evaluations (at entry) and its reports on portfolio performance tend to back up the OED's findings, it is worth noting that they also find that IBRD/IDA Guarantees, which apply to some of the activities listed in this Discussion Paper, have an overall satisfactory performance rating.

What perspective do we get of the 'Top Twenty' list if the Bank's success stories are taken into account? As noted earlier, it is difficult to identify Bank projects that are publicly applauded, not least because NGOs tend not to campaign in support of Bank projects. Looking at the Bank's own documentation, the 2002 Review of Development Effectiveness indicates that the sectors with the highest satisfaction rating are education, public sector governance and transport. Overall, the Review dedicates the major portion of its space to the analysis of health and education and water access. Clearly these are issues of high importance to the Bank, possibly because they are tied into explicit Millennium Development Goals, while, and by contrast, extraction industry and hydro-power projects are rolled into the catch-all Development Goal of 'Eradicate extreme poverty and hunger' and are not as explicitly considered. The Quality Assurance Group's 2001 Annual Report on Portfolio Performance indicates that the part of the Bank's portfolio classified as coming under the Poverty Reduction and Economic Management Network was the most 'at risk', while that coming under the Finance Network was the least 'at risk'. The World Bank's own public information material follows the trend of the Development Effectiveness Review, with the focus of its key publicity document, 'Working for a World Free of Poverty', and its web-based 'Project Profiles' being on education, health, environmental and agriculture initiatives. While this once again partly reflects the wording of the Millennium Development Goals, the absence of references to large-scale construction or water privatization initiatives is striking. If such projects are successful, clearly it is not in a way the Bank seeks to publicize.

Key findings

The Projects

Oil, dams and water

The first finding of this study is that three types of activity attract high-levels of criticism: oil and gas projects, dam/hydro-electric projects and water privatization programs. While this is partly due to the research parameters, the above discussion over the Bank's own evaluations of its projects suggests this finding is generally robust.

One conclusion that can be made here is that projects which instigate a high degree of change within a relatively short period of time – especially where there is a physical, immediate impact on a population's daily life – carry a high risk of attracting criticism. This is not surprising; public policy analysts and practitioners have long been aware of the political risks associated with instigating top-down change that impacts on defined groups, and a large body of policy implementation literature has evolved in response to this dilemma. Likewise, there is a strong tradition among development NGOs that is critical of 'top-down' policy formulation and implementation and instead promotes more 'bottom-up' policy-making, usually phrased in terms of community-based development. The Bank itself has conducted research on this issue and instigated several changes that attempt to overcome the 'top-down'/'bottom-up' dichotomy – the Comprehensive Development Framework can be viewed as one outcome of this process.

It is with interest, therefore, that we note the emergence (re-emergence?) in Bank policy of a High Risk/High Reward strategy in relation to water resources. Issued in 2003, it has already attracted a great deal of adverse NGO attention precisely because it is seen to advocate the continuation of 'top-down' development decision-making that fails to refer adequately to local-level needs. Irrespective of the claimed development outcomes of such projects – bearing in mind that just as large-scale, 'top-down' projects have been criticized for failing to provide a holistic response to poverty, so too have community development approaches been criticized for failing to alleviate economic deprivation in a timely manner – there remain clear problems with their propensity to incite criticism, thus adversely impacting on other Bank strategies that seek to promote consultation, and long-term development partnerships, with beneficiary populations. This issue of conflicting policy directions *within* the Bank is a theme that emerges in a number of the findings within this section.

LAC and SSA

Projects in Latin America and the Caribbean (LAC) (10 projects) and Sub-Saharan Africa (SSA) (5 projects) dominate the Top Twenty' list. This in part reflects the large number of activities the Bank supports in those two regions, with current commitments of the IBRD/IDA totalling \$19.8 billion in LAC and \$15.9 billion in SSA. The sheer level of expenditure is not the whole story; Bank commitments in South Asia currently stand at \$17.8 billion, for example, yet only two projects were identified as attracting significant criticism within the parameters of this study. This raises the suggestion that there is something in the nature of Bank-supported projects in the LAC and SSA regions that increases their tendency to transgress accepted standards, or at least increases their susceptibility to criticism. What is of interest here is the correlation between the comparatively high levels of project criticism and the failure of these regions over a ten year period (1992–2002) to record significant improvements in income per capita. No doubt ongoing development failure instigates criticism. It is probable that the factors which are raised in critiques have some linkage to those which help entrench poverty in these areas. In line with this, there is a clear correlation between the listed LAC and SSA projects and the presence of corruption allegations against the state partners in those projects. This finding is of limited use, however, as most projects listed in this Discussion Paper, as well as those which did not meet the research criteria, were criticized for the presence of inappropriate partner government behaviour of some sort, ranging from extensive, proven corruption through to transparency problems that may be caused as much by lack of capacity as by intentional wrongdoing. The LAC and SSA regions may contain governance structures and institutions that are especially prone to encouraging problematic behaviours, but that is not something that is able to be ascertained within the parameters of the current research.

A more defined correlation was that between projects located in the SSA region and accusations that the governments concerned actively sought to suppress, sometimes threaten and, in some cases, physically harm opponents of the projects. On the basis of this data, it can be concluded that there is a greater propensity for World Bank partner governments in the SSA region to use their monopoly on the legitimate use of force in an illegitimate manner during project implementation (the fact that their monopoly, and sometimes their legitimacy, is often tenuous may explain this). However, a more extensive body of data than that available in the current study is required in order to fully explain exactly why it is that projects in these two regions are so heavily criticized.

The BTC Pipeline Project

The Baku-Tbilisi-Ceyhun Oil Pipeline project is clearly generating the largest amount of public criticism of any of the projects identified. Database searches of major newspaper stories from the past three years indicate the project has received twice the level of adverse coverage as the next most reported, the Chad-Cameroon Pipeline. This interest has been fed by a number of well-coordinated NGO campaigns opposing the project prior to the IFC's 4 November 2003 decision to provide the loan. These campaigns have been comparatively well-resourced and well-researched.

They have been conducted by long-established environmental and development-focused international and Northern NGOs, and some human rights NGOs, working in conjunction with local groups. And they have used versions of the Bank's own tools – economic and social impact analyses (the most commonly cited being that produced by the Netherlands Commission for Environmental Impact Assessment) – to support their arguments. The IFC recognizes the level of critical interest this project is receiving and has dedicated a section of its internet website to presenting the project details, impact assessments and plans and its responses to NGO claims.

The BTC Pipeline was criticized in relation to nearly every category covered in this Discussion Paper. Recent events – the fluid political situation in Georgia, terrorist activities in Turkey and the ongoing corruption and political oppression concerns in Azerbaijan – have served to increase the intensity of scrutiny. Taking this into account, and given the extent of the IFC's financial commitment and, especially, its commitment to ensuring the environmental, social and political sustainability of this project, the BTC Pipeline is shaping as the litmus test of the ability of the IFC, and the World Bank Group as a whole, to use large-scale oil and gas projects to achieve poverty alleviation through 'sustainable economic growth'.

The fact the IFC elected to back this scheme when projects that had received similar levels of criticism, especially the Three Gorges and the Narmada dam projects, ultimately were not supported indicates that the Bank considers criticism of the BTC pipeline to be unfounded, or that the lessons learned from earlier projects are no longer applicable in light of the Bank's improved safeguard policies and assessment techniques. This stance is of a part with the Bank Management's draft response (reported by the Financial Times, 3 February 2004) to the recent Extractive Industries Review (EIR) final report, where there was an explicit rejection on economic growth grounds of the EIR's recommendation that the Bank cease financing oil and coal projects in the developing world. The introduction of the High Risk/High Reward strategy in relation to water resources reflects similar sentiments.

Decisions such as that on the BTC pipeline and the EIR response highlight the policy tension within the Bank between sustainability and economic growth – they are not always as compatible as the Bank's mission assumes. Laissez-faire notions of growth-encouraging environments do not sit easily alongside Bank initiatives to improve communication with civil society, to advance Corporate Social Responsibility (through the CSR Practice Section), to begin to apply research on issues such as pro-poor privatization and to produce a workable CDF. They also risk any reputation the Bank may have among local populations, and critics, as an agent of sustainable poverty alleviation.

Privatization programs and water

It was clear from the twenty projects considered in depth that the privatization projects or activities that received significant criticism did not stand alone; they were all linked into broader 'programs' or structural adjustment processes and loans. A history of privatization preceded the specific

activity that sparked the high levels of criticism, and often that history was fraught. Bringing in privatization reforms that result in sharp increases in tariffs – no matter how economically appropriate – risks extensive local criticism and, in some cases, civil disruption.

As has been noted above, the activity that most commonly ignited any pre-existing opposition to privatization was the attempt to privatize the supply of water. Changes in the conditions under which water is accessed have an immediate, physical impact on local populations in the way the sale of central banks, for example, do not. And, while the available data might suggest there is a general long term benefit in privatizing infrastructure, in the short term there can be clear income and asset distribution inequalities and an initial failure for the impact on the poorest of price increases to be balanced out by increases in access and quality.² The demonstrations in Papua New Guinea, even though they were not directed at water privatization, involved labor market (linked to public sector reforms) and social structure change that meant significant sections of the local population were directly affected by privatization. Overall, the evidence in this Discussion Paper supports the view, expressed by Nellis et al, that privatization programs frequently suffer from failures of change management, where the economic justification of the process is prioritised at the expense of the politics of transition.³ Whether or not casting this debate in human rights terms – if that is even possible – will assist in improving such transition and the quality of the development outcomes is picked up in the Program Implications section of this Discussion Paper.

World Bank or IMF?

While the sources used in this paper for the most part refer to specific projects, it is important to note that they are not fully representative of the public information concerning the World Bank as a whole. The process of data collection for this Discussion Paper revealed the extent to which little distinction is made in general reportage and NGO criticism between the work of the World Bank and that of the IMF. Certainly, in the case of the print media, the discrepancy is stark. Since 1 January 2000, the BTC pipeline project has been easily the most reported of the projects identified in this paper, being mentioned in approximately 250 articles in major newspapers (the rest of the projects in the list, below the top three, rated mention in 40 articles or less each). By contrast, there were approximately 1,100 articles over the same period that mentioned the IMF and World Bank in the same sentence while discussing, within the same paragraph, protests. The bulk of public reporting in the North appears to assume all IFIs are the same and deserving of the same criticism.

When networks of Northern and Southern NGOs run organized campaigns against particular projects, the distinction between the actions of the Bank and the IMF is made far clearer in their media releases, internet postings and reports. However, and in relation to larger NGOs especially,

² See Birdsall, N & Nellis, J. “Winners and Losers: Assessing the distributional impact of privatization”. *Centre for Global Development, Working Paper Number 6, May 2002*. (2002)

³ Nellis, J, Menezes, R & Lucas, S. “Privatization in Latin America: The rapid rise, recent fall, and continuing puzzle of a contentious economic policy”. *Centre for Global Development Policy Brief*. Vol 3 (1). (2004)

specific project criticism often exists within a broader framework of anti-IFI campaigning. The effect of this is that it is not uncommon, for example, to see NGO media releases that focus on a specific Bank project, and in doing so cover a range of relevant issues and present a balanced critique, to then conclude with a general critical statement directed at both the IMF and the Bank.

The conclusion to be drawn from this is that only a few projects, such as the BTC Pipeline and, before that, the Three Gorges and Narmada dams, attract such a level of attention that they are picked out from the more generalized anti-IFI criticism and identified as 'belonging' to the World Bank alone. Specific criticism of Bank projects has a tendency to meld into the highly generalized campaign against all IFIs. That it is large construction projects which tend to stand out is perhaps not surprising given the high level of public debate in the past decade over globalization and the opportunity projects such as the BTC Pipeline afford for characterization as 'exploitative'. If this is the case, it says something disturbing about the quality of the bank's communication, and its credibility, with the public and with the development policy community.

The Criticism

Categories of criticism

The criticism of the 'Top Twenty' projects fell into seven rough categories (in alphabetical order):

- Economic and social impacts
- Environment
- Labor
- Politics and government
- Project design and implementation
- Resettlement/Land ownership
- Water access

The economic and social impacts category covered critiques that focused on problems such as enclave development, socially disruptive industry growth and failure to protect previously sustainable economic practices. The environment was a key point of criticism in the bulk of the projects, being of most importance in those where existing eco-systems were seen as being threatened by project construction. Labor issues were raised in relation to the Bank's private partners and their sub-contractors, and also in relation to partner states failing to protect workers' rights in those situations. Criticism over politics and government was focused on questions such as corruption, lack of capacity and the prevention by states of the lawful expression of opposition to a project or the manner of a project's execution. 'Project design and implementation' included issues such as consultation failure and problems with the poor application of Bank safeguards, criticisms that arose in nearly every project listed. Resettlement questions, and the appropriateness of

compensation and/or the Bank-devised resettlement programs arose in all large-scale construction projects included in the 'Top Twenty' list. The issue of water access arose primarily in relation to the privatization projects listed, but was also a key element in many of the environment-oriented criticisms, which noted the inter-linking between land and water-catchment degradation.

Specific categories and important cross-cutting issues raised by the research are picked out for further exploration below.

The environment

That there was a preponderance of environment-related criticism in the data is hardly surprising given the number of well-established NGOs that focus on the environment. What was of more interest was the extent to which the issues of health and local community economies were explicitly connected to the preservation of eco-systems. In short, there was a clear 'local population focus' to much of the environment-related criticism, rather than reference being made to global environmental issues (although the criticism of specific projects would sometimes be related back to these larger concerns). Also of interest, and in line with an earlier finding, was the degree to which the issue of access to potable water was raised within the context of the environmental claims and also linked back to definitions of poverty. Once again, this highlighted how important the question of water access has become in the development community.

Overall, this study supports the already well-recognized fact that major environmental NGOs are clearly in favour of a holistic approach toward development where environmental protection is the central component to a whole range of basic development needs, including: sustainable economies; sustainable employment; access to clean water; protection of indigenous communities and protection for social and cultural structures. If a comprehensive local development alternative to the Bank's economic growth model was present at all in the criticism then it was found in the material presented by international environmental NGOs. Where these organizations' critiques were less forthcoming, however, was on the linkage between sustainable development and international economic and trade relationships. While increased analysis of this topic may emerge, especially in the aftermath of the collapse of the September 2003 World Trade Organization talks in Cancun, it will be some time before it filters down in any meaningful way to the criticism of specific projects. Overall, given the concerns of the critics and devotion to local-level solutions, it is especially surprising how little attempt was made by environment-focused critics to present, at least in parallel, their arguments in human rights terms, despite the ample grounds upon which they could do so. This point is pursued in the Human Rights Analysis section below.

Failure to consult

The most consistent criticism, raised in relation to every project bar one, is that the Bank, its private partners and the recipient states failed to consult sufficiently with affected populations during project design and implementation processes. This criticism was applied to activities in all sectors and in relation to nearly all safeguards the Bank nominally has in place, including environment and social impact analyses, resettlement plans, community development plans and indigenous peoples development plans.

The initial point that needs to be made here is that the sample from which this finding is drawn is, to a degree, self-selecting because of the use of the Inspection Panel and the CAO as sources of data. Both of those bodies are charged with responding to complaints from affected groups who believe the Bank has failed to meet its own performance criteria. The failure to consult with such groups in the first place will be a major incentive for a complaint to be made, so it should not be surprising that this is such a common criticism in the projects listed.

Second, and accepting the data sample is less-than-perfect, the dominance of this one criticism suggests the Bank's problems in promoting acceptable levels of consultation and information sharing are long-term and, possibly, systemic. In relation to privatization programs there are clear concerns over the (perceived) imposition of private provider-oriented blueprints without allowing other service-delivery approaches to be considered, even though there has been considerable debate in industrial countries, and in the Bank itself, over the costs and benefits of privatization.

In the case of large-scale construction-oriented projects, a critical reading of the information sources used in this paper indicates that there are entrenched differences of opinion between the Bank and environmental NGOs on the value of these activities to the alleviation of poverty. The issue of community involvement in development decision-making is a central point of dispute here and may only ever be resolved to the satisfaction of some NGOs if the Bank were to refuse assistance to all pipeline and dam-building activities (in a manner similar to the Extractive Industries Review recommendations). Also, once the decision to instigate a major construction or privatization project has been made, the Bank and its private partners (if not the states) operate within the parameters of economic feasibility, in part defined by the need for profits over the longer term so as to recoup on their investments. The level of resources, including time that can be dedicated to consultation processes must fit within those parameters, and there may be a substantial difference between what it is economically optimal and what is socially or politically optimal. Finally, there are differing, and sometimes competing, forms of accountability binding the parties to a major project, as well as informal and political obligations. In such circumstances, while a consultation process may be agreed upon by all parties, its implementation will be indelibly marked by their respective accountability needs and obligations.

Third, the accusations of consultation failure, even though NGOs may sometimes appear to deliver them by rote, deserve to be taken seriously by the Bank if only because it has expended

considerable effort over the past decade and a half in attempting to remold itself as an IFI that conscientiously ensures the participation and safety of developing communities. Once again, this highlights the policy conflict within the Bank over privatization, the environment, indigenous peoples and cultural maintenance in developing countries. In light of this, and the Bank's general dedication to the Millennium Development Goals, the consistency with which the failure to consult on project design and implementation is raised as a criticism should give the Bank pause.

Resettlement

The question of resettlement arises most often in relation to large construction projects where it is necessary to appropriate land. This helps explain the degree to which it has appeared in this paper as the focus of criticism. The more important point to note, however, is that in every identified project where it could be an issue, it *is* an issue. Furthermore, in all of those projects an impact analysis and a resettlement plan were produced. Several potential, and possibly alternate, conclusions can be drawn from this. First, that the general criticism regarding consultation failure has special relevance when it comes to resettlement issues because the support of those affected has a direct bearing on the possibility of a positive outcome. Second, in those projects where resettlement processes were criticised there appeared to be a disjunction between the Bank's resettlement planning and the implementation of those plans by the project managers and partners (especially the state partners). Overall, this study supports the conclusion that even well-designed resettlement programs can easily fall victim to the construction schedules of large projects and the capacity deficiencies of partner states. Third, it is in the nature of resettlement to create social, and economic, problems and to draw significant criticism – the implication therefore being that it should only be undertaken when absolutely necessary. The Bank itself recognises the need to proceed with caution in relation to resettlement in its Operational Directive 4.30, which states that: "Involuntary resettlement should be avoided or minimized where feasible, exploring all viable alternative project designs." The criticism recorded in this discussion paper indicates the extent of the debate over the Bank's assessment of 'feasibility' on this issue.

Lack of human rights 'language'

Only a minor element of the criticism collected in this study was phrased in human rights terms. Even less referred to international human rights law in any meaningful way. The few occasions on which human rights were explicitly referred to were in relation to claims that the freedom of political expression had been (sometimes forceably) denied opponents of a project, or that the legislative process had been used to restrict human rights through invidious project-enabling legislation. The clearest claims of these sorts arose in relation to the BTC and Chad-Cameroon pipeline projects and the Niger Delta Revolving Credit Facility project. On the whole, however, the language in which claims were couched reflected the core concerns of the organizations making the criticism. For example, environmental NGOs talked in terms of how degraded eco-systems

impacted on the quality of life of local populations, but did not then indicate what the human rights implications of this might be or what legal obligations could be invoked. In a similar way, the Bank's project documentation set forward objectives that clearly made the link between private sector-instigated economic growth and poverty alleviation, but made no mention as to the link between poverty alleviation and the fulfilment of human rights. How sectoral-specific concerns may be appropriately, and usefully, expressed in human rights 'language' and law is explored further in the Human Rights Analysis section of this Discussion Paper.

Bank – State partnerships

Another finding to come out of this review is that it is often the Bank's partners rather than the Bank itself whose behaviour is the cause of the complaint – the Bank is implicated by association. The most obvious problems arise in relation to the partner governments, which are criticized on issues such as: their failure to ensure the equitable distribution of economic growth and project-related income; their preventing local opponents of a project to freely express their opinion; their passing of repressive project-enabling legislation; the taint of corruption, or at the very least a lack of transparency, in the manner of their awarding of contracts and concessions; their failure to uphold their responsibilities in relation to environmental and social protection programs, resettlement programs and other safeguard initiatives, and their failure to regulate appropriately the actions of private providers and operators.

The reasons for developing state failure on the above issues are manifold and have been the subject of a large body of literature in a number of disciplines, from economics to postcolonial studies. Without entering fully into this extensive debate, it is worth noting that the criticism logged in the present study repeatedly raised the twin concerns of corruption and lack of developing state capacity. Corruption was sometimes regarded by the critics as being so engrained in a political system and culture that the only question the Bank should consider was how to disengage itself from dealings with the country concerned. In other cases, the nature of the development relationship between these countries and private corporations and the Bank was seen as fostering corrupt behaviour. More frequently, however, corruption, and its eradication, was seen as being linked to capacity-building. The absence of effective modern state structures was a central issue in the critiques of privatization projects/programs, especially where it was claimed the state had failed to regulate private providers properly and check excessive profit-taking. In regards to large construction projects, the key claims revolved around states' organizational capacity to implement environment protection plans and resettlement programs. Regulation issues also arose in respect of ensuring ongoing operation standards were met by the companies charged with running the infrastructure. Where the operator was a state enterprise, usually working in partnership with a private corporation, queries were raised over the agency's financial management abilities. Finally, there was a generally expressed concern over the lack of bargaining power borrower states held in relation to the Bank and MNCs. In these cases, capacity was defined in terms of fiscal independence and political stability as well as technical ability.

On the issue of capacity-building, the Bank is targeted by critics for the manner in which it attempts to help rectify local institutional deficiencies. The allegation here is that the Bank uncritically seeks to impose economic development and governance templates and conditions on borrower countries without taking appropriate account of the individual character of their state-society relations. It is claimed this lowers the chance of effective capacity building. In general, there is an apprehension that the Bank has not fully resolved how best to deal with non-modern, or only partly-modern, states on this and other issues. In very few cases, however, did the criticism extend to offering alternative guidelines on capacity-building, although a general ethos could be discerned in many of the Northern NGOs that favoured long-term local community-development approaches over short term technical assistance projects aimed solely at public officials. Given capacity questions are inherently complex, being informed by, among other things, historical factors, decolonization processes, state-society relations, cultures and international trade relationships, the lack of a comprehensive solution on the part of NGOs is not a disadvantage necessarily; a solution to the capacity problem is as likely to result through incremental, iterative lessons learned by development agencies as it is through 'rational comprehensive' policy blueprints.

Bank – Private corporation partnerships

Questions were also raised over the nature of the World Bank Group's partnerships with multinational corporations, especially where corporations had engaged in business practices that transgressed international standards, such as in labor and environmental law. In those cases, the Bank was regarded as being guilty by association, as well as having failed in its self-appointed role as moderator of the excesses of corporate profit-seeking.

A substantial amount of criticism also argued that MNC's abuse, when able, their unequal bargaining power over developing state governments. It was claimed that they exert pressure on these states in relation to the content of project-enabling legislation, and that they too frequently supported the corrupt behaviour of state officials in order to win contracts or favourable treatment from state regulators. Likewise, the claims made against private corporations in relation to privatization projects argued that the incentive to profit-take outweighed any desire a corporation may have to promote the social good.

There was little or no sense in the criticism recorded that private corporations were able to self-regulate or were capable of viewing their operations in long-term, 'triple-bottom-line' terms. Similarly, the possibility that 'corporate social responsibility' may carry with it some long term business benefits, or, alternatively, that there may continue to be some validity in Adam Smith's argument that the Invisible Hand of the market ultimately ensures the public good, was not raised in the criticism. In general, the sense conveyed by the critics was that capitalism still needs to be 'civilized'. The NGO criticism of private corporations, especially MNCs, and the assumption that resources and profits will tend to flow from the periphery to the metropole, also revealed an ongoing intellectual debt to Dependency Theory.

Standards, policies and impact assessments

A large number of the claims recognized the existence of the international standards that apply to the sector involved, for example, the labor standards set out by the International Labor Organization or the environmental standards set out under international agreements such as the 1992 Rio Declaration on the Environment and Development and the UNESCO Convention Concerning the Protection of the World Cultural and Natural Heritage. Also recognized was the fact that the Bank has its own sets of directives and procedures under which it operates, including a series of project impact assessments and environmental and social safeguards it requires of itself to undertake and implement. These safeguards cover issues such as: Environmental assessment (Operational Policy (OP) 4.01), Cultural property (OP 4.11), Indigenous peoples (Operational Directive (OD) 4.20), Involuntary resettlement (OD 4.30), Forced labour and harmful child labour (IFC policy statement). Criticism was frequently phrased in terms of the Bank's failure to meet these standards.

There was little debate over the substance of the Bank's impact assessments and safeguards – they were regarded as being, in principle, worthwhile – rather, the key accusation was that their effectiveness was diminished through poor implementation. It was argued that there was a clear disjunction between policy and the operational reality. This criticism was most clearly expressed in the case of the BTC Pipeline project, where the full panoply of Bank impact assessments were instituted, but, according to the critics, an inappropriate project was still 'green-lighted'.

There was also a less commonly expressed perception that the goal of poverty alleviation was compromised through the way in which Poverty Reduction Strategy Papers were devised and then implemented via loan programs and projects. The key allegation here was that the empowerment of the poor, an issue with which the Bank has engaged with over the past several years through research such as the 'Voices of the Poor' project, was not something that was being supported in practice by the identified projects or the PRSPs to which they were supposedly linked.

The fact the World Bank's own standards and policies were referred to with such frequency in the criticism suggests that the Inspection Panel and the CAO are fulfilling their roles as disseminators of information. By their very existence these bodies raise the profile of the standards under which the Bank operates, or at least advertise the fact that the Bank *has* standards it must meet, and so provide a focal point for criticism. That a significant number of the projects discussed in this paper were subjects of applications to these institutions indicates that both are now well-established as important arbitrators and advisors in the World Bank Group. That most critics chose not to rely solely on these bodies, but also sought to influence the Bank through public campaigning, indicates the existence of a perception that the Inspection Panel and the CAO have limited influence on the Bank Management. There are implications here for the way the Bank communicates with its critics and the degree to which it can instil confidence that complaints will be fairly heard and dealt with.

The Sources of Criticism

In relation to the sources of World Bank criticism, the clearest finding to be drawn from this study is that international and Northern environmental NGOs (usually working with local partners) provide the majority of the criticism directed at large construction projects, while local community activists and local NGOs tend to take the lead in criticising privatization programs.

Exactly why there is such a marked division between the sources of construction project-oriented criticism and privatization-oriented criticism is a little unclear. One explanation simply may be that there are more large, well-established environmental NGOs than privatization-focused NGOs, and those privatization NGOs that do exist are not especially well-versed in the art of international campaigning and networking. Alternatively, it may be that there are indeed large numbers of advocacy groups which are concerned with privatization programs, but that they roll this advocacy over into general claims and activities regarding globalization and hence are not picked up within the project-oriented parameters of the current research. Trade unions are groups that have a role to play in the criticism of privatization, but, with the exception of the Grupo M project, they were not the public face of criticism in the projects listed in the 'Top Twenty'. It may be that cases such as the Cochabamba protests are more common, where the key players are local community groups who had been influenced by trade union members and methods.

In privatization programs/projects there is often a strong incentive for the local populace to become involved in protests as they make up a large segment of consumers who are buying, for example, the water supplied by private providers. Their expenditure on that product often represents a significant component of their overall household expenditure. By contrast, local consumers often represent only an insignificant market for the products of oil, gas and hydro-electricity projects and, in turn, frequently do not dedicate a large part of their household incomes to those products; the incentives for protest are different. Finally, privatization programs affect the urban mass of consumers, while extractive industries tend to directly affect more rural populations who have less direct access to political networks.

On a more minor point, academic analysis appears to be skewed toward privatization programs over construction projects (a notable exception being the Chad-Cameroon Pipeline project, which has been the subject of a number of academic articles). This, however, is a less-than-robust finding as it relates only to academic articles where the project formed the core object of study; construction projects may be cited extensively in broader analytical articles without being the central focus of research.

Finally, it was clear that very few groups explicitly dedicated to human rights were sources of criticism unless there was evidence of borrower governments or private partners engaging in activities such as political repression. Human rights groups, excluding, on occasion, Amnesty International and Human Rights Watch, tended not to proffer criticism on the environmental,

economic and social impacts of the projects identified in this study. It may be that they supported various campaigns without taking on any coordinative or substantive role, and so would not be authors of key campaign media releases. As a general comment, it appears that it is still early days in expanding development-related human rights thinking from a focus on political and civil issues into economic, social and cultural concerns. While this is occurring in academic and high-level policy debate circles, it appears to have only a tenuous hold among development-focused NGOs and, if it appears in their campaigning at all, it is accorded a lower status than environmental or economic development issues (Amnesty International's criticism of the BTC pipeline project being the exception that almost proves the rule). Likewise with the Bank, where project documentation and the reports of review bodies such as the Inspection Panel and the CAO do little to show an operational level engagement with a human rights perspective of international development.

It appears increasingly the case, however, that human rights-oriented language is beginning to seep into criticisms of the Bank's activities. This is set to increase on the back of the generally heightened awareness of the relevance of human rights concerns to the debate over economic globalization, and the role of MNCs in particular. It is also increasingly emerging in the thinking and writing of policy-makers and leading commentators. One of the driving factors here is that the regime of international human rights law provides a broad-based and inclusive framework within which nearly all of the concerns voiced, for instance, in this study can be accommodated. The suggestion is that such a 'one size fits all' tool of criticism will not lie dormant for long in the hands of the Bank's critics.

Summary

This empirical analysis section highlighted the degree to which extractive industry-related projects and water privatization projects are the objects of private sector development-oriented criticism. It also determined the key issues over which these projects are garnering criticism, noting that few of those issues were ever phrased in human rights terms. The largest number of criticisms were based around the failure of the Bank to properly consult with those populations affected by a project or to properly apply the operational standards and safeguards it has set for itself ('Project design and implementation' criticisms). This perception of *process* failure cuts across sectors, although it is, arguably, most crucial in the case of resettlement, where the very act of effectively moving populations is dependent on their acquiescence.

The next most common criticisms focused on the environment and the impact of project-related degradation on water and health. Equitable access to water was also raised as a critical issue in the context of the bank's encouragement of privatized water supply systems. In respect of large-scale construction projects one of the key points of criticism was the degree to which these interventions would actually result in broad-based and equitable economic growth.

Closely linked to the design and implementation critiques, although not as frequent, were those aimed at the political behaviour of the state partners to projects, especially in relation to their preventing dissent either through coercion or through legislative frameworks.

The following section, Human Rights Analysis, takes these criticisms in turn – *process, environment and water, economic well-being and labor, political expression* – and shows how, and the degree to which, they can be translated into well-established human rights (once again leaving to one side any judgement on their merit). The implications of expressing these critiques in this manner is then explored in the final section of the Discussion Paper.

Human Rights Analysis

Introduction

The previous section concluded that the twenty most criticized World Bank private sector development-related projects were condemned by critics for their failures to meet acceptable standards in relation to a range of factors, including: economic and social impacts, environmental impacts, effects on labor and wages, linkage to inappropriate political and governmental behaviour, project design and implementation, approach toward resettlement and land ownership, and their impact on water access. In order to examine what human rights 'echo' these critiques might make, they are grouped in this section for the purposes of detailed legal investigation under the headings of:

- Due process rights
- Environmental, water and health rights
- Rights to adequate housing, shelter and land
- Labor rights
- Personal integrity rights

As will become evident, grouping these issues in this way reflects the degree to which the analysis in this section draws on international human rights law. The body of international human rights law is well-entrenched and normative. It has emerged, in large part, as a pragmatic response to the need to mediate the relationship between the individual and the state and, in parallel with this, between the individual, the state and the international community of states (as represented by international organizations). It has been tested by the immediate reality of international relations and international development and found to have great value, even if it is not always observed in the first instance. Yet, even though the ideals embodied in international human rights law are central to the endeavours of the Bank, as well as many of its critics, this fact, as evidenced by the above empirical analysis, is rarely acknowledged by development protagonists. This section of the Discussion Paper seeks to redress that discrepancy and makes explicit what is often only partly acknowledged. The Implications section of the paper which then follows, highlights the important legal and program repercussions in clearly acknowledging how the institution of international human rights law does and can influence the Bank's work.

For the most part, existing analyses of human rights-based criticism of the World Bank have focused on the structural questions of whether and how the Bank should adopt a 'human rights approach' to achieving its development objectives. In particular, there has been much debate over

the extent to which the Bank's articles of agreement should and can be read so as to permit such ostensibly 'social' or 'political' issues as human rights considerations to fall within the Bank's proper mandate and, therefore, to be of legitimate concern in its assessments of what projects to fund and under what conditions.⁴ The derivative question of the degree to which 'structural adjustment programmes', as a principal vehicle of Bank activities, promote or retard the protection of human rights in the countries in which they are implemented has also been much discussed.⁵

At the operational level of the Bank's activities, there has also been discussion and debate about the efficacy and impact of individual projects, but it is noticeable that the bulk of such discussion is expressed in non-human rights terms. Both the claimed benefits and detriments of individual projects, are (as detailed in the previous section) usually referred to in terms of their impact on poverty and standards of living; their effect on the environment, on peoples' health and working conditions, and their access to basic utilities like water, land and power; the extent of consultation, transparency of purpose and the provision of information; and, more generally, their consequences for a states' capacity to develop its economy and to better provide for its citizens.

Certainly, our analysis of the criticism levelled at the projects included in the present study, reveals that human rights discourse is not readily used, and where it is, it is often used amorphously and alongside more detailed expressions of concern.

And yet, this is not to say that the concept of human rights, and more specifically, human rights law, plays little or not part in these concerns. Rather, it is symptomatic of an unfamiliarity with, or understanding of, what human rights entail, and/or scepticism of what their use in argument might achieve on the part of protagonists from both sides of the debate. The Bank's critics, just as much as Bank officials and other supporters, prefer not to couch their arguments in human rights terms, despite the apparent opportunity to do so.

In respect of the present study, these observations throw up two basic questions:

1. What are the human rights at issue in this debate, whether expressly articulated or implicit?
2. What are the implications, both for the World Bank and for human rights protection, of the current non-use of human rights language, and of any future increase in the use of such language either by critics or supporters?

We shall address each of these in turn in this section.

'Human rights' criticisms

⁴ The literature on this point is vast, but two relatively recent and comprehensive accounts are provided by Mac Darrow *Between Light and Shadow* (Hart Publishing, 2003), pp.149-170, and Sigrun Skogly *The Human Rights Obligations of the World Bank and the IMF* (Cavendish publishing, 2001), pp. 17-28.

⁵ Again, here the literature is vast, but for two excellent, recent accounts, see A Orford, "Globalization and the Right to Development" in P Alston (ed) *Peoples' Rights* (OUP, Oxford, 2001), pp.127-84, and M Monshipouri, "Promoting

As detailed in the previous section, the projects under review were subject to a variety of criticisms, expressed in terms that we have grouped under such headings as resettlement and land ownership, labor, the environment, water access (often including health), politics and government, project design and implementation, and economic and social impacts (including issues relevant to culture, indigenous peoples, ethnic minorities and access to infrastructure).

Upon examination of the details of these criticisms it is possible to discern human rights concerns even where none have been raised, or where they have been, not fully explained. Further, it is possible to recast the criticisms in human rights terms and regroup them accordingly. Thus, we have been able to construct a human rights list of criticisms under the broad headings discussed below. Under each, we have grouped the criticisms as originally phrased, so as to allow them to be tracked and links and comparisons to be made. Under each, we also provide an explanation of how and why we believe one is able to infer the human rights claimed.

Two things should be noted in advance of the following discussion. First, there is some overlap between the categories, in terms both of the rights involved and the criticisms made of the projects. Thus, for example, consultation and participation rights are at issue, albeit to varying degrees, in each of the rights categories. Second, under each of the headings below we list at the outset, for ease of reference, the main rights comprising that particular rights category and the main criticisms made of the projects that relate to that rights category.

1. 'Due process' rights

Main criticisms:

- Project Design and Implementation
- Politics and Government
- Resettlement/Property ownership

Main rights:

- right to non-discrimination
- right to self-determination
- right to cultural practices
- right to a fair trial
- rights to education
- right to participation in public affairs/government
- right to freedom of expression.

This category of rights comprises a broad set of essentially procedural rights that are not only important rights in isolation, but are also, crucially, adjectival, in that they underpin the structure and means of implementation of other rights. Thus, for example, the right to receive as well as to impart information (both elements of the right to freedom of expression as well as the right to education) is essential to a person's exercise of their rights to health, a clean environment, labor and livelihood, not least because it extends to individuals and communities the opportunity to take part in the processes by which decisions are made in respect of each of these social circumstances. The right not to be discriminated against is essential to the exercise of the freedom of religion, to found a family, to a fair trial, to cultural pursuits, to self-determination as well as to the access of a whole raft of essential services (such as water, housing, education, health, social security). And without the right to self-determination, most civil and political rights, and potentially many economic and social rights cannot be realized.⁶ Cultural rights are frequently impeded where a people have not realized their right to self-determination, especially in view of the fact that it is often impossible to separate a people's cultural practices and way of life from political, civil, economic and social factors.

In the context of the present study, the particular sets of criticisms that trigger concerns within this 'due process' category of rights were 'Project Design and Implementation' and 'Politics and Government'. Many specific criticisms focused on inadequate consultation with, and participation of, stakeholder groups, in the design and management of projects and the lack of transparency in the decision-making processes associated with the project, whether on the part of government or private sector partners. Often, also, claims of corruption were intermingled with, or cited as the causes of, the lack of proper consultation, participation or transparency. A further feature of the criticisms voiced was the number that cited concerns raised over the failure to abide by international standards or domestic laws (whatever the subject matter) or the Bank's own operational procedures.

Rights to self-determination and to cultural practice

The first articles of both the International Covenant on Economic, Social and Cultural Rights 1966 (ICESCR) and the International Covenant on Civil and Political Rights 1966 (ICCPR) affirm the fundamental principle of international law that "all peoples have the right of self-determination,"⁷ by virtue of which they must be enabled "freely [to] determine their political status and freely [to] pursue their economic, social and cultural development. Thereby all peoples have the right to choose the form of their political systems, government and constitution, and States have a duty to

⁶ See CCPR General Comment 12 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," para 1.

⁷ The right is also enshrined in article 1 of the Charter of the United Nations and is reaffirmed by the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States and the United Nations General assembly in its resolution 2625 (XXV) of 24 October 1970. See also CERD General Recommendation XXI (Forty-eighth session, 1996): Right to Self-Determination, A/51/18 (1996), paragraph 9.

promote the realization of the right for all people, globally, and this includes a duty to refrain from “interfering with internal affairs of other States.”⁸ As such, unwarranted pressure exerted upon a state by another state, or a group of states, or by international organizations to pursue particular political, economic or social models or policies, or conversely to refrain from adopting certain models or policies, threatens to violate that right.

The right to be able to participate in, practice and pursue one's cultural norms and traditions is often closely associated with the right to self-determination, for the obvious reason that culture is an indispensable part of a community's social and political structures by which it is governed.⁹ That said, the obligation on states to respect, protect, promote and fulfil cultural rights extends further than its association with self-determination. Thus, article 15 of the ICESCR guarantees the right of everyone “to take part in cultural life” and states that the steps to be taken “to achieve the full realization of this right shall include those necessary for the conservation, the development and the diffusion of...culture.”¹⁰ And article 27 of the ICCPR specifically affirms the cultural rights of minority groups, in order to enrich “the fabric of society as a whole.”¹¹

A denial or undue restriction on cultural practices therefore arising out of insensitive, unheeding or simply discriminatory design or implementation of development projects, such as is alleged in a number of ‘Resettlement’ and ‘Economic and Social Impact’ criticisms must be considered to amount to an infringement of the right to cultural practice. Where, further, large-scale development projects involve the acquisition of, or damage to, land in remote locations (as they often do) then the cultural practices at risk are more likely to be those of indigenous peoples, whose association with the lands is of especial importance, and therefore will more keenly suffer from their violation. This much has been expressly recognized by the UN Human Rights Committee in respect of article 27 of the ICCPR in its statement that:

*Culture manifests itself in many forms, including a particular way of life associated with the use of land resources, especially in the case of indigenous peoples. That right may include such traditional activities as fishing or hunting and the right to live in reserves protected by law. The enjoyment of those rights may require positive legal measures of protection and measures to ensure the effective participation of members of minority communities in decisions which affect them.*¹²

⁸ CCPR, General Comment 12, paragraph 6.

⁹ To which end article 27 of the ICCPR states that: “in those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language.”

¹⁰ ICESCR, article 15.

¹¹ CCPR, General Comment 23, paragraph 9, A/49/40 vol. I (1994) 107.

¹² CCPR, General Comment 23, paragraph 7.

Right to self-determination and cultural practice

Lesotho Highlands Water Project

Bank input: \$155m

The Lesotho Highlands Water Project is typical of the large construction projects listed in this study in that a considerable portion of the criticism it has received focuses not just on the dispossession of local people's land, and the related break-down of long-established economic and social traditions associated with that land, but also the fact that they had no choice in the matter. In this case, not only are there issues in relation to the project authority's possible over-riding of the wishes of local populations, there was also the involvement of South African authorities, as well as Lesotho police, in the suppression of local opposition to the project. Should the affected populations in this example phrase their claims in human rights terms, 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.

Right to participate in public affairs/government

The right of all citizens of a country to participate in public affairs is enshrined in article 25 of 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."¹³ In meeting their obligations to legislate and implement policies and programs to give effect to these provisions, states must give effect to the rights in a way that facilitates direct participation (both in the organs of government and in public discussion, debate and protest), and indirect participation,

¹³ The term "public affairs" is elucidated in CCPR General Comment 25 where it is proclaimed to be "a broad concept which relates to the exercise of political power, in particular the exercise of legislative, executive and administrative powers. It covers all aspects of public administration, and the formulation of policy at international, national, regional and local levels"; para.5.

by way of ensuring that representatives of the people at all levels exercise their duties and discharge their powers free of all types of corruption, bias and discrimination.¹⁴

The entitlement then of every citizen, regardless of race, gender, religious belief or political persuasion,¹⁵ to take part in the conduct of public affairs at all levels is essential to the proper satisfaction of the right to self-determination. Peoples cannot control or determine their own political, economic and social affairs without democratic participation (alongside other civil rights, of course, like freedom of expression), and as such the right “lies at the core of democratic government based on the consent of the people.”¹⁶ Thus, regarding the many and varied criticisms raised in the present study concerning the inadequacy of consultation with, and participation of, communities directly affected by the projects in question, there is an apparently clear link to breaches of this right. And although the thrust of these criticisms is aimed at the actions of the domestic states themselves, there are also concerns about the conduct of the private sector and Bank partners to individual projects. Responsibility, therefore, extends to the project partners, either directly or indirectly, through their relationship with the state.

There is an adjunct human rights concern to this broad issue of participation, which although not expressly enunciated in the criticisms canvassed, is nonetheless implicit in many of them. This is the question of the right to a fair trial. The right to a fair trial is related to the right to participate in public affairs, not just as regards the fairness of any curial resolution of a dispute (the importance of which is undoubted), but also during all stages of a legal dispute that leads, or may lead, to such a formal court hearing, as such processes and procedures associated with those prior stages will be of concern in any court trial. The CCPR General Comment on the fair trial article of the ICCPR (article 14) stipulates that the obligation imposed on the state is “to ensure that equality before the courts, including equal access to courts, fair and public hearings and competence, impartiality and independence of the judiciary are established by law and guaranteed in practice.”¹⁷ In the current context, it is the obligation to ensure equal *access* to the courts that opens up the question of the importance of pre-trial procedures concerning civil disputes. Thus, such criticisms as the lack of transparency, corruption and the lack of information as well as opportunities to challenge decisions made in respect of projects, all bear directly on the ability to mount a defence against any alleged offence in the first place, let alone bring it to a conclusion either way. In this sense, therefore, a considerable number of the complaints raised might well stem from breaches of the right to a fair trial.

¹⁴ This includes, of course, unwarranted and systematic discrimination against certain groups in society. Thus, in specific response to the historically entrenched discrimination against the participation of women in public affairs, article 7 of CEDAW makes particular provisions.

¹⁵ The right to non-discrimination is integral to the UDHR and all six of the UN's principal human rights treaties; see for example ICCPR, article 2(1) and ICESCR, article 2(2).

¹⁶ CCPR, General Comment 25, paragraph 1, UN Doc. No. A/51/40 vol. I (1996).

¹⁷ General Comment 13 (1984), para.3. Note further that the Committee emphasizes the fact that the fair trial provision applies to both civil and criminal legal proceedings.

Freedom of expression and right to education

Together, the two rights of freedom of expression and the right to education form an essential component to any individual or community fully participating in decisions that affect them. They are intimately related in the fact that each is essential to the full expression of the other. Thus, meeting the requirement under article 13 of ICESCR that “education shall enable all persons to participate effectively in a free society”, is significantly dependent on “the right to hold opinions without interference” and the right to freedom of expression that includes “the right to seek, receive and impart information and ideas of all kinds, regardless of frontiers”, as provided for by article 19 of the ICCPR. These rights exist at all levels such that individuals are consulted about public policy decisions and are able to contribute to decision-making processes in a productive and meaningful way on issues that affect them and their communities. Governments are therefore required to provide the conditions under which their people can participate in these ways, including through an independent media and functioning educational institutions, and by providing space for public discussion and dissent, where the freedom of expression is curtailed only when where it is necessary to protect national security or public order.¹⁸ In terms of the concerns that many critics have about the lack of opportunities for input that have been made available to communities affected by the projects in this study, these rights are of direct relevance and application. Given, what is more, the standard objectives claimed of Bank projects – to promote the economic and social development of local and national communities – the protection of such “empowerment rights”¹⁹ as free speech and education must be viewed as paramount.

¹⁸ ICCPR Article 19(3)

¹⁹ The right to education, for example, is considered to be “the primary vehicle by which economically and socially marginalized adults and children can lift themselves out of poverty and obtain the means to participate fully in their communities”; CESCR, General Comment 13, para.1.

Right to participate in public affairs

Right to freedom of expression

Baku-Tbilisi-Ceyhan Pipeline

Bank input: \$310m

Amnesty International expressed serious concerns over the way pieces of project-enabling legislation passed by the three state partners to this project, and backed by the key MNC project partner, BP, in effect created a 'rights free' corridor along the length of the proposed pipeline. One of their key criticisms was over the manner in which this legislation, and the mode of its implementation, prevented any local opposition to the project from being expressed through either established public/political channels or more direct protest. In addition, directives as to the nature of legislation relating to the environment, health, labor and tax that the partner states was allowed to pass in the future was also seen as an unconscionable restriction on local citizens' right to participate in public affairs. The BTC pipeline project raises a number of issues in relation to how far state legislation that is necessary for a project to be established and operate can over-ride existing political processes and prevent opposition from being expressed, no matter how costly that freedom of expression may appear to be to the immediate bottom-line. The sheer level of the criticism of the BTC project on these issues might suggest that the more economically-astute, long-term decision would be to ensure project-enabling legislation meets international human rights law criteria in the first place.

2. Environmental, water and health rights

Main criticisms:

- Environment
- Project design and implementation
- Economic and social impact
- Water/ health
- Politics and government
- Resettlement/property ownership

Main rights:

- right to a clean and healthy environment
- right to clean water
- right to health
- right to food
- right to livelihood
- right to consultation and participation in decisions concerning the environment

Environmental, water and health rights are often viewed as being intimately connected to the right to clean environment. Thus, for example, the UN Committee on Economic, Social and Cultural Rights 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.*²⁰

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,²¹ but rather as interdependent parts of a generalized right to health and, especially in the case of the right to water, also, as an essential component of the right to an adequate standard of living. The right to health is enshrined in article 12 of the ICESCR. It provides:

1. 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.

2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for:

(a) The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child;

²⁰ CESCR, General Comment 15, para. 8.

²¹ In the case of the environment, however, there is the UN Draft Declaration of Principles on Human Rights and the Environment (1994), which despite being a non-binding draft declaration, is nonetheless the most comprehensive international instrument relating to the environmental aspects of human rights; see <http://www1.umn.edu/humanrts/instreet/1994-dec.htm>, accessed on 22 December 2003

(b) The improvement of all aspects of environmental and industrial hygiene;

(c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases;

(d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness.

Aside, then, from the obligation on states to provide access to basic health care services without physical or economic barriers, the right to health entails the promotion of environmental hygiene and the prevention of disease, through the creation of such conditions as the provision of, and access to, clean water.²²

Right to a clean and healthy environment

Yanacocha III Gold Mine

Bank input: \$60m

The Yanacocha gold mine is the largest mine in South America and has proven to be commercially successful over a number of years. Critics of its proposed expansion to the La Quina deposit, however, focus on the impact it has already had on water catchment areas and argue that existing damage will be compounded and expanded under the next phase of the mine's operation. The mining techniques employed, especially the use of cyanide heap leaching, as well as the mercury spill that occurred at Choropampa in 2001, have been cited as examples of how inappropriate mining practices can adversely impact on the environment of an area and the health of the local population. The right to a clean and healthy environment is very clearly set out in international human rights law; creating economic growth, which may in turn lead on to improved funding for medical facilities and public health infrastructure and activities, at the immediate cost of a healthy environment is a difficult proposition to sustain under human rights law. Extractive industries, as is becoming clear through the current Extractive Industries Review process, would be well served to take account of the environmental human rights of citizens in their operations before incurring criticism of the sort arising in relation to the Yanacocha mine.

²² On the question of the essential place of socio-economic factors in the right to health's preventive mandate, see CESCR, General Comment No. 14, para. 4, UN Doc. E/C.12/200/4.

The right to water is also incorporated 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 fulfilment of the protection and promotion of the right to an adequate standard of living.²³ The right is further adumbrated by the Committee on Economic, Social and Cultural Rights' 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.²⁴

It should be noted that the interconnection between the three rights to water, health and a clean environment is especially strong in the context of developing countries based on rural, agrarian economies (including those where there are pockets of over-urbanized squalor) in which, for example, health concerns are as focused on the general state of the environment and the condition of such basic amenities as water sanitation, as they are on access to health care facilities.

Like the package of due process rights considered above, there are a number of specific rights that fall under the present category. There are also, in addition, many more rights that are affected by the levels of protection for environmental, water and health rights on account of the latter rights being so fundamentally important to their fulfilment. Thus, the promotion of a clean, healthy and sustainable environment is instrumental to the exercise of the rights to life, self-determination and to labor, the protection of culture (especially of indigenous peoples), the provision of adequate housing and an adequate standard of living, the opportunity to participate in public affairs, and the protection of one's privacy.

One inherent feature of all of these rights, and one that is especially pertinent to this study given the volume of criticism that concerns it, is the importance that must be attached to ensuring consultation with and participation of all affected by governmental decisions that impact on people's conditions of health, water access and living environment. For in terms of the state's fulfilment of the obligations to protect these rights, it is clear that without such consultation and participation, the rights are not likely to be adequately or appropriately protected. The various dimensions of the right to participate in public affairs considered above under 'Due Process' Rights, are also relevant here. However, in the particular case of decisions that affect the environment, there are added concerns. Thus principle 15 of the Draft Declaration of Principles on Human Rights and the Environment states that:

²³ Joint Statement by the Special Rapporteur on adequate housing, Special Rapporteur on the right to food and Special Rapporteur on the right to the highest attainable standard of physical and mental health under the Commission on Human Rights, Third World Water Forum, Kyoto, 17 March 2003, available at <[http://www.unhcr.ch/hurricane/hurricane.nsf/\(Symbol\)/HR.03.22.En?OpenDocument](http://www.unhcr.ch/hurricane/hurricane.nsf/(Symbol)/HR.03.22.En?OpenDocument)>, accessed on 5 Sept. 2003.

²⁴ Committee on Economic, Social and Cultural Rights, General Comment No. 15, paragraph 10, UN Doc. E/C.12/2002/11.

All persons have the right to information concerning the environment. This includes information, howsoever compiled, on actions and courses of conduct that may affect the environment and information necessary to enable effective public participation in environmental decision-making. The information shall be timely, clear, understandable and available without undue financial burden to the applicant.

To the extent then, that the accuracy of the frequent and detailed accusations made of the projects in this study are accurate – namely that information and consultation on the environmental and health consequences of individual projects was lacking or absent, and that opportunities for meaningful participation in the decision-making processes within the project by those most affected were too few or non-existent – host states, and their private sector and Bank project partners will have been in violation of a key component to the rights in this section.

Right to water

Manila Water Privatization Program

Bank input: \$56m

As with all the water privatization programs listed in this study, the Manila program was criticized for effectively preventing all citizens access to clean water by virtue of unconscionable tariffs private providers were allowed to impose under the water concessions they had bought. The extent to which tariffs were raised by private providers were greater in Manila than elsewhere, and were possibly illegal under the terms of the concession, but the key question remains the same: To what extent can market principles be allowed to dictate the supply of an essential public good such as water? In other words, how is the right to water, clearly enunciated in international human rights law, to best be met? By private providers? By states? Or by a combination of the two? On this international human rights law is, understandably, silent, but by phrasing the issue in human rights terms, the goal to be met becomes the fulfilment of the right to water rather than the adherence to any one ideology, be it of the market or the state.

3. Rights to adequate housing, shelter and land

Main criticisms:

- Resettlement/property ownership
- Economic and social impact
- Politics and government
- Project design and implementation

Main rights:

- right to adequate standard of living
- right to privacy
- right to property
- right to cultural practice

The right to adequate housing subsists as part of the right to an adequate standard of living as prescribed by article 11 of the ICESCR:

The States Parties to the present Covenant 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 continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.

As such, adequate housing is essential to the enjoyment of an adequate standard of living. Significantly, the CESCR states that “the right to housing should not be interpreted in a narrow or restrictive sense which equates it with, for example, the shelter provided by merely having a roof over one's head or views shelter exclusively as a commodity.”²⁵ It highlights the meaning given to the term ‘adequate’ and reaffirms the approach that ‘adequate housing’ necessitates that there is “adequate privacy, adequate space, adequate security, adequate lighting and ventilation, adequate basic infrastructure and adequate location with regard to work and basic facilities - all at a reasonable cost”.²⁶

²⁵ Committee on Economic, Social and Cultural Rights, General Comment No. 4, paragraph 7, UN Doc. E/1992/23.

²⁶ Committee on Economic, Social and Cultural Rights, General Comment No. 4, paragraph 7, UN Doc. E/1992/23. As originally stated by the Global Strategy for Shelter to the Year 2000, United Nations General Assembly Res. A/RES/43/181. 83rd plenary meeting, 20 December 1988.

The right to adequate housing also requires that legal security of tenure is conferred upon lawful occupiers of land. It is 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 collectivities [sic]."²⁷ The overwhelming vulnerability created by the dismantling of people's foundations for shelter and often their livelihoods, culture and community, particularly when physical violence is used during the eviction, is undeniably devastating.²⁸ Indigenous communities, in particular, are at risk in this respect. This is due to the fact that the areas targeted by certain development projects such as dam, reservoir and pipeline constructions, tend to be in remote, inaccessible areas, which are often the same areas occupied by indigenous peoples. Where resettlement is necessary, therefore, the adverse effects on indigenous peoples are especially serious and keenly felt,²⁹ as is reflected in many of the 'resettlement' criticisms of projects in this study. Further, the intimate, cultural as well as livelihood, connections that indigenous peoples have with their lands is nearly always such that any dislocation from it will have irreparable and often disastrous consequences for their ways of life.³⁰ Finally, indigenous communities are typically under-represented, or ill-represented, at all levels of government, but especially at those levels (usually national) where decisions are taken over such projects as the above that can so gravely affect their interests. The parlous position of indigenous peoples in this regard is recognized at international law, both implicitly in everyone's right to an adequate standard of living under article 11 of ICESCR and the right to non-discrimination in respect, *inter alia*, of housing and culture in article 5 of the CERD, and specifically under articles 10 and 12 of the UN Draft Declaration on the Rights of Indigenous Peoples.³¹

A necessary concomitant to the right to housing is the obligation on states to ensure that individuals or communities whose housing and tenure conditions will be affected by state actions are not only

²⁷ 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.

²⁸ Thus, "to be persistently threatened or actually victimized by the act of forced eviction from one's home or land is surely one of the most supreme injustices any individual, family, household or community can face," United Nations Office of the High Commissioner for Human Rights, Fact Sheet No. 25, Forced Evictions and Human Rights, available at <<http://www.unhcr.ch/html/menu6/2/fs25.htm#1>>, accessed on 10 September 2003.

²⁹ Erica-Irene A. Daes, *Indigenous Peoples and Their Relationship to Land*, U.N. ECOSOC Commission on Human Rights, Sub-Commission on the Promotion and Protection of Human Rights, Final Working Paper prepared by the Special Rapporteur, 53rd Sess., Provisional Agenda Item 5, U.N. Doc. E/CN.4/Sub.2/2001.21, paras. 29–32, 122 (June 11, 2001).

³⁰ *Study of the Problem of Discrimination Against Indigenous Populations*, U.N. ECOSOC Commission on Human Rights, Sub-Commission on Prevention of Discrimination and Protection of Minorities, 36th Sess., Provisional Agenda Item 11, U.N. Doc. E/CN.4/Sub.2/1983/21/Add.4 (1983) (José R. Martínez Cobo, Special Rapporteur), at 26.

³¹ Submitted by the Working Group on Indigenous Populations, Sub-Commission on Prevention of Discrimination and Protection of Minorities, in 1993: U.N. Doc. E/CN.4/1995/2. The Declaration is currently being reviewed by the Commission on Human Rights.

appropriately involved in the decision-making process,³² but are adequately compensated and/or relocated³³ where the decisions taken adversely affect them. These safeguards must be put in place when public authorities are considering taking actions that involve resettlement, eviction or major environmental disturbance. As many of the largest development projects - such as the building of hydropower installations, dams, reservoirs and pipelines - involve substantial land usage there is a strong likelihood that some people's housing situation will be disturbed, if they are not in fact relocated. And as this describes many of the projects subject to review in the present study, it is perhaps unsurprising that so many criticisms have focused on this matter.

States have an obligation to guarantee "legal protection against forced eviction, harassment and other threats,"³⁴ which is most appropriately provided for by the granting of occupancy permits or titles to land.³⁵ But whatever the case, the state is obliged to enact legislation that protects against forced evictions and provides legal remedies (including adequate compensation) where necessary. The legislation must also be binding upon "all agents acting under the authority of the State or who are accountable to it", as well as "private persons or bodies," in light of the trend towards the contracting out and privatization of housing sector responsibilities.³⁶ In circumstances where the state fails to consult properly, or to resettle people without adequate provision for alternative housing, or forcibly evict households, or they permit private parties to fail in these ways, then the state will be in violation of the right to housing. Where it does so under the auspices of a development project of the World Bank, then the Bank too will be a partner to such violations.

³² Committee on Economic, Social and Cultural Rights, General Comment No.7, para.15, UN Doc. E/1998/22, annex IV.

³³ *Ibid.*, para.16.

³⁴ Committee on Economic, Social and Cultural Rights, General Comment No. 4, para. 8, UN Doc. E/1992/23.

³⁵ Economic and Social Council, Forced Evictions: Analytical report compiled by the Secretary-General pursuant to Commission resolution 1993/77, UN Doc. No. E/CN.4/1994/20, para. 160.

³⁶ Committee on Economic, Social and Cultural Rights, General Comment No.7, para. 9, UN Doc. E/1998/22, annex IV.

Right to land [resettlement]

Nam Theun Hydroelectric Project

Bank input: \$50m

Every large construction project listed in this study involved some measure of resettlement of local populations, although dam construction tended to have the largest and most immediate impact. In the case of the proposed Nam Theun project, it is anticipated that approximately 4,500 people will be resettled, and there is an equally large number with whom the question of land ownership will have to be resolved. One of the key criticisms made in relation to resettlement programs in the past is that the affected populations have not fully understood their rights on this issue and also have not been allowed to have a meaningful input into the design and management of the process. Should these claims be correct, they raise significant human rights concerns as the rights to shelter, housing and land have clear expression in human rights law. Exploring the full range of resettlement and compensation options so as to ensure these rights are maintained is, obviously, an essential component of any dam building, and human rights law sets the standard of what is appropriate and justifiable.

4. Labor rights

Main criticisms:

- Labor
- Resettlement/Property ownership
- Economic and social impact
- Politics and government
- Project design and Implementation

Main rights:

- right to work
- right to just and favourable conditions at work
- right to form trade unions
- right to adequate standard of living
- right to education/training

The concerns over labor rights in the context of the current study arise out of the particular conditions upon which the study is based. For the focus on Bank projects that concern private sector and/or privatization development strategies necessarily raises the matter of the manner and form of private sector employment, as well as that within the public sector, under the individual projects. The labor rights in question, are the same in either sphere, it is just the circumstances in which concerns about their protection that are different.

A variety of labor rights are recognized at international law, principally under the more than 180 conventions and 185 recommendations of the ILO, and under the main human rights instruments of the UN. Though the seven or eight fundamental ILO conventions are of particular significance,³⁷ we here concentrate only on those rights embraced by human rights law instruments.

The ICESCR make provision for three main labor rights – namely, the rights to work, safe conditions at work and to form and join trade unions. Article 6 of the Covenant enshrines the right of everyone to “the opportunity to gain his living by work which he freely chooses or accepts”, and requires states to take steps to realize the right through the provision, specifically, of training programs and policies, and generally, the promotion of economic conditions that allow full productive employment. Article 7 extends the obligation of the state parties to respect, promote, protect and fulfil the right of every person to “the enjoyment of just and favourable conditions of work,” including in respect of fair and non-discriminatory wages, safe and healthy working conditions, opportunities for promotion, and reasonable working hours and time for rest and leisure. And the right to form and join trade unions is protected by article 8 of the ICESCR (alongside the protection of the right to freedom of association under article 22 of the ICCPR). Whilst this provision does recognize that the right may be made subject to lawful restrictions, it nonetheless stresses the fact that such restrictions must themselves be “necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others”.³⁸

Two issues stand out in respect of the labor rights relating to the current study and are reflected in the criticisms raised against a number of projects. First, the employment practices of concern are not just confined to those of the public authorities, or the private sector partners, or indeed of the Bank itself (although, clearly, all three must conform to the rights described above), but extend all the way along the supply chain of private sector contractor and contractees, agents, suppliers and distributors. On truly enormous projects like some of those under scrutiny in this study, the

³⁷ These are the Forced Labor Convention (No. 29); the Freedom of Association and Protection of the Right to Organise Convention (no. 87); the Right to Organise and Collective Bargain Convention (No. 98); the Equal Remuneration Convention (No. 100); the Abolition of Forced Labor Convention (No. 105); the Discrimination (Employment and Occupation) Convention (No.111); and the Minimum Age Convention (No. 138). An eighth – the more recent (1999) Convention on the Elimination of the Worst Kinds of Child Labor (No. 182) is also regarded to be of particular importance.

³⁸ Article 8(1)(c)

project's commercial tentacles stretch very far, wide and deep, so there has to be a limit to the extent of responsibility for failures in employment conditions that can be laid at the feet of the state and the project's principal partners, but responsibility there must be for some distance along the chain.

The second matter arises out of the immediate and ongoing employment consequences of the project. On the one hand, although the opportunities for, and standards of, employment may be markedly improved during the lifetime of a project, there is concern for the sustainability of such favourable economic and social conditions and the viability of the communities that have been established thereby, after the project finishes. And conversely, in respect particularly of privatization projects, there are concerns about the broad social and economic consequences for local communities when the implementation of the project results in large scale unemployment. In both these respects, the state – and by extension, its project partners - is under an obligation to ensure that the rights to work and to work under safe and healthy conditions, and the attendant rights to an adequate standard of living, health and housing are not violated as a result of the project.

Labor rights

Grupo M Project

Bank input: \$23m

The Grupo M project has generated a large number of claims from international trade union bodies, such as the International Confederation of Free Trade Unions, that workers in the project's factories are being denied, sometimes forceably, the right to unionise and that claims for better employment conditions are being ignored. While this project is perhaps the most extreme in this regard of all those listed in the Discussion Paper, a number of other projects have raised the issue of sub-standard working conditions, usually in relation to the treatment of workers by contractors and sub-contractors. The question of labor rights must be of concern to the IFC, given the extent of its relationship with private partners and the degree to which it is trying to encourage industry growth in developing countries. Difficult decisions over whether or not to continue supporting a specific private or state partner, or over the extent to which it is economically viable to make adherence to internationally approved labor rights an initial funding condition of a project, need to be made in situations where the available evidence suggests workers are being forced to work in unacceptable conditions and are being prevented from exercising their right to unionize.

5. Personal integrity rights

Main criticism:

- Politics and government

Main rights:

- right liberty
- right to a fair trial
- right to freedom from torture, cruel or inhuman treatment
- right to freedom of expression
- right to freedom of association

Across the 20 projects that comprise this study, the most serious criticism raised regarding this group of personal integrity rights and that concerned the conduct of Nigerian law enforcement officials in respect of the protection of the interests of the Shell Oil. And although Shell is indeed the main private partner to the Revolving Credit Facility project, the conduct complained of - which ranged from threats and intimidation through to arbitrary detention, torture and killing of peaceful protestors - was in regard to Shell's general operations in Nigeria, rather than to this credit project in particular. That said, the seriousness of the accusations made, coupled with the fact that they attracted widespread and intense attention (including a high profile court case in the US),³⁹ warrants their consideration here. That is, if only on the basis that the Bank's association with any such prominent private sector player in the same country as that player is so heavily committed and so strongly criticized for complicity with the government in human rights abuses, must be of concern to the Bank.

³⁹ *Wiwa v Royal Dutch Petroleum Co.* 226 F.3d 88 (2000, US Court of Appeals, 2nd Circuit). The imbroglio that Shell found itself in Nigeria was a catalyst to the creation in 2000 of the *US/UK Voluntary Principles on Security and Human Rights* for corporations; see <http://www.fco.gov.uk/Files/KFile/da85e5dbm-5fRights-5f13Dec.pdf> (last visited Oct. 24, 2003).

Human Rights Watch criticism of the impact of oil companies & the World Bank in Nigeria

Human Rights Watch has been one of the most high profile NGOs to criticize the ongoing problem of the interaction between major oil companies, such as Shell and Exxon-Mobil, the national and state governments and the local population in Nigeria. It argues that the manner in which the oil companies have sought to involve or compensate local populations has been dangerously short-sighted and has caused many local disputes that have quickly escalated into bloodshed or have been brutally put down by the army or police. It regards the World Bank Group as being at least partially complicit in this general problem through, what it claims is, the IFC's ill-conceived involvement with Shell in the Niger Delta Revolving Credit Facility, on the basis that supporting the facility necessarily results in some form of support for the Government's continued heavy-handed tactics against local opposition. The implication here being that there is a lack of sufficiently critical appraisal of the consequences of funding such as this. On the other hand it also acknowledges the Bank's attempt to support the Niger Delta Development Commission, with the aim of improving development outcomes in the region, and its provision of loans in the sectors of health and urban development. Overall, Human Rights Watch argues that the Bank, like the oil companies, has not done enough to directly address in its dealings with the Nigerian Government clear rights breaches such as:

- The crushing of protest in Ogoniland by the then military government in 1998 and the arbitrary killing of protestors.
- The destruction by the Nigerian army of the town of Odi in Bayelsa State in November 1999, killing hundreds, in reprisal for the killing by locals of 12 police.
- The arbitrary killing, injuring and detention of local residents in Liama and Finima in January and March 2002 by the Mobile Police, units of which are deployed at many oil facilities in the Delta region, with the oil companies contributing to their upkeep.
- The inappropriate awarding in 2000 of a surveillance contract by Shell to youth of the Kalabari /Bille village (a process which had resulted in problems in many other villages where it had been tried), which led to considerable local violence until the contract was renegotiated to include the entire community.⁴⁰

⁴⁰ Human Rights Watch, *Nigeria – The Niger Delta: No Democratic Dividend*, Human Rights Watch, October 2002, Vol.14, No. 7(A), (2002).

Implications of the non-use of human rights language

What can be said at the outset of our consideration of the implications of the relative non-use of human rights language in the criticisms we have screened in this study is that the non-use is clearly not because of any lack of human rights concerns. That much is abundantly clear. As the previous section demonstrates all, or nearly all, of the criticisms made of the 20 projects are readily amenable to being couched in human rights terms. The critics of the Bank's private sector and privatization activities, are therefore steeped in human rights concerns, whether they know it or not, acknowledge it or not, or accept it or not. This is an important point, as it surely provides an indication of an important direction in which criticisms of Bank operations might develop in future. And yet, however important this signpost might be, it is overshadowed by the necessary implication it raises for the World Bank. For whatever the prevailing Bank perspective is in respect of acknowledging or accepting its role in protecting and promoting human rights – and the discussion at the outset of this section concerning the ongoing debate over the legitimate extent of the Bank's involvement in political matters indicates what a moot point this is – it is, undeniably, immersed in the business of human rights. It must be recognized in this respect that in terms of process human rights considerations are in many ways little different from other analyses – both normative and empirical – in that it requires a weighing up of duties and entitlements, costs and benefits, and concessions and compromises. Every international human rights instrument is replete with the permissible (even if sometimes problematic) limitations to stated rights (as classically demonstrated by the essentially relativist obligations for implementation under the ICESCR.⁴¹ What is different, however, and what is the 'added-value' of adopting a human rights framework, is that it enables analysts to appreciate and determine (a) that there are certain basic rights that inhere in all human beings that go towards the constitution of their individual dignity⁴² and that (b) those whose rights and interests are to be, or have been, unjustly and adversely infringed upon. And this in turn enables, or can enable, the establishment of program strategies by which those infringements are minimised or eliminated.

The World Bank as protector and promoter of human rights

⁴¹ See Article 2(1) which reads that “[e]ach State Party to the present Covenant undertakes to take steps, individually, and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.” It is important to note

⁴² Which rights persist, whether or not they have been fulfilled, for as the UNDP has asserted, “why cannot there be ‘unfulfilled’ rights? There is no contradiction in saying (indeed lamenting): ‘these individuals have these rights, but alas the rights were not fulfilled’”; *Human Development Report 2000: Human Rights and Development*, p.25.

The World Bank's stated mission is "to fight poverty...and to help people help themselves and their environment by providing resources, sharing knowledge, building capacity, and forging partnerships in the public and private sectors."⁴³ As such, and through the projects that express this mission, there can be no doubt that the World Bank actively engages, fundamentally, in the quest to better protect and thereby, necessarily, to promote peoples' human rights. It does so, what is more, largely by way of assisting state governments to fulfil their obligations pursuant to the principal international human rights instruments.

The Bank has made clear its own understanding of the critical role that human rights play in "protect[ing] livelihoods and assets and enabl[ing] poor people to invest in their futures and be included in the society in which they live", and thereby, substantially aiding the Bank in its fundamental development goal of expanding "the opportunities for people to participate in decisions that affect their lives and the lives of their families".⁴⁴ The Bank's further recognition that access to information, participation in public programs, accountability of those in public office and institutions, and a local organizational capacity - all human rights or human rights derivations - are necessary elements of an empowered society.⁴⁵

In fact, it is no exaggeration to say that the Bank's key strategic and operating principles – as guided now by the Millennium Development Goals - are designed so as to promote the respect and protection of some of the most basic human rights; namely, the rights to self-determination, to life and an adequate standard of living, to participate in public affairs, to education and the freedom of expression, to work and to health and to a clean and safe environment. The Bank's critical role in the eradication of extreme poverty and hunger promotes the rights to life, food, an adequate standard of living and other key economic and social rights. The goals of reducing child mortality, improving maternal health, combating HIV/AIDS, malaria and other major diseases facilitates the satisfaction of the right to health. Along with its role in promoting gender quality and empowering women, these goals also impact directly on the improvement of women's rights and the rights of children. Its commitments to the elimination of urban slums alongside aiding the rural poor, to the promotion of opportunities for employment and to the support and advancement of severely disadvantaged indigenous peoples and ethnic minorities, all underpin the rights to housing, work, culture and non-discrimination. The right to education is enhanced by the goal of achieving universal primary education. The implementation of environmental rights, and therefore many other human rights including the right to water, is facilitated by the Bank's goal of ensuring environmental sustainability. And the Bank's efforts to combat corruption, foster transparency, expand access to justice and generally to promote the precepts of good governance, advances the

⁴³ The World Bank Group Mission Statement, available at <<http://web.worldbank.org/WBSITE/EXTERNAL/EXTABOUTUS/0,,contentMDK%3A20040565~menuPK%3A34563~pagePK%3A34542~piPK%3A36600~theSitePK%3A29708,00.html>>, accessed 20 November 2003.

⁴⁴ The World Bank Group Annual Report 2003, Chapter 1, page 13, available at <http://www.worldbank.org/annualreport/2003/download_report.html>, accessed on 22 November 2003.

⁴⁵ Ibid, page 13.

rights to self-determination, participation in public affairs, and freedom of expression, as well as to non-discrimination and fairness in the administration of justice.

The Bank's concern with, and effect upon, human rights stretches across both broad categories of economic, social and cultural rights, and civil and political rights, even if, given the nature of aid and development, there is a greater tendency towards the promotion of economic and social rights. The intimacy of the Bank's relationship with human rights concerns is certainly appreciated at the highest levels of the Bank, as, apparently, is the need for the nature of this relationship to be more fully appreciated and indeed embraced throughout the Bank, at all levels, and in all its activities.⁴⁶ President Wolfensohn, is adamant that the Bank "is already engaged in human rights" and that it is, in fact, "one of the major protectors and developers of programs which ... give rights to people, starting with reducing poverty and the desire to give people the chance for a better life".⁴⁷ Other Vice-Presidents of the Bank have voiced similar sentiments,⁴⁸ including, most recently, Peter Woicke, whose words, as Vice-President of the private sector-focused IFC, are especially pertinent to the present study. Following his enthusiastic and instrumental role in the launch of the so-called "Equator Principles" which provide a framework of guidelines for banks in managing environmental and social issues in project financing,⁴⁹ Mr Woicke has since added that he sees the integration of human rights into such guidelines and "safeguards" as unavoidable. Furthermore, as he believes that as an institution, the IFC is already "convinced that [it] ha[s] to integrate human rights", the role that the IFC must and can therefore play in promoting this end will be as "the leader in helping banks and other financial institutions sort through these issues".⁵⁰

Problematic perceptions of human rights

As foreshadowed at the beginning of this section, the reasons for the lack of the use of human rights terms in on the parts of both Bank critics and supporters appear principally to stem from the fundamental conditions of unfamiliarity, ignorance and scepticism. The Bank is essentially an economic institution, staffed overwhelmingly by economists, mandated to assist economic development and conditioned traditionally to focus on key economic performance indicators, thereby pushing social and political matters to the margins of its thinking. Critics, on the other hand, even those who have expertise in human rights, often focus on the direct and immediate policy and

⁴⁶ See notes of comments made by Alfredo Sfeir-Younis, then the World Bank's Special Representative to the WTO and the UN, Proceedings of an internal, cross-network Bank seminar entitled "Human Rights & Sustainable Development: What Role for the Bank?" held on 2 May 2002, in which there were nearly 100 participants, including the President and a number of Vice-Presidents and Managing-Directors; available at [http://lnweb18.worldbank.org/essd/essd.nsf/ed184c367402e19e85256a4f00766cac/509e61fd645ffbcce85256bf10075a272/\\$FILE/May2-Summary-ext.pdf](http://lnweb18.worldbank.org/essd/essd.nsf/ed184c367402e19e85256a4f00766cac/509e61fd645ffbcce85256bf10075a272/$FILE/May2-Summary-ext.pdf), pp.4-6.

⁴⁷ *Ibid.*, p.10.

⁴⁸ Namely, Mats Karlsson (V-P (Ext)); Ko-Yung-Tung (V-P (LEG) and Ian Johnson (V-P & Network Head (ESSD)), *ibid.*, pp.11-13.

⁴⁹ On which see the Equator Principles website: <http://www.equator-principles.com/ifcstmt.shtml>.

⁵⁰ Interview with Peter Woicke by Demetri Sevastoplu, *Financial Times*, 4 Nov. 2003

programmatic consequences of Bank projects, which, it would appear, are more readily expressed in social and economic terms. It must be said further, that there is a degree of self-referral within the debates engaged in by the Bank and its critics, in that arguments are countered – and indeed most directly so - by using the same language. So where the agenda is already established, and it does not include a significant place for human rights, then there is a tendency for specific human rights terms not to be introduced anew.

And yet concerns over the use of human rights language persist, even where there is some knowledge of, and sympathy for, the objects of human rights. These concerns exist on at least four levels. First, there is a long history of economists, and certainly those in the World Bank, not considering socio-political matters such as human rights protection as being a legitimate part of their discipline. That is, even if it is recognized that economic decisions are both affected by, and impact upon, such socio-political concerns as individual rights protection, the essentially variable and imponderable character of human rights rendered them beyond the boundaries of serious quantitative economic analysis. From this orthodoxy, it follows that human rights are neither the proper, nor the viable, concern of economic development projects such as those administered by the Bank. Though certainly strains of this attitude still persist within aid and development circles, the bulk of the preceding analysis in this section stands in evidence of the fact that human rights concerns are neither alien to, nor impossible to be embraced by, the pursuit of economic development.⁵¹

Second, there is a perception that the legal dimensions of human rights effectively preclude such non-expert organizations (in terms of human rights and law) as the World Bank from pursuing any human rights agenda, whether explicit or implicit. The legal character of human rights in fact comprises two parts – one the expression of human rights in legal form (eg Conventions, Covenants and treaties etc), and the other, the obligation to implement or enforce their protection. Both are desirable and necessary if human rights are to be effectively promoted and protected. However, to engage with human rights is not necessarily to commit to both parts of their legal conception – or at least not to commit in the same way. While it is true that both the Bank and its critics may have concerns over the capacity and propriety of the Bank to enforce human rights standards (lacking, as it does, both the expertise and the inclination to do so), this does not mean that the Bank is thereby exempt or unable to entertain any human rights considerations at all. The, as yet, ill-defined (though manifest) *legal* obligations of the Bank as regards human rights, do not detract from the Bank's *policy* obligations to have regard to human rights concerns as expressed in the various international human rights law instruments discussed above, in the design and delivery of its projects and programs. In short, the Bank is not being asked, let alone obliged, to act as a global

⁵¹ As Alfredo Sfeir-Younis has put it in the context of Bank discussions over the proper place of human rights in its operations: “human rights and economic approaches are, in fact, two sides of the same coin, one defining the desirable and the other the possible. While the desirable cannot be de-linked from the possible or the whole debate will be based on false promises, the possible must be fully immersed in the values of the desirable”; Proceedings of an internal, cross-network Bank seminar entitled “Human Rights & Sustainable Development: What Role for the Bank?” held on 2 May 2002, p.7

“human rights police officer”, rather it is being suggested that it is bound, by its own admission, to appreciate the human rights implications (both positive and negative) of its actions.

Third, the very nature of the types of development projects engaged in by the Bank lends itself to a preponderance of concerns over economic, social and cultural rights, rather than civil and political rights. As such, there is a well-recognized disinclination to use human rights terms, still less human rights *law* terms, when discussing economic, social or cultural disadvantage as distinct from civil and political disadvantage, even within the discipline of human rights itself. Economic, social and cultural rights are considered by some not to be human rights at all, but rather to be policy aspirations that illegitimately pre-judge state expenditure options. As such, moreover, they are considered lacking in the capacity to be legally enforceable; that is, they are ‘non-justiciable’. A veritable mountain of literature has been erected to counter these arguments, essentially based on the twin lines of holding (a) that economic, social and cultural rights are no more or less aspirational, expenditure-neutral, or non-justiciable than civil and political rights,⁵² and (b) that in any case the two sets of rights “are universal, indivisible, interdependent and interrelated”.⁵³ And yet despite this fact, the impression lingers that economic, social and cultural rights are secondary or inferior to civil and political rights. This retentive misapprehension is certainly a factor in the relative absence of human rights language noted in this study, albeit one that can, and will be corrected as the debate progresses.

Fourth and finally, the ongoing, pervasive debate over the nature and extent of the relationship between economic development and human rights has certainly affected the thinking of critics and supporters alike in the present study, and likely stunted their readiness to use human rights terms. Further, questions as to whether the right to development is directed at states or individuals and how, in any event, it is reconciled with the pursuit and protection of other rights, cloud both the meaning of development in a human rights context and the meaning of human rights in an development context. And yet, as has been made clear by many, including the UNDP,⁵⁴ and as we have made clear earlier in this section, aside the format of its delivery, economic development can have the most profound impact on the enjoyment of human rights. The development agenda of the Bank therefore ought to be ripe for description, examination and analysis in human rights terms.

The future use of human rights arguments

⁵² See, for example, Asbjørn Eide “Economic, Social and Cultural Rights as Human Rights” and Martin Scheinin “Economic, Social and Cultural Rights as Legal Rights” in Eide, Krause & Rosas (eds) *Economic, Social and Cultural Rights* (2nd edn; 2001), pp. 9-28 & 29-54, respectively; and Philip Alston, “US Ratification of the Covenant on Economic, Social and Cultural Rights: the Need for an Entirely New Strategy” 84 (1990) *American Journal of International Law*, 365-93.

⁵³ This is the phrase classically adopted in the UN’s *Vienna Declaration and Program of Action* (1993), para.5.

⁵⁴ See the UNDP’s *Human Development Report 2000: Human Rights and Human Development* (OUP, 2000), in which it is acknowledged that “the promotion of human development and the fulfillment of human rights share a common

Whilst it has been our aim in this section to reveal both the depth of the Bank's – and thereby its critics – existing involvement in human rights, and to provide some explanation as to why neither side is inclined to use human rights language in argument, it is equally our concern to stress the fact that this amounts to an opportunity squandered, by both sides to the debate. This is so, not just in terms of adding to their respective critical arsenals, but also in terms of advancing the understanding about the relationship between human rights and development and improving the opportunities for, and instance of, the promotion and protection of human rights which are so in line with the Bank's own development goals. This is not an apologia for the institution of a 'human rights way to development', though that is an option, in that it offers an especially valid frame of reference within which to pursue the debate.⁵⁵ Rather, our intention at this point is, at one and the same time, more simple and more fundamental. It is merely to point out that in human rights you have an alternative, substantively satisfying and strategically smart discourse within which to frame the most basic concerns that occupy the minds of both the Bank's critics and advocates – namely, how to alleviate poverty, raise living standards, combat health hazards and enhance individual dignity. For it is when one expresses the objects of human rights in these terms that one appreciates their assonance with the Millennium Development Goals that the Bank has so committedly embraced.

motivation", p.19. And on the right to development, see, for example, Arjun Sengupta "On the Theory and Practice of the Right to Development" 24 (2002) *Human Rights Quarterly* 837-89

⁵⁵ See, for example, Human Rights Council of Australia, *The Rights Way to Development: A Human Rights Approach to Development Assistance – Policy and Practice* (2001)

Implications

Legal Implications

Introduction

Having established, in the previous section, that the operations and activities of the World Bank are already embedded in human rights and further, that there is a widening space to be found within the Bank for acknowledging and embracing this fact, the question arises as to what are the legal implications of this circumstance. In terms specifically of human rights law, the legal implications for the Bank of this study are best viewed in terms of the responsibilities to protect human rights that international human rights law imposes not only on the Bank itself, but also on the states and private corporations with which the Bank does business. This tripartite perspective is necessary due largely to the fact that the focus of this review is on human rights concerns regarding the Bank's private sector activities in particular states, and as such the human rights responsibilities of all three entities must be addressed. For whilst the extents to which states and corporations are to be held responsible for their own human rights abuses may appear only to affect the Bank indirectly, in situations where the Bank is contractually bound with states and corporations (whether themselves directly with the Bank or indirectly through the state), then the Bank's relationship to the abuse becomes one of vicarious responsibility.

In many ways such analysis is a relatively new venture in any international law study. For the orthodox view of international law holds that as states are the only true subjects of international law, it is upon them and them alone that the duty to protect and promote human rights under international law is imposed. It remains the case today that states shoulder the primary responsibility for the implementation of human rights within their individual jurisdictions, but they are no longer alone in bearing such a duty.

Inter-governmental organizations (IGOs) such as the World Bank, now fall squarely within the fold of international law and are considered to have their own legal personalities, complete with attendant legal rights and responsibilities, including in respect of human rights. The legal duties of corporations at international law, are not yet so clearly demarcated. But there are certain existing features of international law, as well as a number of current draft initiatives that indicate that some nascent level of corporate human rights responsibility is already apparent and will be increased in the near future.

The human rights responsibilities of the World Bank

One aspect of the question of what are, or might be, the human rights responsibilities of the Bank is represented by the debate over the possible and proper readings of the Bank's mandate in respect of its involvement of in 'political' issues of the states in which it operates.⁵⁶ For, clearly, the more expansive an interpretation adopted, the more ready the Bank will be to acknowledge and accept a role in promoting such political and social matters as human rights protection. Thus, the Bank's explicit and determined embracing of the principles of good governance in its operations has led directly to concerns of judicial, legal, local government and public sector reform, combating corruption, family planning, and environmentally and socially sustainable development. And these concerns, in turn, have been recognized by the Bank itself as embroiling it in the world of human rights protection.⁵⁷

Another aspect to the question, and one that bears directly on the outcome of this debate over interpretation, is the extent to which international law imposes human rights obligations outside the terms of the Bank's own Articles of Association. This proposition operates at three main levels.

(i) Under the UDHR and other UN human rights instruments

First, the Bank is considered to be directly, if implicitly, liable to promote respect for human rights by virtue of the proclamation in the Universal Declaration of Human Rights (UDHR) that such a duty falls to "every individual and every organ of society".⁵⁸ Given the breadth of the rights covered by the UDHR, the impact of this duty on all of the Bank's activities ranges across the full spectrum of human rights categories – that is economic, social and cultural rights, as well as civil and political rights. In fact, the potential direct effect that the duty has on the Bank is most pronounced with respect to economic and social rights. For example, the UN Committee on Economic, Social and Cultural Rights, which oversees the ICESCR, has stated that:

international agencies should scrupulously avoid involvement in projects which, for example involve the use of forced labor in contravention of international standards, or promote or reinforce discrimination against individuals or groups contrary to the provisions of the Covenant, or involve large-scale evictions or displacement of persons without the provision of all appropriate protection and compensation. In positive terms, it

⁵⁶ See above, p.63

⁵⁷ See Proceedings of an internal, cross-network Bank seminar entitled "Human Rights & Sustainable Development: What Role for the Bank?" held on 2 May 2002, in which there were 100 participants, including a number of very senior personnel, available at [http://lnweb18.worldbank.org/essd/essd.nsf/ed184c367402e19e85256a4f00766cac/509e61fd645ffbce85256bf10075a272/\\$FILE/May2-Summary-ext.pdf](http://lnweb18.worldbank.org/essd/essd.nsf/ed184c367402e19e85256a4f00766cac/509e61fd645ffbce85256bf10075a272/$FILE/May2-Summary-ext.pdf)

⁵⁸ Preamble to the UDHR

*means that, wherever possible, the agencies should act as advocates of projects and approaches which contribute not only to economic growth or other broadly defined objectives, but also to enhanced enjoyment of the full range of human rights.*⁵⁹

The Committee has also further argued that every effort must be made by development agencies to consider human rights implications at all stages of their operations, including “...in the initial assessment of the priority needs of a particular country, in the identification of particular projects, in project design, in the implementation of the project, and in its final evaluation.”⁶⁰

The World Bank and human rights – the UN perspective

The UN Committee on Economic, Social and Cultural Rights which monitors the implementation of ICESCR, has, on a number of occasions, expressly referred to the role of the World Bank in human rights protection, including declaring that there is a direct duty on the Bank to respect and promote human rights. The Committee has praised the Bank's stance on limiting “the scale of and human suffering associated with forced evictions”,⁶¹ and has urged it to ensure greater co-ordination between itself and other IGOs (such as UNDP, UNICEF the ILO and WHO) as well as greater co-operation with states to ensure the more effective implementation of its programs in terms of the realization of the rights to food,⁶² health⁶³ and education⁶⁴. But the Committee has also specifically admonished the Bank (often alongside the IMF) for not taking sufficient account of the rights food,⁶⁵ water,⁶⁶ health,⁶⁷ housing⁶⁸ and

⁵⁹ Committee on Economic, Social and Cultural Rights, General Comment No. 2, paragraph 6, UN Doc. E/1990/23.

⁶⁰ Committee on Economic, Social and Cultural Rights, General Comment No. 2, paragraph 8(d), UN Doc. E/1990/23.

⁶¹ Committee on Economic, Social and Cultural Rights, General Comment No. 7, paragraph 18, UN Doc. E/1998/22, annex IV.

⁶² Committee on Economic, Social and Cultural Rights, General Comment No. 12, paragraph 40, UN Doc. E/C.12/1999/5.

⁶³ Committee on Economic, Social and Cultural Rights, General Comment No. 14, paragraph 64, UN Doc. E/C.12/2000/4.

⁶⁴ Committee on Economic, Social and Cultural Rights, General Comment No. 13, paragraph 60, UN Doc. E/C.12/1999/10 and also General Comment No. 11, paragraph 11, UN Doc. E/C.12/1999/4.

⁶⁵ Committee on Economic, Social and Cultural Rights, General Comment No. 12, paragraph 41, UN Doc. E/C.12/1999/5.

⁶⁶ Committee on Economic, Social and Cultural Rights, General Comment No. 15, paragraph 60, UN Doc. E/C.12/2002/11.

⁶⁷ Committee on Economic, Social and Cultural Rights, General Comment No. 14, paragraph 64, UN Doc. E/C.12/2000/4.

⁶⁸ Committee on Economic, Social and Cultural Rights, General Comment No. 4, paragraph 19, UN Doc. E/1992/23.

⁶⁹ Committee on Economic, Social and Cultural Rights, General Comment No. 13, paragraph 60, UN Doc. E/C.12/1999/10.

education⁶⁹ in its lending policies, credit agreements, structural adjustment programs and other development projects.

(ii) As a UN agency

Shared aims of the World Bank and the UN

“Co-operation between the Bank and the UN has been in place since the founding of the two organizations (1944 and 1945) and focuses on economic and social areas of mutual concern such as reducing poverty, promoting sustainable development and investing in people” – The World Bank Website.⁷⁰

“At the executive level, the Bank President and the Secretary-General engage in an on-going dialogue on substantive issues such as poverty eradication, capacity building in Africa, humanitarian and post-conflict issues, human rights and financing of development” – The World Bank Website.⁷¹

It can be strongly argued that the World Bank, by virtue of its status as a specialized agency of the UN, is bound to observe the UN Charter and its provisions, including the general principle to protect human rights.⁷² This argument is sustained by way of the combined effects of stipulations in the Charter itself and the prescriptions of the World Bank's Relationship Agreement with the UN. Articles 55, 57 and 63 of the UN Charter together provide for the establishment of specialized agencies alongside the express articulation of the UN's responsibility to promote “universal respect for, and observance of, human rights and fundamental freedoms ...” (art.55). The Relationship Agreement on the other hand, whilst providing for the Bank's *functional* independence, nonetheless

⁷⁰ The World Bank Group, Partners, United Nations, available at <<http://web.worldbank.org/WBSITE/EXTERNAL/EXTABOUTUS/0,,contentMDK%3A20040610~menuPK%3A41691~pagePK%3A43912~piPK%3A44037,00.html>> , accessed on 17 Dec 2003.

⁷¹ The World Bank Group, Partners, United Nations, available at <<http://web.worldbank.org/WBSITE/EXTERNAL/EXTABOUTUS/0,,contentMDK%3A20040610~menuPK%3A41691~pagePK%3A43912~piPK%3A44037,00.html>> , accessed on 17 Dec 2003..

⁷² Such obligation, it is held, flows from a consideration of the UN Charter's human rights provisions in arts 55-57.

stresses its *legal* duties as a UN agency as depicted in its Articles of Agreement.⁷³ Thus, for example, Article 6(1) of the IBRD's Articles of Agreement acknowledges the primacy of Security Council decisions at international law.

The result is that the Bank's objectives, and therefore its operations, must properly be read as commensurate with the objectives of the UN, including those in respect of human rights protection under article 55 as extracted above. Indeed, it is argued that in the broad context of the UN's Charter objectives, a principal motive for establishing specialized agency relations in the first place with organs such as the World Bank was to marshal all relevant resources to fulfilment of the task. In that case, it would be patently absurd to interpret the mandates of institutions like the Bank – no matter how opaquely expressed - in such a way as to permit actions that were either contrary to, or dismissive of, the UN's goals of human rights protection and promotion.⁷⁴

From 'relationship' to 'partnership'

The nature and necessity of the Bank's relationship with the UN is certainly appreciated at the highest levels of policy-making in the Bank, and it is likely that the two organizations today enjoy a closer "multifaceted, extensive and growing partnership,"⁷⁵ than at any other time in their respective histories. Thus on the occasion of the President Wolfensohn becoming the first president of the Bank to address the UN General Assembly in October 2003, he emphasized the Bank's "desire ... to work intimately and closely with the UN system."⁷⁶ The Bank-UN relationship has been fortified in recent times by the joint commitment towards the Millennium Development Goals (MDGs). To this effect, the Bank has described itself as a "full partner" of the United Nations in implementing the MDGs.⁷⁷

⁷³ See Article 1(2) of the *Agreement between the UN and the International Bank for Reconstruction and Development* (Nov.15 1947), 16 U.N.T.S. 346. See further, Darrow, above note 1, pp.124-9 and Skogly, above note 1, pp.103-06, 108-09.

⁷⁴ See Darrow, above note 1, pp.125 & 128.

⁷⁵ The World Bank Group, *Partners, United Nations*, available at <<http://web.worldbank.org/WBSITE/EXTERNAL/EXTABOUTUS/0,,contentMDK%3A20040610~menuPK%3A41691~pagePK%3A43912~piPK%3A44037,00.html>> , accessed on 17 Dec 2003.

⁷⁶ Address by World Bank President James D. Wolfensohn to the United Nations High-Level Dialogue on Financing for Development, New York, October 30, 2003.

(iii) By virtue of jus cogens and international customary law

In parallel to the treaty, or contractual, human rights obligations placed on the Bank discussed above, there are also obligations existing under the *jus cogens* and customary law branches of international law. As a matter of principle it is argued that as, by definition, *jus cogens* principles (or 'pre-emptory norms') are immutable and absolutely binding on states at international law,⁷⁸ so they should bind international organizations, which are the creations of states.⁷⁹ In respect of customary international law there is a somewhat similar argument that holds that where rules bind states on the basis of their customary observance in international relations,⁸⁰ then in so far as inter-state organizations such as the Bank operate within the same field of international relations they too will be bound.⁸¹ These are important legal arguments, however, it must be recognized that there has not yet been any express, definitive determination of what are or should be the practical implications for the Bank of being so bound by *jus cogens* principles and international customary laws.

The views of the International Court of Justice

As a subject of international law in its own right and as a collective body of nation states, the World Bank, is bound by customary and peremptory human rights. Thus in two notable cases, the International Court of Justice has stated that:

(i) "international organizations are subjects of international law which ... are governed by the 'principle of speciality', that is to say that they are invested by the states which create them with powers, the limits of which are a function of the common interests whose promotion those states entrust to them".⁸²

and

⁷⁷ World Bank Joins United Nations in Implementing Millennium Development Goals Guide To Development In 21st Century, News Release no.: 2002/086/S, Washington, September 19, 2001.

⁷⁸ Article 53 of the Vienna Convention on the Law of Treaties states that a *jus cogens* norm is: "a norm accepted and recognized by the international community... as a norm from which no derogation is permitted..."Vienna Convention on the Law of Treaties, May 23, 1969, 1155 U.N.T.S. 332, 8 I.L.M. 679.

⁷⁹ Schermers & Blokker, *International Institutional Law* (3rd rev. edn; 1995); p.822

⁸⁰ "International custom, as evidence of general practice accepted as law" is recognized as a source of international law by article 38(1) of the Statute of the International Court of Justice. Further, its validity as a source of international law was affirmed in the International Court of Justice case of *Nicaragua v. USA (merits)*, ICJ Rep, 1986, 14 at 97.

⁸¹ See Judith Gardam "Legal Restraints on Security Council Military Enforcement Action" (1996) 17 *Michigan Journal of International Law* 285 for discussion of how another international organization - the Security Council - might be so bound.

⁸² The Legality of the Use by a State of Nuclear Weapons in Armed Conflict, International Court of Justice, case Summary, Advisory Opinion, (1996), at 25.

(ii) "international organizations are bound by any obligations incumbent upon them under general rules of international law . . ." ⁸³

These "common interests" and "general rules" include the rights that constitute customary international law and *jus cogens* norms (as listed above). Therefore in carrying out its projects and activities the Bank has obligations under international law with respect to those human rights and freedoms.

A non-exhaustive list of human rights that are regarded as customary international law is provided by the American Law Institute. These are the rights to be free from:

- (a) genocide,
- (b) slavery or slave trade,
- (c) the murder or causing the disappearance of individuals,
- (d) torture or other cruel, inhuman, or degrading treatment or punishment,
- (e) prolonged arbitrary detention,
- (f) systematic racial discrimination, or
- (g) a consistent pattern of gross violations of internationally recognized human rights. ⁸⁴

Of these, the rights contained in (a) to (f) constitute *jus cogens* norms.

The more recent General Comment No. 24 of the UN Human Rights Committee provides a more extensive list of human rights that amount to customary international law and arguably *jus cogens* norms. ⁸⁵ These are rights not to be subjected to:

- (a) slavery,
- (b) torture, cruel, inhuman or degrading treatment or punishment, to
- (c) arbitrary deprivation of a person's life,
- (d) arbitrary arrest and detention,
- (e) the presumption of guilt,

Further, a State may not:

- (f) deny freedom of thought, conscience and religion,
- (g) execute pregnant women or children,
- (h) permit the advocacy of national, racial or religious hatred,

⁸³ Interpretation of the Agreement of 25 March 1951 between the WHO and Egypt. International Court of Justice, Reports of Judgment, Advisory Opinions and Orders. (1980), at 89-90.

⁸⁴ Restatement (Third) of the Foreign Relations Law of the United States, American Law Institute, 1987, section 702.

⁸⁵ UN Human Rights Committee, *General Comment No. 24 - Issues relating to reservations made upon ratification or accession to the Covenant or the Optional Protocols thereto, or in relation to declarations under article 41 of the Covenant*, CCPR/C/21/Rev.1/Add.6, 4 Nov. 1994, para.8.

- (i) deny to persons of marriageable age the right to marry, or
- (j) deny to minorities the right to enjoy their own culture, profess their own religion, or use their own language,
- (k) deny a fair trial.

International customary law, jus cogens and the World Bank

Though not perhaps to be overstated – because the proposition has not yet been explicitly tested before any international tribunal - there is some potential for the Bank to be found to be in breach of certain fundamental human rights norms (whether *jus cogens* or customary international law) by which it is bound under international law. The scope for such argument is illustrated in the following pair of examples from the ‘top twenty’ projects that form the basis of the present study.

(i) Among the key criticisms of the Niger Delta Contractor Revolving Credit Facility, is the implicit encouragement given by the Bank to the Nigerian government's behaviour which has in some cases involved arbitrary detention and killing to silence opposition to the regime. The willingness of the Bank to deal with the Nigerian government is perceived by critics as encouragement and therefore complicity in such behaviour. As arbitrary detention and killing are clear violations of human rights that constitute customary international law and *jus cogens*, there is some potential to argue that the Bank is violating its obligations under international law.

(ii) Equally, the Bank may have a similar case to answer in respect of its involvement in the BTC oil and gas pipeline facility in Azerbaijan, Georgia and Turkey. Strong criticisms have been levelled, variously, at all three of the Bank's government partners regarding the systemic discrimination, and arbitrary detention, of minority ethnic groups by way of the prejudicial laws they have passed enabling the pipeline to be built and operated. As these are violations of fundamental human rights norms and as the Bank is party to the projects within which context the violations have occurred, the Bank is open to the possibility of itself being charged with having failed to fulfil its international legal obligations.

Responsibilities in practice

As to what any of these sources of international legal obligations might mean in practice for the Bank, there is still room for debate. On the one hand, there can be little doubt that such fundamental negative obligations as mostly constitute *jus cogens* and customary rules, like the rule against torture, can be imposed on (and surely be accepted by) the Bank. But what of duties that are

less prohibitive and more promotive in character. Thus, for example, international human rights law treaties typically seek to extend the rule against torture to incorporate such positive obligations as the proper training of law enforcement officers so as to eliminate cruel or inhumane practices. To be sure, it would be difficult to infer such a promotive obligation from either *jus cogens* or customary rules, but it is quite reasonable to suppose such an inference from a number of provisions in the Convention Against Torture (CAT) (arts.1, 2 & 4, and especially arts 10 – 12) and the ICCPR (art.7, read in conjunction with art.2(2)). Thus, to the extent that the Bank can be considered bound by these instruments (as we argue above) it will be obliged to adopt this promotive approach to rights protection as well as abiding by the prohibitive forms of rights protection.

The human rights responsibilities of states

At international law, states are bound to observe an array of human rights norms. Some of these are, as discussed above, the pre-emptory norms – such as the prohibition of acts of aggression, genocide, slavery and racial discrimination,⁸⁶ – that constitute *jus cogens* and are, thereby, considered to be immutable. Some, as customary international law, are binding by way of their repeated use or observance by states,⁸⁷ including, for example, prohibitions against the use of torture and extra-judicial killing, the pacific settlement of disputes, and diplomatic immunities. However, by far the most extensive and detailed human rights provisions binding states at international law are to be found in a wide range of human rights treaties, at the centre of which stand the 1948 Universal Declaration of Human Rights (UDHR) and the UN's six principal human rights instruments – namely:

- The International Covenant on Economic, Social and Cultural Rights (1966) (ICESCR)
- The International Covenant on Civil and Political Rights (1966) (ICCPR)
- The Convention on the Elimination of all Forms of Racial Discrimination (1966) (CERD)
- The Convention on the Elimination of all Forms of Discrimination Against Women (1979) (CEDAW)
- The Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (1984) (CAT)
- The Convention on the Rights of the Child (1989) (CRC)

⁸⁶ As indicated above, though the conditions of what constitutes *jus cogens* is provided by Article 53 of the Vienna Convention on the Law of Treaties (1969), the list of *jus cogens* obligations is not clear-cut.

⁸⁷ It is accepted further, that state practice must be accompanied by *opinion juris* (that is, a statement to that effect in a recognized form at international law (judicial decisions, treaty provision, or authoritative publication) for it to be considered customary law.

[NB, soon to be added to this list is the Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (2004) which is due to come into force imminently]

Under each of the Conventions and Covenants,⁸⁸ signatory states are typically bound to implement the treaty provisions within their jurisdiction by all appropriate means, including, especially, through legislation, administrative action, and court interpretation.⁸⁹ And although “jurisdiction” is here directed at domestic jurisdiction, it is not exclusively so. This is important, because it has become clear that states in their capacity as the components of such inter-government organizations as the World Bank are obliged to ensure that these gubernatorial bodies promote and protect human rights through their own activities. Thus, the *Maastricht Guidelines on Violations on Economic, Social and Cultural Rights* provide that:

*The obligations of States to protect economic, social and cultural rights extend also to their participation in international organizations, where they act collectively. It is particularly important for States to use their influence to ensure that violations do not result from the programmes and policies of the organizations of which they are members. It is crucial for the elimination of violations of economic, social and cultural rights for international organizations, including international financial institutions, to correct their policies and practices so that they do not result in deprivation of economic, social and cultural rights. Member States of such organizations, individually or through the governing bodies, as well as the secretariat and nongovernmental organizations should encourage and generalize the trend of several such organizations to revise their policies and programmes to take into account issues of economic, social and cultural rights, especially when these policies and programmes are implemented in countries that lack the resources to resist the pressure brought by international institutions on their decision-making affecting economic, social and cultural rights.*⁹⁰

⁸⁸ The provisions of the UDHR – though not itself a binding treaty (merely a ‘Declaration’) – may also bind states in so far as the provisions can be considered to be customary international law.

⁸⁹ See, for example, article 2 of the ICCPR which stipulates that each state party “undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant...”(art.2(1)).

⁹⁰ The Maastricht Guidelines on Violations of Economic, Social and Cultural Rights Maastricht, January 22-26, 1997. paragraph 19.

It should also be noted, that in respect of the obligation on states under the ICESCR, that they protect the rights under that instrument “to the maximum of its available resources,”⁹¹ the resources of international development agencies are specifically recognized as being potentially “available” to developing countries.⁹² In consequence, both state and development agency are entwined in the obligation to ensure human rights observance within the means at the state’s disposal or otherwise made available to it.

On the face of it, there are significant differences in terms of the nature and extent of states’ obligations between the various forms of international law. Thus, though relatively few in number, *jus cogens* human rights norms are strictly binding, whether or not a state knows about them, or recognizes or even approves of them. Norms under customary international law are more numerous, but are less universally binding, given that it is possible to argue that “persistent objector” states are not covered. And the human rights provisions of treaties, though collectively the most numerous, only bind those states which have signed and ratified the treaties in question. However, in practice, and depending on the state in question, the difference can be much less significant. Where a state has signed up to all or most of the above human rights treaties, then it will be bound to respect all or most of the rights covered by the three categories. Conversely, the fewer the treaties ratified by a state (or ratified with extensive reservations), the smaller the range of human rights duties it is exposed to. Minimally, states will always be bound to respect *jus cogens* human rights norms.

Impact on the Bank of human rights infringements by states

The legal implications for the Bank of human rights infringements by its state project partners are most apparent in respect of the potential for it to be held vicariously legally liable - as depicted in respect of the claimed breach of certain fundamental human rights norms in the BTC pipeline and Niger Delta credit facility projects discussed above. However, there are also significant practical consequences of such behaviour by states that impact on the Bank’s legal obligations outside human rights. Thus, project contract difficulties in the form of delays, escalating costs, and deteriorating inter-partner relations follow quickly on the heels of a persistently rights infringing or intransigent state party, as the Bank has experienced in respect, for example, to its Bujagali Hydropower plant in Uganda, where the key private partner, AES, has pulled out following ongoing problems of this kind with the Ugandan Government.

⁹¹ Article 2(1).

⁹² Committee on Economic, Social and Cultural Rights, General Comment No. 3, paragraph 2, UN Doc. E/1991/23.

In practice, therefore, much hinges on the extent of ratifications of the above instruments. Generally, speaking, as shown in Appendix 3 there is reasonably good global coverage of state ratifications across all six instruments. Of the 195 states, the CRC has attracted most support (193 ratifications (99%) and the CAT, the least support (with 133 ratifications (68%)).

More important, in the context of the present study, is the remarkable level of support for the treaties among developing countries (DCs) and least-developed countries (LDCs) being the target countries for development assistance, and especially among the 21 countries that are the hosts to the 20 projects under review in this study. These levels are depicted in the tables in Appendix 4 (Ratification by Countries in Study) and Appendix 5 (Ratifications by Developing and Least Developing Countries). In respect of the countries in the study, the rate of treaty adherence is especially impressive, being 100% in relation to the CERD, CEDAW and CRC; 90% in relation to ICESCR and ICCPR and 76% in relation to CAT. Indeed across DCs and LDCs as a whole (Appendix 5), the levels of treaty ratifications is generally better than that attained globally (Appendix 3).

The human rights responsibilities of corporations

Traditionally, international law holds little room for corporations, whether transnational or domestic. Indeed there is considerable debate over whether corporations possess any legal personality at international law, and if so, to what extent that bestows on them the capacity to be the holder of legal rights, and more especially, the bearer of legal duties.⁹³ However, on the back of sustained and sometimes intense, public interest and concern over the power wielded by MNCs in particular, and the vital role they play in economic globalization, in terms of the promotion of commercial enterprise, trade, and economic development, a number of legal and quasi-legal (or 'soft-law') regulatory initiatives have emerged. Broadly speaking, these concerns and their legal consequences have been channelled through the prism of demands for good corporate governance, which can itself be interpreted in two complementary ways. On the one hand it can mean that corporations ought to be made more economically accountable in terms primarily of the financial probity of their actions; while, on the other, and in addition, that corporations ought to be made more socially accountable in terms of the human rights consequences of their actions. It is in latter respect – dubbed corporate social responsibility (CSR) - that we are concerned with here. Corporate social responsibility takes many forms. And even when one restricts one's focus on CSR just to human rights law matters, the scope remains broad, which reflects the fact that the matter is still in the early stages of development.

⁹³ On which see further Nicola Jägers *Corporate Human Rights Obligations: in search of Accountability* (Intersentia; 2002), pp.19-33.

In fact, the CSR field is littered with non-legally binding, voluntary codes of conduct, guidelines and principles, couched in broad terms that barely mention human rights standards.⁹⁴ There are then very few human rights specific initiatives within the evolving body of CSR; and still fewer that are legally backed. In this context, it is fair to say that the human rights responsibilities of corporations at international law exist more in prospect than actual, albeit that what is prospective is, as we discuss below, significant indeed. The situation of the human rights responsibilities of corporations at the level of domestic law however is somewhat different, even if it too is some way short of being comprehensive.

Human rights responsibilities under domestic laws

The situation of corporate human rights responsibilities under domestic laws differs, of course, from jurisdiction to jurisdiction. But broadly speaking, most countries, and all western countries (from which most MNCs emanate and operate), possess whole rafts of domestic laws that bind corporations in respect of their activities that impact on human rights, including in such areas as criminal law, anti-discrimination, health and safety at work, environmental protection, and labor rights. There is also an expanding body of domestic laws that have extraterritorial effect and which focus on the human rights implications of actions taken by corporations overseas. Foremost in this category, is the US *Alien Torts Claims Act*, which has spawned a number of high profile cases against such corporations as Coca-Cola, Shell, Unocal, Texaco and Freeport-McMoran.⁹⁵ But other examples of such laws include the Australian legislation enacted to combat sex tourism overseas,⁹⁶ and the Belgium's so-called 'universal competence' law.⁹⁷ Domestic courts in the common law jurisdictions of the US, the UK and Australia have also begun to limit the opportunities traditionally made available to corporations under the rule of *forum non conveniens* whereby corporations were able to avoid court actions at home concerning their off-shore activities, where the local (and often less exacting) jurisdiction (or forum) is considered more conveniently able to hear the case.⁹⁸

In the domestic realm there is also an abundance of industry codes and guidelines, individual corporation codes of conduct and even some national initiatives that provide, to varying degrees, stipulations as to minimum human rights standards. These may be, and some are, worthwhile initiatives in the quest to raise both corporate awareness of the relevance of human rights and the

⁹⁴ On which see generally, Deborah Leipziger *The Corporate Responsibility Code Book* (Greenleaf; 2003)

⁹⁵ See Stephen B Ratner, *Corporations and Human Rights: A Theory of Legal Responsibility* 111 YALE L. J. 443 (DECEMBER 2001), Beth Stephens and Michael Ratner, INTERNATIONAL HUMAN RIGHTS LITIGATION IN US COURTS (1996), and SARAH JOSEPH, TRANSNATIONAL HUMAN RIGHTS LITIGATION AGAINST CORPORATIONS (forthcoming Hart Publications, Oxford, 2004). It must be noted that as yet there have been no successful suits against corporations, though a number of cases are still pending final determination.

⁹⁶ Part IIIA of the Federal *Crimes Act 1914* (Cth).

⁹⁷ Which is now heavily curtailed; see *The Economist* (28 June 2003), p.54

⁹⁸ See Halina Ward, *Governing Multinationals: The Role of Foreign Direct Liability*, in BRIEFING PAPER NEW SERIES No.18, Royal Institute of International Affairs, London (February 2001).

standard of their observance by corporations. But in so far as they impose no legal obligations on corporations, they fall outside the parameters of this section's concern with legal implications. That said, there are two, interrelated aspects of these voluntary codes that lend themselves to some legal effect. One is the normative effect that these initiatives are having on the development of legally binding regulations, which now exist – such as the recent amendments to the French *Code de Commerce* (requiring quoted companies to submit social and environmental reports on their activities),⁹⁹ and the mandatory reporting requirements of the Johannesburg Stock Exchange in South Africa¹⁰⁰ – or are emerging as draft proposals – such as the corporate codes of conduct bills that have been introduced in recent years in federal legislatures of the US¹⁰¹ and Australia¹⁰² and in the UK Parliament.¹⁰³

Domestic 'Hard Law': trade practices legislation and the Nike Experience

The second possible legal effect arises out of any reliance that consumers, customers or clients (actual or potential) might place on a corporation's public statements about its products or its activities (including those made in a corporate code of conduct or such like). For it is an essential feature of the legal systems of all market economy states that they possess some sort of trade practices legislation which guards against false or misleading statements or representations. Thus, where, for example, a corporation makes certain claims as to its non-use of sweat-shop labour in the manufacture of its products – as Nike did – and a consumer or potential consumer of those products alleges that he has been misled by those claims – as Mr Kasky alleged – then the corporation may be sued – as Mr Kasky has sued Nike. In fact, Kasky's cause of action was upheld by the US Supreme Court before the matter was settled out of court in advance of the matter returning to trial.

¹⁰⁴

⁹⁹ Law No.2001-420 regarding new economic regulations (15 May 2003), Article 116

¹⁰⁰ That is by way of the JSE's adoption (in 2002) of a Code of Corporate Practices and Conduct which is based on the Global Reporting Initiative's Sustainability Reporting Guidelines; see further Halina Ward *Legal Issues in Corporate Citizenship*, Paper prepared for the Swedish Partnership for Global Responsibility, Feb., 2003, p.4.

¹⁰¹ H.R. 45967 at 7 June 2000 and H.R. 2782 at 2 August 2001; the Bill lapsed.

¹⁰² The Bill lapsed. For a parliamentary committee report on the Bill, see Parliament of the Commonwealth of Australia, Parliamentary Joint Statutory Committee on Corporations and Securities, *Report on the Corporate Code of Conduct Bill 2000* (2001), available at

http://www.apf.gov.au/senate/committee/corporations_ctte/corp_code/report/report.pdf.

¹⁰³ The Second Reading in the House of Commons of the *Corporate Responsibility Bill* was set down for 14 November 2003, but the Bill lapsed at the close of the parliamentary session.

¹⁰⁴ *Kasky v. Nike Inc.*, 123 S. Ct. 2554; 2003 U.S. LEXIS 5015. On the terms of the settlement, see Lisa Girion *Nike Settles Lawsuit over Labor Claims* LA TIMES (September 13, 2003) available at

<http://www.fairlabor.org/all/news/docs/KaskyLATimes.doc> (last visited Oct. 13, 2003)

Human rights responsibilities under international law

As mentioned above, there are few existing human rights responsibilities placed on corporations under international law. In terms of direct responsibilities, the obligation under the UDHR that every organ of society is obliged to pursue the upkeep of human rights standards applies to corporations, just as it does to states and to the World Bank. There are also a number of environmental treaties that impose liabilities directly on TNCs. For example, both the International Convention on Civil Liability for Oil Pollution Damage¹⁰⁵ and the Convention on Civil Liability for Damage resulting from Activities Dangerous to the Environment¹⁰⁶ stipulate that in addition to state parties, other legal persons, including corporations, can be held directly liable for breaches.¹⁰⁷ It should be noted further, that whilst under international criminal law, the duty not to engage in the criminal acts stated in the Statute of the International Criminal Court,¹⁰⁸ is not imposed on corporations,¹⁰⁹ it may be in respect of their officers and/or employees.¹¹⁰ The legal liability of corporations under international law may also be imposed *indirectly*; that is, through the *direct* responsibilities placed on states. However, for the international obligation to filter through to the corporation in this way, one must rely on the agency of state, which is required to enact the appropriate legislation in domestic law giving effect to the international duty.

Notwithstanding the relative scarcity of these instances of concrete legal liability, there have been some major developments in respect of corporate human rights responsibilities on the international plane. There now exist a number of high-profile voluntary initiatives overseen by such intergovernmental organizations as the UN (the Global Compact),¹¹¹ the OECD (Guidelines for Multinational Corporations),¹¹² the ILO (Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy),¹¹³ and such private international initiatives as the Global Reporting Initiative,¹¹⁴ SA 8000,¹¹⁵ the Equator Principles,¹¹⁶ and Amnesty International's

¹⁰⁵ *Entered into force* June 19, 1975, art. 1.

¹⁰⁶ *Adopted* June 21, 1993, art. 2(6).

¹⁰⁷ The Preamble to the UN's Norms on the Responsibilities of Transnational Corporations and Other Enterprises with Regard to Human Rights UN Doc. E/CN.4/Sub.2/2003/38/Rev.2 (2003) lists many other international instruments that bind corporations, though in just about all cases the obligation only comes indirectly, through the direct obligations placed on states by the various instruments.

¹⁰⁸ Namely, genocide, crimes against humanity (such as enslavement, rape, torture and murder), war crimes or crimes of aggression; see *The Statute of the International Criminal Court* (ICC Statute), arts 5-8;

<http://www.un.org/law/icc/statute/rome.htm>, accessed on 22 December 2003.

¹⁰⁹ A proposal by France that the Statute of the International Criminal Court include a provision that extended criminal liability beyond individuals to include legal persons such as corporations was never adopted; see *Developments – International Criminal Law*, 114 HARV L R 1943, 2031-2 (2001).

¹¹⁰ See arts 25(3) and 28(2) of the ICC Statute which deal with individual responsibility and responsibility within non-military superior/subordinate relationships, respectively.

¹¹¹ www.globalcompact.org (last accessed 24 November 2003)

¹¹² The OECD Guidelines for Multinational Enterprises (2000), Part IV, at <http://www.oecd.org/dataoecd/56/36/1922428.pdf>;

¹¹³ <http://www.ilo.org/public/english/standards/norm/sources/mne.htm>

¹¹⁴ www.gri.org

Human Rights Principles for Companies.¹¹⁷ And whilst none of these are themselves legally binding, their effect on the conduct of business could be profound, as, for example, in the case of the anticipated impact on development finance of the Equator Principles, as noted in the previous section on Human Rights Analysis, and further noted here.

International 'Soft Law': The Equator Principles

“These principles will foster our [the private sector bank signatories] ability to document and manage our risk exposures to environmental and social matters associated with the projects we finance, thereby allowing us to engage proactively with our stakeholders on environmental and social policy issues” – *Preamble* to The Equator Principles

“The adoption of the Equator Principles confirms that the role of global financial institutions is changing. More than ever, people at the local level know that the environmental and social aspects of an investment can have profound consequences on their lives and communities – particularly in the emerging markets where regulatory regimes are often weak. And if financial institutions want to operate in these markets, there is a bottom-line value in having clear, understandable and responsible standards for investing” - Peter Woicke, Executive Vice-President of the IFC, Press Statement at the launch of The Equator Principles, 4 June 2003.

The international initiative in this field that holds the greatest promise – both because of its breadth and depth, as well as its ambition – is the UN's Norms on the Responsibilities of Transnational Corporations and Other Enterprises with Regard to Human Rights.¹¹⁸ The Norms and accompanying Commentary, were developed by the Working Group on Transnational Corporations and were adopted by the Sub-Commission on the Protection and Promotion of Human Rights on 13 August 2003, and are set to be considered by the Commission on Human Rights in 2005¹¹⁹ They explicitly cover such matters as equal treatment and non-discrimination, right to security of the person, the rights of workers, respect for national sovereignty (including the right to development), obligations regarding consumer protection and environmental protection.¹²⁰

¹¹⁵ Social Accountability International: <http://www.sa-intl.org/SA8000%20standard.htm>

¹¹⁶ www.equator-principles.com

¹¹⁷ <http://web.amnesty.org/library/index/engACT700011998?open&of=eng-398>

¹¹⁸ UN Doc. E/CN.4/Sub.2/2003/38/Rev.2 (2003), available at <http://www1.umn.edu/humanrts/links/norms-Aug2003.html>; accessed, 22 December 2003.

¹¹⁹ Sub-Commission Resolution 2003/16, UN Doc. E/CN.4/Sub.2/2003/L.11 at 52 (2003).

¹²⁰ For further discussion and analysis, see Peter Muchlinski, “The Development of Human Rights Responsibilities for Multinational Enterprises” in Sullivan (ed) *Business and Human Rights* (Greenleaf; 2003), pp.39-43 & 47-51.

The Norms constitute what is in effect a draft treaty, which may soon be open to states to sign up to. But what is more significant about this instrument, is that in addition to purporting to bind states, it also purports to place obligations on transnational corporations and other business enterprises “within their respective spheres of activity and influence, ... to promote, secure the fulfilment of, respect, ensure respect of, and protect human rights recognized in international as well as national law”.¹²¹ The Commentary that accompanies the Norms states further that TNCs “shall have” responsibilities to use due diligence to ensure their activities do not infringe human rights; to refrain from activities that undermine the rule of law; and, to inform themselves of the human rights impact of their activities. The Norms are unclear, however, as to how corporations could be held directly liable under international law for any breaches of these obligations, beyond implying that the possibility exists that new enforcement mechanisms might be created permitting such an outcome.¹²² For the time being, therefore, it is likely that the liability of corporations will be imposed along the more orthodox, indirect route, by way of the direct liability that the Norms will place on states.

To be or not to be “the Enron of human rights abuse”?

The long list of powerful TNCs that have been subject to high-profile litigation regarding their human rights record is a clear indication of the pressure – both direct and indirect – that is being placed on corporations to comply with international human rights standards. The list includes such names as: Rio Tinto, Chevron-Texaco, Unocal, BHP Billiton, Coca-Cola, Freeport McMoran, Shell, The Gap, Unocal, Nestlé, Exxon, Pfizer, Nike, and Eastman Kodak.

And though it is true that to date, very few of these cases have been found against the corporate defendant (due to their out-of-court settlement before trial or there being no case to answer), it can be said with certainty that no corporation benefits from, still less likes, such litigation, and none would want to become “the Enron of human rights abuse”.¹²³

Finally, in the context of this Discussion Paper, the especially significant role that all corporations, and TNCs in particular, can play in advancing social, as well as economic circumstances in developing countries must be recognized. Indeed, it can be argued that in certain contexts, a key factor in the level of protection of human rights in some countries is the level of recognition and

¹²¹ Paragraph 1.

¹²² Paragraph 16 of the Norms refers to the prospect of supervision of corporations by domestic or international mechanisms, whether in existence “or yet to be created”.

¹²³ Elliot Schrage “Emerging Threat: Human Rights Claims” *Harvard Business Review* (August 2003), Forethought Memorandum, p.1; available from www.hbr.org.

support that such protection receives from the business sector, and especially *big* business. For in the absence or inadequacy of human rights protection provided by the state, it can often be that, at a local level, a corporation may be the only realistic prospect of providing such protection. This is particularly so when there is “[e]xternal pressure on companies to actively promote human rights ... [where] it alters the [corporate] stakeholders’ perception of the balance between opportunities and risks in such a way that it is in the company’s interest to embark on human rights protection”.¹²⁴ To be sure, there is a danger in pushing this line too far in the fact that it cannot be expected to undermine either the essential basic duties of the state or the ultimate commercial (that is profit) motive of the corporation.¹²⁵ The matter also raises questions as to the legitimacy and competence of the corporation to be involved in matters of such social and political significance within a state. But that is surely significantly tempered when the corporation is acting in partnership with the World Bank (alongside the state as well), for, as we have endeavoured to establish in this section, the Bank is obliged to protect human rights, and – as both a UN agency and as an aid to states in fulfilment of their obligations – vicariously responsible for promoting the observance of international human rights standards in its activities. What is more, it can often be the case that together the consortium (of corporation, Bank and state) constitutes the only entity capable of providing the level of human rights protection required.

Conclusions

It is apparent from the foregoing examination of the legal implications for the World Bank of its involvement in human rights issues that there are heightened – and to some extent accepted – expectations of greater recognition by the Bank of the human rights consequences of its private sector development activities. Some of these expectations are already in legal form, others are still in planning or potential stages. The pressure to realize fully the notion that the Bank has some degree of direct liability under international human rights law for its actions will continue to be applied. However, in the context of the Bank’s activities at issue in this paper, it is, as we stressed at the outset and throughout this section, at the level of Bank’s liabilities acquired indirectly, through the legal responsibilities imposed directly on its state and private sector partners, that there lies the greatest potential for development. The responsibilities of states under international human rights law are manifest and established, as detailed above, whilst the legal obligations of corporations are in some respects still evolving. In respect of the continuing and future impact of such indirect liability through either path, the actions of the Bank, as much as those of the states and private sector partners themselves, will be crucial. Thus, on the one hand, the Bank’s increasing

¹²⁴ Frans-Paul van der Putten, Gemma Crijns & Harry Hummels, “The Ability of Corporations to Protect Human Rights in Developing Countries” in Sullivan (ed) *Business and Human Rights* (Greenleaf, 2003), p.91.

¹²⁵ In this regard, note the comment of a Shell chief executive in Nigeria made during the height of Shell’s remedial efforts following the Ken Saro-Wiwa imbroglio that “things are back to front here; the government’s in the oil business and we are in local government”; Brian Hendersen, quoted by Noreena Hertz *The Silent Takeover* (Arrow, 2001), p.220. Note also the undesirability of having corporate ideologies and processes transplanted into the public domain, Daniel Litvin, *Empires of Profit: Commerce, Conquest and Corporate Responsibility* (Texere, 2003), pp.224-5.

commitment to advancing the principles of good governance, access to justice, and combating corruption in its development projects has the inevitable effect of enhancing the institutional capacities of host states to comply with their obligations under international human rights law. And on the other, the increasing instances of Bank/private sector relations will add another dimension to the pressure otherwise being applied on corporations to make them more legally accountable for human rights consequences of their actions. Advances in both these respects will certainly increase the legal obligations of the Bank in terms of human rights, in direct correlation to the extent of its formal, business relations with states and private corporations in development projects. To be sure this will not be a simple task, for beyond the crucial matter of the Bank actively embracing these human rights objectives at the level of its strategic management, there are practical obstacles to overcome such as questions of states' claimed rights of non-interference and the parallel issue of how to deal with local laws that do, or appear to, contradict international human rights standards. But, given that these are precisely the same obstacles that the Bank is faced in its endeavours to push such social and political initiatives as promoting good governance and anti-corruption programs, the problem cannot be claimed by the Bank to be either novel or insurmountable.

Program Implications

The preceding empirical and human rights law analyses have numerous implications for World Bank policy and operations and it is not the intent here to cover all contingencies or, indeed, to preempt the Bank's decision-making on these issues. Instead, two tasks are performed in this section. First, the potential programmatic impact of human rights law (or, to be more accurate, a 'human rights way to development') is briefly considered in relation to the Bank's approach toward water privatization – a key target, as the earlier Empirical Analysis highlighted, for public criticism. Having identified some of the advantages, and problems, with adopting a human rights-based approach to this Bank activity, the second part of this section analyzes the more general *policy processes* through which a concern for human rights may, gradually and with experimentation, be brought into the core of the Bank's work. This policy analysis is organized around a three-tiered metaphor that distinguishes between policy formed at a macro-level, that formed through the course of implementation (meso-level), and that arising out of the ongoing operations of the Bank (micro-level). At the end of each of these sub-sections, several questions for further discussion by Bank decision-makers are set out.

Privatization and Human Rights

The first thing to note is that relatively little has been written on the topic of a 'human rights way' to infrastructure privatization in the developing world. One author who has (briefly) looked at this is Mac Darrow, of the joint UNDP/UN High Commissioner for Human Rights HURIST project

(Human Rights Strengthening), who argued that when it comes to the privatisation of essential services in developing countries it is possible the Bank and the IMF may breach their 'negative' obligation to not assist in the transgression of human rights. He makes the point that the agencies' "collective zeal" for privatisation might require review:

In particular, by respecting the presumption against unwarranted retrogression, ensuring that any deliberate diminution in enjoyment of economic and social rights is justified by reference to the totality of such rights, implementing a human rights impact assessment (within applicable methodological constraints), and guaranteeing the implementation of countervailing measures to the extent of foreseeable violations.¹²⁶

Although Darrow does not pursue this issue further, in the above quote he raises some of the key dilemmas associated with the privatization of essential services in developing countries (not to mention Northern industrial states). His emphasis on the need to justify any 'deliberate diminution' of economic and social rights by considering the overall effect on the 'totality of such rights', and his emphasis on the need to ensure processes are in place to balance out 'foreseeable violations' of those rights, re-state in human rights-oriented language the concern over unequal distributional impacts that development analysts are beginning to identify, and support through empirical measurement, in infrastructure privatization processes. The third element of Darrow's statement – the need for human rights impact assessments – points to one way that human rights analysis may help overcome the side-effects of privatization by raising human rights to the level where they, at the very least, require safeguarding if immediate fulfilment is not possible. The following discussion picks up where Darrow leaves off and digs a little more deeply into these questions.

The unequal impact of privatization

A noisy policy debate over the costs and benefits of privatization, and of public-private relationships such as contracting out, has been taking place in Northern industrial states, and more recently in 'the South' as well, for over a quarter of a century. In the case of the World Bank, a gradual re-evaluation of the benefits of public infrastructure privatization (focusing on telecommunications, energy, transport, water and sanitation) appears to be taking place. Policy statements such as the 2002 Private Sector Development Strategy continue to emphasize how broad economic and service quality benefits can be achieved through taking the ownership and operation of infrastructure out of the hands of government, where decision-making may be sullied by political opportunism, and placing it into those of private enterprise, where competitive markets promise to ensure, over the long-term, competent management and improved service delivery.¹²⁷ There is, however, also some recognition that markets alone are not sufficient to ensure these benefits; effective, public regulatory structures and institutions, as well as well-planned incentive regimes,

¹²⁶ Darrow, Mac, *Between Light and Shadow: The World Bank, The International Monetary Fund and International Human Rights Law*, Oxford: Hart Publishing (2003), n1 at 295-296.

¹²⁷ The World Bank, *Private Sector Development Strategy – Directions for the World Bank Group*, April 9, 2002, Washington, DC: The World Bank (2002).

are also required so as to counteract rent-seeking behaviour by firms and the tendency of infrastructure markets to revert to monopolies.¹²⁸

Recent empirical analysis confirms the need for effective regulation. The most detailed analyses, for reasons of availability, quality and longitudinal breadth of the data (especially household consumption surveys), have been in relation to Latin America. These have found that, overall, there have been many positive benefits to come from privatization. There have been clear increases in access to infrastructure, especially telecommunications and electricity, and in the quality of services. In numerous cases, network coverage has expanded to take in households that previously had no formal connection. In the case of water supply, robust correlations have also been established between privatization and lowered child mortality. And infrastructure and service provision by private firms is found to be, on the whole, more efficient (at a micro-economic level), which is expected to produce positive macro-economic effects through lowered production costs.¹²⁹

The outcomes of infrastructure privatization have not, however, been uniformly positive. The same studies that isolate the positive outcomes of privatization have also indicated the ways in which privatization differentially impacts on the poor. In some cases this is because the poorest communities are being forced to pay for services that were previously gained through illegal (and often unsafe) connections to the established networks (especially electricity and water). In many other cases it is because uniform tariff increases impact unequally on the incomes of poor households. To some degree, improved access balances out increased tariffs, although this is of limited importance once the percentage of income dedicated to essential services expands to the point it prevents poor households' from obtaining equal or higher elements in the 'hierarchy of needs'. The Latin American studies indicate that the privatization of water supply has, overall, led to high tariff increases that have not resulted in improved access and service quality to the degree of other infrastructure sectors. Moral hazard – such as profit-taking by increasing tariffs without increasing service – seems especially acute in the water and sanitation sector, either because of unequal bargaining power between governments and MNC-backed consortia or because natural monopolies have returned some years after initial privatization attempts.¹³⁰ Also, at a macro-

¹²⁸ The World Bank, *World Bank Group Private Sector Development Strategy Implementation Progress Report, June 20, 2003*, Washington, DC: The World Bank (2003).

¹²⁹ See Birdsall, N & Nellis, J. "Winners and Losers: Assessing the distributional impact of privatization", *Centre for Global Development, Working Paper Number 6, May 2002*, (2002); Nellis, J, Menezes, R & Lucas, S. "Privatization in Latin America: The rapid rise, recent fall, and continuing puzzle of a contentious economic policy", *Centre for Global Development Policy Brief*. Vol 3 (1), (2004); Macedo, Roberto, *Privatization and the Distribution of Assets and Income in Brazil*, Working Paper No 14, Washington, DC, Carnegie Endowment for International Peace (2000); Megginson, William L. & Netter Jeffrey, "From State to Market: A Survey of Empirical Studies on Privatization," *Journal of Economic Literature*, Vol. XXXIX, (2001); Estache, Antonio, Gomez-Lobo, Andres & Leipziger, Danny, *Utility Privatization and the Needs of the Poor in Latin America: Have We Learned Enough to Get it Right?*, Infrastructure for Development: Private Solutions and the Poor Workshop, 31 May - 2 June 2000, London, UK, (2000).

¹³⁰ Bitrán, Gabriel A. & Valenzuela, Eduardo P. "Water Services in Chile: Comparing Private and Public Performance", *Public Policy for the Private Sector*, March 2003, Note Number 255. (2003). NB Bitrán & Valenzuela ultimately find that tariff increases in Chile have been matched by improved investment in infrastructure. They do not examine, however, differential income impacts of tariff rises.

economic level, there has been less evidence of improved economic growth and job creation based on improved firm-level efficiency as was initially hoped, thus lowering the long-term macro-economic compensations for the short-term, differentially felt 'pain'.

As this Discussion Paper indicates, and as is supported by a number of studies, many of privatization programs in regions such as Latin American and Sub-Saharan Africa have been unpopular with the local citizenry. This may in part be because privatization has coincided in some countries with economic down-turns caused by factors not linked explicitly to privatization.¹³¹ In other cases it is because privatization was too-extravagantly praised; it may also have been seen as an imposition on local sovereignty by outside, Northern forces. One, public policy-oriented explanation is that while the considerable benefits of privatization are spread relatively evenly across the community, in some cases with the poorest differentially benefiting from improved access, the costs are felt more keenly in certain groups than others.¹³² Most importantly, trade unions, entrenched political and bureaucratic interests and the urban beneficiaries of previously subsidized services are adversely affected, which provides a motive for anti-privatization protest. While the facts of a case such as Cochabamba does not fully bear such analysis out – there it was the most powerful local groups that had the greatest interest in the, admittedly somewhat bastardized, privatization process going ahead – there can be little doubt that opposition to privatization has been a largely urban affair. What the empirical studies indicate, however, is that, when looking at the impacts of privatization in the short-term at least, perceptions that privatization is producing inequality are not without foundation. There is something more going on here than just the rearguard action of the newly disempowered; it can be argued that there is a broad-based community realization that the lot of the traditionally disempowered is not, on the whole, being improved by privatization.

The evidence presented above suggests that advocates of water privatization face a major dilemma. To overcome the problems of inequality associated with the privatization of water supply systems requires better management and better design of tender processes, incentive structures and regulatory frameworks and institutions. Unfortunately, the opposition to privatization bred by the (partly justified) perception of the inequality it causes reduces the local political will to continue engaging in privatization at all, even via institutional strengthening projects for regulators. In other words, there is a complex interplay between economic analysis, public sector management and public opinion that needs to be understood and engaged with for the many benefits of private sector involvement in the provision of public infrastructure and services to be fully obtained.

At the present time the World Bank seeks to help its borrower members achieve the benefits of privatization by offering a combination of advisory services (such as the Rapid Response Unit),

¹³¹ See presentation by John Nellis on 11 November 2003 to members of the World Bank's Europe and Central Asia (ECA) Region section on *Winners and Losers: Assessing the Distributional Impact of Privatization*. Recorded on 'B-Span' and located at <http://info.worldbank.org/etools/bspan/PresentationPrint.asp?PID=957&EID=496>

¹³² Nellis, J, Menezes, R & Lucas, S. "Privatization in Latin America: The rapid rise, recent fall, and continuing puzzle of a contentious economic policy", *Centre for Global Development Policy Brief*. Vol 3 (1), (2004).

discrete institutional strengthening projects and loans based on country strategies. The question now to be addressed is what implications human rights analysis has for those tools, and the intellectual content they deliver.

Example: A human rights way to water privatization

Two bodies that are investigating how a 'human rights way to development' can be made operational are the UNDP/OHCHR HURIST Project, mentioned earlier, and the Human Rights Council of Australia, which has produced a policy and practice manual addressing this issue. Both have adopted similar approaches. For example, both see an initial need to reinterpret the overall framework of development goals through the prism of the international human rights regime. The HURIST Project interprets the human rights way to development framework as resting on four, non-negotiable principles: the universality and indivisibility of human rights; equality and non-discrimination; participation and inclusion, and accountability and the rule of law.¹³³ The Human Rights Council of Australia's approach is in agreement with this, although it more explicitly locates development as a sub-set of the human rights regime on the basis of the Vienna Declaration's "explicit endorsement" of the 1986 UN Declaration on the Right to Development.¹³⁴ Both approaches seek to recast development needs as rights, the intent being to help empower those populations often characterized simply as aid 'beneficiaries'. The Human Rights Council phrases it this way:

"[A human rights approach] is not premised upon government largesse. It is not discretionary and it establishes a very different relationship between the individual or group and the state. A right confers power. A human right enables even the most marginalized and ostensibly powerless person or group to make a claim against the State. A claim that under international law and custom is sustainable."¹³⁵

**The Human Rights Based Approach to Development Cooperation:
Toward a Common Understanding Among the UN Agencies**

In May 2003 representatives from the UN development agencies met at Stamford, USA, to conduct a Workshop on Implementing a Rights-based Approach in the Context of U.N. Reform. The resulting report was the first time a statement agreed on by all the agencies had been made as to their 'common understanding' of the primary elements of a human rights approach to development. It has been heralded as an important step in institutionalizing a rights way to development in the

¹³³ Van Weerelt, Patrick. *A Human Rights-based Approach to Development Programming in UNDP – Adding the Missing Link*. (July 2001). Paper available online at <http://www.undp.org/governance/hurist.htm>.

¹³⁴ The Human Rights Council of Australia. *The Rights Way to Development: A Human Rights Approach to Development Assistance – Policy and Practice*, The Council (2001) 24-25.

¹³⁵ *Ibid*, 28.

UN. Its three key points are:

1. "All programmes of development co-operation, policies and technical assistance should further the realisation of human rights as laid down in the Universal Declaration of Human Rights and other international human rights instruments.
2. Human rights standards contained in, and principles derived from, the Universal Declaration of Human Rights and other international human rights instruments guide all development cooperation and programming in all sectors and in all phases of the programming process.
3. Development cooperation contributes to the development of the capacities of 'duty-bearers' to meet their obligations and/or of 'rights-holders' to claim their rights."¹³⁶

The UN Committee on Economic, Social and Cultural Rights in their General Comment No. 3 (1990) also argue that the ICESCR-imposed obligation to progressively realize all economic, social and cultural rights means that there should not be any "deliberately retrogressive measures" taken without very careful justification by reference to the totality of ICESCR rights.¹³⁷ In the context of water privatization, this becomes of immediate concern in relation to the general non-discrimination principle articulated above.

When considering programmatic changes, while the human rights framework may not significantly change the instruments used to deliver development assistance, it will certainly alter the manner in which they are employed. Country strategies, for example, would utilise human rights standards in assessing needs and setting targets, as well as employing those principles, such as participation, in the formation of the strategy. Darrow and Tomas warn against a doctrinaire application of human rights principles in the development contexts of specific countries, noting that national human rights plans must be relevant to the local development conditions.¹³⁸ Part of the country strategy formulation process therefore involves translating the standards set under the international human rights regime to the legal, political, economic, social and cultural situation of that particular country. The HURIST Project has been working with local governments and communities on National Human Rights Plans in countries as diverse as Uganda, Mongolia and Nepal. HURIST reports on this planning activity indicate that it encounters the same issues of local institutional capacity that more 'traditional' World Bank country strategy/PRSP processes face. Early evaluations suggest that such planning processes have been only intermittently successful.¹³⁹ It must be borne in mind,

¹³⁶ UN, *Report – The Second Interagency Workshop on Implementing a Human Rights-Based Approach in the Context of UN Reform (Stamford, USA, 5-7 May, 2003)*, (2003), 17.

¹³⁷ Committee on Economic, Social and Cultural Rights, General Comment No.3 (1990) at para 9.

¹³⁸ Darrow, Mac & Tomas, Amparo, "Power, Capture and Conflict: A Call for Human Rights Accountability in Development Cooperation", *Human Rights Quarterly* (Forthcoming) (2004), 50.

¹³⁹ Westman, Ewa, *A desk study on National Human Rights Action Plans initiated by HURIST, July, 2003*, Located on the Internet at <http://www.undp.org/governance/hurist.htm>, (2003); Loubser, Jan, *Process Report On Hurist Mission With UHRC, Kampala, Uganda, March 4 To 29, 2002*, Located on the Internet at

however, that these plans are attempting to set in motion from the outset the method whereby questions of sustainable development are resolved, in terms of both the human rights goals that are set and the participatory manner in which they are agreed upon. These early findings also have to be read in the context that the National Human Rights Planning processes are taking place at the same time as well-established North-South development assistance interaction occurs; there are legitimate questions as to the preparedness of local governments to dedicate resources to the human rights planning processes.

At the level of implementing Country Strategies through programs and projects, the human rights-based approach to development focuses attention on the question of participation and timeliness. The UNDP, for example, has developed a Guide to Participation that clarifies the types of parties with which a development agency should engage and the steps by which they do that at various stages of the project cycle.¹⁴⁰ This raises the question, however, as to how such a high level of participation is going to fit within the time and resource constraints of ODA results-based management systems. The suggestion here is that such systems may need to be recalibrated so as to allow greater time for design and feasibility assessment on the expectation that the later implementation process will be more efficient and effective. At the monitoring and evaluation end of the project cycle, while a complete measurement of human rights is impossible, appropriate data-gathering and evaluation is important to ensure, even if only through proxy indicators, that rights are being fulfilled.¹⁴¹

In considering the specific case of water privatization, a human rights approach clearly would focus on the issue of the potential for tariff increases to have a discriminatory impact. Privatization that resulted in the poorest households being disproportionately affected, even if the community-wide benefits were positive, would be difficult to countenance under a human rights approach. One alternative would be that already raised by the Bank, that is to help strengthen regulatory institutions and frameworks before providing resources to assist privatization. A human rights-based approach would encourage such structures to focus on ensuring the most marginalized households were protected from, or compensated for, discriminatory tariffs. It would also provide for easily accessible avenues of redress, possibly through institutions such as ombudsman commissions. This amounts essentially to preserving key elements of citizenship even in an environment dominated by commercial contracts.

One of the real benefits of a human rights approach in the context of water privatization is that it would push development agencies to consider the various forms of public-private partnerships and the various incentive structures that may accompany them. It would encourage the assessment of world-wide best practice. One case that may be worth studying, even though it is concerned with a

<http://www.undp.org/governance/hurist.htm>, (2002); Darrow, Mac & Delgermaa, B., *Hurist (Human Rights Strengthening) Programme - Mongolia National Human Rights Action Programme (Nhrap) -Preliminary Lessons Learned*, Located on the Internet at <http://www.undp.org/governance/hurist.htm>, (2002)

¹⁴⁰ UNDP, *Empowering People – A Guide to Participation*, Located on the Internet at <http://www.undp.org/csopp/CSO/NewFiles/docemppeople.html>, (1998).

¹⁴¹ Van Weerelt, Patrick. *A Human Rights-based Approach to Development Programming in UNDP – Adding the Missing Link*. (July 2001). Paper available online at <http://www.undp.org/governance/hurist.htm>.

different sector, is the public transport system in the Brazilian city of Curitiba. This is frequently cited as a public-private relationship that encourages efficiency and yet also meets the social good. In this example, private bus operators are rewarded by the city government not for the number of passengers carried but for the extent of their network and the kilometres travelled. The government has also contributed to efficiency by altering the road layout so as to assist private operators in transporting the maximum numbers of people the maximum distances. As a result the system has high patronage and low fares, with only a minimal differential impact on incomes. It has also witnessed a number of positive environmental spin-off effects.¹⁴²

In a similar vein, advocates of what is sometimes called 'pro-poor' privatization have also raised the possibility that different forms of privatization, contracts and concessions could apply to different communities. For example, a government that is looking to private firms to provide state-of-the-art water infrastructure to communities currently lacking any modern infrastructure at all may face the unpalatable reality that the level of investment required is so high as to make it impossible for the supplier to achieve a timely profit without imposing prohibitive tariffs. At that point the government may be tempted to either privatize only that part of the system that has the potential to be profitable (leaving the rest to poorly subsidized public provision) or raise tariffs prior to privatization in order to make the whole system more attractive to potential buyers. A human rights-based, pro-poor privatization approach, however, might argue that in such cases it is better to open the market to a range of small contractors who bring in water by means that are less than state-of-the-art; or even allow for a mix of private contractors and community-based co-operatives.¹⁴³ The danger here is that, while the differential impact of tariffs might be reduced, a tiered system of supply standards may also be entrenched. Any layered approach such as this needs to have in place a dynamic that allows for improvement, however gradual, so that ultimately all households have similar access to a high quality water supply. Such a dynamic could, once again, be based on the public sector instigating investment through its own sources, setting appropriate incentives for private investors and providing opportunities for community-level participation and investment-in-kind.

The general point being made here is that a human rights way to development encourages exploration of the full range of methods whereby the right to water could be achieved for all citizens. If the conditions are such that full privatization is the best means to fulfil that right, then so be it. However, the possibility remains open for an other private-public combinations to be supported in accord with the situation in the country concerned, as determined by the initial human rights analysis of the way political, civil, economic, social and cultural structures inter-link in support, or otherwise, of rights. There is, therefore, not an enormous difference between current development approaches toward water privatization and those based on human rights; it is a matter of a slightly different expression of goals, and the means by which their achievement is measured,

¹⁴² Kroll, Lucien, "Creative Curitiba (the urban design of Curitiba, Brazil)", *The Architectural Review*, May 1999, Vol 205 (1227), (1999), 92-96.

¹⁴³ Tremolet, Sophie, *Pro-Poor Regulation: Challenges and Implications for Regulatory Design*, PPIAF/ADB Conference on Infrastructure Development – Private Solutions for the Poor: The Asian Perspective, Environmental Resources Management, The World Bank, (2002); Tremolet, Sophie & Browning, Sarah, *The Interface between Regulatory Frameworks and Tri-Sector Partnerships*, Business Partners for Development Research and Survey Series, (2002)

leading to an improved preparedness to consider the complete array of public-private-community relationships able to fulfil ever citizen's right to water.

As a final comment, one of the key impediments to effective participation in decision-making over development-related activities such as privatization, and something that underlies much of the criticism recorded in the Empirical Analysis section of this Discussion Paper, is that too often there is a clear discrepancy between the language of economics and public sector management, spoken by development agencies, and the language of social justice spoken by NGOs and community groups. The resultant mis-communication at the very least increases transaction costs, and at worst results in entrenched debate that prevents the full panoply of development solutions from being canvassed. A mutually intelligible language of human rights, which draws on many ideas familiar to social justice advocates, but which also looks to economic reasoning in helping to achieve many of those rights, offers a way around this impasse.

This proposition on the benefits of human rights as a development *lingua franca* indirectly raises once again the issue of empowerment. Speaking the language of rights and allowing the space for the gradual empowerment of the poor will require alterations in Bank policy and operational process that are not easily achieved. The following sub-section indicates some of the dilemmas, and possible solutions, in relation to this.

Policy Change on Human Rights

Macro-level

Should the World Bank respond to the criticism it is receiving over private sector development and privatization projects by formulating a high-level policy, issued by the Bank President and supported by the Boards of Governors and Directors, that places human rights at the centre of the Bank's work – in effect a top-down policy on 'mainstreaming' a human rights way to development? On the basis of the analysis conducted in this Discussion Paper, the immediate answer is: Yes, of course. Clearly this would be a very public way in which the Bank could acknowledge the importance of its human rights obligations and commit itself to meeting those obligations through its development work. And, assuming there is a genuine commitment on the part of Bank management to apply this policy, a high-level statement of this kind would set in train multiple changes throughout the agency. Yet, and this is a key point, a Presidential or a Board of Governors policy statement is not the only way, nor is it enough by itself, to bring about a change in the goals, methods and operations in an organization such as the World Bank.

While, at some level, policy is always about setting and achieving objectives that at least nominally add to the public good or the good of the organization, most managers, and every politician, knows that policy is slippery to define and even harder to apply. Policy can be made in an very 'rational', almost technocratic manner, where a policy hypothesis is defined, evaluated, compared against alternatives, and then monitored against clear criteria during its implementation. Alternatively,

policy can be made in an ad hoc style by politicians/managers responding to an immediate (or perceived) crisis; it can be the result of 'top-down', elite consensus that restricts the range of policy responses considered 'appropriate'; it can arise out of meso-level, implementation networks; it can result from 'bottom-up', on-the-ground activity that brings about change without significant input from higher-level officials. So, the possible ways in which the Bank and its 'policy managers' can determine and then achieve the objective of mainstreaming human rights in its development work are more varied than, simply, an announcement being issued from the office of the President. For the moment, however, we will focus on the implications of international human rights law for the high-level, 'rational' formulation of Bank policy on human rights.

The major policy process advantage of international human rights law, leaving aside its substantive value to development which has already been discussed in the above sections, is that it clarifies what is otherwise latent in the Bank's development hypothesizing. As noted in the opening of the Human Rights Analysis section of this paper, international human rights law is the institutional representation of the underlying liberal paradigm on which the Bank is based, and through its increasingly sophisticated articulation and application presents a clear, comprehensive policy hypothesis that rational policy-makers can assess in a structured manner. It has the benefit of being a well-established system of ideas and processes, giving policy-managers an explicit set of propositions that can be evaluated, on the basis of available evidence as well as theoretical analysis, as to their usefulness in helping the Bank achieve its core goal of sustained poverty alleviation. The fact that human rights law interprets poverty alleviation in a broad sense, going beyond mere economic growth and introducing other, assess-able variables, should not be seen as a policy problem but rather as a policy opportunity to address the issue of poverty more fully, fairly and effectively. The fact that human rights law broadens both the scope of the task and the options for its solution in an open fashion better enables comparison against alternative hypotheses, and is further reason why it can be seen as a practicable tool to assist 'rational' policy-making.

On the question of variables, one of the important advantages of international human rights law to rational policy-makers is that, as an institution that has been tested to some degree in the real world of international relations, it has already accounted for many variables that might otherwise not be recognized on account of the "bounded rationality" of decision-makers. Policy-makers always have inherently limited experience and cognitive abilities to identify and compare all policy options; by referring to the pre-existing and pre-tested institution of international human rights law they are able to expand those boundaries somewhat and move a little way from that which is merely 'satisficing', to use the language of Herbert Simon,¹⁴⁴ toward a more optimal policy outcome (in this case, the alleviation of poverty).

Once a commitment to this policy hypothesis has been made, international human rights law also brings the advantage of clarity to the question of rational policy implementation; its very

¹⁴⁴ Herbert A. Simon. "A Behavioural Model of Rational Choice". *Quarterly Journal of Economics* (1955) Vol 69: 99-118.

institutional framework is a set of standards and processes – the law – against which success or failure can be measured. Although it does not prescribe any one development mode (e.g. private sector-driven economic growth or community development), it does make explicit the goals that need to be met in order to achieve the mission of poverty alleviation (broadly defined). And while it is less than forthcoming on the specific indicators by which policy implementers will know those goals have been reached – for example, how is self-determination to be quantitatively measured? – there is a well-established tradition of debate on these points that can be referred to. This is in line with Amartya Sen's suggestion that human rights standards should influence both the goals and the *processes* of international development.¹⁴⁵

Should Bank decision-makers accept the general validity of the development policy hypothesis represented by human rights law, several substantive problems would have to be addressed. The first is that once the Bank accepts the centrality of international human rights law it must then accept that adherence to the law will impact on policy processes as well as project and program activities. For example, human rights law would oblige the Bank, on the 'due process rights' grounds discussed in the Human Rights Analysis section above, to consult with partner governments and local-level beneficiaries on issues of Bank policy. This already occurs to a degree through the Bank's existing governance arrangements and, at a program level, through the Poverty Reduction Strategy and Country Strategy processes. The question here is, does an explicit commitment to international human rights law mean the Bank must meet a more stringent standard of policy consultation, possibly even going so far as to alter the long-established tradition that the Bank's donor partners are granted the dominant share of the voting rights at the Board of Governors level? While this is not a likely scenario, human rights law certainly highlights it as an issue to be tested. In a similar vein, it also raises the issue of the Bank's policy relationship with international organizations such as the UN and the Office of UNHCHR: Are these agencies required under international human rights law to have any substantive input into Bank policy? The discussion in the legal implications section above suggests these organizations' contributions are advisory only, but, once again, this issue is thrown into far sharper relief should the Bank make a high-level policy commitment to human rights law.

The second problematic issue that an explicit commitment to human rights law would throw up is that of engagement. Should the Bank disengage with a state, or private, partner if that partner breaches international human rights law? As discussed in the Legal Implications section of this paper, the potential exists for the Bank to transgress its own legal obligations if it continues to support a country that is carrying out clear human rights abuses. The development counter-argument to this is that without some form of engagement the ability of the Bank to directly influence a government, or to build its capacity so as to produce more human rights-friendly decision-making in the future, is diminished. This is a long-running debate and one that has yet to be answered completely no matter which development policy hypothesis is adopted. Should the Bank express an explicit policy concern for human rights it will emphasize this dilemma, but it will

¹⁴⁵ Amartya Sen. *Development as Freedom*. (2001) Oxford: Oxford University Press

also open itself to the intellectual tools that will help it at least partly resolve the question; that is, it has a set of standards it can refer to in making a judgement on engagement. For example, a difference can be made between a regime that is arbitrarily killing and detaining citizens and one that is failing to support the cultural rights set out in the ICESCR. It is not a question of tiers of rights, rather, it is an intellectual ordering or balancing that helps define the activities in rights terms and so helps in arriving at appropriate policy responses (e.g. improving a state's capacity to better support cultural rights versus exerting international pressure to prevent a regime from irrevocably destroying the lives of its citizens).

Having raised several issues of concern, a final positive outcome that might result from a policy commitment to human rights law lies in the opportunity it offers to help resolve what the above Empirical Analysis section highlighted as a policy conflict within the Bank stemming from its desire to inculcate real and timely economic development in a manner that is environmentally, politically, socially and culturally sustainable. The current policy dilemma appears to be that, on the one hand, the Bank instigates large, high impact projects while, on the other hand, it attempts to construct holistic development relationships with local beneficiaries. A human rights 'way to development' based on international human rights law sees the relieving of economic deprivation and the meeting of due process rights, environment, water and health rights, shelter housing and land rights and political and civil rights as being intertwined to such a degree that any attempt to disassociate them is not only fruitless, it is also likely to be harmful to the long-term objective of poverty alleviation.

Questions for further discussion on 'high-level' policy formulation

- How 'rational' – in the Herbert Simon sense of the term – is the World Bank's 'high-level' policy formulation process? Is such a process possible under the Bank's governance structures which do not appear to permit, or at any rate do not permit easily, considerations beyond the economic? Who are the key players in this process and to whom are they accountable?
- How are borrower partners consulted on questions of Bank-wide policy? What aspects of the country-by-country Poverty Reduction Strategy Paper negotiation process and the ongoing maintenance of Country Assistance Strategies are open to alteration so as to reflect the human rights duties and obligations of the respective parties?
- How is the dialogue that the Bank Executive and Management have with the UN and other international organizations structured? How might, and should, policy change emerge from the human rights dialogue the Bank has with organizations such as the UN?
- What aspects of the Bank's Civil Society Engagement Teams (global, regional, country) operations, especially their dialogue and consultation processes, are able to be fed back

into a 'rational' policy formulation process?

- Should the Bank formalize a policy on engage or disengagement with state partners on the basis of those partners' observance of international human rights law?

Implementation (Meso-level)

As noted above, policy is not always made in a rational manner by high-level decision-makers in an organization. For one thing, the policy that is made by the central decision-makers of an agency is rarely of the same character as that which emerges during the course of implementation. Pressman and Wildavsky, for example, isolated a number of factors that could derail implementation, including: a flawed policy hypothesis; altered external circumstances (for example, economic recession); inadequate time and resources; too many steps, and too many associated assumptions, between the government/agency action and the ultimate objective; too many 'dependent' relationships where different actors have to provide either goods, services, or permission for one step to be completed and the next one to begin; competing perspectives among actors leading to a breakdown in coordination; failure to resolve questions of actor responsibility and accountability.¹⁴⁶ Hogwood and Gunn also added the factor of politics – “the patterns of power and influence between and within organisations” – and political conflict to this list.¹⁴⁷ As a number of the critics of the Bank projects identified in this study argued, even though the World Bank had in place policies and directives on environmental and social impact assessments and safeguards, the actual implementation of those policies produced outcomes that did not match the high-level policy statements. Irrespective of the validity of those particular accusations, the fact remains that the historical record of policy implementation suggests that a policy statement by the World Bank President on the necessity to mainstream human rights into Bank activities would not, of itself, guarantee the outcome intended.

The importance of implementation to policy can be taken even further; implementers themselves are involved in policy formulation. In the process of implementing a policy, Bank officials working on specific projects inevitably alter, in subtle ways, centrally-devised policy in order to make it better fit the reality of the agency's interaction with its partners and local beneficiaries. While this displays some of the characteristics of 'bureaucratic capture' of policy, it is also a necessary part of any large, public organization's program and project work.

¹⁴⁶ Jeffrey L Pressman and Aaron Wildavsky. *Implementation: How Great Expectations in Washington Are Dashed in Oakland: Or, Why It's Amazing that Federal Programs Work at All (3rd ed.)*. (First published 1973) ([1973] 1984). Berkeley: University of California Press.

¹⁴⁷ Brian W. Hogwood and Lewis A. Gunn. *Policy Analysis for the Real World*. (1984) Oxford: Oxford University Press.

Flowing on from the previous point, implementers gain specialist knowledge and expertise through the course of implementation, and thus influence the content of policy agendas both directly and by informing the concepts in which those agendas are couched. This is related to 'network analysis' that argues that service providers and sectoral interests influence policy determination through the relationships they form with each other over the course of implementation. They tend to create a professional, if not a political, elite who dictate how issues are to be conceptualised and the range of policy solutions deemed to be appropriate. Central directives that fail to find resonance with these networks frequently fail to be fully implemented – something that is sometimes known as the 'rubber levers' effect.

This analysis suggests that if the Bank lacks sectoral expertise in human rights, and a shared understanding between central management and project officials on these issues, or if there are no structural requirements for international human rights law to be considered in the process of designing and implementing projects and loan programs (both of which can be regarded as 'policy tools'), then the chances of any high-level commitment to human rights being translated into practice are slim. International human rights law is itself something of a pre-existing 'sectoral language', but one that World Bank officials at the present time do not speak fluently. Overcoming that discrepancy at a program level, changing 'meso-level' sectoral cultures and networks, is difficult to do without a long-term commitment by senior management to a new form of thinking about development and a commitment to altering program incentives and structures (especially the project design and implementation system).

The form and content of international human rights law can assist to some degree in effecting this change by virtue of the fact it is capable of reasonably easy translation into criteria that must be accommodated in the project design process, just as environmental and social concerns have been. In other words, there already exist points of connection between international human rights law and the implementation networks with which the Bank managers are involved. Further than that, the fact that human rights law gives institutional expression to environmental and social issues and links them back to a broad, liberal notion of development opens the possibility that an integrated and comprehensive project assessment process based on international human rights law can be devised. Equally, contracting and private partner relationships are open to renegotiation under similar criteria and by reference to the Bank's legal obligations.

There is a chance in all this that the Bank's conflicting policy directions, discussed earlier, are replicated in implementation-level networks. This might occur if sectoral expertise on human rights is developed within the Bank by establishing a separate thematic group or section without any further supporting change. In that case, the danger is that a network is created that competes with existing networks for dominance of the Bank's policy agenda, heightening existing policy conflict. In other words, the existence of implementation-level networks does not devolve all policy responsibility away from senior management; rather, it means that those managers have to take the problems and opportunities represented by networks on board in their policy management.

Questions for further discussion on policy implementation

- What elements of the Bank's Operational Directives on contracting, and what elements of the IFC's vetting process on private partners, can be reviewed so as to represent the human rights obligations of all parties? What 'due diligence' style processes should the Bank implement so as to have a more complete understanding of the human rights history of its private partners?
- What changes are required in the Bank's project approval process so as to ensure human rights lessons learned are given weight? The fact the Bank has already shown it will not commit to some projects on the basis of environmental or social impact indicates there is significant capacity within the approval process to consider the merits of projects on criteria other than economic feasibility. How can this be extended to human rights?
- In relation to project design and implementation, how can the Bank apply the human rights lessons it has learned to its 'change management' role in private sector development and privatization-related projects (including, among other things, its use of impact analyses, resettlement programs and indigenous peoples development planning)?
- How can the Bank integrate its state and civil society capacity-building projects with its private sector development and privatization projects more effectively, so as to better ensure state partners can meet their human rights obligations in relation to those projects?

Operations (Micro-level)

No Bank is an island. Every day World Bank managers interact with individuals and organizations outside of the agency on operational issues. They deal with representatives of borrower governments, the representatives of donor governments, partner corporations, contractors, private and academic analysts, NGOs and civil society groups, international organizations and, to a greater or lesser extent, local beneficiaries. Many of these interactions are purely procedural in nature, some are more explicitly concerned with policy, all come together in shaping the ongoing dialogue or discourse between the Bank and the communities within which it operates. A liberal democrat would be tempted to view this discourse as pleasingly pluralistic, with the Bank at the centre of a marketplace of development ideas from which it can select the most 'competitive' as policy, i.e. those which have shown themselves more able than their competitors to achieve the goal of poverty alleviation. A network analyst would see it as being riddled with organizational 'oligarchies', where some ideas receive a better hearing than others, and where some players have greater policy influence than others. Community development proponents might regard it as a very exclusive dialogue indeed, where local-level ideas and concerns on development are rarely listened to with any great degree of understanding. An organizational theorist would not disagree with that, but

would also see the assumed rules under which an organization runs its day-to-day business as the key pressure point for instigating change that might rectify the disempowerment identified by community development advocates.

There are two inter-linked issues of substance and process here. The first is that policy of a kind is formed at the ongoing operational level of an organization through the development of work practices and cultures, especially in an organization's dealings with the outside world. The second is that ensuring a truly comprehensive dialogue or discourse – ensuring the World Bank is sensitive to the full panoply of development ideas available in the 'marketplace' – means ensuring there is a sourcing of policy from the 'bottom-up', i.e. from the long-term experience of local beneficiaries and Bank and private practitioners working on development programs. These two issues are linked because bottom-up policy can be assisted by changes to operations and work cultures.

In the present case, and in keeping with their mutual liberal roots, if the World Bank were to commit to placing international human rights law as a central guide to its operations, a corollary of that commitment would be to ensure the liberal notion of the marketplace of ideas was reflected in the Bank's operations. One outcome would be to make the organization more open to bottom-up policy-making than is currently the case. Notions of bottom-up policy-making owe more to the democratic ideal than networks, which are essentially top-down in nature even when the focus moves from political elites to sectoral or technical elites. And in the case of the World Bank, bottom-up policy formulation can be seen as being closely linked to the 'due process rights' discussed in the Human Rights Analysis section; it also represents a part response to the criticism that the Bank fails to consult adequately with affected populations during project initiation, design and implementation phases. So, in its very form, bottom-up policy-making owes much to the ideals of international human rights law, as well as being a possible method for its application.

In respect of the operational change necessary for improved bottom-up policy processes, what is required is the presence of talented policy managers at various levels, including the senior level. They are the key people in an organization who, irrespective of their job titles, are critical players in the process of changing an organization's modes of operation and, in the process, its work culture. They may be hooked into existing sectoral networks, but they also have the capacity to review those with a critical eye. Their formal jobs, and the bulk of their work, might involve overseeing the implementation of top-down policy, but the skills they possess also enable them to help make an agency more responsive, in a sense more democratic, by also enabling it to receive bottom-up policy ideas. Good policy managers are capable of the difficult balancing act of ensuring an organization meets its accountability requirements yet is also able to experiment with new approaches and able to learn from its previous endeavours. Any attempt to transform an organization and its operational culture so that it is receptive to ideas from outside the established sectoral networks or the high-level policy process must involve the identification of such policy managers, and then convince them of the merits of an idea.

Managers have to become comfortable with international human rights law and have to be given an opportunity to discover for themselves how it may assist the Bank's ongoing operations, especially how its relative clarity and rigour can assist in making sense of the complexities of development and assist in improving the quality of dialogue with local beneficiaries, NGOs and civil society groups. Importantly, the potential for a 'lessons learned' framework that is based on international human rights law to assist policy managers in accessing and understanding bottom-up policy ideas, and the developmental benefits they might bring, needs to be explored. This is something that can be established outside of high-level or implementation-level policy processes, yet still have a long-term policy impact.

Questions for further discussion on operational issues

- Who are the key policy managers in the World Bank?
- How does the Bank currently engage in 'bottom-up' policy processes?
- What has the Bank learned in relation to human rights from its many years as a key player in international development? Have those lessons ever been collected in an ordered manner, analysed and then disseminated in an accessible form?
- Are the operations of the Inspection Panel and the Compliance/Adviser Ombudsman able to be reconstituted so as to reflect the centrality of human rights to those institutions' work?
- Which public relations strategies and operations, e.g. media release protocols, can be reworked so as develop dialogue based on human rights-oriented language?
- What goodwill initiatives can the Bank undertake in developing country communities to emphasize its commitment to human rights? How can it best publicize its human rights successes to local communities?

Conclusion

In a major policy shift, such as that mooted here, all three levels of policy activity are involved. Clearly, political and senior management approval of a policy direction is extremely important in instigating and then enforcing change. By the same token, if the implementation-level networks to which the Bank is connected, as well as the Bank's own work cultures and operational protocols and learning, are not supportive of such change then it can be stymied. The key point which is being made in the above discussion is that acknowledging the central importance of human rights to the World Bank's work is a policy change that can be assisted by the very existence of international human rights law. The clear expression of substance and form that this institution represents can

only aid policy managers who are attempting to inculcate organizational change at macro, meso and/or micro levels.

The Bank is, in fact, best placed out of the World Bank/International Monetary Fund/ World Trade Organization 'trifecta' to promote a human rights way to development approach, given its *raison d'être*, its relative sensitivity to, and acknowledgement of, the human rights dimensions of its activities, its closer relations with the private sector (in terms of actually working with corporations as partners) and the exposure that provides the Bank to the increasing pressure on corporations to take on human rights responsibilities (see the Legal Implications section). Even with such factors in its favour, a paradigm shift of this kind will neither be easy nor swift; policy managers who see this as the policy direction in which the Bank must move will be, we are certain, under no illusions as to the time it will take.

Appendix 1

'Top Twenty' Projects (full details)**Baku-Tbilisi-Ceyhan Pipeline**

Location:	Azerbaijan, Georgia, Turkey
Sector:	Energy & Mining – Oil & Gas
Bank instrument:	IFC Loan
Bank ID No.:	11251 (IFC) Linked to Azeri-Chirag-Deepwater Gunashli (ACG) Phase 1 Project (and building on the 1998 Caspian Sea Early Oil Development Project: Amoco)
Project dates:	Start: 2003 End: 2005
Total project cost:	\$3,700 m (BTC) + \$3,200m (ACG)
Total bank input:	\$250 m (BTC) + \$60m (ACG)
Partner(s):	BP (UK), SOCAR (Azerbaijan public agency), EBRD, Unocal (USA) Statoil, TPAO, Itochu, Ramco, Delta Hess and ENI. Also involves a number of Export Credit Agencies, including USExim, JBIC, ECGD, Hermes, COFACE and SACE.

Project description:

- The BTC Consortium (BTC Co.) is seeking to build the Baku-Tbilisi-Ceyhan (BTC) pipeline from the Caspian Sea to the Mediterranean. This project is linked to the Azeri-Chirag-Deepwater Gunashli (ACG) Phase 1 Oil Field Project.
- The IFC has agreed to invest in both projects (4 November 2003) and the European Bank for Reconstruction and Development (EBRD) has agreed to invest in the BTC Project (12 November 2003).
- Environmental and Social Impact Assessments, a Framework Oil Spill Response Plan, Resettlement Action Plans and Public Consultation and Disclosure Plans were produced by the IFC in accord with its Operations Procedures. A 120-day period of public feedback on those assessments was held in 2003. It has been claimed that over 450 communities, 30,000 landowners and 750,000 people along the route have been consulted over the past decade. In response to criticism by Amnesty International over the human rights implications of the pipeline, negotiations between Amnesty and BP were instigated by the World Bank Group.
- Projects aiming to improve the capacity of the relevant governments to negotiate with and regulate BTC Co have also been instigated, e.g. the Georgia-Energy Transit Institution Building Project (GEPE72394).

Project objectives:

- To improve economic conditions in the countries involved through private sector-driven investment and activity and to improve political stability and the process of economic restructuring and reform in the region.
- The IFC's stated role in this project is to: mitigate political risk; provide direct finance and mobilize commercial loans; ensure environmentally and socially sustainable project design and operation; ensure 'community development' and ensure project transparency.

Key criticisms:

Project design and implementation

- Restrictive and unconscionable project-specific pieces of legislation – especially laws preventing the passing of new environmental or health legislation that might impact on project revenue – have been passed by the state parties to the project. BTC Co has been also exempted from a number of environmental, labour and tax laws in the pipeline countries. The project's legislative framework was overly influenced by MNCs and ECAs to suit their own interests, with the IFC's influence and its governance and capacity interventions being insufficient to prevent this from occurring.
- In spite of what has been, on the face of it, an extensive consultation process, there has been a failure to ensure the responses of affected populations are properly taken into account in relation to the project-related legislative framework and also the project's design and management. This was most vociferously argued in relation to environmental and social impact assessments. The claim is that the IFC is breaching the spirit of its own operational standards on this question, even if it is observing the letter of those directives.
- There has been a failure to disclose and fully explain all relevant project information to affected populations, and a failure to engage in truly constructive dialogue with the international NGO community.
- Significant, long-established evidence exists of corruption on the part of local and national politicians (Transparency International has been especially critical of Azerbaijan and Georgia); this behaviour is abetted by MNCs which are prepared to accommodate corrupt officials in order to ensure the project goes ahead.

Environment

- The project's design and construction plans fail to meet both international environmental standards and those of the World Bank.
- There is a significant chance that environmental degradation will result from the building and operation of the pipeline – even after construction there is a high potential for spillage, either accidentally, through seismic activity or as the result of sabotage – in relation to the large number of eco-systems the pipe will traverse (including rivers, deserts and a wildlife protection area).

Water

- There is a substantial risk of lowered water quality where the pipeline crosses catchment areas – something that raises an additional concern in Georgia, where a well-established mineral water industry is threatened.

Economic and social impact

- This project will tend to create enclave economic growth only, thus leading to increases in economic inequality rather than broad-based poverty alleviation.
- The affected populations have been denied the opportunity to determine their own economic future – this is true especially in relation to indigenous communities – and local social systems are placed under pressure by large-scale multi-national investment and the Western mode of economic interaction that accompanies it.

Resettlement

- Local groups and minorities are being prevented from accessing all their traditional lands – this is relevant especially to the nomadic pastoralists in the region.
- Emergency powers to speed up the process of land acquisition were passed in the countries concerned, with the effect of dispossessing communities without compensating them appropriately or allowing them input into the resettlement program's design.
- The reduction in land ownership and access will have an adverse impact on local agrarian and nomadic societies and their cultural systems, which are tied into certain modes of land usage.

Politics and government

- Investing in this project will support governments with poor human rights records in relation to their treatment of political opposition (Azerbaijan especially, although Georgia and Turkey have both been criticized as well).
- There have been clear attempts by the governments concerned to prevent local groups from expressing their opposition to the project. These activities were linked into more long-term repression, such as that of the Kurdish peoples by Turkey, with the BTC project being used as an excuse for the continuation of such actions.
- It was also argued that ethnic or religious groups opposing the pipeline governments were highly likely to use sabotage of the pipe as a way of exerting pressure on those governments to meet the groups' demands.

Key critics:

- International and Western and Eastern European-based NGOs (with an emphasis on environmental and 'bank-watch'-style groups), and, to a lesser degree, international human rights groups (most notably Amnesty International UK) have been running a number of campaigns which have varying degrees of connection with each other. Alternative Environment and Social Impact Statements have been used by these campaigns. (Key NGOs include CEE BankWatch, FOE International, the Bretton Woods Project, the Kurdish Human Rights Project and the Baku Ceyhan Campaign.)
- Northern NGOs have networked with local groups in order to publicise their claims to the international community.
- During its public feedback period, the IFC received representations from campaigns such as those above and provided a general response setting out its position. The IFC also made ESIA documents publicly available.

* * * * *

Chad-Cameroon Petroleum Development and Pipeline

Location:	Chad, Cameroon
Sector:	Energy & Mining – Oil & Gas
Bank instrument:	IBRD and IFC Loans
Bank ID No:	TDPE44305 Linked to IDA projects: P048202, P062840 – Chad Petroleum Sector Management Capacity-Building & Management of the Petroleum Economy Projects; P048204 – Cameroon Petroleum Environment Capacity Enhancement Project
Project dates:	Start: 2000 End: 2005
Total project cost:	\$3,700 m
Total bank input:	\$192 m
Partner(s):	ExxonMobil, Petronas, ChevronTexaco

Project description:

- This is a three part project involving the development of Chad's Doba oil fields, the construction of a buried pipeline from Chad to Cameroon's Atlantic Coast (1,050 km), along with necessary facilities and infrastructure, and the installation in Cameroon of an offshore marine export terminal and related pipelines and facilities.
- A range of implementation and management plans have been produced, including: environmental management plans, a resettlement plan (Chad), a compensation plan (Cameroon), revenue management plans (in an attempt to ensure general community benefit is gained from oil-related revenues) and IDA-supported capacity building projects.

Project objectives:

- To promote economic growth in Chad and Cameroon through the private sector-led development of petroleum reserves and export facilities.
- To ensure oil revenues are used to finance public expenditure in health, education, rural development and infrastructure and also support macroeconomic stability.

Key criticisms:

Politics and government

- Local populations and opposition groups in both countries have been intimidated and coerced by their national governments into accepting the project and its accompanying legal framework; there has been civil unrest in response to the respective governments' hard-line approach – with this unrest merging into the ongoing civil war in Chad.
- The governments of both countries have poor records in relation to freedom of expression and corruption and the Bank is providing them with funds to continue acting in this way.
- The process of implementing the project has been marked by corruption with the Chad and Cameroon governments receiving illegal payments from companies seeking project-related contracts.

- There is a fear that the revenues from the project will be siphoned off to government ministers and their supporters, rather than helping benefit the general community.
- There is a fear that the regulatory authorities that are meant to oversee the proper implementation and operation of the project lack the capacity to carry out their roles.

Project design and implementation

- There has been a failure to consult adequately with the affected populations in relation to the legal changes associated with the project.
- Domestic legal standards have not been met in the legislation passed by the respective national governments.
- The World Bank's own standards on consultation have not been met in this case.
- There has been a failure to disclose all the environmental and social impacts associated with this project, with the result that the project design has not fully accounted for all potential problems.

Resettlement

- Resettlement has been undertaken, under the laws passed in relation to the project, without adequate compensation being provided. In addition, some populations have been effectively dispossessed of their land by the way the pipeline cuts through their villages and local areas.

Environment & Water

- The pipeline goes through large sections of rainforest and over numerous rivers and wetlands. There is the strong chance of environmental degradation during the pipe's construction and oil leaks during its operation.
- Oil leakages and run-off issues relating to construction will impact on the availability and quality of water for the populations living within the affected catchment areas.
- Environmental problems related to oil spillage also carry significant health implications.

Economic and social impacts

- There is a strong potential for unequal and unsustainable economic growth to emerge from an oil project such as this, with local communities failing to receive sustained support for developing their own, local economies.
- The failure to consult has increased the chance of unsustainable growth occurring and has lessened the ability of local populations to determine their economic and social future.
- The influx of outside workers and the growth of a one-sector economy can strain community and cultural structures, where the status of the pipeline, and the companies that run it, becomes all-important.

Labor

- International standards in relation to employment conditions of local workers employed by the project, and its related businesses, have not been met.
- The local level employment created by the pipeline project will be only short-term in nature and ultimately will not off-set the loss of sustainable livelihood brought about by environmental degradation.

Key critics:

- International NGOs, especially environmental groups and some church-based organizations.

- Local coalitions of NGOs and community groups (including some, such as the Chadian Association for the Promotion and Defense of Human Rights, that are focused explicitly on human rights), and partnerships between Northern and Southern NGOs, reflected in the existence of groups such as Friends of the Earth-Cameroon.

* * * * *

Cochabamba Water Privatization

Location:	Bolivia
Sector:	Water, Sanitation & Flood Protection – Water supply
Bank instrument:	Linked to IBRD Loans & Projects Not a specific World Bank project but one in which the Bank has been implicated by critics who claim the origins of the Cochabamba water privatization process lay in Bank pressure (especially through ongoing structural adjustment loans and related projects). There was also an initial link with the Major Cities Water Supply and Sewerage Rehabilitation Project.
Bank ID No:	Major Cities Water Supply and Sewerage Rehabilitation Project (P006172)
Project dates:	Start: 1990 (P006172); 1999 (Cochabamba concession sold) End: 1997 (P006172); 2000 (Cochabamba concession withdrawn)
Total project cost:	\$67 m (P006172); Cochabamba concession investment \$85m -\$129m
Total bank input:	\$35 m (P006172)
Partner(s):	Bechtel, Aguas del Tunari, Abengoa, SEMAPA

Summary of events:

- Under the Major Cities Water Supply and Sewerage Rehabilitation Project a sub-project for privatization of the water supply to the city of Cochabamba had been planned (it was also a condition for the extension of the project loan to 1997). The existing municipal utility, SEMAPA, was re-formed into a state corporation and the Bank assisted the Bolivian Government in drawing up a private provider concession contract – with water supply coming from the Corani reservoir as opposed to the alternative proposal of the Misicuni Dam (which was still being developed and to which Cochabamba was unconnected).
- The Municipality of Cochabamba successfully appealed against the first tender/bidding process, leaving no time for another before the Rehabilitation Project ended (although structural adjustment loan arrangements were still in place at a national level). The Cochabamba Municipality (backed by the Bolivian Government) then signed a contract for the building of a connection to the Misicuni Dam. This reflected a long-held desire by local political and business interests to make the dam operational. Also sought was a private

owner/operator to run, and upgrade, the Cochabamba water supply system. Following a failed tender process, an unsolicited bid was received and accepted from Aguas del Tunari, a jointly-owned corporation in which the US-based multinational Bechtel was a major shareholder through its subsidiary International Water (other shareholders included the Spanish corporation, Abengoa, and several Bolivian corporations).

- Under the terms of the concession, Aguas del Tunari was permitted to raise tariffs by 38% immediately and by an additional 20% once the connection to the Misicuni Dam had been made. The consortium raised tariffs by an average of 35% (although some consumers faced increases of closer to 50%).
- The tariff increases set in train a series of protests, demonstrations and general strikes between January and April 2000 that resulted in the declaration of martial law. Violent confrontations occurred between residents and the Bolivian military, with numerous people injured and at least one protestor killed. In mid-April 2000 the Bolivian Government broke the contract with Aguas del Tunari/Bechtel on the grounds that the company's management had left the country.
- Bechtel, through Aguas del Tunari, is seeking damages against the Government of Bolivia and currently has a case before the World Bank-administered International Center for the Settlement of Investment Disputes.

Key criticisms:

Access to water

- The poorest citizens of Cochabamba, in order to access water, were forced to pay unconscionably high tariffs under the arrangements imposed by Aguas del Tunari. For some sections of the population upwards of a quarter of their income would have had to go on water supply payments. No account was taken of the social and health consequences of the corporation's behaviour.
- In some cases citizens were prevented from accessing their own, private wells by the company.

Project design and implementation

- World Bank pressure, through earlier projects and the general structural adjustment process, meant that privatization was deemed to be the only solution to Cochabamba's water supply problems when other, more community-oriented approaches could have been considered. The World Bank has continued to put privatization forward as a condition that Bolivia must meet in order to receive further loans and project investment.
- The Bank had also supported, in its more general country assessments, the idea of full cost recovery by private providers of water, thus encouraging an approach to tariffs that fails to account for social costs.
- There was little or no community consultation in relation to the water privatization process – the local population was simply presented with tariff increases.
- There has been a growing unease in the Bolivian population over the sale of public assets and the privatization of public services, and an increasing sense that they have no control over their economic future. The recent protests over the gas pipeline to Chile are in part fuelled by this sense of disenfranchisement (as well as by historical antagonism toward Chile).

Politics and government

- There are allegations the Bolivian authorities, especially the Mayor of Cochabamba, ensured that only a privatization process that included completion of, and connection to, the Misicuni Dam would be considered because they stood to make money if further foreign investment was put into that project.
- Martial law was declared and the police and military forces fired live ammunition and tear gas at protestors in efforts to put down lawful opposition to the project.
- Local community leaders of the protests were arbitrarily jailed and harassed by the authorities.

Key critics:

- La Coordinadora para la Defensa del Agua y Vida, a local community group with union links, took a lead role in instigating direct protest as well as taking its complaints directly to the World Bank and to the press.
- Other local community groups such as The Democracy Center (run by expatriate Americans) also helped publicise the protest via the internet and US public television.
- A loose coalition of Northern NGOs, such as the Center for International Environmental Law, promoted a campaign against the World Bank and Bechtel.
- The Cochabamba events have been frequently used as a case study in relation to water rights and privatization by NGO analysts and academics.

* * * * *

UG-Bujagali Private Hydropower Development Project

Location:	Uganda
Sector:	Energy & Mining – Power
Bank instrument:	IFC and IDA Loans & Guarantees
Bank ID No:	UGPE063834: 8943 (IFC); P078024 (IDA Guarantee) Linked to Third Power Project (Credit 2268-UG)
Project dates:	Start: 2001 End: 2017
Total project cost:	\$600 m
Total bank input:	\$225 m
Partner(s):	AES, Madhvani International S.A., Uganda Electricity Transmission Company Limited, Uganda Electricity Board

Project description:

- The AES Nile Power Limited (AESNP) is a private corporation (and subsidiary of AES) that

was established to develop, construct, own and operate a 200MW hydropower plant on the Victoria Nile river. The project consists of a small reservoir, a powerhouse, a rockfill dam, spillway, a 100 km transmission line, substations and associated works.

- The project will sell electricity to the Uganda Electricity Transmission Company Limited under a 30 year Power Purchase Agreement.
- The IFC and IDA conducted an Environmental Assessment and a Cumulative Impact Assessment of the project, alongside Economic Impact Assessments, and also established a Resettlement Action Plan and a Community Development Action Plan.
- In August 2003 AES pulled out of the project citing concerns about lowered returns resulting from delays (some of which are associated with a corruption probe into the project instigated by the US Government).

Project objectives:

- The objective of the project is to address concerns regarding the failure of the existing public electricity system, operated by the Uganda Electricity Board (UEB), and to improve power sector efficiency and performance by placing the UEB's distribution facilities under private management and encouraging the use of private capital.
- The stated project objectives are to promote growth through developing least-cost power generation for domestic use in an environmentally sustainable and efficient manner, and to mobilize private capital and promote private sector ownership and management of the power sector.

Key criticisms:

Environment

- The reservoir created as part of the project will drown local eco-systems, including the Bujagali Falls, agricultural land and the local watershed and will result in long term soil degradation and the degradation of forests and fisheries.
- The Environmental Impact Assessments carried out by the Bank failed to adequately meet the Bank's own standards, especially in relation to the cumulative environmental impact of the dam. There was also a failure to conduct a Sectoral Environmental Assessment.
- There was a general failure to consult adequately with local populations about the likely environmental impacts.
- There was a failure to consider fully the alternative sources of power or alternative sites for a hydro-power station.

Project design and implementation

- There has been a lack of transparency in the tender phase of the project and a failure to meet the Banks standards in relation to international competitive bidding.
- There has been a general lack of consultation, and lack of full disclosure, with affected populations over the details of the project and its administration.
- The Ugandan Government has been accused of corrupt practices in relation to the initial bidding process for the project. Concerns have also been raised in relation to the Ugandan Government's overall corruption record and the potential for a project this size to encourage further corruption.

Resettlement

- Inadequate compensation and resettlement options were provided to the local populations shifted out of the area demarcated for flooding. There was a failure to consult adequately with the affected populations on these issues.
- The Bank failed to meet its own guidelines in relation to resettlement, with inadequate administrative arrangements being put in place for moving and compensating local populations.
- There has been a detrimental social impact as a result of resettlement, with a breakdown in community structures (including cultural structures).

Economic and social impacts

- The World Bank initially failed to ensure equity of bargaining power between AES and the Ugandan Government over the Power Purchase Agreement. The Ugandan High Court found that it discriminated against Uganda and the contract had to be renegotiated.
- Sustainability questions have been raised in opposition to initial predictions of economic growth – especially given the impact on agricultural activities, fisheries and tourism.

Key critics:

- Friends of the Earth and the International Rivers Network are two International NGOs that have been influential in bringing together a coalition of Northern and Southern NGOs for coordinated campaign against this project.
- Local NGOs that have pushed for change, including taking a complaint to the World Bank's Inspection Panel, are the National Association of Professional Environmentalists of Kampala (NAPE) and the Uganda Save Bujagali Crusade (SBC).
- The World Bank's own Inspection Panel has criticized some of the ways in which Bank guidelines were implemented (or not implemented) in the course of project planning.

* * * * *

Ghana - Water Privatization Program

Location:	Ghana
Sector:	Water, Sanitation & Flood Protection – Water supply
Bank instrument:	This is an ongoing program being implemented by the Government of Ghana aimed at privatizing the water supply system. This has been supported by the World Bank under its Country Assistance Strategy and through the structural reform/public enterprise divestiture component of the Third Economic Reform Support Operation Credit (PO50619) to Ghana. Assistance also comes by way of the phased Community Water and Sanitation Project 2, under a three part IDA

Adaptable Program Loan (P050616), and the Ghana Water Sector Restructuring Project (P056256)

Bank ID No:	PO50619, PO50616, PO56256
Project dates:	Start: 1999 End: 2008
Total project cost:	\$1,160m (PO50619); \$90m (PO50616); \$285 m (PO56256)
Total bank input:	\$110m (PO50619); \$80m (PO50616); \$100 m (PO56256)
Partner(s):	Ghana Water Company Ltd, DFID, Vivendi, Bi-water

Project description:

- The Government of Ghana aims to increase private participation in the country's water supply by leasing 74 urban water systems to two private companies. The proposal involves dividing the 74 systems into two Business Units. The private companies leasing the units will be responsible for operation and management of the systems. Extending and rehabilitating the systems will remain the responsibility of the Ghana Water Company Ltd. At this stage pre-qualified bidders for the leases are major transnational corporations, including Vivendi and Bi-water.
- The World Bank has stated that the Ghana Water Sector Restructuring Project (P056256) loan will not be approved (it was held up because of corruption concerns) until the Government of Ghana concludes a contract with a private provider under the current water privatization process.

Project objectives:

- The Ghanaian water supply system currently does not provide an effective or comprehensive service and is in need of rehabilitation. In some areas there is no public infrastructure coverage at all and an expensive per-unit private system has evolved. Fundamental reform is required to rectify these problems.
- Structural reform, through privatization, of the water supply system will make it more efficient, ultimately lowering the Government of Ghana's expenditure commitments and also lowering the cost of water usage for other producers and household consumers. More efficient provision of public and production goods and services is an important component of economic growth and, through that, poverty reduction.

Key criticisms:

Access to Water

- A privatized water system will restrict access to those who can afford to pay. A private operator will always do what is most profitable rather than what is socially responsible; there is, for example, the danger of a 'race to the bottom' in order to profit-take at the expense of water quality and service delivery.
- The Bank is insisting that disbursement of the loan will only begin when there is clear evidence from the Government of Ghana of a commitment to private sector participation –the Government has therefore been forced to accede to the bidding corporations' demands that the level of investment they are required to make into the rehabilitation and improvement of the water system under the proposed terms of the concession be lowered.

- The Bank is pushing the Government of Ghana, through structural adjustment loan conditionality, to make the existing water system look attractive to private providers by restricting access to that sector of the population who can afford increased tariffs. This will ensure the system is profitable, or at least able to cover costs, prior to its sale, but has direct social and health consequences for the population as a whole.
- At present only half of Ghana's population has access to a regular, safe water supply and there has been nothing in the privatization process thus far that indicates that level of access will be increased significantly.
- The existing, inefficient private system that exists alongside the more formal water supply system and to which the poorest citizens are forced to go to access water will not be improved under a privatization regime.
- The failure to ensure the access of all citizens to clean water also has social implications in relation to community unrest, with anti-privatization demonstrations having already occurred.

Project design and implementation

- The World Bank (and the UK's DFID) is placing financial pressure on the Government of Ghana to adopt a privatization framework without allowing for alternatives to be fully canvassed or the opinion of the citizens of Ghana to be recognized.
- There has also been a lack of transparency in the tendering process for the right to operate the water system and allegations of government corruption – all of which led to the first tender being nullified and another process begun. This accompanies more general corruption claims being made against the current government.

Labor

- The lack of employment in Ghana will not be assisted by privatizing public services so that multinational corporations can run them; the Bank should allow for countries such as Ghana to determine their own processes of public service delivery so as to improve employment opportunities

Key critics:

- Local Ghanaian NGOs, institutes and coalitions, as well as some Christian groups and Northern NGOs (most of which are focused on globalization issues), have been the key groups to take an interest in this project.

* * * * *

Niger Delta Contractor Revolving Credit Facility

Location: Nigeria
Sector: Energy & Mining – Oil & Gas
Bank instrument: IFC Credit Facility
Bank ID No: 10683
Project dates: Start: 2003 End: N/A

Total project cost: \$30m

Total bank input: \$10m

Partner(s): Shell (through its subsidiaries Delta Business Development Limited and Shell Petroleum Development Corporation of Nigeria Limited), Diamond Bank Limited, Niger Delta Development Commission

Project description:

- The credit facility is designed to provide small to medium-sized local contractors, who provide services to Shell, access to 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).
- This facility responds to the current absence of reasonably priced, longer term financing for businesses of this kind in Nigeria. It also fits within a broader set of credit lines that the IFC has extended to Nigeria.

Project objectives:

- The key goal of this project is to help relieve unemployment and poverty in the Niger Delta through encouraging small to medium-scale private enterprise and, as a result, broad-based economic growth.
- It is also hoped that the technology transfer and improved training that results from increased investment will have a long-term impact on the capacity of local contractors to compete against foreign firms on larger contracts.
- Improved technology and practices will also go toward lowering overall production costs and improving the efficiency of the Nigerian economy.

Key criticisms:

Environment

- This project encourages the environmentally destructive practices of Shell and its contractors in Nigeria, with impacts already having been felt in relation to fisheries and farming.
- The Bank has not met its own environmental safeguard policies in approving this project.
- The environmental degradation problems associated with the oil industry in Nigeria also carry health implications for the local population, especially in relation to the impact on water supplies of the by-products of oil production (as well as any direct spillage).

Politics and Government

- There is substantial evidence of corruption and mismanagement on the part of the Nigerian national government and the governments of the oil-producing states/provinces within Nigeria in relation to their handling of oil revenues. Transparency International has ranked Nigeria number 90 out of 91 in its Corruption Perceptions Index.
- The Nigerian government has been prepared to use coercion, intimidation and, in some cases, arbitrary detention and killing in silencing opposition to the regime; the Bank and Shell's agreeing to deal with the Nigerian Government encourages this behaviour.
- The Nigerian government, through its security forces, especially the Nigerian Mobile Police, has employed oppressive tactics in protecting Shell's investment and

infrastructure in the Niger Delta. The IFC Credit Facility, by investing in the Nigerian oil industry, effectively gives approval to the above behaviour on the part of Shell and the Nigerian Government.

Project design and implementation

- In contravention of its own standards, the IFC failed to fully assess the history, activities and reputation of Shell in Nigeria or to widely consult with affected parties and local groups in relation to both Shell and the design and implementation of this project. The failure to meet the IFC's own standards was exacerbated by the decision to have a Nigerian bank, Diamond Bank, administer the project, thus circumventing the safeguards the IFC would have to observe if it implemented the project directly.
- There was insufficient transparency over the selection of Diamond Bank as the operator/marketer of the facility, and claims the process was corrupted.
- Shell exerts undue pressure over government decision-making in Nigeria and so prevents projects or legal frameworks not favourable to its operation from going ahead.

Labor

- There have been a number problems over Shell's record in Nigeria in relation to the way it treats contractors, and the way its contractors treat sub-contractors and employees
- International standards in relation to employment and labor conditions have not been met by Shell contractors in Nigeria and the design of this project suggests it will not rectify that situation.

Economic and social impacts

- Oil industry-related jobs growth has proven not to be sustainable and will not address long-term unemployment or poverty alleviation.
- There have been long-running concerns over the national government's failure to ensure an equitable spread of the wealth from oil revenue, with significant economic and social problems resulting.
- The manner of the operation of Shell and its contractors within Nigeria has exacerbated existing ethnic and social tensions within the country. The IFC's failure to consult with affected minority groups in relation to this project simply reinforces those tensions.

Key critics:

- The criticisms of this project is part of a long running NGO campaign against Shell in Nigeria involving international and local environmental NGOs and also corporate watchdog-style NGOs and institutions and groups critical of globalization
- Northern human rights NGOs have also been investigating the involvement of the Bank in the Shell – Nigeria relationship.
- The CAO received a complaint from Environmental Rights Action and made several recommendations – especially in relation to participatory project design

* * * * *

Yanacocha III Gold Mine

Location:	Peru
Sector:	Energy & Mining – Mining & other extractive
Bank instrument:	IFC Loan
Bank ID No:	9502
Project dates:	Start: 1999 End: N/A
Total project cost:	\$120m
Total bank input:	\$60m
Partner(s):	Newmont Mining Corporation, Condesa, Compañía de Minas Buenaventura SA

Project description:

- This project supports the further development of the Yanacocha gold mine complex in Peru – in which the IFC has already invested on two occasions (which each loan having been fully paid back) and has an equity position of 5%. In the hope of ensuring the continuation of the mine's productive life, the new IFC loan will help the mining company open up the La Quinoa deposit section of the mine, i.e. an additional mine (La Quinoa), a leach pad, and ancillary facilities.
- The mine is the largest employer in the Cajamarca region of Peru (both directly and through sub-contracting).
- A \$1.5m SME linkage program has been prepared by the Bank to accompany investment in the mine so as to ensure broad-based economic benefits accrue from the mining investment.

Project objectives:

- The Yanacocha project has already been successful and produced significant economic benefits for the Peruvian economy and labour market. It is one Peru's biggest sources of tax and export revenue, has encouraged FDI into other projects and is a key employer in the country. It has also been the instigator of a number of productive economic reforms in Peru, including privatization.
- The company has been improving its social and community relations processes and has also worked to better publicise its environmental reports. It is providing a guide to other Peruvian companies as to how to meet international standards in these areas.

Key criticisms:

Environment & Water

- The project has been accused of producing short and long-term water contamination, with much of the local area's water catchment area being within or near the mining precinct. The use of 'cyanide heap leaching' to extract gold from ore, as occurs at Yanacocha, has serious implications for local water supplies and eco-systems, with clear health repercussions for local populations.
- The proposed expansion of the mine will open up new, and as yet untouched, water catchments to the possibility of mine-related pollution.

- An incident in 2001 – one of the mining company's trucks spilled mercury while passing through the town of Choropampa – has resulted in an ongoing dispute between local residents, the mine and the IFC. The CAO has been asked to act as mediator between the parties.
- There has been long-running failure to disclose all information on the mine's environment-related activities and to consult with local populations in relation to the mine's environmental impact.

Project design and implementation

- Although there is a legal requirement for the profits of the mine to be directed back into the local community this has been hampered by national and provincial level corruption.
- Accusations of corruption in the relationship between Newmont and Peruvian officials have not been adequately investigated by the IFC.
- There has been a general and ongoing failure to meaningfully consult with the communities affected by the mine's presence. An example of this can be seen in the mining company's considerable efforts to seek legal redress against the local municipality's declaration of their wish to limit further expansion of the mine.

Economic and social impacts

- The IFC didn't recognize the local population as 'indigenous' for the purposes of their impact assessments, thus denying them access to the Bank's safeguards in relation to indigenous peoples. The Peruvian Constitution, by contrast, does regard them as indigenous.
- The influx of contractors from outside the region and the urban migration of those displaced from their land by the mine have also led to fracturing of local social structures – examples of which include the increase in domestic violence and the rise in prostitution in the local city of Cajamarca.

Labor

- Extraction industry employment is not sustainable, something which is exacerbated by the environmental effects of the mine which will last well after it has closed.

Resettlement/Property ownership

- Those people forced to migrate following the mine's opening in 1993 have not been adequately compensated, with the result that they have been, in all but name, dispossessed.
- Many who sold their land were not aware that, by doing so, they were giving up all usage rights (i.e. there was a disjunction between traditional and Western notions of property).

Key critics:

- Key forces in the campaign against this project have been international and Northern-based environmental NGOs. Local community groups have been supported by these NGOs and have also engaged in ongoing protests against the mine, as well as taking their complaints to the World Bank.
- The CAO has been involved in mediation and also produced several reports in relation to the mercury spill incident.

* * * * *

Lesotho Highlands Water Project

Location:	Lesotho, South Africa
Sector:	Energy & Mining – Power Water, Sanitation & Flood Protection – Water supply
Bank instrument:	IBRD and IDA Loans
Bank ID No:	P001396 & P001409
Project dates:	Start: 1991 End: 2004
Total project cost:	\$3,600m
Total bank input:	\$155m
Partner(s):	Lesotho Highlands Development Authority, Trans Caledon Tunnel Authority, European Investment Bank

Project description:

- The overall project is planned to have four phases, although only Phases 1A and 1B have been undertaken at the current time. Phase 1A involved construction of the Katse dam in Lesotho and a tunnel system across to South Africa; it also included the 'Muela hydropower station for supplying electricity to Lesotho. Phase 1 B includes construction of the Mohale dam, a weir at Matsoku, a tunnel system to the Katse dam and another tunnel system to South Africa's Vaal River System
- Environment assessments were made of the projects and the Bank safeguards were deemed to have been met; resettlement plans, public health plans, rural development and environment and heritage preservation activities were also implemented.

Project objectives:

- The goal of this project is to assist Lesotho earn export revenue from its natural water reserves and to provide low cost water to South Africa's Gauteng Region.
- The project will assist in providing cheaper electricity to Lesotho and will also, directly and indirectly, increase local economic activity and employment, leading to a reduction in poverty.

Key criticisms:

Project design and implementation

- Several Northern corporations have been convicted in Lesotho courts for bribing the former chief executive of the Lesotho Highlands Development Authority (now serving a 15 year jail term) during bidding processes for project related contracts. The companies are the German engineering contractor Lahmeyer International (fined US\$1.43 million) and Canadian company Acres International (fined US\$2 million). French construction firm Spie Batagnolles has also been charged and bribery allegations have been levelled at a number of other companies.
- The World Bank has been accused of not adequately investigating the activities of contractors to the project once bribery allegations became known. It is claimed the Bank

was reluctant to be critical of large dam-building corporations with which it has considerable dealings and instead chose to only narrowly interpret its own procurement guidelines.

Resettlement

- Larger numbers of people (approximately 30,000) than was anticipated have been affected by the dam building. The resettlement and compensation plans prepared as part of the project design, while adequate in conception, have not been able to accommodate these numbers, with not all people being properly resettled, compensated or provided with alternative means for earning a living.
- The resettlement program was rushed in order to complete the engineering program on time, with an inferior process, and inferior infrastructure, resulting, leading to diminished living conditions for those who were resettled.
- There was insufficient consultation with affected populations on this issue and insufficient ownership of the resettlement process. This has resulted in broad-based community dissatisfaction and protests in 2001 that resulted in people being beaten by local police.

Environment & Water

- Watersheds for over 40% of the country will be affected by the time the project is completed. Soil erosion problems have resulted from the construction and operation of the dams as well as the resettlement process.
- River eco-systems have been altered forever, either through flooding upstream of the dams or through reduced flows downstream; reduced river flows downstream of the dams have also impacted on the health and economic well-being of local populations.

Economic and social impact

- Significant areas of agriculturally productive land – already limited by the mountainous topography of Lesotho – have been flooded, with implications for the economic sustainability of local populations.
- The influx of contractors and workers from outside local communities has resulted in fast-paced and traumatic change. This has been aggravated by the marked economic inequality between foreign contractors and local workers.
- There were strong cultural associations between local populations and their use of local flora and the rivers which have now been broken. Changed economic and social circumstances have also resulted in the breakdown of traditional authority and family structures.

Politics and Government

- 1998 protests against the Lesotho government, and, indirectly, the water project, were put down with the help of the South African military, the claim subsequently being that they were concerned to protect the project, which is now a vital source of water for South Africa. The 2001 protests were dealt with in a similarly harsh manner.

Labor

- Lesotho workers claim to earn less than those from South Africa or other countries also working on the project.
- Attempts to protest against working conditions or to unionise have been suppressed.

Key critics:

- International and Northern NGOs with an environmental and World Bank focus, such as the International Rivers Network, have been major critics of this project. Local NGOs, while existing, have not been nearly as successful in gaining publicity for their claims.
- There has been significant international press coverage of the corruption cases

* * * * *

Manila Water Privatization Program

Location:	The Philippines
Sector:	Water, Sanitation & Flood Protection – Water supply, Sewerage
Bank instrument:	IFC Loan and Advisory Services
Bank ID No:	Linked to Manila Water Company Project - IFC Project No 11232
Project dates:	Start: 1997 End: 2005
Total project cost:	N/A
Total bank input:	\$56m
Partner(s):	Metropolitan Waterworks and Sewerage System, Manila Water Company Inc, Mayniland Water Services Inc, Bechtel, Suez Lyonnaisee Eaux

Project description:

- In 1997 the Philippines Government began to privatize the water and sanitation sector by dividing the Manila metro area into two zones and tendering the supply systems out to two private providers with the Manila Water Company Inc (partnered with Bechtel) winning the East Zone concession and Mayniland Water Services Inc (partnered with Suez) winning the West Zone.
- The IFC provided fee-based advisory services (worth \$6m) to the Government during this process.
- The contracts/concessions are “build-operate-transfer” arrangements, where ownership remains with the government (Metropolitan Waterworks and Sewerage System (MWSS)) but the facilities, properties and all material relevant to the operation of the sector are leased to the concessionaries for a 25 year period. The Government’s Regulatory Office sets water rates and ensures contract compliance.
- The IFC approved a \$50m loan to Manila Water Company Inc in 2002 to assist with upgrades and expansion in infrastructure and service networks and also to pay part of the concession fees.
- Mayniland Water Services Inc attempted to terminate its concession in 2002, the International Chamber of Commerce, however, ruled on 7 November 2003 that it must

continue to run the concession and that it owes US\$150 million in concession fees. Suez pulled out of the concession in February 2003.

Project objectives:

- The goal of this project is to improve the access of the poorest people in Manila to regular, clean water supplies, with associated health and poverty-reduction outcomes.
- Another project aim is to lower the overall cost of water supply so as to benefit The Philippines' economy by improving its competitive advantage and productivity through lower production costs.

Key criticisms:

Project design and implementation

- The World Bank placed significant pressure on the Government of the Philippines to privatize its water supply system – a key motivation behind this was that the MWSS had an outstanding loan from the Bank.
- The successful companies are run by oligarchies (the Ayala and the Lopez families) who have other significant infrastructure investments and are (or were) partnered with major international water companies, which added to the difficulty in ensuring the Government of the Philippines ran a transparent tendering process.
- The Philippines Government raised tariffs, without increasing service, prior to the division and sale of the system in order to make it more attractive to private buyers.
- In 2001, pressure was placed on the government to renegotiate the contract – reducing targets and lowering monitoring requirements and tariff controls – to the advantage of the companies involved, and the government lacked the bargaining position to oppose this.
- The Philippines regulatory system lacks the funds or the capacity to adequately monitor the activities of the private providers; that lack of capacity, and the lack of transparency with which dealings with the private providers has been conducted, has resulted in corrupt practice.
- The Mayniland Water Services Inc has been accused of over-charging customers more than 2,000m pesos in total.
- There was a lack of consultation with the affected population and insufficient investigation as to what their true water supply needs were; no alternative to privatization was canvassed.

Access to water

- Tariffs have been raised by the private providers to such an extent that the poorest citizens are effectively precluded from accessing regular, clean water supplies (there are claims of more than 300% tariff rises occurring over the period of the concessions).
- The private companies have not met the conditions of their contracts and have instead profit-taken at the expense of the quality and coverage of their service.
- In order to protect profits, the private providers have prevented communal pump-sharing, thus directly denying the access of the poorest citizens to clean water.

Labor

- As a result of the privatization process, large numbers of MWSS employees (approximately 3,000) lost their jobs and there no program for re-training or re-hiring

was implemented.

Key critics:

- There has been a high level of local antagonism toward the privatization outcomes, with a number of local NGOs developing in response. There has been some international NGO interest in the program as well, although primarily in relation to the involvement of MNCs.

* * * * *

Nam Theun Hydroelectric Project (02)

Location:	Laos
Sector:	Energy & Mining – Power
Bank instrument:	IBRD/IDA Partial Risk Guarantee
Bank ID No:	P076445
Project dates:	Yet to be approved
Total project cost:	\$1,200m
Total bank input:	\$50m
Partner(s):	Government of Laos, Nam Theun Electricity Consortium, Transfield, Electricite de France, Ital-Thai Development, Jasmine International, Phatra Thanakit

Project description:

- The project aims to build a dam on the Nam Theun river, along with a reservoir, a hydro-powerhouse and a transmission line to the Thai national grid. The electricity generated will be sold for foreign exchange. The Nam Theun 2 Electricity Consortium will build, own and operate the project and then transfer ownership to the Laos Government after 25 years.
- The World Bank is being asked providing a partial risk guarantee and credit that will help protect private investors against ‘political risk’ associated with the project, thus helping to attract them to invest in the project in the first place.
- The International Advisory Group has conducted several reports on the environmental and social impacts of the project and has, with some recommendations, approved the project. The Bank itself has requested the Government of Laos improve its macro-economic position, its commitment to using dam-sourced revenues for poverty alleviation and its capacity to monitoring and regulate the project. There has also been an attempt to improve communication in relation to the project so as to build a better understanding of it both locally and internationally.

Project objectives:

- The goal is to improve economic growth in Laos through the generation of long term net revenues and foreign exchange and to then encourage the Government to invest in rural and human resource development.
- The Bank aims to ensure economic development also helps meet environmental and social objectives (e.g. ensuring processes are in place to protect the watershed affected by the dam).
- The project will help develop a model for public-private partnerships which could stimulate future FDI in Laos, helping it to overcome the lack of domestic financing resources.

Key criticisms:

Environment

- The dam, in its construction and operation, will cause large-scale degradation to existing river and catchment eco-systems and have a commensurate effect on local bio-diversity. Most importantly, a pristine tropical forest area, one of the last in South-East Asia is threatened by the dam and reservoir.
- Logging in the reservoir area in preparation for the dam has already had a serious impact that eco-system and is contravention of the World Bank's own standards.

Resettlement

- There are estimates that approximately 4,500 indigenes will be forced to relocate, even though they have not been consulted on this.
- Similarly, there has been no serious consultation with the large number of people who will be less-directly affected by dam; even though the Bank claims to have helped run a public participation program in relation to this in the late 1990s, the reality is that the Laotian Government has prevented any major dissent from arising.

Project Design and Implementation

- The project has not met the World Commission on Dams guidelines or the World Bank's own standards on consultation and information exchange with affected populations.
- Agreed guidelines on logging in the reservoir area were not upheld by the Lao Government and there is a belief the government may either lack the capacity or be too corrupt to properly regulate a project of this kind.
- The Bank has not ensured compliance prior to the project, thus lowering confidence it will be able to ensure the conditions and safeguards associated with this project are met.

Economic and social impacts

- Important river fisheries on which approximately 150,000 people depend will be adversely affected by the dam.
- There are concerns that there is not the demand in Thailand for the amount of electricity likely to be generated by the project and that this project will not be a sustainable source of economic development.
- The social and cultural structures of those physically and economically affected by the project will be altered in ways over which they have no control and into which they have had no input.

Key critics:

- International environmental NGOs and development-oriented NGOs have been major critics of this project – local groups have had a far lower profile. The project has also attracted a significant degree of academic analysis.

* * * * *

Brazil - Land Reform and Poverty Alleviation Pilot Project

Location: Brazil

Sector: Agriculture, Fishing & Forestry – General agriculture, fishing & forestry sector

Bank instrument: IBRD Loan

Bank ID No: PO06475
Followed by the \$202m Land-Based Poverty Alleviation Project (PO50772)

Project dates: Start: 1997 End: 2002

Total project cost: \$150m

Total bank input: \$90m

Partner(s): Ministerio Extraordinario de Politica Fundiaria, Brazilian Ministry of Agriculture

Project description:

- This completed project involved setting up a Land Purchase Fund to finance market-based land purchases for approximately 15,000 poor farm families across five of Brazil's North-East states. The project worked in conjunction with capacity building efforts at the State level and improvements in impact evaluation and information dissemination at the Federal level.
- Another project component was a small grants scheme for community-based initiatives and investments.
- Several requests for project review were received by the World Bank's Inspection Panel. Bank Management responded to the Panel reports by noting that this project is regarded as one of the best designed in Latin America and that initial concerns regarding land pricing and interest rates have been addressed.

Project objectives:

- The primary goal of this project was to directly attack one of the root causes of poverty – inequality of land ownership. It was an attempt to instigate land reform via market mechanisms rather than wholesale governance and property system changes. This was

considered to be an efficient, productive approach toward addressing rural poverty in some of the poorest states in Brazil

- Another goal was to help empower local communities to instigate their own reforms and sub-projects, resulting in community-based economic growth.

Key criticisms:

Resettlement/Property ownership

- The land open to purchase under the project was often not sufficiently productive to warrant the debt incurred, and, in some cases, was land that should have been appropriated under the more established, and less expensive, Federal Government land reform process.
- Many of the properties available for purchase had water access problems and poor or eroded soil, effectively meaning that project participants were not being allowed to operate in a fair market.
- The loan repayment arrangements are such that a large number of families have run into serious debt servicing problems and have been denied access to existing micro-credit facilities. This raises the risk that those who are supposed to benefit from this project will actually lose possession of their land.
- The very existence of the project has the effect of raising land prices by increasing demand, thus negating much of the intended benefit.

Project Design and Implementation

- There was inadequate consultation with the affected populations in the design of the project and its implementation, with the result that a large number of participants went into the scheme without realising the extent to which they would be liable for loan repayments and the loan conditions they were required to meet.
- The project has failed to recognize the extent to which rural elites influence governance in the Brazilian States and the power they have to impede State-based, as opposed to National, land reform.
- There has been insufficient input allowed from rural reform groups that have been campaigning for change for a considerable period of time – the project design has been dominated by the concerns of Brazilian governments not the communities affected.

Key critics:

- Applications to the International Panel were received from a coalition of local advocacy groups calling itself the National Forum for Agrarian Reform and Rural Justice. These applications were also supported by a number of local civil society organizations, church representatives and representatives from the Federal Congress.
- Several international NGOs, such as Environmental Defense International, took an interest in this project, although most of the criticism was more locally-based rather than part of an international campaign.

* * * * *

Puerto Quetzal Power Project

Location:	Guatemala
Sector:	Energy & Mining – Power
Bank instrument:	IFC Loan
Bank ID No:	Investment Agreement, Puerto Quetzal Power Corp. and International Finance Corporation (Mar. 31, 1993)
Project dates:	Start: 1993 End: 1994(?)
Total project cost:	\$92.7m
Total bank input:	\$71.9m
Partner(s):	Enron, Sun King, Puerto Quetzal Power Corporation, Empresa Eléctrica de Guatemala S.A, Overseas Private Investment Corporation (US), U.S. Department of Transportation Maritime Administration

Project description:

- Puerto Quetzal Power Corporation, backed by Enron, built a barge-mounted electricity generation plant in order to sell electricity to Empresa Eléctrica de Guatemala S.A.
- The IFC provided a loan to help finance the project, this was part of the \$761m worth of loans in total the IFC provided to Enron in finance for operations in the developing world.
- Following the collapse of Enron, the Puerto Quetzal Power Project has been investigated by the US Internal Revenue Service for tax evasion and the US Senate Committee of Finance.

Project objectives:

- A key objective of this project was to encourage FDI into Guatemala and, through that, private-sector driven economic growth.

Key criticisms:

Project design and implementation

- The main criticism of the Bank in relation to this project is that it became involved with an investment partner, Enron, that engaged in illegal tax avoidance. In the aftermath of the collapse of Enron, this project received considerable publicity as a result of the US Senate investigation in Enron's activities in Guatemala. The key issue is explained in the following direct quote from the March 2003 US Senate Committee of Finance Staff Report [pp 2-3]:

“After examining this project, IRS international auditors raised a number of questions regarding the proper tax treatment of various project expenses. Specifically, as part of its corporate group, Enron claimed tax deductions attributable to questionable payments made through a subsidiary (Puerto Quetzal Power Corporation (Enron/PQPC)) to a Panamanian corporation known as Sun King Trading Company, Inc. (Sun King) which is owned by four Guatemalans and one U.S. citizen. The payments are not associated with any legitimate service or product

associated with the Guatemala Project. Rather, in an effort to conceal taxable income from the Guatemalan tax authorities, the payments were disguised by Enron as add-on fuel charges, and the monies paid to Sun King were routed to a specified bank account in Miami.

“The payments in question also reduced Enron/PQPC’s tax liability.”

Key critics:

- The US Senate Committee of Finance and the US Internal Revenue Service reports have been picked up by the international media, resulting in considerable public exposure of this project without the large scale involvement of NGOs.

* * * * *

Grupo M

Location: Dominican Republic, Haiti
Sector: Textiles, Apparel & Leather (IFC sector name)
Bank instrument: IFC Loan
Bank ID No: 20744
Project dates: Start: 2003 End: N/A
Total project cost: \$43m
Total bank input: \$23m
Partner(s): Grupo M, Banco Popular

Project description:

- This project involves the phased development of a Manufacturing Export Zone on the border between the Dominican Republic and Haiti with the plan being for up to 40 ‘factory units’ on the site to be built by Grupo M and leased by companies producing apparel, footwear and other products.
- Part of the loan is also to provide finance for Grupo M’s own apparel manufacturing operation.

Project objectives:

- A key objective of this project is to revitalise the garment industry in the Dominican Republic and Haiti so as to improve employment opportunities in both countries (it has the potential to create 60,000 jobs).

- This project has the potential to instigate private sector investment in related areas and help reduce poverty. The IFC is attempting to ensure Grupo M's activities result in sustainable poverty alleviation and strong private sector-community linkages.

Key criticisms:

Labor

- Workers from Grupo M who have argued for fairer employment conditions or who have attempted to unionize have been sacked by the company. There have been reported instances of the company intimidating workers who seek to speak out about working conditions or seek to organise or collectively bargain; it is reported that the company has its own private security force that has performed acts of intimidation against workers.
- There do not appear to be any effective measures in place as part of this project to ensure that core international labor standards are maintained – the word of the company alone is insufficient given its past record.
- The governments of both countries have shown themselves in the past to be either unable or unwilling to ensure international labor standards are met.
- The types of jobs being created offer no avenue for future economic advancement, they are perpetual minimum-wage jobs.
- While the project is creating manufacturing jobs, it is denying those working in the agricultural sector the ability to engage in sustainable employment.

Economic and social impact

- There have been concerns expressed over the limited extent to which a development of this kind will have a broad economic impact as opposed to enclave growth and, as a result, the extent to which it will result in economic inequality.
- There are also concerns as to the real economic benefits to be gained by such low-wage work.

Environment

- The zone is located on high quality agricultural land that is central to the livelihoods of the local population and can be cultivated in a sustainable manner.
- The construction of the zone and the operation of the factories will result in environmental degradation and pollution.

Project design and implementation

- There was a failure to consult with, or advise, the local population as to the details and likely impact of the project.
- The legal framework under which the project has been established does not provide sufficient labor standards protection for workers in the project.
- The use of military and police to protect the free trade zone and ensure the appropriation of land has effectively led to the denial of the affected population to have any critical input into the project implementation process.

Politics and government

- There have been several instances harassment by the authorities of groups protesting the project.

Key critics:

- International union groups have been lobbying the IFC against their supporting this project.
- Local unions, NGOs and community groups have expressed their opposition to the project and this has been picked by international unions and the international media.

* * * * *

Reform Project for the Water and Telecommunications Sectors

Location: Paraguay (and, indirectly, Argentina)

Sector: Water, Sanitation & Flood Protection – Water supply, Sewerage
Energy & Mining – Power

Bank instrument: IBRD Loan

Bank ID No: P007926 (formerly Asuncion Sewerage Project)
Linked to Yacyreta Hydroelectric Project – P007926 was one of the funding sources for that project, as was the SEGBA v Power Distribution Project (Argentina) P005968

Project dates: Start: 1995 End: 2003

Total project cost: \$87.9m

Total bank input: \$46.5m

Partner(s): Corporation for Sanitary Works (CORPOSANA), European Investment Bank

Project description:

- One element of this project was to provide institutional development assistance looking toward improving CORPOSANA's ability to operate as a corporate enterprise, advancing decentralization of infrastructure responsibilities to local governments and establishing a regulatory framework to oversee both public and private providers. Another element was to open the sector up to an increased number of private providers. A third element was to improve the quality and range of sewerage infrastructure in Asuncion, the quality of outfalls and the regulations controlling disposal into the Paraguay river.
- This project is linked by funding and infrastructure to the Yacyreta Hydroelectric Project.

Project objectives:

- To improve the quality and efficiency of water and sewerage services in Paraguay and to improve the access of the poorest citizens to these services.
- Provide affordable power for the local population and for industry, thus improving economic productivity and growth.

Key criticisms:

Resettlement

- Plans to raise the water level of the Yacyreta dam by another 23 feet will displace thousands of people beyond those who have already been dislocated.
- The proposed changes to the dam will also impact on Asuncion, with some low-lying areas being flooded and many residents being forced to move from their homes and the areas of their employment.
- Those people who have been forced to move have not received any compensation.

Project Design and Implementation

- There have been allegations of corruption in relation to the decision to build the dam in the location that was selected. It was located on land owned by the members of the ruling regime who signed the loan agreement; there were no good environmental, social or economic reasons for locating it there.
- The immediate economic and management concerns of construction overwhelmed any consideration of the environmental and social safeguards.
- When it became clear the Bank's safeguards and conditions were not being met it failed to act on that information in a prompt and adequate manner.

Environment

- It is claimed that the dam is polluted, especially from sewerage waste, and is responsible for the large number of health problems, including malaria, dengue fever; diarrhea, anemia, parasitic infection and skin diseases.

Key critics:

- Local community activists and NGOs with some support from Northern and international NGOs have been the key players in criticising this project.
- There has been a significant level of academic analysis of this project.

* * * * *

Argentina Water Sector Reform Program

Location:	Argentina
Sector:	Water, Sanitation & Flood Protection – Water supply
Bank instrument:	IBRD Loan
Bank ID No:	P005945, P005977, P006046
Project dates:	Start: 1985 End: 2004
Total project cost:	\$ N/A
Total bank input:	\$190m
Partner(s):	OSN/National Sanitation Works, Aguas Argentinas, Suez Lyonnaise

Project description:

- This is a series of projects, linking in with general structural adjustment programs and loans, relating to the capacity-building and privatization of the Argentinian water supply system. The first projects were aimed at the privatization of the Buenos Aires water service; later projects are now attempting to encourage the same changes in regional and medium sized cities.

Project objectives:

- To improve the coverage, quality and efficiency of the Argentinian water supply, with the resultant benefits being seen in improved health and quality of life of the poorest citizens and improved economic growth through reduced production costs.

Key criticisms:

Water

- Critics argue that after 10 years of a privatized water supply in Buenos Aires there have been large tariff increases (well over 100 per cent) but little improvement in enabling the poor to have improved access to regular, clean water supplies.
- The incentive structures are not in place for private providers to ensure coverage to all citizens, instead corporations such as Aguas Argentinas (of which the Suez owns 46%) focus only on those services and areas that guarantee good profit margins.
- The question of water access is also tied into that of land ownership in that the poorest communities are often those without formal property rights (e.g. outlying squatter settlements) and therefore without the legal means to pressure both state and private providers into providing services.
- There are obvious health and poverty issues related to this failure to ensure water access.

Project Design and Implementation

- There was insufficient consultation at the design stages of the Buenos Aires privatization process with the result that the regulatory frameworks and incentive structures implemented did not sufficiently encourage the supply of water to the poorest citizens.
- There are claims the tendering process and the tariff-setting process have been corrupted; the Environment Minister responsible for much of the decision-making on the Buenos Aires water privatization has been charged with 'illicit enrichment'.
- Argentina's regulatory institutions lack the capacity to adequately monitor private providers and ensure consumer redress in relation to service failure.
- The privatization process was entered into largely as a result of World Bank pressure and designed to fit the Bank's privatization template – alternative approaches were not considered seriously.
- A World Bank employee worked for Aguas Argentinas at one point and was instrumental in negotiating higher tariff rates, before returning to the Bank and heading a team that sanctioned a \$30m loan to the Argentinian Government.
- There has been a significant loss in public support for the water privatization process as a result of the perceived politicisation of the process, corruption, weak regulation and seemingly opportunistic tariff increases.

Labor

- Over 7,000 workers lost their jobs as a result of the privatization.

Key critics:

- Local NGOs and community groups/activists have been instrumental in ensuring criticism of this program has garnered significant publicity. International academic institutions and NGOs focussing on globalization and water rights have also picked up on these criticisms, but not as part of an especially coordinated campaign.
- The World Bank's own Development Research Group has analysed this program.

* * * * *

Pangue Hydroelectric Project

Location: Chile
Sector: Energy & Mining – Power
Bank instrument: IFC Loan
Bank ID No: 2067

While the Bank is not funding the related Ralco Dam project (which is currently incurring criticism), the infrastructure of the two projects is linked.

Project dates: Start: 1992 End: 1997 (NB Ralco Dam project ongoing)
Total project cost: \$367m
Total bank input: \$150m
Partner(s): ENDESA (National Energy Enterprise), European bilateral agencies and commercial lenders

Project description:

- The IFC provided funding to Chile's largest electricity corporation, and subsidiary of the Spanish parent company, ENDESA, to commence a long-term plan to construct six hydroelectric dams along the Bio Bio River. The first dam to be constructed, between 1992 and 1997, was the Pangue Dam. The next, and currently under construction, is the Ralco Dam.
- The IFC helped produce environmental and social impact studies on this project. The Inspection Panel, following requests from local parties, completed several investigations of the project's environmental and social safeguards and made a number of criticisms of the IFC's performance. The Bank acknowledged that at least some of those criticisms were well-founded.
- The Bank has chosen not to provide further funding to the overall project and is not funding

the Ralco Dam construction.

Project objectives:

- To provide an inexpensive source of power for Chilean producers and consumers, with a correlative positive impact on economic growth and poverty reduction

Key criticisms:

Resettlement

- Members of the indigenous Pehuenche community were forced off their traditional lands by the Chilean government, their ongoing opposition has resulted in civil conflict between them and private militias funded by corporations associated with the dam project. More members of the Pehuenche community are now facing resettlement as part of the Ralco Dam building process
- The compensation offered to the peoples resettled was inadequate (and in some cases non-existent), as was the planning to rehabilitated lands affected by the construction process.
- There was a general failure on the part of the IFC and its private partners to consult with the affected parties over the terms and processes of resettlement.

Politics and government

- The Chilean Government has forcibly sought to prevent indigenous peoples opposed to the projects to express their opposition and to continue to occupy lands slated for appropriation.

Project design and implementation

- The IFC failed to fully prepare and implement all environmental and social safeguards required for the sustainable operation of this project.
- There was a refusal on the World Bank's part to release all information once they started receiving criticism that claimed they had failed to observe their own environmental and social standards.
- There was a failure to consult adequately with the affected populations in relation to environmental and social impacts of the project.

Environment

- The Pangué project resulted in large areas of forest and eco-system inundation and the Ralco Dam now threatens to do the same thing.
- The construction and operation of Pangué and the anticipated construction of Ralco dam degrade the local eco-system and impact on the sustained livelihoods of the indigenous peoples affected.

Key critics:

- A coordinated campaign involving international NGOs and local community activists grew up around this project, with environmental and human rights NGOs being key players. While the Pangué Dam has been completed for several years, the Ralco Dam project is now incurring significant criticism from similar organizations, with the World Bank receiving its share by virtue of the way in which the Pangué project prepared the way for the Ralco Dam.
- Academic analysts have also examined the project, with the American Anthropological Association becoming a leading critic.

- The Inspection Panel was unambiguously critical of a number of aspects of this project.

* * * * *

Gas Sector Development Project-Bolivia-Brazil Gas Pipeline

Location:	Brazil, Bolivia
Sector:	Energy & Mining – Oil & Gas
Bank instrument:	IBRD Loan + Partial Credit Guarantee
Bank ID No:	P006549
Project dates:	Start: 1997 End: 2000
Total project cost:	\$2,086m
Total bank input:	\$130m (loan) + \$180m (partial credit guarantee)
Partner(s):	Brazilian Gas Transport Company (TBG), Petrobras, Government of Brazil, British Gas, El Paso Energy, Broken Hill Proprietary (the BTB consortium), Enron, Shell, Bolivian Pension Funds, Yacimientos Petroliferos Fiscales Bolivianos (YPFB), Inter-American Development Bank, European Investment Bank

Project description:

- This project seeks to link Bolivian gas fields with markets in Brazil and, ultimately, other countries in South America
- The project involves the construction of 557 km of gas pipeline connecting Rio Grande in Bolivia to Corumba in Brazil, and then 2,593 km of pipeline in Brazil from Corumba to Porto Alegre – this latter section also involves building of the Penapolis compression station and the expropriation of land for the pipeline and the station.
- The IBRD carried out economic, financial, technical, environmental, social and institutional assessments of the project prior to approving funding and also devised a participatory implementation approach and an Indigenous Peoples Development Plan (IPDP).

Project objectives:

- The aim of this project is to improve the export income Bolivia earns from its gas production and to also encourage FDI in upstream gas exploration, and then production, with benefits to flow through to the rest of the economy through improved capacity for government expenditure and improved access to investment.
- This project will also diversify Brazil's energy supply and to make it economically viable for populations in South and Southeast Brazil to move away from using high-polluting fuels to environmentally 'cleaner' natural gas.

Key criticisms:

Project design and implementation

- On this project the IBRD is partnering with private corporations that have a record of environmental abuse and failure to properly assess social impacts.
- There has been a failure to consult sufficiently with local populations and expert analysts on the potential for environmental degradation associated with the pipeline's construction and operation and a failure to consult in relation to community impacts as a result of opening up the area to outside workers and migrants.
- The MNC's involved – such as Shell and Enron – exerted undue pressure on the Brazilian and Bolivian Governments in approving project-enabling legislation that protected the corporations' interests rather than those of the affected populations.
- Even though it has conducted numerous impact assessments, the World Bank is failing to properly implement its own standards in relation to environmental and social protection.

Environment

- This project involves the destruction of areas of primary tropical rainforest ecosystems (e.g. Chiquitano Forest, Mata Alantica Forest and Pantanal wetlands) in its construction and maintenance.
- Soil erosion associated with the pipeline construction has not been controlled.
- The infrastructure – especially the roads (including access roads not on any of the original plans) – required to construct and maintain the pipeline also opens the area up to loggers, miners and short term farmers, with correlated adverse environmental impacts.
- There have been reports of increased wildlife poaching in areas accessed via the project's infrastructure.

Economic and Social Impacts

- The pipeline runs through lands owned by indigenous peoples and there have been no substantial measures (the Bank's Environmental Management Capacity Building Project has had only a limited impact) to redress the economic and social problems associated with its construction and ongoing operation (the continuing presence of large numbers of TBG employees and company settlements, as well as the infrastructure itself).
- The IPDP devised by the Bank lack sufficient resources to ensure the continuation of its initial actions, nor does it provide sufficient compensation for the immediate damage caused by the pipeline's construction and operation.

Key critics:

- A coordinated campaign by international, Northern and Southern environmental NGOs has formed in opposition to this project. Local community activist groups and some indigenous groups have also publicly opposed the project.

* * * * *

Papua New Guinea Governance Promotion Adjustment Loan

Location:	Papua New Guinea
Sector:	Law & Justice & Public Administration – Central government administration
Bank instrument:	IBRD Loan
Bank ID No:	P069771
	Link has been made by NGO critics to the PNG Forestry and Conservation Project
Project dates:	Start: 2000 End: 2001
Total project cost:	\$90m
Total bank input:	\$90m
Partner(s):	Government of Papua New Guinea

Project description:

- This loan supports PNG's reform program in relation to economic management, governance and anti-corruption measures.
- The activities supported under the loan build on ongoing structural adjustment assistance that seeks to: improve fiscal and debt management; improve the transparency, efficiency and efficacy of the PNG public sector; improve the investment environment for business, and improve health, education and forestry management.
- The loan was delivered in three tranches: the first in the sum of \$35m, followed by a floating tranche of \$20m and a second tranche of \$35m. The second tranche had 22 release conditions, including the requirement that the PNG Government place a moratorium on the granting of new logging licences. The first tranche was disbursed on 21 June 2000, the floating tranche was disbursed in July 2001 and the second tranche was disbursed in December 2001.

Project objectives:

- The supported reform program aims to stabilise PNG's economy and return it to a pattern of sustainable growth by improving the Government's economic management and the degree and manner to which it intervenes in the economy either directly or via public sector operations.

Key criticisms:

Project design and implementation

- The World Bank has imposed a privatization regime onto PNG as a condition of further loans and assistance without fully exploring the specific circumstances of PNG's governance and society – many of the problems relating to privatization in PNG can be linked back to the uncritical use of such 'templates'.

- The PNG government was required to meet certain environmentally sound criteria in relation to its forestry management before receiving all of the loan, but the Bank has failed to meet its own standards on this and allowed the loan go through even though those conditions have not been met.
- There have been ongoing criticisms levelled at PNG Governments over corruption; sometimes the Bank is criticized for allowing corrupt behaviour to occur, other times it is criticized for overly interfering in the governance reform process – overall the criticism is that the project/loan has not been successful in curbing official corruption.

Environment

- The Bank's failure to insist on loan criteria that placed a moratorium on further logging concessions being granted has exposed PNG to greatly increased reduction in its forests and associated bio-systems.
- Large numbers of the PNG population rely on the forest areas for their subsistence livelihood; economic, social and health issues are bound up in the continuing existence of the forest areas.

Politics and government

- Large demonstrations in May 2001 against the PNG Government's privatization activities resulted in three people being shot by security forces.

Key critics:

- While there hasn't been a large coordinated campaign opposing this project, there have been a number of local NGOs and opposition groups whose claims are being picked up by environmental NGOs in Australia and the Pacific.
- Several international environmental NGOs and academic analysts have also been examining this project.

* * * * *

Coal and Forestry Sector Guarantee Facility Project

Location:	Russia
Sector:	Agriculture, Fishing & Forestry – Forestry Energy & Mining – Mining & other extractive
Bank instrument:	IBRD/IDA Partial Risk Guarantee
Bank ID No:	P057893
Project dates:	Start: 2000 End:
Total project cost:	\$200m
Total bank input:	\$200m
Partner(s):	Government of Russia, approved private partners

Project description:

- The project provides for Guarantee Contracts (managed by the Federal Center for Project Finance) to be issued to private investors in the coal and forestry sectors that minimise the interference of the Russian Government in private transactions where the Government, for example, raises taxes, alters licences or confiscates goods.
- The project provides for compensation to be paid to private investors if government interference occurs.
- \$50m is reserved for forestry sector developments, \$50m for coal sector developments, and the remaining \$100m is to be allocated according to demand and under the Bank's eligibility criteria.

Project objectives:

- The key goal is to encourage private investment in the coal and forestry sectors by removing what has been the biggest impediment to this in the past – government interference.
- The potential exists for long-term economic growth to be instigated by increased activity in these sectors.

Key criticisms:

Project design and implementation

- The Bank has failed to prepare an IPDP for this project even though it is acknowledged that, given the location of much of the coal and forestry industries, indigenous peoples will be affected. Instead, the Bank has placed the onus on the private investors to submit plans with their applications. The key problem here is that the consultation requirements the Bank places on itself in the preparation of IPDPs are not placed on private investors.
- No attempt has been made by the Bank to meet its upgraded forestry safeguards in the preparation of the project framework. As with IPDPs, too much responsibility has been placed on the private investors to incorporate safeguards into their proposals.

Key critics:

- Several local and European-based NGOs have been lobbying the IFC and conducting a public campaign on the twin issues of IPDP and forestry safeguard compliance.

* * * * *

Corredor Sur Toll Road Project

Location: Panama
Sector: Transportation and Warehousing (IFC sector name)
Bank instrument: IFC Loan
Bank ID No: 8526

Project dates:	Start: 1998	End: 2000
Total project cost:	\$210m	
Total bank input:	\$85m	
Partner(s):	Empresa ICA Sociedad Controladora, S.A. de C.V (ICA Panama), Government of Panama	

Project description:

- ICA Panama undertook a Build-Operate-Transfer project (transfer occurring after thirty years) to complete a 19.5 km toll highway linking the central business district of Panama City to eastern districts and the city airport. The highway traverses both land and a section of the Panama Bay. Property development, called 'Punta Pacific', involving land-fill and mainland areas is also part of the project.
- The IFC supported the project through an A Loan of \$35m and a B Loan of \$50m.

Project objectives:

- The aim of the project is to improve efficiency in transport infrastructure (thus lowering production costs for local businesses), improve the level of FDI coming into Panama, and ensure the project is conducted in an environmentally responsible manner.

Key criticisms:

Environment

- In 2000 the Central American Water Tribunal found the builders and owners of the project, as well as the Government of Panama, culpable of causing environmental degradation and related health problems among the local population.
- Part of the Panama Bay ecosystem is claimed to have been adversely affected by the construction and design on that segment of the highway which crosses it.
- The landfill islands created as part of the Punta Pacific development are also claimed to affect the Bay's ecosystem, especially in relation to their impact of currents in the Bay that help disperse sewerage outflows.
- The build up of fecal pollution will add to the existing pollution levels and further diminish fisheries in the area.

Project design and implementation

- A civil law suit has been brought against the company on behalf of people who allege their property was damaged during the course of the highway's construction, or had its value significantly reduced as a result of the project, for which they have thus far received little or no compensation.
- The Ministry of Finance is being investigated for the illegal sale of land in relation to the project (the redevelopment associated with the former airport).
- Little information about the project was disclosed before it began (even though NGO requests had been received), little consultation was entered into and there was lack of transparency regarding the arrangements between the Government of Panama and ICA during the course of the project.
- National land use standards were intentionally circumvented by building over the Bay.

Resettlement

- Residents forced to resettle as a result of the project were not able to collectively bargain with ICA and in a number of cases received less in compensation than independent valuations of their property indicated was appropriate.
- There have been claims of intimidation against residents who were reluctant to leave and there has been ongoing low-level conflict with those residents who have remained.
- Those forced to resettle have been shifted to areas on the outskirts of the city, a considerable distance from their established place of economic activity, namely, the Bay.

Key critics:

- A combination of Northern and local NGOs have come together in a loose network in opposition to this project.
- There has been some independent and academic analysis of this project.

Appendix 2

Database Search Hits

LEXIS.COM

- International Law> Law Reviews and Journals>International Law Review Articles, Combined.
-01/01/2000 – 11/11/2003

1. "Baku-Ceyhan Pipeline"
 - 2 hits
 - both reference the specific project but no HR issues raised
 - "btc pipeline"
 - no hits
 - btc and pipeline
 - no hits

2. "Bujagali Hydropower Project"
 - no hits
 - bujagali hydropower project
 - no hits
 - bujagali and project
 - no hits

3. Yacyreta Hydroelectric Project
 - 4 hits
 - 1= reference in terms of IP process, no HR issue
 - 2= same doc as 1
 - 3= entered
 - 4= reference only no HR issue raised

4. "Chad-Cameroon Petroleum Pipeline"
 - 2 hits
 - Chad/Cameroon Project
 - 7 hits
 - Chad w/5 Cameroon w/5 Project
 - 13 hits

5. "Papua New Guinea governance Loan"
 - no hits
 - "papua new guinea" and governance w/5 loan

- no hits
“papua new guinea” and governance and loan and “world bank”
-10 hits, none relevant to this project.
- 6. “Liberian agricultural company”; Liberian w/5 agricultural w/5 company; “Liberian agricultural” and “world bank”
-no hits
- 7. “jordan gateway project”; “Jordan gateway” w/5 project; Jordan w/5 gateway w/5 project; “Jordan gateway” and “world bank”
- no hits
- 8. “niger delta” w/5 credit
-no hits
“niger delta” and “world bank”
-20 hits- three entered as relevant generally to project
- 9. “nam theun hydroelectric project”; “nam theun” and “world bank”
- none
“nam ngum” and “world bank”
- 1 hit- reference to specific project but no HR issues raised
- 10. “Yanacocha III”; “Yanacocha”
-no hits
- 11. “Pangue Hydroelectricity Project”
-1 hit –project reference but no HR issue raised
“pangue” and “world bank” and “project”
-same hit as above + one hit no HR reference
“ralco” and “world bank”
-1 hit- reference to specific project but no HR issue raised
- 12. “Major Cities Water Supply and Sewarage Rehabilitation Project”
-no hits
“cochabamba”
-14 hits; only 1 reference to privatisation project but no HR issue raised therein
- 13. ghana and “world bank” and water w/5 privatisation or privatization
-2 hits
1= entered
2= not relevant

14. brazil and "Land Reform and Poverty Alleviation Pilot Project"
-no hits
brazil w/5 "land reform" and "world bank"
-6 hits – no HR issues raised
15. "Puerto quetzal power project"; "Puerto quetzal" and "world bank"; "Puerto quetzal"; Puerto
and quetzal
-no hits
16. "Grupo M"
-1 hit- Spanish doc
17. "Lesotho highlands water project"
-2 hits- reference project but no HR issues raised
"Lesotho highlands" and project and "world bank"
-3 hits- none re HR issues raised
18. "corridor sur"
-no hits
19. "Argentina Water Sector Reform"
-no hits
argentina and "world bank" and water w/5 privatisation or privatization
-6 hits
1= WTO criticisms generally
-no HR criticisms re water privatisation in Argentina
20. "Coal and Forestry Sector Guarantee Facility Project"; "coal and forestry sector guarantee";
"coal and forestry sector" and russia
-no hits
21. "Manila Water Privatisation"; "Manila Water Privatization";
-no hits
Manila and "world bank" and water w/5 privatisation or privatization
-1 hit- reference to privatisation bid but no HR issues raised
22. "Bolivia-Brazil Gas Pipeline";
-no hits
bolivia and brazil and "gas pipeline" and "world bank"
-11 hits but none relating to particular project

EXPANDED ACADEMIC ASAP

-Advanced search- limited to 2000, 2001, 2002, 2003

-search terms searched in full text

1. baku-ceyhan pipeline
-344 hits (note have looked up to 50)

btc pipeline
-62 hits

In refereed journals only:

baku-ceyhan pipeline
-22 hits

-principally the pipeline is referred to within context of analysis of political relationships between states and state positions on political/economic terms - in particular the politics of the route of the pipelines and relationship between states in terms of reliance on particular sources of oil.- no specific comment re HR issues

btc pipeline
1 hit- included above

2. "bujagali hydropower project"
-24 hits
-principally articles in African news services and one in the Multinational Monitor Journal.

Bujagali and project
-276 hits

-again, almost all appear to relate specifically to the subject project and are almost exclusively articles appearing with regularity in the African News Services and occasional specific African focused journals, with exception of one Asian news service and a couple of western news services.

In refereed journals only:

"Bujagali Hydropower Project"
-no hits

bujagali and project
-3 hits- all entered- all ngo articles

3. Yacyreta Hydroelectric Project
-4 hits
-one is a western news service and others refereed journals.

Yacyreta and project
14 hits- 8 relevant to particular project

In refereed journals only:

Yacyreta Hydroelectric Project
-3 hits (included in those above)
– referenced in context of discussion regarding inspection panel processes but no issues regarding the HR criticisms. One a bioscience journal regarding impacts of dams in technical terms

yacyreta and project
14 hits- principally news reports incl reference to other projects-followed up

4. “Chad-Cameroon Petroleum Pipeline”
-1 hit- African news service with relevant HR issues

Chad and Cameroon and pipeline
-259 hits
-principally African News Services reporting on project development as well as many appearing to relate particularly to criticisms, but unlike Bujagali there is are some handful of articles appearing in International and western newspapers, bulletins, magazines.

In refereed journals only:

“Chad-Cameroon Petroleum Pipeline”
-no hits

Chad and Cameroon and pipeline
-11 hits- journal of international affairs and Environment Bulletin repeated articles + others

5. “Papua New Guinea governance Loan”
-no hits
papua new guinea and governance loan and world bank
-no hits
“papua new guinea” and loan and “world bank”
-40 hits, of those 4 relevant to particular loan – entered.

In refereed journals only:

“papua new guinea” and loan and “world bank”

2 hits specifically related to the project

6. “Liberian agricultural company”

- 1 hit – relevant- Environment Bulletin a refereed journal

“Liberian agricultural” and “world bank”

- same 1 hit as above

7. “jordan gateway project”

- 1 hit but no text available, appears to be updating on progress of project;

“Jordan gateway” and “world bank”

-same hit

- no refereed journal hits

8. “niger delta” and “revolving credit” and “world bank”

- 3 hits all African News Services incl reference to HR criticisms

- none refereed articles

9. “nam theun hydroelectric project”

- 1 hit –reference to project but no HR issue raised

“nam theun” and “project” and “world bank”

- 16 hits

- mixture of articles within African News Services principally on the issue of corruption and in reference to Accre the company implicated in corruption issues in Lesotho, Bujagali and Nam Then as well as some western journals

In refereed journals only

“nam then” and project and “world bank”

- 4 hits

10. Yanacochoa

-51 hits

In refereed journals only:

“yanacochoa”

-1 hit – Environment Bulletin

11. Pangu Hydroelectricity Project

- no hits

pangu and project

- 7 hits

In refereed journal articles only:

Pangue and project

- 4 hits

12. "Major Cities Water Supply and Sewerage Rehabilitation Project

-no hits

cochabamba

-259 hits, most of which appear related to the particular privatisation process and in the context of privatisation

cochabamba and "world bank"

-84 hits

In refereed journal articles only:

Cochabamba and "world bank"

-29 hits

13. Ghana water and privatisation and "world bank"

-21 hits principally African News Services and journals on subject of Africa

Ghana water and privatization and "world bank"

-12 hits as above

Ghana and water and privatisation and world bank

-76 hits

Ghana and water and privatization and world bank

-79 hits

In refereed journal articles only:

Ghana and water and privatisation and world bank

-11 hits

Ghana and water and privatization and world bank

-15 hits

14. Land Reform and Poverty Alleviation Pilot Project

-1 hit, reference to project but no HR issue raised

"land reform" and brazil and "world bank"

-108 hits

"land reform" and project and "world bank" and brazil

-54 hits

"land reform" and project and privatisation and "world bank" and brazil

-5 hits

"land reform" and project and privatization and "world bank" and brazil

-29 hits

note all the results of the above are disparate subjects not generally relating specifically to the subject project but land reform history generally or otherwise.

In refereed journal articles only:

-no hits according to precise project title

15. "Puerto quetzal power project"

-no hits

Puerto quetzal and project

-2 hits but neither relevant to particular project

Puerto quetzal and "world bank"

-no hits

16. Grupo M

- 7 hits, 3 relevant to particular project and incorporating HR issues.

In refereed journal articles only:

Grupo M- 3 hits but none related to particular project

17. Lesotho Highlands Water Project

-137 hits

-principally articles arising with African News Service and journals with subject of Africa, although there is a number of international journals, Asia pacific and western generally reporting on the subject also.

In refereed journal articles only:

Lesotho Highlands Water Project

- 9 hits

18. corridor sur

-no hits

19. "Argentina Water Sector Reform"

-no hits

Argentina and water and privatisation and world bank

-38 hits of which:

Argentina and water and privatization and world bank

-133 hits

In refereed journal articles:

Argentina and water and privatisation and world bank

-11 hits

Argentina and water and privatization and world bank

-37 hits

20 Coal and Forestry Sector Guarantee Facility Project

-no hits

coal and forestry sector and world bank and project and Russia

-no hits

21. Manila Water Privatisation

-1 hit relevant (African News Service)

Manila Water Privatization

- no hits

Manila and water and privatization and world bank

-26 hits

Manila and water and privatisation and world bank

-9 hits

In refereed articles only:

Manila and water and privatization and world bank

-14 hits

Manila and water and privatisation and world bank

-7 hits

22. Bolivia-Brazil Gas Pipeline

-51 hits- majority relevant to the specific project

In refereed articles only

Bolivia-Brazil Gas Pipeline

-1 hit

23. Chixoy Dam

-8 hits

chixoy and world bank

-same 8 hits as above

In refereed articles only:

Chixoy and world bank

-no hits

Note- it should be noted that with regard to the searches of the three water privatisation process projects (bolivia, ghana and manila) the results relevant to those are mostly papers or articles not specifically on those projects but in relation to privatisation generally with reference to one or more of those three commonly raised.

PRO QUEST

Search of multiple databases for the closed period 01/01/2000-15/11/2003, and search within article text.

1. “Baku-Ceyhan Pipeline”

All sources:	225
Scholarly journals:	27
Magazines:	20
Trade Publications:	68
Newspapers:	29

BTC pipeline

All sources:	102
Scholarly journals:	5
Magazines:	5
Trade Publications:	75
Newspapers:	6
References/Reports:	4

2. Bujagali and Hydropower and Project

All sources:	24
Scholarly journals:	3
Magazines:	5
Trade Publications:	11
Newspapers:	2

3. Yacyreta Hydroelectric Project

All sources:	14
Scholarly journals:	6
Magazines:	2
Trade Publications:	2
Newspapers:	1

4. Chad Cameroon Petroleum Pipeline

All sources:	342
Scholarly journals:	39
Magazines:	59
Trade Publications:	161
Newspapers:	61

5. “Papua New Guinea” and Tranche and “World Bank”

All sources: 5
Scholarly journals: 1
Trade Publications: 2

6. "Liberian Agricultural Company"

none

"Liberian Agricultural" and "World Bank"

none

7. "Jordan Gateway Projects"

Trade Publications: 1 – references project but no HR issue raised

"Jordan gateway" and "world bank" and project

none

8. "Niger Delta Contractor Revolving Credit Facility"

none

"niger delta" and "revolving credit"

Newspapers: 1

"niger delta" and "world bank" and credit

All sources: 21

Scholarly journals: 8

Magazines: 3

Trade Publications: 6

Newspapers: 2

9. "Nam Theun" and Hydroelectric

All sources: 32

Scholarly journals: 3

Magazines: 3

Trade Publications: 13

Newspapers: 7

10. "Yanacocha 3"

none

Yanacocha

All sources: 129

Scholarly journals: 6

Magazines: 6

Trade Publications: 74

Newspapers: 34

11. Pangué and Hydroelectric

All sources:	4
Magazines:	1
Trade Publications:	2

12. Cochabamba Water Privatization

All sources:	69
Scholarly journals:	28
Magazines:	19
Trade Publications:	14
Newspapers:	5

Cochabamba Water Privatisation

All sources:	20
Scholarly journals:	9
Magazines:	6
Trade Publications:	2
Newspapers:	2

13. Ghana Water Privatization

All sources:	133
Scholarly journals:	75
Magazines:	6
Trade Publications:	23
Newspapers:	2

Ghana Water Privatisation

All sources:	60
Scholarly journals:	23
Magazines:	22
Trade Publications:	10
Newspapers:	3

14. "Land Reform" and "Pilot Project" and Brazil

All sources:	9
Scholarly journals:	5
Magazines:	1
Trade Publications:	2

None of the hits relate to HR criticisms of the subject project

15. "Puerto Quetzal" and Power and Project

7 hits but only one relevant to HR issue

16. "Grupo M"
All sources: 12
Scholarly journals: 2
Magazines: 1
Trade Publications: 6
-majority scholarly journals and magazines relate to current free trade zone agreement and concerns raised in conjunction with same.

17. "Lesotho Highlands Water Project"
All sources: 45
Scholarly journals: 11
Magazines: 16
Trade Publications: 12
Newspapers: 4

18. Corredor sur
All sources: 2
Scholarly journals: 1
Trade Publications: 1
Both raise HR issues

19. Argentina w/3 water w/3 privatisation
1 hit- no HR issue raised
argentina w/3 water w/3 privatization
1 hit – no HR issue raised
*argentina and water w/3 privatisation and "world bank"
All sources: 8
Scholarly journals: 1
Magazines: 3
Trade Publications: 1
Newspapers: 2
Only couple relate particularly to water privatisation process in argentina and HR issues

20. "Coal and Forestry Sector" and Russia and guarantee and "world bank"
4 hits- all reporting on project- no criticisms raised

21. Manila and water w/3 privatization
All sources: 39
Scholarly Journals: 3
Magazines: 2
Trade Publications: 28

Newspapers: 3

Majority are referencing the specific water privatisation process and largely relating to criticisms or concerns over privatisation- incl reports regarding problems of one of the companies involved.

Manila and water w/3 privatisation

All sources: 3

Magazines: 1

Trade Publications: 1

Newspapers: 1

22. Bolivia Brazil Gas Pipeline

All sources: 127

Scholarly journals: 3

Magazines: 5

Trade Publications: 104

Newspaper articles: 8

23. Chixoy Dam

All sources: 6

Magazines: 3

Trade Publications: 2

All relevant to specific project and raise criticisms.

APPENDIX 3**UNITED NATIONS HUMAN RIGHTS TREATIES: GLOBAL RATIFICATIONS**

The following chart of States shows which are a party (indicated by the date of adherence: ratification, accession or succession) or signatory (indicated by an “s” and the date of signature) to the United Nations human rights treaties listed above. Self-governing territories that have ratified any of the treaties are also included in the chart. As at 02 November 2003, all 189 Member States of the United Nations and 4 non-Member States were a party to one or more of these treaties.

	CESCR	CCPR	CERD	CEDAW	CAT	CRC
Afghanistan	24 Apr 83 ^a	24 Apr 83 ^a	5 Aug 83 ^a	4 Apr 03	26 Jun 87	27 Apr 94
Albania	04 Jan 92 ^a	04 Jan 92 ^a	10 Jun 94 ^a	10 June 94	10 Jun 94 ^a	28 Mar 92
Algeria	12 Dec 89	12 Dec 89	15 Mar 72 ^a	21 Jun 96 ^a	12 Oct 89 ^a	16 May 93
Andorra		<i>s05 Aug 02</i>	<i>s05 Aug 02</i>	14 Feb 97 ^a	<i>s05 Aug 02</i>	01 Feb 95
Angola	10 Apr 92 ^a	10 Apr 92 ^a		17 Oct 86 ^a		04 Jan 91
Antigua and Barbuda			25 Oct 88 ^d	31 Aug 89 ^a	18 Aug 93 ^a	04 Nov 93
Argentina	08 Nov 86	08 Nov 86	04 Jan 69	14 Aug 85	26 Jun 87 [*]	03 Jan 91
Armenia	13 Dec 93 ^a	23 Sep 93 ^a	23 Jul 93 ^a	13 Oct 93 ^a	13 Oct 93	22 Jul 93 ^a
Australia	10 Mar 76	13 Nov 80	30 Oct 75 [*]	27 Aug 83	07 Sep 89 [*]	16 Jan 91
Austria	10 Dec 78	10 Dec 78	08 Jun 72 [*]	30 Apr 82	28 Aug 87 [*]	05 Sep 92
Azerbaijan	13 Nov 92 ^a	13 Nov 92 ^a	15 Sep 96 ^{a*}	09 Aug 95 ^a	15 Sep 96 ^{a*}	12 Sep 92 ^a
Bahamas			05 Aug 75 ^d	05 Nov 93 ^a		22 Mar 91

Human Rights and the World Bank's Private Sector Development and Privatization Projects

Bahrain			26 Apr 90 ^a	18 Jul 02 ^a	05 Apr 98 ^a	14 Mar 92 ^a
Bangladesh	05 Jan 99 ^a	06 Dec 00 ^a	11 Jul 79 ^a	06 Dec 84 ^a	04 Nov 98 ^a	02 Sep 90
Barbados	03 Jan 76 ^a	23 Mar 76 ^a	08 Dec 72 ^a	03 Sep 81		08 Nov 90
Belarus	03 Jan 76	23 Mar 76	08 May 69	03 Sep 81	26 Jun 87	31 Oct 90
Belgium	21 Jul 83	21 Jul 83	06 Sep 75 [*]	09 Aug 85	25 Jul 99 [*]	15 Jan 92
Belize	<i>s:06 Sep 00</i>	10 Sep 96 ^a	14 Dec 01	15 Jun 90	26 Jun 87 ^a	02 Sep 90
Benin	12 Jun 92 ^a	12 Jun 92 ^a	30 Dec 01	11 Apr 92	11 Apr 92 ^a	02 Sep 90
Bhutan			<i>s:26 Mar 73</i>	30 Sep 81		02 Sep 90
Bolivia	12 Nov 82 ^a	12 Nov 82 ^a	22 Oct 70	08 Jul 90	11 May 99	25 Jul 90
Bosnia and Herzegovina	06 Mar 92 ^d	06 Mar 92 ^d	16 Jun 01 ^d	16 Jul 93 ^d	01 Oct 93 ^{a*}	06 Mar 92 ^d
Botswana		08 Dec 00	22 Mar 74 ^a	12 Sep 96 ^a	08 Oct 00	13 Apr 95 ^a
Brazil	24 Apr 92 ^a	24 Apr 92 ^a	04 Jan 69 [*]	02 Mar 84	28 Oct 89	24 Oct 90
Brunei Darussalam						26 Jan 96 ^a
Bulgaria	03 Jan 76	23 Mar 76	04 Jan 69 [*]	10 Mar 82	26 Jun 87 [*]	03 Jul 91
Burkina Faso	04 Apr 99 ^a	04 Apr 99 ^a	17 Aug 74 ^a	13 Nov 87 ^a	03 Feb 99 ^a	30 Sep 90
Burundi	09 Aug 90 ^a	09 Aug 90 ^a	26 Nov 77	07 Feb 92	20 Mar 93 ^{a*}	18 Nov 90
Cambodia	26 Aug 92 ^a	26 Aug 92 ^a	28 Dec 86	14 Nov 92 ^a	14 Nov 92 ^a	14 Nov 92 ^a
Cameroon	27 Sep 84 ^a	27 Sep 84 ^a	24 Jul 71	22 Sep 94	26 Jun 87 ^{a*}	10 Feb 93
Canada	19 Aug 76 ^a	19 Aug 76 ^a	15 Nov 70	09 Jan 82	24 Jul 87 [*]	12 Jan 92
Cape Verde	06 Nov 93	06 Nov 93	02 Nov 79	03 Sep 81 ^a	04 Jul 92 ^a	04 Jul 92 ^a
Central African Republic	08 Aug 81 ^a	08 Aug 81 ^a	15 Apr 71	21 Jul 91 ^a		23 May 92
Chad	09 Sep 95 ^a	09 Sep 95 ^a	16 Sep 77 ^a	09 Jul 95 ^a	09 Jul 95 ^a	01 Nov 90
Chile	03 Jan 76	23 Mar 76	19 Nov 71 [*]	06 Jan 90	30 Oct 88	12 Sep 90
China	27 Jun 01	<i>s:05 Oct 9</i>	28 Jan 82 ^a	03 Sep 81	03 Nov 88	01 Apr 92
Colombia	03 Jan 76	23 Mar 76	02 Oct 81	18 Feb 82	07 Jan 88	27 Feb 91
Comoros			<i>s:22 Sep 00</i>	30 Nov 94 ^a	<i>s:22 Sep 00</i>	21 Jul 93

Human Rights and the World Bank's Private Sector Development and Privatization Projects

Congo	05 Jan 84 ^a	05 Jan 84 ^a	10 Aug 88 ^a	25 Aug 82		13 Nov 93 ^a
Cook Islands						06 Jul 97 ^a
Costa Rica	03 Jan 76	23 Mar 76	04 Jan 69	04 May 86 [*]	11 Dec 93 [*]	20 Sep 90
Croatia	08 Oct 91 ^d	08 Oct 91 ^d	08 Oct 91 ^d	09 Oct 92 ^d	08 Oct 91 ^d	08 Oct 91 ^d
Cuba			16 Mar 72	03 Sep 81	16 Jun 95	20 Sep 91
Cyprus	03 Jan 76	23 Mar 76	04 Jan 69 [*]	22 Aug 85 ^a	17 Aug 91 [*]	09 Mar 91
Czech Republic	01 Jan 93 ^d	01 Jan 93 ^d	01 Jan 93 ^{d*}	24 Mar 93 ^d	01 Jan 93 ^{d*}	01 Jan 93 ^d
Cote d'Ivoire	26 Jun 92 ^a	26 Jun 92 ^a	03 Feb 73 ^a	17 Jan 96	17 Jan 96 ^a	06 Mar 91
Democratic People's Republic of Korea	14 Dec 81 ^a	14 Dec 81 ^a		29 Mar 01 ^a		21 Oct 90
Democratic Republic of the Congo	01 Feb 77 ^a	01 Feb 77 ^a	21 May 76 ^a	16 Nov 86	17 Apr 96	27 Oct 90
Denmark	03 Jan 76	23 Mar 76	08 Jan 72 [*]	21 May 83	26 Jun 87 [*]	18 Aug 91
Djibouti	05 Feb 03 ^a	05 Feb 03 ^a		01 Jan 99 ^a	05 Dec 02 ^a	05 Jan 91
Dominica	17 Sep 93 ^a	17 Sep 93 ^a		03 Sep 81		12 Apr 91
Dominican Republic	04 Apr 78 ^a	04 Apr 78 ^a	24 Jun 83 ^a	02 Oct 82	<i>s:04 Feb 85</i>	11 Jul 91
Ecuador	03 Jan 76	23 Mar 76	04 Jan 69 ^{a*}	09 Dec 81	29 Apr 88 [*]	02 Sep 90
Egypt	14 Apr 82	14 Apr 82	04 Jan 69	18 Oct 81	26 Jun 87 ^a	02 Sep 90
El Salvador	29 Feb 80	29 Feb 80	30 Dec 79 ^a	18 Sep 81	17 Jul 96 ^a	02 Sep 90
Equatorial Guinea	25 Dec 87 ^a	25 Dec 87 ^a	08 Nov 02 ^a	22 Nov 84 ^a	07 Nov 02 ^a	15 Jul 92 ^a
Eritrea	17 Jul 01 ^a	22 Apr 02 ^a	30 Aug 01 ^a	05 Oct 95 ^a		02 Sep 94
Estonia	21 Jan 92 ^a	21 Jan 92 ^a	20 Nov 91 ^a	20 Nov 91 ^a	20 Nov 91 ^a	20 Nov 91 ^a
Ethiopia	11 Sep 93 ^a	11 Sep 93 ^a	23 Jul 76 ^a	10 Oct 81	13 Apr 94 ^a	13 Jun 91 ^a
Fiji			11 Jan 73 ^d	27 Sep 95		12 Sep 93
Finland	03 Jan 76	23 Mar 76	13 Aug 70 [*]	04 Oct 86	29 Sep 89 [*]	20 Jul 91
France	04 Feb 81 ^a	04 Feb 81 ^a	27 Aug 71 ^{a*}	13 Jan 84	26 Jun 87 [*]	06 Sep 90
Gabon	21 Apr 83 ^a	21 Apr 83 ^a	30 Mar 80	20 Feb 83	08 Oct 00	11 Mar 94

Human Rights and the World Bank's Private Sector Development and Privatization Projects

Gambia	29 Mar 79 ^a	22 Jun 79 ^a	28 Jan 79 ^a	16 May 93	<i>s:23 Oct 85</i>	07 Sep 90
Georgia	03 Aug 94 ^a	03 Aug 94 ^a	02 Jul 99 ^a	25 Nov 94 ^a	25 Nov 94 ^a	02 Jul 94 ^a
Germany	03 Jan 76	23 Mar 76	15 Jun 69 [*]	09 Aug 85	31 Oct 90 [*]	05 Apr 92
Ghana	07 Dec 00	07 Dec 00	04 Jan 69	01 Feb 86	07 Oct 00	02 Sep 90
Greece	16 Aug 85 ^a	05 Aug 97 ^a	18 Jul 70	07 Jul 83	05 Nov 88 [*]	10 Jun 93
Grenada	06 Dec 91 ^a	06 Dec 91 ^a	<i>s:17 Dec 81</i>	29 Sep 90		05 Dec 90
Guatemala	19 Aug 88 ^a	05 Aug 92 ^a	17 Feb 83	11 Sep 82	04 Feb 90 ^a	02 Sep 90
Guinea	24 Apr 78	24 Apr 78	13 Apr 77	08 Sep 82	09 Nov 89	02 Sep 90 ^a
Guinea-Bissau	02 Oct 92 ^a	<i>s:12 Sep 00</i>	<i>s:12 Sep 00</i>	22 Sep 89	<i>s:12 Sep 00</i>	19 Sep 90
Guyana	15 May 77	15 May 77	17 Mar 77	03 Sep 81	18 Jun 88	13 Feb 91
Haiti		06 May 91 ^a	18 Jan 73	03 Sep 81		08 Jul 95
Holy See			31 May 69		26 Jul 02 ^a	02 Sep 90
Honduras	17 May 81	25 Nov 97	09 Nov 02 ^a	02 Apr 83	04 Jan 97 ^a	09 Sep 90
Hungary	03 Jan 76	23 Mar 76	04 Jan 69 [*]	03 Sep 81	26 Jun 87 [*]	06 Nov 91
Iceland	22 Aug 79	22 Nov 79	04 Jan 69 [*]	18 Jul 85	22 Nov 96 [*]	27 Nov 92
India	10 Jul 79 ^a	10 Jul 79 ^a	04 Jan 69	08 Aug 93	<i>s:14 Oct 97</i>	11 Jan 93 ^a
Indonesia			25 Jul 99 ^a	13 Oct 84	27 Nov 98	05 Oct 90
Iran (Islamic Republic of)	03 Jan 76	23 Mar 76	04 Jan 69			12 Aug 94
Iraq	03 Jan 76	23 Mar 76	13 Feb 70	12 Sep 86 ^a		15 Jul 94 ^a
Ireland	08 Mar 90	08 Mar 90	28 Jan 01 [*]	22 Jan 86 ^a	11 May 02 [*]	28 Oct 92
Israel	03 Jan 92	03 Jan 92	02 Feb 79	02 Nov 91	02 Nov 91	02 Nov 91
Italy	15 Dec 78	15 Dec 78	04 Feb 76 [*]	10 Jul 85	11 Feb 89 [*]	05 Oct 91
Jamaica	03 Jan 76	23 Mar 76	04 Jul 71	18 Nov 84		13 Jun 91
Japan	21 Sep 79	21 Sep 79	14 Jan 96 ^a	25 Jul 85	29 Jul 99 ^a	22 May 94
Jordan	03 Jan 76	23 Mar 76	29 Jun 74 ^a	31 Jul 92	13 Dec 91	23 Jun 91
Kazakhstan			26 Sep 98 ^a	25 Sep 98 ^a	25 Sep 98 ^a	11 Sep 94

Human Rights and the World Bank's Private Sector Development and Privatization Projects

Kenya	03 Jan 76 ^a	23 Mar 76 ^a	13 Oct 01 ^a	08 Apr 84 ^a	23 Mar 97 ^a	02 Sep 90
Kiribati						10 Jan 96 ^a
Kuwait	21 Aug 96 ^a	21 Aug 96 ^a	04 Jan 69 ^a	02 Oct 94 ^a	06 Apr 96 ^a	20 Nov 91
Kyrgyzstan	07 Oct 94 ^a	07 Jan 95 ^a	05 Oct 97 ^a	12 Mar 97 ^a	05 Oct 97 ^a	06 Nov 94 ^a
Lao People's Democratic Republic	07 Dec 00	<i>s:07 Dec 00</i>	24 Mar 74 ^a	13 Sep 81		07 Jun 91 ^a
Latvia	14 Jul 92 ^a	14 Jul 92 ^a	14 May 92 ^a	15 May 92 ^a	14 May 92 ^a	14 May 92 ^a
Lebanon	03 Jan 76 ^a	23 Mar 76 ^a	12 Dec 71 ^a	21 May 97 ^a	04 Nov 00 ^a	13 Jun 91
Lesotho	09 Dec 92 ^a	09 Dec 92 ^a	04 Dec 71 ^a	21 Sep 95 ^a	12 Dec 01 ^a	09 Apr 92
Liberia	<i>s:18 Apr 67</i>	<i>s:18 Apr 67</i>	05 Dec 76 ^a	16 Aug 84		04 Jul 93
Libyan Arab Jamahiriya	03 Jan 76 ^a	23 Mar 76 ^a	04 Jan 69 ^a	15 Jun 89 ^a	15 Jun 89 ^a	15 May 93 ^a
Liechtenstein	10 Mar 99 ^a	10 Mar 99 ^a	31 Mar 00 ^a	21 Jan 96 ^a	02 Dec 90 [*]	21 Jan 96
Lithuania	20 Feb 92 ^a	20 Feb 92 ^a	09 Jan 99	17 Feb 94 ^a	02 Mar 96	01 Mar 92 ^a
Luxembourg	18 Nov 83	18 Nov 83	31 May 78 [*]	04 Mar 89	29 Oct 87 [*]	06 Apr 94
Madagascar	03 Jan 76	23 Mar 76	09 Mar 69	16 Apr 89	<i>s:01 Oct 01</i>	18 Apr 91
Malawi	22 Mar 94 ^a	22 Mar 94 ^a	11 Jul 96 ^a	11 Apr 87 ^a	11 Jul 97 ^a	01 Feb 91 ^a
Malaysia				04 Aug 95		19 Mar 95 ^a
Maldives			24 May 84 ^a	31 Jul 93 ^a		13 Mar 91
Mali	03 Jan 76 ^a	23 Mar 76 ^a	15 Aug 74 ^a	10 Oct 85	28 Mar 99 ^a	20 Oct 90
Malta	13 Dec 90	13 Dec 90 ^a	26 Jun 71 [*]	07 Apr 91 ^a	13 Oct 90 ^{a*}	30 Oct 90
Marshall Islands						03 Nov 93
Mauritania			12 Jan 89	09 Jun 01 ^a		15 Jun 91
Mauritius	03 Jan 76 ^a	23 Mar 76 ^a	29 Jun 72 ^a	08 Aug 84 ^a	08 Jan 93 ^a	02 Sep 90 ^a
Mexico	23 Jun 81 ^a	23 Jun 81 ^a	22 Mar 75	03 Sep 81	26 Jun 87 [*]	21 Oct 90
Micronesia (Federated States of)						04 Jun 93 ^a
Monaco	28 Nov 97	28 Nov 97	27 Oct 95 ^{a*}		05 Jan 92 ^{a*}	21 Jul 93 ^a
Mongolia	03 Jan 76	23 Mar 76	05 Sep 69	03 Sep 81	23 Feb 02 ^a	02 Sep 90

Human Rights and the World Bank's Private Sector Development and Privatization Projects

Morocco	03 Aug 79	03 Aug 79	17 Jan 71	21 Jul 93 ^a	21 Jul 93	21 Jul 93
Mozambique		21 Oct 93 ^a	18 May 83 ^a	16 May 97 ^a	14 Oct 99 ^a	26 May 94
Myanmar				21 Aug 97 ^a		14 Aug 91 ^a
Namibia	28 Feb 95 ^a	8 Feb 95 ^a	11 Dec 82 ^a	23 Dec 92 ^a	28 Dec 94 ^a	30 Oct 90
Nauru		<i>s:12 Nov 01</i>	<i>s:12 Nov 01</i>		<i>s:12 Nov 01</i>	26 Aug 94 ^a
Nepal	14 Aug 91 ^a	14 Aug 91 ^a	01 Mar 71 ^a	22 May 91	13 Jun 91 ^a	14 Oct 90
Netherlands	11 Mar 79	11 Mar 79	09 Jan 72 [*]	22 Aug 91	20 Jan 89 [*]	07 Mar 95
New Zealand	28 Mar 79	28 Mar 79	22 Dec 72	09 Feb 85	09 Jan 90 [*]	06 May 93
Nicaragua	12 Jun 80 ^a	12 Jun 80 ^a	17 Mar 78 ^a	26 Nov 81	<i>s:15 Apr 85</i>	04 Nov 90
Niger	07 Jun 86 ^a	07 Jun 86 ^a	04 Jan 69	07 Nov 99 ^a	04 Nov 98 ^a	30 Oct 90
Nigeria	29 Oct 93 ^a	29 Oct 93 ^a	04 Jan 69 ^a	13 Jul 85	28 Jul 01	19 Apr 91
Niue						19 Jan 96 ^a
Norway	03 Jan 76	23 Mar 76	05 Sep 70 [*]	03 Sep 81	26 Jun 87 [*]	07 Feb 91
Oman			02 Feb 03 ^a			08 Jan 97 ^a
Pakistan			04 Jan 69	11 Apr 96 ^a		12 Dec 90
Palau						03 Sep 95 ^a
Panama	08 Jun 77 ^a	08 Jun 77	04 Jan 69	28 Nov 81	23 Sep 87	11 Jan 91
Papua New Guinea			26 Feb 82 ^a	11 Feb 95 ^a		31 Mar 93
Paraguay	10 Sep 92 ^a	10 Sep 92	17 Sep 03	06 May 87 ^a	11 Apr 90 [*]	25 Oct 90
Peru	28 Jul 78	28 Jul 78	29 Oct 71 [*]	13 Oct 82	06 Aug 88 [*]	04 Oct 90
Poland	18 Jun 77	18 Jun 77	04 Jan 69 [*]	03 Sep 81	25 Aug 89 [*]	07 Jul 91
Portugal	31 Oct 78	15 Sep 78	23 Sep 82 ^{a*}	03 Sep 81	11 Mar 89 [*]	21 Oct 90
Qatar			21 Aug 76 ^a		10 Feb 00 ^a	03 May 95
Republic of Korea	10 Jul 90 ^a	10 Jul 90 ^a	04 Jan 79 [*]	26 Jan 85	08 Feb 95 ^a	20 Dec 91
Republic of Moldova	26 Apr 93 ^a	26 Apr 93 ^a	25 Feb 93 ^a	31 Jul 94 ^a	28 Dec 95	25 Feb 93 ^a
Romania	03 Jan 76	23 Mar 76	15 Oct 70 ^a	06 Feb 82	17 Jan 91 ^a	28 Oct 90

Human Rights and the World Bank's Private Sector Development and Privatization Projects

Russian Federation	03 Jan 76	23 Mar 76	06 Mar 69 [*]	03 Sep 81	26 Jun 87 [*]	15 Sep 90
Rwanda	03 Jan 76 ^a	23 Mar 76 ^a	16 May 75 ^a	03 Sep 81		23 Feb 91
Saint Kitts and Nevis				25 May 85 ^a		02 Sep 90
Saint Lucia			14 Feb 90 ^d	07 Nov 82 ^a		16 Jul 93
Saint Vincent and the Grenadines	09 Feb 82 ^a	09 Feb 82 ^a	09 Dec 81 ^a	03 Sep 81 ^a	31 Aug 01 ^a	25 Nov 93
Samoa				25 Oct 92 ^a		29 Dec 94
San Marino	18 Jan 86 ^a	18 Jan 86 ^a	11 Apr 02		<i>s:18 Sep 02</i>	25 Dec 91 ^a
Sao Tome and Principe	<i>s:31 Oct 95</i>	<i>s:31 Oct 95</i>	<i>s:06 Sep 00</i>	03 Jul 03	<i>s:06 Sep 00</i>	13 Jun 91 ^a
Saudi Arabia			23 Oct 97 ^a	07 Oct 00	23 Oct 97 ^a	25 Feb 96 ^a
Senegal	13 May 78	13 May 78	19 May 72 [*]	07 Mar 85	26 Jun 87 [*]	02 Sep 90
Serbia and Montenegro	27 Apr 92 ^d	27 Apr 92 ^d	27 Apr 92 ^{d*}	28 Mar 82	27 Apr 92 ^{d*}	02 Feb 91 ^d
Seychelles	05 Aug 92 ^a	05 Aug 92 ^a	06 Apr 78 ^a	04 Jun 92 ^a	04 Jun 92 ^a	07 Oct 90 ^a
Sierra Leone	23 Nov 96 ^a	23 Nov 96 ^a	04 Jan 69	11 Dec 88	25 May 01	02 Sep 90
Singapore				04 Nov 95 ^a		04 Nov 95 ^a
Slovakia	28 May 93 ^d	01 Jan 93 ^d	28 May 93 ^{d*}	27 Jun 93 ^d	28 May 93 ^{d*}	01 Jan 93 ^d
Slovenia	06 Jul 92 ^d	25 Jun 91 ^d	06 Jul 92 ^d	05 Aug 92 ^d	15 Aug 93 ^a	25 Jun 91 ^d
Solomon Islands	17 Mar 82 ^d		17 Mar 82 ^d	05 Jun 02 ^a		09 May 95 ^a
Somalia	24 Apr 90 ^a	24 Apr 90 ^a	25 Sep 75		23 Feb 90 ^a	<i>s:09 May 0</i>
South Africa	<i>s:03 Oct 94</i>	10 Mar 99	09 Jan 99 [*]	14 Jan 96	09 Jan 99 [*]	16 Jul 95
Spain	27 Jul 77	27 Jul 77	04 Jan 69 ^{a*}	04 Feb 84	20 Nov 87 [*]	05 Jan 91
Sri Lanka	11 Sep 80 ^a	11 Sep 80 ^a	20 Mar 82 ^a	04 Nov 81	02 Feb 94 ^a	11 Aug 91
Sudan	18 Jun 86 ^a	18 Jun 86 ^a	20 Apr 77 ^a		<i>s:04 Jun 86</i>	02 Sep 90
Suriname	28 Mar 77 ^a	28 Mar 77 ^a	15 Mar 84 ^d	31 Mar 93 ^a		31 Mar 93
Swaziland			07 May 69 ^a			06 Oct 95
Sweden	03 Jan 76	23 Mar 76	05 Jan 72 [*]	03 Sep 81	26 Jun 87 [*]	02 Sep 90
Switzerland	18 Sep 92 ^a	18 Sep 92 ^a	29 Dec 94 ^{a*}	26 Apr 97	26 Jun 87 [*]	26 Mar 97

Human Rights and the World Bank's Private Sector Development and Privatization Projects

Syrian Arab Republic	03 Jan 76 ^a	23 Mar 76 ^a	21 May 69 ^a	27 Apr 03 ^a		14 Aug 93
Tajikistan	04 Apr 99 ^a	04 Apr 99 ^a	10 Feb 95 ^a	25 Nov 93 ^a	10 Feb 95 ^a	25 Nov 93 ^a
Thailand	05 Dec 99 ^d	29 Jan 97 ^a	27 Feb 03 ^a	08 Sep 85 ^a		26 Apr 92 ^a
The Former Yugoslav Republic of Macedonia	18 Jan 94 ^d	17 Sep 91 ^d	17 Sep 91 ^{d*}	17 Feb 94 ^d	12 Dec 94 ^d	17 Sep 91 ^d
The Philippines	07 Jun 74	23 Oct 86	15 Sep 67	05 Aug 81		21 Aug 90
Timor-Leste	16 Jul 03 ^d	18 Dec 03 ^d	16 May 03 ^d	16 May 03 ^d	16 May 03 ^d	16 May 03 ^d
Togo	24 Aug 84 [*]	24 Aug 83 ^a	01 Oct 72 [*]	26 Oct 83 ^a	18 Dec 87 [*]	02 Sep 90
Tonga			17 Mar 72 [*]			06 Dec 95 [*]
Trinidad and Tobago	08 Mar 79 [*]	21 Mar 79 [*]	03 Nov 73	11 Feb 90		04 Jan 92
Tunisia	03 Jan 76	23 Mar 76	04 Jan 69	20 Oct 85	23 Oct 88 [*]	29 Feb 92
Turkey	23 Dec 03	23 Dec 03	16 Oct 02	19 Jan 86 ^a	01 Sep 88 [*]	04 May 95
Turkmenistan	01 Aug 97 ^a	01 Aug 97 ^a	29 Oct 94 ^a	31 May 97 ^a	25 Jul 99 ^a	19 Oct 93 ^a
Tuvalu				05 Nov 99 [*]		22 Oct 95 ^a
Uganda	21 Apr 87 [*]	21 Sep 95 [*]	21 Dec 80 ^a	21 Aug 85	26 Jun 87 ^a	16 Sep 90
Ukraine	03 Jan 76	23 Mar 76	06 Apr 69 [*]	03 Sep 81	26 Jun 87	27 Sep 91
United Arab Emirates			20 Jul 74 [*]			02 Feb 97 [*]
United Kingdom of Great Britain and Northern Ireland	20 Aug 76	20 Aug 76	06 Apr 69	07 May 86	07 Jan 89 [*]	15 Jan 92
United Republic of Tanzania	11 Sep 76 [*]	11 Sep 76 [*]	26 Nov 72 [*]	19 Sep 85		10 Jul 91
United States of America	<i>s:05 Oct 77</i>	08 Sep 92	20 Nov 94	<i>s:17 Jul 80</i>	20 Nov 94	<i>s:16 Feb 9</i>
Uruguay	03 Jan 76	23 Mar 76	04 Jan 69 [*]	08 Nov 81	26 Jun 87 [*]	20 Dec 90
Uzbekistan	28 Dec 95 [*]	28 Dec 95 [*]	28 Oct 95 [*]	18 Aug 95 [*]	28 Oct 95 [*]	29 Jul 94 [*]
Vanuatu				08 Oct 95		06 Aug 93
Venezuela	10 Aug 78	10 Aug 78	04 Jan 69	01 Jun 83	28 Aug 91 [*]	13 Oct 90
Viet Nam	24 Dec 82 ^a	24 Dec 82 ^a	09 Jul 82 ^a	19 Mar 82		02 Sep 90

Yemen	09 May 87 ^a	09 May 87 ^a	17 Nov 72 ^a	29 Jun 84 ^a	05 Dec 91 ^a	31 May 91
Zambia	10 Jul 84 ^a	10 Jul 84 ^a	05 Mar 72	21 Jul 85	06 Nov 98 ^a	05 Jan 92
Zimbabwe	13 Aug 91 ^a	13 Aug 91 ^a	12 Jun 91 ^a	12 Jun 91 ^a		11 Oct 90

	CESCR	CCPR	CERD	CEDAW	CAT	CRC
REMAINING SIGNATORIES (&)	6	7	7	1	12	2
TOTAL STATE PARTIES (195)	149	152	170	175	133	193
	76%	78%	87%	90%	68%	99%

Notes:

The dates listed refer to the date of ratification, unless followed by:

An “a” which signifies accession,
“d”, which signifies succession, or
“s”, which signifies signature only.

(&) Among non-State parties.

* Indicates that the state party has recognized the competence to receive and process individual communications of the Committee on the Elimination of Racial Discrimination under article 14 of the CERD (total 42 state parties) or of the Committee against Torture under article 22 of CAT (total 54 state parties).

APPENDIX 4**UNITED NATIONS HUMAN RIGHTS TREATIES: RATIFICATIONS BY COUNTRIES UNDER STUDY**

The following chart of States shows which are a party (indicated by the date of adherence: ratification, accession or succession) or signatory (indicated by an “s” and the date of signature) to the United Nations human rights treaties. Self-governing territories that have ratified any of the treaties are also included in the chart.

	CESCR	CCPR	CERD	CEDAW	CAT	CRC
Azerbaijan	13 Nov 92 ^a	13 Nov 92 ^a	15 Sep 96 ^{a*}	09 Aug 95 ^a	15 Sep 96 ^{a*}	12 Sep 92 ^a
Bolivia	12 Nov 82 ^a	12 Nov 82 ^a	22 Oct 70	08 Jul 90	11 May 99	25 Jul 90
Brazil	24 Apr 92 ^a	24 Apr 92 ^a	04 Jan 69 [*]	02 Mar 84	28 Oct 89	24 Oct 90
Cameroon	27 Sep 84 ^a	27 Sep 84 ^a	24 Jul 71	22 Sep 94	26 Jun 87 ^{a*}	10 Feb 93
Chad	09 Sep 95 ^a	09 Sep 95 ^a	16 Sep 77 ^a	09 Jul 95 ^a	09 Jul 95 ^a	01 Nov 90
Chile	03 Jan 76	23 Mar 76	19 Nov 71 [*]	06 Jan 90	30 Oct 88	12 Sep 90
Dominican Republic	04 Apr 78 ^a	04 Apr 78 ^a	24 Jun 83 ^a	02 Oct 82	<i>s:04 Feb 85</i>	11 Jul 91
Ghana	07 Dec 00	07 Dec 00	04 Jan 69	01 Feb 86	07 Oct 00	02 Sep 90
Guatemala	19 Aug 88 ^a	05 Aug 92 ^a	17 Feb 83	11 Sep 82	04 Feb 90 ^a	02 Sep 90
Haiti		06 May 91 ^a	18 Jan 73	03 Sep 81		08 Jul 95
Lao People's Democratic Republic	07 Dec 00	<i>s:07 Dec 00</i>	24 Mar 74 ^a	13 Sep 81		07 Jun 91 ^a
Lesotho	09 Dec 92 ^a	09 Dec 92 ^a	04 Dec 71 ^a	21 Sep 95 ^a	12 Dec 01 ^a	09 Apr 92
Nigeria	29 Oct 93 ^a	29 Oct 93 ^a	04 Jan 69 ^a	13 Jul 85	28 Jul 01	19 Apr 91
Panama	08 Jun 77 ^a	08 Jun 77	04 Jan 69	28 Nov 81	23 Sep 87	11 Jan 91
Papua New Guinea			26 Feb 82 ^a	11 Feb 95 ^a		31 Mar 93
Paraguay	10 Sep 92 ^a	10 Sep 92	17 Sep 03	06 May 87 ^a	11 Apr 90 [*]	25 Oct 90

Peru	28 Jul 78	28 Jul 78	29 Oct 71 [*]	13 Oct 82	06 Aug 88 [*]	04 Oct 90
Russian Federation	03 Jan 76	23 Mar 76	06 Mar 69 [*]	03 Sep 81	26 Jun 87 [*]	15 Sep 90
The Philippines	07 Jun 74	23 Oct 86	15 Sept 67	5 Aug 81		21 Aug 90
Turkey	23 Dec 03	23 Dec 03	16 Oct 02	19 Jan 86 ^a	01 Sep 88 [*]	04 May 95
Uganda	21 Apr 87 [*]	21 Sep 95 [*]	21 Dec 80 ^a	21 Aug 85	26 Jun 87 ^a	16 Sep 90

	CESCR	CCPR	CERD	CEDAW	CAT	CRC
TOTAL	19	19	21	21	16	21
	90%	90%	100%	100%	76%	100%

Notes:

The dates listed refer to the date of ratification, unless followed by:

An “a” which signifies accession,
“d”, which signifies succession, or
“s”, which signifies signature only.

(&) Among non-State parties.

* Indicates that the state party has recognized the competence to receive and process individual communications of the Committee on the Elimination of Racial Discrimination under article 14 of the CERD (total 42 state parties) or of the Committee against Torture under article 22 of CAT (total 54 state parties).

APPENDIX 5

UNITED NATIONS HUMAN RIGHTS TREATIES: DEVELOPING AND LEAST DEVELOPED COUNTRIES

The following chart of States shows which are a party (indicated by the date of adherence: ratification, accession or succession) or signatory (indicated by an “s” and the date of signature) to the United Nations human rights treaties listed above. Self-governing territories that have ratified any of the treaties are also included in the chart.

DEVELOPING COUNTRIES (70)

	CESCR	CCPR	CERD	CEDAW	CAT	CRC
Albania	04 Jan 92 ^a	04 Jan 92 ^a	10 Jun 94 ^a	10 June 94	10 Jun 94 ^a	28 Mar 92
Algeria	12 Dec 89	12 Dec 89	15 Mar 72 ^a	21 Jun 96 ^a	12 Oct 89 ^a	16 May 93
Antigua and Barbuda			25 Oct 88 ^d	31 Aug 89 ^a	18 Aug 93 ^a	04 Nov 93
Armenia	13 Dec 93 ^a	23 Sep 93 ^a	23 Jul 93 ^a	13 Oct 93 ^a	13 Oct 93	22 Jul 93 ^a
Azerbaijan	13 Nov 92 ^a	13 Nov 92 ^a	15 Sep 96 ^{a*}	09 Aug 95 ^a	15 Sep 96 ^{a*}	12 Sep 92 ^a
Belize	<i>s:06 Sep 00</i>	10 Sep 96 ^a	14 Dec 01	15 Jun 90	26 Jun 87 ^a	02 Sep 90
Bolivia	12 Nov 82 ^a	12 Nov 82 ^a	22 Oct 70	08 Jul 90	11 May 99	25 Jul 90
Bosnia and Herzegovina	06 Mar 92 ^d	06 Mar 92 ^d	16 Jun 01 ^d	16 Jul 93 ^d	01 Oct 93 ^{a*}	06 Mar 92 ^d
Botswana		08 Dec 00	22 Mar 74 ^a	12 Sep 96 ^a	08 Oct 00	13 Apr 95 ^a
Brazil	24 Apr 92 ^a	24 Apr 92 ^a	04 Jan 69 [*]	02 Mar 84	28 Oct 89	24 Oct 90
Bulgaria	03 Jan 76	23 Mar 76	04 Jan 69 [*]	10 Mar 82	26 Jun 87 [*]	03 Jul 91
China	27 Jun 01	<i>s:05 Oct 9</i>	28 Jan 82 ^a	03 Sep 81	03 Nov 88	01 Apr 92
Colombia	03 Jan 76	23 Mar 76	02 Oct 81	18 Feb 82	07 Jan 88	27 Feb 91
Dominica	17 Sep 93 ^a	17 Sep 93 ^a		03 Sep 81		12 Apr 91
Dominican Republic	04 Apr 78 ^a	04 Apr 78 ^a	24 Jun 83 ^a	02 Oct 82	<i>s:04 Feb 85</i>	11 Jul 91

Human Rights and the World Bank's Private Sector Development and Privatization Projects

Ecuador	03 Jan 76	23 Mar 76	04 Jan 69 ^{a*}	09 Dec 81	29 Apr 88 [*]	02 Sep 90
Egypt	14 Apr 82	14 Apr 82	04 Jan 69	18 Oct 81	26 Jun 87 ^a	02 Sep 90
El Salvador	29 Feb 80	29 Feb 80	30 Dec 79 ^a	18 Sep 81	17 Jul 96 ^a	02 Sep 90
Fiji			11 Jan 73 ^d	27 Sep 95		12 Sep 93
Gabon	21 Apr 83 ^a	21 Apr 83 ^a	30 Mar 80	20 Feb 83	08 Oct 00	11 Mar 94
Georgia	03 Aug 94 ^a	03 Aug 94 ^a	02 Jul 99 ^a	25 Nov 94 ^a	25 Nov 94 ^a	02 Jul 94 ^a
Ghana	07 Dec 00	07 Dec 00	04 Jan 69	01 Feb 86	07 Oct 00	02 Sep 90
Grenada	06 Dec 91 ^a	06 Dec 91 ^a	<i>s:17 Dec 81</i>	29 Sep 90		05 Dec 90
Guatemala	19 Aug 88 ^a	05 Aug 92 ^a	17 Feb 83	11 Sep 82	04 Feb 90 ^a	02 Sep 90
Guyana	15 May 77	15 May 77	17 Mar 77	03 Sep 81	18 Jun 88	13 Feb 91
Honduras	17 May 81	25 Nov 97	09 Nov 02 ^a	02 Apr 83	04 Jan 97 ^a	09 Sep 90
India	10 Jul 79 ^a	10 Jul 79 ^a	04 Jan 69	08 Aug 93	<i>s:14 Oct 97</i>	11 Jan 93 ^a
Indonesia			25 Jul 99 ^a	13 Oct 84	27 Nov 98	05 Oct 90
Iran (Islamic Republic of)	03 Jan 76	23 Mar 76	04 Jan 69			12 Aug 94
Jamaica	03 Jan 76	23 Mar 76	04 Jul 71	18 Nov 84		13 Jun 91
Jordan	03 Jan 76	23 Mar 76	29 Jun 74 ^a	31 Jul 92	13 Dec 91	23 Jun 91
Kazakhstan			26 Sep 98 ^a	25 Sep 98 ^a	25 Sep 98 ^a	11 Sep 94
Kyrgyzstan	07 Oct 94 ^a	07 Jan 95 ^a	05 Oct 97 ^a	12 Mar 97 ^a	05 Oct 97 ^a	06 Nov 94 ^a
Lebanon	03 Jan 76 ^a	23 Mar 76 ^a	12 Dec 71 ^a	21 May 97 ^a	04 Nov 00 ^a	13 Jun 91
Libyan Arab Jamahiriya	03 Jan 76 ^a	23 Mar 76 ^a	04 Jan 69 ^a	15 Jun 89 ^a	15 Jun 89 ^a	15 May 93 ^a
Mauritius	03 Jan 76 ^a	23 Mar 76 ^a	29 Jun 72 ^a	08 Aug 84 ^a	08 Jan 93 ^a	02 Sep 90 ^a
Mongolia	03 Jan 76	23 Mar 76	05 Sep 69	03 Sep 81	23 Feb 02 ^a	02 Sep 90
Morocco	03 Aug 79	03 Aug 79	17 Jan 71	21 Jul 93 ^a	21 Jul 93	21 Jul 93
Myanmar				21 Aug 97 ^a		14 Aug 91 ^a
Namibia	28 Feb 95 ^a	08 Feb 95 ^a	11 Dec 82 ^a	23 Dec 92 ^a	28 Dec 94 ^a	30 Oct 90
Nicaragua	12 Jun 80 ^a	12 Jun 80 ^a	17 Mar 78 ^a	26 Nov 81	<i>s:15 Apr 85</i>	04 Nov 90

Human Rights and the World Bank's Private Sector Development and Privatization Projects

Occupied Palestinian Territories	-	-	-	-	-	-
Oman			02 Feb 03 ^a			08 Jan 97 ^a
Panama	08 Jun 77 ^a	08 Jun 77	04 Jan 69	28 Nov 81	23 Sep 87	11 Jan 91
Papua New Guinea			26 Feb 82 ^a	11 Feb 95 ^a		31 Mar 93
Paraguay	10 Sep 92 ^a	10 Sep 92	17 Sep 03	06 May 87 ^a	11 Apr 90 [*]	25 Oct 90
Peru	28 Jul 78	28 Jul 78	29 Oct 71 [*]	13 Oct 82	06 Aug 88 [*]	04 Oct 90
Republic of Moldova	26 Apr 93 ^a	26 Apr 93 ^a	25 Feb 93 ^a	31 Jul 94 ^a	28 Dec 95	25 Feb 93 ^a
Romania	03 Jan 76	23 Mar 76	15 Oct 70 ^a	06 Feb 82	17 Jan 91 ^a	28 Oct 90
Russian Federation	03 Jan 76	23 Mar 76	06 Mar 69 [*]	03 Sep 81	26 Jun 87 [*]	15 Sep 90
Saint Lucia			14 Feb 90 ^d	07 Nov 82 ^a		16 Jul 93
Saint Vincent and the Grenadines	09 Feb 82 ^a	09 Feb 82 ^a	09 Dec 81 ^a	03 Sep 81 ^a	31 Aug 01 ^a	25 Nov 93
Saudi Arabia			23 Oct 97 ^a	07 Oct 00	23 Oct 97 ^a	25 Feb 96 ^a
South Africa	<i>s:03 Oct 94</i>	10 Mar 99	09 Jan 99 [*]	14 Jan 96	09 Jan 99 [*]	16 Jul 95
Sri Lanka	11 Sep 80 ^a	11 Sep 80 ^a	20 Mar 82 ^a	04 Nov 81	02 Feb 94 ^a	11 Aug 91
Sudan	18 Jun 86 ^a	18 Jun 86 ^a	20 Apr 77 ^a		<i>s:04 Jun 86</i>	02 Sep 90
Suriname	28 Mar 77 ^a	28 Mar 77 ^a	15 Mar 84 ^d	31 Mar 93 ^a		31 Mar 93
Swaziland			07 May 69 ^a			06 Oct 95
Syrian Arab Republic	03 Jan 76 ^a	23 Mar 76 ^a	21 May 69 ^a	27 Apr 03 ^a		14 Aug 93
Tajikistan	04 Apr 99 ^a	04 Apr 99 ^a	10 Feb 95 ^a	25 Nov 93 ^a	10 Feb 95 ^a	25 Nov 93 ^a
Thailand	05 Dec 99 ^d	29 Jan 97 ^a	27 Feb 03 ^a	08 Sep 85 ^a		26 Apr 92 ^a
The Former Yugoslav Republic of Macedonia	18 Jan 94 ^d	17 Sep 91 ^d	17 Sep 91 ^{d*}	17 Feb 94 ^d	12 Dec 94 ^d	17 Sep 91 ^d
The Philippines	07 Jun 74	23 Oct 86	15 Sep 67	08 Aug 81		21 Aug 90
Tunisia	03 Jan 76	23 Mar 76	04 Jan 69	20 Oct 85	23 Oct 88 [*]	29 Feb 92
Turkey	23 Dec 03	23 Dec 03	16 Oct 02	19 Jan 86 ^a	01 Sep 88 [*]	04 May 95
Turkmenistan	01 Aug 97 ^a	01 Aug 97 ^a	29 Oct 94 ^a	31 May 97 ^a	25 Jul 99 ^a	19 Oct 93 ^a

Ukraine	03 Jan 76	23 Mar 76	06 Apr 69 [*]	03 Sep 81	26 Jun 87	27 Sep 91
Uzbekistan	28 Dec 95 [*]	28 Dec 95 [*]	28 Oct 95 [*]	18 Aug 95 [*]	28 Oct 95 [*]	29 Jul 94 [*]
Venezuela	10 Aug 78	10 Aug 78	04 Jan 69	01 Jun 83	28 Aug 91 [*]	13 Oct 90
Viet Nam	24 Dec 82 ^a	24 Dec 82 ^a	09 Jul 82 ^a	19 Mar 82		02 Sep 90

	CESCR	CCPR	CERD	CEDAW	CAT	CRC
DEVELOPING COUNTRIES TOTAL (70)	56	58	66	65	60	69
	80%	83%	94%	93%	86%	99%

LEAST DEVELOPED COUNTRIES (50)

	CESCR	CCPR	CERD	CEDAW	CAT	CRC
Angola	10 Apr 92 ^a	10 Apr 92 ^a		17 Oct 86 ^a	04 Jan 91	
Bangladesh	05 Jan 99 ^a	06 Dec 00 ^a	11 Jul 79 ^a	06 Dec 84 ^a	04 Nov 98 ^a	02 Sep 90
Benin	12 Jun 92 ^a	12 Jun 92 ^a	30 Dec 01	11 Apr 92	11 Apr 92 ^a	02 Sep 90
Bhutan			<i>s:26 Mar 73</i>	30 Sep 81		02 Sep 90
Burkina Faso	04 Apr 99 ^a	04 Apr 99 ^a	17 Aug 74 ^a	13 Nov 87 ^a	03 Feb 99 ^a	30 Sep 90
Burundi	09 Aug 90 ^a	09 Aug 90 ^a	26 Nov 77	07 Feb 92	20 Mar 93 ^{a*}	18 Nov 90
Cambodia	26 Aug 92 ^a	26 Aug 92 ^a	28 Dec 86	14 Nov 92 ^a	14 Nov 92 ^a	14 Nov 92 ^a
Cameroon	27 Sep 84 ^a	27 Sep 84 ^a	24 Jul 71	22 Sep 94	26 Jun 87 ^{a*}	10 Feb 93
Cape Verde	06 Nov 93	06 Nov 93	02 Nov 79	03 Sep 81 ^a	04 Jul 92 ^a	04 Jul 92 ^a
Central African Republic	08 Aug 81 ^a	08 Aug 81 ^a	15 Apr 71	21 Jul 91 ^a		23 May 92
Chad	09 Sep 95 ^a	09 Sep 95 ^a	16 Sep 77 ^a	09 Jul 95 ^a	09 Jul 95 ^a	01 Nov 90
Comoros			<i>s:22 Sep 00</i>	30 Nov 94 ^a	<i>s:22 Sep 00</i>	21 Jul 93

Human Rights and the World Bank's Private Sector Development and Privatization Projects

Cote d'Ivoire	26 Jun 92 ^a	26 Jun 92 ^a	03 Feb 73 ^a	17 Jan 96	17 Jan 96 ^a	06 Mar 91
Democratic Republic of the Congo	01 Feb 77 ^a	01 Feb 77 ^a	21 May 76 ^a	16 Nov 86	17 Apr 96	27 Oct 90
Djibouti	05 Feb 03 ^a	05 Feb 03 ^a		01 Jan 99 ^a	05 Dec 02 ^a	05 Jan 91
Equatorial Guinea	25 Dec 87 ^a	25 Dec 87 ^a	08 Nov 02 ^a	22 Nov 84 ^a	07 Nov 02 ^a	15 Jul 92 ^a
Eritrea	17 Jul 01 ^a	22 Apr 02 ^a	30 Aug 01 ^a	05 Oct 95 ^a		02 Sep 94
Ethiopia	11 Sep 93 ^a	11 Sep 93 ^a	23 Jul 76 ^a	10 Oct 81	13 Apr 94 ^a	13 Jun 91 ^a
Gambia	29 Mar 79 ^a	22 Jun 79 ^a	28 Jan 79 ^a	16 May 93	<i>s:23 Oct 85</i>	07 Sep 90
Guinea	24 Apr 78	24 Apr 78	13 Apr 77	08 Sep 82	09 Nov 89	02 Sep 90 ^a
Guinea-Bissau	02 Oct 92 ^a	<i>s:12 Sep 00</i>	<i>s:12 Sep 00</i>	22 Sep 89	<i>s:12 Sep 00</i>	19 Sep 90
Haiti		06 May 91 ^a	18 Jan 73	03 Sep 81		08 Jul 95
Kenya	03 Jan 76 ^a	23 Mar 76 ^a	13 Oct 01 ^a	08 Apr 84 ^a	23 Mar 97 ^a	02 Sep 90
Kiribati						10 Jan 96 ^a
Lao People's Democratic Republic	07 Dec 00	<i>s:07 Dec 00</i>	24 Mar 74 ^a	13 Sep 81		07 Jun 91 ^a
Lesotho	09 Dec 92 ^a	09 Dec 92 ^a	04 Dec 71 ^a	21 Sep 95 ^a	12 Dec 01 ^a	09 Apr 92
Madagascar	03 Jan 76	23 Mar 76	09 Mar 69	16 Apr 89	<i>s:01 Oct 01</i>	18 Apr 91
Malawi	22 Mar 94 ^a	22 Mar 94 ^a	11 Jul 96 ^a	11 Apr 87 ^a	11 Jul 97 ^a	01 Feb 91 ^a
Malaysia				04 Aug 95		19 Mar 95 ^a
Maldives			24 May 84 ^a	31 Jul 93 ^a		13 Mar 91
Mali	03 Jan 76 ^a	23 Mar 76 ^a	15 Aug 74 ^a	10 Oct 85	28 Mar 99 ^a	20 Oct 90
Mauritania			12 Jan 89	09 Jun 01 ^a		15 Jun 91
Mozambique		21 Oct 93 ^a	18 May 83 ^a	16 May 97 ^a	14 Oct 99 ^a	26 May 94
Nepal	14 Aug 91 ^a	14 Aug 91 ^a	01 Mar 71 ^a	22 May 91	13 Jun 91 ^a	14 Oct 90
Niger	07 Jun 86 ^a	07 Jun 86 ^a	04 Jan 69	07 Nov 99 ^a	04 Nov 98 ^a	30 Oct 90
Nigeria	29 Oct 93 ^a	29 Oct 93 ^a	04 Jan 69 ^a	13 Jul 85	28 Jul 01	19 Apr 91
Pakistan			04 Jan 69	11 Apr 96 ^a		12 Dec 90
Rwanda	03 Jan 76 ^a	23 Mar 76 ^a	16 May 75 ^a	03 Sep 81		23 Feb 91

Human Rights and the World Bank's Private Sector Development and Privatization Projects

Samoa				25 Oct 92 ^a		29 Dec 94
Sao Tome and Principe	<i>s:31 Oct 95</i>	<i>s:31 Oct 95</i>	<i>s:06 Sep 00</i>	03 Jul 03	<i>s:06 Sep 00</i>	13 Jun 91 ^a
Senegal	13 May 78	13 May 78	19 May 72 [*]	07 Mar 85	26 Jun 87 [*]	02 Sep 90
Sierra Leone	23 Nov 96 ^a	23 Nov 96 ^a	04 Jan 69	11 Dec 88	25 May 01	02 Sep 90
Solomon Islands	17 Mar 82 ^d		17 Mar 82 ^d	05 Jun 02 ^a		09 May 95 ^a
Togo	24 Aug 84 [*]	24 Aug 83 ^a	01 Oct 72 [*]	26 Oct 83 ^a	18 Dec 87 [*]	02 Sep 90
Uganda	21 Apr 87 [*]	21 Sep 95 [*]	21 Dec 80 ^a	21 Aug 85	26 Jun 87 ^a	16 Sep 90
United Republic of Tanzania	11 Sep 76 [*]	11 Sep 76 [*]	26 Nov 72 [*]	19 Sep 85		10 Jul 91
Vanuatu				08 Oct 95		06 Aug 93
Yemen	09 May 87 ^a	09 May 87 ^a	17 Nov 72 ^a	29 Jun 84 ^a	05 Dec 91 ^a	31 May 91
Zambia	10 Jul 84 ^a	10 Jul 84 ^a	05 Mar 72	21 Jul 85	06 Nov 98 ^a	05 Jan 92
Zimbabwe	13 Aug 91 ^a	13 Aug 91 ^a	12 Jun 91 ^a	12 Jun 91 ^a		11 Oct 90

	CESCR	CCPR	CERD	CEDAW	CAT	CRC
LEAST DEVELOPED COUNTRIES TOTAL (50)	38	37	40	49	29	49
	76%	74%	80%	98%	58%	98%

	CESCR	CCPR	CERD	CEDAW	CAT	CRC
DEVELOPING COUNTRIES TOTAL (70)	56	58	66	65	60	69
LEAST DEVELOPED COUNTRIES TOTAL (50)	38	37	40	49	29	49
TOTALS	94	95	106	114	89	118
	78%	79%	88%	95%	74%	98%

Notes:

The dates listed refer to the date of ratification, unless followed by:

An "a" which signifies accession,
"d", which signifies succession, or
"s", which signifies signature only.
(&) Among non-State parties.

* Indicates that the state party has recognized the competence to receive and process individual communications of the Committee on the Elimination of Racial Discrimination under article 14 of the CERD (total 42 state parties) or of the Committee against Torture under article 22 of CAT (total 54 state parties).