

# Financial Institutions and the Rights of the Child

## An Overview of Policies and Accountability Mechanisms



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International Commission of Jurists  
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Rue des Bains 33  
Geneva  
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This report was written on the basis of an original paper prepared by Gamze Erdem Turkelli and with extensive contributions from Elana Berger (Bank Information Centre) in Chapters 1 and 3 (section 3); Ute Hausmann (FIAN) in Chapter 3 (section 1); and Wan Chun Yau (Hong Kong City University) in Chapter 3 (section 2). Carlos Lopez completed the research and prepared the final draft with the assistance of Daniel Uribe. Ian Seiderman and Jill Heine provided legal review.

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3ª. avenida 14-62, zona 1

PBX. 2245 8888

[www.serviprensa.com](http://www.serviprensa.com)

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## Introduction

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The conduct of international financial institutions (IFIs) often has a substantial, sometimes adverse, impact on the enjoyment of human rights of persons affected directly or indirectly by their activities. There is today a revival of interest in the linkages between human rights and financial institutions, particularly international financial institutions (IFIs) such as the World Bank and the International Monetary Fund (IMF). This is due in part to the priority recently accorded to the area of business and human rights by international human rights institutions and civil society, including at the UN Human Rights Council. But concerns about these issues are not new. In fact, already in 2002, a group of experts met at Tilburg University and drafted the *Tilburg Guiding Principles on World Bank, IMF and Human Rights*<sup>1</sup> in an attempt to clarify rules governing IFIs' operations and their impact on human rights. The *Tilburg Guiding Principles* elaborate on the human rights obligations of the World Bank and the IMF and emphasize the need for monitoring and evaluation of the human rights impact of their activities. They also highlight the need to ensure remedies and accountability for adverse human rights impact of IFI activities.

The United Nations human rights system has also addressed this issue, if inadequately. A number of the expert Committees that monitor State compliance with human rights treaties (human rights treaty bodies) have focused on the responsibilities of States parties both as members of IFIs and on the responsibilities of IFIs themselves in discharging their human rights treaty obligations. For instance, the UN Committee on Economic Social and Cultural Rights has also provided recommendations in relation to States' roles as members of IFIs. Thus, in its 2000 Concluding Observations on Italy, the Committee "The Committee encourages the Government of Italy, as a member of international organizations, in particular the International Monetary Fund and the World Bank, to do all it can to ensure that the policies and decisions of those organizations are in conformity with the obligations of States parties to the Covenant, in particular the obligations contained in article 2 (1) concerning international assistance and cooperation."<sup>2</sup> In the field of children's rights, as early as 2003, the Committee on the Rights of the Child adopted *General Comment No. 5 on the General Measures of Implementation of the Convention on the Rights of the Child* calling on the World Bank Group, the International Monetary Fund and the World Trade Organization to "ensure that their activities related to international cooperation and economic development give primary consideration to the best interests of children and to promote full implementation of the Convention".<sup>3</sup>

The rights of the child, like other human rights, may be affected by the activities of IFIs. Recent international developments in the field of business and human rights have highlighted this impact. In February 2013 the Committee on the Rights of the Child adopted *General Comment No. 16 on State obligations regarding the impact of the business sector on children's rights*, which includes a section on International Organizations.<sup>4</sup> According to the Committee, both States and international organizations have responsibilities under the Convention on the Rights of the Child:

- States "must comply with their obligations under the CRC [Convention on the Rights of the Child] and its protocols when acting as members of such organisations and they should not accept loans from international organizations, or agree to conditions set forth

1 Tilburg Guiding Principles on World Bank, IMF and Human Rights, <http://www1.umn.edu/humanrts/instree/Tilburgprinciples.html> (accessed 22 January 2014) The Tilburg Principles are currently under revision, see <http://www.glothro.org/main.aspx?c=.GLOTHRO&n=116822> (accessed 24 March 2014)

2 Concluding Observations of the Committee on Economic Social and Cultural Rights: Italy, UN Doc. E/C.12/1/Add.43 (2000) para 20.

3 UN Committee on the Rights of the Child, General Comment No. 5, General Measures of Implementation of the Convention on the Rights of the Child CRC/GC/2003/5, para. 64.

4 UN Committee on the Rights of the Child, General Comment No 16 on State obligations regarding the impact of the business sector on children's rights, UN Doc. CRC/C/GC/16, 2013.

by such organizations, if these loans or policies are likely to result in violations of the rights of children” (para. 47)

- “International organizations should have standards and procedures to assess the risk of harm to children in conjunction with new projects and to take measures to mitigate risks of such harm” as well as “put in place procedures and mechanisms to identify, address and remedy violations of children’s rights in accordance with existing international standards including when they are committed by or result from activities of businesses linked to or funded by them.”(para. 48)

The *Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights*, also address the question of the obligations of States as members of international organizations in Principle 15: “As a member of an international organization, the State remains responsible for its own conduct in relation to its human rights obligations within its territory and extraterritorially. A State that transfers competences to, or participates in, international organizations must take all reasonable steps to ensure that the relevant organization acts consistently with the international human rights obligations of that State.”<sup>5</sup>

The present report carries out an overview of policies and accountability mechanisms of several financial and development institutions with a view to ascertaining the extent to which they incorporate children’s rights as defined in the UN Convention on the Rights of the Child and the definitions contained in General Comment No 16 in relation to international organizations. These institutions provide direct funding or other support to private and public economic projects around the world and are therefore a key factor in determining the economic feasibility of such projects. The financial institutions covered include such international institutions as the World Bank Group, regional, the Asian Development Bank and other regional institutions, and national institutions such as the German development banks.

The general normative parameters of this report are the Convention on the Rights of the Child and the Committee’s General Comment 16. The report also makes reference to other instruments and sources that contain standards or commentary relating to human rights, environmental and social responsibilities of business corporations but do not focus extensively on them. Likewise, this report does not focus on the broader corpus of international human rights. To do so would require a major undertaking that goes well beyond the scope and objectives of this report.

The report builds on research originally done to inform the process leading to the elaboration of the General Comment 16 by the Committee on the Rights of the Child. As such it was addressed to members of the Committee and children’s rights experts and human rights defenders that were working with the Committee with a view to provide basic information on the work of financial institutions and the possible implications of their operations on the rights of the child. Consistent with its origins, the present report is intended to inform a growing but relatively unaware group of human rights defenders, especially those who focus on the rights of the child, with a view to facilitating their advocacy efforts. To that end, each section ends with a brief identification of opportunities, if any, for action to improve policies and procedures within those institutions and ensure better respect for children’s rights in their operations.

The report addresses the practice of several international, regional and national institutions with a view to identifying the extent to which they have incorporated relevant standards and recommendations on the rights of the child in their policies and operating standards. International financial institutions analysed in the report are the World Bank (International Bank for Reconstruction and Development and International Development Association) and the International Finance Corporation. The Asian Development Bank is the only regional financial institution included in the sample, but three national financial institutions from different continents are covered: Germany’s KfW Entwicklungsbank, China Exim Bank and the United States’ Overseas Private Investment Corporation – OPIC.

5 The Commentary to the Principles is published in *Human Rights Quarterly*, Volume 34, 2012, pp. 1084-1169, available at <http://www.icj.org/protecting-human-rights-beyond-borders/> (accessed 24 March 2014)



# 1. International financial institutions

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The International Bank of Reconstruction and Development (IBRD) and the International Monetary Fund (IMF) were created in 1944 at the Bretton Woods Conference held towards the end of World War II to support the reconstruction of war-ravaged Europe and to bring financial stability to markets. Both institutions, collectively called the Bretton Woods Institutions, became operational in 1946. The IBRD was later on transformed into the World Bank Group, comprising five institutions. The first part of this section will assess the World Bank Group as a collective institution and the second part will focus on the World Bank Group's public sector lending arms, the IBRD and International Development Association (collectively referred to as the "World Bank") and private sector lending arm, the International Financial Corporation, separately. The third part of this section will look at the overarching watchdog mechanism of the World Bank Group, the Independent Evaluation Group.

## 1.1 The World Bank Group

The five institutions under the World Bank Group banner are:

- The International Bank for Reconstruction and Development (IBRD), which lends to the governments of middle-income and creditworthy low-income countries.<sup>6</sup>
- The International Development Association (IDA), which provides concessional lending, loans at below market rates, and grants to the governments of the world's poorest countries.
- Collectively, the IBRD and the IDA are referred to as the World Bank, sharing headquarters, staff and senior management.
- The International Finance Corporation (IFC), an arm of the World Bank Group engaged in private lending in developing countries, provides loans, equity and technical assistance to private sector investors in these countries.
- The Multilateral Investment Guarantee Agency (MIGA), which "provides guarantees against losses caused by non-commercial risks to investors in developing countries".<sup>7</sup> The aim is to encourage and support Foreign Direct Investment (FDI) by providing guarantees where otherwise the risks would deter investors from investing in a particular country or project.
- The International Centre for the Settlement of Investment Disputes (ICSID), which provides an international forum for the conciliation and arbitration of investment disputes. It does not engage in conciliation and arbitration itself but provides the institutional and procedural framework for independent conciliation commissions and arbitral tribunals constituted in each case to resolve the dispute.<sup>8</sup> The work of the ICSID is outside the scope of this paper.

<sup>6</sup> The World Bank Group, *A Guide to the World Bank*, 3<sup>rd</sup> Ed., 2011, p. 2, available at <https://openknowledge.worldbank.org/bitstream/handle/10986/2342/638430PUB0Ext00Box0361527B0PUBLIC0.pdf?sequence=1>

<sup>7</sup> The World Bank Group Website, available at: <http://web.worldbank.org/WBSITE/EXTERNAL/EXTABOUTUS/0,-contentMDK:23063010~menuPK:8336848~pagePK:50004410~piPK:36602~theSitePK:29708,00.html>

<sup>8</sup> ICSID Website, available at: [https://icsid.worldbank.org/ICSIDFrontServlet?requestType=CasesRH&action-Val=RightFrame&FromPage=Dispute%20Settlement%20Facilities&pageName=Disp\\_settl\\_facilities](https://icsid.worldbank.org/ICSIDFrontServlet?requestType=CasesRH&action-Val=RightFrame&FromPage=Dispute%20Settlement%20Facilities&pageName=Disp_settl_facilities) (accessed 22 Jan 2014)

## Membership, Organizational Structure and Operations: Overview

Each of the five World Bank Group institutions has a separate foundational legal instrument that outlines its purposes, composition, ownership, organization and activities. Countries that are signatories of these instruments become members of the relevant institutions. Members of the World Bank are those members of the IMF who wish to join the Bank.<sup>9</sup> To be member of IDA, IFC and MIGA it is also necessary to be a member of the IBRD.

**Graphic 1: The World Bank Group Membership**

|   |   |   |  |   |
|---|---|---|--|---|
|  |  |  |  |  |
| <b>188<br/>Members</b>  | <b>172<br/>Members</b>  | <b>184<br/>Members</b>  | <b>177<br/>Members</b>   | <b>147<br/>Members</b>  |

Source: The World Bank Group (as of 1 October 2012)

The World Bank Group is formally governed by its Board of Governors. Each member appoints a governor and an alternate governor, in most cases senior officials from the government of each country or head of its central bank. The most important functions of the Board are to decide on the admission and suspension of members, to review the budget and the financial statements of the institutions, and to formally arrange to cooperate with other organizations. The sessions of the Board of Governors take place only once a year in the late months during the Annual Meeting, and hence many of their powers and responsibilities are delegated to the Executive Director.

Upon assuming membership of the IBRD, IDA, IFC or MIGA,<sup>10</sup> the joining country makes a “capital subscription,” which is analogous to buying shares in the institutions. The level of these capital subscriptions in turn determines the voting power of the respective country within the institution. The five countries holding the largest number of shares in each institution each appoint an Executive Director. While their voting power is distributed differently in each institution, the five countries that typically hold the largest number of shares in the institutions are the United States, Japan, Germany, France and the UK.<sup>11</sup> However, China and Russia are now among the first five largest holders of shares in the IRDB. In addition, China, Russia and Saudi Arabia elect their own Executive Directors to represent their country’s interests. The other 17 Executive Directors represent constituencies consisting of multiple countries. The weighted voting system, granting economically powerful States more say in global economic decision-making has given rise to charges that it renders the institutions as lacking in democratic legitimacy. In response, the World Bank Group has pointedly included “increasing voice and participation” as part of its reform agenda with a view to increasing the representation of “developing and transition countries [through the establishment of] an

9 IBRD Articles of Agreement, Article II, Section 1. Available at: <http://web.worldbank.org/WBSITE/EXTERNAL/EXTABOUTUS/0,,contentMDK:20049564~menuPK:63000601~pagePK:34542~piPK:36600~theSitePK:29708~isCURL:Y,00.html> (accessed 24 March 2014)

10 Membership to ICSID does not require a capital subscription.

11 Voting Powers, Allocation of votes by Organization, available at <http://web.worldbank.org/WBSITE/EXTERNAL/EXTABOUTUS/ORGANIZATION/BODEXT/0,,contentMDK:21429866~menuPK:64020035~pagePK:64020054~piPK:64020408~theSitePK:278036,00.html> (accessed 20 January 2014). Information updated up to the end of 2013 in each case. China appears in the third place in the IRDB list, while Russia is fifth in the IFC list. The World Bank Group Website, “World Bank Reform”, available at: <http://www.worldbank.org/worldbankreform/>. (The detailed proposals with regards to this reform item can be found on the Development Committee’s discussion paper entitled “Enhancing Voice and Participation of Developing and Transition Countries in the World Bank Group: Update and Proposals for Discussion”, available at: [http://siteresources.worldbank.org/DEVCOMMINT/Documentation/22335196/DC2009-0011\(E\)Voice.pdf](http://siteresources.worldbank.org/DEVCOMMINT/Documentation/22335196/DC2009-0011(E)Voice.pdf) (accessed 22 January 2014)

additional seat on the Board of Directors for Sub-Saharan Africa and an increase in the voting power of developing countries to at least 50 per cent over time.”<sup>12</sup>

World Bank Executive Directors take decisions on loans by IBRD, loans (referred to as “credits”) and grants by IDA, investments by the IFC, guarantees by MIGA as well as “policies and strategic issues that impact the World Bank Group’s general operations”.<sup>13</sup> All World Bank’s Executive Directors participate in the Steering Committee of the Board of Executive Directors and on at least one of the standing committees (Audit Committee, Budget Committee, Committee on Development Effectiveness, Committee on Governance and Executive Directors’ Administrative Matters, and Human Resources Committee).

The work of the Committee on Development Effectiveness (known as the CODE) is especially relevant for human rights. CODE’s Terms of Reference (2009) state that the Committee

“supports the Boards in assessing the development effectiveness of the World Bank Group [WBG], providing guidance on strategic directions of each member institution of the WBG, monitoring the quality and results of the WBG operations, and overseeing or liaising on the work of the entities that are part of the WBG’s accountability framework (i.e., the relevant units of the Independent Evaluation Group (IEG) ...); the Inspection Panel with respect to IBRD and IDA operations; the Compliance Advisor/Ombudsman with respect to IFC and MIGA; and any others whose oversight or liaison is delegated to the Committee.”<sup>14</sup>

The CODE can undertake its work by evaluating the development results achieved by WBG institutions in their operations, making recommendations to the Boards, overseeing WBG monitoring and evaluation systems, and monitoring the implementation of thematic or sectorial strategies, as well as operational policies, especially on high priority issues by WBG institutions.<sup>15</sup>

While World Bank Group lending remains only one among numerous sources of funding (others include regional and national financial institutions), the involvement of the World Bank Group in a project often acts as a catalyst for attracting other investors or partners, given the Bank Group’s financial reputation and credibility.

**Table 1: World Bank Group Commitments**

| <b>World Bank Group Financial Commitments (in billion USD)</b> | <b>Fiscal Year 2011</b> | <b>Fiscal Year 2012</b> |
|--|-------------------------|-------------------------|
| IBRD   | 26.7                    | 20.6                    |
| IDA  | 16.3                    | 14.7                    |
| IFC (not including other investors)*                           | 12.3                    | 15                      |
| MIGA   | 2.1                     | 2.3                     |
| <b>TOTAL</b>   | <b>57.4</b>             | <b>52.6</b>             |

\* Commitments from external investors valued at 6.4 billion USD for 2011 and 5 billion USD for 2012.

Source: The World Bank Group (published 29 June 2012)

12 The World Bank Group Website, “World Bank Reform”, available at: <http://www.worldbank.org/worldbankreform/>. (The detailed proposals with regards to this reform item can be found on the Development Committee’s discussion paper entitled “Enhancing Voice and Participation of Developing and Transition Countries in the World Bank Group: Update and Proposals for Discussion”, available at: [http://siteresources.worldbank.org/DEVCOMMINT/Documentation/22335196/DC2009-0011\(E\)Voice.pdf](http://siteresources.worldbank.org/DEVCOMMINT/Documentation/22335196/DC2009-0011(E)Voice.pdf) (accessed 24 March 2014))

13 The World Bank Group Website, “Boards at Work”, available at: <http://go.worldbank.org/R39ZLBTU10> (accessed 24 March 2014)

14 The World Bank, Committee on Development Effectiveness Terms of Reference, 15 July 2009, para. 1, available at: <http://siteresources.worldbank.org/BODINT/Resources/CODETOR.pdf> (accessed 24 March 2014)

15 Ibid, paras. 2.1 and 2.2.

## Legal Position

From a legal standpoint, the World Bank Group's structure constitutes a distinctive combination of intergovernmental and supranational elements. With respect to the intergovernmental elements, the World Bank Group governors, alternate governors and executive directors are appointed or elected by and represent States. These States are each party to at least one human rights treaty and all but two are parties to the Convention on the Rights of the Child (the United States of America and South Sudan). Hence, the representatives of States that are parties to the CRC and other human rights conventions are under a legal obligation to respect and be guided by the norms set forth in these instruments when acting within the World Bank Group.

The World Bank Group (and the IMF) also has supranational characteristics. For instance, their staff members neither represent nor are accountable to those States whose nationalities they hold, at least for most conduct arising out of the ordinary scope of their employment. Like UN officials, they represent and are accountable to their relevant organizations. Many of the day-to-day decisions and activities of these institutions are carried out within this supranational organizational structure.

The World Bank Group is also an independent United Nations specialized agency as per its 1947 agreement with the UN. The World Bank Group is an observer in a number of UN bodies, including the UN General Assembly. The UN Economic and Social Council (ECOSOC) has the authority, in accordance with Article 63 of the UN Charter (Chapter X), to coordinate the activities of UN specialized agencies through consultation with and recommendations to these agencies and through recommendations to the General Assembly and to UN Member States. Accordingly, the ECOSOC has been holding high-level annual meetings with the World Bank Group and the IMF (as well as the World Trade Organization and UN Conference on Trade and Development (UNCTAD)) following the Spring Meetings of these institutions.<sup>16</sup> As an entity with separate legal personality the World Bank (and similar institutions) should also be guided by human rights standards as recommended by UN treaty bodies.

## Mandate and Guiding Concepts

The World Bank Group is a development institution with a mission to reduce poverty. Specifically, it is currently focused on two broad goals:

- Ending extreme poverty by decreasing the percentage of people living on less than \$1.25 a day to no more than 3 per cent
- Promoting shared prosperity by fostering the income growth of the bottom 40 per cent for every country

The World Bank Group has emphasized its role as a development agency that seeks to achieve its objectives by drawing guidance from the Millennium Development Goals (MDGs),<sup>17</sup> which the Bank endorsed in 2000. In its own words, the World Bank Group is: "the world's largest funder of education, the world's largest external funder of the fight against HIV/AIDS, a leader in the fight against corruption worldwide, a strong supporter of debt relief, the largest international financier of biodiversity projects, water supply and sanitation projects".<sup>18</sup>

<sup>16</sup> The World Bank Group, Op. Cit., note 6, p. 49.

<sup>17</sup> Millennium Development Goals at <http://www.un.org/millenniumgoals/> (accessed 24 March 2014) The MDGs are a set of eight targets agreed on by the international community to be achieved by 2015. They are the following: 1) Eradicate extreme poverty and hunger, 2) Achieve universal primary education, 3) Promote gender equality and empower women, 4) Reduce child mortality, 5) Improve maternal health, 6) Combat HIV/AIDS, malaria, and other diseases, 7) Ensure environmental sustainability, and 8) Develop a Global Partnership for Development

<sup>18</sup> The World Bank Group, *A Guide to the World Bank*, 2<sup>nd</sup> Ed., 2007, p. 3.

The World Bank Group institutions use MDG targets as benchmarks, calling MDGs the “Bank Group’s roadmaps for development”.<sup>19</sup> The World Bank does not generally apply a rights-based approach to development or in meeting the MDGs particularly, meaning necessarily that children’s rights do not explicitly figure on the World Bank Group agenda. Nonetheless, many of the developmental targets and indicators set through the MDGs which inform the work of the Bank Group focus on children or are directly or indirectly related to the well being of children.

### 1.1.1 The World Bank (IBRD and IDA)

#### Overview of Activities

The public lending arm of the World Bank Group, the World Bank comprises the IBRD and the IDA. Together, these institutions account for more than half of the Bank Group’s financial commitments.

The World Bank has significantly increased its global lending in response to the global crisis in 2008 and 2009. According to the 2011 World Bank Annual Report, over the last five years, World Bank’s lending activities have significantly increased in the following areas: public administration, law and justice sector, health and other services sector, transportation sector, water, sanitation, and flood protection sector.<sup>20</sup> Since 1947, the World Bank Group has lent to 169 countries for a total of 11,491 projects. In 2011, the World Bank estimates it had extended loans of almost 18 billion USD (out of a total of 43 billion USD by IBRD and IDA combined) to MDG-related projects.<sup>21</sup>

#### Products

The World Bank, though known globally mostly for its financing facilities, provides products under five major headings: lending, banking products, trust funds and grants, guarantees, and knowledge activities. The Bank also includes financial management, procurement and disbursement arrangements within the fiduciary framework for its operations.

- *Lending*: The World Bank’s lending activities have been undertaken either as “investment operations” or “development policy operations”. Investment lending generally supports discrete development projects, while development policy loans provide budgetary support to governments.
- *Banking Products*: IBRD offers eligible members risk management products including financing, credit enhancement, hedging, and catastrophe risk financing. The banking products are designed to allow countries to manage their currency, interest rate and commodity risk exposures, which may put their macroeconomic stability and viability at risk.
- *Trust Funds and Grants*: Trust funds are technically not Bank resources but resources from external donors, with which the World Bank enters into financial and administrative arrangements.<sup>22</sup> Grants are either funded by the Bank itself or through partnerships. For instance, one such partnership, the Japan Social Development Fund (JSDF) has funded

19 The World Bank Group, Op. Cit., note 6, 3.

20 The World Bank Group, *Annual Report 2011*, 4, available at: <http://go.worldbank.org/D74CFKTQ80> (accessed 24 March 2014)

21 TheWorldBankWebsite, “WorldBankLendingtoMDG-RelatedProjectsFiscal2011”, available at: [http://siteresources.worldbank.org/EXTANNREP2011/Resources/8070616-1315496634380/8136490-1315496673041/LendingtoMDG\\_RelatedProjects.pdf](http://siteresources.worldbank.org/EXTANNREP2011/Resources/8070616-1315496634380/8136490-1315496673041/LendingtoMDG_RelatedProjects.pdf) (accessed 24 March 2014)

22 The World Bank Website: <http://web.worldbank.org/WBSITE/EXTERNAL/PROJECTS/0,,contentMDK:20120721~menuPK:232467~pagePK:41367~piPK:51533~theSitePK:40941,00.html> (accessed 24 March 2014)

some child-focused projects including the “Early Childhood Education and Care” project in Vietnam<sup>23</sup> and “A Future without Child Labour” project in Egypt.<sup>24</sup>

- *Guarantees:* The Bank acts as a “lender of last resort” and covers risks related to government performance, thereby allowing governments to benefit from World Bank financial backing in attracting private investors.<sup>25</sup>
- *Knowledge Activities:* The Bank carries out research and analysis and provides data and statistics on development and related issues. In addition, the Bank has facilities for helping governments develop policies, strategies or plans through provision of technical assistance and advisory services. As a part of its Knowledge Activities, the World Bank carries out “donor aid coordination” by liaising between donors of financial and other types of assistance including governments, aid agencies, NGOs, development banks and others.

### *Program-for-Results Financing*

The Bank’s Board of Executive Directors approved a new instrument called *Program-for-Result (PforR)* Financing on 24 January 2012. PforR is designed to finance and assist borrowing countries in the implementation of their development programs. The instrument ties the disbursements to achievement of results by setting up Disbursement-linked Indicators (DLIs). The focus of the financing is on institutional capacity building of borrower countries. An innovative aspect of this new funding instrument is its purportedly strong anti-corruption and anti-fraud component. The World Bank will have the right to investigate all allegations of fraud and corruption as they relate to Bank financing, as well as in relation to the entire development programme supported by PforR. The World Bank has the authority to apply its sanctions regime and debarment list to this entire programme. Also, any activities that are deemed to “pose risk of potentially significant and irreversible adverse impacts on the environment and/or affected people” (called Category A activities) will be excluded from the financing’s scope. The Bank will be able to make an assessment of environmental and social systems and engage in a consultation on these assessments with stakeholders (both assessments are to be publicly available).<sup>26</sup> This new instrument is intended to be incrementally rolled-out and reassessed after two years of implementation.

The introduction of this new financing instrument and the inclusion of environmental and social concerns within its scope may signal a potential willingness on the part of the organization to identify areas for improvement. The Environmental and Social Systems Assessment, according to Bank Policy 9.00 on Program-for-Result Financing, gives the designated World Bank task team the possibility to also assess to what degree the Programme systems “give attention to groups vulnerable to hardship or disadvantage, including as relevant the poor, the disabled, women and children, the elderly, or marginalized ethnic groups; and, if necessary, take special measures to promote equitable access to Programme benefits”.<sup>27</sup> Operational Policy 9.00 on Program-for-Result Financing gives the Bank the authority to take remedial action in cases of non-compliance with contractual obligations, including failure to prevent, detect and respond to fraud and corruption or allegations of such conduct. Remedial action may include suspension or cancellation of the financing.<sup>28</sup>

23 For details on the Vietnam project:  
[http://siteresources.worldbank.org/EXTJSDF/Resources/JSDF\\_VietnamSep13.pdf](http://siteresources.worldbank.org/EXTJSDF/Resources/JSDF_VietnamSep13.pdf) (accessed 24 March 2014)

24 For details on the Egypt project:  
[http://siteresources.worldbank.org/EXTJSDF/Resources/JSDF\\_Egypt\\_Sep13.pdf](http://siteresources.worldbank.org/EXTJSDF/Resources/JSDF_Egypt_Sep13.pdf) (accessed 24 March 2014)

25 The World Bank Website, available at:  
<http://web.worldbank.org/external/default/main?theSitePK=3985219&piPK=64143448&pagePK=64143534&menuPK=64143504&contentMDK=20191686> (accessed 24 March 2014)

26 The World Bank, “Program for Results Financing – Overview”, available at:  
[http://siteresources.worldbank.org/EXTRESLENDING/Resources/7514725-1313522321940/PforR\\_Overview\\_12.2011.pdf](http://siteresources.worldbank.org/EXTRESLENDING/Resources/7514725-1313522321940/PforR_Overview_12.2011.pdf) (accessed 24 March 2014)

27 The World Bank, Bank Procedure 9.00 on Program-for-Results Financing, February 2012, para. 29

28 Ibid, paras. 14-15

However, despite the potential benefits of the PforR financing, civil society groups have expressed serious concerns about the way in which this instrument would allow the World Bank to bypass its social and environmental safeguard policies (described below). Additionally, there are concerns about the understanding and assessment of “risk” as related to this financing mechanism and the ways in which risks to the rights and interests of affected communities, including children, are not adequately assessed and mitigated. Because these safeguards will not apply to the PforR financing, there may actually be a reduction in the ability of project-affected communities to hold the World Bank accountable for harm caused by projects receiving World Bank funds.<sup>29</sup>

## Policies

### *The Operational Policies*

The World Bank activities are carried out in accordance with its Operational Policies (OP), which are compiled in an Operational Manual.<sup>30</sup> The Operational Manual outlines the principles of Bank activity and the rules and procedures under which it is to be carried out. The Operational Manual is designed to be used by the Bank’s staff in the performance of their functions. In addition to setting out the Bank’s Operational Policies, the Operational Manual contains Bank Procedures (BP) and Operational Memoranda (OM) designed as interim instructions to staff. The World Bank defines these various documents in the following way:

“Operational Policies (OPs) are short, focused statements that follow from the Bank’s Articles of Agreement, the general conditions, and policies approved by the Board. OPs establish the parameters for the conduct of operations; they also describe the circumstances under which exceptions to policy are admissible and spell out who authorizes exceptions.<sup>31</sup>

Bank Procedures (BPs) explain how Bank staff carry out the policies set out in the OPs. They spell out the procedures and documentation required to ensure Bank-wide consistency and quality.

Operational Memoranda (Op Memos) are interim instructions intended to elaborate on material in OPs/BPs or ODs. Once the instructions in OP Memos are incorporated into revisions of the pertinent OPs/BPs, the Op Memos are retired.”<sup>32</sup>

Currently, there is no World Bank Operational Policy dedicated to children’s rights or, more generally, to human rights, although several Operational Policies address issues of relevance for children and other specific groups. It has been argued that Operational Policies of the World Bank should be revamped to require the Bank take into account human rights in project design and implementation, but the Bank has so far resisted such suggestions. This could be done in a number of ways, including through drafting an operational policy on human rights or through the incorporation of human rights standards in policies that have a particular significance in terms of human rights.<sup>33</sup>

A survey of the latest version of the World Bank’s Operational Manual reveals that the term “human rights” is used only twice in the Operational Manual and only within the context of the World Bank’s policies and principles on indigenous peoples.<sup>34</sup> World Bank management has

29 See civil society comments and concerns about the World Bank’s proposed PforR, available at <http://www.p4rcments.org/> (accessed 15 January 2014)

30 The complete World Bank Operational Manual is available online at: [http://siteresources.worldbank.org/OPSMANUAL/Resources/EntireOM\\_External.pdf](http://siteresources.worldbank.org/OPSMANUAL/Resources/EntireOM_External.pdf) (accessed 24 March 2014)

31 Operational Policies have replaced Operational Directives (ODs) over the years.

32 The World Bank Website, available at: <http://go.worldbank.org/RF8N5YBBF0> (accessed 24 March 2014)

33 Koen de Feyter, “International Financial Institutions and Human Rights – Law and Practice”, Institute of Development Policy and Management –University of Antwerp, Discussion Paper, December 2002, 14-15, Bank Information Center “Human Rights and the World Bank: Case studies from IDA countries”, Washington DC, October 2013

34 OP 4.00 Piloting the Use of Borrower Systems to Address Environmental and Social Safeguard Issues in Bank-Supported Projects – Table A1 “Environmental and Social Safeguard Policies – Policy Objectives and Operational Principles” Section E revised in July 2005 states: “To design and implement projects in a way that fosters full respect for Indigenous Peoples’ dignity, human rights, and cultural uniqueness and so that they:

generally taken the position that it is the responsibility of borrower countries to comply with their international human rights obligations, and that the World Bank as an institution has no responsibility to ensure that Bank funded projects are human rights compliant and do not result in violations.

There are also few references to “children” in the Operational Manual. Where such references are included, children are generally included within a larger group of “vulnerable persons” together with displaced people, poor people, landless people, elderly people, women, indigenous peoples and ethnic minorities. One such reference is found in the section on Involuntary Settlement of Operational Policies OP 4.00 and OP 4.12 on Involuntary Settlement calling for a consultation with those affected by the project and the civil sector, asking particular attention be paid to vulnerable groups.<sup>35</sup> Another reference is found in OP 4.10 on Indigenous Peoples, which states that consultation methods used should be designed to give “[...] special attention to the concerns of Indigenous women, youth, and children and their access to development opportunities and benefits” and calling for the Bank to “address the gender and intergenerational issues that exist among many Indigenous Peoples, including the special needs of indigenous women, youth, and children”.<sup>36</sup> OP 2.30 on Development Cooperation and Conflict, which was revised in March 2012, distinguishes the situation of children, as well as other groups, in a note:

Children are especially vulnerable to societal and family disruptions since they depend on others for their care and survival. They suffer special psychosocial trauma and are increasingly recruited as fighters. Other groups of civilians, for example, the elderly, may also deserve special attention. Women who are widowed and, thus, assume new roles as heads of households, or women who have experienced sexual abuse in warfare, may require targeted assistance.<sup>37</sup>

International human rights law is not referenced explicitly anywhere in the Operational Manual. In contrast, the World Bank’s Operational Policies on Environmental Assessment (OP 4.01) and on Physical Cultural Resources (OP 4.11) contain references to a country’s obligations arising from “international environmental treaties and agreements”. OP 4.01 on Environmental Assessment concludes that the “Bank does not finance project activities that would contravene such country obligations,” while OP 4.11 on Physical Cultural Resources states that “[t]he impacts on physical cultural resources resulting from project activities, including mitigating measures, may not contravene either the borrower’s national legislation, or its obligations under relevant international environmental treaties and agreements”.<sup>38</sup> OP 4.36 on Forests has an even broader reach, stipulating that “[t]he Bank does not finance projects that contravene applicable international environmental agreements”.<sup>39</sup>

The World Bank’s deliberate decision not to finance projects that contravene environmental agreements, while permitting the financing of projects that may entail violations of international human rights agreements, including treaty obligations binding on its Members States, represents a striking contrast. This contrast can only be understood in the context of the World Bank’s often-repeated position that it is bound only by its Articles of Agreement, and has no obligations under international human rights treaties.<sup>40</sup> Human rights issues have long been

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(a) receive culturally compatible social and economic benefits; and (b) do not suffer adverse effects during the development process.” OP 4.10 on Indigenous Peoples from July 2005 Peoples states: “This policy contributes to the Bank’s mission of poverty reduction and sustainable development by ensuring that the development process fully respects the dignity, human rights, economies, and cultures of Indigenous Peoples.”

35 The World Bank OP 4.00 – Table A1 Section D on Involuntary Settlement Operational Principle 4. See also: OP 4.12, para. 8.

36 The World Bank OP 4.10 on Indigenous Peoples, paras. 10(b) and 22(d), respectively.

37 The World Bank OP 2.30 on Development Cooperation and Conflict, para. 2(c), footnote 4.

38 The World Bank OP 4.01 on Environmental Assessment para. 3 and OP 4.11 on Physical Cultural Resources, para. 3.

39 The World Bank OP 4.36 on Forests para. 6.

40 For further discussion of this issue see Galit Safarty, “Why Culture Matters in International Institutions: The Marginality of Human Rights at the World Bank”, (2009) 103 *American Journal of International Law* 647.



deemed “political” and thus outside the Bank’s mandate that “only economic considerations shall be relevant” (Article IV IRDB Articles of Agreement).<sup>41</sup>

While the World Bank itself has certainly acknowledged the relevance of human rights to its development objectives, it continues to shy away from taking responsibility for ensuring that there are no human rights abuses in Bank funded projects. Instead, the World Bank’s current statement of its position is solely that it “may play a facilitative role in helping its members realise their human rights obligations” and “support its members to fulfill those obligations where they relate to World Bank projects and policies.”<sup>42</sup> This leaves a significant protection gap and allows the World Bank to fund projects that violate human rights and more specifically children’s rights. Moreover, under international human rights law, including the Convention on the Rights of the Child, States have an obligation to realize human rights through international cooperation and assistance. IFIs such as the World Bank provide an opportune medium through which States might, acting in concert, discharge this obligation. However, this opportunity is lost when the Bank is disinclined to take a rights based approach to its objectives and operations.

### *Environmental and Social Safeguard Policies*

The World Bank management has identified ten policies<sup>43</sup> among the entire catalogue of Operational Policies (OPs) that are “particularly important in ensuring that Bank operations do no harm to people and the environment”.<sup>44</sup> These so-called “Safeguard Policies” comprise the following:

- Operational Policy 4.01 on Environmental Assessment,
- Operational Policy 4.11 on Physical Cultural Resources,
- Operational Policy 7.60 on Disputed Areas,
- Operational Policy 4.36 on Forests,
- Operational Policy 4.10 on Indigenous Peoples,
- Operational Policy 7.50 on Projects on International Waterways,
- Operational Policy 4.12 on Involuntary Resettlement,
- Operational Policy 4.04 on Natural Habitats,
- Operational Policy 4.09 on Pest Management,
- Operational Policy 4.37 on Safety of Dams.<sup>45</sup>

Each proposed project is evaluated in accordance with the Environmental Assessment policy as well as other safeguard policies, and classified into different categories (A, B, C, and FI)

41 IBRD Articles of Agreement, Article IV, SECTION 10. *Political Activity Prohibited (1989)*.

“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.” IBRD Articles of Agreement, available online at: [http://siteresources.worldbank.org/BODINT/Resources/278027-1215526322295/IBRDArticlesOfAgreement\\_English.pdf](http://siteresources.worldbank.org/BODINT/Resources/278027-1215526322295/IBRDArticlesOfAgreement_English.pdf) (accessed 24 March 2014)

42 “The Way Forward: Human Rights and the World Bank” by *Ana Palacio*, *Article on the World Bank Development Outreach, World Bank Institute, October 2006*. Available at: <http://web.worldbank.org/WBSITE/EXTERNAL/TOPICS/EXTLAWJUSTICE/0,,contentMDK:21106614~menuPK:445675~pagePK:64020865~piPK:149114~theSitePK:445634,00.html> (accessed 24 March 2014)

43 Additionally, OP 4.00 Piloting the Use of Borrower Systems to Address Environmental and Social Safeguard Issues in Bank-Supported Projects, is often considered along with these 10 policies as it constitutes the Bank’s policy for how it can rely on a country’s own system of laws and regulations as the environmental and social standards the project must meet.

44 World Bank Group website, available at:

<http://web.worldbank.org/WBSITE/EXTERNAL/TOPICS/ENVIRONMENT/0,,contentMDK:20124315~menuPK:559747~pagePK:148956~piPK:216618~theSitePK:244381,00.html> (accessed 24 March 2014)

45 Independent Evaluation Group (IEG) by Anis Dani, Ade Freeman, and Vinod Thomas), *Evaluation Brief 15: Evaluative Directions for the World Bank Group’s Safeguards and Sustainability Policies*, 2011, available at: [http://www.bicusa.org/wp-content/uploads/2013/01/IEG\\_Eval\\_WBG\\_Safeguards.pdf](http://www.bicusa.org/wp-content/uploads/2013/01/IEG_Eval_WBG_Safeguards.pdf) (accessed 14 January 2014), p. 4.

based on different parameters: "type, location, sensitivity and scale of the project and the nature and magnitude of its potential environmental impacts".<sup>46</sup>

Category A: high risk – likely to have significant adverse environmental impacts that are sensitive, diverse, or unprecedented

Category B: modest risk – potential adverse environmental impacts on human populations or environmentally important areas

Category C: likely to have minimal or no adverse environmental impacts

Category FI: Financial Intermediary – involves investment of Bank funds through a financial intermediary, in subprojects that may result in adverse environmental impacts.<sup>47</sup>

According to the Safeguard Policy, it is up to the concerned government to carry out the required assessments and to the Bank to review the assessments and mitigation plans to ensure that these comply with the Bank's operational policies. World Bank Regional Safeguard Advisor teams that serve as the first point of contact in local settings for the application of safeguard policies are able to provide guidance to interested parties. For instance, in the application of the Operational Policy/Bank Policy 4.01 on Environmental Assessment, the Bank has dedicated environmental assessment specialists in its Quality Assurance and Compliance Unit (Operations Policy and Country Services Network) who can assist local partners.<sup>48</sup>

The 2010 Report of the Independent Evaluation Group found that attention to safeguards and performance standards was reasonably good during the appraisal of projects but that in practice there had been a "lack of adequate supervision and monitoring of outcomes, especially in the case of medium-risk projects".<sup>49</sup> Additionally, this report argued that the Bank's social safeguards were insufficient to protect populations impacted by Bank projects. It explained that "[t]he priority given to mitigation of existing safeguard policies effectively crowded out attention to other social impacts on local communities, including gender impacts in Bank-supported projects, as shown by a recent IEG evaluation of World Bank Group support for gender and development (2010a). The label "safeguards" has also created an artificial barrier precluding attention to emerging themes such as climate change and occupational health and safety under the safeguards framework."<sup>50</sup>

In October 2012, the World Bank formally launched the revision and update of its Safeguard Policies, a process that will last more than two years and is likely to be finalized some time in 2015. The goals of this review process, set out in *The World Bank's Safeguard Policies Proposed Review and Update Approach Paper*:

"It is anticipated that the review and update process will lead to a new integrated framework that builds on the existing core principles of the safeguard policies, and may include several components, such as principles, policies, procedures, and guidance. The proposed integrated framework is intended to enhance policy alignment with internal and external changes, and provide a solid foundation for a renewed and strengthened partnership with the Bank's borrowers, leading to enhanced development effectiveness."<sup>51</sup>

This Approach Paper also provides for the consideration of "a number of areas that are not addressed under the current set of safeguard policies [such as] human rights, labour and occupational health and safety, gender, disability, the free, prior, and informed consent of

46 OP 4.01 on Environmental Assessment, Art. 8.

47 The World Bank, *Safer Homes, Stronger Communities: A Handbook for Reconstruction after Natural Disasters*, "Chapter 21: Safeguard Policies for World Bank Reconstruction Projects", January 2010, 314.

48 World Bank Group Website, "Environmental Assessment in Operational Policy 4.01", available at: <http://web.worldbank.org/WBSITE/EXTERNAL/TOPICS/ENVIRONMENT/EXTENVASS/0,,menuPK:407994~pagePK:149018~piPK:149093~theSitePK:407988,00.html> (accessed 24 March 2014)

49 Independent Evaluation Group (IEG) *Evaluation Brief 15, Op. Cit note 45, p. 2*

50 Ibid, p. 10

51 The World Bank, *The World Bank's Safeguard Policies Proposed Review and Update Approach Paper*, 10 October 2012, para. 4

Indigenous Peoples, land tenure and natural resources, and climate change” during the review and update process.<sup>52</sup>

There is no fixed or regular review schedule for World Bank policies or operations and such reviews have so far taken place on an *ad hoc* basis. The World Bank considers “the [safeguard] review and update [to be] part of a larger modernization effort within the institution, which includes separate but parallel reviews of Investment Lending and Procurement.”<sup>53</sup> This review is taking place within the context of a period of significant change for the World Bank, with the institution setting out a new corporate strategy and undergoing a restructuring.

The World Bank’s Safeguard Review Approach Paper and the separate Consultation Plan recount a number of reasons for the timing of the current review process. According to these documents, the review process has been triggered by a number of factors:<sup>54</sup>

- Changing and diversifying World Bank borrower profiles that include a broad range from “middle-income countries with well-developed institutions and capacities, to low-income countries with weaker governance and institutions, to fragile and conflict-affected states where more tailored and coordinated interventions are required”<sup>55</sup>
- New or changing development demands and challenges, such as climate change
- Changing nature of World Bank operations the launch of policy loans such as *PforR* financing
- Increasing role of private sector in World Bank financed projects
- Findings of the 2010 evaluation of the Independent Evaluation Group.

The World Bank’s approach to the review included a first consultation period with numerous multi-stakeholder meetings in different cities across the globe as well as meetings with government representatives. This consultation was aimed at soliciting views as to what the revised safeguards should include. The first consultation period closed on 30 April 2013 but the Bank did not include any consultations with children during this period.

The first consultation with shareholders and stakeholders including development institutions, civil society organizations and universities was held on 15 November 2012 in Washington DC. Civil society organizations highlighted a number of issues regarding the Safeguards.<sup>56</sup> Under the rubric of children’s rights, civil society organizations noted that because “children are often negatively impacted by development projects”, “revised safeguards should go further [than recognizing children among “vulnerable groups” and “those with special needs”] and require Bank funded activities take all necessary measures to protect the rights of children”.<sup>57</sup> Civil society organizations underlined that the revised policies “should include, among other measures, prohibiting the use of child labour in World Bank funded activities, ensuring that projects do not interrupt children’s access to appropriate educational services (including inclusive education for children with disabilities,) and preventing gender based exploitation of minors”.<sup>58</sup>

52 Ibid, para. 35

53 The World Bank Website, “Reviewing and Updating the Environmental and Social Safeguard Policies (Sept. 2012)”, available at: <http://go.worldbank.org/00E973V3B0> (accessed 24 March 2014)

54 These reasons have also been underlined in the presentation by Colin Scott, World Bank Lead Specialist, Operational Risk Management, “The World Bank Safeguard Policies Review and Update –Overview Presentation” given at the Brussels Multi-stakeholder meeting, 5 March 2013.

55 The World Bank, Review and Update of the World Bank Environmental and Social Safeguard Policies Consultation Plan, available at [http://consultations.worldbank.org/Data/hub/files/safeguardsreview\\_consultationplan.pdf](http://consultations.worldbank.org/Data/hub/files/safeguardsreview_consultationplan.pdf) (accessed 14 January 2014) (accessed 24 March 2014). p. 1.

56 Initial Comments by Civil Society Organizations on the World Bank’s Safeguard Policies Review and Update, November 2012, available at: <http://siteresources.worldbank.org/EXTSAFEPOL/Resources/584434-1306431390058/InitialCommentsbyCivilSocietyOrganizationsontheWorldBankSafeguardsReviewNovember142012rev1.pdf> (accessed 24 March 2014)

57 Ibid, 10

58 Ibid, 10

On 28 January 2013, a letter endorsed by more than 75 civil society organizations was sent to President of the World Bank Dr Jim Yong Kim highlighting the “importance of directly and explicitly addressing the needs of children in the World Bank safeguard policies”.<sup>59</sup> The letter underscores the importance of childhood as a unique period of human development and recalls the possible long-term effects of deprivations during childhood, not only on children themselves but also on society at large. The letter points out that harms to children caused by World Bank-supported projects are not limited to child labour or forced child labour, but extend to the impacts of involuntary resettlement (which may consist in lack of access to education and social services), as well as to increased risk of being subject to violence, trafficking or sexual exploitation, and negative impacts on health.<sup>60</sup> Civil society organizations asked for a number of important revisions to the current safeguards:

- A minimum requirement of environmental and social impact assessments that specifically assess the likely impacts of a project on children, including the potential for violence and exploitation that can arise during the project’s implementation;
- Additional language requiring attention to the unique needs of children in all relevant safeguard policies, including the involuntary resettlement policy, with particular attention paid to uniquely vulnerable children, including girls and children with disabilities;
- Addition of a new labour safeguard to clearly prohibit child labour and require respect for fundamental labour rights, as defined by the ILO, by all companies involved in the project, as well as their supply chains and related services;
- Integration of a vision whereby quality investments in early stages of human life have greater development and poverty reduction effects that allow for breaking intergenerational cycles of poverty.<sup>61</sup>

### **Accountability Mechanism: The World Bank Inspection Panel**

The independent Inspection Panel is the World Bank’s accountability mechanism. It was created in 1993 through identical resolutions of the IBRD and the IDA. As such, the World Bank Inspection Panel has jurisdiction only over the operations of the IBRD and the IDA. IFC, MIGA and ICSID operations do not fall under its jurisdiction and have their own mechanisms. The Inspection Panel was set up in response to criticism about the operations of the World Bank and other international organizations and to calls for more transparency and accountability.

The Inspection Panel assesses only whether there has been a serious violation of the Bank’s own policies and procedures and does not apply more general international standards such as those of international human rights treaties.

59 Input on Protection of the Needs of Children to the World Bank’s Safeguard Policies Review and Update, 28 January 2013, available at: [http://siteresources.worldbank.org/EXTSAFEPOL/Resources/584434-1306431390058/January28\\_Protection\\_for\\_the\\_Needs\\_of\\_Children.pdf](http://siteresources.worldbank.org/EXTSAFEPOL/Resources/584434-1306431390058/January28_Protection_for_the_Needs_of_Children.pdf) (accessed 24 March 2014)

60 Ibid.

61 Ibid.

Table 2 sets out a synopsis of works bank inspection panel procedures:

| <b>Table 2: World Bank Inspection Panel Procedures</b> |  |
|--|--|
| Who can bring a request for inspection?                | An affected party in the territory of the borrower which is not a single individual (i.e., a community of persons such as an organization, association, society or a group of two or more individuals) or their representatives.<br>In special cases of alleged serious violations: an Executive Director or Executive Directors of the Bank acting as a Board.  |
| On what grounds?                                       | The affected party must demonstrate that its rights/interest have been or are likely to be directly affected by an action or omission of the 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 (including situations where the Bank is alleged to have failed in its follow-up on the borrower's obligations under loan agreements) and such failure of the Bank has had or threatens to have a material adverse effect.   |
| Additional requirements                                | The Panel is required to ascertain that the subject matter of the request has been dealt with by the Management and the Management has failed to demonstrate it has followed/is taking adequate steps to follow the Bank's own policies and procedures. The alleged violation of Bank's policies and procedures should be of a serious character.  |
| Grounds for inadmissibility of request                 | <ul style="list-style-type: none"> <li>• When the complaint is about actions that are the responsibility of parties other than the Bank and do not involve any Bank action or omission;</li> <li>• When the complaint is made by suppliers of goods/services or losing tenderers in case of procurement decisions by Bank borrowers;</li> <li>• When the requests are filed after the Closing Date of the loan financing the project or after at least 95% of the loan has been disbursed;</li> <li>• When the requests are made on matter(s) over which the Panel has previously made recommendations, unless supported by new evidence or circumstances not previously known.</li> </ul> |
| Procedure  | The Panel issues an Eligibility Report upon considering the request and the Management's response to the request;<br>The Executive Directors decide whether or not to allow investigation after Eligibility Report of the Panel;<br>If the Panel does investigate, it produces an Investigation Report after fact-finding and verification.  |
| Nature of Panel Reports                                | Recommendatory. It cannot order compensation or similar remedies.<br>In response to the Panel Report, the Management produces a Report and Recommendations;<br>The Board discusses the Panel's findings and Management recommendations.  |

Originally adopted in 1994 when the Panel was established, the Inspection Panel Operating Procedures are currently under review and update, with an aim to issue the revised procedures by March 2014. Consultations with stakeholders including the Board of Directors and the World Bank management, former claimants, civil society, academics, former Panel members, and technical experts with experience in Panel investigations were held in the context of this review.<sup>62</sup>

62 The World Bank website, available at:  
<http://web.worldbank.org/WBSITE/EXTERNAL/EXTINSPECTIONPANEL/0,,contentMDK:22991942~pagePK:64129751~piPK:64128378~theSitePK:380794,00.html> (accessed 24 March 2014)

Because children's rights are not explicitly incorporated in the Bank's own policies and procedures, it is not possible to bring requests for inspection solely for children's rights violations in the strict sense. However, where children's rights violations occur in the context of a violation of other Bank policies, for example where the right to education is infringed because a resettlement plan is not followed in the context of forced displacement, these harms may be addressed by the Inspection Panel, although the remedy will not be for a rights violation *stricto sensu*.

Recently a case was brought before the Panel related to forced child labour in Uzbekistan in the context of the World Bank's Rural Enterprise Support Project (RESP-II) loan. In this case, complainants alleged that Bank management violated OP 4.01 on Environmental and Social Assessment because the Social Assessment for RESP-II fraudulently stated that there was no forced child labour taking place in the agriculture sector of Uzbekistan. The complainants argued that this assessment resulted in RESP-II contributing to forced labour in the country. In December 2013 the Panel found that there was a potential link between the World Bank project and harm to children. A report back to the Bank's board on progress toward ending child labour that may be related to the Bank's activities in Uzbekistan is required in one year. At that time the Panel is expected to consider what recommendations to make to Bank management regarding the RESP-II project.

There have also been requests for inspections that have framed the complaint in human rights terms, some of which touch on rights that concern children. Panel decisions in such cases are limited to using the language in existing Operational Policies. One case, in which the Panel explicitly discusses the negative impact of a project on children, and implicitly their right to education, relates to involuntary resettlement resulting from the construction of the Bujagali dam in Uganda. In this case, the Inspection Panel stated that

"Evidence of the inattention to children was brought to the Panel's attention in discussions with the displaced along the T-line. Panel interviews near the Mutundwe substation discovered people were supportive and prepared to move, but concerned that the displacement might occur after school enrolment, making it difficult if not impossible for displaced children to enrol or transfer between government schools. The demographics may range from several hundred to several thousand children and represents a substantial loss of human capital which, according to mothers, may be irreparable for teenagers if the disruption derails their studies. Options such as paying for full enrolment and transportation costs of private schools or adjusting the time of the move had not been considered. Enrolment in school is one of the 8 indicators for outcome evaluation, meaning that this problem may negatively skew the overall project evaluation. School fees account for 23 per cent of the affected household's spending, underscoring the significance the displaced place on education."<sup>63</sup>

In their application to the World Bank Inspection Panel on Chad-Cameroon Petroleum Development and Pipeline Project (March, 2001), the claimants alleged violations of the Bank's Directives on good governance and human rights while the Management maintained that it believed the project would achieve its developmental objectives.<sup>64</sup> The Panel stated that the human right situation in Chad was "far from ideal" and that it raised questions about the Bank's compliance with its policies, especially the ones related to "open and informed consultation" and warranted "renewed monitoring by the Bank".<sup>65</sup> The Panel also summarized the Management's view of human rights in its work: human rights became of direct concern to the Bank only if they had significant economic effects on a Bank project.<sup>66</sup> The Panel criticized this "narrow view" and recalled a previous statement made by the Bank about "always tak[ing] measures to ensure human rights are fully respected in connection with the projects it supports".<sup>67</sup>

63 World Bank Inspection Panel, Investigation Report Uganda: Private Power Generation (Bujagali) Project, 29 August 2008, <http://documents.worldbank.org/curated/en/2009/09/11093822/uganda-private-power-generation-project-inspection-panel-investigation-report> (accessed 14 January 2014) fn 536.

64 World Bank Inspection Panel, Chad-Cameroon Petroleum and Pipeline Project: Investigation Report on Chad, 17 July 2002, para. 212.

65 Ibid, para. 217

66 Ibid, para. 212

67 Ibid, para. 214

In 2007 the Inspection Panel responded to a claim by a community of indigenous Garifuna people from Honduras alleging that the Bank had violated its own policies on indigenous peoples, environmental assessment and natural habitats, as well as ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries, which would lead them to lose their traditional entitlements to land.<sup>68</sup> The Panel did not pronounce itself on Honduras' human rights obligations under ILO Convention No. 169, but considered the Convention to be relevant to World Bank policies and procedures under OMS 2.20 (superseded by OP 4.01), which required it to take relevant international agreements into account.<sup>69</sup> The Panel also responded to and disagreed with the General Counsel's assessment that "relevant international agreements" referred only to international environment agreements by "record[ing] its serious concern" with the Counsel's statement which seemed "to limit, and even amend, existing Bank policies".<sup>70</sup>

The developments indicate that the Inspection Panel is much more attentive to human rights arguments than the Management or the General Counsel of the World Bank. The Panel, however, does not issue binding decisions and cannot propose remedies or redress to the claimants even when it concludes that the Bank has failed to comply with its own policies and procedures.

## The World Bank and Children's Rights in Practice

The World Bank works on child development in the broader context of its development work, with a special focus on early childhood development. Most early child development projects are undertaken as part of larger human development projects. Lending to early child development projects was estimated at 1.6 billion USD in 2006, up from 126 million USD in 1990.<sup>71</sup>

In 2011, the World Bank and UNICEF released a Guidance Note entitled *Integrating a Child Focus into Poverty and Social Impact Analysis (PSIA)*, along with the "Children and PSIA Resource Pack". The Guidance Note was designed to "help analysts prevent a decline in children's well-being as a result of policy reforms, and identify ways of enhancing positive impacts on children" and the resource pack provided detailed insight into "designing policies or programs for the maximum possible positive effects on children".<sup>72</sup> In the Guidance Note, the World Bank itself sets out the rationale for including an *ex-ante* child impact analysis in development projects:

- Children and adolescents are numerically significant as a population group and are disproportionately likely to live in poverty.
- Because of the rapidity of neurobiological, cognitive, and emotional development in early childhood, children and adolescents are uniquely vulnerable to even short periods of deprivation, which can have lifelong and intergenerational effects.<sup>73</sup>

According to the Guidance Note, economic and social reforms that are most likely to effect children either in large numbers or in smaller numbers, but with a more severe impact, include those that have important impacts on "household incomes and livelihoods", those that affect "access to and quality of key services" such as education or health that children

68 World Bank Inspection Panel, Investigation Report on Honduras: Land Administration Project, 12 June 2007, paras. 6-10.

69 Ibid, para. 253

70 Ibid para. 255

71 World Bank Website, "Early Childhood Development Projects" available at: <http://go.worldbank.org/57K8MKSD90> (accessed 24 March 2014)

72 World Bank and UNICEF, *Guidance Note: Integrating a Child Focus into Poverty and Social Impact Analysis (PSIA)*, September 2011, p. 4, available at: <http://siteresources.worldbank.org/EXTPSIA/Resources/490129-1322765725723/PSIA-Guidance-Note-2011.pdf> (accessed 24 March 2014)

73 Ibid., p. 6

and their families use and those that impact “key forms of social capital that protect children and help them develop”.<sup>74</sup>

The Guidance Note, among other things, provides advice on how to conduct an initial screening to identify whether or not more in-depth child impact analysis is warranted, for instance by assessing the possible short, medium and long-term impacts and their degree.<sup>75</sup>

While the Guidance Note and the accompanying Resource Pack are considered to be useful tools that could and should be used by the World Bank itself as a preliminary child impact assessment tool, there seems to be a need for a more robust rights based approach to these efforts.

In fact, it appears that many of the criticisms made in 2005 by human rights experts of the World Bank remain pertinent in 2013. Neither the World Bank nor the IMF “has been able or prepared to incorporate the legal framework of human rights treaty obligations in any meaningful way into its daily work”; and that “[it] cannot [be] conclude[d] ... that the CRC has a significant place within the policy matrix which is applied” by the Bank.<sup>76</sup>

The World Bank’s refusal to use human rights language or concepts in its work continues to be quite incongruous with the Bank’s work toward human development and poverty reduction work, which by definition would benefit from universal respect for human rights.<sup>77</sup> It is of even more concern that the Bank shies away from using children’s rights language given the importance of realization of children’s rights to the Bank’s development and poverty alleviation mission. All but two of the countries the Bank allocates funds to and all but three of its members are States Parties to the CRC and thus have obligations to protect the rights of children. More broadly, all States are parties to multiple other human rights treaties and have human rights obligations under general international law, and children, as much as adults are protected under such law.

Despite the fact that World Bank management continues to shy away from the use of human rights language or framing its work as a human rights based approach, World Bank member countries maintain their human rights treaty obligations in their dealings with the Bank. The duty to respect, protect and ensure human rights are incumbent upon all States and the rights enumerated in the CRC are obligations that all but two countries receiving World Bank funding have agreed to adhere to, including in the implementation of World Bank funded projects and all but three of the World Bank member states must comply with when voting or giving input on World Bank policies, programmes and projects.<sup>78</sup>

## Opportunities for improvement in safeguarding children’s rights

The World Bank has no specific Operational Policy or Guideline that incorporates human rights, including children’s rights and the standards of the CRC, leaving a protection deficit in the context of World Bank-related projects. The World Bank does not carry out children’s rights impact assessments for projects prior to making its lending decisions, notwithstanding the requirement of an environmental assessment, which does not mandate that the Bank assess human rights impacts.

<sup>74</sup> Ibid., p. 10

<sup>75</sup> Ibid.

<sup>76</sup> Philip Alston and John Tobin (with the assistance of Mac Darrow), *Laying the Foundations for Children’s Rights: An Independent Study of some Key Legal and Institutional Aspects of the Impact of the Convention on the Rights of the Child*, UNICEF Innocenti Insight, 2005, p. 78.

<sup>77</sup> See e.g. World Resources Institute, “A Roadmap for Incorporating Human Rights Into the World Bank Group”, 2010, available online at: [http://www.wri.org/sites/default/files/pdf/roadmap\\_for\\_integrating\\_human\\_rights.pdf](http://www.wri.org/sites/default/files/pdf/roadmap_for_integrating_human_rights.pdf) (accessed 22 January 2014)

<sup>78</sup> CRC General Comment 16 on State obligations regarding the Impacts of the Business sector on children’s rights, para 47; See Article 15 of the Maastricht Principles on Extraterritorial Obligation of States in the Area of Economic Social and Cultural Rights, available at <http://icj.wpengine.netdna-cdn.com/wp-content/uploads/2012/12/Maastricht-ETO-Principles-ENG-booklet.pdf>; *Tilburg Guiding Principles on World Bank, IMF and Human Rights*, Op. Cit. note 1, para 27.



The Bank does not seem to have developed the necessary tools to provide guidance to local partners on human rights, including children's rights. There is no monitoring of impacts of on-going projects on children generally, although children are considered in several Operational Policies to be among the vulnerable groups that might be adversely affected by projects.

There is no explicit connection made between the development work undertaken by the World Bank and the rights of the child, even though development work may contribute to enhancing rights. However, in some cases the development work undertaken by the Bank has led to inadvertent negative impacts on children. Using the language of rights and a human rights based approach in its policies could both facilitate the achievement of development objectives and avoid contributing to rights violations that undermine development objectives. It could also contribute to the states discharge of positive obligations to fulfilling the rights of the child. Looking closely at the Inspection Panel cases and the reactions from the Bank Management with regards to Panel reports, it is possible to conclude that recognition of the importance of respecting, protecting and fulfilling human rights, and particularly children's rights, in development projects is lacking among Bank staff and management.

In addition to financing, the World Bank (IBRD and IDA) provides technical expertise and assistance in the countries where it operates. It is critical to ensure adequate training and operational directives to World Bank staff on human rights, including children's rights, and establishing procedures which would allow for alerting the staff to situations where children may be at risk as a result of Bank-financed or Bank-related activities. This will in turn impact national authorities responsible for coordinating or running projects in conjunction with the World Bank.

In relation to these deficiencies, strategic opportunities may arise in the current safeguards review process with a view to reforming the approach of the Bank to human rights.

- The on-going Safeguard Policy Review Process presents a valuable opportunity to address gaps in addressing human rights, including child's rights, within the World Bank's, policies and procedures. In this regard, the next two years will be crucial in bringing such issues to the attention of policy makers and prompt their action on those matters.
- While the drafting of a separate operational policy on children's rights in particular is not something currently being considered as part of the Review, incorporating language that addresses the rights of children into relevant safeguard policies may be attainable. In particular, there is an opportunity to advocate for inclusion of a requirement that child impact assessments be carried out as part of the existing environmental and social assessment process and this may have a reasonable chance of success. The recent African Development Bank's Integrated Safeguards Policy is an example that illustrates the feasibility of this option.<sup>79</sup>
- The newly-adopted *General Comment 16 of the Committee on the Rights of the Child on State obligations regarding the impact of the business sector on children's rights* expressly addresses States parties that enter into agreements with the World Bank as well as the World Bank as an international organization. The General Comment recommends that a children's rights risk assessment and mitigation plan be adopted by international and regional finance and trade institutions and these institutions establish procedures to identify, assess and remedy any violations of children's rights that might occur.

<sup>79</sup> African Development Bank's Integrated Safeguards System: Policy Statement and Operational Safeguards, December 2013 <http://www.afdb.org/fileadmin/uploads/afdb/Documents/Policy-Documents/December%202013%20-%20AfDB%E2%80%99S%20Integrated%20Safeguards%20System%20-%20Policy%20Statement%20and%20Operational%20Safeguards.pdf> (accessed 15 January 2014). In page 48 the policy states the objective to "[A]lign Bank requirements with the ILO Core Labour Standards, and the Convention on the Rights of the Child, where national laws do not provide equivalent protection;»

- The next two years will be a crucial period during which the post-MDG development framework that extends beyond 2015 will emerge. There is strong likelihood that the follow-up to the Millennium Development Goals once 2015 is reached will determine the short to medium-term development policy priorities of the World Bank Group. At this time of change and renewal, more possibilities of including a children's rights focus in the work of the Bank Group in the context of this new development framework may emerge. Thus, it will be crucial to ensure that children and their rights feature more prominently in the follow-up to the MDGs.
- During the evaluation of Program-for-Results financing scheme after the initial two years of its implementation, there may be an opportunity to reassess the scope of what the term "risk" entails to include a clearer focus on children, similar to the focus that exists on indigenous peoples.
- Although not couched in terms of children's rights the World Bank has considerable expertise in managing and financing child-related projects around the globe especially through its Early Child Development programme. The sensibilities and the expertise accumulated through child development programs may be operationalized further. The Human Development Network's experience could be mainstreamed throughout the Bank with those responsible for the Bank's lending operations taking advantage of this knowledge to improve the developmental outcomes of its loans.
- Because breaking intergenerational cycles of poverty remains an important part of the World Bank's focus on poverty eradication, the IBRD and IDA are indirectly engaged with children's rights as a means of achieving this objective.

### 1.1.2 International Finance Corporation

The International Finance Corporation (IFC) is the private lending arm of the World Bank Group. According to the IFC's Articles of Agreement the institution's purpose is "further[ing] economic development by encouraging the growth of productive private enterprise in member countries, particularly in the less developed areas."

The IFC's 2012 Annual Report indicates that the IFC's "net income before grants to the IDA, the World Bank's fund for the poorest, totalled \$1.66 billion".<sup>80</sup> In the five-year period of 2007 to the end of 2011, the IFC granted more than two billion USD of its net income to the IDA.<sup>81</sup>

#### Products

*Investment Services:* The investment services cover the mobilization of financial resources from the IFC and from other investors in order to support the private sector in developing countries through financial products and services. The IFC invested 20.4 billion USD in 103 countries in 2012, five billion USD of which was contributed by other investors.<sup>82</sup>

*IFC Advisory Services:* The IFC acts as a consultant for developing the private sector through provision of advice and training services to companies, industries and governments. The aim is to give guidance not only on attracting investment, but also on the objectives of expansion and investment.

*IFC Asset Management Company:* The Asset Management Company is a wholly owned subsidiary of IFC and is tasked with mobilizing and managing funds on behalf of large institutional investors ranging from development finance institutions to funds such as pension

<sup>80</sup> IFC, *Annual Report 2012*, "Our Business and Expertise", p. 8.

<sup>81</sup> *Ibid*, p. 9

<sup>82</sup> *Ibid*, p. 8

funds and sovereign funds. The IFC Asset Management Company's investments are guided by IFC's Performance Standards.

## Policies

The IFC has a number of policy frameworks that guide its overall work, its relationship to its clients and its recommendations to clients. These frameworks include the Policy and Performance Standards on Environmental and Social Sustainability; Environmental, Health, Safety Guidelines; the Exclusion List; and the Guide to Human Rights Impact Assessment and Management.

### *IFC Policy and Performance Standards on Environmental and Social Sustainability*

The IFC Policy and Performance Standards on Environmental and Social Sustainability (IFC's Sustainability Framework) have guided the work of the institution since their adoption on 30 April 2006. The most recent revision of the Sustainability Framework became effective on 1 January 2012.<sup>83</sup> The Board of Executive Directors requested the IFC to review the Sustainability Framework adopted in 2006 after three years of implementation. The IFC reported to CODE in 2009 on the three years of implementation of the new Sustainability Framework, concluding that the Sustainability Framework could further be improved through a review and update process.<sup>84</sup> The review and update process was formally launched on 8 September 2009.<sup>85</sup> The revision was undertaken during 18 months through a consultative process involving various stakeholders.<sup>86</sup>

Currently, there is no Policy and Performance Standard dedicated to human rights, including children's rights. The IFC decided not to introduce a new performance standard on human rights. The stated reason for not including such a standard was that "issues related to human rights are so pervasive that they are best treated as fully mainstreamed throughout the Performance Standards".<sup>87</sup> There are eight Performance Standards (PS), related to different impacts the work of IFC might have.

In the Sustainability Policy, the IFC fails to require the private sector to conduct human rights due diligence, in accordance with international standards, as a precondition for receiving IFC money. While the IFC recommends that in some contexts borrowers undertake a human rights impact assessment, identifying adverse risks and impacts, along with measures to avoid or address them, as a recommendation it is non-binding.

<sup>83</sup> These Policy and Performance Standards also apply to MIGA and thus the discussion in this section is relevant to the work of MIGA as well as the IFC.

<sup>84</sup> The IFC report entitled "IFC's Policy and Performance Standards on Social and Environmental Sustainability and Policy on Disclosure of Information: Report on the First Three Years of Application" is available at: [http://www1.ifc.org/wps/wcm/connect/31987a00498009e2a82dfa336b93d75f/IFC\\_PPSTThreeYearApplication.pdf?MOD=AJPERES&CACHEID=31987a00498009e2a82dfa336b93d75f](http://www1.ifc.org/wps/wcm/connect/31987a00498009e2a82dfa336b93d75f/IFC_PPSTThreeYearApplication.pdf?MOD=AJPERES&CACHEID=31987a00498009e2a82dfa336b93d75f) (accessed 24 March 2014)

<sup>85</sup> IFC Website, "The 2009-2011 Review and Update: The Review Process", available at: [http://www1.ifc.org/wps/wcm/connect/Topics\\_Ext\\_Content/IFC\\_External\\_Corporate\\_Site/IFC+Sustainability/Sustainability+Framework/The+2009-2011+Review+and+Update/The+Review+Process/](http://www1.ifc.org/wps/wcm/connect/Topics_Ext_Content/IFC_External_Corporate_Site/IFC+Sustainability/Sustainability+Framework/The+2009-2011+Review+and+Update/The+Review+Process/) (accessed 24 March 2014)

<sup>86</sup> For a detailed overview of the consultation process, see: [http://www1.ifc.org/wps/wcm/connect/Topics\\_Ext\\_Content/IFC\\_External\\_Corporate\\_Site/IFC+Sustainability/Sustainability+Framework/The+2009-2011+Review+and+Update/Events+and+Milestones/](http://www1.ifc.org/wps/wcm/connect/Topics_Ext_Content/IFC_External_Corporate_Site/IFC+Sustainability/Sustainability+Framework/The+2009-2011+Review+and+Update/Events+and+Milestones/) (accessed 24 March 2014)

<sup>87</sup> IFC Response to Stakeholder Feedback on Human Rights, available at: [http://www1.ifc.org/wps/wcm/connect/6b499080498009a2a78cf7336b93d75f/Phase3\\_QCR-HumanRights.pdf?MOD=AJPERES](http://www1.ifc.org/wps/wcm/connect/6b499080498009a2a78cf7336b93d75f/Phase3_QCR-HumanRights.pdf?MOD=AJPERES) (accessed 24 March 2014)

**Table 3: IFC Performance Standards**

|                         |  |
|-------------------------|--|
| Performance Standard 1: | Assessment and Management of Environmental and Social Risks and Impacts          |
| Performance Standard 2: | Labour and Working Conditions  |
| Performance Standard 3: | Resource Efficiency and Pollution Prevention                                     |
| Performance Standard 4: | Community Health, Safety, and Security   |
| Performance Standard 5: | Land Acquisition and Involuntary Resettlement                                    |
| Performance Standard 6: | Biodiversity Conservation and Sustainable Management of Living Natural Resources |
| Performance Standard 7: | Indigenous Peoples   |
| Performance Standard 8: | Cultural Heritage  |

During the process of revising the Sustainability Framework, the IFC released an analysis entitled “The International Bill of Human Rights and IFC Policies and Performance Standards” that includes a matrix mapping the draft Performance Standards to the International Bill of Human Rights.<sup>88</sup> The introductory paragraphs summarize how each human right is reflected in Version 1 of the revised Policies and Performance Standards.

As regards children’s rights, the matrix identifies “Right of protection for the child” enshrined in UDHR Article 16 and ICCPR Article 24 and matches it with a number of Performance Standards and Policies. According to the analysis:

This right is addressed within and outside the workplace. The Policy on Environmental and Social Sustainability reaffirms IFC’s commitment to ensure that the costs of economic development do not fall disproportionately on those who are *poor or vulnerable*. This commitment is further elaborated in PS1, which requires the client to identify groups and communities that may be directly and differentially or disproportionately affected by the project because of their *disadvantaged or vulnerable status*. PS1 and PS2 extend the client’s responsibility to considering the impacts associated with the supply chain where there is a high risk of *child labour* and/or forced labour. PS4 requires the client to avoid or reduce the potential for community exposure to diseases that could result from project activities, taking into consideration exposure to and high impact on *vulnerable groups* (including the very young).<sup>89</sup> (Emphasis added)

This analysis confines its consideration of the rights of the child to the context of children who are among the vulnerable groups and to child labour. This analysis is clearly inadequate, as pointed out in a report by Amnesty International, as it touches upon only a narrow range of human rights concerns. Normatively, its scope is unduly limited to the UDHR, ICCPR and ICESCR, disregarding other UN core human rights treaties, such as the CRC, or the jurisprudence of UN human rights bodies.<sup>90</sup>

The current version of the IFC Policy and Performance Standards contain human rights standards in Performance Standard 1, which, echoing the UN Protect, Respect, Remedy Framework, stipulates that businesses should “respect human rights, which means to avoid infringing on the human rights of others and address adverse human rights impacts business

88 IFC, The International Bill of Human Rights and IFC Sustainability Framework, available at: [http://www.ifc.org/wps/wcm/connect/dc3e948049800ad7ac6afe336b93d75f/IBHR\\_and\\_IFC\\_Policies%2BPS-DRAFT.pdf?MOD=AJPERES](http://www.ifc.org/wps/wcm/connect/dc3e948049800ad7ac6afe336b93d75f/IBHR_and_IFC_Policies%2BPS-DRAFT.pdf?MOD=AJPERES) (accessed 14 January 2014),

89 Ibid. p. 13

90 Amnesty International, *Time to invest in human rights: A human rights due diligence framework for the International Finance Corporation*, 2010, available online at: <http://www.amnesty.org/en/library/asset/IOR80/004/2010/en/4c6c3700-22ba-47fd-9da7-a442d7e19594/ior800042010en.pdf> (accessed 24 March 2014)

may cause or contribute to".<sup>91</sup> The IFC considers that their safeguard policies are broadly consistent with the UN Guiding Principles on Business and Human Rights.<sup>92</sup> However, the IFC fails to recognize that it must align IFC standards to the requirements under the Convention on the Rights of the Child or ILO Conventions. General Comment No 16, which sets out what the Committee on the Rights of the Child considers to constitute the requirements of States vis-à-vis companies, was adopted only in 2013, and it remains to be seen whether the IFC will ultimately take the Committee's view in its future development of standards.

Standard 1 applies to business activities with environmental and/or social impacts. The Standard requires client businesses to conduct a process of environmental and social assessment and establish an environmental and social assessment management system (ESMS). The environmental and social risk and impact assessment envisaged under Standard 1 allows for considerable leeway for clients as to type, scope and level, ranging from full-scale impact assessment to a limited or focused one. Standard 1 does indicate that the type, scale and location of the project will guide the scope and the level of the effort, which must be consistent with "good international industry practice."<sup>93</sup> If risks and impacts are identified, the client is required to address these impacts in a way that achieves the environmental and social goals of the project. If the risks and impacts result from third party's actions, "the client will address those risks and impacts in a manner commensurate with the client's control and influence over the third parties, and with due regard to conflict of interest."<sup>94</sup> "Where the client can reasonably exercise control, the risks and impacts identification process will also consider those risks and impacts associated with primary supply chains."<sup>95</sup>

Standard 1 makes a case for differentiated measures to protect disadvantaged or vulnerable groups or individuals from disproportionate impact, and age is listed among factors to be considered.<sup>96</sup> In addition, Standard 1 requires clients to receive external communications and establish grievance mechanisms where there are affected communities resulting from its business activities to facilitate the resolution of concerns and grievances.<sup>97</sup>

IFC's Policy and Performance Standard 2 elaborates on labour and working conditions.<sup>98</sup> Child labour is among the issues addressed. The IFC has declared that it will not support projects that use forced labour or harmful child labour:

"The client will not employ children in any manner that is economically exploitative, or is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral, or social development. ... Children under the age of 18 will not be employed in hazardous work."<sup>99</sup>

A similar provision is included in relation to forced labour, including employment of trafficked persons.<sup>100</sup> When there is a high risk of child or forced labour in the 'primary supply chain', the client is required to identify these risks and "take appropriate steps to remedy them while continuing to monitor its 'primary supply chain' on an on-going basis."<sup>101</sup>

91 United National Human Rights Council, Guiding Principles on Business and Human Rights: Implementing the United Nations Protect, Respect and Remedy' Framework, UN Doc. A/HRC/17/31, 2011.

92 International Finance Corporation's Guidance Notes: Performance Standards on Environmental and Social Sustainability, January 2012, p. 16, available at [http://www.ifc.org/wps/wcm/connect/e280ef804a0256609709ffd1a5d13d27/GN\\_English\\_2012\\_Full-Documents.pdf?MOD=AJPERES](http://www.ifc.org/wps/wcm/connect/e280ef804a0256609709ffd1a5d13d27/GN_English_2012_Full-Documents.pdf?MOD=AJPERES) (accessed 28 February 2014)

93 IFC Performance Standard 1 on Assessment and Management of Environmental and Social Risks and Impacts, para. 7.

94 Ibid, para. 9

95 Ibid, para. 10

96 Ibid, para. 12

97 Ibid, para. 35

98 IFC Website, available at: [http://www.ifc.org/wps/wcm/connect/Topics\\_Ext\\_Content/IFC\\_External\\_Corporate\\_Site/IFC+Sustainability/Sustainability+Framework/Sustainability+Framework+-+2012/Performance+-Standards+and+Guidance+Notes+2012/](http://www.ifc.org/wps/wcm/connect/Topics_Ext_Content/IFC_External_Corporate_Site/IFC+Sustainability/Sustainability+Framework/Sustainability+Framework+-+2012/Performance+-Standards+and+Guidance+Notes+2012/) (accessed 24 March 2014)

99 IFC, Performance Standard 2 on Labour and Working Conditions, para. 21. Available at: [http://www.ifc.org/wps/wcm/connect/2408320049a78e5db7f4f7a8c6a8312a/PS2\\_English\\_2012.pdf?MOD=AJPERES](http://www.ifc.org/wps/wcm/connect/2408320049a78e5db7f4f7a8c6a8312a/PS2_English_2012.pdf?MOD=AJPERES) (accessed 24 March 2014)

100 Ibid, para. 22

101 Ibid, para. 27

### *Environmental, Health, Safety Guidelines*

In addition to the Policy and Performance Standards, the IFC issued Environmental, Health, Safety Guidelines (EHS Guidelines) in 2007 as a technical tool for the use of clients in carrying out their responsibilities under Policy and Performance Standard 3. The EHS Guidelines elaborate on “Good International Industry Practice” by giving more general and industry-specific examples. For instance, the Guidelines recommend as a good practice measure a detailed site-specific, environmental risk assessment to determine “how current and proposed future land use influence the predicted risks (e.g. change of land use from industrial to residential with more sensitive receptors such as children)”.<sup>102</sup> Another good practice measure identified by the Guidelines is working with “local communities and responsible authorities to improve signage, visibility and overall safety of roads, particularly along stretches located near schools or other locations where children may be present” where the project may result in a significant increase in road traffic.

### *IFC Exclusion List*

IFC Exclusion List enumerates the types of projects that the IFC does not finance. The list includes:

- Production or activity deemed illegal under host country laws or regulations or international conventions and agreements, or subject to international bans
- Production or trade in weapons or munitions; in alcoholic beverages excluding beer and wine; in tobacco; gambling, casinos, etc. [does not apply to project sponsors who are partially involved in these sectors, i.e. if it is not their primary operation]
- Production or trade in radioactive materials [excluding purchase of medical equipment, quality control (measurement) equipment, etc.]
- Production or trade in unbounded asbestos fibres
- Drift net fishing in the marine environment using nets in excess of 2.5 km in length.

The IFC Exclusion List serves as a benchmark for many regional and national financial institutions in guiding their exclusion policies. In addition to the IFC list, all financial intermediaries through which the funding is provided must apply additional exclusions, including when they invest in microfinance or trade finance projects. One such additional exclusion applies to the “production or activities involving harmful or exploitative forms of forced labour/harmful child labour.”<sup>103</sup>

### *Guide to Human Rights Impact Assessment and Management*

The IFC published its *Road-Testing Draft Guide to Human Rights Impact Assessment and Management* (Guide to HRIAM) in June 2007. An updated version of the Guide to HRIAM was launched in June 2010 and is currently in use.

The Guide is aimed at providing “practical advice to companies on how to identify and assess the human rights risks and impacts of their business activities, integrate the results into their management system, and ultimately improve their performance”.<sup>104</sup> It purports to offer guidance to companies of “any size, industry sector and geographical location”. However, the Guide is nonbinding, and IFC management and staff has no firm obligation to follow any of the recommendations or suggestions found in the Guide.

<sup>102</sup> IFC EHS Guidelines, 30 April 2007, p. 57

<sup>103</sup> IFC Exclusion List, available at:

[http://www1.ifc.org/wps/wcm/connect/Topics\\_Ext\\_Content/IFC\\_External\\_Corporate\\_Site/IFC+Sustainability/Sustainability+Framework/IFC+Exclusion+List/](http://www1.ifc.org/wps/wcm/connect/Topics_Ext_Content/IFC_External_Corporate_Site/IFC+Sustainability/Sustainability+Framework/IFC+Exclusion+List/) (accessed 24 March 2014)

<sup>104</sup> IFC Website, available at:

[http://www1.ifc.org/wps/wcm/connect/topics\\_ext\\_content/ifc\\_external\\_corporate\\_site/ifc+sustainability/publications/publications\\_handbook\\_hria\\_wci\\_1319577931868](http://www1.ifc.org/wps/wcm/connect/topics_ext_content/ifc_external_corporate_site/ifc+sustainability/publications/publications_handbook_hria_wci_1319577931868) (accessed 24 March 2014)

The Guide situates children among “disadvantaged and vulnerable people” and includes the “Right of protection for the child” among the 35 different human rights that it mentions. The Guide gives scenarios to companies to be used in order to evaluate allegations of violations of human rights. It does not restrict its scenarios to child labour cases. It also envisages scenarios that might have spill over effects on the rights of children, such as violation of the child’s right to health, or other adverse impacts upon health, resulting from environmental pollution arising from business activities. It also contemplates scenarios of harm caused to children including deprivation of their rights resulting from violations of their parents’ rights (i.e. adequate working conditions).

### **Accountability Mechanism: the Compliance Advisor/Ombudsman**

The World Bank Inspection Panel does not have mandate to consider complaints lodged against the IFC or MIGA. Complaints by affected communities against IFC and MIGA projects are handled by the Office of the Compliance Advisor/Ombudsman (CAO - [www.cao-ombudsman.org](http://www.cao-ombudsman.org)), which was established in 1999 and is based in Washington DC.

The revised Operational Guidelines of the CAO specify that the Office of the CAO is “the independent recourse mechanism of the IFC and MIGA for environmental and social concerns”, reporting directly to the President of the World Bank Group.<sup>105</sup> Individuals or groups of individuals that believe they are “affected, or potentially affected, by the environmental and/or social impacts of an IFC/MIGA project” may lodge complaints before the CAO.<sup>106</sup>

In order for a complaint to be admissible it must fulfil three conditions:

- It must pertain to a project that IFC/MIGA is participating in, or is actively considering;
- The issues raised must pertain to CAO’s mandate to address environmental and social impacts of IFC/MIGA projects; and,
- The complainant must either have been or may be affected if the environmental and/or social impacts raised in the complaint occurred.<sup>107</sup>

The CAO was previously mandated as an “Ombudsman” to use a “flexible, problem-solving approach” purportedly aimed to lead to a fair resolution of the issue.<sup>108</sup> With the new revised Operational Guidelines, the CAO’s Ombudsman role has been replaced with a Dispute Resolution role. The Dispute Resolution role underscores CAO as a “non judicial, non adversarial, neutral forum,” while the functions such as facilitation and information sharing, joint fact-finding, dialogue and negotiation or conciliation and mediation are preserved.<sup>109</sup> The CAO under its Dispute Resolution mandate is prohibited from supporting “agreements that would coerce one or more parties, be contrary to IFC/MIGA policies, or violate domestic laws of the parties or international law.”<sup>110</sup>

The CAO has two other functions. It oversees compliance appraisals and investigations of social and environmental performance of IFC and MIGA projects, and it provides independent advice to the President of the World Bank, and the management of IFC and MIGA on broader environmental and social issues respectively.<sup>111</sup>

The decision as to whether a complaint will be addressed by means of dispute resolution or through a compliance function is made after initial eligibility screening and further assessment by CAO dispute resolution experts. If there is no agreement between the parties to undertake

<sup>105</sup> Ibid, Art. 1.1.4.

<sup>106</sup> Ibid, Art. 2.1.2.

<sup>107</sup> Ibid, Art. 2.1.1.

<sup>108</sup> CAO, Operational Guidelines of the CAO, 2007, Art. 1.2.

<sup>109</sup> CAO, Operational Guidelines of the CAO, March 2013, Art. 3.2.1.

<sup>110</sup> Ibid, Art. 3.2.2.

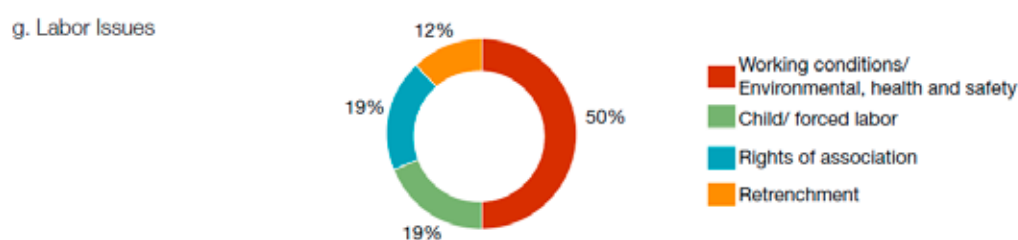
<sup>111</sup> Ibid, Art. 4.1 and 5.1.1, respectively

dispute resolution, the “compliance” function will be triggered. The compliance function is carried out through appraisals and compliance investigations.

Most cases that have been brought before the CAO are about allegations of failure to carry out consultations with concerned persons; displacement; land use; failure to respect indigenous peoples’ rights; threats to the environment; health concerns arising from pollution; damage to infrastructure, failure to respect rights of association; disruption of livelihoods (agriculture, fishing), and violation of rights at work. The complaints have been brought mostly by local and international NGOs representing the affected groups. Some NGOs have brought complaints based on the same facts several times on different legal grounds.

Human rights grounded language regarding the violations of “human rights” or “rights” was used in 62 per cent of original complaint letters handled between Financial Years 2000 and 2010 (47 out of 76). Direct children’s rights aspects dealt with by the CAO are limited to child labour under the rubric of harmful child/forced labour as these two issues are linked by both Performance Standard 2 and the Exclusion List. The CAO reports that between 2000 and 2010, from the total of labour issues that were brought to the CAO, 19 per cent of the cases related to child/forced labour. It is not possible to identify how many complaints refer explicitly to child labour as opposed to forced labour because, although the CAO reports are public, in most of cases the complaints themselves have not been made public.

**Graphic 2: CAO Cases by Issue, 2010-2010**



Source: The CAO at 10: Annual Report FY 2010 and Review FY2000-10, 56.

The CAO launched an independent audit of environmental and social performance of IFC’s financial sector investments in 2011. The audit concluded that IFC’s “less visible activities in the financial sector could potentially be a risk for IFC since these investments may cause environmental and social harm.”<sup>112</sup> The audit looked into IFC’s financing through financial intermediaries (banks, microfinance institutions, insurance and leasing companies, private equity funds) which constitute more than 40 per cent of IFC’s portfolio.<sup>113</sup> The CAO responded to numerous external inquiries “question[ing] how IFC’s environmental and social standards are applied and monitored in financial sector investments” and identified that “[a]ffected parties are less likely to file a complaint with the CAO about financial sector projects” as opposed to real sector projects that are directly funded by the IFC.<sup>114</sup> Clients may not be aware or able to discern that IFC is the main supplier of the financial tools they benefit from or not be aware of the CAO accountability mechanism.<sup>115</sup>

After analyzing 188 IFC investments through 63 different intermediary clients in 25 countries, the CAO audit found that “while the majority of IFC investments in the audit sample are in procedural compliance, IFC does not have a methodology for determining whether its principle requirement on clients—the implementation of an environmental and social management

112 CAO, “Independent Audit Assesses Environmental and Social Performance of IFC’s Financial Sector Investments”, 11 February 2013, available at: [http://www.cao-ombudsman.org/documents/CAOstatement\\_IFCFinancialSectorAudit\\_February2013.pdf](http://www.cao-ombudsman.org/documents/CAOstatement_IFCFinancialSectorAudit_February2013.pdf) (accessed 24 March 2014)

113 CAO, *CAO Audit of a Sample of IFC Investments in Third-Party Financial Intermediaries*, 10 October 2012, 8, available at: [http://www.cao-ombudsman.org/documents/Audit\\_Report\\_C-I-R9-Y10-135.pdf](http://www.cao-ombudsman.org/documents/Audit_Report_C-I-R9-Y10-135.pdf) (accessed 24 March 2014)

114 Ibid.

115 Ibid.



system—achieves the core objective of ‘doing no harm’ or improving environmental and social outcomes at the sub-client level”.<sup>116</sup> The CAO also found that the IFC could play a pioneering role globally by setting up environmental and social performance reporting and disclosure requirements for its clients, thus “encourag[ing] the adoption of a widely shared vision of industry standards for acceptable E&S [environment and social] practices, behaviour, and results”.<sup>117</sup>

The IFC Official Response to the CAO audit stated that the IFC considers the report to “present perspectives on how IFC could work differently or better to meet the ... objective [of effective and efficient management of the E&S (environmental and social) risks of ... FI (financial intermediary) business]”.<sup>118</sup> The IFC also asserted that it “does not evaluate all information at the sub-client level” because it does not “consider this necessary or efficient” as the “intent is to have ... partner FIs manage this through an Environmental and Social Management System (ESMS)”.<sup>119</sup>

It is intended that the audit remains open as the CAO will continue to monitor “IFC’s implementation of actions to address audit findings”.<sup>120</sup>

## The IFC and Children’s Rights in Practice

The IFC, unlike the World Bank, does not maintain regular consultations with children in the context of development.

On the other hand, the institution works closely with private sector clients and sub-clients through financial intermediaries and these frequently are involved in activities that generate adverse impacts on children’s enjoyment of their rights. Especially in the case of large-scale infrastructure or industrial agriculture projects, the IFC’s role has been questioned by a number of NGOs as regards land acquisitions (or ‘land grabs’ to use an alternative terminology).<sup>121</sup> Although children’s rights concerns appear not to have been explicitly been raised to date by civil society actors, it is clear that disruptions of environments and livelihoods may impact a wide range of children’s rights. On a positive note, the IFC does not seem reticent to use human rights language in its policies, standards or guides.

## Opportunities for improvement

Although the IFC has published its Guide to HRIAM, drawing the attention of partner companies to the need to respect human rights in their operations, IFC itself has not yet adopted a human rights/children’s rights code that binds its staff and operations. IFC should adopt policies and procedures to conduct children’s rights due diligence for its operations and decisions. Human Rights Impact Assessment promoted by the IFC presently remains optional, but should be made mandatory. Conducting a HRIA does not figure among the conditions of funding to be allocated to companies and hence, the process is often omitted in those cases where it is most necessary.

Crucially, the IFC Performance Standards generally place the onus for compliance on the borrower and the IFC itself does not have responsibility for ensuring compliance. This means that with respect to IFC loans, there is only an obligation for borrowers to work towards

<sup>116</sup> CAO, *Op. Cit.* note 112

<sup>117</sup> CAO, *Op. Cit.* note 113, p. 37.

<sup>118</sup> IFC Response: Report on Audit of a Sample of IFC Investments in Third-Party Financial Intermediaries, 31 January 2013, available at: <http://www.cao-ombudsman.org/newsroom/documents/FINALIFCResponsetoCAOR-report1-31-2013.pdf> (accessed 24 March 2014)

<sup>119</sup> *Ibid.*

<sup>120</sup> *Ibid.*

<sup>121</sup> Examples include Oxfam International, *Our Land, Our Lives: Time out on the global land rush*, October 2012, available online at: [http://www.oxfam.org/sites/www.oxfam.org/files/bn-land-lives-freeze-041012-en\\_1.pdf](http://www.oxfam.org/sites/www.oxfam.org/files/bn-land-lives-freeze-041012-en_1.pdf) (accessed 24 March 2014) and GRAIN, *Who’s Behind the Land Grabs? A look at some of the people pursuing or supporting large farm land grabs around the world*, October 2012, available online at: <http://www.grain.org/article/entries/4576-slideshow-who-s-behind-the-land-grabs> (accessed 24 March 2014)

compliance, rather than an obligation for the IFC to ensure compliance before dispersal of funds. Additionally, there is a caveat in the implementation of IFC Performance Standards: while the Performance Standards are applied by the IFC to direct project finance, projects financed through financial intermediaries may escape the scrutiny of the Performance Standards as has been pointed out by the recent CAO audit.

There is ample room for improvement in the IFC performance standards. Such progress is especially important given that guidelines and standards adopted by the IFC have a strong bearing on the substantive standards applied by many regional and national financial institutions.<sup>122</sup>

- Because the IFC works with private sector and provides financing to private sector companies, international human rights law and standards, including the Framework provided in the CRC Committee's *General Comment 16* and in the *UN Protect, Respect, Remedy Framework* can and should be invoked in addressing concerns related to the work of the IFC in the future.
- The IFC should enhance its Guide to HRIAM by adding a child-specific section, especially following the *General Comment 16 of the Committee on the Rights of the Child* and the *UNICEF's Children's Rights and Business Principles*. The IFC may also consider making HRIAM a requirement to receive its funds.
- The IFC as an organization has achieved certain level of sensitization to human rights concerns during its recent process of updating its Performance Standards, even if its responses are not always adequate. IFC is relatively dynamic in revising its policies, guidelines and complaints mechanisms. This offers an opportunity to promote changes to these policies, guidelines or complaints procedures showing to IFC policy makers the need for introducing such changes.

### 1.1.3 Independent Evaluation Group (IEG)

The activities of the World Bank (IBRD and IDA), the private sector development work of the IFC and MIGA guarantee projects and services are evaluated by the Independent Evaluation Group (IEG) in order to provide "an objective assessment of the results of the Bank Group's work and to identify and disseminate lessons learned from experience".<sup>123</sup> The IEG reports directly to the Board of Executive Directors.

The IEG employs various methods to evaluate public sector and private sector projects and programs. Public sector projects and programs are evaluated with a view to determining the effectiveness and efficiency in achieving their development objectives. Private sector projects, on the other hand, are evaluated in terms of economic and financial performance criteria.<sup>124</sup> IEG is tasked with evaluating all Implementation Completion Reports produced by the World Bank and also undertakes more in-depth evaluation of a selection of around 25% of completed projects through both research and fieldwork.

The results of the evaluations are stored in the World Bank Project Performance Ratings database by using project performance indicators, which currently holds more than 8000 project evaluations for 6000 projects.<sup>125</sup>

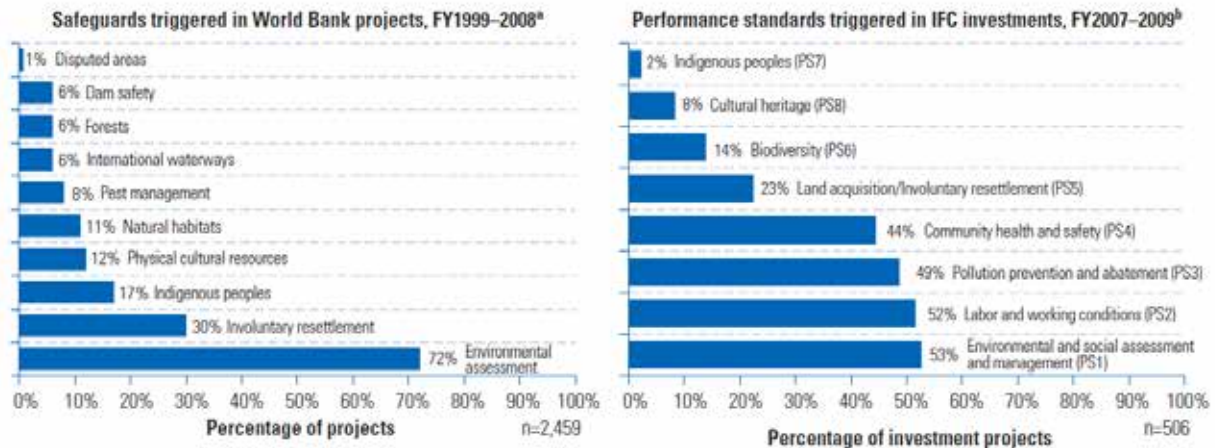
<sup>122</sup> For instance, the IFC's Exclusion List has served as a benchmark for many important regional and national players. As has been articulated by Oxfam International, "the IFC is the number one standard setter for investors: some 15 development finance institutions, 32 export credit agencies and the 77 private investors of the Equator Principles banks all reference the IFC's Performance Standards." Oxfam International, *Our Land, Our Lives: Time out on the global land rush*, Ibid, p. 12. (The current number of Equator Principles Banks stands at 79.) This observation has also been brought up by the CAO in its recent audit.

<sup>123</sup> IEG Website, available at: <http://ieg.worldbankgroup.org/about-us> (accessed 24 March 2014)

<sup>124</sup> IEG Website, available at <http://ieg.worldbankgroup.org/methodology> (accessed 24 March 2014)

<sup>125</sup> World Bank Project Performance Ratings Database is available at: <http://ieg.assyst-uc.com/ieg-ratings> (accessed 24 March 2014)

**Graphic 3: World Bank Group Portfolio – Safeguards and Performance Standards Triggered**



Sources: World Bank and IFC databases.

a. Bank data are based on results for all 2,056 investment projects in the portfolio, approved in fiscal 1999–2008. This excludes 439 development policy loans and structural adjustment loans from the same portfolio, 6 percent of the structural adjustment loans, approved prior to Sept 2004 and that triggered OP 4.01 (Environmental Assessment), are reflected in this chart. IFC figures are based on the entire IFC portfolio, including FI- and C-category projects.

b. IFC data depicted are an underestimate as they do not portray the Performance Standards triggered by FI subprojects.

Source: IEG, *Safeguards and Sustainability Policies in a Changing World: An Independent Evaluation of World Bank Group Experience*, IBRD/The World Bank: 2010, 84.

Since 2000, the work of the IEG in conducting public sector project evaluations has focused on development objectives. Currently, the topics under IEG purview include: agriculture and development, climate change, financial crisis, human development and natural crises. Areas of education, healthcare, nutrition, cash-transfers, poverty reduction and social security have been subject to a number of project and sector evaluation reports.

As the children are frequently directly affected by projects in these areas, they often feature in the evaluation of outcomes of related projects.

For instance, IEG's report entitled *World Bank Support to Education since 2001: a Portfolio Note* found that although World Bank commitments to education from 2001–2010 increased substantially and totalled 23 billion USD with a focus on "Learning for All", the performance of the projects declined from 82 per cent to 69 per cent of projects receiving satisfactory ratings.<sup>126</sup> The Bank had been more successful in achieving objectives of increasing access to education and improving equity but much less so in achieving desired education quality, efficiency and learning objectives.<sup>127</sup>

The IEG's evaluation of the Bank-supported Female School Stipend Programme in Pakistan found that giving stipends to families of girls on the condition that girls continue attending middle school had increased the likelihood of these girls completing middle school, entering later into the labour force, marrying later and having fewer children.<sup>128</sup>

Yet another evaluation on Bank nutrition interventions and programs to improve child anthropometric outcomes – height, weight, and birth weight found that such an improvement did in fact occur but that results of different programs and interventions varied significantly "depending on differences in local context, the causes and severity of malnutrition, and the capacity for programme implementation".<sup>129</sup>

<sup>126</sup> IEG, *World Bank Support to Education Since 2001: A Portfolio Note*, p. 30.

<sup>127</sup> Ibid, p. 37–38.

<sup>128</sup> IEG, *Do Conditional Cash Transfers Lead to Medium-Term Impacts? Evidence from a Female School Stipend Program in Pakistan*, p. 20–25.

<sup>129</sup> IEG, *What Can We Learn from Nutrition Impact Evaluations?*, "Executive Summary", p. vii.

In summary, IEG evaluations on public sector programs of the World Bank already take into account some child outcomes within the broader context of development objectives specific to these projects and interventions.

### **Opportunities for improvement**

Although the IEG already takes into account child outcomes to an extent in their evaluations, the proper Framework provided in international human rights law, including the CRC and its General Comment 16 or the UNICEF Child Rights and Business Principles could be more explicitly incorporated to guide those evaluations. This could ensure that respect for the rights of the child will be an element of the evaluation.

The IEG may also give consideration to incorporating the voice of children in their evaluations by allowing direct participation by youngsters in the evaluation process.

## 2. Regional financial institutions

### 2.1 Asian Development Bank

#### Membership and Management

Founded in 1966 by 31 members, the Asian Development Bank (ADB) currently has 67 members (48 are from the Asia region and 19 are from outside the Asia region).<sup>130</sup> The membership is divided between Developing Member Countries (DMC), who are entitled only to borrow, and donor members. Japan and the United States are the biggest shareholders, each holding 12.82 per cent of the voting power in the institution, followed by China, India, Australia and Canada. Shareholder member states in the ADB appoint governors to the Board of Governors. In turn, the Board of Governors elects a 12-member Board of Directors (eight members are elected by regional members and four by non-regional members). Each Director is elected by a constituency (group of countries). The Board of Directors is tasked with supervising the bank's financial statements, approving its administrative budget, and reviewing and approving policy documents and all operations (loans, equity and technical assistance operations). The Chairperson of the Board of Directors acts as the President of the ADB and is elected by the Board of Governors for a renewable five-year term. The President is the legal representative of the ADB and is overall responsible for the organization. The President works with five Vice-Presidents and the Managing Director General to carry out the day-to-day management of the ADB and its staff. Currently, the ADB has close to 3000 employees and works in 59 countries.

The funds used in ADB operations are raised principally through the issuance of bonds that are bought by States. Additional funds include contributions from member States and earnings from interest and repayments.<sup>131</sup> These constitute what are called the ADB's Ordinary Capital Resources (OCR). In addition to using funds from its OCR, the ADB uses special funds placed under its administration by a State or group of States.

#### Products

The source of products of the ADB includes those deriving from Ordinary Capital Resources (OCR) and those from Special Funds. In respect of OCR, as of 2011, the ADB held approximately 11.3 billion USD. OCR funds are provided to developing member countries (DMCs). DMCs are categorized according to their eligibility to borrow either from Ordinary Capital Resources (OCR) and/or from the Asian Development Fund.<sup>132</sup>

*Public Sector (Sovereign) Financing:* Public sector financing may include loans, technical assistance or grants and is available for developing member countries of the bank, either at the government level or at the public sector entity level, including state-owned enterprises. Sovereign financing makes up the bulk of ADB development assistance.

*Private Sector (Non-Sovereign) Financing:* Private Sector Financing is a relatively smaller part of ADB financing. It consists of direct financial assistance (loans, equity investments, guarantees, technical assistance). These are made in respect of projects in DMCs when there

<sup>130</sup> Non-regional Members include Austria, Belgium, Canada, Denmark, Finland, France, Germany, Ireland, Italy, Luxembourg, The Netherlands, Norway, Portugal, Spain, Sweden, Switzerland, Turkey, the UK and the US.

<sup>131</sup> ADB Website, available at: <http://www.adb.org/about/faqs>.

<sup>132</sup> Classification of DMCs - Group A (eligible to borrow from ADF only): Afghanistan, Bhutan, Cambodia, Kiribati, Kyrgyz Republic, Lao People's Democratic Republic, Maldives, Myanmar, Nauru, Nepal, Samoa, Solomon Islands, Tajikistan, Tonga, Tuvalu, and Vanuatu; Group B (eligible to borrow from both ADF and OCR): Armenia, Azerbaijan, Bangladesh, Georgia, India, Marshall Islands, Federated States of Micronesia, Mongolia, Pakistan, Palau, Papua New Guinea, Sri Lanka, Timor-Leste, Uzbekistan, Viet Nam; Group C (eligible to borrow from OCR only): Cook Islands, People's Republic of China, Fiji, Indonesia, Kazakhstan, Malaysia, Philippines, Thailand, and Turkmenistan

are “clear development impacts and/or demonstration (sic) effects that go beyond the benefits captured in the financial rate of return”.<sup>133</sup>

Special funds made up 2.7 billion USD of ADB resources in 2011. The most significant of these special funds is the Asian Development Fund.

*Asian Development Fund (ADF)*: Established in 1973, the fund provides grants and loans at very low interest rates to the poorest ADB member countries. The ADB conducts Country Performance Assessments for all countries eligible to ADF funds, evaluating the country’s macroeconomic and structural policies, governance, public sector management, the promotion of equity and inclusion in its policies and institutions as well as performance of on-going projects and programs.<sup>134</sup> The ADF provides funding for many projects that are focused on education, especially at the primary and secondary levels in countries such as Bangladesh, Cambodia, Mongolia, Sri Lanka and Vietnam. Recent projects have provided funds for building or modernizing schools and the education system and reducing early drop out rates. Such projects are likely to have an impact on the realization of children’s rights.

*Other Trust Funds*: ADB administers a number of trust funds that are designated to finance projects in specific sectors or address particular themes, including climate change, poverty reduction, governance, gender and development, HIV/AIDS, water, energy, education, information and communication technologies, trade and finance. Some trust funds have been created *ad hoc* to respond *inter alia* to natural disasters, such as the Asian Tsunami Fund, Pakistan Earthquake Fund; others aim at addressing longer-term, more structural needs.

## Policies

### *Strategy 2020*

Since 1999, the ADB’s overarching goal has been poverty reduction in the Asia-Pacific region. The current strategy of ADB for achieving this goal is outlined in its *Strategy 2020: The Long-Term Strategic Framework of the Asian Development Bank 2008-2020*. The Strategy 2020 identifies five main drivers of change the ADB seeks to build on: private sector development and private sector operations; good governance and capacity development; gender equity; knowledge solutions; and partnerships.<sup>135</sup> The strategy announced gave as its target for 2012 that 80 per cent of its lending would be in what are deemed the be core operational areas (areas of comparative strength for the bank):

- Infrastructure, including transport and communications, energy, water supply and sanitation and urban development
- Environment
- Regional cooperation and integration
- Finance sector development
- Education

*Strategy 2020* also identifies health, agriculture, and disaster and emergency assistance as other areas of operations, to be more selectively pursued.

*Strategy 2020* does not include a focus on human rights generally, nor on children’s rights or the CRC particularly, in respect of its conceptual and policy framework. Indeed it does not adopt a rights based approach to any of its work. Likewise, there is no agenda that expressly incorporates human rights into the strategy. While a focus on children’s rights proper is absent in *Strategy 2020*, the emphasis on education is strongly connected to the provision of services

<sup>133</sup> ADB, *ADB Private Sector Operations: Innovation, Impact, Integrity*, available at: <http://www.adb.org/sites/default/files/pub/2012/psod-brochure.pdf>, p. 7 (accessed 21 March 2014)

<sup>134</sup> ADB Website, <http://www.adb.org/site/adf/allocation-adf-resources> (accessed 21 March 2014)

<sup>135</sup> ADB, *Strategy 2020: The Long-Term Strategic Framework of the Asian Development Bank 2008-2020*, <http://www.adb.org/sites/default/files/Strategy2020-print.pdf>, p. 14, (accessed 21 March 2014)

for children. Strategy 2020 states that the ADB “will continue to support expanded, higher-quality, more accessible basic and secondary education, particularly in smaller and poorer DMCs”.<sup>136</sup> Although tertiary education is not excluded, the emphasis is placed on primary and secondary education (technical and vocational education included).

By contrast, ADB’s Policy on Education underlines that basic education has been recognized as a human right by the ADB since 1988.<sup>137</sup> The Policy reiterates the status of basic education as a human right by referring to the Universal Declaration of Human Rights, and it cites in its appendix the International Covenant on Economic, Social and Cultural Rights-ICESCR, Convention on the Elimination of Discrimination against Women- CEDAW and the Convention on the Rights of the Child-CRC. But at the operational level the ADB does not have an explicit rights-based approach or matrix and its contribution to the realization of children’s rights is highly selective, e.g, through its refusal to allow the employment of child labour and incorporating this in loan agreements. Likewise, it can be said that its contribution to gender equality is indirect by virtue of the fact that it uses it as one of the cross cutting themes, but again without adopting a rights-based approach.

### *Operational Manuals*

The policies that guide the daily operations of the ADB are spelled out in its Operations Manuals, which include Bank Policies and Operational Procedures. Children’s rights do not expressly appear in these manuals, although there are some references to principles and categories with a human rights dimension, such as participation, gender, involuntary resettlement, indigenous peoples, labour, affordability, and other risks and/or vulnerabilities.

Bank Policy on Incorporation of Social Dimensions into ADB Operations states that ADB operations incorporate social dimensions to promote greater inclusiveness and equity in access to services, resources and opportunities, greater empowerment to participate in socio-economic and political life, as well as a greater sense of security.<sup>138</sup> Bank Policies on Poverty Reduction (OM C1/BP) and on Governance (OM C4/BP) underscore the importance of inclusive development and participation, without making references to children’s rights. This means that the ADB does not organize its operations by reference to the realization or the avoidance of violations of rights of the child, but it does tend to assume that its ordinary operations in such areas as poverty reduction, education, will have a positive impact on children’s rights.

### *Safeguard Policies*

ADB safeguards are focussed on three key areas: protection of environment and people, involuntary resettlement and indigenous peoples, in order to:

- “1) Avoid adverse impacts of projects on the environment and affected people, where possible;
- 2) Minimize, mitigate, and/or compensate for adverse project impacts on the environment and affected people when avoidance is impossible; and
- 3) Help borrowers/clients to strengthen their safeguard systems and develop the capacity to manage environmental and social risks.”<sup>139</sup>

The Indigenous Peoples Safeguards require the classification of proposed projects in terms of their expected impact on indigenous peoples. The significance of such impacts is measured by 1) taking into account different factors from customary rights of use and access to land and natural resources to health, education, livelihood and social security status, and; 2)

<sup>136</sup> Ibid, p. 20

<sup>137</sup> ADB, *Policy on Education*, July 2003, p. 1, available online at: <http://www.adb.org/sites/default/files/education-policy.pdf>, (accessed 21 March 2014)

<sup>138</sup> ADB, Bank Policy on Incorporation of Social Dimensions into ADB Operations, OM Section C3/BP, 6 December 2010, Art. 5

<sup>139</sup> ADB, *Safeguard Policy Statement*, issued 1 October 2013, available at: <http://www.adb.org/sites/default/files/OM-F1-20131001.pdf> (accessed 15 Jan 2014)

the level of vulnerability of the affected Indigenous Peoples community.<sup>140</sup> The Involuntary Resettlement Safeguards calls for assigning projects to categories of risk depending of their involuntary resettlement impacts. The impacts are classed as significant if more than 200 persons experience them.<sup>141</sup> The incorporation of social dimensions into ADB operations policy broadly recognizes that “[a]ll ADB operations have social dimensions that need to be taken into account from the country strategy formulation, programming, and project processing phases onward” and that gender, caste, ethnicity, age and race are, among others, part of the social dimension. However, children do not appear explicitly and their needs (because of their age and level of maturity) do not seem to be given special consideration.<sup>142</sup>

### *Prohibited Activities List*

In the 2009 ADB Safeguard Policies Statement included a list of Prohibited Investment Activities, according to which the ADB does not fund *inter alia* “production or activities involving harmful or exploitative forms of forced labour or child labour” where child labour is defined as “employment of children whose age is below the host country’s statutory minimum age of employment or employment of children in contravention of ILO Convention No. 138 ‘Minimum Age Convention.’”<sup>143</sup>

### *Partnerships*

The ADB has established official relationships with a number of intergovernmental organizations, UN specialized agencies as well as other development banks. The ADB and UNICEF have a Memorandum of Understanding (MoU), setting out their “mutual interest in supporting inclusive and sustainable economic growth and poverty reduction in the Asia and Pacific region, including especially the achievement of the Millennium Development Goals (the “MDGs”).”<sup>144</sup> In this regard, ADB and UNICEF have established a number of guiding principles that aim at protecting “the interests of the poor and vulnerable, and especially children”. These guiding principles include long-term approaches to investment in children to eliminate intergenerational poverty, encouraging the participation of all stakeholders, including children themselves, as well as initiating programs that are purportedly aimed at alleviation of poverty and target the most vulnerable.<sup>145</sup> The MoU identifies areas of cooperation between ADB and UNICEF as joint technical assistance, joint research and development of knowledge products, information and knowledge sharing, technical staff cooperation and joint analytical work in “areas of common interest such as poverty, vulnerability, gender, and resource allocation for health, education, water, sanitation and hygiene, and protection”.<sup>146</sup>

The MoU shows that children are among the concerns and targets of the ADB in terms of poverty reduction, especially in the elimination of intergenerational poverty. A more complete inclusion of children’s needs and interests as well as rights would clearly add value to the collaboration ADB- UNICEF.

## **Accountability Mechanisms: Special Project Facilitator and Compliance Review**

The ABD established its own Inspection Function in December 1995 following the establishment of the World Bank Inspection Panel in 1993 and the Inter-American Development Bank Independent Investigation Mechanism in 1994. Pursuant to a review of the Inspection Function, an Accountability Mechanism was introduced in 2003. Following the review the Bank set up two separate and complementary phases within the Accountability Mechanism:

140 Ibid, para. 11

141 Ibid, para. 9

142 Operational Manual Section C3/BP, 10 December 2010, p. 1, available at: <http://www.adb.org/sites/default/files/OM-C3.pdf> (accessed 20 Jan 2014)

143 ADB, “ADB Prohibited Investment Activities List”, in *ADB Safeguard Policy Statement*, June 2009, Appendix 5.

144 Memorandum of Understanding (MoU) for Administrative Arrangements Between the Asian Development Bank and the United Nations Children’s Fund, September 2010.

145 Ibid.

146 Ibid, Art.8 (d)



- A *Problem-solving Function*, comprising a consultation phase within the Office of the Special Project Facilitator (OSPF) to respond to concerns and problems of people affected by ADB-assisted projects. This function uses mainly informal and flexible methods.
- A *Compliance Review Function*: In the Review phase an independent Compliance Review Panel investigates alleged violations of ADB operational policies and procedures that have resulted or are likely to result in direct and material harm to project-affected people.<sup>147</sup>

A further review of the Accountability Mechanism undertaken in 2010 resulted in additional changes that were introduced in 2012. As a result, complainants no longer need to engage in the “problem- solving phase” prior to requesting a compliance review, but may now have direct access to this function. A Complaints Receiving Officer post was also established, as a single entry point for all complaints. Complainants may also send complaints to any ADB office, including any resident mission office, regional office or representative office, to be forwarded to the Complaints Receiving Officer.<sup>148</sup>

Tables 4 and 5 below summarize the two ABD complaint mechanisms:

*Office of the Special Project Facilitator*

| <b>Table 4: Complaint Procedures for the Office of the Special Project Facilitator</b> |   |
|--|---|
| Who is eligible to file a complaint?   | <ul style="list-style-type: none"> <li>• Any group of two or more persons who are directly, materially, and adversely affected by present or expected future harm</li> <li>• A local representative of affected people</li> <li>• In exceptional cases, a non-local representative of affected persons, where local representation cannot be found and the Special Project Facilitator or Compliance Review Panel agrees</li> <li>• Representatives must clearly identify the project affected people and provide evidence of the authority to represent them</li> </ul>  |
| Where to file a complaint?   | Either directly to the Complaints Receiving Officer or through any ADB office   |
| What is the basis for the complaint?   | Being directly, materially, and adversely affected by an ADB-assisted project, provided that complainants have first made a ‘good faith effort’ to resolve problems by working with the relevant ADB operations department  |
| The entity in charge of dealing with complaints  | ADB Special Project Facilitator   |
| General approaches   | Consultative dialogue, information sharing, joint fact-finding, and mediation   |
| Type of problem-solving  | Outcome-driven- The procedure seeks to address grievances without seeking to identify or allocate blame   |
| Limitations  | “The SPF will not interfere in the internal matters of any Developing member country (DMC) and will not mediate between the complainants and local authorities.” <sup>149</sup>   |
| Cut-off Date   | Complaints about a project cannot be accepted if the Project Completion Report (PCR) for that project has been issued, (usually one or two years after the project is physically completed)   |
| Excluded Topics  | <ul style="list-style-type: none"> <li>• Those not related to ADB’s actions or omissions in formulating, processing, or implementing ADB-assisted projects</li> <li>• Procurement of goods, services and consulting services</li> <li>• Allegations of fraud and corruption in ADB-assisted projects and by ADB staff</li> <li>• Matters already considered under the previous Inspection Function or by the Compliance Review Panel</li> <li>• Adequacy or suitability of ADB’s existing policies and procedures</li> <li>• Matters that are frivolous, malicious, trivial, or generated to gain competitive advantage</li> <li>• ADB personnel matters</li> <li>• Matters regarding ADB’s non-operational housekeeping functions, such as finance and administration</li> </ul> |

<sup>147</sup> ADB, *Accountability Mechanism Policy 2012*, available at: <http://www.adb.org/sites/default/files/accountability-mechanism-policy-2012.pdf>, p. 1 (accessed 21 March 2014)

<sup>148</sup> Ibid, p. 15

<sup>149</sup> Ibid, p. 25

*Compliance Review Panel*

|   |  |
|---|--|
| Who is eligible to file a complaint?            | <ul style="list-style-type: none"> <li>Any group of two or more persons who are directly, materially, and adversely affected by present or expected future harm</li> <li>A local representative of affected people</li> <li>In exceptional cases, a non-local representative of affected persons, where local representation cannot be found and the Special Project Facilitator or Compliance Review Panel agrees (Representatives must clearly identify the project affected people and provide evidence of the authority to represent them)</li> </ul>  |
| Where to file a complaint?                      | Either directly to the Complaints Receiving Officer or through any ADB office  |
| What is the basis for the complaint?            | <ul style="list-style-type: none"> <li>Alleged violation of ADB operational policies and procedures</li> <li>Being directly, materially, and adversely affected by an ADB-assisted project</li> </ul>  |
| The entity in charge of dealing with complaints | Each Independent Compliance Review Panel is composed of three members (1 full-time Chair and 2 part-time members, 2 members are from regional member States with one from a developing member State, and third member from a non-regional State)   |
| What is the process?                            | Once eligibility is established, the Complaints Receiving Officer conducts reviews compliance with policy and procedures, holds consultations with project stakeholders based on preliminary findings and recommendations, issues draft and final reports to the Board   |
| Excluded Topics                                 | <p>In addition to all the topics excluded by the Problem-Solving function:</p> <ul style="list-style-type: none"> <li>Issues that are the responsibility of other parties such as the borrower, executing agency, or potential borrower, unless the conduct of these other parties is directly relevant to the assessment of ADB's compliance with its operational policies and procedures;</li> <li>Issues that do not involve ADB's noncompliance with its operational policies and procedures;</li> <li>Issues that are being dealt with by the Special Project Facilitator under the problem solving function;</li> <li>- Issues that relate to the laws, policies, and regulations of the borrowing country, unless this directly relates to ADB's compliance with its operational policies and procedures; and/or are about matters already considered by the CRP, unless new evidence is presented and unless the subsequent complaint can be readily consolidated with the earlier complaint.</li> </ul> |

Between 2004 and 2010, the Accountability Mechanism through the Special Project Facilitator received 32 complaints, 11 of which were deemed eligible. The grounds for ineligibility were mostly related to failure to first try to address the issues through relevant ADB departments.

**Table 6: Complaints to the Special Project Facilitator**

| <b>Issues raised in complaints (2004-2012)</b>  | <b>Number of Times Raised in Complaints</b> |
|---|---|
| Resettlement  | 26  |
| Information   | 12  |
| Consultation and participation  | 10  |
| Agriculture, natural resources, environment   | 9   |
| Community and social issues   | 8 (1 complaint on gender issues)            |
| Energy  | 2   |
| Others (distributary link, flooding, procurement, loan suspension, education and termination of contract) | 6   |

Source: ADB Website

Although the new Policy on Accountability Mechanism represents a step forward, the mechanism has substantial limitations and has been subject to criticism by civil society organizations. Concerns relate to the limitations on the eligibility of complaints and to the insufficient independence of the accountability mechanism. Regarding the eligibility of complaints, the policy does not allow for individuals to file complaints; requires representatives who file complaints on behalf of project-affected people to name the affected people “even if those people have a reasonable fear of persecution”;<sup>150</sup> and complaints cannot be filed in local or indigenous languages. The organization Accountability Counsel also claims that the accountability mechanism lacks sufficient independence, *inter alia*, because civil society members are not afforded the possibility to participate in the process to appoint the Special Project Facilitator (“SPF”) and the Compliance Review Panel (“CRP”); the SPF is appointed by the ADB President, reports directly to and is evaluated by her or him; there is no policy provision for the removal of the SPF and the SPF is not barred from future employment with the ADB after his or her term at the mechanism; the CRP work plan is still subject to ADB Board and Presidential oversight and the CRP budget is subject to Presidential oversight; while the CRP chair functions independently of other ADB staff, other staff members within the Office of the Compliance Review Panel are employed as ADB staff with no such independence.<sup>151</sup>

## Independent Evaluation Department

The ADB has an Independent Evaluation Department (IED) in addition to its Accountability Mechanism, akin to the Independent Evaluation Group (IEG) of the World Bank. Independent evaluations by the IED are a second stage of evaluation at the bank. The first stage is defined by the bank as “self-evaluation” conducted by staff that shape and carry out country strategies, projects and programs.

The mandate of the IED is to “undertake evaluation activities to help ADB Management and developing member country stakeholders who are responsible for planning, designing, and implementing projects and programs to understand whether resources have been well spent, and whether the planned outcomes have been achieved”.<sup>152</sup> The IED prepares validation reports (PVRs) for project/programme completion reports (PCRs). PCRs are prepared by regional departments of the ADB to assess the performance of loans and grants.

The IED bases its evaluations on the assessment of a project’s relevance, effectiveness, efficiency and sustainability. It uses a four-category performance rating system: highly successful; successful; less than successful; and unsuccessful.<sup>153</sup> The ADB maintains a database of project ratings on its website. Negative impacts or violations of human rights, and more specifically children’s rights, as a result or in connection with ADB funded projects do not form part of the evaluations’ terms of reference.

## The ADB and Children’s Rights in Practice

The ADB has taken a step forward by recognizing that education is a human right and by making explicit reference to the Universal Declaration of Human Rights and the main human rights conventions in its Policy on Education. The Bank also incorporates that recognition into some of its operations, for instance, by including in contracts the banning of child labour or the strong emphasis in educational projects. Like the World Bank, the ADB carries out child-focused development projects, especially in the context of projects aimed at realizing Millennium Development Goals. To this end, the ADB signed a Memorandum of Understanding with UNICEF in 2010 to cooperate in providing technical assistance, carrying out projects and

<sup>150</sup> <http://www.accountabilitycounsel.org/policy/existing-mechanisms/adb/past-policy-initiatives/> (accessed 21 Jan 2014)

<sup>151</sup> Ibid.

<sup>152</sup> ADB Website, “Independent Evaluation Department”, available at: <http://www.adb.org/site/evaluation/overview> (accessed 21 March 2014)

<sup>153</sup> ADB Website, “Independent Evaluation Department”, available at: <http://www.adb.org/site/evaluation/portfolio-performance> (accessed 21 March 2014)

programmes targeted at children and women in geographical priority areas.<sup>154</sup> Some of the more recent ADB projects relevant for children's rights include such projects as "Reducing Child Malnutrition through Social Protection in Nepal",<sup>155</sup> "Promoting Early Child Development in the Philippines",<sup>156</sup> "Child and Families Protection in Post-Conflict-Affected Areas of Nepal",<sup>157</sup> "Reducing Persistent Chronic Child Malnutrition in Mongolia",<sup>158</sup> and "Community-Based Early Childhood Care and Development in Viet Nam."<sup>159</sup> Most of these programmes are financed from grants from various ADB funds have made available to the national governments.

The ADB also has a number of thematic policies- separate from its Operational Manual or Safeguard Policies - that deal with child-related questions. For instance, under the rubric of ADB Health Policy, the ADB focuses on maternal, newborn and child health.<sup>160</sup> Likewise, ADB's Education Policy stresses the right to education and focuses also on children.

Statements of recognition and operational policies constitute a meaningful contribution from the ADB to the realization of the rights of the child. However the ADB lacks a consistent and across the board approach to human rights generally and children's rights specifically and certainly does not apply a rights based approach to its policies and practices. Indeed, there is no dedicated policy that addresses "human rights" or "rights of the child" impacted adversely by projects funded by the ADB. Nor, in positive terms, does there appear to be any policy aimed at directing or prioritizing Bank lending toward the realization of such rights. With the exception of child labour, specific areas of children's rights are entirely neglected.

Practice also shows certain lapses in the implementation of existing policies and commitments in relation to children's rights. For instance, in September 2012 a large group of families displaced from their homes and deprived of their livelihoods by the ADB-financed project to rehabilitate the Cambodia's railway filed a complaint to the ADB's Compliance Review Panel alleging that the project had caused them serious harm, including impoverishment. The Railway project is funded largely by the ADB and Australia. More than 1200 families have been required to relocate in order to facilitate the project. The complainants state that children in particular are bearing the brunt of displacement and parents claim they "no longer earn enough to feed their children and they are dropping out of school." Families also faced threats and intimidation and they claim that basic due process principles were not observed during consultations. Resettlement facilities and compensation were also said to be inadequate. They claim the ADB policies have not been respected. The ADB's internal mechanism is due to release its findings during 2014.<sup>161</sup> A review, if conducted within a rights framework, would look both to alleged violations of economic social and cultural rights, such as the right to food, housing, health and education, and violations of civil and political rights such as the right to a fair hearing.

In another recent example, Human Rights Watch has alleged that the ADB failed to address adequately serious human rights concerns in relation to the cotton industry in Uzbekistan,

154 The priority areas for cooperation between the two organizations include Armenia, Bangladesh, Cambodia, Georgia, Indonesia, Lao People's Democratic Republic, Mongolia, Nepal, Pakistan, Papua New Guinea, Philippines, Timor Leste, Uzbekistan, and Viet Nam. (Further information is available at: [http://www.unicef.org/media/media\\_56191.html](http://www.unicef.org/media/media_56191.html) (accessed 21 March 2014))

155 For more information: <http://www.adb.org/sites/default/files/reducing-malnutrition-nep.pdf> (accessed 21 March 2014)

156 For more information: <http://www.adb.org/sites/default/files/pub/2009/PHI-Proj-Brief-on-ECD.pdf> (accessed 21 March 2014)

157 For more information: <http://www.adb.org/sites/default/files/pub/2010/NEP-children-families-protection.pdf> (accessed 21 March 2014)

158 For more information: <http://www.adb.org/sites/default/files/reducing-malnutrition-mon.pdf> (accessed 21 March 2014)

159 For more information: <http://www.adb.org/sites/default/files/pub/2010/vie-early-childhood.pdf> (accessed 21 March 2014)

160 ADB, *An Operational Plan for Improving Health Access and Outcomes Under Strategy 2020*, October 2008, available at: <http://www.adb.org/sites/default/files/pub/2008/Operational-Plan-For-Health.pdf> (accessed 21 March 2014)

161 Inclusive Development International, "Families displaced by Cambodian railway Development seek justice from the Asian Development Bank", Press release, 4 September 2012, available at <http://www.inclusivedevelopment.net/railway/> (accessed 20 January 2014)

that an ADB project is aimed at supporting. The project, the Modernization and Improved Performance of the Amu Bukhara Irrigation System in Uzbekistan, will reportedly benefit the cotton industry at the expense of children in an area where the rights of children are routinely violated. Each year the Uzbek government is accused of forcing over a million of its own citizens (children and adults) to harvest cotton in abusive conditions under threat of punishment. The Government is said to exact reprisals against those who denounce those practices at the national and international levels. HRW argues that the ADB has inappropriately limited its consideration of labour risks as it funds activities involving harmful or exploitative forms of forced labour or child labour in relation to the water sector employees of the project. The ADB is said to ignore the practice of forced labour in the harvesting of cotton. The ADB approved a 220 million USD loan to the project on 25 September 2013.<sup>162</sup>

The above examples further illustrate the need for ADB to substantially reform its policies and practices so as to effectively monitor and prevent adverse impacts on the rights of the child.

## Opportunities for improvement

The ADB Operational Manuals and Safeguard Policies make no specific reference to children's rights, with the exception of the right to education, nor they invoke the Convention on the Rights of the Child, ratified by all but one of the ADB's members. Apart from the prohibiting of goods and services produced using child labour and the recognition of the right to education, there is no explicit recognition that ADB and its staff should aim to ensure respect and protection of children's rights in operative settings or decisions. However, modest progress made in recent years offers the opportunity for improving the ADB's policies and affective compliance with existing policies and safeguards.

- The ADB has started a mid-term review process of its strategy. The scope of the review is limited<sup>163</sup> and focuses on the identification of achievements and areas for improvement. Although it refers to the existing strategy, identifying and advocating for areas for improvement in connection with children's human rights at this stage may convince the Bank to act to adequately incorporate children's rights in its future reviews of policies or, preferably, undertake separate human rights review process involving periodic human rights impact assessment.
- The ADB's partnership with UNICEF for the promotion of children's wellbeing and interests with a view of carrying out joint action should integrate international human rights law and standards, the *Children's Rights and Business Principles* elaborated by UNICEF as well as relevant elements of the *General Comment 16* to raise awareness among the ADB staff about business and projects funded by the Bank, all of which have rights implications and many of which may be involved in children's rights abuses.
- ADB's existing involvement in children's development may be an entry point in bringing a broader human rights dimension to ADB's work, including in respect of the rights of the child. It is important to note that ADB has already used rights language to define education as "A Right Not a Privilege".<sup>164</sup> ADB's Policy on Education further underlines

<sup>162</sup> Asian Development Bank: Reconsider Uzbekistan Project, 10 September 2013, available at: <http://www.hrw.org/news/2013/09/11/asian-development-bank-reconsider-uzbekistan-project> (accessed 20 January 2014)

<sup>163</sup> The scope is stated as follows: "Scope of the midterm review. As the mid-point of Strategy 2020 approaches, ADB is undertaking a midterm review (MTR) with the objective of improving its responsiveness and effectiveness. The MTR analyzes lessons learned through implementation of Strategy 2020 over the last five years, and assesses the existing and emerging challenges of [Developing Member Countries] DMCs. In this process, it identifies key achievements as well as areas for improvement. Building on this analysis and assessment, and in line with the stated objective, the MTR includes a ten point programme on future strategic directions to deepen and rebalance ADB's partnership with DMCs, and strengthen ADB's institutional effectiveness for the remaining years of Strategy 2020."

<sup>164</sup> ADB Website, "ADB's Work in Support of Quality Education for All", available online at: <http://www.adb.org/sectors/education/main> (accessed 21 March 2014)

that basic education has been recognized as a human right by the ADB since 1988.<sup>165</sup> The Policy reiterates the status of basic education as a human right several times by referring to *inter alia* the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights-ICESCR, Convention on the Elimination of Discrimination against Women- CEDAW and the Convention on the Rights of the Child-CRC. It would be a step forward to have other human rights, including the rights of the child also expressly recognized by ADB and incorporated within its Safeguards and Compliance procedures.

## 2.2 Other regional development banks

While the scope of this paper is limited to a consideration of the ADB, it is important to note that several other regional Banks have more explicit policies on human rights that could serve as examples for the World Bank and ADB to look to in modifying and enhancing their own policies and practices.

The European Investment Bank (EIB) and European Bank for Reconstruction and Development (EBRD) are considered to have more robust policies in the area of human rights, although neither has a special focus on children's rights. The EIB and EBRD both include an explicit human rights focus in their safeguard policies. The EIB's Statement of Environmental Principles and Standards contains the following commitment: "The Bank will not finance projects which result in a violation of human rights."<sup>166</sup> Similarly the EBRD's Environmental and Social Policy states that "The EBRD will not knowingly finance projects that would contravene country obligations under relevant international treaties and agreements related to environmental protection, human rights, and sustainable development, as identified during project appraisal."<sup>167</sup> While not explicitly referencing children's rights, all States in which the EBRD operates are party to the CRC and to other human rights treaties, all of which implicates the rights of children.

The EBRD and EIB also use a State's record on human rights as a key determinant of whether any investments at all should be made in the country. The EIB's states that it "restricts its financing to projects that respect human rights and comply with EIB social standards, based on the principles of the Charter of the Fundamental Rights of the European Union and international good practices. The Bank does not finance projects located in countries declared 'off-limits' by the European Council for EU financing, particularly due to violations of human rights." For example, in 2005 the EBRD curtailed public sector lending in Uzbekistan due to human rights abuses and a lack of progress toward economic liberalization and democratization in the country and there have been no new investments in the country since 2010.<sup>168</sup>

The African Development Bank has also adopted a new Integrated Safeguards Policy, which states that it is a Bank's policy objective to "[A]lign Bank requirements with the ILO Core Labour Standards, and the *Convention on the Rights of the Child*, where national laws do not provide equivalent protection".<sup>169</sup> The Bank did not have such recognition of children's and human rights before.

165 ADB, *Policy on Education*, July 2003, p. 1, available online at: <http://www.adb.org/sites/default/files/education-policy.pdf> (accessed 21 March 2014)

166 EIB, "Statement of Environmental and Social Principles and Standards," 2009, available online at [http://www.eib.org/attachments/strategies/eib\\_statement\\_esps\\_en.pdf](http://www.eib.org/attachments/strategies/eib_statement_esps_en.pdf) (accessed 21 March 2014)

167 European Bank for Reconstruction and Development (EBRD), "Environmental and Social Policy," May 2008, available online at <http://www.ebrd.com/downloads/research/policies/2008policy.pdf> (accessed 21 March 2014)

168 EBRD, "Uzbekistan Country Strategy", July 2005, available online at: <http://www.ebrd.com/pages/country/uzbekistan/strategy.shtml> (accessed 21 March 2014)

169 African Development Bank, Op. Cit., note 79.

## 3. National financial institutions

### 3.1 Germany's national development financial institutions

There are two German National Financial Institutions under the umbrella of KfW Bankengruppe that provide investments in developing countries: KfW Entwicklungsbank, which like the IBDR and IDA provides financing to partner countries, and Deutsche Investitions- und Entwicklungsgesellschaft (DEG) which, similar to the IFC, provides private-sector financing.

#### 3.1.1 KfW Entwicklungsbank

KfW Entwicklungsbank is a part of the KfW Bankengruppe. It provides public sector financing to developing countries. KfW Entwicklungsbank administers governmental financial cooperation on behalf of the German Federal Ministry for Economic Cooperation and Development (BMZ), as well as the Federal Foreign Office, the Federal Ministry of the Environment, Nature Conservation and Reactor Safety and the Federal Ministry of Education and Research.<sup>170</sup>

KfW Entwicklungsbank is also occasionally contracted by the European Commission and other State governments to assist in the implementation of development cooperation programmes.

The funds used by KfW Entwicklungsbank come from the German federal budget, complemented by funds raised in the capital markets. For instance, in 2011, the KfW Entwicklungsbank portfolio was at 4.5 billion Euros, 2.6 billion of which were raised in capital markets.

Currently, the question climate change is the highest priority item on its agenda; the bank provided 60 per cent of its total financing volume in 2011 to this area.<sup>171</sup>

#### Products

KfW Entwicklungsbank provides programme and project finance to different partners in the sectors it supports: peace-building, education, energy, financial system development, governance and decentralization, health, rural development, natural resources and rainforests, transport, urban development, waste management and water.

The programs and projects funded by the KfW Entwicklungsbank are carried out in the context of bilateral cooperation based on agreements between the German federal government and the partner country pursuant to proposals by partner countries themselves. Partner countries are responsible for the preparation and implementation of the programs and projects.<sup>172</sup>

KfW Entwicklungsbank finances programmes in a number of sectors that directly impact the rights of children, including education, health and water. In the education sector, KfW Entwicklungsbank focuses on widening access to education especially for disadvantaged groups and improving the quality of primary education. Investment in the renewal and refurbishment of school buildings, construction of new school buildings, and purchase and distribution of new schoolbooks and materials constitute some of the activities carrying children's rights impacts that KfW funds. In the health sector, improving maternal and child health especially during childbirth and HIV/AIDS prevention are among the goals supported. Provision of safe drinking water in order to combat child mortality due to diarrheal disorders is one of the focal points of the water sector financing activities.

<sup>170</sup> KfW Entwicklungsbank Website, available at: [http://www.kfw-entwicklungsbank.de/ebank/EN\\_Home/About\\_Us/Our\\_bank/FC\\_yesterday\\_and\\_today.jsp](http://www.kfw-entwicklungsbank.de/ebank/EN_Home/About_Us/Our_bank/FC_yesterday_and_today.jsp)

<sup>171</sup> KfW Entwicklungsbank Website, available at: [http://www.kfw-entwicklungsbank.de/ebank/EN\\_Home/About\\_Us/Our\\_bank/Key\\_figures.jsp](http://www.kfw-entwicklungsbank.de/ebank/EN_Home/About_Us/Our_bank/Key_figures.jsp)

<sup>172</sup> KfW Entwicklungsbank Website, available at: [http://www.kfw-entwicklungsbank.de/ebank/EN\\_Home/About\\_Us/How\\_we\\_work/index.jsp](http://www.kfw-entwicklungsbank.de/ebank/EN_Home/About_Us/How_we_work/index.jsp)

Respect for human rights within the context of KfW work has been prioritized in the German *Development Policy Action Plan on Human Rights 2004-2007* of the German Federal Ministry for Economic Cooperation and Development. In line with this priority, KfW Entwicklungsbank has for instance financed a programme on children's rights entitled "Human rights/combating child labour and child trafficking" in Burkina Faso. The project had a relatively modest budget of 8.8 million USD and focused on the prevention of child labour and child trafficking for supply as labourers to households, construction firms or mines. The programme was designed in several regional languages as an awareness-raising programme to reach children, parents, teachers and potential employers especially in rural areas. In addition to awareness-raising, incentives such as offering children meals at schools, paying small subsidies to families for the payment of school fees and equipment or establishing boarding schools for children from remote regions are being undertaken in the context of the programme.<sup>173</sup>

## Policies

KfW Entwicklungsbank monitors the programmes and projects designed and implemented by partner countries. Among the KfW Entwicklungsbank requirements are transparency, fair competition and impartial supervision to prevent corruption, especially in sectors where it has traditionally been rampant. KfW Entwicklungsbank also assigns independent, external auditors to inspect its own activities and funding to partners to ensure that funds are being used for intended purposes. There are anti-corruption clauses in the loan and financing agreements and infringement of these provisions may result in the refusal of the KfW to disburse funds. The KfW Entwicklungsbank has issued no specific human rights monitoring policies, although it asserts that "the human rights practice and policy of [...] partner countries are a key element in the development policy criteria used by the German Federal Ministry for Economic Cooperation and Development to assess a country's eligibility for promotion".<sup>174</sup>

In 2011, the German Ministry for Economic Cooperation and Development (BMZ) issued a strategy for its *Human Rights in German Development Policy*.<sup>175</sup> The Strategy contains binding requirements to which the agencies tasked with implementing official development assistance (ODA) must adhere. In addition, it serves as a frame of reference for the business activities undertaken by KfW Entwicklungsbank and its subsidiary DEG at their own risk. In 2013, BMZ adopted "Guidelines on incorporating human rights standards and principles, including gender, in programme proposals for bilateral German Technical and Financial Cooperation", which are binding on KfW Entwicklungsbank when implementing ODA. The Guidelines make explicit reference to the Children's Rights and Business Principles and include issues like participation of children, human rights education for children, child and youth appropriate standards and procedures. When KfW Entwicklungsbank is tasked with implementing official development assistance (ODA) and preparing programme proposals it is mandatory that they appraise the relevant human rights risks and impacts before any project, programme or module of bilateral German development cooperation can be commissioned.

However, KfW Entwicklungsbank's parent company KfW Bankengruppe also has its own "Sustainability guidelines", which replace the "Environmental and Social Principles",<sup>176</sup> and a "Declaration on Human Rights".<sup>177</sup> According to the Sustainability Guidelines of KfW

173 KfW Entwicklungsbank Website, available at: [http://www.kfw-entwicklungsbank.de/ebank/EN\\_Home/Countries\\_and\\_Programmes/Sub-Saharan\\_Africa/Burkina\\_Faso/Programme\\_2.jsp](http://www.kfw-entwicklungsbank.de/ebank/EN_Home/Countries_and_Programmes/Sub-Saharan_Africa/Burkina_Faso/Programme_2.jsp) (accessed 25 March 2014)

174 KfW Entwicklungsbank Website, available at: [http://www.kfw-entwicklungsbank.de/ebank/EN\\_Home/Topics/Human\\_rights/Activities\\_of\\_KfW\\_Entwicklungsbank.jsp](http://www.kfw-entwicklungsbank.de/ebank/EN_Home/Topics/Human_rights/Activities_of_KfW_Entwicklungsbank.jsp) (accessed 25 March 2014)

175 Federal Ministry for Economic Cooperation and Development, *Human Rights in German Development Policy*, available at: [http://www.bmz.de/en/publications/type\\_of\\_publication/strategies/Strategiepapier305\\_04\\_2011.pdf](http://www.bmz.de/en/publications/type_of_publication/strategies/Strategiepapier305_04_2011.pdf) (accessed 25 March 2014)

176 KfW Bankengruppe, *Sustainability guidelines of KfW Bankengruppe*, available online at: <https://www.kfw.de/nachhaltigkeit/migration/Nachhaltigkeit/Sustainability/Sustainability/Sustainability-guideline-of-KfW-Bankengruppe.pdf> (accessed 24 March 2014)

177 KfW Bankengruppe, *Declaration of human rights of KfW Bankengruppe*, 28 November 2008, available online at: <https://www.kfw.de/nachhaltigkeit/migration/Menschenrechtserklärung.pdf> (accessed 24 March 2014)



Bankengruppe, for the Bank group (including all of its subsidiaries), “the minimum requirement is compliance with national law. To maintain appropriate environmental and social standards we orient ourselves on internationally recognised standards such as, for example, those of the EU, the World Bank Group (Safeguard Policies for public sector financing, IFC Performance Standards for private sector financing) and the International Labour Organisation (ILO).” The new statement omits explicit reference to UN human Rights standards, including the Convention on the Rights of the Child, in contrast with the statement contained in the previous Environmental and Social Principles.<sup>178</sup> The new Sustainability Guidelines also state: “We do not support projects that are likely to cause unacceptable environmental or social harm.”<sup>179</sup> It also defers to specific set of guidelines for projects in particular fields (such as in relation to indigenous people) and contains also a commitment to achieve work-family balance for all employees as a social mission, which can have a positive impact on children’s lives

The Bank’s Declaration of Human Rights recognizes that human rights violations can in fact create these foreseeable unacceptable environmental or social disadvantages. The Declaration also stipulates that the KfW Group “respects and protects international human rights within its sphere of influence” and that it may, “where appropriate tools are available, support the implementation of international human rights actively”.<sup>180</sup> The Declaration also states that at the level of the German state, all international human rights agreements to which Germany is party, are binding on KfW and that most of the partner countries where the Group works are also parties to these agreements. It also states that the Group demands that state obligations under these international human rights agreements are met.<sup>181</sup>

Given that all countries where the KfW Group works are party to the CRC and other core human rights instruments, it should logically follow that the Bank also require partner countries to meet their children’s rights obligations.

### **Internal Accountability Mechanism: The Evaluation Department**

There is no specific accountability mechanism under the auspices of KfW Entwicklungsbank to which those who would seek to complain about actual or potential human rights impacts might turn. According to information provided by KfW Entwicklungsbank, the Bank has recently established a formal internal procedure to deal with complaints, including complaints related to human rights. However, no information is provided on the website on how a complaint can be lodged. In 2013, KfW Entwicklungsbank launched a transparency portal as part of the German implementation of the International Aid Transparency Initiative (IATI)<sup>182</sup> and now provides also to some degree information about specific projects, which may facilitate accountability initiatives in relation to those projects.<sup>183</sup>

While it is unclear whether there have been international complaints lodged against KfW Entwicklungsbank, an unsuccessful complaint was made against another subsidiary of the KfW Bankengruppe, KfW IPEX-Bank, before the OECD National Contact Point in Germany in April 2010. The complaint was lodged by a local Saami community but was rejected.<sup>184</sup>

178 The the bank group “gear[s] its decisions to regulations in ... partner countries as well as to benchmarks established by the EU, the OECD and the United Nations, including the standards of the World Bank Group and the core labour standards of the International Labour Organization (ILO).” The principles can no longer be found in the KfW Bankengruppe website, but used to be located at the following address: .The Environmental and Social Principles of KfW Bankengruppe, at [http://www.kfw.de/kfw/en/I/II/Download\\_Center/Sustainability\\_PDFs/Umwelt-u-Sozialleitsaetze\\_en.pdf](http://www.kfw.de/kfw/en/I/II/Download_Center/Sustainability_PDFs/Umwelt-u-Sozialleitsaetze_en.pdf)

179 Sustainability Guidelines, Op. Cit., note 176.

180 KfW Bankengruppe, *Declaration of human rights of KfW Bankengruppe*, Op. Cit., note 177

181 Ibid.

182 KfW Bankengruppe, Global Engagement, available at: <http://transparenz.kfw-entwicklungsbank.de/en/index.html?>

183 KfW Bankengruppe Website, available at: <https://www.kfw-entwicklungsbank.de/Internationale-Finanzierung/KfW-Entwicklungsbank/Projekte/Projektdatenbank/index.jsp> (german only)

184 OECD Watch Website, available at: [http://oecdwatch.org/cases/Case\\_183](http://oecdwatch.org/cases/Case_183)

While there is no complaints mechanism within the bank, KfW Entwicklungsbank does carry out its own evaluation of the impacts of their funded projects. The Evaluation Department reports directly to the Board of Managing Directors, working independently from regional divisions involved in the planning and implementation of projects.<sup>185</sup> The Bank's Evaluation Department is headed by an external expert, appointed by the Board of Managing Directors. Independent experts, who may be employees that have not worked on the project under evaluation or consultants contracted externally, are tasked with undertaking the evaluation.<sup>186</sup> Until 2007, the Evaluation Department conducted an evaluation for every completed project; currently however, it works with a representative sample of individual projects chosen through random sampling.<sup>187</sup> An evaluation report is compiled and the project's outcomes and effects are rated, following a standardized format. The Evaluation Department publishes its summary results biannually.<sup>188</sup>

Five key criteria are applied in every evaluation: relevance; effectiveness; efficiency; overarching developmental impact and sustainability.<sup>189</sup> Because only synopses of evaluation reports are made public, it is not possible to directly analyze these unsuccessful projects or to assess whether human rights considerations have played any decisive role in their appraisals.

## External accountability

BMZ is currently considering the establishment of an independent human rights complaint procedure for persons affected by German official development cooperation. Proposals have been presented by Forum Menschenrechte,<sup>190</sup> the German NGO network for human rights, and Germany's national human rights institution, the German Institute for Human Rights.<sup>191</sup>

In 2012, an independent evaluation institute for German development cooperation (DEval – Deutsches Evaluierungsinstitut der Entwicklungszusammenarbeit) was set up. The Institute is tasked with implementing evaluations related to KfW's work and includes an explicit focus on human rights.<sup>192</sup>

### 3.1.2 Deutsche Investitions- und Entwicklungsgesellschaft (DEG)

DEG is a subsidiary of KfW, founded in 1962 to provide funding to the private sector for investments in developing and transitional countries. In its 50 years of existence, DEG has worked with more than 1,600 companies and reached an overall investment volume of 39 billion Euros (current portfolio at more than 5.6 billion Euros). Most projects are undertaken in the finance, industry and infrastructure sectors, with a strong presence in Asia, Latin America and Eastern Europe.<sup>193</sup>

185 KfW Entwicklungsbank Website, available at: [http://www.kfw-entwicklungsbank.de/ebank/EN\\_Home/Evaluation/The\\_independent\\_Evaluation\\_Department/index.jsp](http://www.kfw-entwicklungsbank.de/ebank/EN_Home/Evaluation/The_independent_Evaluation_Department/index.jsp) (accessed 20 March 2014)

186 Ibid.

187 KfW Entwicklungsbank, *Evaluating Development Developing Evaluation 10: Evaluation Report On Projects And Programmes In Developing Countries (2006-2008)*, p. 21.

188 KfW Entwicklungsbank Website, available at: [http://www.kfw-entwicklungsbank.de/ebank/EN\\_Home/Evaluation/The\\_independent\\_Evaluation\\_Department/Mutual\\_Accountability.jsp](http://www.kfw-entwicklungsbank.de/ebank/EN_Home/Evaluation/The_independent_Evaluation_Department/Mutual_Accountability.jsp). (accessed 20 March 2014)

189 Ibid, p. 38-39.

190 Forum Menschenrechte, Proposal for a Human Rights Complaint Mechanism for German development cooperation, 2012, available at: [http://www.forum-menschenrechte.de/cms/upload/PDF/ab\\_02\\_2012/1210\\_FMR\\_Proposal\\_HR\\_Complaint\\_Procedure\\_Dev\\_Coop.pdf](http://www.forum-menschenrechte.de/cms/upload/PDF/ab_02_2012/1210_FMR_Proposal_HR_Complaint_Procedure_Dev_Coop.pdf)

191 Andrea Kämpf, Deutsches Institut für Menschenrechte, Mehr Menschenrechte durch Rechenschaftslegung, available at: [http://www.institut-fuer-menschenrechte.de/uploads/tx\\_commerce/Policy\\_Paper\\_22\\_Mehr\\_Menschenrechte\\_durch\\_Rechenschaftslegung.pdf](http://www.institut-fuer-menschenrechte.de/uploads/tx_commerce/Policy_Paper_22_Mehr_Menschenrechte_durch_Rechenschaftslegung.pdf) (accessed 21 March 2014)

192 German Institute for Development Evaluation website available at: <http://www.deval.org/de/struktur.html> (accessed 21 March 2014)

193 Deutsche Investitions- und Entwicklungsgesellschaft Website, available at: <https://www.deginvest.de/International-financing/DEG/Unsere-Investitionen/Portfolio/> (accessed 21 March 2014)

## Products

DEG products and services that are available to the private sector range from finance to advisory services. Financial products are designed to be long-term finance and include risk capital, equity capital, second-floor finance, loans and guarantees. In addition, borrowers may benefit from project advisory services, feasibility studies or special programs such as Climate Partnerships to implement climate-friendly projects.

## Policies

According to its own policy, DEG only finances projects that have the potential to make effective development policy impact. DEG's statement of selection criteria include: the common Environmental and Social Guidelines of the European Development Finance Institutions (EDFI), which in turn is said to encompass the IFC Performance Standards and the stipulations of the Environmental, Health and Safety Sector Guidelines of the World Bank Group as well as the conventions of the International Labour Organisation (ILO). "The IFC Performance Standards, as revised in 2012, take full account of the UN Guiding Principles on Business and Human Rights."<sup>194</sup> The projects are also required to meet environmental standards and comply with social principles. Those projects that DEG will not support are more specifically addressed in its Exclusion List.

BMZ human rights policy serves as a framework of reference for the business activities undertaken by subsidiary DEG at their own risk. However, it remains unclear what this means in practice.

DEG currently does not publish project specific information and is not included in IATI implementation. A recent petition by 27 NGOs to the German Parliament requested that Parliament call on the government to make DEG more transparent. As BMZ and other Ministries are on the governing board of DEG, in principle they can take the initiative to implement higher transparency standards within DEG.

DEG has recently established a complaint mechanism to "address specific issues that have contributed to a conflict and help stakeholders identify solutions that meet the interests of all the parties."<sup>195</sup> Any individual, group, community, or other party can make a complaint if they believe they are, or may be, negatively affected by a project financed or planned by DEG. Complaints may be presented through a representative party in certain cases.

For a complaint to qualify for assessment, it should relate to a project financed by DEG, contain allegations with material adverse impacts or risks, there must be a relationship between the project and the alleged impacts, and the complainants are, or may be, directly affected by the issues raised. Anonymous complaints cannot be accepted, but confidentiality can be requested and granted in certain cases.

The complaint is forwarded to an Independent External Panel, which will decide on its eligibility, assess the situation and decide on what process is the most pertinent: a dispute resolution process or a compliance review. In the case of a dispute resolution process, the Panel assists with the resolution but it does not take a position on whether any allegations are accurate nor does it find fault or impose solutions. In a compliance review the Panel will investigate whether the project was financed in conformance with the compliance investigation criteria / relevant policies. In particular cases both processes may be combined.<sup>196</sup>

<sup>194</sup> Deutsche Investitions- und Entwicklungsgesellschaft Website, available at: <https://www.deginvest.de/International-financing/DEG/Die-DEG/Was-wir-tun/#3> (accessed 21 January 2014)

<sup>195</sup> Deutsche Investitions- und Entwicklungsgesellschaft Website, available at: <https://www.deginvest.de/International-financing/DEG/Die-DEG/Verantwortung/Beschwerdemanagement/#2> (accessed 13 March 2014)

<sup>196</sup> Ibid.

### *DEG Exclusion List*

DEG's exclusion list echoes that of the IFC. Accordingly, DEG does not finance, *inter alia*:

- Forced labour or child labour,
- Activities or materials deemed illegal under host country laws or regulations or international conventions and agreements
- Pornography and/or prostitution,
- Racist and/or anti-democratic media.<sup>197</sup>

## **German Development Institutions and Children's Rights in Practice**

KfW Entwicklungsbank and DEG, like other national development finance institutions, work under the supervision of the German government and in close cooperation with other national institutions that are engaged in foreign affairs, development and finance. KfW Entwicklungsbank, as opposed to DEG, has more experience, in particular through its work in education and health, in child-related development projects. KfW Group explicitly states that it is bound by Germany's international human rights obligations and that it requires partner countries to meet their own human rights obligations arising from international law. DEG does recognize international standards as parameters for its own operations, including IFC standards and the UN Guiding Principles on Business and Human Rights. However, because there is little information publicly available regarding to the evaluations of projects funded by these two institutions, it is difficult to assess their actual practice in observing the rights of the child in their operations. Neither of them have an internal accountability mechanism.

The application by Germany of its human rights treaty obligations, including regarding the rights of the child, to the impacts of KfW Bankengruppe abroad remains a challenge for the country and for the Bankengruppe itself. The aspirations contained in the Bank Group's Declaration of Human Rights are not fully operationalized. For example, there is no indication of whether failure of a partner State to meet its own human rights obligations in the course of a project would trigger a decision to suspend or cancel the funding for the project.

## **Opportunities for improvement**

Despite the relatively progressive statement of principles and policies that guide their operations, including international treaties and a Declaration on human rights, there is a need for further improvement in the actual operationalization of those policies and in the accountability front. The KfW and DEG's operations themselves may offer opportunities for advocates to target deficiencies in their policies and practices.

DEG, as the private sector development finance subsidiary of the KfW Bankengruppe, could be an ideal candidate to apply international human rights standards, including the CRC and its *General Comment 16* and the *UNICEF's Children's Rights and Business Principles* to its private sector clients. KfW Bankengruppe's Sustainability Guidelines and its Declaration of Human Rights, as well as BMZ human rights policy and Guidelines represent a good practice that may be followed by other national development finance institutions. As a State-owned bank working in close cooperation with other government departments, the Bank is bound by the international human rights obligations of Germany. KfW Entwicklungsbank has carried out a project in Burkina Faso dedicated to raising awareness on children's rights with a particular focus on child labour and child trafficking. This programme aims to eventually introduce children's rights components into classrooms in the country.

<sup>197</sup> DEG Exclusion List, available online at: [https://www.deginvest.de/DEG-Englische-Dokumente/About-DEG/Our-Mandate/EDFI\\_DEG\\_Exclusion-List\\_en.pdf](https://www.deginvest.de/DEG-Englische-Dokumente/About-DEG/Our-Mandate/EDFI_DEG_Exclusion-List_en.pdf) (accessed 21 January 2014)

Opportunities for improvement:

- A review of KfW Sustainability Guidelines is scheduled for the end of 2014. This review will offer an opportunity to highlight gaps in the group's policies regarding the rights of the child and for revision with a view to filling those gaps.
- The current consideration of a possible accountability mechanism within the German Cooperation Development offers the opportunity to create a transparent and effective procedure that is accessible to children and their representatives.
- Given that all States where the KfW Group works are party to many core human rights treaties, including the CRC, in the context of the Sustainability Guidelines' review the KfW Bank may consider partner States' compliance with those obligations as an element in its own assessments and decisions over loans.

## 3.2 National financial institutions of the People's Republic of China

### 3.2.1 China Exim Bank (Export-Import Bank of China)

The People's Republic of China has rapidly become among the most prolific international lenders to development projects. A recent report of the Information Office of the State Council of the Republic of China entitled *China's Foreign Aid*<sup>198</sup> indicates that China disburses grants and interest-free loans directly from state finances and that the Export-Import Bank of China provides "medium- and long-term low-interest loans" to the governments of developing countries. These are known as Chinese Government Concessional Loans.

The Export-Import Bank of China, founded in 1994, is a fully State-owned bank under the direct leadership of the State Council. Its international credit ratings are the same as China's sovereign ratings. The Bank is headquartered in Beijing. In addition to more than 20 business branches inside China, it has one branch and two representative offices outside China, namely the Paris Branch, the Representative Office for Southern and Eastern Africa and St. Petersburg Representative Office. It has established correspondent banking relationship with more than 1,000 banks.<sup>199</sup>

### Products

Funds for concessional loans are raised in the market at an interest rate, but the loans are made at a lower preferential rate. The difference is covered by the Chinese state as financial subsidies.<sup>200</sup> It is reported that China provided concessional loans to 76 countries for 325 projects by the end of 2009 at a value of 73.55 billion Yuan (10.76 billion USD). Of these loans, 61 per cent were used in the construction of transport, communications and electricity infrastructure, 16.1 per cent for industry projects, 8.9 per cent for the development of energy and resources such as oil and minerals, 4.3 per cent for agriculture and 3.2 per cent for public facilities.<sup>201</sup> It should be noted, however, that concessional loans make up a very small part of China Exim Bank's portfolio.<sup>202</sup> Other business includes: export credit and import credit; loans for offshore contracts and overseas investment; international guarantee; and international and domestic settlement and corporate deposits under the loan facilities provided by the Bank.<sup>203</sup>

198 The report is available on the website of the China State news agency Xinhua, at: [http://news.xinhuanet.com/english2010/china/2011-04/21/c\\_13839683.htm](http://news.xinhuanet.com/english2010/china/2011-04/21/c_13839683.htm) (accessed 21 March 2014)

199 The Export-Import Bank of China Website <<http://english.eximbank.gov.cn/profile/intro.shtml>> (accessed 29 January 2014).

200 Information Office of the State Council of the Republic of China, *China's Foreign Aid*, April 2011.

201 Ibid.

202 Deborah Brautigam, "Chinese Development Aid in Africa: What, where, why, and how much?" in Ligang Song (ed.), *Rising China: Global Challenges and Opportunities*, ANU E Press, 2011, p. 204.

203 The Export-Import Bank of China Website [http://english.eximbank.gov.cn/tm/en-AU/index\\_619.html](http://english.eximbank.gov.cn/tm/en-AU/index_619.html) (accessed 21 March 2014)

## Policies

The condition for concessional loan disbursement is that the project is recognized by the Chinese government and the recipient State government and that the loan will be used to help bring economic or social benefits, to fund production oriented projects and medium-sized infrastructure projects, or to provide complete sets of equipment, machinery and electronic products, technical services as well as other materials.<sup>204</sup>

The Bank promotes Chinese commercial interests, consistent with its mission statement.<sup>205</sup> In a 2008 report, the organization Human Rights First noted however that the Export-Import Bank of China had given Sudan more than \$1 billion in “concessional loans,” during the last decade although there was not a clear economic need for it given Sudan’s growing oil revenues.<sup>206</sup>

In fact, human rights, including children’s rights, considerations do not play a role in development finance provided by China. Although the “Guidelines for Environmental and Social Impact Assessments of the China Export and Import Bank’s (China EXIM Bank) Loan Projects” provides that social benefits are to be considered when reviewing its loan projects,<sup>207</sup> Chinese banks do not impose human rights conditions on borrowers. China’s ambassador to Bolivia, Shen Zhilang, said it is China’s “principle” not to “impose political conditions on foreign aid.”<sup>208</sup> The China’s Eight Principles for Economic Aid and Technical Assistance to other countries (January 1964) states that China imposes no “political conditions” on loans or aid:

China upholds the Five Principles of Peaceful Coexistence, respects recipient countries’ right to independently select their own path and model of development, and believes that every country should explore a development path suitable to its actual conditions. China never uses foreign aid as a means to interfere in recipient countries’ internal affairs or seek political privileges for itself.<sup>209</sup>

The discourse of Chinese foreign aid -whether as concessional loans or as direct governmental grants- stresses mutual benefit between developing countries and emphasizes the importance of South-South cooperation, while retaining a traditional discourse of “non-interference”.

204 China Export-Import Bank Website, [http://www.eximbank.gov.cn/yewuarticle/yewu/wgzfzd/200807/6199\\_1.html](http://www.eximbank.gov.cn/yewuarticle/yewu/wgzfzd/200807/6199_1.html).

205 The Export-Import Bank of China Website, [http://english.eximbank.gov.cn/tm/en-AU/index\\_619.html](http://english.eximbank.gov.cn/tm/en-AU/index_619.html) (accessed 21 March 2014) “The Bank’s main mandate is to facilitate the export and import of Chinese mechanical and electronic products, complete sets of equipment and new- and high-tech products, assist Chinese companies with comparative advantages in their offshore project contracting and outbound investment, and promote international economic cooperation and trade.” See also, Joshua Kurlantzick, Beijing’s Safari: ‘China’s Move into Africa and Its Implications for Aid, Development, and Governance’ (Policy Outlook No. 29, November 2006), [http://carnegieendowment.org/files/kurlantzick\\_outlook\\_africa2.pdf](http://carnegieendowment.org/files/kurlantzick_outlook_africa2.pdf) (accessed 27 January 2014)

206 Human Rights First, ‘Investing in Tragedy: China’s Money, Arms and Politics in Sudan’, 2008, available at: <http://www.humanrightsfirst.org/wp-content/uploads/pdf/080311-cah-investing-in-tragedy-report.pdf>, p. ii (accessed 27 January 2014)

207 International Rivers, ‘Guidelines for Environmental and Social Impact Assessments of the China Export and Import Bank’s Loan Projects’, 2008, <http://www.internationalrivers.org/resources/guidelines-for-environmental-and-social-impact-assessments-of-the-china-export-and-import>, (accessed 4 February 2014)

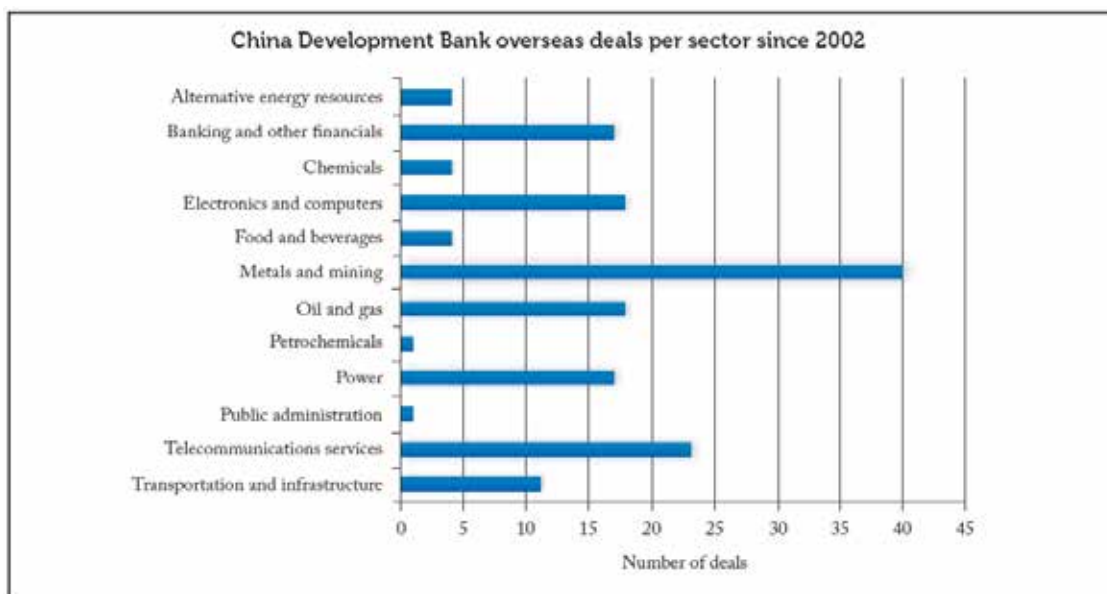
208 Ministry of Foreign Affairs of the People’s Republic of China, ‘Interview with Ambassador Shen Zhiliang by Bolivia’s Patria Nueva Radio Station’ (in Chinese), available at: <http://www.fmprc.gov.cn/chn/gxh/mtb/zwb/d/dszlsjt/t848667.htm> (accessed January 12, 2012), available in Portuguese at [http://www.thedialogue.org/PublicationFiles/IAD9184\\_China\\_Portuguese\\_web.pdf](http://www.thedialogue.org/PublicationFiles/IAD9184_China_Portuguese_web.pdf) (accessed 21 March 2014), p. 18.

209 Information Office of the State Council of the Republic of China, Op. Cit., note 200.

### 3.2.2 China Development Bank (CDB)

The China Development Bank (CDB) is the other fully state-owned Chinese policy bank that plays an important role in Chinese development finance abroad. It is headquartered in Beijing, and currently has 34 sub-branches and three representative offices in China. Its major business includes lending, fund-raising, treasury management and investment banking.<sup>210</sup> Besides its national mandate in the Chinese domestic market, CDB provides financing to private sector actors overseas. By June 2011, overseas loans were at 123.8 billion USD covering 100 countries. The CDB presents itself as “the world’s largest development financial institution with total assets more than that of the World Bank, Asian Development Bank and African Development Bank combined.”<sup>211</sup> As of the end of 2012, the bank’s outstanding foreign currency loans had reached 224.5 billion USD.<sup>212</sup> Major operations of the CDB take place in energy (power, oil and gas), metals and mining, and infrastructure.

**Graphic 4: China Development Bank Operation Sectors since 2002**



Note: Values are partly estimated based on number of financial institutions involved in deals. Source: ThomsonOne Database, viewed in May 2012; Bloomberg Database, viewed in May 2012.

Source: Friends of the Earth and BankTrack, *China Development Bank’s overseas investments: An assessment of environmental and social policies and practices*, Berkeley, CA: Friends of the Earth, 2012, 9.

The CDB has undergone a period of transformation in the last decade, making it more financially successful as well as more visible on a global scale. CDB has two shareholders: the Ministry of Finance of China and Central Huijin Ltd, the state-owned national investment company. Following the restructuring of the CDB, a Board of Directors with 14 directors was established. There is also a Board of Supervisors, which had already existed prior to the restructuring.<sup>213</sup> Theoretically, the Board of Directors and the Board of Supervisors report directly to the shareholders of the Bank. In practice, however, it has been suggested that

<sup>210</sup> China CSR Map Website, [http://www.chinacsrmap.com/Org\\_Show\\_EN.asp?ID=1220](http://www.chinacsrmap.com/Org_Show_EN.asp?ID=1220) (accessed 30 January 2014)

<sup>211</sup> China Development Bank, *Handbook on the Special Loan for the Development of African SMEs funded by the China Development Bank*, p.

6, available online at: <http://www.cdb.com.cn/WebSite/cdb/UpFile/File2987.pdf> (accessed 24 March 2014)

<sup>212</sup> China Development Bank, Performance Highlights, <http://www.cdb.com.cn/english/NewsInfo.asp?News-Id=415> (accessed 6 February 2014)

<sup>213</sup> Friends of the Earth and BankTrack, *China Development Bank’s overseas investments: An assessment of environmental and social policies and practices*, Berkeley, CA: Friends of the Earth, 2012, available at: [http://libcloud.s3.amazonaws.com/93/2b/2/2245/China\\_Development\\_Banks\\_overseas\\_investments\\_-\\_An\\_assessment\\_of\\_environmental\\_and\\_social\\_policies\\_and\\_practices.pdf](http://libcloud.s3.amazonaws.com/93/2b/2/2245/China_Development_Banks_overseas_investments_-_An_assessment_of_environmental_and_social_policies_and_practices.pdf) (accessed 21 January 2014), p. 6.

when critical decisions are at stake, the CDB management may by-pass the shareholders and seek direct State Council approval.<sup>214</sup>

CDB's international business is coordinated through branch offices in China that are responsible for different regions abroad in addition to the headquarters. Branch offices in turn deploy abroad work teams that "operate out of Chinese embassies, gather information about the host countries, establish relationships with local officials and businesses, and provide logistical support for visiting CDB officials."<sup>215</sup> Between 2006 and the end of 2009, the number of countries to which work teams were deployed had reached 141, including natural resource-rich countries such as Brazil, Russia, Turkmenistan and Venezuela as well as 45 African countries.<sup>216</sup> In addition to working through Chinese embassies in its international operations, the CDB works in concert with China's State Council to advance Chinese economic interests abroad especially in the areas of access to energy through energy-backed loans, diversification of foreign exchange reserves and foreign expansion of domestic firms.<sup>217</sup> The China Eximbank embraces similar policy objectives. The State Council also has considerable authority in the financial decisions of the CDB as well as the general policy directions.

## Products

The CDB acts as a lender for large energy and infrastructure projects through energy-backed loans. Among the most important of these, for their volume and political impact, are loans given to Russian national oil company Rosneft, Russian pipeline monopoly Transneft, Brazilian national oil company Petrobras, Venezuela's Bank for Economic and Social Development, Turkmenistan's national gas company Turkmengas, and Ecuador's Ministry of Finance and PetroEcuador.<sup>218</sup> Overseas finance may also be provided to overseas ventures by Chinese businesses or to developing country businesses that are of small and medium-size. In 2011, for instance, China Development Bank extended loans to SMEs in 29 African countries and signed 59 financial cooperation agreements with 43 countries and regions with a total value of 27.5 billion USD.<sup>219</sup> The CDB financed projects were mostly in infrastructure and agriculture sectors as well as SMEs.

### *Special Loan for African SMEs*

China Development Bank also has a one billion USD Special Loan for the Development of African SMEs, which was established in the context of the 4<sup>th</sup> Ministerial Conference of the Forum on China-Africa Cooperation in 2009. Loans to African SMEs are flexible in terms of maturity and interest rates and lending is either done through platform or direct lending. Platform-lending employs government-approved financial institutions or other institutions in host countries to disburse funds to eligible SMEs for loans of at least 20,000 USD. Direct lending concerns bigger scale lending of at least 1 million USD for a single loan. Eligible borrowers are profitable foreign-funded enterprises or joint ventures with fairly high credit rating. The eligible projects are those that have already commenced and are mature and viable.<sup>220</sup> At the present, SMEs in 31 African countries are recipients of the Special Loan.

## Policies

The CDB does not operate as an independent commercial institution as regards corporate governance priorities.

214 Erica Downs, "Inside China, Inc: China Development Bank's Cross-Border Energy Deals," *Brookings Institution*, Washington, DC, March 2011, p. 63.

215 *Ibid.*, p. 29.

216 *Ibid.*

217 *Ibid.*, p. 61-62.

218 A full account of these different loans can be found in Erica Downs, *Op. Cit.* note 214.

219 China Development Bank, *Corporate Social Responsibility Report 2011*, p. 75-76.

220 China Development Bank, *Op. Cit.* note 211,, p. 16-17.



CDB's self-professed policy of promoting sustainable development is evaluated in its Corporate Social Responsibility Reports. The report states that, given the importance CDB attaches to anti-corruption and to combating financial crimes, it investigates complaints made on these grounds. Of the 19 complaints in 2011, CDB closed 89 per cent and "three employees were punished for violating the Party and administrative discipline".<sup>221</sup> Random on-site visits were conducted for 959 projects, with 137 problematic cases surfacing as a result and 136 problematic cases were reportedly rectified.<sup>222</sup> Because there is no publicly available data on the nature of the complaints or the problematic cases identified by the CDB itself, it is impossible to ascertain whether any of them related to overseas financing activities of the bank.

The CDB participates in a number of voluntary initiatives: Global Reporting Initiative, UNEP Finance Initiative and the UN Global Compact. CDB is the only state-owned bank in China that has joined the Global Compact.<sup>223</sup> It does not participate however, in any mandatory international schemes.

China Development Bank and the China Exim Bank have not adopted any specific social and environmental standards or guidelines and there are no grievance mechanisms available for those negatively impacted by projects financed by either the China Eximbank or the CDB.

The CDB's 2011 Corporate Social Responsibility Report also evaluated CDB's compliance with the Ten Principles of the Global Compact, concluding that the CDB had respected all international conventions or practices signed or recognized by the Chinese government, the Universal Declaration of Human Rights, the ICCPR and the ICESCR as well as other conventions and declarations.<sup>224</sup> In the context of child labour, the report states that CDB bans the use of child labour.<sup>225</sup>

Given the lack of independent and impartial reviews of the Bank's policies, it is not possible to assess the accuracy of the claims made in the CSR Report.

## Accountability Mechanism

Apart from the self-conducted Corporate Social Responsibility evaluation, the CDB does not have independent evaluation or accountability mechanisms. It is not clear how the above-mentioned complaints were lodged and the Corporate Social Responsibility reports do not clarify whether there are regular processes in existence to facilitate accountability.

## Chinese Development Institutions and Children's Rights in Practice

The two Chinese banks, namely the China Exim-Bank and the CDB, have not adopted any corporate governance standards on human rights. There is no public information about the banks' activities or engagements to promote children's rights. There are reportedly many controversial projects financed by Chinese development institutions to build large-scale infrastructure and industrial schemes that have the potential to seriously disrupt livelihoods of communities, including many children.<sup>226</sup> For instance, Chinese development activities in Sudan appear particularly problematic. China has invested heavily and buys substantial

<sup>221</sup> China Development Bank, Op. Cit. note 211, p. 21.

<sup>222</sup> Ibid.

<sup>223</sup> UN Global Compact, PRI, 'Responsible Business Advancing Peace: Examples From Companies, Investors & Global Compact Local Networks', 2013. Available at: [http://www.unglobalcompact.org/docs/issues\\_doc/Peace\\_and\\_Business/B4P\\_ResourcePackage.pdf?utm\\_medium=email&utm\\_campaign=UN+Global+Compact+Bulletin++October+2013+Subscribers&utm\\_content=UN+Global+Compact+Bulletin++October+2013+Subscribers+CID\\_f2691e52be1e8649773e272c9de72c4f&utm\\_source=Monthly%20Bulletin&utm\\_term=Download](http://www.unglobalcompact.org/docs/issues_doc/Peace_and_Business/B4P_ResourcePackage.pdf?utm_medium=email&utm_campaign=UN+Global+Compact+Bulletin++October+2013+Subscribers&utm_content=UN+Global+Compact+Bulletin++October+2013+Subscribers+CID_f2691e52be1e8649773e272c9de72c4f&utm_source=Monthly%20Bulletin&utm_term=Download) (accessed 1 February 2014)

<sup>224</sup> China Development Bank, Op. Cit. note 211, p. 132.

<sup>225</sup> Ibid., p. 133.

<sup>226</sup> Among these projects are the Liquefied Natural Gas Project in Papua New Guinea, the Sasan Ultra Mega Power Project in India and the Shwe Gas and Pipeline Projects in Myanmar/Burma (The NGO BankTrack lists these deals under "Dodgy Deals" on its website's Bank Profiles section ([www.banktrack.org](http://www.banktrack.org))).

amounts of oil in Sudan meanwhile Sudan receives substantial oil revenue and weapons despite its systematic human rights violations in Darfur.<sup>227</sup> Human Rights First has alleged that by advancing concession loans to the Sudanese government, China Exim Bank has been complicit in human rights violations such as forced displacement and armed conflicts in Sudan.<sup>228</sup> Such practices make it compelling that Chinese development finance institutions take meaningful steps to ensure that policies and practices incorporate human rights and that safeguards are in place to prevent violations of human rights, including the rights of the child.

## Opportunities for improvement

Chinese development finance institutions have failed to adopt a human rights framework or rights based approach to any of their policies or activities. China's finance institutions continue to track the problematic Chinese official approach that to raise human rights concerns is to inappropriately interfere in the domestic affairs of a recipient country. China and its lending institutions therefore do not attach any human rights, including children's rights, conditionality to its loans and the practices of recipient States do not at present have an effect on loan-making decisions on the part of the Chinese development finance institutions.

However, there are a few potential opportunities to change this situation:

- The China Development Bank established an "Equator Principles Working Panel" in 2008<sup>229</sup>, and as of 2013 has reportedly started to apply those principles. This is an opportunity given that the Equator Principles take on board IFC's Performance Standards some of which are relevant for the realization and protection of human rights, including children's rights.
- The China Exim Bank issued "Guidelines for Environmental and Social Impact Assessments of the China Export and Import Bank's (China EXIM Bank) Loan Projects" in 2007. These guidelines specify that a social and environmental impact assessment is required for overseas projects, and that borrowers must follow laws and regulations of the host country.<sup>230</sup> Although human rights and/or children's rights were not explicitly mentioned, this is an opportunity for China Exim Bank to play a leverage role to protect human rights, including children's rights, in overseas project.
- The State Council laid down "Nine Principles on Encouraging and Standardizing Foreign Investment" in 2007, which called on Chinese investors to fulfil the necessary social responsibility and care and support the local community and people's livelihood.<sup>231</sup> Arguably this includes protecting children's rights in areas where there are overseas investment projects.
- CDB and China Eximbank are State-owned institutions and as such the Chinese government must take effective steps to ensure these institutions respect, protect and fulfil human rights, including children's rights, in their operations abroad. In that regard, China should ensure that its international human rights obligations, including the CRC and the Framework provided by the CRC Committee in *General Comment 16* on the Rights of the Child and Businesses are applied in practice.

227 Elirehema Doriye, "The next stage of sovereign wealth investment: China buys Africa" in *Journal of Financial Regulation and Compliance*, Volume 18, Iss: 1, 2010, p. 23-31.

228 Human Rights First, *Op. Cit.* note 206. Int'l Rivers Network, 'Memorandum on the Merowe Dam Project', available at: <http://www.internationalrivers.org/resources/memorandum-on-the-merowe-dam-project-4338> (accessed 24 March 2014)

229 Friends of the Earth and BankTrack, *Op. Cit.* note 213, p. 17.

230 International Rivers, *Op. Cit.* note 207.

231 Xinhuanet, 'Wen Jiabao held State Council general meeting, discussed passing the Nine Principles on Encouraging and Standardizing Foreign Investment', available at: [http://news.xinhuanet.com/politics/2006-10/25/content\\_5248774.htm](http://news.xinhuanet.com/politics/2006-10/25/content_5248774.htm) (in Chinese) (accessed 4 February 2014)

### 3.3 United States of America National Financial Institutions

#### 3.3.1 Overseas Private Investment Corporation (OPIC) – United States of America

The Overseas Private Investment Corporation (OPIC) is the governmental development finance institution of the United States, established as a government agency in 1971. As of 2012, the OPIC was active in 103 countries with a total portfolio of 16.4 billion USD.<sup>232</sup> It operates by partnering with US businesses. At least 25 per cent of the equity must be US-owned in cases of US-registered companies and the majority must be US owned in respect of non-US companies. The Board of Directors has 15 members, seven of whom represent the federal government and eight of whom come from the private sector. The members are nominated by the US President and confirmed by the US Senate. OPIC staff members are US Government personnel. The net income that OPIC generates from the projects it finances or provides insurance to contributes to the federal budget of the US. Each year, OPIC activities and priorities may shift depending on US foreign policy priorities. For instance, in 2011, OPIC lent its support to the Middle East and North Africa region in the context of the “Arab Spring”. Additionally, OPIC does not invest in projects that it is considered could have a negative impact on the US economy or result in the loss of jobs in the US.<sup>233</sup>

OPIC provides four types of products: financial products, political risk insurance, investment funds and the Enterprise Development Network. The US is a party to several core human rights treaties, including the International Covenant on Civil and Political Rights (ICCPR), the Convention against Torture (CAT) and the Convention on the Elimination of Racial Discrimination (CERD), but is not a party to the CRC. In practice OPIC takes human rights significantly into account in financing decisions.

#### Policies

OPIC policy requirements are broader than its eligibility requirements and the requirement of “risk due diligence” (due diligence to identify and mitigate risks). Unlike many multinational and regional development banks, OPIC explicitly states that it works to ensure that supported projects protect human rights.<sup>234</sup> Within the OPIC, the Office of Investment Policy (OIP) works to ensure that OPIC supports projects that:

- Are environmentally and socially sustainable;
- Are compatible with low and no-carbon economic development;
- Respect human rights, including the rights of workers and the rights of affected communities;
- Avoid negative impacts and if such impacts are unavoidable properly mitigate or compensate for the impacts;
- Provide timely information regarding its activities to Project Affected People,
- Are undertaken in countries that are taking steps to adopt and implement laws that extend Internationally Recognized Worker Rights.<sup>235</sup>

<sup>232</sup> OPIC, *Annual Policy Report 2012*, p. 4, available at: [http://www.opic.gov/sites/default/files/files/OPIC\\_2012\\_Final.pdf](http://www.opic.gov/sites/default/files/files/OPIC_2012_Final.pdf) (accessed 24 March 2014)

<sup>233</sup> OPIC, *Annual Policy Report 2011*, p. 5, available at: <http://www.opic.gov/sites/default/files/docs/051912-annualreport-FINAL.pdf> (accessed 24 March 2014)

<sup>234</sup> OPIC, Environmental and Social Policy Statement, 15 October 2010, para. 1.3, available at: [http://www.opic.gov/sites/default/files/consolidated\\_esps.pdf](http://www.opic.gov/sites/default/files/consolidated_esps.pdf) (accessed 24 March 2014)

<sup>235</sup> Ibid.

### *Project Screening*

Policies on human rights and labour rights are included in OPIC's Environmental and Social Policy Statement and apply to all OPIC activities. This policy statement is based on IFC's Performance Standards on Social and Environmental Sustainability.<sup>236</sup> OPIC categorizes projects according with the expected risks presented by it from high to low risk. Labour rights that are enumerated by the OPIC include the minimum age for employment. Human rights are assessed in coordination with the Department of State.

The OPIC project review process seeks to ascertain that supporter projects are compliant with the requirements of the United States Foreign Assistance Act. In this respect, OPIC and the Bureau for Democracy, Human Rights and Labour of the US Department of State work in coordination. This coordination takes the form of monthly and quarterly updates on the human rights situation in OPIC eligible countries. Also, all projects that are being considered undergo this human rights consultative review process.<sup>237</sup> For instance, OPIC projects in the People's Republic of China have been suspended by statute since 1990.<sup>238</sup>

Bases for declining support to a project include when (1) a project is a Categorically Prohibited Project;<sup>239</sup> (2) a project fails to address environmental and social concerns in a satisfactory manner and cannot be expected to meet the requirements of the Performance Standards over a time frame considered reasonable and feasible; (3) residual impacts after mitigation are unacceptable; (4) a project does not comply with the host country's environmental and social laws or regulations; (5) a project does not respect labour rights; or (6) the U.S. Department of State advises that OPIC decline support for a project based on the consultative human rights review.

The OPIC website states that the "protection of human rights is essential to successful OPIC-supported projects".<sup>240</sup> The Office of Investment Policies within OPIC ensure that all projects supported by OPIC respect human rights, including the rights of workers, and take place in countries that afford internationally recognized workers' rights. Internationally recognized workers' rights is defined as follows: "The term, as specified in the Trade Act of 1974 (as amended), includes: (1) the right of association; (2) the right to organize and collective bargaining; (3) prohibition on forced labour and the worst forms of child labour; (4) a minimum age for the employment of children; and (5) acceptable conditions of work with respect to minimum wages, hours of work, and occupational health and safety."<sup>241</sup> Apart from this reference to the worst forms of child labour, there is no other reference to the rights of the child in OPIC's policies.

### *Monitoring*

OPIC uses two methods of project monitoring: self-monitoring and site monitoring. In terms of self-monitoring, OPIC requires all supported projects to complete an annual Self-Monitoring Questionnaire. The Self-Monitoring Questionnaire is designed as an information-gathering tool to track investment performance. Site monitoring, on the other hand, is used to check the reliability of the information supplied in Self-Monitoring Questionnaires as well as the observance of conditions that are enumerated in OPIC agreements. Site monitoring is carried out on those projects deemed "sensitive" either in terms of US economic impact, host country

<sup>236</sup> Ibid, at 1.5

<sup>237</sup> OPIC, Op. Cit. note 234, p. 19

<sup>238</sup> OPIC, *Annual Policy Report 2009*, p. 25, available at: [http://www.opic.gov/sites/default/files/docs/annualreport\\_2009.pdf](http://www.opic.gov/sites/default/files/docs/annualreport_2009.pdf) (accessed 24 March 2014)

<sup>239</sup> Categorically Prohibited Projects are those in sectors enumerated in Annex B of The Environmental and Social Policy Statement, Op. Cit note 273, p. 35; also available at <http://www.opic.gov/what-we-offer/financial-products/financing-details/investor-screener> (accessed 10 March 2014)

<sup>240</sup> OPIC Website, *Doing Business with Us*, available at: <http://www.opic.gov/doing-business-us/OPIC-policies/worker-human-rights> (accessed 10 March 2014)

<sup>241</sup> OPIC, Op. Cit. note 238, Appendix, Glossary, p. 43

developmental impact, labour, environment or social impact as well as a number of randomly selected projects from the active portfolio.<sup>242</sup>

## Accountability Mechanism

Established in 2005, the Office of Accountability is an independent office within OPIC with a dual function of problem-solving and compliance review.<sup>243</sup>

It should be noted that the operating procedures and guidelines of the Accountability mechanism are currently under review. There have been consultations with relevant stakeholders and a set of draft Guidelines has been submitted for public comment.<sup>244</sup>

### *Problem Solving*

The problem-solving function is more flexible and does not require allegations of non-compliance with OPIC policies as opposed to the compliance review function. The main difference with the ADB is that as OPIC has a policy on human rights and labour rights, human rights and labour claims can be brought before the Office of Accountability.

| <b>Table 7: Complaint Procedures at the Office of Accountability</b> |   |
|--|---|
| Who is eligible to file a complaint?                                 | <ul style="list-style-type: none"> <li>• Members of the local community who are, or are likely to be, materially, directly and adversely affected by an OPIC-supported project</li> <li>• A local representative of affected people (Representatives must clearly identify the project affected people and provide evidence of the authority to represent them)</li> <li>• In exceptional cases, a non-local representative, where there is no adequate or appropriate representation in the country where the project is located</li> <li>• Project Sponsor</li> </ul> |
| Where to file a complaint?   | OPIC Office of Accountability, in writing   |
| What is the basis for eligibility of the complaint?                  | Project must be OPIC-supported, meaning OPIC has, through a commitment letter or an insurance contract, clearly indicated interest in financing or insuring the project   |
| Type of problem-solving  | Requestors are asked to clarify how they would like to see the problem resolved   |
| Other requirements   | Requestor must have made good faith efforts to bring problem to OPIC/ sponsor/local community attention and work with the concerned party to try to address the problem   |
| Cut-off Date   | Final disbursement of financing, when the OPIC support is considered to end   |

### *Compliance Review*

Compliance Review, as the name suggests, is triggered by allegations of non-compliance with OPIC's policies on environment, social impacts, worker rights and human rights, which also include IFC's Performance Standards.

<sup>242</sup> OPIC, *Op. Cit.* note 234, p. 20.

<sup>243</sup> OPIC Web site, Office of Accountability, available at: <http://www.opic.gov/who-we-are/office-of-accountability> (accessed 10 March 2014)

<sup>244</sup> OPIC Web site, available at: <http://www.opic.gov/who-we-are/office-of-accountability/oa-process-update-operating-procedures> (accessed 10 March 2014)

**Table 8: Complaint Procedures for the Compliance Review**

|   |  |
|---|--|
| Who is eligible to file a complaint?                | <ul style="list-style-type: none"> <li>• Member/s of the local community with concerns about adverse environmental, social, worker rights or human rights impacts of an OPIC-supported project</li> <li>• An authorized representative of affected people (Representatives must clearly identify the project affected people and provide evidence of the authority to represent such people), in exceptional cases, a non-local representative, where there is no adequate or appropriate representation in the country where the project is located</li> <li>• OPIC's President and CEO</li> <li>• OPIC Board of Directors</li> </ul> |
| Where to file a complaint?                          | OPIC Office of Accountability  |
| What is the basis for eligibility of the complaint? | OPIC has executed a financial agreement or insurance contract with the sponsor of the project, and OPIC maintains a contractual relationship with the project  |
| Basis of the complaint                              | Alleged failure to comply with OPIC policies related to environment, social impacts, worker rights and human rights  |

## Children's Rights and the OPIC in practice

OPIC provides private-sector financing and is therefore not involved on the ground in financing specifically dedicated child-related projects that contribute to the realization of children's rights, which may take place mainly through funding from the public sector. US financing (either as loans or as grants) to the public sector in developing countries takes place mainly through the USAID. In this context, financing to the private sector is subject to projects complying with OPIC Policies, including those referring to human rights and minimum age for employment.

## Opportunities for improvement

While not a party to the Convention on the Rights of the Child, the US is party to other core human rights instruments as well as ILO Convention 182 on the Worst forms of child labour, and supports ILO declarations and other instruments concerning the rights of the child. It has traditionally used financing and aid instruments as tools to advance its human rights foreign policy, including on human rights.

- OPIC should draw guidance from international human rights standards, including the CRC and its General Comment 16, irrespective of whether it is a State Party, with a view to incorporating a broader range of rights of the child in its funded operations. As part of a review process of the rules applicable to its Office of Accountability initiated in 2013, OPIC is accepting comments on new draft guidelines.<sup>245</sup> This would offer an opportunity for child rights advocates to press for enhanced human rights protections in the operation of the OPIC and more robust accountability procedures, including to provide for greater transparency and accessibility to children, in line with international standards and the jurisprudence of the Committee on the Rights of the Child.
- Project Screening at OPIC entails a process undertaken pursuant to a standard of due diligence on human rights components. It would be important to ensure that an enhanced range of human rights, including children's rights is taken on board. This process is conducted prior to the taking of decisions on financing. In addition, applicant businesses are required to carry out risk due diligence and in this context standards such as the CRC and its GC 16 as well as UNICEF's Rights of the Child and Business principles are relevant.

<sup>245</sup> OPIC, Operational Guidelines Handbook for Problem-Solving and Compliance Review Services (Draft), Available at: <http://www.opic.gov/sites/default/files/files/draft-revised-oa-guidelines-082013.pdf> (accessed 21 January 2014)

- OPIC has a policy on human rights and labour rights and violations of this policy can serve as basis for claims before the Office of Accountability. Rights advocates may invoke a number of substantive sources, and the ILO Convention 182 (prohibiting the worst forms of child labour- regarded by OPIC as one of the internationally recognized labour rights) may in particular be invoked to trigger such claims.





## Conclusions and recommendations

This overview of policies and accountability procedures of financial institutions at global, regional and national levels shows a wide diversity in the approaches that IFIs had taken toward the incorporation of international human rights standards in their work. Under international law, States remain bound by human rights obligations in their actions extraterritorially and when acting in the context of international organizations.<sup>246</sup> They remain the decision-making authority. In so doing they must “elaborate, interpret and apply” international agreements, such as those constituting and falling within the ambit of the IFIs “in a manner consistent with their human rights obligations.”<sup>247</sup> According to the International Law Commission’s *Draft Articles on Responsibility of International Organizations*, “A State member of an international organization incurs international responsibility if, by taking advantage of the fact that the organization has competence in relation to the subject-matter of one of the State’s international obligations, it circumvents that obligation by causing the organization to commit an act that, if committed by the State, would have constituted a breach of that obligation.”<sup>248</sup> Such obligations include, of course, human rights obligations.

In respect of children’s rights particularly and the standards set in the Convention on the Rights of the Child, the Committee on the Rights of the Child in its *General Comment No 16* reminds States parties to the Convention of their duty to uphold their obligations when acting within international organizations. The Committee also stresses that “International organizations should have standards and procedures to assess the risk of harm to children in conjunction with new projects and to take measures to mitigate risks of such harm” as well as “put in place procedures and mechanisms to identify, address and remedy violations of children’s rights in accordance with existing international standards including when they are committed by or result from activities of businesses linked to or funded by them.”<sup>249</sup> The commentary by the Committee on the Rights of the Child reflect prevailing doctrine and commentary by other UN human rights treaty-bodies as well as international law experts’ statements such as the *Tilburg Principles* and the *Maastricht Principles*.<sup>250</sup>

The direct human rights obligations of international financial institutions, such as the World Bank Group and the Asian Development Bank, are not as well defined as those of national financial institutions such as the German KfW and DEG, the OPIC in the United States or the China Development Bank. The national financial institutions considered in this report, are State actors and their conduct, in certain circumstances, may be attributable to their respective States. Officials of these institutions must therefore act in accordance with the State’s human rights obligations, including the Convention on the Rights of the Child. Notwithstanding these obligations, States’ incorporation of human rights as part of the operational policies and practices of their financial institutions remains deficient.

<sup>246</sup> Maastricht Principles on Extraterritorial Obligations of States, Principles 3 and 15, note 5

<sup>247</sup> Ibid. at Principle 17

<sup>248</sup> International Law Commission, Report of the International Law Commission, UN Doc A/66/10 (2011), p. 161, Art. 61(1)

<sup>249</sup> CRC General Comment 16, para. 48

<sup>250</sup> Tilburg principles, see for instance principle 5: “As international legal persons, the World Bank and the IMF have international legal obligations to take full responsibility for human rights respect in situations where the institutions’ own projects, policies or programmes negatively impact or undermine the enjoyment of human rights.”; and Principle 7: “The World Bank and the IMF are governed by their member States. When representatives of member States determine the policies of the two IFIs, they are bound by their States’ international obligations, including those arising from international human rights law. This includes an obligation on those States in a position to assist, to provide international assistance and co-operation. The obligation of international assistance and co-operation includes the duty to work actively towards an equitable financial investment and multilateral trading system that is conducive to the reduction and eradication of poverty and the full realisation of all human rights.” See also Maastricht Principles on Extraterritorial Obligations of States in the area of Economic, Social and Cultural Rights, Principles 14 and 15.

Operational and policy priorities of national financial institutions are in practice set in accordance with those of their national governments, which explains the wide diversity in approaches to the incorporation of children's rights into their operational policies and procedures.

Multilateral financial institutions have a different dynamic and their policies respond not to one State's priorities but to those of several States, with the most powerful and largest donor States maintaining greatest leverage in this respect. But here again the level of uptake of international standards in the field of children's rights is varied. While explicit references to children's rights are scarce in the wider field of international development finance, recent progress at the international level suggest that there is growing concern about the impacts of financial institutions and the projects they fund on the enjoyment of the rights of the child. At the same time, there is growing interest and opening to sensitization and action in relation to those rights, and the broader universe of human rights.

International human rights law and standards have been bolstered in this area, for example by the adoption of the General Comment No. 16 by the UN Committee on the Rights of the Child on *State obligations regarding the impact of the business sector on children's rights*, the *Maastricht Principles on the Extraterritorial Obligations of States*, the *UN Guiding Principles on Business and Human Rights* and the *Tilburg Principles* (which are currently under revision). Human rights treaty obligations read together with these instruments constitute a normative framework for both States and enterprises to take action. Global and regional institutions work under a governance system whereby States members have decisive power to define policies, priorities and procedures, and General Comment 16 is particularly relevant in this context.

The European Investment Bank (EIB) and European Bank for Reconstruction and Development (EBRD) have taken the clearest steps to incorporate international human rights conventions among their safeguard policies, and example that has recently been followed up by the African Development Bank. The Asian Development Bank's current mid-term review of its Strategy may provide an opportunity for bolder action to make the ADB's safeguard policies – and their monitoring- comply with international standards. Similarly, the current review process of the World Bank Safeguard Policies provides for the real opportunities offered for progressive development. Advocates of children's rights have an important agenda in the years to come to achieve better recognition and respect of those rights by financial institutions through their operations and policies.

The overview of policies and accountability mechanisms provided in this report shows that although there is some progress in the incorporation of standards on the rights of the child more need to be done. The existing opportunities identified at the end of each entry, can be effectively used to operate some changes.

In this regard, the ICJ recommends that States take action to ensure that no project, in its design and implementation, contravenes the human rights standards relative to the obligations of member states of the international institution or of the State of any national institutions, including those arising under the Convention on the Rights on the Child and other core human rights treaties.

### **Recommendations to the World Bank:**

- Fully take account of lessons learned by the Human Development Network and the World Bank's expertise in child development into all of the Bank's operations and policies
- Include in the revised safeguards a requirement for *ex ante* children's rights impact assessments as part of its environmental and social impact assessment in order to prevent Bank-funded projects from causing adverse impacts on children
- Include in the Bank's policy on consultations with affected communities, a requirement that consultations on the planning and execution of projects with children take place

- Actively engage with civil society organizations, UNICEF and other concerned international, regional or national institutions with expertise on human rights, including the rights of the child to ensure that human rights and particularly children's rights feature in Banks' policies and priorities and ultimately children reap the benefits of development and poverty eradication along with other segments of society

### **Recommendations to the International Finance Corporation (World Bank Group):**

- Mainstream the use of Human Rights Impact Assessments (HRIA) in IFC-funded projects, urging private sector clients to use the tool and directing IFC staff to conduct these impact assessments and human rights due diligence for its decisions and operations, with reference to international human rights standards, including under the CRC
- Make HRIAs mandatory prior to finalizing funding decisions for projects and update the Guide to HRIAM by adding a child-specific section
- Ensure the application of IFC Performance Standards to all financing operations and decisions equally, including to projects financed through financial intermediaries.
- Carry out capacity building efforts to ensure staff and clients have an adequate understanding of international human rights standards, including in the field of children's rights that are especially pertinent to their operations. These standards should comprise General Comment 16.

### **Recommendations to the ADB and similar regional financial institutions:**

- Recognize children as important stakeholders when taking financing decisions and consider the impact of these decisions on human rights, and especially the rights of children by conducting its own *ex ante* children's rights impact assessments and requiring project partners conduct similar impact assessments and to report on a project's possible child-related impacts
- Consider, as part of the mid-term review process of its strategy, the impacts of projects funded by ADB on human rights, including children's rights and the ways to mitigate, avoid and/or remediate those impacts through improvements in the ADB safeguard policies.
- Carry out capacity building efforts to ensure staff and clients have an adequate understanding of international human rights standards, especially in the field of children's rights, that are pertinent to their operations. These standards should comprise General Comment 16.

### **Recommendations to National Governments and National Financial Institutions:**

- Incorporate policies and practices based on international human rights standards, including on the rights of the child and provide for internal accountability mechanisms.
- Require staff to conduct human rights, including child rights impact assessments, prior to the approval of funding for a new project and require the same from partners/recipients of loans
- Take action to ensure that all partners in third countries (including governments, private sector and others) where the projects are being financed on the ground, respect children's rights and refrain from causing foreseeable harm to children and others.

- Carry out capacity building efforts to ensure staff and clients have an adequate understanding of international human rights standards, especially in the field of children's rights, that are especially pertinent to their operations. These standards should comprise General Comment 16.

### **Recommendations to all financial institutions:**

- Adequately train staff in headquarters as well as those on the ground on the international human rights framework, especially in respect of the rights of the child, the respective responsibilities of States and businesses, and the need to raise awareness about children's rights and the likely impacts of funded projects on children's rights
- Adopt policies and operating instructions for project staff to ensure that they use human rights impact assessments and prevention of violations as a critical metric for evaluating the feasibility, and success of a project
- Put in place mechanisms that ensure accountability and provide remediation for negative impacts on human rights, including violations of children's rights arising from decisions, policies or projects on children.

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P.O. Box 91  
Rue des Bains 33  
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**t** +41 22 979 38 00  
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