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World Bank's Roadmap and the Inspection Panel's Human Rights Responsibilities

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1. *The World Bank and human rights*

The World Bank has been under pressure to devise a process for "evolving" its mission, operations, and resources, acknowledging that decades of engagement with low- and middle-income countries has resulted, paradoxically and contrary to its official mission, in a "crisis of development." The Bank bluntly notes in the opening to its paper "Evolving the World Bank Group's Mission, Operations, and Resources: A Roadmap," issued in December 2022, "after decades of progress, growth and poverty reduction have stalled." Indeed, this "crisis of development" threatens to unleash political instability around the world.

Pressure to reform the institution is coming not only from civil society organizations but also from member governments of the Bank, particularly from countries in the Global South where leaders face political backlash for the devastating effects of neoliberal reforms. As the Roadmap notes, "Urgent action is needed to address the growing crisis of poverty and economic distress, and global challenges, including climate change, pandemic risks, and rising fragility and conflict." Indeed, economic and environmental crises are triggering civil strife, eroding social cohesion, and encouraging far-right, religious fundamentalist, and authoritarian tendencies that severely erode human rights.

Given this context, it is worth recalling that the Bank is bound by international human rights law[3] and that - with questionable success -[4] it has been trying to integrate these legal norms into its own policies and practices.[5] It is also timely to recall that the 2016 WB "Vision Statement"[6] noted that "the World Bank's activities support the realization of human rights expressed in the Universal Declaration of Human Rights." The World Bank Inspection Panel is - at least on paper - a key institutional player that should

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[3] Daniel Bradlow, "The World Bank, the IMF, and Human Rights," *Transnational Law & Contemporary Problems*, 1996, Vol. 6, pp. 47-90.

[4] UN Special Rapporteur on Extreme Poverty and Human Rights, "The World Bank is a Human Rights-Free Zone," Press release, 29 September 2015, at https://www.ohchr.org/en/press-releases/2015/09/world-bank-human-rights-free-zone-un-expert-extreme-poverty-expresses-deep.

[5] Siobhán McInerney-Lankford, "International human rights law, politics and international financial institutions: the case of the World Bank," in B. Andreassen (ed.), *Research Handbook on the Politics of Human Rights Law*, Elgar, 2023, ch. 15.

[6] World Bank, "A Vision for Sustainable Development, Environmental and Social Framework,", 4 August 2016.

strengthen and bolster the Bank' accountability in respecting and meeting the standards of international human rights law.[7]

2. The Roadmap has very modest ambitions and a mere shift in focus

Compared to those voices advocating for systemic changes,[8] the WB's evolution Roadmap has very modest ambitions, broadly sticking to versions of the usual GDP-linked development indicators. It seeks to expand the WB's vision and mission by broadening its limited "twin goals" of "ending extreme poverty and boosting shared prosperity" by 2030, to emphasize sustainability and resilience and the creation of global public goods as a way of addressing challenges such as climate change and pandemic preparedness, prevention and response. The Roadmap redefines inclusiveness to pay more attention to middle-income countries that also face challenges to their sustainable development. But it leaves unaddressed the issue of whether this extension will be in addition to an increased engagement with low-income countries (LICs). The Roadmap is largely a promise to review the WB's operating model, and perhaps more importantly for the institution, to find ways of increasing resources and enhancing its "financial model,"[9] to achieve these loosely defined objectives.

Rather than break away from the reliance on traditional indicators and the tethering of multilateral public finance to private finance and instead incentivizing private finance to wade into areas with low profit probabilities but high social returns, the Roadmap seems to be strengthening the Bank's outdated tendencies. The Bank could feasibly address some of these issues by importing a select set of outcome indicators that more generally reflect advances and regressions on human rights into the development-indicators framework. The OECD, for example, declared as long ago as 2006 that human rights should be integrated into development.

3. Incorporating human rights into WB indicators

Yet even the WB acknowledges in its Roadmap that there is a need to explore new indicators for measures of prosperity. While any single indicator is inadequate in terms of coverage and reliability, a combination of indicators that go beyond just GDP, for example, do help assess progress on the sustainable development front and rank countries in terms of relative achievement.

The World Bank notes: "The evolution exercise will review the current approach and explore the possibility of using new indicators for measuring prosperity," it says. In that spirit and given that the WB is technically part of the U.N. system - which codifies human rights in its Charter - the case can be made for a richer set of indicators that acknowledge

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[7] Viorica Vita, Rachel Tan, and Nealofar Panjshiri, "The World Bank Inspection Panel and International Human Rights Law," International Organizations (IO) Clinic at NYU School of Law, 2007, at https://www.iilj.org/publications/world-bank-inspection-panel-international-human-rights-law-%EF%BB%BF/.

[8] Bretton Woods Project, "UDHR and IPN anniversaries underscore urgent need for Human Rights policy at all IFIs," July 2023, at https://www.brettonwoodsproject.org/2023/07/udhr-and-ipn-anniversaries-underscore-urgent-need-human-rights-policy-at-all-ifis/.

[9] Andrea Molinari and Leticia Patrucchi, "World Bank Group Evolution: Technical fixes or urgently needed reform?," *Bretton Woods Project At Issue*, July 2023, at https://www.brettonwoodsproject.org/wp-content/uploads/2023/07/Molinary-Patrucci-WB-Evolution-Roadmap-Summer-2023-FINAL.pdf.

human rights. As explained, the World Bank Group is bound by international human rights law, which includes civil, political, economic, social, and cultural rights. Yet the notion of development that it follows does not include the full realization of all human rights. Hence, it is urgent to design and effectively implement indicators with a strong human rights focus that accurately measure outcomes. Furthermore, it is technically possible to do this, and should in fact be mandatory.

The framing of these indicators must be guided by the obligation to contribute to the advancement and full realization of all human rights. At the minimum this should include:

i. The right to food, in the form of universal access, for free or at heavily subsidized prices for those who require it, to a minimum quantity, comprising staples and other elements that meet basic caloric and nutritional requirements;

ii. The right to education, with free and compulsory access to school up to the higher secondary level for all children in the relevant age group;

iii. The right to health, with universal access to free primary and secondary health care;

iv. The right to employment, with a guarantee to provide, on demand, a certain number of days of employment in a year at the national minimum wage, failing which the beneficiary would be eligible for an equivalent unemployment allowance to cover the shortfall.

Needless to say, realizing these targets would require the allocation of adequate resources from State budgets relative to GDP. Development policy recommendations from the World Bank should advocate for the necessary fiscal space to provide that allocation.

UNCTAD recently developed a Sustainable Development Finance Assessment (SDFA) Framework[10] for policymakers of developing countries to assess the development finance that each of them may need to achieve structural transformation, and to realize the most significant Sustainable Development Goals (SDGs), while at the same time ensuring the sustainability of their external and public sector financial positions. While SDFA seeks broadly to facilitate the achievement of SDGs, it is perfectly compatible with a more specific and concrete human rights approach.

4. A role for hybrid indicators

Incorporating human rights elements into the set of indicators can be facilitated by the use of hybrid indicators that link financial trends and movements in crucial outcome indicators. "Hybrids" involve the simultaneous use of more than one indicator when attempting to assess determinants of or influences on progress or absence thereof in crucial human development area. As an example, one indicator (for which information is already available) that can be used by the World Bank is the value of the public-health-sector budget in relation to annual external debt payments. This ratio would give a general idea of the priority given to realizing the population's right to health. To assess the fallout of different levels of diversion of budgetary resources away from public health to

[10] UNCTAD (2022), "UNCTAD Sustainable Development Finance Assessment (SDFA) Framework: linking debt sustainability to the achievement of the 2030 Agenda", DA Covid-19 Project Paper 16/22, November, at https://mobilizingdevfinance.org/research-material/unctad-sustainable-development-finance-assessment-sdfa-framework-linking-debt.

servicing of external debt, parallel trends in indicators such as neonatal, infant, and maternal mortality rates can be examined." Debt-sustainability analyses can then concretely integrate the debt-driven consequences of limited public health spending. This would reveal the amount of additional resources needed in this area based on the specific overall health situation and challenges a country faces. The development indicator here connects external financial sustainability, public-sector financial sustainability, and the realization of specific human rights.

Focusing on specific features of the right to health does not mean that issues such as underspending and overspending in general are not relevant to assessing the impact of public finance on human rights. Rather, other perspectives need to be added and integrated into the universe of development indicators in order to understand and show more holistically the causes and effects of the main global social, economic and environmental challenges that countries confront. Promoting good governance while protecting minimum fiscal capacity for rights-sensitive budget items are mutually reinforcing goals.

Similar indicators can also link the level of a population's access to clean water and sanitation with the country's spending to service external debt. More specifically, changes in indicators such as water system functionality, safe management of sewage, water quality, sustainability, sanitary risk, and the enabling environment, can be measured and assessed relative to debt repayments.

Measures of gender equality offer an example of how human rights-centered development indicators can be elaborated in a detailed and sophisticated way. A measure, for example, of the asymmetry in the distribution of care work among men and women in a given country could also be related to sums directly devoted in the public budget to the care economy and to the level of external debt-service payments.

Such conjoined indicators could help the World Bank and its shareholders and constituents better understand the extent to which a given debt burden is sustainable from a human rights perspective. As mentioned earlier, this information can - and should - inform the due diligence that creditors perform when assessing the credit risk of a given borrowing State and, ultimately, help determine whether and under which conditions debt relief should be granted or agreed.

Movement toward these outcomes entails greater reliance on a framework that emphasizes development policy lending (which supports the overall development effort), as opposed to investment or project lending (or financing focused on individual projects). The difficulty is that the Bank links development policy financing to "assessment of performance against a set of indicators in the form of institutional or policy reform measures that reflect progress in implementing a country-owned reform programme." But the agenda for reform and the indicators linked to it privilege private initiatives over proactive State intervention. Combined with associated privatization, this approach prioritizes fiscal consolidation of a kind that limits state capacity and embraces markets that function within power structures.

5. The role of the Inspection Panel

The current World Bank framework, as signaled in the Roadmap, must change its lending practice to advance human rights, especially social and economic rights. As all human rights are interdependent – something seen particularly dramatically during the pandemic – the attainment of social and economic human rights can, in turn, advance the right to health and even the right to life. Furthermore, the Bank, as any other multilateral financial institution, should not be deterred from adopting a human rights approach in its decisions and daily practices by allegations – or fears of allegations – that it is meddling in countries' internal politics or that it is increasing bureaucracy and transactional costs.

Human rights recognized in international conventions are not about politics, but about universally agreed upon moral and legal values. Anticipating the effect of loans and policy recommendations on human rights and development does not create inefficiency; rather, inefficiency derives from the failure to meet basic institutional objectives by repeatedly prescribing the same policy recipes that harm instead of benefit the people of developing countries.

The establishment of the World Bank's Inspection Panel (the Panel) in 1993, as an independent accountability mechanism, was a significant step toward getting the World Bank to recognize and guard against or redress potential human rights violations in the projects it finances. The Inspection Panel provides a forum for individuals to report violations in Bank-funded projects and obtain redress for harms they have faced as a result of projects financed by the World Bank. Private individuals or communities can submit petitions to the Inspection Panel, claiming that "their rights or interests have been or are likely to be directly affected by an action or omission of the World Bank as a result of a failure of the Bank to follow its operational policies and procedures with respect to the design, appraisal, and/or implementation of a project financed by the Bank".[11] Such acts or omissions include situations where "the Bank is alleged to have failed in its follow-up of the borrower's obligations under loan agreements with respect to such policies and procedures".[12]

In practice, while the Panel has made some difference, its interventions have fallen short of requirements. It does not manage to ensure that the voices of those likely to be affected by projects financed by the World Bank are heard adequately at the planning stage. It often acknowledges violations when much damage has already been done. Many projects with damaging consequences have gone to completion even since the launch of the Panel. Even when it investigates, identifies violations, and assesses the extent of damage caused, it does not have the power or the resources to ensure that the victims are adequately compensated.

Moreover, being focused on assessing the impact of projects financed by the World Bank, the Panel does not recognize the damage done by making financing dependent on adopting policy regimes or implementing macroeconomic or financial policies that influence the pace and pattern of development. Whatever the Bank's reading of a situation, the policies at the back of the books providing these analyses adhere to the same neoliberal prescriptions that exacerbate the inequities embedded in markets with participants who are asset-rich and exert differential power.

However, the Inspection Panel should not wear blinders when assessing the cause of the actual or potential adverse effects on people's human rights; otherwise, its ultimate objective would be to work as an ambulance instead of improving World Bank's policies and preventing damage. As explained by a number of scholars from different regions in a recent open letter addressed to the Bank and the UN, "SDG10 is not a separate,

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[11] Int'l Bank for Reconstruction and Development [IBRD] and Int'l Development Association [IDA], *The World Bank Inspection Panel*, ¶ 12, IBRD No. 93-10, IDA No. 93-6 (Sept. 22, 1993); *1999 Clarification of the Board's Second Review of the Inspection Panel*, The World Bank, ¶ 12–13 (1999).

[12] *Id.*

standalone goal: all economic, financial, and social policies should be assessed in terms of their likely impact on this goal. This would clearly signal our collective ambition to forge a more equal world."[13]

If the World Bank does not develop and adopt a robust legal approach which necessarily includes human rights indicators, to measure and assess - and if necessary recalibrate, - its own policies, how is the Inspection Panel supposed to effectively carry out its responsibilities? The Inspection Panel, that claims to be an independent body, must examine the implications of the World Bank's policy framework, besides spontaneously (*juria curia novit*) using the applicable human rights standards to assess and decide on the impact of cases referred to it.

[13] Open Letter to the United Nations Secretary-General and President of the World Bank-Setting Serious Goals to Combat Inequality, 18 July 2023, at https://equalshope.org/index.php/2023/07/17/setting-serious-goals-to-combat-inequality/.