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UPDATES FROM INTER-GOVERNMENTAL AND NON-GOVERNMENTAL ORGANIZATIONS

THE WORLD BANK APPRAISES THE VALUE OF BIODIVERSITY

Biodiversity is the variety of life on earth, encompassing plants, animals, their surrounding environments, and the interdependent nature of all organisms. In recognition of the importance of biodiversity, the UN declared 2010 to be the International Year of Biodiversity. To celebrate, the UN promoted greater awareness of the importance of biodiversity to humanity's continued existence. The World Bank is a significant partner in the drive to preserve biodiversity and has undertaken the task of helping countries implement measures to protect their biodiversity by acting as an enforcement mechanism to encourage compliance with the Convention on Biodiversity (CBD).

The CBD entered into force on December 29, 1993 and has been signed by 193 states. It was inspired by a growing global commitment to sustainability and represents "a dramatic step forward in the conservation of biological diversity, the sustainable use of its components, and the fair and equitable sharing of benefits arising from the use of genetic resources." The CBD links the protection of biodiversity to human rights because understanding biodiversity can lead to future improvements in quality of life, providing better, more affordable healthcare, and sustainable food growing measures. The CBD acknowledges that substantial investments are required to "address the loss of biological diversity" and asserts that such investments will bring significant environmental, social, and economic benefits. The World Bank, recognizing the importance of this Convention, has committed to facilitating state compliance by creating an innovative enforcement mechanism.

A direct enforcement mechanism to ensure compliance with the CBD was not envisaged by the drafters. Instead, the CBD relies on states to adopt or change their own domestic legislation. Article 27 of the CBD includes a tiered dispute resolution process with a clause permitting the International Court of Justice to claim jurisdiction over violations of the Convention through an optional referral process. Article 14(2) requires the Conference of Parties (COP), a committee created by the CBD as an investigative review body, to examine "the issue of liability and redress, including restoration and compensation, for damage to biological

diversity." Because a commission or other regulating body does not enforce the CBD, the COP has only been authorized to engage in information gathering. This enforcement gap has opened the door for non-governmental and inter-governmental organizations to help create alternative and innovative solutions to ensure compliance.

World Bank investments have helped to initiate state protection of the world's biodiversity. However, direct monetary support has not come with concrete incentives and has proven insufficient. This deficiency has not gone unnoticed by the heads of the World Bank. Speaking at the opening in of the Tenth Conference of the Parties of the Convention on Biological Diversity (COP10) in October 2010, World Bank Group President, Robert B. Zoellick said that the Bank would increase support for the conservation of the world's natural resources, noting that protecting ecosystems and biodiversity were central to overcoming poverty. The World Bank also announced a pilot program to increase involvement in protecting biodiversity by "turn[ing] nature into numbers" through a study on how the ecosystem affects state economies. Ten countries will take part in the project, which aims to give finance ministers a more complete "picture of what their countries' assets are worth." By linking the economic value of the state to protection of its biodiversity, the World Bank is encouraging state leaders to invest in environmental measures. World Bank development program benefits are directly linked to the total net worth of a state's economy. Adding the value of a state's biodiversity to the state's net worth increases the benefits eligibility of that state, providing a monetary incentive to meet CBD obligations.

By offering economic incentives for their compliance, the World Bank plays an instrumental role in encouraging states to comply with their CBD obligations. The World Bank pilot program may even establish a system of enforceable, *de facto* sanctions on states that do not protect their biodiversity by lowering the economic net worth of such states, reducing their development funds. Offering economic incentives serves as a way to encourage compliance with the CBD and strengthen the global commitment to the preservation of biodiversity.

MICROFINANCE REGULATION AS A WAY TO PROTECT POVERTY ALLEVIATION

Microlending has become popular as a way to alleviate poverty through economic empowerment. Although there is no explicit international right to be free from poverty, poverty significantly hinders the enjoyment of recognized human rights found in international instruments such as the Universal Declaration of Human Rights (right to dignity and shelter), the International Covenant on Economic, Social and Cultural Rights (right to food), and the Convention on the Elimination of Discrimination Against Women (right to water). Yet, these provisions do not provide solutions to the problem of poverty and the protection of these human rights. Microfinance has emerged as one possible solution, and, under the right circumstances, can help raise whole families out of poverty.

Microloans are generally available without collateral, making credit available to people too poor to secure traditional bank loans; the additional risk is offset by higher interest rates or social guarantees provided through a group lending model. The Grameen Bank is one microfinance NGO that relies on solidarity lending whereby small groups borrow collectively and group members encourage one another to pay back their loans. Mohammed Yunus, Grameen's founder, earned the Nobel Peace Prize in 2006 for his development model, which assists "5 percent of Grameen borrowers [to] get out of poverty every year." The solidarity-lending model creates accountability for repayment and is now utilized by other microfinance NGOs such as Self-Employed Women's Association of India (SEWA) and ACCION International.

The microfinance industry has expanded through not-for-profit NGOs as well as for-profit banks. With this popularity and growth, the microfinance industry has begun to receive criticism for high interest rates and irresponsible lending due to an overabundance of credit and competition between micro-lenders. Inadequate regulation of the microfinance industry has allowed microloans to, at times, become debilitating burdens because of a range of abuses and excesses, including over-indebtedness, repayment problems where borrowers suddenly have access to multiple lenders, abusive repayment recovery methods,

and to a lesser extent, exorbitant interest rates. A confluence of events has led to a situation where microloans push borrowers who are already poverty stricken into more severe debt and prove to be an obstacle to realizing their human rights.

A growing number of countries are enacting legislation to protect the poor, and international organizations are providing guidance on how to facilitate better microlending. Approaches include introducing a legal framework for microfinance institutions, such as the newly enacted Russian Federal Law No. 151-FZ, or amending banking regulations to take into account the increase in microlending, as Kenya has recently done. These laws help keep track of legitimate microlending organizations and allow the state to hold these organizations accountable. National regulations are compiled by the Consultative Group to Assist the Poor (CGAP), an independent policy and research center housed at the World Bank. This compilation demonstrates the trend toward passing microlending regulations and provides examples of national regulation methods. CGAP has promulgated the first potential framework for the regulation of microfinance, the non-binding *Consensus Guidelines: Guiding Principles on Regulation and Supervision of Microfinance*. These guidelines serve as a standard setting tool for those concerned with the microfinance industry.

The Basel Committee on Banking Supervision sets international standards to monitor the practices of international banking; however, there are no internationally recognized standards for microlending. In February 2010, the Basel Committee issued a paper, *Microfinance Activities and the Core Principles for Effective Banking Supervision*, which contains supervisory guidance for the application of the Basel Core Principles for Effective Banking Supervision to microfinance activities. This proposal is still in its initial stages and the likelihood of international adoption is still unclear. However, standards promulgated by the Basel Committee usually have high rates of compliance and widespread integration into domestic practice. These principles are proposed prudential regulation guidelines aimed at the soundness of the microfinance industry and the financial system as a whole. The recent involvement of the Basel Committee demonstrates the level of international prominence microfinance has reached.

The poverty-stricken in India are among the most high-profile microloan recipients.

This recognition is well deserved, as Indian banks devote approximately U.S. \$4 billion to the microlending industry. Following scandals in late 2010, Indian politicians are accusing the industry of profiting off the poor; these politicians have begun encouraging microloan borrowers to stop repaying their loans. India has a progressive constitution that allows for the recognition of individual and collective rights, including those guaranteed by international human rights instruments to which India is a signatory. India has signed and ratified international instruments that assert the right to food, water, shelter, work, and human dignity. Microfinance, if properly regulated, can help achieve access to these human rights. The Basel Committee paper and the CGAP compilation of regulations may be able to provide assistance to the Indian parliament on how to better regulate the microlending industry and meet the government's human rights obligations through more effective laws.

As proven by the success of the Grameen Bank, microloans can help reduce poverty and thereby promote realization of fundamental human rights. However, as with any new industry, there are twin dangers of both ignoring growing problems and over-reacting to the recent abuses. In order to avoid losing the benefits of microlending, national legislators should use international standards and comparative state practice to create more effective regulations.

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ACCOUNTABILITY IN BURMA: MOVEMENT TOWARDS A UN COMMISSION OF INQUIRY

In March 2010, the UN Special Rapporteur on human rights in Burma, Tomas Quintana, urged the UN "to establish a commission of inquiry with a specific fact finding mandate to address the question of international crimes" in Burma. This suggestion came in response to allegations by Burmese activists and non-governmental organizations (NGOs), such as Human Rights Watch, that Burmese government actors have committed crimes against humanity and war crimes. The United States, the United Kingdom, Canada, and Australia, among other nations, have voiced support for Rapporteur Quintana's proposal to investigate charges including murder, torture, rape, warrantless detention, widespread forced relocations, and forced labor. In light of the Burmese

government's failure to act upon these allegations, accountability will likely be achieved only through cooperation from the international community.

The United Nations can establish a commission of inquiry to investigate crimes against humanity through a resolution from the Human Rights Council (HRC), the General Assembly (GA), or the Security Council (SC). Alternatively, the Secretary-General can establish a commission, which is not without precedent. In 2004, the UN was faced with a serious challenge in Darfur, where an uncooperative government was accused of being complacent in systematic crimes against humanity. The SC passed Resolution 1564, establishing the International Commission of Inquiry on Darfur (Darfur Commission). The Darfur Commission's mandate was to "[immediately] investigate reports of violations of International humanitarian law and human rights law in Darfur by all parties, . . . and to identify the perpetrators of such violations with a view to ensuring that those responsible are held accountable." The largely successful investigation methods of the Darfur Commission may offer a model from which a Burmese commission could learn.

The Darfur Commission's fact-finding delegation conducted visits to Sudan to interview members of the national government, provincial and local leaders, members of the armed forces, IDPs, victims and witnesses of violations, NGOs, and UN representatives. Because it gathered testimony representative of many viewpoints in the conflict, the international community regarded the Darfur Commission as credible and impartial. Once the investigation was complete, the Darfur Commission recommended, based on its findings, that the SC refer the matter to the ICC. Even though allegations of abuses in Darfur were often denied or downplayed by the Sudanese Government, the Darfur Commission was able to convey to the world the extent of the atrocities being committed in an impartial and trusted manner.

For over twenty years, the UN has passed various resolutions urging the Burmese government to respect human rights. A commission of inquiry would provide credible answers to allegations that crimes against humanity and war crimes have been perpetrated, and would help establish accountability for the acts. If the commission were to find that these allegations were true, it would have two principle options. It could follow

the example of the Darfur Commission and recommend that the SC refer the matter to the ICC, although it is unlikely that the SC would follow this suggestion. For a SC referral, nine of the fifteen countries on the SC must vote yes and there can be no veto from the five permanent members of the SC. China has actively opposed past resolutions against Burma, and would likely oppose ICC involvement. Because of the difficulties inherent in passing an ICC referral through the SC, a commission of inquiry would likely seek another means of accountability.

Confronted with the difficulties in convincing the SC to refer the Burmese government to the ICC, the commission could instead recommend that the SC establish a compensation commission to bring redress to victims. This commission would be established under the terms of the GA's Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (GA's Declaration), and would preside over compensation claims made by victims of the crimes found by the initial commission of inquiry. Because of the broad definition of victim under the GA's Declaration, anyone harmed physically, mentally, emotionally, or economically by way of human rights violations could seek compensation. Compensation could include medical and psychological rehabilitation, access to legal and social services, or forms of widespread remedy such as an official public apology or guarantees of non-repetition.

Were a UN commission of inquiry to find that crimes against humanity had indeed occurred, it would be a powerful statement to the SC that the Burmese government must be held responsible. A credible investigation based on objective evidence would be difficult for the international community to ignore. Referring the perpetrators to the ICC, or creating a compensation commission, would be one of the first steps in bringing justice to victims and ensuring accountability

TESTING THE EFFICACY OF THE WORKING GROUP ON ENFORCED AND INVOLUNTARY DISAPPEARANCES IN COTE D'IVOIRE

Established on February 29, 1980, the United Nations Working Group on Enforced and Involuntary Disappearances (WGEID) was the first UN mechanism designed to respond to a particular human rights issue. WGEID was not intended to be a permanent solution to the problem of enforced and involuntary disappearances, and accordingly the original mandate only tasked the Working Group with collecting information and mak-

ing recommendations to the UN Commission on Human Rights. Today, WGEID examines reports of enforced disappearances received from human rights groups and family members of the disappeared. Despite its expanded role, however, it is still not authorized to directly investigate individual cases, protect petitioners against reprisals, establish responsibility, judge, sanction, exhume remains, grant reparations, or deal with cases involving non-government actors.

In essence, WGEID's role is that of a mediator with no adjudicatory or enforcement powers. It facilitates communication between families and government actors, and issues urgent communications asking governments to locate and protect disappeared persons. WGEID does not require exhaustion of all domestic legal remedies, but cases must be submitted by relatives of the disappeared rather than by an NGO or another third party. It may also refer matters to the UN General Assembly through the Secretary-General upon receipt of well-founded information of widespread or systematic state-sponsored enforced disappearances. However, if the government fails to respond, or if the General Assembly and Secretary-General take no action, the Working Group has virtually no power to proceed further. Thus, while the WGEID has handled a total of 53,252 cases in over eighty countries since its creation, it has only clarified, closed, or discontinued 10,362 of them.

The International Convention for the Protection of all Persons from Enforced Disappearances, which entered into force in December 2010, overcomes some of the WGEID's shortcomings. Its 23 States Parties undertake binding legal obligations and are subject to review by a committee authorized by the Convention. Yet, for the vast majority of states that have not yet ratified the Convention, WGEID remains the sole UN organ with specific authority to deal with enforced disappearances.

The recent Cote d'Ivoire case illustrates the persistent weaknesses of this system. Cote d'Ivoire is not a signatory to the Convention, and thus WGEID is the only available mechanism for the victims of at least 24 reported cases of politically motivated disappearances, which have allegedly occurred since the disputed November 28, 2010 presidential elections in Cote d'Ivoire. After investigating the sudden and numerous disappearances in Cote d'Ivoire occurring in the wake of the ongoing political crisis, WGEID suggested that these disappearances are systematic and calculated

moves by forces loyal to President Laurent Gbagbo against supporters of the internationally-recognized winner of the election, Alassane Outtara. Yet, because the WGEID operates primarily as a fact-finding body, it cannot give legal effect to its conclusion that the Ivorian government is responsible for human rights violations, nor compel the government to cease or prevent such abuses.

WGEID has two viable options in the Cote d'Ivoire situation: (1) it could bring the matter to the attention of the General Assembly for referral to the Security Council; or (2) it could make a recommendation to a competent regional or domestic court system. If the General Assembly referred the matter, the Security Council could increase troop presence in the ongoing UN peacekeeping mission in Cote d'Ivoire or establish a negotiation team to facilitate a peaceful resolution. In the alternative, WGEID could recommend that the Community Court of Justice of the Economic Community of West African States (ECOWAS), granted power in 2007 to review violations of human rights in all member states, take action. While the African Charter on Human and Peoples' Rights does not specifically mention enforced disappearances, such actions would likely violate the rights to life and integrity of the person (Article 4), human dignity (Article 5), and liberty and security of the person (Article 6). Unfortunately, this regional court has, until recently, been plagued by access problems and relatively few human rights cases have been successful. For those states which are not party to the International Convention for the Protection of All Persons from Enforced Disappearances, WGEID functions as a starting point for families to get answers and raise awareness of the situation of their relatives. However, WGEID's limited mandate forces it to maintain a balance between its position as an advocate for families of the disappeared and effective communication with the governments perpetrating the disappearances. The entry into force of the new International Convention makes it unlikely that WGEID's mandate will be strengthened. Therefore, for WGEID to be effective, the Security Council and regional tribunals must act upon its recommendations, or else countries will continue to defy requests by WGEID and families will continue to go without answers.

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