A RIGHT BY ANY OTHER NAME: 
THE EVASIVE ENGAGEMENT OF INTERNATIONAL 
FINANCIAL INSTITUTIONS WITH HUMAN RIGHTS

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I. INTRODUCTION

The actions of international financial institutions (IFIs)—the 
International Monetary Fund (IMF), the World Bank and its con-
stituent agencies, and regional development banks—undeniably 
have a profound effect on human rights in both positive and nega-
tive ways. 

Development projects sponsored by these institutions can bring 

improved infrastructure, employment, and sustained prosperity, 

often on a very large scale, to large numbers of people. These ben-

efits often accelerate the realization of economic, social, and cul-
tural rights, such as the rights to work, a reasonable standard of 
living, health, and education. In many cases, however, these 

projects negatively affect the rights of local people.

Infrastructure and mining projects frequently require relocation 
of communities from the development site. Relocation impacts 

the right to housing, and depending upon the conditions of the 

new location, the rights to work, food, and enjoyment of culture, 
among others. A new development that causes pollution, particu-
larly to waterways, may infringe upon the rights to water, health, 
food, and perhaps even life.

Loans and financial assistance packages, and the associated 

involvement of IFIs in restructuring economic policies in recipient 
countries, can have a positive impact on human rights in those 
countries. As discussed in Part V below, the increased focus of 
development programs on poverty alleviation has a clear synergy 

with the realization of human rights. To the extent that

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macroeconomic restructuring succeeds in preventing future economic crises in the relevant country, the human rights interests are served by preventing a situation in which the state simply cannot afford to implement resource-intensive programs such as the provision of health care, education, and social security. The same positive effect flows from the debt relief programs IFIs promote, which maximize the resources available to the state for the fulfillment of human rights. When macroeconomic reforms include significant cuts to social spending, privatization of essential services, labor market reforms, or other measures that result in loss of livelihood or access to services for certain groups or individuals, however, their consequences can include a diminution of human rights unless appropriate safeguards are put in place.

Other IFI programs also have the potential to contribute to the realization of human rights, such as those promoting good governance, judicial independence, and anticorruption measures. These programs can support human rights both directly, by promoting the right to a fair trial, for example, and indirectly, by promoting transparency and removing conditions that allow oppression to flourish.

The goals and programmatic focus of IFIs have become more conducive to the promotion of human rights goals over time, particularly in relation to poverty alleviation. Calls for accountability for human rights violations also have become more frequent and attract increasing support. Meanwhile, the IFIs’ attitudes toward their role in human rights have evolved significantly. For several decades, IFIs insisted they were purely economic institutions that had nothing to do with human rights, and indeed expressly were prohibited from addressing human rights concerns. Today, that position has dissipated, although the attitude that has replaced it varies by the institution and program in question.

1. The truth of claims that the various macroeconomic reforms sponsored by international financial institutions (IFIs) actually do improve recipient countries’ economic prospects and stability—or conversely, whether they sometimes exacerbate the problems—has been a subject of great debate among economists and development specialists. See, e.g., Joseph E. Stiglitz, Failure of the Fund: Rethinking the IMF Response, HARV. INT’L L. REV., Summer 2001, at 14; U.N. Econ. & Soc. Council [ECOSOC], Sub-Comm’n on Human Rights, Effects of Structural Adjustment Policies and Foreign Debt on the Full Enjoyment of Human Rights, Particularly Economic, Social and Cultural Rights, U.N. Doc. E/CN.4/2003/10 (Oct. 23, 2002) (prepared by Bernards Mudho) [hereinafter ECOSOC, Effects]. This Article will not revisit that debate, which is essentially an empirical economic question. Instead, this Article assumes that it is possible for IFI-instigated macroeconomic reforms to have positive long-term economic effects, and that such programs, whether positive or negative overall, also can have negative effects for particular groups.
The World Bank in particular now acknowledges—one might say even extols—its positive contribution to human rights. It also takes note of its potentially negative impact on human rights, and many of its policies can be characterized as human rights safeguards or safety nets. The IFIs’ use of poverty and social impact analyses demonstrates their consciousness of the potential effects of their programs on human rights and a determination to minimize any harm from the outset. In their policy documents and everyday work, IFIs generally do not use the language of human rights law. When IFIs do use such language, normally in dialogue with civil society or U.N. human rights bodies, they avoid any mention of human rights obligations, even while recognizing the relevance of human rights to the IFIs’ work and the importance of ensuring they are protected.

Chris Jochnick has noted:

The Bank’s submission to the World Conference on Human Rights is typical. In thirteen pages devoted to the importance of human rights and the many ways in which the Bank “is helping developing countries to make the enjoyment of economic and social human rights a reality,” there is a studious avoidance of legal obligation.²

This Article is concerned with the evolution of the IFIs’ engagement with human rights and their enduring insistence that they are not bound by any obligations under international human rights law. It examines some areas of IFI activity that are most relevant to the realization of human rights and analyzes approaches that IFIs take for consistency with human rights law. The central question of this Article is: does it matter that IFIs do not use human rights language if they pursue human rights outcomes and impose human rights safeguards? As will be seen from the analysis that follows, there may be no practical difference in many cases. The philosophy that underlies human rights law, however—that the treatment of every human being should comply with certain standards that derive from inherent human dignity and are a matter of entitlement—potentially disappears if human rights language is regarded as mere words, interchangeable with other labels. This Article seeks to highlight the gaps that arise from IFIs’ repudiation of human rights obligations and language.

For the sake of simplicity, this Article focuses on those IFIs that operate at the global level—the IMF and the World Bank—

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although many of the comments apply equally to other IFIs, such as the regional development banks. This Article starts by considering the arguments commonly made by IFIs when denying obligations under international human rights law. To place the debate in context, the evolving interpretation of the mandates of the World Bank and IMF are examined in Parts III and IV, respectively, with particular attention to the place of human rights in the perceived role of each institution. Given the prominent place of poverty reduction in the current articulation of the goals of both institutions, Part V examines the relationship between poverty reduction and human rights.

In illustrating the relationship between IFI operations and the realization of human rights, this Article focuses in particular on poverty reduction strategy papers and associated programs (Part VI) and development projects (Part VII). These are two areas in which human rights impacts are significant but quite different. The scope of this Article does not permit detailed consideration of the many other IFI operations that affect human rights. Through discussion of the areas highlighted, however, this Article hopes to contribute to an understanding of the practical consequences of the IFIs’ approach to human rights that also can help inform their other activities.

Finally, given the importance in human rights discourse of the availability of a recourse mechanism and an effective remedy for victims of human rights violations, Part VIII considers recourse mechanisms in place within the World Bank and IMF in terms of their effectiveness. In Part IX, the Article returns to the question of the use of human rights language, and concludes that more direct engagement with human rights philosophy, if not human rights law, is an important step for IFIs and human rights realization in their operations.

3. Human rights are relevant to other areas of IFI activity. Debt relief, particularly the Highly Indebted Poor Countries Initiative, could make a significant contribution to human rights in targeted countries due to the increase in available resources, in line with the discussion infra Part V.B. Another avenue with a potentially significant impact on human rights is the IMF’s Article IV consultations, in which the institution engages annually with its member states to discuss their economic and financial policies. See Namita Wahi, Human Rights Accountability of the IMF and the World Bank: A Critique of Existing Mechanisms and Articulation of a Theory of Horizontal Accountability, 12 U.C. DAVIS J. INT’L L. & POL’Y 331, 355 (2006) (“[T]he [International Monetary Fund] in the past has been known to engage the member state in discussions of its policies relating to health care, environment, welfare, housing, unemployment, labour markets, military expenditures, and certain aspects of management of the state’s public sector.”).
II. CURRENT DEBATE ON THE HUMAN RIGHTS OBLIGATIONS OF IFIs

A. Assumptions

The case for human rights obligations under international law on the part of international financial institutions—the World Bank and IMF in particular—has been made meticulously elsewhere. This Article does not revisit that legal analysis. Instead, the following sections focus on arguments that have been made in the past by the institutions and others opposing the imposition of human rights obligations on IFIs.

It is necessary to lay out a number of assumptions about the human rights obligations of IFIs from which this Article proceeds. Some of these assumptions are contentious, but those controversies must rage elsewhere. First, this Article presumes that IFIs, as international legal persons, are capable of holding obligations under international law. Naturally, that includes the capacity to hold human rights obligations.

Second, this Article presumes that as actors on the international plane, IFIs operate within the parameters of general international law. Given the prominent status of human rights norms within international law, human rights principles must at least be relevant,


5. For this author’s views on the international human rights obligations of IFIs, see Adam McBeth, Breaching the Vacuum: A Consideration of the Role of International Human Rights Law in the Operations of the International Financial Institutions, 10 INT’L J. HUM. RTS. 385 (2006).

and perhaps determinative, in defining and interpreting the proper role and responsibilities of IFIs. For example, both the World Bank and IMF have the status of specialized agencies of the United Nations,7 which arguably obliges the institutions to respect the provisions of the U.N. Charter.8 The U.N. Charter expressly declares the realization of human rights to be a principal goal of international economic cooperation,9 and some have said it makes realization of human rights the raison d’être of the IFIs.10 Regardless of the conclusions one reaches about specialized-agency status and the inferences of the U.N. Charter, the customary international rules of treaty interpretation clearly apply to interpretation of the IFIs’ Articles of Agreement in the same way they do to any other international agreement, and other general international law applies to the IFIs’ operations.

This Article deliberately avoids any conclusion on whether IFIs currently have legal human rights obligations, leaving that debate to the literature noted above. Proceeding from the assumptions that legally binding human rights obligations are possible and that general international law affects the interpretation and application of the IFIs’ Articles of Agreement independently of specific human rights obligations that might apply to the IFIs themselves, this Article aims to build upon previous literature that has sought to prove the relevance of international human rights law to IFIs. The discussion here focuses on the differences between the models adopted by the IFIs with regard to human rights issues and an approach that accepts institutional obligations to respect and protect human rights.

This Article does not propose that IFIs ought to be gatekeepers or “human rights police”11 that only engage with a given government on the condition that the government complies with its human rights obligations under international law. Such a position would render IFIs an enforcement tool of international human rights law in relation to states’ obligations, but has nothing to do

8. Skogly, supra note 4, at 101.
with human rights obligations of IFIs themselves or their impact on human rights, except perhaps to the extent that their engagement with a recalcitrant government supports continuation of its abusive practices. Given that no state has a clean human rights record, such a gatekeeping function has obvious potential to become politicized, providing an excuse not to cooperate with a given state for ulterior purposes, in precisely the manner that the Bretton Woods drafter intended to avoid when inserting the political prohibition in the World Bank’s Articles of Agreement.12 This Article discusses human rights obligations—and IFIs’ insistence that no such obligations exist—in the context of the impact of operations, projects, and policies of IFIs themselves upon the realization of human rights.

B. Articles of Agreement and the Political Prohibition

Early in the existence of each institution, the Commission on Human Rights invited the World Bank and IMF to participate in the drafting process of the International Covenant on Economic, Social, and Cultural Rights (ICESCR).13 Both IFIs declined the invitation on the ground that human rights were outside their mandates as defined in their respective Articles of Agreement.14 At the time, the IMF was a very narrowly-focused monetary institution providing foreign exchange to help member states overcome temporary balance of payments problems, and was not involved in shaping the domestic economic or social policies of its member states in any significant way.15 The International Bank for Reconstruction and Development (IBRD) similarly narrowly focused on reconstruction lending rather than the development projects and broader policy prescriptions that characterize its later work. As discussed in Parts III and IV, the operations of both institutions have evolved a great deal, but many continued to use the old arguments.

12. See IBRD Articles of Agreement, supra note 6, art. IV, § 10; see also discussion infra Part I.B.


15. Id. at 116.

16. The International Bank for Reconstruction and Development (IBRD) was the original institution of what became known as the World Bank and today comprises one of the five agencies of the World Bank Group.
based on a narrow and restrictive reading of the Articles of Agreement, to disclaim the relevance of human rights to the IFIs’ work for several decades.

Article IV, Section 10, of the IBRD Articles of Agreement provides as follows:

The Bank and its officers shall not interfere in the political affairs of any member; nor shall they be influenced in their decisions by the political character of the member or members concerned. Only economic considerations shall be relevant to their decisions, and these considerations shall be weighed impartially in order to achieve the purposes stated in Article I.  

This provision is generally known as the World Bank’s “political prohibition” and is the source for much of the debate surrounding the permissible role of human rights within the World Bank’s mandate. The political prohibition also appears in the Articles of Agreement of the International Development Association (IDA) in virtually identical terms.

The existence in the same section of a prohibition on political interference and a stipulation that only economic considerations are relevant led to a presumption that all issues need to be labeled “political” or “economic” to determine whether they are lawfully within the scope of the Bank’s operations.

The political prohibition has led to a number of artificial distinctions between policy areas that the World Bank deems legitimate for its involvement and those it does not. For example, on the issue of using conditionality to achieve policy change within a recipient government, former World Bank general counsel Ibrahim Shihata has defended the World Bank’s “delicate balance,” which pushed policies to improve economic policy, “including in particular those policies that made government more efficient by reducing its size and its control over the economy—while being careful not to assert any mandate to introduce political reform or to question the political form of its borrowing member governments.”

These “economic” reforms, such as reduced employment security for government employees, reduced access to welfare payments, and increased privatization, sometimes restrict the accessibility of essential services and cause significant social consequences, often

17. IBRD Articles of Agreement, supra note 6, art. IV, § 10.
affecting the realization of economic, social, and cultural rights. Conversely, the untouchable “political” policy areas often have economic consequences.

Properly construed, the political prohibition operates as a requirement of nondiscrimination between countries of different governing philosophies and different geopolitical allegiances. The framers intended the IBRD to engage in postwar reconstruction in Europe without discrimination on the basis of which side a given country supported during the war, and bearing in mind the emerging Cold War. In other words, the political prohibition was intended to ensure that the IBRD used economic criteria in approving loans, rather than allowing the process to be used for political leverage.

Former World Bank general counsel Roberto Dañino advised that the political prohibition and the requirement to take only economic considerations into account should be read in the context of the objectives in Article I of the Articles of Agreement and “against the backdrop of the current international legal regime and the evolving understanding of development.” Adopting that purposive interpretation, Dañino concluded there are strong grounds “for the Bank to take human rights into consideration as part of its economic decision-making process,” and that the Articles of Agreement will in some cases require recognition of “the human rights dimensions of its development policies and activities.”

Today, it is clear that the provisions of the IBRD and IDA Articles of Agreements, properly construed, do not prohibit consideration of human rights in the World Bank’s work. The Bank further accepts that human rights standards are directly relevant to its work, although there is disagreement about how the standards ought to be applied and what practical consequences they should carry.

The IMF Articles of Agreement require that “[t]he Fund shall be guided in all its policies and decisions by the purposes set forth in this Article,” and all six listed purposes relate to issues surrounding balance of payments, international trade, and monetary pol-

21. Id. ¶ 24, at 8.
22. Id. ¶ 25, at 9.
23. IMF Articles of Agreement, supra note 6, art. I.
That provision gives rise to similar presumptions about the legitimacy of supposedly noneconomic matters to the IMF’s mandate, policies, and decision making that were previously pervasive in relation to the World Bank. There is no direct equivalent to the World Bank’s political prohibition in the IMF’s Articles of Agreement, however.

Extending Dañino’s analysis to the IMF makes it clear that the distinction between economic and noneconomic matters is artificial and often unsustainable, particularly in placing human rights in the latter, prohibited category. Although human rights issues might be less central to the IMF’s day-to-day work than they are to the World Bank’s work, the principle that prevents human rights from being dismissed as irrelevant “noneconomic” matters applies equally to both institutions. As discussed in Part IV below, the IMF now acknowledges the general relevance of social concerns to its work, although it is less prepared to use the language of human rights than the Bank. The IMF shares the Bank’s reluctance to acknowledge human rights obligations on the part of the institution.

C. Application of Human Rights Treaties

One final ground commonly used to deny that human rights law applies to the IFIs is the assertion that international human rights treaties bind only states parties.25

There are two fundamental problems with this argument. First, while it is true that IFIs, as international legal persons, are not parties to any of the international human rights treaties and do not have the ability to ratify them, it does not follow that principles and obligations of international human rights law cannot apply to IFIs. Many of the principles set out in international human rights treaties have crystallized as norms of customary international law.26 The content of human rights norms differs from topic to topic, but the ultimate goal is always protection and promotion of the inherent dignity of the human person, which is capable of violation by state and nonstate actors alike. The manner in which norms of customary international law apply to nonstate actors is a matter of

24. See id. art. 1(i)-(vi).
25. See Gianviti, supra note 14, at 118.

The second problem with this line of argument is that although the IFIs are independent legal persons, they are also composed of member states, all of which have at least some human rights obligations deriving from the U.N. Charter and customary international law, and all of which have ratified at least one significant human rights treaty.\footnote{28 The vast majority of member states have ratified both the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). See \textit{International Covenant on Economic, Social and Cultural Rights, New York, 16 Dec. 1966}, in \textit{1 Multilateral Treaties Deposited with the Secretary-General} ch. 4, pt. 3, \textit{available at} \url{http://treaties.un.org/doc/Publication/MTDSG/Volume%20I/Chapter%20IV/IV-3.en.pdf}; \textit{International Covenant on Civil and Political Rights, New York, 16 Dec. 1966}, in \textit{1 Multilateral Treaties Deposited with the Secretary-General} ch. 4, pt. 4, \textit{available at} \url{http://treaties.un.org/doc/Publication/MTDSG/Volume%20I/Chapter%20IV/IV-4.en.pdf}. For ratification details of all major international human rights treaties, see Office of the United Nations High Comm’r for Human Rights, \textit{International Law}, \url{http://www2.ohchr.org/english/law/} (last visited July 29, 2009).} The obligations assumed by member states include an obligation, at a minimum, not to do anything in the course of their engagement with an international institution that would impede the realization of human rights.\footnote{29 \textit{Universal Declaration of Human Rights, G.A. Res. 217A, at 77, U.N. GAOR, 3d Sess., 1st plen. mtg., U.N. Doc. A/810 (Dec. 10, 1948) [hereinafter UDHR]; Darrow, \textit{supra} note 4, at 295 (“The core minimum obligation incumbent directly upon both the Bank and Fund . . . is a duty of vigilance to ensure that their policies and programs do not facilitate breaches of their member states’ human rights treaty obligations.”).}


The same principle applies to the IFIs. If the IFIs’ member states remain conscious of their human rights obligations in determining
the policies and direction of the IFIs, the result will be institutional practices that reflect the member states’ obligations to respect and protect human rights. The Committee on Economic, Social and Cultural Rights sought to remind states of this in its General Comment on the right to water:

States parties should ensure that their actions as members of international organizations take due account of the right to water. Accordingly, States parties that are members of international financial institutions, notably the International Monetary Fund, the World Bank, and regional development banks, should take steps to ensure that the right to water is taken into account in their lending policies, credit agreements and other international measures.31

Although this Article refrains from reopening the discussion on whether IFIs are bound by international human rights law, a conclusion that equates human rights law with the international treaty regime to exclude nonstate actors cannot alone sustain a denial of the relevance of human rights law to IFIs.

III. THE EVOLUTION OF THE WORLD BANK MANDATE

In the immediate postwar period, the World Bank’s activities primarily focused on reconstruction of war-ravaged Europe. As the focus began to shift toward development in the 1950s, the prevailing interpretation of the Bank’s mandate was that its policy involvement and decision making should be strictly economic and nonpolitical.32 This interpretation was colored by the Cold War political divisions prominent at the time, divisions which were not permitted to influence the Bank’s operations.33 In this context, the strict division between economic and political matters emerged, as discussed above in relation to the political prohibition. The single-minded objective from that period through the 1960s was the pursuit of economic growth, which was presumed to bring about reduced levels of poverty, while poverty reduction and the realization of human rights were not specifically pursued as ends in themselves.34

Under the presidency of Robert McNamara commencing in 1968, the World Bank introduced an approach known as “Basic

33. See IBRD Articles of Agreement, supra note 6, art. IV, § 10.
34. See Jensen & Karunaratne, supra note 32, at 231.
Human Needs,” which included poverty reduction and broader aspects of human development for the first time in a systematic way as a key focus of the Bank’s operations.\footnote{Wahi, supra note 3, at 340.} Measurement of Bank program success expanded beyond traditional indicators of economic growth to encompass indicators of human well-being, such as life expectancy, infant mortality, and literacy.\footnote{Jensen & Karunaratne, supra note 32, at 232.} This shift in the way the Bank set its goals and measured the success of its programs demonstrated an acknowledgement that the Bank’s operations did impact the economic, social, and cultural rights of affected groups and individuals—even if that terminology was not used—and that it was possible and indeed desirable to adapt the Bank’s operations to improve their human impact. Moreover, the Basic Human Needs approach was accepted as remaining firmly within the bounds of the Bank’s economic mandate, despite the attention the approach paid to human impact.

The late 1970s and 1980s saw a declining emphasis on human needs in favor of structural adjustment programs, and criticism of the Bank’s approach was mounting by the end of the 1980s, leading to calls for “adjustment with a human face.”\footnote{See UNICEF, ADJUSTMENT WITH A HUMAN FACE (1987); World Health Org., Adjustment with a Human Face, http://www.who.int/trade/glossary/story003/en/index.html (last visited July 29, 2009).} That push reignited debate about the appropriate limits of the World Bank’s mandate, specifically whether its mandate permitted the pursuit and protection of human rights as outcomes in themselves. In 1988, then-general counsel of the World Bank Ibrahim Shihata reiterated the prohibition on the Bank interfering in the political affairs of member states or taking political considerations into account, but acknowledged that there was a great deal of scope for the Bank to have an impact on human rights without violating its political prohibition:

[T]he Bank’s involvement in human rights issues goes far beyond the political arena where it is prohibited from interfering. The Bank’s involvement encompasses such varied subjects as the alleviation of poverty, the fulfillment of basic human needs for nutrition, safe water, education, health and housing, the concern for resettlement of people affected by large development projects and of tribal peoples, the role of women in development, and the avoidance of the negative impact of development on the environment.\footnote{Ibrahim F. I. Shihata, The World Bank and Human Rights: An Analysis of the Legal Issues and the Record of Achievements, 17 Denv. J. Int’l L. & Pol’y 39, 40 (1988).}
Shihata thus signaled a shift in the interpretation of the boundaries of the Bank’s mandate, which acknowledged the relevance of human rights—this time actually using the label—to the Bank’s work, rather than insisting that human rights belonged to the prohibited political realm.

By 1990, World Bank policies began to refer to poverty reduction as a primary objective, while still focusing on economic growth as the means for reducing poverty. During the presidency of James Wolfensohn from 1995, poverty alleviation became the explicit focus of the World Bank, and is today held out as the Bank’s mission. The slogan on the World Bank home page today reads “Working for a World Free of Poverty.” The Comprehensive Development Framework, adopted in 1999, seeks to encourage a long-term, holistic vision of development among borrowing countries and World Bank staff, representing a significant departure from the old economic/political dichotomy. The Comprehensive Development Framework encompasses the Poverty Reduction Strategy discussed in Part VI below.

The evolution in the World Bank’s perception of its own mandate has been described as “mission creep,” evolving from postwar reconstruction, through several conceptions of economic development, to a broader policy platform that includes the implementation of public health programs and many other initiatives that would not have been considered legitimate under the narrow interpretation of the Bank’s economic mandate that prevailed at its inception. The reality of so-called mission creep highlights two important issues in the context of exploring the World Bank’s engagement with human rights law. First, it is now clear that the objection that the Bank’s strict economic mandate prevents it from pursuing human rights is not plausible today, if indeed it ever was. Second, as the Bank now consciously pursues poverty alleviation—which is inextricably intertwined with the realization of human rights, as discussed in Part V below—engagement with human rights issues is now direct and explicit. In that environment, the

40. See Jensen & Karunarathne, supra note 32, at 233.
42. Id.
continued insistence that the Bank has no human rights obligations—the “all care, no responsibility” approach—is more curious and unsustainable than it was in the era when poverty alleviation and realization of economic, social, and cultural rights were seen as by-products of economic growth rather than relevant topics for the World Bank in their own right.

Today the Bank clearly recognizes the relevance of human rights to its development work and the need to pursue outcomes that improve their realization. There is a definite reluctance, however, to acknowledge any legal obligation to respect, protect, or fulfill human rights, with the result that human rights law is rarely utilized in circumstances where it is apparently appropriate and could bring meaningful insights to the institution’s work. Then-president of the World Bank James Wolfensohn stated, “generally the best way for us to proceed has been a sort of step-by-step way, doing it quietly, trying to assert the delivery of rights, but not necessarily couching it in the terms of human rights.”

The unwillingness to address the relationship between the World Bank’s operations and international human rights law was finally shattered in a legal opinion authored by the outgoing general counsel, Roberto Daño, in January 2006. Daño advised that the economic mandate and terms of the Articles of Agreement do not prohibit the World Bank from engaging with human rights, concluding that “the Articles of Agreement permit, and in some cases require, the Bank to recognize the human rights dimensions of its development policies and activities since it is now evident that human rights are an intrinsic part of the Bank’s mission.”

Daño recognized the value of the existing body of human rights law in evaluating World Bank activities, noting that “[h]uman rights offer a standard by which to assess progress and the efforts of those with obligations to achieve development targets and the Millennium Development Goals.” Implicit in that statement, however, is an assertion that the World Bank does not have any human rights obligations itself. Daño went on to observe: “Human rights foster accountability of all actors involved in development by locating duty for particular development outcomes in

46. See Daño, supra note 20, ¶ 24, at 8-9.
47. Id. ¶ 25, at 9.
48. Id. ¶ 2, at 1
duty-bearers (usually States). This advances accountability to the poor and a consequent empowerment of the poor.”

The question of accountability, and thus the availability of an avenue for affected persons to claim a violation of their rights in the course of operations involving the Bank, is a key omission in the World Bank’s approach to human rights. This point is discussed in Part VIII below. While the Bank has come a long way in recognizing the intrinsic links between human rights and its operations, the fact that the Bank’s role is always characterized as assisting other entities to fulfill their obligations, rather than the Bank meeting obligations of its own or complying with human rights standards independently means that accountability is lacking. As long as human rights are characterized as relevant and desirable considerations for World Bank projects, but not enforceable entitlements, the purpose of human rights as inalienable entitlements for all human beings is not being realized.

Nevertheless, the evolution of the interpretation of the World Bank’s proper mandate, from strict and narrowly defined economic measures, to incorporating basic human needs, to alleviation of poverty, and finally to recognizing the relevance of human rights—if not yet human rights obligations and accountability—represents enormous progress from a human rights perspective. The programs, policies, safeguards, and safety nets the Bank has implemented as part of its broadening, “pro-poor” mandate (some of which are discussed below) represent progress in the practical achievement of outcomes promoting human rights, particularly economic, social, and cultural rights. That progress, however, still has some distance to go before it is entirely consistent with an approach that respects and protects human rights in all circumstances.

IV. The Approach of the IMF

The changed understanding of the institutional mandate is even more prominent in the case of the IMF. Whereas the World Bank was formed to rebuild the postwar world through medium- and long-term loans, the IMF was intended to be an overseer of the international monetary system, particularly the exchange rates fixed by states and the justification of those rates, ensuring macroeconomic stability. Its role as a financier was therefore

49. Id.

intended to be strictly short-term, assisting in temporary balance of payments problems.\textsuperscript{51} When the par-value system of fixed exchange rates was dismantled in the 1970s, the principal purpose of the IMF’s existence up to that point disappeared.\textsuperscript{52} As a consequence, Daniel Bradlow argues, the IMF lost influence over industrialized states, which were unlikely to need to borrow from the IMF in a world without fixed exchange rates, and gradually gained influence over developing states, which still relied on the IMF as a lender of last resort.\textsuperscript{53} “This process has resulted in the IMF slowly mutating from a monetary organization into a macro-economically oriented development financing institution.”\textsuperscript{54}

When amending the IMF Articles of Agreement in 1978 to adapt the Fund’s role after the demise of the par value system, member states granted the IMF a broad role in overseeing an orderly international monetary system. The amendments included a mandate to encourage states to pursue policies directed toward “sound economic growth,”\textsuperscript{55} among similarly broad objectives, but were not particularly prescriptive about how that role should be carried out. As a consequence, the IMF gradually expanded the matters it raised in its annual consultations with member states and expanded the breadth of conditions it attached to loans.\textsuperscript{56} The effect of some of those conditions, such as those relating to privatization, welfare reform, and spending cuts to areas such as health and education, has been the focus of many of the criticisms directed toward IMF for its adverse effect on human rights.\textsuperscript{57}

Defending the shift of IMF activity and focus from the macro to the micro level, particularly following the Asian financial crisis of the 1990s, Robert Hockett asserts that the IMF’s Articles of Agreement were deliberately loose in their construction, allowing the IMF to be flexible in the means it chose to achieve the purposes set out in Article I.\textsuperscript{58} Further, in granting the IMF exclusive power to interpret its own Articles, the drafters “effectively insulat[ed] [IMF]

\begin{footnotes}
\footnotetext{51}{Id.}
\footnotetext{53}{Id. at 2.}
\footnotetext{54}{Id.}
\footnotetext{55}{IMF Articles of Agreement, supra note 6, art. IV, § 1.}
\footnotetext{56}{Bradlow, supra note 52, at 6-7.}
\footnotetext{57}{See, e.g., ECOSOC, Effects, supra note 1, ¶ 42.}
\footnotetext{58}{Robert Hockett, From Macro to Micro to “Mission Creep”: Defending the IMF’s Emerging Concern with the Infrastructural Prerequisites to Global Financial Stability, 41 Colum. J. Transnat’l L. 153, 178 (2002).}
\end{footnotes}

decisions from international and domestic judicial review.” 59 Hockett concludes that the latter power “amounts to a nearly irrebuttable presumption in favor of formal legality,” 60 in that the IMF Executive Board is free to conclude that any particular actions of the institution were lawful, and the broadly drafted Articles of Agreement will almost always make such a conclusion defensible. In this context, it is difficult to see how the deliberately broad Articles of Agreement justify a fundamental overhaul in the purpose and operational focus of the IMF, yet remain constraining enough to exclude recognition of human rights in its operations.

The IMF’s use of conditionality reflects the changing perception of its role. The earliest conditions imposed on states for IMF assistance focused on ensuring the recipient country could repay the loan and prevent recurrence of the type of balance-of-payments problem that necessitated it. Those conditions included reduction in government spending and foreign borrowing and regulation of the money supply to prevent inflation. 61 Over time, the conditions imposed took more of a programmatic focus, requiring liberalization of trade and investment and encouraging privatization. 62 In the last decade, broader governance issues have been the subject of conditionality, with a focus on strengthening national institutions and fighting corruption. 63

While the shift toward poverty reduction as an institutional goal was less overt at the IMF than the World Bank, the shift undeniably occurred. The IMF established new funds over decades to help low-income countries with their entrenched economic difficulties, which necessitated a longer-term outlook, greater involvement in domestic economic policy, and different lending terms than original IMF operations. 64 When the Poverty Reduction and Growth Facility replaced the latest incarnation of these concessional lending funds in 1999, coinciding with the Poverty Reduction Strategy Paper (PRSP) approach discussed in Part VI below, the pursuit of poverty reduction as a central goal in IMF assistance was entrenched.

The IMF’s position toward human rights increasingly acknowledges a role for social concerns and the need to institute safe-

59. Id.
60. Id. at 180.
62. Id.
63. See id. at 527-28.
64. Skogly, supra note 4, at 19-21.
guards for negatively affected social groups, but never as a matter of obligation. The IMF typically takes the position that its role is to foster economic stability and growth, which allows states and other international institutions to take measures for the realization of human rights—a position expressed by Gianviti in the following terms:

The Fund’s contribution to economic and social human rights is essential but indirect: by promoting a stable system of exchange rates and a system of current payments free of restrictions, and by including growth as an objective of the framework of the international monetary system, as well as providing financial support for balance of payment problems, the Fund helps provide the economic conditions that are a precondition for the achievement of the rights set out in the [ICESCR].

Since the advent of the Poverty Reduction Strategy in concert with the World Bank, the practical approach of the IMF has progressed to the point that “social concerns” (generally the preferred term within the IMF, rather than “human rights” or “economic and social rights”) are legitimate considerations in determining how to direct spending and domestic economic policy in borrowing countries. The ostensibly country-owned, poverty-focused PRSPs, which now form the basis of the IMF’s interactions with low-income countries, have contributed to a shift from the view that Washington-consensus policies provide the necessary framework for economic growth, poverty reduction, and social well-being, which are the responsibility of the state to deliver, toward a view that those outcomes ought to be taken into account in designing tailored economic programs for each country. Targeted social spending and the provision of social safety nets are therefore more prevalent in IMF-supported programs today than they were before the turn of the century, although there is considerable debate about the extent to which actual practice in those areas matches institutional rhetoric.

Despite acknowledgement of the legitimacy of social concerns to its work, the IMF remains steadfast in denying that human rights


66. Gianviti, supra note 14, at 137.

67. See, e.g., INT’L MONETARY FUND, FACTSHEET, supra note 65.

law applies to it. The IMF denies in particular that it has human rights obligations and that there is a need for accountability mechanisms to enable affected communities to raise claims of human rights violations.

V. THE RELATIONSHIP BETWEEN POVERTY REDUCTION AND HUMAN RIGHTS

This Article follows the presumption of the IFIs that poverty is defined primarily by income (or more accurately, access to purchasing power) below a certain level. The U.N. Millennium Development Goals define extreme poverty as living on the equivalent of less than one U.S. dollar per day, while the World Bank tracks the proportion of the population in each country living below the benchmarks of one and two dollars per day.

This narrow, income-focused definition contrasts with the approach of Amartya Sen, who defines poverty more broadly as a deprivation of capability, specifically the capability to enjoy freedom. Lack of income is an important contributor to this definition, but not the sole determinant. The World Bank expressly follows Sen’s framework at a conceptual level, but the definitive


74. See id.

role of income for practical evaluations of poverty is unquestioned. This Article’s adoption of the more orthodox, income-based conception of poverty does not intend to obscure that income poverty and lack of access to the capabilities identified by Sen and others are often mutually reinforcing. The World Bank recognized this in its description of poverty and the multiple dimensions of deprivation and vulnerability that poverty brings in its paradigm-setting World Development Report 2000/2001: Attacking Poverty.76 Poverty in the narrow sense is both a cause and a consequence of denial of a range of human rights, including economic, social, and cultural rights as well as civil and political rights.

Relief from the consequences of poverty is undoubtedly a human right, or alternatively, the manifestation of several distinct human rights. Tom Campbell contends:

[T]he condition of poverty is to be viewed as a distinct violation of specific human rights, such as the right to subsistence or the right to a tolerable standard of living. Such rights assume that poverty is a matter of severe material deprivation reducing below an acceptable level a person’s diet, accommodation, physical comfort, and health.77

Entitlement to an adequate standard of living and to adequate food and water is recognized in key human rights instruments.78 Access to the highest attainable standard of health79 and adequate housing80 also are necessarily unfulfilled for those living in dire poverty defined by income, unless the state or some external actor intervenes. There is further a tendency for a wide range of other human rights to be denied at least in part for impoverished people, given their tendency to be politically marginalized, making failure to protect their civil and political rights more likely. The inferior working conditions commonly associated with extremely low-paid jobs also often result in violations of labor rights. One can therefore expect reducing levels of poverty to improve the realization of many different human rights for currently impoverished people.

76. See id. at 15-29.
79. See UDHR, supra note 29, at 76; ICESCR, supra note 78, art. 12.
80. See UDHR, supra note 29, at 76; ICESCR, supra note 78, art. 11(1).
Even taking the very narrow view that human rights are entitlements against the holders of institutional power and that they only oblige those entities not to cause harm and to remedy any harm caused, Thomas Pogge reaches the conclusion that ongoing gross poverty is itself a violation of human rights, in the moral sense. Specifically, Pogge concludes that ongoing gross poverty violates the right to the basic necessities of human life. The international financial and trading regimes that, according to Pogge, perpetuate poverty and impose obstacles to its eradication therefore must be reformed, and the failure to reform them constitutes a violation of human rights on the part of those entities with the capacity to bring about change. According to Pogge:

Given that the present global institutional order is foreseeably associated with such massive incidence of avoidable severe poverty, its (uncompensated) imposition manifests an ongoing human rights violation—arguably the largest such violation ever committed in human history . . . . The continuing imposition of this global order, essentially unmodified, constitutes a massive violation of the human right to basic necessities—a violation for which the governments and electorates of the more powerful countries bear primary responsibility.

Whether one sees poverty and material deprivation as human rights violations or conditions that inevitably lead to human rights violations, a successful poverty reduction campaign automatically will bring an improvement in realization of human rights for people it impacts positively. As Sfeir-Younis put it, “there is no doubt that a poverty eradication strategy is essential to the implementation of all rights . . . . [L]iving in absolute poverty is probably the most effective way to violate all human rights.” A strong focus on poverty reduction is therefore a very effective way to improve the human rights situation of many affected people.

81. For an expanded explanation of Pogge’s narrow conception of human rights for the purpose of this argument, see generally Thomas Pogge, World Poverty and Human Rights: Cosmopolitan Responsibilities and Reforms 58-76 (2d ed. 2008) (discussing how human rights should be conceived).
82. Pogge differentiates between human rights in the moral sense and human rights in the legal sense. See generally id. The latter is dependent on the creation and enforcement of obligations by a given legal system, while the validity of the former “is independent of any and all governmental bodies.” Thomas Pogge, Severe Poverty as a Human Rights Violation, in Freedom from Poverty as a Human Right, supra note 77, at 11, 13 [hereinafter Pogge, Severe Poverty].
83. See Pogge, Severe Poverty, supra note 82, at 14.
84. Id. at 52-53.
There is grave danger, however, in interpreting the realization of human rights and the reduction of poverty as interchangeable concepts and goals. The principal reason for this danger is that while human rights are inherently personal, poverty is typically measured and addressed in a collective and systemic manner. International human rights law holds that human rights derive from the inherent dignity of the human person. That dignity demands that every person be able to live a meaningful life free from interference with one's physical security and beliefs, with autonomy over one's own destiny, including rights to free speech and political participation, and access to the basic necessities of life, such as food, water, shelter, health care, and education. As Louis Henkin put it:

In sum, the idea of human rights is that the individual counts—
independent of and in addition to his or her part in the common good. Autonomy and liberty must be respected, and the individual’s basic economic-social needs realized, as a matter of entitlement, not of grace or discretion. . . . An individual’s right can be sacrificed to another’s right only when choice is inevitable, and only according to some principle of choice reflecting the comparative value of each right.

Poverty, in contrast to human rights, necessarily is measured and tackled in a collective context. Any discussion of poverty, including by those who advocate a human-rights-based approach, quotes figures—such as gross national product, gross national income, percentage of population living below the poverty line, or proportions of particular demographics living in poverty—to demonstrate the nature and extent of the problem. A report seeking to demonstrate improvement or deterioration in poverty over time similarly will point to changes in such figures. To measure progress toward their target of halving the proportion of people living in extreme poverty by 2015, the Millennium Development Goals use the World Bank’s data on the proportion of the population living below one dollar per day, the poverty gap ratio, and the poorest quintile’s share in national consumption. Given the broad, interconnected economic context in which initiatives to alleviate poverty take place, a collective, quantitative view of the problem and progress of

88. The poverty gap ratio “is the mean shortfall from the poverty line . . . expressed as a percentage of the poverty line,” which “reflects the depth of poverty as well as its incidence.” WORLD BANK, WORLD DEVELOPMENT REPORT 2008, supra note 72, at 348.
89. The Secretary-General, supra note 71, Annex n.d.
a purported solution is probably unavoidable. This type of approach, however, cannot give the necessary regard to individual human dignity demanded by international human rights law. Therefore, while poverty reduction and realization of human rights are to a large extent complementary, pursuit of one cannot fully displace the need for pursuit of the other. The inconsistency was highlighted by the United Nations Development Programme in the following terms:

Individual rights express the limits on the losses that individuals can permissibly be allowed to bear, even in the promotion of noble social goals. Rights protect individuals and minorities from policies that benefit the community as a whole but place huge burdens on them . . . . Gains in human development are not always attended by gains in human rights fulfilment, and subsequently a pure human development accounting may fail to pick up on the vulnerability of individuals and groups within a society.90

While a government’s efforts to reduce poverty either alone or with international cooperation are a key part of the state’s obligation to fulfill economic, social, and cultural rights, poverty alleviation must be tackled with the same degree of respect for individual rights as any other state action. A development project that provides increased prosperity and human rights to some or even a majority of the local population may still have serious human rights consequences for others. A project might, for example, employ some of the population and provide them access to essential services, yet forcibly evict others from their land or infringe their freedom of speech and even personal security through an authoritarian response to protest. From a broad poverty reduction perspective, this scenario might be acceptable because the overall impact on poverty—and even the net realization of economic, social, and cultural rights—is positive. Indeed, if one looks at purely economic measures, infringement of many human rights, particularly civil and political rights, would not even be detectable. Human rights law, however, insists that the rights of negatively affected individuals are inviolable and cannot be canceled out in a utilitarian calculus. If the rights of a relatively small group necessarily must be infringed for a project that serves the greater good, respect for the human rights of those people requires that they be identified as potentially affected people before the project pro-

ceeds, they be consulted about the impact and best way to address it, and that measures be implemented to mitigate the harm as much as possible. For example, in the case of a forced eviction, mitigation measures would include availability of meaningful procedural protection and an obligation to “ensure that adequate alternative housing, resettlement or access to productive land, as the case may be, is available.”

The tasks of identifying individuals and groups whose rights would be negatively affected by a proposed project and implementing safeguards and harm-mitigation measures could be incorporated into a poverty-reduction approach. A poverty and social impact analysis undertaken as part of a Poverty Reduction Strategy Paper, discussed in Part VI below, could provide a vehicle for these human-rights-protection measures, as could the safeguard policies and performance standards discussed in Part VII. In both cases, the IFIs’ initiatives make important progress toward the protection of human rights, but fall short of comprehensive protection because of inadequate coverage and inadequate implementation, as discussed in the respective sections below. Even if the IFIs remedied issues of coverage and implementation, ultimately their characterization of human rights concerns as “social issues,” or some other label, as opposed to enforceable rights, fails to recognize the crucial role of human dignity and the human rights that derive from it.

VI. Poverty Reduction Strategy Papers

A. Introduction of Poverty Reduction Strategy Papers

In 1999, the IMF and the World Bank introduced a process known as Poverty Reduction Strategy Papers (PRSPs). The PRSP was designed to strengthen the emphasis of IFI operations on poverty reduction, to achieve a greater degree of “ownership” by recipient countries of IFI-backed programs, and to promote a more cohesive, coordinated, long-term approach to development and poverty reduction. This approach involved the IMF, World Bank,

92. For more information on PRSPs, see International Monetary Fund, Poverty Reduction Strategy Papers (PRSP), http://www.imf.org/external/np/prsp/prsp.asp (last updated Oct. 29, 2009).
recipient governments, and stakeholders of recipient countries in PRSP design. The PRSP was intended to provide the basis for directing all IFI lending to the relevant country, and the framework has also been adopted by other donors.

A country’s PRSP must be approved by the IMF and World Bank boards as a prerequisite for receipt of new concessional lending from the IMF or a World Bank agency or relief under the Highly Indebted Poor Countries initiative. Each PRSP’s intended goal was for the relevant government “to lay out realistic but challenging poverty objectives, along with the policies needed to achieve them,” and to provide a framework for the IFI’s involvement in concessional lending, including the conditions that would be attached to the loans. Each PRSP required annual progress reports and a new PRSP after three years.

The systematic focus on poverty reduction as the primary goal of policy reform encouraged or required by IFIs (or “structural adjustment,” as it was previously known) is a watershed for the cause of human rights in IFI operations. As discussed above, however, poverty reduction in itself is not a substitute for respecting and promoting human rights. To address human rights effectively, one must predict potential negative effects of proposed programs in advance, identify vulnerable groups, and modify programs to prevent erosion of those people’s rights, or alternatively, put safety nets in place to protect those who otherwise would be casualties of the policies in question. The PRSP process attempts to do those things to some extent, by supporting the use of poverty and social impact analyses and safety nets.

So far, however, evaluations of the success of economic and structural reforms stemming from PRSPs have been mixed. Several analyses assert that the old Washington-consensus policies like privatization, spending cuts, and cost recovery remain prevalent in the “country-owned” plans, perhaps because governments anticipate that IFI boards require these policies for approval of the

94. See id.
98. Id.
PRSP.\textsuperscript{99} Other critiques claim that the touted holistic, coordinated approach based on a coherent PRSP has fallen by the wayside. The IMF’s own Independent Evaluation Office observed:

When the [Poverty Reduction and Growth Facility (PRGF)] was introduced, it was meant to be more than a name change. It set out a new way of working, grounded in the PRS process, with programs based on specific country-owned measures geared to poverty reduction and growth, and an ambitious vision of the IMF’s role on the analysis and mobilization of aid, working in close partnership with the Bank. But . . . the IMF gravitated back to business as usual.\textsuperscript{100}

Analyses of the success or failure of economic policies in reducing poverty and the degree to which the PRSP process remains a holistic enterprise are outside the scope of this Article. Instead, two elements critical to consistency with human rights law are considered in the following sections: the degree to which conditional lending affects availability of resources for realization of economic, social, and cultural rights; and the role of poverty and social impact analyses.

B. \textit{Availability of Resources}

Perhaps the most significant phrase in enunciating the scope of a state’s obligations for the realization of economic, social, and cultural rights is the ICESCR requirement that each state party implement measures for realization of those rights “to the maximum of its available resources.”\textsuperscript{101} In their roles as lenders of last resort and at least partial architects of states’ economic policy, particularly parameters of expenditure, IFIs have a tremendous impact on precisely which resources are “available” within the meaning of the ICESCR in recipient countries.

When evaluating the IMF’s role in relation to aid in Sub-Saharan Africa in 2007, the IMF Independent Evaluation Office (IEO) found that PRGF-supported policies frequently required aid to be saved to build reserves or retire domestic debt, except in countries that already had high reserves and low inflation.\textsuperscript{102} The IEO also found that the IMF and the PRSP process did not do enough to set

\textsuperscript{99} See Darrow, \textit{supra} note 4, at 87-91; Celine Tan, \textit{The Poverty of Amnesia: PRSPs in the Legacy of Structural Adjustment}, in \textit{The World Bank and Governance: A Decade of Reform and Reaction}, \textit{supra} note 44, at 147, 158.


\textsuperscript{101} ICESCR, \textit{supra} note 78, art. 2(1).

\textsuperscript{102} \textit{Indep. Evaluation Office, Annual Report, \textit{supra} note 100, at} 12.
targets or identify opportunities for additional aid. The evaluation found, however, that the PRSP process supported “pro-poor budgets” for funds that the recipient government could spend, representing a departure from earlier generations of conditionality, which critics frequently denounced for promoting fiscal discipline at any cost—a cost commonly borne by the poor.

Previous criticisms of conditionality from a human rights perspective tended to focus on the constraint the conditions imposed on the government’s social spending, such as demands to cut public-sector payrolls, reduce welfare outlays, and cease subsidizing services. The PRSP approach was in part a response to those criticisms, recognizing the need to be conscious of and minimize the negative impact of austerity programs and financial reforms on the poor. This is particularly true of the poverty and social impact analysis, discussed below. The human rights implications of IFI involvement in the budget process via PRSPs are just as significant on the other side of the ledger. While directives as to how to spend available funds might interfere with the state’s obligation to direct maximum resources toward the progressive realization of human rights, quarantining certain funds from being spent at all, thereby reducing the pool of funds available for government programs, is an even greater constraint on the state’s ability to improve realization of economic, social, and cultural rights.

While IFI-driven spending cuts to specific areas could be characterized as coercing the state to violate its human rights obligations (regardless of one’s views of independent human rights obligations for IFIs), removing funds from the pool of available resources altogether arguably might not coerce violation if the primary focus of the expenditure that is available is improving the realization of human rights. Elaborating on states’ obligations toward the progressive realization of economic, social, and cultural rights, the Committee on Economic, Social and Cultural Rights emphasized the broad definition of available resources: “The Committee notes

103. Id.
104. Id.
105. See id. at 11-13.
107. As of July 2009, 154 of the 185 IMF member-states are also state-parties to the ICESCR; five of these 31 IMF member-states which are not ICESCR state-parties—Belize, Comoros, Sao Tome and Principe, South Africa, and the United States—have signed but not ratified the ICESCR. See International Covenant on Economic, Social and Cultural Rights, New York, 16 Dec. 1966, supra note 28.
that the phrase ‘to the maximum of its available resources’ was intended by the drafters of the Covenant to refer to both the resources existing within a State and those available from the international community through international cooperation and assistance.”

A framework that acknowledged human rights obligations for IFIs would be cognizant of the effect that quarantining aid funds from government expenditure might have on the realization of human rights. If IFIs had obligations not to violate human rights in the course of their operations, conditions within the PRSP or elsewhere requiring quarantining funds would need to be justified on human rights grounds. This does not mean that directing available funds toward savings or debt retirement, whether from international aid or elsewhere, will always be prohibited. On the contrary, if those policies can curb inflation and prevent future economic catastrophe, they may be an efficient and prudent use of resources in the short term, presuming realization of human rights benefits from availability of greater resources over the long term. Nevertheless, the formulation “to the maximum of available resources” was chosen specifically to denote that improvement of economic, social, and cultural rights should be an absolute priority as resources become available, rather than a desirable way to spend surplus funds. Conditions under PRSPs that shrink the pool of resources for social spending in the short term or that otherwise require regression in the enjoyment of economic, social, and cultural rights for particular groups should be justified within this human rights framework. If they are not justified, they should be considered a violation of the human rights obligations of the state that produces and implements the PRSP, coerced by IFIs and the member states that drive them.

C. Poverty and Social Impact Analysis

As part of the PRSP process, the participating countries and IFIs are encouraged to undertake a Poverty and Social Impact Analysis (PSIA) of proposed policy reforms. For example, a proposed change in tax rates should be accompanied by an analysis of its

109. ICESCR, supra note 78, art. 2(1).
effects on the poor, including factors such as the number of people who would be lifted out of poverty, those who would be worse off, and changes in their ability to purchase essential goods and services. A comprehensive analysis would not only weigh numbers of affected people, but identify groups likely to be harmed and measures to minimize the harm.

A PSIA along these lines has obvious synergy with the protection and promotion of human rights. The World Bank’s guidance note for conducting a PSIA includes a focus on “access to key infrastructure such as electricity, water, transportation, communications and access to other services (in addition to health and education),” and requires the assessment of sources and levels of vulnerability, all of which are broadly consistent with a human rights approach. Assessments carried out under this process, however, are at most treated as factors in evaluating a policy, rather than legal entitlements. Furthermore, the PSIAs do not use international human rights standards to inform the assessments. The PSIA process therefore cannot be described as a human rights approach to economic-policy reform. It has the potential, however, to improve human rights outcomes if it is applied in a manner that maximizes human rights protection for vulnerable people and is given significant weight in the design and monitoring of policy reforms as part of IFI programs.

The evaluation of PRSPs by the IMF’s Independent Evaluation Office in 2004 concluded that “efforts to conduct PSIA have been slow to start and the integration of these results into program design even slower.” Moreover, when an analysis was conducted, its quality and comprehensiveness was often questionable, and responsibility for the follow-up, particularly in terms of altering the proposed policies to address the identified harms, was undefined and in many cases fell through the gaps. The World Bank addressed the slow adoption of PSIAs in 2004 by incorporating the process into its due-diligence guidelines in the Bank’s Operational Policy on Development Policy Lending, making the PSIA pro-

111. Id. at 3.
113. See id.
114. See id. at 56.
cess routine for Bank lending to low- and middle-income countries.116

PSIAs are a vital component of the integration of responsibility for human rights into the work of IFIs. It is important, however, that such analyses are perceived only as diagnostic tools, rather than ends in themselves that satisfy the requirement to take social or poverty-related issues into account. For a PSIA to be effective from a human rights perspective, it must be conducted before the proposed policy reform is implemented, and it must trace the chain of consequences from the proposed reform as far as possible. For example, if a particular reform is likely to lead to inflation or devaluation of assets commonly held by vulnerable people, the PSIA should ask how that will impact their rights to food, water, and shelter, or their access to health, education, and other social services. States and IFIs must regard realization of those rights as inherent entitlements, and make changes based on the PSIA results to the proposed policies or put safeguards in place to ensure that regression in the realization of human rights does not occur. If human rights violations or regression is unavoidable, an approach consistent with human rights protection would hold that the policy reform should not be implemented unless the status quo or available alternatives ultimately would lead to a greater diminution of human rights—a possibility that should not be discarded in situations of a response to or prevention of economic collapse.

The Committee on Economic, Social and Cultural Rights made the following entreaty in 1990, in relation to the previous generation of structural adjustment programs:

The Committee recognizes that adjustment programmes will often be unavoidable and that these will frequently involve a major element of austerity. Under such circumstances, however, endeavours to protect the most basic economic, social and cultural rights become more, rather than less, urgent. States parties to the Covenant, as well as the relevant United Nations agencies, should thus make a particular effort to ensure that such protection is, to the maximum extent possible, built-in to programmes and policies designed to promote adjustment. Such an approach, which is sometimes referred to as “adjustment with a human face” or as promoting “the human dimension of development” requires that the goal of protecting the

rights of the poor and vulnerable should become a basic objective of economic adjustment.\footnote{117}

The utility of a PSIA depends on policy makers in borrowing governments and IFIs having the courage to abandon a proposed course of action or adopt an alternative one if negative effects identified in the PSIA cannot be ameliorated effectively. A secondary option is to proceed with the planned program but implement safety nets designed to insulate particularly vulnerable people from the negative effects to come or that have already occurred. There is significant doubt, however, about the effectiveness of safety nets at targeting and negating the effects of structural adjustment, and usually longer-term measures developed out of the PSIA process and built into policy design are preferable to the band-aid solution of safety nets.\footnote{118}

D. Human Rights and PRSP

The core difference between acceptance of an obligation to respect human rights in IFI operations and the current use of the PRSP system is the notion of a right as opposed to a relevant consideration. While international human rights law recognizes that circumstances sometimes may force restricted enjoyment or diminution of realization of a given right, its starting point is that the enjoyment of all human rights—civil and political as well as economic, social, and cultural—are the birthright of every human being that can only be restricted in the most pressing circumstances. The PRSP system, by contrast, retains the approach of earlier generations of IFI activity in that policy prescriptions are designed and evaluated by collective measures, with no recognition of the rights of individuals or groups beyond their treatment as social concerns in a PSIA, and no effective grievance mechanism for those who allege that their rights have been violated. The IFIs’ explicit focus on poverty and use of PSIAs as a routine part of program design are steps in the right direction for protection of human rights. The IFIs’ failure to recognize the inalienable and prima facie inviolable nature of human rights, as well as their failure to utilize the vast body of relevant international human rights law in assessing and addressing potential human rights problems,
however, cause the PRSP approach to fall short of comprehensive respect for and protection of human rights.

VII. HUMAN RIGHTS IN PROJECT EVALUATION

For several decades now, the World Bank has been criticized for human rights violations occurring in the course of development projects it sponsors, particularly during the era when IFIs favored large-scale infrastructure such as dams. Forced eviction of local people, lack of respect for cultures of indigenous peoples and their connection with the land, and broad-ranging environmental damage were among the most commonly voiced accusations.\footnote{119. See Kay Treakle, Jonathan Fox & Dana Clark, Lessons Learned, in DEMANDING ACCOUNTABILITY: CIVIL-SOCIETY CLAIMS AND THE WORLD BANK INSPECTION PANEL 247, 251 tbl.11.2 (Dana Clark, Jonathan Fox & Kay Treakle eds., 2003).} Commencing in the early 1990s, the World Bank responded to some of the most protracted criticisms of human rights outcomes of Bank-sponsored projects by developing a series of “safeguard policies” with which projects had to comply. In setting prescribed parameters within which World Bank projects had to operate, the safeguard policies also provided a standard against which the performance of the Bank and its project partners could be measured. The Inspection Panel, discussed in Part VIII below, has the power to hear complaints from affected individuals and communities that a particular project has violated the Bank’s safeguard policies.\footnote{120. See INSPECTION PANEL, WORLD BANK, OPERATING PROCEDURES, available at http://web.worldbank.org/WEBSITE/EXTERNAL/EXTINSPECTIONPANEL/0,,contentMDK:20175161-isCURLY-menuPK:64129254-pagePK:64129751-piPK:64128378-theSitePK:380794,00.html (last visited July 29, 2009) [hereinafter WORLD BANK, OPERATING PROCEDURES]; see discussion infra Part VII.} This forum provides a dispute resolution avenue for human-rights-based complaints, provided they could be tailored to the content of one or more of the policies.

In 2006, the International Finance Corporation (IFC), which had been the first World Bank agency to adopt the safeguard policies, replaced its safeguard policy system with a multitiered system of policies and performance standards under the banner of “social and environmental sustainability.” The IBRD and IDA continue to apply safeguard policies, which therefore remain relevant to the jurisdiction of the Inspection Panel. The following sections discuss the safeguard policies and the IFC’s new social and environmental sustainability approach from the perspective of their consistency with principles of human rights law and their effectiveness as mechanisms for the protection of human rights.
The safeguard policies were reactive by nature, responding to the particular issues that had attracted criticism in the past. The policies therefore addressed involuntary resettlement and the rights of indigenous peoples, and a policy on forced and child labor was added later, but there was no cohesive vision for the policies and no recognition that the objective of the safeguards actually was to protect the human rights of certain vulnerable people affected by the projects. The IFC safeguard policies were made up of the following World Bank Operational Policies and Directives:

(i) Environmental Assessment (Operational Policy [OP] 4.01)
(ii) Natural Habitats (OP 4.04)
(iii) Pest management (OP 4.09)
(iv) Cultural property (OP 4.11)
(v) Indigenous peoples (OP 4.10)
(vi) Involuntary resettlement (OP 4.12)
(vii) Forests (OP 4.36)
(viii) Safety of dams (OP 4.37)
(ix) Projects on international waterways (OP 7.50)
(x) Forced labor and harmful child labor.

When the IFC Compliance Advisor / Ombudsman (CAO) reviewed the safeguard policies in 2003, it noted the relevance of international legal standards, particularly human rights standards, and criticized the safeguard policies for failing to utilize them:

With the exception of the child labor policy, no other policies make explicit mention of international agreements, norms or standards to which countries and the World Bank Group ascribe.\textsuperscript{122} . . . [I]n some cases, where sponsors are unclear as to


\textsuperscript{122} The opening statement in this quotation is not entirely accurate, as the safeguard policy on forestry in force at the time of the IFC review stipulated that the “IFC will not finance projects that contravene any relevant international environmental agreement to which the member country concerned is a party.” INT’L FIN. CORP., OPERATIONAL POLICIES: FORESTRY, OP 4.36, ¶ 2 (1998). That statement only serves to highlight further the serious omission in the safeguard policies of any reference to international human rights law or any explanation of the relationship between human rights norms and the consequences of projects supported by the World Bank. It also begs the question as to why projects must be
the relation between IFC policies and national regulations, international standards may give helpful context and reference points. . . . IFC policies could achieve greater traction if they referenced international standards.\footnote{COMPLIANCE ADVISOR OMBUDSMAN, WORLD BANK, REVIEW OF IFC’S SAFEGUARD POLICIES 37 (2003).}

The CAO’s review noted the role of international law in the application of a single exception—the forced-and-child-labor policy. “The framework for implementation is provided by the [International Labour Organization (ILO)] agreements on core labor standards and work within countries and the international community on how they can be implemented.”\footnote{Id. at 36.} Not only are the ILO agreements themselves relevant to the interpretation of this safeguard policy, but so are state practice and the practice of nonstate actors relating to those agreements. This recognition goes some way toward acceptance that the operations of IFIs and their partners are not isolated from the scope of international law, including elements of human rights law relevant to the operations in question.

The indigenous-peoples policy acknowledges an overarching aim that development projects should be a means toward “poverty reduction and sustainable development,” \textit{inter alia}, by ensuring respect for dignity and human rights.\footnote{WORLD BANK, OPERATIONAL MANUAL: INDIGENOUS PEOPLES, OP 4.10, ¶ 1 (2005), available at http://web.worldbank.org/WEBSITE/EXTERNAL/PROJECTS/EXTPOLICIES/EXTOPMANUAL/0,,contentMDK:29004608~menuPK:64701637~pagePK:64709096!piPK:64709108~theSitePK:502184,00.html.} While this is another indication that the consideration of the full body of human rights law should be a principal concern in the planning, evaluation and execution of development projects, that has not been the effect of the safeguard policies to date. Rather, the policies tend to be applied narrowly and in isolation.\footnote{Id. at 36.}

The other safeguard policies touch on a few narrow and specific human rights issues. For example, involuntary resettlement has obvious human rights ramifications on the rights to housing and a decent standard of living, and dam safety plays a specific role in consistent with a state’s treaty obligations relating to the environment, but not those relating to human rights. The ban on World Bank financing of projects that contravene international environmental agreements was retained in the 2002 version of OP 4.36 and is applied in the environmental assessment. \textit{World Bank, Operational Manual: Forests,} OP 4.36, ¶ 6 (2002), available at http://web.worldbank.org/WEBSITE/EXTERNAL/PROJECTS/EXTPOLICIES/EXTOPMANUAL/0,,contentMDK:29004608~menuPK:64701637~pagePK:64709096!piPK:64709108~theSitePK:502184,00.html.

124. \textit{Id.} at 36.  
126. \textit{Compliance Advisor Ombudsman, supra note} 123, at 36, 39-43. \end{flushright}
protecting the rights to life and a safe and healthy workplace. Some of the environmentally focused policies also seek to achieve goals that overlap with human rights goals. The coverage of the safeguard policies, however, is far from comprehensive in protecting the full range of internationally recognized human rights in the course of World Bank projects. The safeguard policies attempt to influence World Bank projects toward achieving specific outcomes that contribute to the realization of human rights in the narrow and limited subject matter of the applicable policies, but in that process agencies rarely use human rights language and rarely invoke norms of international human rights law. This may be an attempt to avoid the very purpose of human rights discourse, namely the conceptualization of certain universal entitlements that cannot be bartered away accruing to every human being. World Bank agencies generally may be attempting to respect, protect, and promote human rights in their operations, while reserving the right to claim that they and their project partners are not to be legally bound to do so if it becomes inconvenient or threatens a project they perceive as important.

B. Social and Environmental Sustainability Policy and Performance Standards

The IFC’s decision to replace its safeguard policies with a social and environmental sustainability policy and a set of performance standards in 2006 was partly in response to the CAO criticisms mentioned above and partly motivated by a desire in the IFC and among its private partners for more flexibility in the policies and a greater focus on outcomes than processes. The new system consists primarily of a single IFC policy outlining the IFC’s responsibilities and a series of eight performance standards to be implemented by the client. In contrast to the IBRD, the IFC acts primarily as a facilitator of development activity by private investors.

1. The IFC’s Role: the Sustainability Policy

The IFC policy on social and environmental sustainability, referred to as the “sustainability policy,” emphasizes the primary role of the client in the new system, with the IFC performing more

of an oversight role. "Assessing and managing environmental and social impacts in a manner consistent with the [Policy and Performance Standards] is the responsibility of the client. IFC's responsibility is to review the work of the client, identify opportunities to improve outcomes, and ensure consistency with policy requirements."128

The IFC conducts its own social and environmental review of every project proposed for financing as part of its overall due diligence,129 but the review is based on the assessment conducted by the client pursuant to the performance standards.130 The IFC's review considers the social and environmental risks flagged in the client's assessment and forms a view as to the client's ability to manage those issues and the role of any third parties in the course of the project in the manner required by the performance standards.131 If the IFC is not satisfied that the client can meet the performance standards "over a reasonable period of time," it must refuse to finance the project.132

Under the sustainability policy, the client must engage with and consult affected communities, and the IFC must satisfy itself that projects with potential adverse effects for a community have "broad community support."133 Throughout the life of the project, the sustainability policy requires the IFC to monitor the project's compliance with the performance standards by reviewing periodic reports submitted by the client and conducting site visits.134 The policy does not require the client's reports to be publicly available,135 although it "encourage[s] the client to report publicly on its social, environmental and other non-financial aspects of performance."136

Where the client fails to comply with its social or environmental commitments, the sustainability policy requires the IFC to "work

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130. See id. ¶ 15.
131. Id.
132. Id. ¶ 17.
133. Id. ¶¶ 19-20.
134. Id. ¶ 26.
135. DURBIN ET AL., supra note 127, at 5 n.18.
with the client to bring it back into compliance to the extent feasible, and if the client fails to reestablish compliance, exercise remedies when appropriate.” This requirement was highlighted by the IFC in its response to nongovernmental organization (NGO) criticism alleging that the IFC tolerates noncompliance under the new standards. The IFC noted that “the Performance Standards . . . and other applicable environmental and social obligations of the client are covenanted in loan agreements,” making them legally enforceable.

Finally, the sustainability policy imposes additional requirements relating to public disclosure and interaction with host governments for a narrow category of extractive industry and public-infrastructure projects, acknowledging the additional social and environmental risks historically associated with such projects. In the case of infrastructure projects involving essential services, such as water and electricity, which carry significant ramifications for realization of human rights, the sustainability policy “encourages” public disclosure of information such as concession fees, tariffs, and government support, but does not mandate it.

The Halifax Initiative, a coalition of Canadian NGOs focusing on IFIs, criticized the failure of the sustainability policy to embrace international human rights law, alleging that “[t]he Sustainability Policy language on human rights is weak and ineffective.” The Halifax Initiative argues:

The IFC’s lending practices should explicitly respect and adhere to applicable provisions of international human rights and humanitarian law and the IFC should ensure that the projects that it finances do not lead to or exacerbate violations of human rights or humanitarian law—either directly or indirectly. The Sustainability Policy does not achieve these goals.

In response, the IFC expressed the view that international human rights law contains obligations only for states, “and it is dif-

137. Id.
139. Id.
140. See IFC, SUSTAINABILITY POLICY, supra note 129, ¶ 22. Additional requirements apply for extractive industry projects deemed to be “significant,” in that they are “expected to account for ten percent or more of government revenues.” Id.
141. See id. ¶ 23.
142. Id.
143. DUBIN ET AL., supra note 127, at 6.
144. Id. at 6-7.
ficult to translate these into specific private sector actions.”145 The IFC acknowledges the ongoing debate on this point, including the mandate of the Secretary-General’s Special Advisor on the issue of business and human rights.146 The IFC claims to “have tried to strengthen [its] support of human rights at the project level” through the performance standards, particularly in relation to labor standards and use of security personnel.147 On its own terms, then, the effectiveness of the IFC’s new system should be judged by the content and effectiveness of the performance standards in protecting human rights. Certainly, the sustainability policy adds very little on its own to the realization of human rights, given that its primary role is to coordinate implementation of the performance standards and associated monitoring mechanisms.

2. Performance Standards

The performance standards to be implemented by IFC clients under the new system are:

(1) Social and Environmental Assessment and Management Systems;
(2) Labor and Working Conditions;
(3) Pollution Prevention and Abatement;
(4) Community Health, Safety, and Security;
(5) Land Acquisition and Involuntary Resettlement;
(6) Biodiversity Conservation and Sustainable Natural Resource Management;
(7) Indigenous Peoples; and
(8) Cultural Heritage.

Performance Standard 1 requires the client to prepare a social and environmental assessment.148 The assessment must identify the risks of any social or environmental harm that might arise in relation to the project, including the specific issues highlighted in Performance Standards 2–8, but also other social and environmental impacts relevant to the project.149 The scope of the assessment covers “the project’s area of influence,” including flow-on effects

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146. Id.
147. Id.
149. Id.
from the project, which may occur away from the project site and/or at a later date, and all stages of the project up to “decommissioning or closure.”

For projects that identify significant adverse impacts or risks, the client must implement a management program detailing methods of mitigating the identified risks. The policy management program is intended to be outcome oriented, specifying appropriate, quantifiable targets and monitoring methods.

Where harm-mitigation measures are necessary to meet either applicable laws or Performance Standards 1–8, the client must prepare an action plan detailing the actions to be taken, their prioritization, and the implementation timeline. The action plan must be “disclosed to the affected communities,” and the client also must report at least annually on the plan’s progress and institute a grievance mechanism for affected communities.

Significantly, the action plan forms part of the covenants included in loan agreements with the IFC. As a result, the client’s commitment to identify adverse social and environmental impacts, implement specific mitigation measures, meet specific targets, report on the plan’s implementation, and provide a grievance mechanism is legally enforceable by the IFC against the client, although not by the individuals affected.

While the increased focus on social harm is a welcome step in entrenching respect for and protection of human rights in the IFC’s operations, the new social-and-environmental-assessment performance standard fails to take advantage of the existing body of international human rights law in the text of the performance standard itself because it does not require clients to assess the effect of their projects on human rights.

The guidance notes accompanying the performance standards, in contrast, are more forthright in embracing human rights as an appropriate standard for social impact assessment. The guidance

150. Id. ¶¶ 5-6, at 2.
151. Id. ¶ 13, at 3.
152. See id. ¶ 15, at 3.
153. Id. ¶ 16, at 4.
154. Id. ¶ 16, at 4. ¶ 26, at 6.
155. Id. ¶ 26, at 6.
156. Id. ¶ 23, at 5.
notes do not themselves have the status of policy and are not directly legally binding, but “offer helpful guidance on the requirements contained in the Performance Standards.” Guidance Note 1, supplementing Performance Standard 1, contains the following advice in relation to human rights:

A number of international agreements and conventions have established basic human rights. . . . While states are responsible for protecting these human rights, it is increasingly expected that private sector companies conduct their affairs in a way that would uphold these rights and not interfere with states’ obligations under these instruments. In addition, business conduct that is inconsistent with these basic human rights can pose risks to business, and as a result, the [social and environmental] Assessment process is a useful tool to analyze these risks and to consider management measures.

Guidance Note 1 goes on to highlight the importance of mitigating adverse impacts on “disadvantaged or vulnerable groups” and describes processes of affirmative action and distribution of project benefits that might be required in certain circumstances, reminiscent of nondiscrimination principles in human rights law, but not actually referencing them. Similar comments are included in relation to gender.

Despite acknowledging that projects IFC sponsors can affect human rights, and despite encouraging private sector clients to “uphold” human rights, the sustainability policy and performance standards consistently treat human rights as the responsibility of states alone, at least in terms of legal obligations. While these policies are designed to prevent and alleviate what are effectively human rights violations, the policies never acknowledge the World Bank’s independent human rights obligations.

The main weakness of the performance standard system is the reliance it places on the client. The client carries out the social and environmental assessment, rather than independent experts as the environmental assessment in the former safeguard policy required. Much of the monitoring and enforcement subse-

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160. See id. ¶ G23, at 9.
161. See id. ¶ G24, at 9-10.
162. See IFC, Performance Standard 1, supra note 148, ¶ 4, at 1.
quently carried out by the IFC proceeds from the issues identified in the client’s social and environmental assessment, which potentially suffers from a lack of independence.

For human rights protection, the considerable broadening of social issues considered in the assessment process under the new performance standards is a significant improvement on the very narrow and ad hoc approach of the former environmental assessment under the safeguard policy system. Nevertheless, the system stubbornly remains separated from the notion of any applicable obligations under international human rights law. The improvement in breadth is undermined further by the reduced credibility of a process built upon an assessment that is not independent.

a. Labor and Working Conditions

Performance Standard 2 on labor and working conditions expands upon the former policy statement on forced and child labor, extending to freedom of association, collective bargaining, and nondiscrimination. The performance standard asserts that its requirements “have been in part guided by” the eight fundamental ILO Conventions163 and the Convention on the Rights of the Child.164 For this performance standard the guidance notes refer-
ence ILO conventions, the Universal Declaration of Human Rights (UDHR), and several other human rights instruments in guiding interpretation of principles such as nondiscrimination.\footnote{165 See \textit{Int’l Fin. Corp.,} Guidance Note 2: Labor and Working Conditions, \textit{in} \textit{Guidance Notes: Performance Standards on Social \\& Environmental Sustainability,} supra note 158, at 33, 39 n.5-6. The Guidance Note references the Universal Declaration of Human Rights (UDHR), the Convention on the Elimination of All Forms of Racial Discrimination (CERD), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the Convention on the Rights of the Child, ILO Convention 100 (Con\textbanksion Concerning Equal Remuneration), and ILO Convention 111 (Convention Concerning Employment and Occupation Discrimination). \textit{Id.}}

This performance standard requires employers to go beyond mere compliance with national law if the relevant law does not provide sufficient protection to workers’ rights.\footnote{166 See IFC, \textit{Performance Standard 2,} supra note 164, ¶ 8, at 8 (requiring “reasonable working conditions and terms of employment that, at a minimum, comply with national law” (emphasis added)). Paragraph 9 requires employers to make alternative arrangements for workers to express grievances and protect their working and employment rights where national law restricts trade unions. \textit{Id.} ¶ 9, at 8. Paragraph 11 requires nondiscrimination and equal opportunity in employment in cases where national law is silent on the issue. \textit{Id.} ¶ 11, at 8.} It also extends vigilance to a corporation’s sphere of influence and requires clients to “inquire about and address child labor and forced labor in its supply chain.”\footnote{167 \textit{Id.} ¶ 18, at 10.} The absolute prohibition on exploitative child and forced labor, however, arguably does not extend beyond the client itself.

The extension of the former IFC child-and-forced-labor policy to a broader range of labor rights, in addition to direct reference to international human rights instruments, makes the performance standard on labor close to a model human rights policy. Its main weaknesses stem not from the terms of the performance standard, but from the institutional problems associated with the sustainability policy system of which it is a part.

b. Indigenous Peoples

Performance Standard 7 retains congruence between international human rights law and IFC requirements for treatment of indigenous peoples. The corresponding guidance note acknowledges that international human rights law forms the appropriate framework for addressing the particular vulnerabilities of indigenous peoples.\footnote{168 See \textit{Int’l Fin. Corp.,} Guidance Note 7: Indigenous Peoples, \textit{in} \textit{Guidance Notes: Performance Standards on Social \\& Environmental Sustainability,} supra note 158, at 126, 140.} The guidance note directly references the Inter-

Although the guidance note expresses respect for and arguably promotion of human rights as an unequivocal expectation, it stops just short of acknowledging any direct, existing obligation under international human rights law on the part of any World Bank agency or its private sector partners. After referring to the human rights instruments, the guidance note states:

While such legal instruments establish responsibilities of states, it is increasingly expected that private sector companies conduct their affairs in a way that would uphold these rights and not interfere with states’ obligations under these instruments. It is in recognition of this emerging business environment that IFC expects that private sector projects financed by IFC foster full respect for the dignity, human rights, aspirations, cultures and customary livelihoods of Indigenous Peoples.\footnote{170}

c. Human Rights Issues in Other Performance Standards

A number of the other performance standards represent improvements over the safeguard policies from a human rights perspective. For example, Performance Standard 4 on community health, safety, and security has a section devoted to the conduct of security personnel,\footnote{171} drawn from the U.S.-U.K. Voluntary Principles on Security and Human Rights.\footnote{172} The accompanying guidance note states that the conduct of security personnel “should be based on the principle that providing security and respecting human rights can and should be consistent.”\footnote{173}

Performance Standard 5 on land acquisition and involuntary resettlement has been criticized as a step backward in human rights because its recognition of displaced persons entitled to com-

\footnote{169. Id.}
\footnote{170. \textit{Id.} ¶ G1, at 126-27.}
\footnote{173. \textit{Int’l Fin. Corp., Guidance Note 4: Community Health, Safety and Security, in Guidance Notes: Performance Standards on Social & Environmental Sustainability, supra note 158, at 77, ¶ G26, at 85.}
pensation is narrower than the corresponding safeguard policy. Nevertheless, the new standard has been praised for promoting improved living conditions and security of tenure for displaced people, objectives that are consistent with the right to housing.

Many of the interests the other performance standards seek to protect are consistent with human rights goals, as was also true for the safeguard policies. For example, pollution prevention and abatement contribute to the rights to life, health, and livelihoods of the affected population. With the exception of the instances highlighted above, however, the standards do not acknowledge the applicability of international human rights law or apply its legal standards, safeguards, and exceptions.

C. Concluding Remarks on Safeguard Policies and Performance Standards

The most important step yet to be taken toward protection of human rights in IFI-sponsored development projects is acknowledging that all human rights must be respected as enforceable rights rather than merely desirable outcomes to be pursued when practicable. To that end, the Tilburg Guiding Principles advocate inserting a human rights clause into the World Bank’s operational policies in the following terms: “The World Bank shall not finance projects that contravene applicable international human rights law.”

The suggested clause presupposes that international human rights law can and does (or at least should) apply to IFIs and their project partners, and carries at least the duty to respect the human rights of those affected by their operations. Inserting this type of reference to international human rights law into the World Bank operational policy would bring in the jurisprudence and experience of that body of law when project managers weigh the competing rights of different groups (an inevitable dilemma in development projects that cause local harm but serve a greater public good) and evaluate safety nets for those affected. This would differ from the existing system because human rights coverage would be comprehensive, whereas the current patchwork of

174. See DURBIN ET AL., supra note 127, at 17.
175. See id. at 16-17.
safeguard policies and IFC performance standards was shaped by past failures and criticisms rather than a coherent theoretical or legal framework. The beauty of a catch-all human rights clause to supplement existing safeguard policies, some of which are practically very effective at addressing specific problems likely to arise in certain types of projects, is that a diluted, one-size-fits-all policy does not need to replace the existing standards. An additional human rights clause would, however, bring human rights issues within the purview of the Inspection Panel, making it a far more effective recourse mechanism for human rights grievances that arise in the course of the Bank’s development projects. This discussion is resumed in Part VIII below.

The highly selective nature of the current safeguard policies and performance standards, combined with the practical status of human rights as desirable goals rather than enforceable rights, leaves clear gaps between the systems of the World Bank agencies and international human rights law in content, philosophical approach, and legal effect. Whether the World Bank adopts a clause along the lines of the Tilburg model or some other approach, it needs to address those gaps.

VIII. Recourse Mechanisms

A vital component of an effective human-rights-protection system is the ability of rights holders to assert their rights. Rights holders need to be able to allege that their rights have been violated, obtain an impartial assessment of their claims, and seek a remedy. The World Bank agencies and the IMF each have independent bodies designed to review the legitimacy and appropriateness of their operations, with varying mandates and varying accessibility for aggrieved groups and individuals. The importance of those avenues from an aggrieved person’s perspective is greatly increased by the immunity from municipal law that IFIs generally enjoy as a matter of common practice.178 This Part briefly considers the effectiveness of each of the key recourse mechanisms in protecting human rights in the course of IFI operations.

178. See Skoogly, supra note 4, at 178-79; IMF Articles of Agreement, supra note 6, art. IX, §§ 3-4. Although the IBRD Articles of Agreement expressly authorize legal actions against it in municipal courts, municipal courts typically decline jurisdiction, which creates a de facto immunity. See IBRD Articles of Agreement, supra note 6, art. VII, § 3.
A. World Bank

The World Bank established an independent Inspection Panel in 1993 to receive complaints relating to projects sponsored by the IBRD and IDA, conduct “inspections” of the projects if warranted, and make recommendations for resolution of conflicts. Any two or more persons who allege they have been harmed or are likely to suffer harm as a result of the World Bank’s violation of its policies or procedures can invoke the Inspection Panel process. The Panel’s mandate is strictly limited to the existing operational policies and procedures of the World Bank. For human rights violations, this means that aggrieved parties must rely largely on the safeguard policies discussed above. The obvious limitation on the Inspection Panel as a defender and enforcer of human rights is the content of the policies, which, as noted above, are inadequate in a number of areas and are far from comprehensive in terms of the scope of human rights covered.

Inspection Panel procedures for requesting an inspection are decidedly informal and nonprescriptive. As a result, applicants frequently complain of human rights violations, rather than framing their complaint in terms of a violation of one or more of the Bank’s policies. To proceed with the inspection, the Inspection Panel therefore needs to reframe the issue as one of policy noncompliance. If that cannot be done, the Panel is powerless to proceed.

For example, inhabitants of a fishing village in the Philippines framed their complaint about the effects of temporary sewage dumping from a Bank-sponsored project on their health, food, and livelihood in terms of the project’s general human effect. The Panel, however, treated the complaint as an allegation of noncompliance with the operational policies on environmental assessment, economic evaluation of investment options, project supervision, and disclosure of information. Thus, the Panel effectively


180. See WORLD BANK, OPERATING PROCEDURES, supra note 120.

181. See id.

182. The relevant policy numbers for these violations are OD 4.01, OP/BP 10.04, OD/ OP/BP 13.05, and OP/BP 17.50, respectively. Notice of Registration, Re: Request for Inspection: Philippines—Manila Second Sewarage Project (MSSP) (Loan No. 4019-PH)
reduced the serious human rights issues raised in the original request to an examination of the environmental assessment process and technical Bank policies.

In a different case, one element of a request for inspection relating to the Chad-Cameroon Petroleum and Pipeline Project contained serious allegations of arbitrary detention and torture of a politician in Chad for his opposition to the project.183 The Inspection Panel was unable to reframe those allegations as violations of a specific Bank policy, and therefore was unable to act on them. The Panel, clearly troubled by this impotence, criticized World Bank management for failing to protect human rights in the Chad-Cameroon project even in the absence of a specific policy requirement to do so.184 The Panel hinted at hypocrisy in Bank management’s rhetoric on human rights and reliance on absence of a specific policy to justify taking no action in this case.185

The gaps in human rights coverage in World Bank policies, some of which were identified above, have a crippling effect on the utility of the Inspection Panel as a recourse mechanism for victims of human rights violations in World Bank projects. As an influential conference of international law experts noted:

The effectiveness of the World Bank Inspection Panel as a human rights accountability mechanism is limited by its inability to invoke specifically human rights law, its lack of decision-making power, the absence of a role for the petitioners in the Inspection Panel procedure itself, and the limited human rights expertise of the Panel.186

As discussed above, the Tilburg Guiding Principles advocate inserting a clause requiring compliance with “applicable international human rights law” into the Bank’s operational policies,187

183. See Inspection Panel, World Bank, Investigation Report: Chad-Cameroon Petroleum and Pipeline Project (Loan No. 4558-CD); Petroleum Sector Management Capacity Building Project (Credit No. 3373-CD); and Management of the Petroleum Economy Project (Credit No. 3316-CD) ¶¶ 11-20 (2003).

184. See id. ¶¶ 212-14, at 61-62.

185. See id.


187. Id. ¶ 30, at 254-55.
which would bring human rights considerations within the legitimate purview of the Inspection Panel.\textsuperscript{188}

John Head proposed that the World Bank and the regional development banks “should submit to the jurisdiction of some external entity authorized to review the legitimacy of [their] action.”\textsuperscript{189} To that end, he also proposed establishment of an “International Tribunal for Multilateral Development Banks,” which essentially would replicate the Inspection Panel’s function of assessing institutional action against the institution’s own policies, but with greater independence and enforcement power.\textsuperscript{190} Such a proposal inevitably would suffer from the existing problem that a recourse body’s utility is only as great as the policies it seeks to uphold. If such a tribunal had the power to interpret the legality of an institution’s actions not only according to its internal rules, but also according to the broader international framework in which the institution operates, including the need to respect human rights within the institution’s operations, it would enhance IFI accountability for human rights greatly. The tribunal could take guidance from dispute settlement organs within the WTO. The WTO Appellate Body has acknowledged the need to interpret economic provisions within the context of evolving norms of broader international law,\textsuperscript{191} although it has yet to invoke the direct relevance of international human rights law. An extended mandate that viewed legality of Bank operations within a holistic framework of international law, including recognizing a duty, at minimum, to respect the human rights of affected people, also could be effective in an internal tribunal such as the Inspection Panel, if it was sufficiently independent and its decisions were routinely enforced and its remedies implemented.

The Inspection Panel has great potential to provide recourse and a remedy to people aggrieved by World Bank operations, an important step in recognizing human rights as rights rather than mere considerations. Bank policies restrict its current mandate, however, because they do not acknowledge explicit human rights obligations, do not allow the Panel to consider international

\begin{itemize}
\item \textsuperscript{188} Id. \textsuperscript{¶} 39, at 256.
\item \textsuperscript{189} Head, supra note 19, at 311.
\item \textsuperscript{190} Head, supra note 19, at 311.
\item \textsuperscript{191} See, e.g., Appellate Body Report, United States—Import Prohibition of Certain Shrimp and Shrimp Products, \textsuperscript{¶} 129-31, WT/DS58/AB/R (Oct. 12, 1998) (interpreting the term “exhaustible natural resources” in the 1947 General Agreement on Tariffs and Trade in light of modern notions of environmental protection as a legitimate goal of international policy).
\end{itemize}
human rights law, and do not replicate the content of human rights law except in the few narrow, isolated instances noted above.

2. Compliance Advisor / Ombudsman

The IFC and Multilateral Investment Guarantee Agency (MIGA), established their dispute settlement and compliance system, the Compliance Advisor / Ombudsman (CAO), in 1999. They established it with a tripartite role: auditing compliance with the agencies’ relevant environmental and social policies, guidelines, and procedures; providing independent advice to the World Bank president and IFC and MIGA management on environmental and social issues; and acting as an ombudsman to receive, respond to, and attempt to resolve complaints from affected parties.192

The relatively holistic approach of the CAO toward social and environmental issues is noteworthy. The CAO’s compliance role enables it to investigate issues of concern in terms of a project’s social or environmental effects or its application of a particular policy or procedure by initiating an audit.193 A request from senior management or a complaint the CAO Ombudsman has considered can trigger a CAO audit, and the CAO also can identify issues for investigation independently.194 Therefore, audits potentially provide a forum for pursuing systemic problems that lead to negative social or environmental outcomes, including violations of human rights. Because the CAO’s mandate is not limited to the proper application of World Bank policies, unlike the Inspection Panel’s mandate, compliance audits can avoid the frustration the Inspection Panel evinced regarding its inability to address the human rights concerns in the Chad-Cameroon pipeline project.

The CAO’s advisory role provides yet another mechanism for avoiding the constraints of other dispute-settlement mechanisms and advocating institutional change to bring about positive outcomes. The advisory role is general in nature, as the potential conflict with the CAO’s ombudsman function generally precludes it from advising in relation to specific projects, lest a perception of bias arise.195 It offers a perfect opportunity, however, to advise on

194. Id.
“lessons learned” from previous specific projects or complaints, including instances in which the IFC’s policies, practices, and ombudsman procedure were unable to prevent or rectify violations of human rights.

The CAO’s ombudsman function is based on the desire to resolve disputes rather than apportion blame, with a flexible approach suited to achieving outcomes in particular cases, emphasizing the role of mediation. While operational policies, procedures, and guidelines are important in defining the paradigm within which complaints are assessed, review is not limited to a strict consideration of whether the World Bank agencies were in compliance, as it is for the Inspection Panel.

The ombudsman function of the CAO provides an opportunity for greater consideration of human rights obligations and implementation of practical human rights outcomes due to emphasis on mediation and its more flexible approach compared to the Inspection Panel. On the other hand, that flexibility also can understate the importance of human rights as entitlements that cannot simply be bartered away. To the extent World Bank safeguard policies upheld by the Inspection Panel enact human rights obligations, the Panel’s somewhat restrictive policy focus may be preferable.

An external review of the CAO found that some NGOs prefer aspects of the Inspection Panel’s approach to the CAO’s ombudsman role:

When pressed, NGOs who are asking for the “teeth” of an inspection panel in fact want process certainty, even though they admit that the adjudicative outcome of the IP in some cases may give little satisfaction on the ground. “It would represent a victory—a moral vindication” is the gist of their comments. Some look forward to the CAO’s compliance audit process to provide the same satisfaction, because they would like to see both ombudsman flexibility and audit determinacy.

The audit process and advisory role of the CAO appear to provide great opportunity for improved human rights outcomes, given their potential as tools for policy and procedural reform within the institution. An external review endorsed the former World Bank president’s determination that the CAO’s advisory role should focus on “social and environmental issues that are both fundamental and far-reaching in the IFC’s and MIGA’s operations. These might include concerns with sustainability, human rights, and com-

196. Id. at 21.
197. Id. at 11.
198. Id. at 12.
pliance with international treaties.” All three of these suggested issues could be combined, ensuring compliance with norms of international human rights law by IFC and MIGA, and private sector partners and other World Bank agencies by implication.

B. IMF

In 2000, Daniel Bradlow complained that the IMF had “not established any mechanism through which the citizens of its consuming countries can hold the IMF or its management accountable for their actions as decision makers,” in relation to consequences of IMF-backed policies in those countries. In July of 2001, the IMF established the Independent Evaluation Office (IEO).

The purpose of the IEO is to conduct “evaluations on issues, and on the basis of criteria, of relevance to the mandate of the Fund,” rather than to act as a dispute-settlement mechanism. The IEO may consult with any persons or groups it deems necessary in the course of its evaluations, however, which raises the possibility that affected parties can raise their grievances with the IEO for consideration within a relevant evaluation.

Some have questioned IEO’s independence from the IMF executive board, given that the board appoints and can dismiss the director and staff of the IEO. The board also sets the terms and conditions of employment for IEO employees and controls the IEO budget and the IEO reports to the board.

The IEO operates within its predetermined work program, with three or four new topics for investigation added each financial year. Previous projects have included case studies of controversial IMF operations in Argentina, Indonesia, Korea, Brazil, and Jordan, as well as the effect of IMF operations in Sub-Saharan Africa and particular IMF methods, such as structural conditionality, PRSPs, and multilateral surveillance.

199. Id. at 19.
202. See id.
203. Head, supra note 61, at 560-61.
204. Id. at 561.
There is potential to consult the people affected by the issues studied in the IEO’s work program in the course of an evaluation, giving them an opportunity to raise human rights concerns. However, the IEO rather than the complainant holds the ability to initiate the process. Furthermore, the intended outcome of the evaluation is advice to IMF management as part of “institutional learning” rather than resolution of complaints or rectification of wrongs suffered by a particular person or group.206 The IEO’s potential to protect the human rights of people affected by programs involving the IMF is therefore severely limited, although it yet may prove to be a catalyst for a human rights approach if its evaluations reveal institutional failure to respect, protect, or sufficiently consider human rights.207 The IEO’s potential role in the realization of human rights is at the macro level rather than as an adjudicator of specific grievances.

From the perspective of international human rights law, the Tilburg Guiding Principles criticized IEO’s effectiveness as a recourse mechanism in the following terms: “The key lacuna in the Office’s terms of reference, however, is that affected or interested parties cannot challenge IMF programs if flawed. For that reason, there is still a need to establish a complaint office.”208 The Tilburg Guiding Principles advocate the integration of human rights considerations into the IEO’s terms of reference,209 but also call for the IMF to “review its accountability mechanisms, in order to provide for settlement of complaints, brought by affected individuals and communities, challenging IMF programs and policies.”210

Currently the IEO shares the shortcomings of the World Bank’s recourse mechanisms in failing to recognize the legitimacy of human rights as part of the body’s mandate, but it also fails to provide access to those who consider themselves victims. Although recourse for victims is not the intended function of the IEO, which


207. Namita Wahi takes a more skeptical stance: The IEO’s mandate is limited to a determination of the IMF’s compliance with its mandate and the IMF has consistently maintained that protection or promotion of human rights is outside its mandate and a factor not to be considered while designing its policies. Therefore, the IEO has very little utility for the purpose of establishing human rights accountability of the IMF.

Wahi, supra note 3, at 361.


209. Id. ¶ 41, at 257.

210. Id. ¶ 42, at 257.
more closely resembles the CAO’s advisory function than its ombudsman role, the absence of a forum for human rights complaints against the IMF is a key omission. The macroeconomic focus of the IMF likely means that the nature of human rights complaints would be more collective than the project-related complaints heard by the Inspection Panel and the CAO. This might require a representative complaints process of some kind. Regardless of the difficulties, the absence of any forum for human rights claims is a significant barrier to human rights being taken seriously within the IMF.

IX. CONCLUSION: THE IMPORTANCE OF HUMAN RIGHTS LANGUAGE

To varying degrees, the IFIs acknowledge the relevance of human rights issues in their rhetoric, although they usually do not use human rights terminology and avoid or deny applicability of international human rights law. IFIs unquestionably engage with civil society today, including human-rights-focused NGOs, which they did not do just a few years ago. They also significantly engage with the human rights apparatus of the United Nations, including annual consultations between representatives of both the World Bank and the IMF, regional development banks, the U.N. Independent Expert on the Effects of Economic Reform Policies and Foreign Debt on the Full Enjoyment of Human Rights, Particularly Economic, Social and Cultural Rights, and periodic consultation with the United Nation’s human-rights-treaty-monitoring bodies, particularly the Committee on Economic, Social and Cultural Rights.211

The IFIs’ increased focus on poverty alleviation as a principal objective, particularly in the World Bank, is another significant step toward the realization of human rights as a goal and an outcome of IFI-sponsored programs. All the same, the IFIs’ refusal to use the language of human rights is a concern, and potentially presents a barrier to a more comprehensive embrace of human rights. With regard to the IMF, Christiana Ochoa has argued:

The list of IMF “social issues”—poverty alleviation; employment; social accommodation for disadvantaged individuals and groups; and access to public service including health and education programs—roughly corresponds to rights found in the ICCPR and ICESCR. . . . Instead of recognizing and citing these rights as the foundation for the “social dimensions” of its work,

211. See, e.g., ECOSOC, Effects, supra note 1; HRC, Promotion and Protection, supra note 69.

The concept of human rights as inalienable entitlements of every human being deriving from human dignity, rather than a privilege granted by the state or some other social institution, is entirely incompatible with an approach that recognizes the legitimacy of a “social issue,” but then weighs that concern against other factors in a cost/benefit analysis.

Of course, use of human rights terminology has no value if IFIs do not share understanding of the obligations it implies, or their understanding differs from that of human rights institutions and lawyers.\footnote{See Adam McBeth & Sarah Joseph, *Same Words, Different Language: Corporate Perceptions of Human Rights Responsibilities*, 11 AUSTL. J. HUM. RTS. 95, 95 (2005).} Indeed, if the words are not backed up by a serious intent to place respect for and protection of human rights at the forefront of the institutions’ activities, their deployment effectively could conceal conduct that is inconsistent with realization of human rights, or even devalue the currency of “human rights approaches” if people perceive an approach as ineffective. Mac Darrow articulated a fear among human rights advocates of “the risk of normative dilution through inappropriate or insincere operationalisation” of human rights principles by IFIs.\footnote{Darrow, supra note 4, at 195.}

While deployment of human rights language would heighten awareness of human rights issues within IFI operations and tap into the underlying principle of human dignity and the jurisprudence of international human rights law, there may be some value in the professed preference of the World Bank for outcomes over language; as Wolfensohn put it, “doing it quietly”—working to deliver human rights without the controversy supposedly associated with human rights terminology.\footnote{Wolfensohn, supra note 45, at 331.} Alfredo Sfeir-Younis has argued that the missing link is cultural or philosophical, and that an excessive focus on terminology and documentation may be counter-productive.\footnote{See Sfeir-Younis, supra note 85, at 41.} The debate regarding World Bank development strategies, he argued,

should not be centred on the abstract list of great human, social or cultural elements they portray in those strategies. It is clear that the intention is not to create more poverty, or to degrade
the environment, or to create more problems for minorities. Thus, in the abstract, most of the development strategies seem to be fine. All of them honour the unity and holistic aspects of development and social progress. The real issue, however, is related to our societies’ inability to maintain the holistic nature of human rights values, or human values in general, when we launch ourselves into development implementation. There seems to be a breakdown somewhere . . . . New development strategies without resolving the causes of the breakdown, will simply result in more documentation and declarations of intent than in respect and realisation of human rights.”217

This Article submits that more direct and willing engagement with international human rights law by IFIs is necessary to gain a holistic understanding of human needs and the role IFIs play in both delivering and obstructing those needs for different groups. Ideally, the IFIs would acknowledge institutional obligations to respect human rights in the course of their operations. For now, however, to the extent IFIs engage with human rights, they still presume the ultimate responsibility lies with the relevant state and excludes the financial institution. It is certainly true, as Salomon has pointed out, that there is a difference between the Bank taking on human rights in an effort to facilitate the human rights responsibilities of its members through the provision of support in giving effect to their human rights obligations . . . and accountability for the impact on human rights of the World Bank (or indeed the IMF) itself for its economic policy prescriptions in borrowing countries.218

The IFIs’ willingness to facilitate positive human rights obligations of states, particularly through PRSP programs and development projects, may be a valuable step in their recognition of the impact IFI action has on the realization of human rights, including its potential to facilitate as well as to impede a state’s ability to fulfill the human rights of its people. In facilitating states’ positive human rights obligations, IFIs should unambiguously accept the nature of human rights as inalienable rights deriving from human dignity. In many cases, this approach and the one that currently prevails amount to no difference in practical outcome. The exceptions, however—the individuals and groups whose rights are outweighed by other concerns—make IFIs’ explicit engagement with human rights vital.

217. Id.