



大会

Distr.: General
20 July 2017
Chinese
Original: English

人权理事会

第三十六届会议

2017年9月11日至29日

议程项目3

促进和保护所有人权——公民权利、政治权利、
经济、社会及文化权利，包括发展权

促进民主和公平的国际秩序独立专家的报告*

秘书处的说明

秘书处谨向人权理事会转递促进民主和公平的国际秩序独立专家阿尔弗雷德·德萨亚斯根据理事会第33/3号决议编写的专题报告。

* 本报告附件和参考书目不译，原文照发。



促进民主和公平的国际秩序独立专家的报告

目录

页次

一. 导言.....	3
二. 积极因素.....	4
三. 挑战.....	5
A. 环境退化、逐离和强迫重新安置.....	7
B. 侵犯劳动权利.....	8
C. 通过外包规避规则.....	9
D. 公私伙伴关系.....	10
E. 报复	11
F. 企业偏向.....	12
G. 世界银行在国内法院的诉讼豁免?	14
H. 信用评级机构.....	15
I. 正在进行的研究.....	15
四. 良好做法.....	16
A. 环境和社会框架.....	16
B. 检查小组.....	17
C. 采取预防性和纠正性行动.....	19
D. 合规顾问/监察员	20
五. 前进之路.....	21
六. 结论和建议.....	22
附件	25
参考书目.....	49

一. 导言

1. 本报告根据人权理事会第 33/3 号决议提交，在该决议中，理事会请独立专家继续研究国际组织和其他机构(尤其是世界银行和国际货币基金组织)所采取的金融和经济政策对民主和公平的国际秩序的影响；
2. 在联合国人权事务高级专员办事处(人权高专办)2016 年 10 月在日内瓦举办了一次专家协商会议后，独立专家决定在他向理事会提交的报告中以世界银行为侧重点，而在提交大会的报告中全面讨论国际货币基金组织(货币基金组织)的问题。这两份报告应一并阅读，并应意识到，在二十一世纪，没有“免人权区”；¹ 所有国家、国际组织和非国家行为方都必须尊重习惯国际人权法；所谓的国际法“不成体系”不能创造“自成一体的制度”或“法律黑洞”。
3. 虽然国际金融机构可促进人权和发展，但它们的一些政策已导致一些国家有利人权的环境被侵蚀，特别是通过促进新自由主义政策的做法，削弱了公共部门并阻碍国家履行它们在教育、卫生保健、劳工标准和适足的生活水平等领域的人权条约义务。此外，通过资助逃税企业，世界银行助长了将公共资源从公共服务中转移。银行增加对公私伙伴关系的支持加强了私营部门而有损于社区，特别是在投资出现问题并给政府带来更大成本的情况下。因此，国际金融机构在贷款方面应采取基于人权的方针，与利益攸关方协商，进行影响评估，采取行动反击报复行为，打击腐败，并通过放弃“绝对豁免”接受法律责任。
4. 独立专家认为，由于世界银行和货币基金组织与联合国有联系协定，它们必须支持大会、经济及社会理事会和联合国贸易和发展会议(贸发会议)推进《联合国宪章》所载的联合国宗旨和原则以及促进人权和可持续发展，同时尊重国家主权平等和不干涉他国内政原则。应重申的是，世界银行和货币基金组织会员国也是许多联合国人权条约的缔约国，特别是《公民权利和政治权利国际公约》和《经济、社会、文化权利国际公约》；它们必须确保金融机构采取的政策和支持的项目不会对人权产生不利影响。²
5. 有鉴于各国有义务确保投资者和跨国公司不侵犯人权，³ 凡是在它们与政府谈判资助具体项目问题时，各国应利用其影响力加强人权制度。⁴ 在这方面，独立专家回顾了各国 2015 年在联合国通过 2015 年后发展议程和大会通过可持续发展目标首脑会议上所作的承诺(见大会第 70/1 号决议)。2015 年通过的第三次发展筹资问题国际会议的“亚的斯亚贝巴行动议程”还呼吁所有开发银行建立或维持社会和环境保障体系(见大会第 69/313 号决议附件，第 75 段)。
6. 2016 年 1 月，独立专家向世界银行、货币基金组织、各国、政府间组织和非政府组织发出了调查问卷(见附件一)。他对它们的合作和收到的许多统计资料和澄清表示深为赞赏。

¹ 见 www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16517&LangID=E and www.nytimes.com/2016/06/27/opinion/the-world-bank-should-champion-human-rights.html.

² 参见国际法委员会编写的国际组织的责任条款草案案文，公布于第六十三届会议报告(A/66/10)，第 87 段。

³ 见，《工商企业与人权指导原则：实施联合国“保护、尊重和补救”框架》。

⁴ 见，《经济、社会、文化权利国际公约》第二条第一款。

7. 2017 年 4 月，他参加了世界银行和货币基金组织春季会议的若干活动，与这两个机构的律师和经济师进行了双边交流，并与民间社会组织进行了联系。他赞同人权高专办和特别程序任务负责人的有关研究和报告，他们重点讨论了国际金融机构工作的多重方面(见附件二)。他从非政府组织⁵和学者编写的实质性研究获得了启发。

8. 世界银行集团由国际复兴开发银行、国际金融公司、国际开发协会、多边投资担保机构和国际投资争端解决中心组成。2012 年以来，金墉担任世界银行集团主席。本报告侧重于国际复兴开发银行和国际金融公司的工作。

9. 世界银行集团的出版物记录它们对人权影响的认识。世界银行自己的社会评估框架的演变承认世界银行的人权责任。本报告并不打算告诉世界银行它已知晓的事情，也不打算说明它的专家正在忙于解决什么问题。本报告希望采用基于人权的方法，提出切合实际的建议。在这方面，应修正世界银行的《协定条款》，以纳入促进人权的内容；理事会应发布将人权纳入主流的指令。有必要修订使命说明，将经济和财政优先事项与人权目标协调起来。⁶甚至世界银行入口处长墙上的话(“我们的梦想是一个没有贫困的世界”)也在呼吁采取行动。

10. 过去 60 年来，比起通常针对世界银行的批评，国际金融公司(成立于 1956 年)的活动引起了更多批评。作为世界银行的私人贷款机构，国际金融公司在其网站上也有理想主义话语，它在网站上夸言说，世界银行的使命“是以激情和专业精神与贫困作斗争，取得持久成果”。⁷独立专家同意，这一使命是可以实现的。

二. 积极因素

11. 世界银行承认，“可持续发展承认，增长必须既有包容性又无害环境，以减少贫穷，为当今人民建造共同繁荣，并继续满足子孙后代的需要。增长须有效使用资源并经过精心规划，为人民、地球和繁荣提供眼前和长远惠益”。⁸

12. 为此目的，2006 年，世界银行通过了“环境和社会框架”，其中包括：

- 可持续发展愿景，它阐明世界银行在环境和社会可持续性方面的愿望；
- 项目融资方面的环境和社会政策，为它所支持的项目规定了强制性要求；
- 十项环境和社会标准，为借款人和项目规定了强制性要求。

13. 在新的“环境和社会框架”的愿景说明中，拟定了一项战略，它“规定了在它的所有伙伴国家中终止极端贫困和促进共同繁荣的集团目标”，包括与人权有关的目标，例如环境可持续性、社会包容和保护资源。在该框架内，为支持借款

⁵ 见 www.oxfam.org/en/tags/world-bank and www.oxfam.org/en/pressroom/pressreleases/2016-10-03/new-links-expose-world-bank-group-investments-and-human-rights.

⁶ 见 www.youtube.com/watch?v=TyOUputeq2Y.

⁷ 见 www.ifc.org/wps/wcm/connect/corp_ext_content/ifc_external_corporate_site/about+ifc_new/IFC+Governance.

⁸ 见 www.worldbank.org/en/topic/sustainabledevelopment/overview.

人的项目所设计的 10 项环境和社会标准侧重于：(a) 社会风险和影响；(b) 劳动和工作条件；(c) 预防污染；(d) 健康和安全；(e) 土地的获取、土地的使用和非自愿重新安置；(f) 生物自然资源的可持续性管理；(g) 土著人民；(h) 文化遗产；(i) 金融中介；(j) 利益攸关方的参与和信息披露。

14. 该愿景超越了“不伤害”并以发展利益最大化为目标。因此，如果借款人的环境和社会评估确定了与一个项目相关的潜在发展机会，世界银行将与借款人讨论将这些机会纳入项目的可行性。此外，世界银行致力于与借款人共同确定战略举措和目标，以处理国家发展优先事项并与捐助国政府、国际组织、运营所在国和民间社会维持关于环境和社会问题的对话。

15. 关于世界银行对国际秩序的影响，意见纷纭。一些观察员认为，世界银行和货币基金组织对世界事务的影响比联合国大会和经济及社会理事会所有决议的总和都大。虽然《联合国宪章》第一百零三条的至上条款规定，《宪章》优先于所有其他国际协定，但事实上，布雷顿森林机构不隶属于大会和安全理事会；它们将对世界事务，包括享受公民、文化、经济、政治和社会权利，继续产生决定性影响。

16. 学术界许多人一直在研究世界银行政策对人权和国际秩序的影响。早在 2003 年，通过了《世界银行、货币基金组织和人权问题蒂尔堡指导原则》。⁹ 在荷兰蒂尔堡大学举行的题为“全球化和跨国人权义务”的一次后续会议导致于 2015 年通过了《蒂尔堡全球化跨国人权义务指导原则》(见附件三)。同样，2009 年，印第安法律资源中心发表了“多国发展银行的国际法原则”，¹⁰ 其中，学者反驳了以下论点：国际金融机构似乎凌驾于法律之上，它们只须履行其宪章和章程。

17. 虽然世界银行名称中有“发展”一词，但必须回答的是，对于《协定条款》而言，“发展”的意思是什么。迄今为止，在理论和实践中，世界银行将“发展”理解为国内生产总值(国内总产值)增长、贸易增加和更大消费。观察员提出了对“发展”的不同理解：它是财富、粮食保障、清洁用水、卫生设施、保健、住房、教育和就业的更公平分配。然而在许多国家，国家之间和国家内部的不平等现象一直在增加，在这些国家，失业增加了，尤其影响到年轻人，实际生活水平下降了。

三. 挑战

18. 尽管有上述积极动态，世界银行和货币基金组织继续要求更多地依靠纯粹基于市场的解决办法，遵循约瑟夫·施蒂格利茨常常谴责的“市场原教旨主义”观

⁹ 见 Willem van Genugten, *The World Bank Group, the IMF and Human Rights: A Contextualized Way Forward* (Cambridge, Intersentia, 2015).

¹⁰ 见 <http://scholar.law.colorado.edu/cgi/viewcontent.cgi?article=1001&context=free-prior-and-informed-consent>. 亦见 Günther Handl, “Multilateral Development Banking”, available from www.meraki-autoworks.com/multilateral-development-banking-environmental-principles-and-concepts-reflecting-general-international.pdf.

点。¹¹ 2016 年，多边开发银行之间加强了合作，侧重于大型基础设施项目、依靠公私伙伴关系¹² 作为规避有限的财政空间的方法并继续努力对国家施加所谓的劳动灵活化和其他过时的条件。

19. 正如娜奥米·克莱恩在她的开创性著作《休克主义》中所指出的，主要问题仍然是，国际金融机构致力于自由放任经济学理念，反映了米尔顿·弗里德曼的芝加哥学派，其特点是奉持近乎宗教式的信仰：私有化和放松管制将推进国内生产总值，尽管它产生惯常的繁荣和萧条周期并最大限度地减少社会成本。¹³

20. 多年来，民间社会指出了受益于世界银行融资的公司所犯的侵犯人权行为，以许多出版物记录了这些侵权行为。其中最严重的侵权行为是，掠夺土地、野蛮逐离、非自愿重新安置、强迫劳动、¹⁴ 童工劳动、性虐待、大规模污染、破坏环境、报复人权维护者、腐败和洗钱。本报告概述几个突出案件，这些案件在广泛侵权现象中具有代表性。

21. 世界银行 2016 年 4 月春季会议之前，乐施会公布了一份题为“国际金融公司和避税天堂”的报告，在该报告中，它透露说，在金融公司 2015 年在撒哈拉以南非洲投资的 68 家公司中，有 51 家公司使用避税天堂。¹⁵ 正如独立专家 2016 年提交大会的报告(A/71/286)中所述，这有可能剥夺该地区国家至关重要的税收，这些税收可用于履行其人权义务，实现可持续发展目标和偿还外债。事实上，贸发会议估计，发展中国家每年损失 1,000 亿美元税收，由此收入损失和未投资收入产生的总发展融资损失为 2,500-3,000 亿美元。¹⁶ 现在，世界银行将不缴纳税款公司的项目列入黑名单的时机已经成熟。

22. 有充分证据表明，世界银行资助的项目对数百万人造成损害。国际调查记者同盟 2015 年的一份报告称，2009 至 2013 年，世界银行将 500 亿美元注入被定级为具有“不可逆转或史无前例的”社会或环境影响最高风险的项目之中。¹⁷ 该报告还指出，世界银行和国际金融公司资助了被指控犯有侵犯人权行为(包括谋杀

¹¹ 见 Joseph Stiglitz, “Moving beyond market fundamentalism to a more balanced economy”, *Annals of Public and Cooperative Economics*, vol. 80, No. 3 (2009). 亦见 www.globalpolicy.org/social-and-economic-policy/the-three-sisters-and-other-institutions/internal-critics-of-the-world-bank-and-the-imf/42796-joseph-stiglitz.html.

¹² 见 www.worldbank.org/en/topic/publicprivatepartnerships, <https://ppp.worldbank.org/public-private-partnership/overview/world-bank-group> and https://ieg.worldbankgroup.org/Data/reports/lp_Health_PPP_1116.pdf.

¹³ 见 www.ipsnews.net/2017/06/east-asian-miracle-myth-making/.

¹⁴ 见 www.theguardian.com/global-development/2017/jun/27/world-bank-funds-linked-to-forced-labour-in-uzbekistan.

¹⁵ 见 www.oxfamsol.be/sites/default/files/documents/bn-ifc-tax-havens-110416-embargo-en.pdf. 亦见 www.oxfam.org/en/pressroom/pressreleases/2016-04-11/majority-world-banks-private-investments-go-companies-have and www.oxfam.org/en/pressroom/pressreleases/2016-12-12/worlds-worst-corporate-tax-havens-exposed-oxfam-report-reveals. www.oxfam.org/sites/www.oxfam.org/files/bp-race-to-bottom-corporate-tax-121216-en.pdf.

¹⁶ 见贸发会议，《2015 年世界投资报告》，第五章，可在以下网址参阅：unctad.org/en/PublicationsLibrary/wir2015_en.pdf. 亦见 www.taxjustice.net/2015/03/26/unctad-multinational-tax-avoidance-costs-developing-countries-100-billion/.

¹⁷ 见 www.counterpunch.org/2017/03/24/world-bank-declares-itself-above-the-law/.

和酷刑)的政府和公司。在一些案例中, 尽管有证据, 它们继续资助这些借款人。¹⁸

A. 环境退化、逐离和强迫重新安置¹⁹

23. 在由于大型勘探、采矿、伐木和水电企业而遭受影响的弱势群体中, 土著人民的土地由于工业活动而被攫取或破坏, 这样做未与他们协商, 也未获得他们的自由、事先和知情同意。²⁰

24. 2015 年, 国际调查记者同盟确定, 由于世界银行供资的项目, 340 万人实际上流离失所或经济上流离失所, 包括埃塞俄比亚阿努阿克人, 他们面临暴力的大规模逐离, 这一逐离运动资金来自世界银行资助的一个项目的资金转移。²¹

25. 2016 年, 该同盟报告了世界银行对一个涉农产业项目的支持, 该项目侵犯了对坦桑尼亚土著人民的保障。在非政府组织的大规模抗议下, 世界银行最初退缩了, 但 2016 年 3 月, 世界银行理事会批准了全面放弃其保障政策(业务政策 4.10), 创造了一个不幸的先例。所涉及的是对坦桑尼亚的南部农业发展走廊(发展走廊)的一笔 7,000 万美元贷款, 这是政府将巴拉拜格族地区的土著牧民逐离的一个举措, 以便将肥沃的农田转给投资者。²² 该同盟还报告了采矿部门的侵权行为,²³ 包括与秘鲁的金矿开采相关的侵权行为。²⁴

26. 关于世界银行放弃土著民族业务政策问题, 土著人民权利问题特别报告员和国家外债和其他有关国际金融义务对充分享有所有人权尤其是经济、社会及文化权利的影响问题独立专家 2017 年 2 月向世界银行发去了一封函件。该信函指出:

发展走廊项目可能对自我认同为土著人民的游牧和半游牧牧民群体, 包括巴拉拜格人、达图嘉人、哈扎比人和马赛人, 产生重大影响, 他们依靠该项目区域中的土地谋求日常生计和生存……我们认为, 至关重要的是, 旨在改进

¹⁸ 见 www.icij.org/blog/2015/04/icijs-world-bank-probe-draws-global-attention.

¹⁹ Alfred de Zayas, “Forced Population Transfer”, in *The Max Planck Encyclopaedia of Public International Law*, Vol. IV, Rüdiger Wolfrum, ed. (Oxford, Oxford University Press, 2012), pp. 165-175.

²⁰ 见《联合国土著人民权利宣言》, 第十至十一、十九、二十八、三十和三十二条。

²¹ 见 www.icij.org/blog/2015/04/new-investigation-reveals-34m-displaced-world-bank and <http://projects.huffingtonpost.com/worldbank-evicted-abandoned/new-evidence-ties-worldbank-to-human-rights-abuses-ethiopia>.

²² Bretton Woods Observer, Autumn 2016, p. 7. 可在以下网址参阅: www.brettonwoodsproject.org/wp-content/uploads/2016/09/Observer_Sept_16_online.pdf. 亦见 <http://documents.worldbank.org/curated/en/215191467995074230/pdf/103990-SU-P125728-IDA-SU2016-0001-OUO-9.pdf> and www.huffingtonpost.com/entry/world-bank-allows-tanzania-to-sidestep-rule-protecting-indigenous-groups_us_57607769e4b09c926cfd6b1c.

²³ 见 www.brettonwoodsproject.org/2014/06/world-bank-mines-threatening-livelihoods/.

²⁴ 见 <http://projects.huffingtonpost.com/worldbank-evicted-abandoned/how-worldbank-finances-environmental-destruction-peru>.

坦桑尼亚社会安全网的项目，在设计时，应使土著人民能够受益于这些项目……而且，应与土著人民进行充分协商。²⁵

27. 特别报告员和独立专家的结论是，“理事会对放弃业务政策 4.10 的批准……从规范和业务视角来看都是成问题的。将业务政策 4.10 违背国家宪法的规定这一单方面论点视为理所当然的做法……在保护土著群体权利方面产生了明显的漏洞”。²⁶

28. 在 2017 年 3 月的答复中，世界银行辩称，“该项目筹备小组听取了当地和国际专家以及土著人民代表的意见。特别是，该国政府同意拟订一项符合业务政策 4.10 要求的保障文书，名为脆弱群体规划框架”。²⁷

29. 世界银行还澄清说：

世界银行执行董事会考虑到了项目设计、法律文件包括与脆弱群体规划框架相关的法律协议，并批准了发展走廊投资项目……子项目资格标准的设计限制了子项目对东道社区土地权利可能产生的影响——该项目不支持涉及到将土地从小农重新分配给涉农企业的投资。²⁸

30. 人权观察社还强调了若干事例，在这些事例中，世界银行未能遵守它本身的保护土著人民权利的政策。例如，人权观察社记录了将埃塞俄比亚甘贝拉地区的半游牧努埃尔人强迫转移的事件，并指出，世界银行项目与政府的一个名为“村庄化”的迁移方案之间存在着业务联系。这一问题得到世界银行检查小组的审查，该小组认定世界银行“没有进行必要的全面风险分析，它的缓解措施也不适当”。²⁹

31. 2014 年，世界银行批准了刚果民主共和国因加水力发电项目的 7,300 万美元赠款，尽管理事会指出有“重大实施风险”。2016 年 7 月，世界银行暂停供资。非政府组织国际河流评论说，世界银行本不应参与该项目，因为“因加代表着一个失败的发展模式，它绕过穷人，为采掘业和出口市场谋取利益”。³⁰

B. 侵犯劳动权利

32. 民间社会还提请注意与世界银行项目相关的侵犯劳动权利问题。例如，人权观察社的“有毒辛劳”报告，记载了在坦桑尼亚公然侵犯儿童权利以及使童工暴露于汞中毒等情况。在该报告中，人权观察社呼吁黄金采矿业建立一个彻底的尽责程序，包括进行定期监测，以消除供应链中的童工劳动。³¹

²⁵ 见 <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=22932>.

²⁶ 同上。

²⁷ 见 <https://spcommreports.ohchr.org/TMResultsBase/DownloadFile?gId=49127>.

²⁸ 同上。

²⁹ 见 www.hrw.org/news/2015/02/23/world-bank-address-ethiopia-findings.

³⁰ Bretton Woods Observer, Autumn 2016, p. 2. 可在以下网址参阅：www.brettonwoodsproject.org/wp-content/uploads/2016/09/Observer_Sept_16_online.pdf.

³¹ 见 www.hrw.org/report/2013/08/28/toxic-toil/child-labor-and-mercury-exposure-tanzanias-small-scale-gold-mines.

33. 此外，在评论世界银行对国际金融公司投资于印度茶叶种植园一事进行的遵规调查时，人权观察社指出：

国际金融公司投资了数百万……而未考虑到该部门的严重劳动侵权和其他侵犯人权情况……国际金融公司未能查明和处理基本风险，包括工人和童工的严重不适当的生活条件……国际金融公司的缺陷部分地是由于其文化和激励措施，这种措施用金钱衡量成果，鼓励工作人员“忽视、不说明、甚至隐瞒可能产生的环境、社会风险以及与冲突相关的风险”。³²

34. 此外，在过去，金融公司未能适当衡量石油和采矿项目风险，例如乍得一喀麦隆输油管项目。在该项目中，一项旨在将石油收入用于教育、保健和其他社会需要的法律在乍得被取消，世界银行最终不得不暂停向该国提供贷款。³³

35. 虽然喀麦隆已批准大多数国际劳工组织(劳工组织)关于劳动和工人生活条件的公约，而且，世界银行的客户有义务执行世界银行关于职业健康和安全的指令，但侵犯工人权利的现象依然有增无减。一个实例涉及中国水利电力对外公司，该公司参与了世界银行供资的 Lorn Pangor 水电项目，该项目导致向世界银行一再提出有关环境和社会管理问题的投诉。2014 年 1 月，喀麦隆的人权组织网络的一份报告称，该项目现场的人权状况令人痛惜。喀麦隆电力发展公司和劳动检查专员未能迫使该公司遵守劳动法律。³⁴

C. 通过外包规避规则

36. 除了世界银行项目造成的直接伤害外，民间社会活动家指出，世界银行通过中间银行对无视人权的公司进行间接供资。一种隐秘的或“无形的”间接供资做法产生了：国际金融公司资助了六家印度商业银行，这些银行又对侵权公司进行了资助。国际包容性发展组织报告说：

金融公司间接资金的接收者包括韦丹塔资源公司、印度国家水电有限公司和金达尔钢铁电力公司，这些公司在严重侵犯人权和环境破坏方面有大量共谋记录可查。这些公司从国际金融公司得到直接援助的希望微乎其微。然而，通过将其发展资金外包给营利性商业银行，国际金融公司……将其支助掩盖于公共监督之外。通过这种做法，国际金融公司对其资金如何使用未提供多少监督。³⁵

37. 国际包容性发展组织已确定，68 家印度公司或项目卷入严重的有害环境影响或侵犯人权的做法，这些公司或项目得到国际金融公司中介机构的资助。该报告指出，“我们正看到一种令人担忧的趋势——不仅在世界银行，而且也在其他开

³² 见 www.hrw.org/news/2016/11/08/world-bank-group-india-tea-investment-tramples-rights.

³³ 见 www.oxfamamerica.org/press/aid-group-lauds-new-world-bank-policies-on-indigenous-rights-and-oil-and-mining-transparency/.

³⁴ Bretton Woods Observer, Autumn 2016, p. 3. 可在以下网址参阅：www.brettonwoodsproject.org/wp-content/uploads/2016/09/Observer_Sept_16_online.pdf.

³⁵ 见 www.inclusivedevelopment.net/new-report-reveals-the-world-banks-murky-financial-entanglements-with-indias-most-irresponsible-corporations/ and www.inclusivedevelopment.net/wp-content/uploads/2017/04/Outsourcing-Development-India.pdf.

发银行——它们通过通常从不接触的项目第三方进行不经手借贷。同时，世界银行正在对日益严重的人类和环境成本——对森林、河流和社区造成的成本洗脱责任”。³⁶

38. 同样，乐施会 2016 年 10 月简报指出：

在过去六年中，国际金融公司向金融部门提供了 500 亿多美元，它对金融中介机构例如商业银行和私人股权基金的长期投资急剧上升了 45%……。然而，证据继续在增加：世界银行集团对于这些款项的大部分如何花费几乎没有控制。这种缺乏问责对许多贫困社区产生破坏性影响。³⁷

39. 虽然正在取得一些进展，但正如乐施会在世界银行和货币基金组织 2017 年会议结束时所评论的，仍有更多的工作待做。“我们感到鼓舞的是，国际金融公司承诺改善监督，对它的高风险金融中介投资进行更仔细的挑选。……我们仍在等待国际金融公司以透明的方式说明，它们的钱最终真正用在了什么地方，这是关键所在”。³⁸

D. 公私伙伴关系

40. 许多民间社会组织抗议世界银行明显致力于促进公私伙伴关系，尽管这种伙伴关系对政府的监管空间构成挑战，特别是在清洁用水和卫生设施、保健服务和教育领域。事实上，2016 年，世界银行明显加强了对超大项目和公私伙伴关系的推动。³⁹

41. 然而经验表明，公私伙伴关系没有很好地服务于发展中国家。例如，国际金融公司最重要的卫生公私伙伴关系似有可能扰乱莱索托的保健方案。1999 年，莱索托建起了一所新的医院，称作莫哈托王后纪念医院，以取代该国原有的主要公立医院。该医院由私营部门经营，并得到金融公司的贷款。莱索托发现，该国陷入了一个为期 18 年的合同，这一合同已经在消耗该国一半以上的卫生预算，同时为私人伙伴产生了高回报。⁴⁰这就将稀缺公共资金危险地从农村地区的初级保健服务中转移出来，而该国四分之三人口生活在农村。不仅卫生公私伙伴关系具有高风险而且代价高昂，而且，它们未能推动普遍和公平保健覆盖目标。

42. 在另一个案例中，2016 年 8 月，乌干达教育部长宣布关闭布里奇国际学院开办的 63 所幼儿园和小学，该国际学院是一个私立教育服务提供方，部分地由国

³⁶ 见 www.inclusivedevelopment.net/new-report-reveals-the-world-banks-murky-financial-entanglements-with-indias-most-irresponsible-corporations/.

³⁷ 见 www.oxfam.org/sites/www.oxfam.org/files/file_attachments/bn-ifc-owning-outcomes-031016-en_0.pdf.

³⁸ 见 www.oxfam.org/en/pressroom/reactions/no-breakthrough-big-issues-spring-meetings.

³⁹ 见 www.brettonwoodsproject.org/2017/02/bank-imf-2016-year-review/ and www.brettonwoodsproject.org/2017/04/world-bank-undermines-right-universal-healthcare/.

⁴⁰ 见 www.oxfam.org/en/research/dangerous-diversion.

际金融公司资助。该部长说，这一决定基于“恶劣的个人卫生和环境卫生对无辜儿童的生命和安全所构成的危险”。⁴¹

43. 同样，在答复独立专家所发的问卷时，亚美尼亚开放社会组织指出，尽管支出了 1 亿多美元以支持亚美尼亚教育系统，但由世界银行支持的公私伙伴关系几乎没有产生任何系统性的影响或改善。相反，贷款助长了获得优质教育机会不平等问题加剧。在欧洲其他地方，在审议了葡萄牙使用公私伙伴关系的情况后，经济合作与发展组织(经合组织)警告说，公私伙伴关系“仅应在有很好的资金效益时才选择使用，而不是因为它们可使政府通过建立资产负债表外的负债摆脱预算限制”。⁴² 然而令人担忧的是，经合组织继续支持公私伙伴关系，经合组织说，“政府应考虑职权范围扩大到当地公私伙伴关系以及供水、污水和废物处理等部门”。⁴³

E. 报复

44. 尽管发展银行越来越多地承认，公众参与对于有效发展十分重要，但越来越多的政府着手开展广泛的、有时是粗暴的运动，以关闭民间社会的活动空间，在某些情况下，甚至将独立的人权工作定为犯罪。⁴⁴ 这些侵权措施将人民排除于参与决策之外，使人们不能公开反对可能会损害其生计的发展项目，使他们不能申诉无效的举措。

45. 在答复独立专家寄发的问卷时，⁴⁵ 人权观察社指出，国际金融机构未作出多少努力，以防止报复对它们资助项目的批评人士。人权观察社 2015 年的一份关于报复世界银行集团项目批评者的报告指出，印度、乌干达、柬埔寨、乌兹别克斯坦和其他地区的人民因为批评世行项目而面临来自政府和强大公司的报复。⁴⁶

46. 一位乌兹别克人权维护者，在提出其政府所受益的棉花部门项目中的强迫劳动问题后处于流亡之中，他指出，“世界银行未采取任何有意义的措施，以确保像我一样的独立人权维护者可监测与它们资助项目相关的侵权行为。世界银行工作人员也未表示反对政府对我的同事和我的攻击”。⁴⁷ 特别程序任务负责人向乌兹别克斯坦政府提出了该人权维护者的案件，据称他由于监测该部门而被拘留和虐待，⁴⁸ 虽然政府予以否认。⁴⁹

⁴¹ Bretton Woods Observer, Autumn 2016, p. 2. 可在以下网址参阅：www.brettonwoodsproject.org/wp-content/uploads/2016/09/Observer_Sept_16_online.pdf.

⁴² 见 www.oecd-ilibrary.org/economics/oecd-economic-surveys-portugal-2012_eco_surveys-prt-2012-en, p. 26.

⁴³ www.oecd.org/eco/surveys/Portugal-2017-OECD-economic-survey-overview.pdf, p. 25.

⁴⁴ 见 www.hrw.org/news/2016/07/14/defending-human-rights-development.

⁴⁵ 见 www.hrw.org/news/2017/04/25/human-rights-watch-submission-re-international-financial-institutions-and-human.

⁴⁶ Human Rights Watch, At Your Own Risk: Reprisals against Critics of World Bank Group Projects, (2015). 可在以下网址参阅：www.hrw.org/sites/default/files/report_pdf/worldbank0615_4up.pdf.

⁴⁷ 见 www.hrw.org/news/2016/07/14/defending-human-rights-development.

⁴⁸ 见 <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=19586>.

⁴⁹ 见 <https://spcommreports.ohchr.org/TMResultsBase/DownloadFile?gId=48790>.

47. 人权观察社还记载了以下事实：在阿塞拜疆，尽管“采掘业透明度倡议”⁵⁰迫使政府停止镇压独立的民间社会，而且尽管世界银行赞同这一建议，但对项目的注资继续有增无减。⁵¹

48. 此外，企业通常对反对掠夺土地和污染的土著和其他人进行报复。特别程序任务负责人经常提到的一个最声名狼藉的案件是 Berta Cáceres 于 2016 年 3 月被杀案件。⁵² 在因她被谋杀而面临指控的人中，有两人是参与建造 Agua Zarca 水坝的一家公司的雇员，该项目并非由世界银行资助，而是由荷兰、芬兰和中美洲银行资助。虽然世界银行并未负责资助该项目，但该项目引起的连带义愤很大，使世界银行也遭到打击，世界银行不得不发布一份新闻稿，世行行长金墉在新闻稿中指出：

我们对洪都拉斯出现的高度恐惧和暴力感到痛惜。过去六年中，数十名环保人士被打死，Berta Cáceres 是其中之一。我们敦促该国政府解决该地区根深蒂固的土地冲突，并终止这种暴力。我们知道，强有力的环境和社会政策是实现我们消除极端贫困和促进共同繁荣目标的关键。因此，像 Berta 一样的人的声音不被打压就更为重要了。⁵³

49. 联合国人权事务高级专员也指出：

在过去一年中，至少又有六名活动家在洪都拉斯被杀害，其中包括……托鲁潘土著人民领袖 José de los Santos Sevilla。在一月份的一个星期内，在哥伦比亚、危地马拉和墨西哥，七人被杀，与水电大坝、采矿和涉农企业项目有关……除谋杀外，镇压工具还包括，限制和平集会，镇压非政府组织、攻击独立媒体、国家审查、严厉的反恐法律、国家支持的诽谤行动、监视、任意拘留、酷刑和失踪。在一些国家，为保护投资者的利益，还专门制定了惩罚性法律并建立了特别执法机构。⁵⁴

F. 企业偏向

50. 2002 年，世界银行开始了“营商环境”项目，其任务是根据各国法规“便利经商”的程度给各国排名。⁵⁵ 从一开始，该项目就因推动放松管制和降低社会和环境标准而遭批评。世界银行作为回应，从评分方法中除去了该项目的“雇用工

⁵⁰ 见 <https://eiti.org/>.

⁵¹ Human Rights Watch, *Harassed, Imprisoned, Exiled: Azerbaijan's Continuing Crackdown on Government Critics, Lawyers, and Civil Society*, (2016). 可在以下网址参阅：www.hrw.org/sites/default/files/report_pdf/azerbaijan1016_web.pdf.

⁵² 见 www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=19805. 另见关于该案的公开信函以及政府对这些信函的答复，可在特别程序网上通信数据库上查阅：<https://spcomm.reports.ohchr.org/Tmsearch/TMDocuments>.

⁵³ 见 www.worldbank.org/en/topic/indigenouspeoples/brief/honduras-and-indigenous-people.

⁵⁴ 见 www.miamiherald.com/opinion/op-ed/article136884218.html.

⁵⁵ 见 www.doingbusiness.org/reports/global-reports/doing-business-2017.

人”指标，因为这一指标破坏了劳工标准和国际公认的工人权利。⁵⁶ 奥克兰研究所谴责了这一指标和其他有缺陷的基准，包括“纳税”指标，这种指标奖励减少各种类型公司税，包括为保护公民和地球而征收的环境和社会税。⁵⁷ 最近的“营商环境”报告实际上将西班牙⁵⁸ 和越南取消公司环境保护费⁵⁹ 称为“良好改革”，并赞扬共 28 个国家为私营部门减税。⁶⁰ 对各国必要的监管空间的另一个令人费解的干涉是，由于坦桑尼亚实行雇主应付工人赔偿费而给它打了差分作为“惩罚”，⁶¹ 由于马耳他增加雇主最大社会保障缴费额而给它打了差分。⁶²

51. 基于营商环境模式，世界银行 2013 年启动了赋能农业项目。它就一系列与农业有关的“良好监管做法”对各国评分，包括政府如何便利进口和分销化肥，在农业中落实知识产权，⁶³ 使私营种子企业增加利润，或促进工业化种子营销而不是由农民生产和交换种子，而在发展中国家，后者更便宜、更多样化和更便于获得。

52. 投资者跟踪这些指数，银行和双边捐助者使用这些指数指导其供资。世界银行的投资环境部⁶⁴ 依赖营商环境分数向各国提供咨询服务。奥克兰研究所称，“在许多国家，这些干预措施帮助建立了‘一站式’机构，以吸引外国直接投资，特别是通过向公司提供廉价的土地租赁、供水和减税”。⁶⁵ 虽然没有科学证据⁶⁶ 支持通过“营商环境”和“赋能农业”项目选择基准专题，或证明其在消除贫困方面的有效性，但世界银行利用这些指数来影响世界各地的政策改革。

⁵⁶ 见 www.doingbusiness.org/Methodology/Changes-to-the-Methodology, www.ituc-csi.org/ituc-calls-on-world-bank-to?lang=en, www.law.cornell.edu/uscode/text/22/262p%E2%80%93939 and old.brettonwoodsproject.org/update/70/bwupdt70_ai.pdf.

⁵⁷ 见 www.oaklandinstitute.org/blog/world-bank%E2%80%99s-doing-business-rankings-relinquishing-sovereignty-good-grade.

⁵⁸ 见 www.doingbusiness.org/Reforms/Overview/Economy/spain.

⁵⁹ 见 www.doingbusiness.org/reforms/overview/economy/vietnam.

⁶⁰ 见 www.doingbusiness.org/reports/thematic-reports/paying-taxes.

⁶¹ 见 www.doingbusiness.org/Reforms/Overview/Economy/tanzania.

⁶² 见 www.doingbusiness.org/Reforms/Overview/Economy/malta.

⁶³ Alice Martin-Prével, “Down on the seed: the World Bank enables corporate takeover of seeds”, (Oakland, California, Oakland Institute, 2017). 可在以下网址参阅: www.oaklandinstitute.org/sites/oaklandinstitute.org/files/down-on-the-seed.pdf.

⁶⁴ 见 www.worldbank.org/en/topic/competitiveness/brief/investment-climate.

⁶⁵ 2017 年 3 月 6 日致独立专家的信函。

⁶⁶ 见 T. Manuel et al., “Independent panel review of the Doing Business report” (2013). 可在以下网址参阅: <http://hendrikwolff.com/web/Doing%20business%20review%20panel%20report%20with%20signatures%20and%20Bibliography.pdf> and www.socialwatch.org/sites/default/files/Joint-statement-Our-Land-Our-Business.pdf.

53. 280 多个民间社会组织、农民团体、工会和智囊团赞同奥克兰研究所的“我们的土地，我们的商业”运动(该运动谴责世界银行给各国强加规范化、标准化的成套改革)，这并非没有意义。⁶⁷

54. 在世界银行发布 2017 年“赋能农业”报告前，⁶⁸ 来自世界各地的 157 个组织和学者批评了“世界银行的劫持农民种子权利的计划和粮食主权和环境的袭击”。⁶⁹ 声明谴责：“‘赋能农业’规定所谓的‘最佳做法’，以管制农业并根据各国执行其规定的情况给它们评分”。然而实际上，奥克兰研究所补充说，“‘赋能农业’已成为推动有利于企业的农业政策的最新工具，特别是在种子部门”。

G. 世界银行在国内法院的诉讼豁免？

55. 迄今为止，由于《专门机构特权和豁免公约》，人们无法追究世界银行的侵犯人权行为责任。⁷⁰ 然而随着国际法的演变，与 1998 年皮诺切特的逮捕令以来国家元首豁免放松相类似，⁷¹ 追究国际金融机构由于贷款做法和缺乏尽责所造成的损害的时机已到。

56. 地球权利国际(一个侧重于环境的非政府倡导团体)在美国联邦法院向国际金融公司提出了两项诉求，⁷² 该组织在诉求中说，绝对豁免是不合时宜的。⁷³ 第一项诉求，加姆诉国际金融公司，由华盛顿哥伦比亚特区地区和巡回法院审理，事关印度塔塔集团孟德拉煤电厂的负面影响。⁷⁴ 在该案中，国际金融公司为一家电厂提供了 4.5 亿美元，原告表明，该电厂使环境退化并摧毁了他们的生计。虽然法院迄今为止裁定国际金融公司享有绝对豁免，⁷⁵ 但原告继续对该裁决提起诉讼。在编写本报告时，原告请求允许对其论点进行全席审理，即由特区巡回法院所有法官全部出庭审理。⁷⁶

⁶⁷ 见 www.oaklandinstitute.org/our-land-our-business, www.oaklandinstitute.org/world-bank-fuels-land-grabs-africa-through-shadowy-financial-sector-investments and www.oaklandinstitute.org/world-bank-sides-agribusinesses-against-farmers-indigenous-communities.

⁶⁸ 见 <http://eba.worldbank.org/>.

⁶⁹ 见 www.oaklandinstitute.org/civil-society-denounces-world-banks-scheme-hijack-farmers-rights-seeds.

⁷⁰ 见 August Reinisch, ed., *The Privileges and Immunities of International Organizations in Domestic Courts* (Oxford, Oxford University Press, 2013).

⁷¹ 见 www.globalpolicy.org/component/content/article/163/29411.html.

⁷² 见 www.earthrights.org/sites/default/files/documents/jam_v_ifc_-_appellant_reply_brief.pdf.

⁷³ 见 www.brettonwoodsproject.org/2016/04/ifc-claims-absolute-immunity-to-avoid-justice-but-will-it-hold-up-in-court/. 亦见，欧洲人权法院，McElhinney 诉 Ireland (第 31253/96 号申请)，2001 年 11 月 21 日的判决(法官 Loucaides 持异议)。

⁷⁴ 见 http://d2zyt4oqq1a0dw.cloudfront.net/sites/default/files/documents/ifc_tata_mundra_complaint.pdf.

⁷⁵ 见 <http://www.allgov.com/india/news/top-stories/world-bank-cant-be-sued-rules-us-judge-in-denying-gujarati-villagers-lawsuit-160408?news=858610j>; <http://law.justia.com/cases/federal/appellate-courts/cadc/16-7051/16-7051-2017-06-23.html>.

⁷⁶ 见 www.earthrights.org/media/federal-appeals-court-rules-world-bank-group-cannot-be-sued-harming-communities-0.

57. 在第二项(Juana Doe 诉国际金融公司)诉讼中, 地球权利组织指控世界银行对迪南种植园所犯下的系统性侵犯人权行为负有责任: 迪南是一个大型棕榈油种植园, 它被指控进行血腥的土地掠夺、恐吓和谋杀洪都拉斯 Bajo Aguán 地区的土著人。⁷⁷ 诉讼指称, 1990 年代中期以来, 国际金融公司与一个金融中介(国际金融公司资产管理公司)一起, 对洪都拉斯棕榈油公司投入了数百万美元。近二十年来, 农民合作社质疑迪南对拥有 16 个棕榈油种植园的主张; 它们指称, 这些土地是通过欺骗、胁迫和实际暴力或暴力威胁从农民合作社手中夺走的。地球权利组织方面称, 国际金融公司“不断和一贯向迪南提供关键资金, 明知迪南正在对农民进行一场暴力、恐怖和剥夺运动, 而且它们的资金将用来协助从事严重的侵犯人权行为”。申诉人引用美国政府的资料以佐证 2009 年以来 100 多名农民被杀害的指控。⁷⁸ 此外, 该诉讼部分地依靠国际金融公司内部监督机构(合规顾问/监察员)的报告(见下文第四节 D 和附件七), 监察员认定, 世界银行未能注意到或故意忽略了实施该项目时的严重社会、政治和人权背景。

H. 信用评级机构

58. 权力(包括经济权力)的每次行使都必须接受民主控制、透明度和问责监督。许多国家认为, 不适当或甚至蓄意虚假的信用评级和可质疑的评级程序是促成亚洲金融危机⁷⁹ 以及最近 2007/08 年全球金融危机的关键因素。⁸⁰ 显然, 改革是必要的, 但看来世界银行尚未处理这些机构的影响, 其评级结果影响到世界银行批准或拒绝贷款的决定。独立专家认为, 世界银行有责任检查私营机构评级的可靠性, 或发展自己的可更客观和更有效履职的⁸¹ 评级机制和机构⁸²。

I. 正在进行的研究

59. 毫无疑问, 世界银行有为善的巨大潜力, 其出色的律师和经济师等工作人员能够制订政策和机制推进经济增长兼人权议程。他们的许多研究承认人权对于发展的关键重要性并拟定了相关建议。然而这些建议并未总能付诸实施。

60. 不过, 世界银行研究人员的一些产品并非无可指责。环境和社会正义组织——行动起来促进团结环境平等和多样性欧洲组织指出:⁸³

世界银行是拥有全球最大研究预算的一个机构, 它在发展经济学领域没有竞争对手……一些研究人员和学者对世界银行委托进行的研究的可靠性提出了

⁷⁷ 见 www.earthrights.org/media/honduran-farmers-sue-world-bank-group-human-rights-violations.

⁷⁸ 见 <https://systemicdisorder.wordpress.com/2017/03/22/world-bank-beyond-law/>。

⁷⁹ Naomi Klein, *The Shock Doctrine* (London, Penguin Books, 2008), pp. 267-276 and 426.

⁸⁰ 见 http://unctad.org/en/Docs/osgdp20081_en.pdf.

⁸¹ Jonathan Katz, Emanuel Salinas and Constantinos Stephanou, “Credit rating agencies”. Crisis Response, Note No. 8 (Oct. 2009). 可在以下网址参阅: <http://siteresources.worldbank.org/EXTFINANCIALSECTOR/Resources/282884-1303327122200/Note8.pdf>. 亦见 www.counterpunch.org/2017/06/07/muslims-are-very-strange-people/.

⁸² 见 <http://blogs.worldbank.org/developmenttalk/health/should-world-bank-issue-credit-ratings>.

⁸³ 见 www.aseed.net/pdfs/ASEED_Report_on_Worldbank_Conditionalities.pdf.

质疑……例如，关于《世界发展报告》系列，尼古拉斯·斯特恩(牛津经济学教授和世界银行前首席经济师)说，世界银行使用的许多数字来自非常可疑的来源，或者这些数字所采用的构建方式使人怀疑这些数字是否可以有益地使用。⁸⁴

61. 由于世界银行意识到这一批评，范式有希望较快地发生改变。

四. 良好做法

62. 数十年来，人权已成为全球优先事项，世界银行对此不再无视。2000年，普及初级教育成为一个千年发展目标。2011年，通过了《工商业与人权指导原则》。⁸⁵ 2013年，世界银行和世界卫生组织(卫生组织)承诺实现普遍医疗覆盖。2015年，世界银行和劳工组织商定了一套旨在确保收入保障和向所有人提供整个生命周期支持的综合政策，名为“普遍社会保护倡议”。⁸⁶ 同时，在世界银行内，人们对环境问题有了清醒的认识，而且正在努力解决这些问题，例如通过了“气候变化行动计划”，旨在帮助各国履行在《联合国气候变化框架公约》缔约方会议第二十一届会议上达成的《巴黎协定》下的义务。⁸⁷

A. 环境和社会框架

63. 2016年4月，经过四年进程，世界银行理事会批准了一个新的“环境和社会框架”，以取代现有保障措施。⁸⁸ 独立专家欢迎将其作为推动进一步发展的基础。例如，关于自由、事先和知情同意的新政策为公司和金融机构，包括承诺遵守“赤道原则”的72家出口信贷机构和私营银行，设立了一个标准——一套确定和管理项目供资中的社会和环境风险的自愿标准。⁸⁹ 然而，虽然新的“环境和社会框架”中的自由、事先和知情同意政策要求集体同意，同样重要的是，确保少数观点不被忽视。

64. 即使世界银行的强烈批评者也认识到新框架的潜力，特别是新框架要求国际金融公司的客户在启动发展活动之前确保获得土著社区的自由、事先和知情同意。乐施会美国分会指出，“国际金融公司由于资助社会和环境风险项目而被广泛批评，在某些情况下，这些项目对当地社区产生了不利影响，但国际金融公司在改善贷款政策方面的努力是朝正确方向迈出的一步”。乐施会澳大利亚分会执

⁸⁴ 见 www.counterpunch.org/2017/03/24/world-bank-declares-itself-above-the-law/.

⁸⁵ 见 www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf

⁸⁶ 见 www.ilo.org/global/topics/social-security/WCMS_378991/lang-en/index.htm and <http://journals.sagepub.com/doi/pdf/10.1177/0020872815604814>.

⁸⁷ 见 www.worldbank.org/en/news/feature/2016/04/07/world-bank-group-sets-new-course-to-help-countries-meet-urgent-climate-challenges.

⁸⁸ 见 www.brettonwoodsproject.org/2016/09/world-bank-approves-new-diluted-safeguards/.

⁸⁹ 见 www.equator-principles.com/index.php/about-ep.

行主任指出，“经修正的‘国际金融公司可持续框架’有潜力帮助土著人民获得公平份额的自然资源财富，特别是在新兴经济体和容易发生冲突的国家”。⁹⁰

65. 虽然“环境和社会框架”中的许多内容值得欢迎而且富有想象力的律师将争取更大的透明度和问责，但民间社会组织指出了一些令人遗憾的缺陷，⁹¹ 包括未能对保护人权做出具有约束力的承诺，特别是在平衡相互竞争的权利和利益方面，⁹² 以及未能承诺落实劳工组织的各项核心公约。

66. 大赦国际曾提交多份资料，促进“环境和社会框架”的制定。大赦国际指出，“世界银行拒绝处理尊重人权方面的自身责任……这意味着它落后于其他国际金融机构并有可能对该机构造成重大的声誉风险”。⁹³ 大赦国际敦促世界银行“确保‘环境和社会框架’规定适当的人权尽责，以确定、防止和/或减轻对人权的所有潜在负面影响”。⁹⁴

67. 同样，亚洲开发银行非政府组织论坛和社会正义联系组织提醒说，“由于模糊语言、漏洞、灵活原则和依靠‘借款人系统’替代了有明确时限的要求，成果在很大程度上被削弱了”。⁹⁵ 国际工会联合会对未提及劳工组织的核心公约(这些公约禁止歧视、童工和强迫劳动并要求尊重结社自由和集体谈判权)提出了更多关切。该联合会的华盛顿办事处主任评论说，“确保充分遵守公认的国际标准制定机构的准则，包括劳工组织为劳动设立的准则”。⁹⁶

68. 独立专家认为，“环境和社会框架”本应明确要求，在作出关于项目融资问题的所有决定前，必须事先进行人权、卫生 and 环境影响评估；审查机制的设计应使其能够在每个项目的整个期间继续监测影响。

B. 检查小组

69. 1993 年，世界银行执行董事会设立了一个检查小组⁹⁷，为自认为因世界银行资助的项目受到伤害或可能受到伤害的人提供了一个独立申诉机制。在过去 24 年中，该小组采取了步骤，以维持和改善世界银行的问责制并协助管理层实施转

⁹⁰ 见 www.oxfamamerica.org/press/aid-group-lauds-new-world-bank-policies-on-indigenous-rights-and-oil-and-mining-transparency/.

⁹¹ 见 <https://medium.com/@OxfamIFIs/four-quick-ways-to-fix-the-world-banks-social-and-environmental-protection-policies-9e63721fe414>.

⁹² 见 www.hrw.org/news/2017/04/25/human-rights-watch-submission-re-international-financial-institutions-and-human.

⁹³ 见 <https://consultations.worldbank.org/content/submission-amnesty-international>. 另见非洲开发银行、联合国开发计划署、欧洲复兴开发银行和欧洲投资银行的环境和社会保护政策，这些政策不同程度上都包含在其所有活动中尊重人权的政策承诺。

⁹⁴ 见 <https://consultations.worldbank.org/content/submission-amnesty-international>.

⁹⁵ Bretton Woods Observer, Autumn 2016, p. 8. 可在以下网址参阅：www.brettonwoodsproject.org/wp-content/uploads/2016/09/Observer_Sept_16_online.pdf.

⁹⁶ 同上，第 8 页。另见 www.ciel.org/news/safeguard-policy-endangers-rights/ and www.ituc-csi.org/IMG/pdf/ess2-wb_ituc-critique_0914.pdf.

⁹⁷ 见 www.inspectionpanel.org 和检查小组 2015/2016 年度报告，可在以下网址参阅：<http://ewebapps.worldbank.org/apps/ip/Pages/Annual-Reports-2016.aspx>.

型项目。该小组由三名成员组成，他们向世行执行董事会直接汇报并独立于世行管理层，其任务是确保世行在人权和环境义务方面的问责。检查小组编写的所有报告，包括最初的申诉，都向公众公布，但申诉人如果希望保密，则他们的身份会保密。

70. 检查小组对国际复兴开发银行和国际开发协会资助的项目有管辖权。对国际金融公司和多边投资担保机构支持的的项目的申诉由合规顾问/监察员办公室处理。⁹⁸

71. 由于检查小组能够进行合规情况调查，它在纠正与世行贷款相关的不公正方面的潜力越来越大。所提供的争议解决方法可通过谈判解决受影响社区的核心关切，而且提供了纠正侵权行为的机会。在这方面，检查小组调查了对人民生计的据称危害或由于基础设施项目而导致的环境退化。检查小组还审议了对土著人民权利产生影响的项目，包括土地权和圣地、影响自然生境的项目、对水源的压力、对湿地的不利影响、毁林、生物多样性丧失或涉及强迫搬迁的项目，例如，由于修建水坝、公路、管道、填埋场或电厂而导致的强迫搬迁。然而，检查小组的任务不包括与采购货物或服务、涉嫌欺诈或腐败相关的问题。后者可以向世界银行的廉正问题副主席报告。⁹⁹

72. 2013 年，在检查小组成立 20 年后，该小组实行了早日解决试点方案，作为第二次机会延期程序，它将调查搁置，同时给世界银行管理层时间以解决社区投诉。虽然该试点方案在巴拉圭的第二次实施似乎运作良好，但其他地方的经验表明，从该小组的透明程序中移除一项申诉可能会使权力不平衡长久化，它使社区与造成问题的相同世行工作人员和政府官员直接谈判。¹⁰⁰ 因此，应当改革或终止该试点方案。

73. 为回应人权观察社的报复问题报告，若干国际金融机构的问责机制制定了准则，以预防、监测和应对报复行为。例如，2016 年 3 月 30 日，检查小组公布了准则，以减少报复风险和应对在小组进程期间的报复。¹⁰¹ 检查小组还与其他申诉机制合作，例如与欧洲投资银行合作，2015 年，检查小组与该银行一起在肯尼亚完成了一项联合调查，通过了一个调解进程。根据检查小组 2015/2016 年的年度报告，¹⁰² 检查小组对涉肯尼亚和乌干达和科索沃¹⁰³ 的案件进行了调查，并参与了亚美尼亚、哥伦比亚、蒙古和乌干达的待审案件。

74. 除这些准则外，2016 年，检查小组推出了“新教训系列”，在这些系列中，错误得到承认并建议了解决办法。¹⁰⁴ 2016 年 4 月出版的该系列中的第一本涉及

⁹⁸ 见 www.cao-ombudsman.org。

⁹⁹ 见 www.worldbank.org/en/about/unit/integrity-vice-presidency/report-an-allegation。

¹⁰⁰ Bretton Woods Observer, Autumn 2016, p. 5. 可在以下网址参阅：www.brettonwoodsproject.org/wp-content/uploads/2016/09/Observer_Sept_16_online.pdf。

¹⁰¹ 见 [http://ewebapps.worldbank.org/apps/ip/PanelMandateDocuments/2016%20Retaliation%20 Guidelines.pdf](http://ewebapps.worldbank.org/apps/ip/PanelMandateDocuments/2016%20Retaliation%20Guidelines.pdf)。

¹⁰² 见 <http://ewebapps.worldbank.org/apps/ip/Pages/Annual-Reports-2016.aspx>。

¹⁰³ 本文件所有对科索沃的提及，均应理解为符合安全理事会第 1244 号决议(1999 年)。

¹⁰⁴ 见 <http://ewebapps.worldbank.org/apps/ip/Pages/Emerging-Lessons.aspx>。

非自愿重新安置，¹⁰⁵ 第二本涉及土著人民(2016 年 10 月)，¹⁰⁶ 第三本侧重于环境评估(2017 年 4 月)。这些是世行、政府、企业和民间社会的重要工具。

75. 独立专家(他是人权高专办投诉处前处长)认为，对投诉人而言，检查小组有很大希望，它应确保持续监测世界银行项目。该程序的缺点是，检查小组没有强制执行其建议的权力。然而这也是联合国条约机构，例如人权事务委员会和经济、社会、文化权利委员会(这两个委员会都有申诉程序)，所面临的一项挑战。¹⁰⁷

C. 采取预防性和纠正性行动

76. 虽然事先进行影响评估是必要的，但应加强监测现有项目的系统和在出现人权、卫生或环境问题暂停融资的机制。例如，2016 年，世界银行了解到，在乌干达的一个 2.5 亿美元银行资助公路建设项目中，对工人的性虐待很普遍。在未能成功纠正这种情况后，资助终止了。然而，事后终止是不够的。正如世界银行行长金墉所指出的：

我们在这一项目中看到了多重失败，世界银行、乌干达政府和一个政府承包商方面都失败了，这是不可接受的……我们有义务适当监督所有投资项目，确保穷人和弱势群体在我们的工作中得到保护……我致力于确保我们竭尽全力……首先全面审查这一项目的情况，然后从我们和他人的失败中迅速吸取教训，以便不再发生失败。¹⁰⁸

77. 检查小组的一份报告促使世行采取进一步行动，导致 2017 年世行管理层作出了回应，其中包含具体的赔偿建议和汲取的经验教训。该报告指出：

管理层已在两个方面(项目层面和全系统范围内)采取步骤，以解决这些问题。在项目层面，这包括采取步骤，向受虐待的儿童受害者提供支助；完成赔偿程序；解决建筑问题；支持执行机构的能力建设；支持应对基于性别的暴力。¹⁰⁹

78. 2014 年，世行获悉，乌兹别克斯坦的一个棉花产业项目存在广泛的强迫劳动，包括童工劳动，它不得不重新审议这一项目。人权观察社的一名国际金融机构高级研究员指出，“世界银行的建议在乌兹别克斯坦是行不通的，在该国，棉花部门的强迫劳动是完全由政府策划的并通过镇压独立团体支持这种做法……世界银行需要确保独立团体和记者能够监测世界银行项目并报告强迫劳动，而不担心受到报复”。¹¹⁰

¹⁰⁵ 见 www.youtube.com/watch?v=D4Ewnz4JcVE.

¹⁰⁶ 见 www.youtube.com/watch?v=-0cuHodwjEA.

¹⁰⁷ Jakob Th.Möller and Alfred de Zayas, *United Nations Human Rights Committee Case Law 1977-2008: A Handbook* (Kehl/Strasbourg, N.P. Engel Verlag, 2009).

¹⁰⁸ 见 www.theguardian.com/global-development/2016/jan/12/world-bank-cancels-uganda-road-sexual-assault-claims.

¹⁰⁹ <http://documents.worldbank.org/curated/en/256791492009515078/pdf/Uganda-TSDP-1st-Progress-Report-REV-for-SVPOP-April-4-final-fdg-CLEARED-04062017.pdf>, p. iv.

¹¹⁰ 见 www.hrw.org/news/2014/12/17/world-bank-investigate-uzbekistans-forced-labor.

D. 合规顾问/监察员

79. 如上所述，合规顾问/监察员办公室(1991年设立)，是国际金融公司和多边投资担保机构的独立问责机制。合规顾问/监察员办公室的任务是“作为一个公平、可靠和有效的独立问责机制，改善国际金融公司和多边投资担保机构的环境和社会绩效”。合规顾问/监察员办公室独立选择自己的调查，并直接向世界银行集团总裁报告。

80. 在最近调查中，合规顾问/监察员办公室就国际金融公司未能监测印度联合种植园私人有限公司项目的环境和社会业绩提出了有益建议。它的结论是：

合规顾问/监察员作出了一些未违规裁定……这些裁定包括国际金融公司的投资前环境和社会审查以及它对该项目的监督……国际金融公司低估了与该项目有关的环境和社会挑战。根据国际金融公司的要求解决这些问题，该公司必须拿出超出它迄今向该客户所提供的资源和相关专门知识……根据未违规裁定……合规顾问/监察员将保持这一调查以进行监测……直到国际金融公司采取的行动使合规顾问/监察员确信国际金融公司正在处理它的未违规裁决。¹¹¹

在另一起案件中，合规顾问/监察员办公室审计了国际金融公司对印度古吉拉特邦蒙德拉港口城镇附近的一家燃煤发电厂的投资。申诉人是在项目附近生活的渔民，他们遭受电厂作业的环境影响。审计的结论是：

国际金融公司环境和社会审查……不支持形成关于以下问题的强有力观点：是否可以预期该项目在一段合理时间内满足绩效标准要求。国际金融公司环境和社会审查进程的弱点也意味着，错失了必须考虑替代项目设计的机会，以避免或尽量减少环境和社会影响。合规顾问/监察员的关切是，尚未建立一个可被审计和监测的环境和社会影响管理框架：所缺乏的内容是，综合说明根据哪些要求使用可核查数据对绩效进行监测……国际金融公司小组信任该客户的环境和社会能力及承诺，同时它认为，从环境和社会角度来看，该项目表现良好，这意味着，国际金融公司未将申诉人的关切视为履约问题。根据合规顾问/监察员业务指南，这一审计将保持开放并受合规顾问/监察员的监测，直至合规顾问/监察员确信，国际金融公司已经重新遵守它的环境和社会承诺。¹¹²

81. 其他重大审计摘要载于本报告附件七。然而必须指出，如同检查小组一样，监察员本人无权补救侵权行为。人权观察社指出，合规顾问/监察员办公室负责调查，但是“由国际金融公司确定，如何处理调查员的调查结果，而且，它经常选择不予处理”。¹¹³

¹¹¹ www.cao-ombudsman.org/cases/document-links/documents/CAOInvestigationReportofIFCinvestmentinAPPL_EN.PDF, p. 11.

¹¹² 见 www.cao-ombudsman.org/cases/document-links/documents/CAOAuditReportC-I-R6-Y12-F160.pdf, p. 5.

¹¹³ 见 www.hrw.org/news/2017/02/21/world-banks-view-through-looking-glass.

五. 前进之路

82. 独立专家欢迎世界银行为处理系统和外在问题已采取的许多积极措施，并鼓励理事会通过加强和促进侵权行为发生时诉诸司法的机会，加强世界银行的治理和问责。世行有能力落实它对结束贫困和帮助在 2030 年前实现可持续发展目标的承诺。我们有理由感到乐观，因为世行意识到了这些问题，它有强大的工作人员并可受益于民间社会组织的意见，这些组织从未停止进行很好的研究、诊断并提出实用建议。

83. 考虑到多边开发银行，包括世界银行，接受大量注入的公共资金，它们对支持发达国家和发展中国家私营部门所采取的有偏见做法，必须转化为基于人权的方法，这种方法认真权衡有关居民的需要。

84. 独立专家认为，进行根本反思是必要的，这种反思应导致明确定义新的优先事项，使数十亿被剥夺生活必需品的人的利益优先于外国投资者的利益。游戏规则必须改变，以使贷款不纯粹基于经济考虑；而且，今后的贷款“附加条件”以促进有关人民的福祉为目标。独立专家钦佩世界银行的动人言辞和精美的出版物，他建议，应将较少资源用于公共关系和产品包装，将更多资源用于风险评估、监测和实施。

85. 为此目的，独立专家建议改变范式，不仅需要修订 1944 年《协定条款》(在新罕布什尔州布雷顿森林通过，最近一次修订是 1989 年 2 月 16 日)，而且理事会应给出明确的指令。根据《协定条款》第五条第 8 节(a)项，世行应与在相关领域负有专责的国际组织合作，包括经济及社会理事会和贸发会议，它们已提出促进发展和人权的行动计划。¹¹⁴

86. 目前，《协定条款》第四条第 10 节可被解释为妨碍这种范式变化。这一过时条款规定，“银行及其官员不应干预任何会员国的政治事务；他们的一切决定，也不应受有关会员国的政治性质的影响”。然而没有理由认为，促进人权和环境保护属于世行的被禁止“政治活动”范围。事实上，《世界银行协定》的所有缔约国也是联合国会员国，都受《联合国宪章》和众多人权条约约束。

87. 具有相关性的是联合国与国际复兴开发银行之间的《协定》(1947 年 11 月 15 日生效)及其《议定书》(1948 年 4 月 15 日在纽约签署，1948 年 7 月 1 日生效)。根据该《协定》第四条，联合国与世界银行应就共同关心的事项协商并交流意见，协商后可提出正式建议。此外，“银行确认，联合国及其各机关可适当提出关于重建或发展计划、方案或项目技术方面的建议”。第八条特别授权银行“就银行活动范围内出现的任何法律问题请求国际法院发表咨询意见”。因此，十分适宜的是，更好地利用《协定》条款，以有效地协调联合国和银行的工作，使其能够推动执行联合国人权、发展和环境承诺。特别是，世行应就人权条约相对于商业和其他安排的总体优先性以及如何更好地将习惯人权准则纳入世界银行的贷款条件等问题征求咨询意见。

¹¹⁴ 见 World Bank, “Coherence, coordination and cooperation among multilateral organizations: 2009 progress report” (2009). 可在以下网址参阅：<http://documents.worldbank.org/curated/en/589571468339611391/pdf/484000BR0SecM2101Official0Use0Only1.pdf>.

88. 考虑到世界银行的《协定条款》和联合国与世行之间的《协定》是在大会通过《世界人权宣言》之前、而且也是在《公民权利和政治权利国际公约》、《经济、社会、文化权利国际公约》和许多其他人权条约生效前通过的，我们完全可以合理地期待，世行会员国的人权义务应得到推进而且不受世行政策的妨碍。联合国和世界银行之间的《协定》第十三条规定，协定应进行修订，双方都有权提出补充协议。这是世界银行对联合国某些关键原则，包括尊重所有国家的主权和不干涉国家内部事务作出承诺的一个机会窗口。这就要求接受这样一个事实：各国，尤其是发展中国家，需要灵活性和政策空间，以实施旨在确保粮食安全、提高生活水平、加强劳动法律和确保获得供水和教育的社会政策，而世行资助的某些私有化项目确实会破坏这种社会政策。对联系协定的任何修订都应加强世行和联合国之间的合作，特别是与贸发会议的合作。

89. 除了修订其《协定条款》外，世界银行必须对其投资结果承担全部责任，并实施预防和纠正措施，以确保所有利益攸关方的有效参与和保护实地人权维护者。从程序上讲，必须解决的一个挑战是，世界银行的不民主决策结构造成了在确定优先事项上的不公平有时甚至产生事与愿违的结果。因此，银行领导层由某些国家公民担任的绅士协议应逐步取消。此外，正如其他报告员所指出的，发展中国家的任职人数偏低，必须提升。

90. 独立专家赞同世界银行研究所全球方案主任的说法，他在 2006 年说，“任何机构如若声称，仅仅由于它正在资助发展项目(例如供水或农村道路项目)，它正在为增强一个国家的人权作出很大贡献，那么，这几乎等同于一块‘遮羞布’”。¹¹⁵ 世行如果真心促发展，就要改变条件方面的要求，不再强调私有化、放松管制和降低公司所得税，而是强调减少军事开支，同时确保颁布和实施累进税，取缔避税天堂，实行金融交易税，通过国际团结使收入用于建设“一个没有贫困的世界”。

六. 结论和建议

91. 世界银行应：

(a) 启动一个包容性进程，起草一项新的、单独的人权政策，其中应包含一项承诺，通过分析国家发展战略中与发展相关的人权问题，将人权纳入其工作之中；向各国政府提出关于如何推进遵守其人权承诺的建议，并确定与投资或建议相关的人权风险；

(b) 通过并实施《普遍社会保护倡议》和 2012 年《劳工组织社会保护最低标准建议书》(第 202 号)。¹¹⁶ 它应支持列入基于劳工组织标准的可强制执行劳动条款，并废除削弱政府监管权的投资者与国家之间的争端解决机制(见 A/HRC/30/44 和 A/HRC/33/40)；

¹¹⁵ Daniel Kaufmann, “Human rights, governance, and development: an empirical perspective”, in Development Outreach, World Bank Institute, October 2006, p. 19. 可在以下网址参阅：<http://siteresources.worldbank.org/EXTSITETOOLS/Resources/KaufmannDevtOutreach.pdf>.

¹¹⁶ 见 www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:R202.

(c) 停止促进劳动力市场放松管制，包括通过使用其资助条件来推动放松管制；相反，应通过支持社会对话和集体谈判，帮助扭转收入不平等的增加；

(d) 制定税务政策和使用充分尽责工具，以超越于仅要求借贷公司遵守法律；

(e) 使国际金融公司担负责任，制定并实施一项在税务上负责任的投资政策，该政策应与民间社会协商制定并至少包括遵守法律之外的适当尽责，以确保国际金融公司不对实行侵犯性或滥权性逃税做法的公司进行投资；

(f) 支持各种举措，将国际税务合作专家委员会提升为一个政府间机构，以防止有害的国际税收竞争、由税收政策的改变产生的不利溢出以及非法资金流动；

(g) 使受影响和有可能受影响的社区了解检查小组和遵规顾问/监察员以及如何与他们接触；

(h) 在借款国协定中列入人权章节，向各国提供关于如何更好地促进财政责任和所有部门(包括国家军事开支)透明度的政策咨询意见；

(i) 作为一项紧急事项，处理对世界银行项目批评者的报复问题。问责机制应系统地分析与收到的每个申诉相关的报复风险和其他安全风险并与申诉人讨论这些问题；采取一切必要措施，确保对要求身份保密的申诉人予以保密；积极监测报复行为，包括询问每个申诉人，他们或与他们有密切联系的人是否面临任何问题，特别是在社区访问之后；制订一个早期预警系统，以查明威胁或其他安全问题，特别是对那些已经提出申诉或正在考虑提出申诉或以其他方式批评项目的人的威胁或安全问题；与世界银行管理层合作，应对与其案件相关的任何报复，以确保申诉人和其他人的安全得到恢复；

(j) 发布业务程序，使银行管理层参与编写和公布半年期报告，跟踪在实施理事会为回应检查小组的调查所核准的行动计划方面的进展情况；

(k) 建立机制，以确保检查小组和遵规监察顾问的报告和建议得到公布和实施。向检查小组和遵规顾问/监察员赋权，使其能够在其报告和建议中提及人权，包括明确提及人权条约机构和特别程序任务负责人的建议；

(l) 警惕关于滥用资金的任何资料，确保将发放贷款或使用贷款方面发生的侵犯人权行为提交适当的民事和刑事法庭处理，确保腐败案件不会有罪不罚，而是在国内法院受到起诉；

(m) 就各国政府在监管企业做法方面的责任问题向各国政府提供咨询意见，确保这些做法不侵犯人权，确保企业在项目所在管辖区纳税；

(n) 加强与人权高专办、贸发会议、劳工组织和世卫组织的合作；

(o) 在发生严重侵犯人权行为时，放弃机构豁免。

92. 国际金融公司应立即终止与逃税公司和项目的所有联系，并停止向直接或间接以避税地运营的借款人贷款，这种运营方式剥夺了国家的合法税收，这些税收对于履行人权义务至关重要。

93. 世界银行理事会应发布明确指令，国际投资争端解决中心必须不干涉国家的本体职能，即根据公共利益进行监管，包括通过环境、卫生、社会和劳动立法进

行监管。国际投资争端解决中心不应向质疑国家的这些职能的诉讼提供服务。相反，国际投资争端解决中心应显示其以咨询角色提供服务的天职。¹¹⁷ 在有风险的情况下，投资者应利用世界银行的多边投资担保机构并从那里获得风险保险（见 A/HRC/30/44、A/HRC/33/40、A/70/285）。

94. 受益于世界银行资助的国家应确保它们申请的所有贷款以及它们收到的所有外国直接投资在使用上应能推进人权享受，不会造成少数人通过牺牲众人而致富。尤其须建立起监测机制，确保透明度和问责，定期监测经营活动，同时确保因世界银行资助项目和基金组织资助的政府贷款和“拯救行为”而受到不利影响的人有便利的诉求途径和补救措施。

95. 捐助国应：

- (a) 要求仅以促进公共利益的方式使用其资金；
- (b) 除非建立了向可能的侵犯人权行为受害者提供补救和赔偿的有效程序，否则，不提供资金；
- (c) 只要有显然的侵犯人权行为正在发生，终止资助正在进行的项目，并排除恢复直接预算支助，直到人权状况有重大改善；
- (d) 通过以下做法，承认其责任：坚持进行独立调查，没有涉嫌腐败或犯有其他侵权行为的政府参与。

96. 在与贷款协议相关的侵权行为发生时，媒体应客观地报道，特别是逐离、破坏环境、童工劳动和腐败问题。

97. 国际调查记者同盟应侧重于早期预警，以帮助防止与世界银行资助项目相关的侵权行为并应探查腐败、洗钱和与避税港串通的案件。

98. 民间社会组织应提醒公众注意超大项目的危险并协助受影响社区向世界银行检查小组¹¹⁸ 和遵规顾问/监察员¹¹⁹ 提出申诉。

¹¹⁷ 见 Kinda Mohamadieh, Lean Ka-Min and Anna Bernando, *Investment Treaties: Views and Experiences from Developing Countries* (Geneva, South Centre, 2015). 亦见 www.iisd.org/itn/2008/08/06/south-american-alternative-to-icsid-in-the-works-as-governments-create-an-energy-treaty/, <http://old.brettonwoodsproject.org/art-561061>, <http://hsfnotes.com/publicinternationallaw/2012/01/19/venezuela-follo-ws-bolivia-and-ecuador-with-plans-to-denounce-icsid-convention/>, and Rafael Ramírez, *Nuestra Industria Petrolera es un Baluarte de Soberanía* (Caracas, Petroleros de Venezuela, 2014).

¹¹⁸ 见 <http://ewebapps.worldbank.org/apps/ip/Pages/FileaRequest.aspx>.

¹¹⁹ 见 www.cao-ombudsman.org/howwework/filecomplaint/ and <https://www.cao-grm.org/>.

Annex I

Questionnaire from the Independent Expert on the promotion of a democratic and equitable international order to the World Bank

1. How does the World Bank promote the right to food, water, health and a safe and clean environment? How does the Bank consider the relationship between its general development model and human rights? In particular, how does the Bank consider mega infrastructure projects and significant private sector investment to impact human rights?
2. How does the Bank's new Environmental and Social Framework contribute to promoting and protecting human rights?
3. Concerning the organisation's institutional governance, how does the Bank ensure transparency in decision-making? What type of accountability exists to remedy any adverse effects on human rights resulting from projects or policies funded or promoted by the Bank? What recourse or remedy is provided for victims of alleged human rights violations? Is there any policy in place to prevent your financial assistance from being used to finance international crimes or to commit human rights violations?
4. How often are human rights, health and environment impact assessments conducted? Are ex ante impact assessments conducted ahead of loan agreements or development projects? Are ex post monitoring carried out?
5. How do you ensure the Bank projects do not involve a regression in the enjoyment of human rights? To what extent, and how, the Bank consider reducing economic inequality as part of their lending policies?
6. How do you ensure the participation and consultation with all stakeholders, including affected communities, in relation to decisions concerning new loan or development projects? What are the measures put in place by the Bank to work hand-in-hand with concerned governments to protect those voicing dissenting views? Is there any policy in place in case of opposition by affected communities or civil society organisations or others? Give examples of projects that have not been undertaken or have been abandoned when they have caused or are likely to cause irreparable harm, e.g. mass displacement of population.
7. How does the Bank see its responsibilities under international law and international human rights law? More concretely, how does the Bank intend to advance the realization of the Sustainable Development Goals and the COP21 commitments? To what extent does the Bank implement the recommendations of the ILO's World Social Protection Report? To what extent does the Bank act pursuant to General Assembly Resolution 69/319, Basic Principles on Sovereign Debt Restructuring Processes? Bearing in mind that "austerity measures" and "privatization" may cause considerable harm to the most vulnerable groups, what other measures does the Bank envisage so that human rights are not hindered but promoted? What do you do to alleviate the debt problem?
8. In the World Bank's responses to previous Special Procedure Mandate Holder reports, the Bank's spokesperson said that the 2015 report of the UN Special Rapporteur on human rights and extreme poverty (A/70/274) had fundamentally misrepresented the Bank's position on human rights. Could you provide a more detailed response to the report (which parts do you agree and disagree with and why)? Has there been any internal follow-up on the publication of the report?
9. How does the Bank respond to the August 2016 report of the UN Independent Expert on Human Rights and foreign debt (A/71/305), in which he calls for the Bank to significantly broaden its definition of 'sustainability' under its Debt Sustainability Framework and take into consideration the need to provide fiscal space to guarantee and ensure governments' core human rights obligations?

10. How do you measure public-private partnership performance in human rights terms? What relationship exists between the Bank and governments that harbour tax havens and enterprises that use secrecy jurisdictions to avoid taxes?

11. How can the Bank collaborate with UNCTAD in implementing meaningful debt relief for poor countries and devising an international debt restructuring mechanism to resolve debt crises? How does the Bank ensure the social and environmental sustainability of their projects in cases of co-lending with other international financial institutions, including new international financial institutions such as the BRICS new development bank (NDB) and the Asian Infrastructure Investment Bank (AIIB), or in cases of financial intermediary lending?

12. How does the Bank envisage cooperation with the NDB and AIIB to strengthen the Purposes and Principles of the United Nations while advancing growth, stability and the right to development?

Annex II

Table of relevant reports

International Human Rights Mechanisms and the World Bank/IMF

Special Procedures

Special Rapporteur on extreme poverty and human rights

Report on the World Bank and human rights (A/70/274)	http://www.un.org/en/ga/search/view_doc.asp?symbol=A/70/274 http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20797&LangID=E (Statement)
--	--

Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health

Missions to the World Bank and the International Monetary Fund in Washington, D.C. (20 October 2006) (A/HRC/7/11/Add.2)	http://www.ohchr.org/EN/Issues/Health/Pages/CountryVisits.aspx
---	---

Special Rapporteur on adequate housing

Preliminary note on the mission to the World Bank Group (26 October to 1 November 2010) (A/HRC/16/42/Add.4)	http://www.ohchr.org/EN/Issues/Housing/Pages/AnnualReports.aspx
Report on the financialization of housing the right to adequate housing (A/HRC/34/51)	http://www.ohchr.org/EN/Issues/WaterAndSanitation/SRWater/Pages/AnnualReports.aspx http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20878&LangID=E (Statement)

Special Rapporteur on the human right to safe drinking water and sanitation

Report on development cooperation and the realization of the human rights to water and sanitation (A/HRC/71/302)	http://www.ohchr.org/EN/Issues/WaterAndSanitation/SRWater/Pages/AnnualReports.aspx http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20878&LangID=E (Statement)
--	--

Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights

Report on Responsibility of international financial institutions (A/HRC/7/9)	http://www.ohchr.org/EN/Issues/Development/IEDebt/Pages/AnnualReports.aspx
Guiding Principles on Foreign Debt and Human Rights (A/HRC/20/23), endorsed by the HRC (A/HRC/RES/20/10)	http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/20/23 http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/RES/20/10

Commentary on the guiding principles on foreign debt and human rights (A/HRC/25/51)	http://www.ohchr.org/EN/Issues/Development/IEDebt/Pages/AnnualReports.aspx
Report on structural adjustment and labour rights (A/HRC/34/57)	http://www.ohchr.org/EN/Issues/Development/IEDebt/Pages/AnnualReports.aspx

Working Group on the issue of human rights and transnational corporations and other business enterprises

Report on developments in the embedding of the Guiding Principles into global governance frameworks (A/67/285)	http://www.ohchr.org/EN/Issues/Business/Pages/Reports.aspx
Report on improving policy coherence for inclusive and sustainable development (A/HRC/29/28)	http://www.ohchr.org/EN/Issues/Business/Pages/Reports.aspx

Special Rapporteur on the rights to freedom of peaceful assembly and of association

The exercise of the rights to freedom of peaceful assembly and of association in the context of multilateral institutions (A/69/365)	http://www.ohchr.org/EN/Issues/AssemblyAssociation/Pages/AnnualReports.aspx
--	---

Special Rapporteur on the situation of human rights defenders

Empowering environmental human rights defenders (A/71/281)	http://ap.ohchr.org/documents/dpage_e.aspx?si=A/71/281
--	---

Other Special Procedures actions

SP Joint Letter from 12 December 2014	http://www.ohchr.org/Documents/Issues/EPoverty/WorldBank.pdf
Communication from the Special Rapporteur on the right to food and the Independent Expert on the effects of foreign debt and other related international financial obligations of States to the World Bank	https://spdb.ohchr.org/hrdb/22nd/public_-_AL_Other_(W.Bank)_10.08.12_(7.2012).pdf https://spdb.ohchr.org/hrdb/24th/public_-_OL_Other_28.03.13_(3.2013).pdf https://spdb.ohchr.org/hrdb/22nd/OTH_09.10.12_(7.2012).pdf (reply from the Bank)
Communication from the Independent Expert on the effects of foreign debt and other related international financial obligations of States and the Special Rapporteur on the rights of indigenous peoples to the World Bank	https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=22932 https://spcommreports.ohchr.org/TMResultsBase/DownloadFile?gId=49127 (reply from the Bank)

Treaty Bodies

Committee on economic, cultural and social rights

General Comment No. 14 The right to the highest attainable standard of health

http://apps.who.int/disasters/repo/13849_files/o/UN_human_rights.htm

(Para. 39: States parties which are members of international financial institutions, notably the International Monetary Fund, the World Bank, and regional development banks, should pay greater attention to the protection of the right to health in influencing the lending policies, credit agreements and international measures of these institutions.)

OHCHR

Comments and recommendations of UN/OHCHR in relation to the draft Environmental and Social Framework (2016)

https://consultations.worldbank.org/Data/hub/files/20160315_memoandum_ohchr_esf_with_annexes.pdf

Key messages on Human Rights and Financing for Development

<http://www.ohchr.org/Documents/Issues/MDGs/Post2015/HRAndFinancingForDevelopment.pdf>

Report on austerity measures and economic and social rights

http://www.ohchr.org/Documents/Issues/Development/RightsCrisis/E-2013-82_en.pdf

Others

UN International Law Commission

Draft articles on the responsibility of international organizations, with commentaries, 2011 UN.Doc. A/66/10

http://legal.un.org/ilc/texts/instruments/english/commentaries/9_11_2011.pdf

OAS

Public Hearing: Human rights violations and responsibility of international financial institutions

http://www.ciel.org/Publications/IFIs_HR_Analysis_28Feb07.pdf

Annex III

Tilburg-GLOTHRO Guiding Principles on the World Bank Group, the IMF and Human Rights

Underlying Notions and Observations

Human Rights Obligations for International Financial Institutions (IFIs)

1. The Universal Declaration of Human Rights of 1948 is a ‘common standard of achievement for all peoples and all nations’ (Preamble of the Declaration). At the beginning of the new Millennium, the Declaration goes far beyond being merely a moral or political obligation, as large parts of it belong to international customary law, while some rights have developed into jus cogens standards.
2. As a follow-up to the 1948 Declaration, a large number of human rights conventions have been adopted by the United Nations, including its Specialised Agencies, and by regional organisations. Regional and international supervisory bodies and national courts have established a serious and extensive body of case law and jurisprudence.
3. International human rights law includes civil, cultural, economic, political and social rights, as well as the right to development. These rights are, each in their own way, relevant in the struggle against poverty as well as for other activities performed by World Bank and IMF, and, mutadis mutandis, other IFIs.
4. The traditional division between obligations of States not to interfere with civil and political rights on the one hand, and obligations of States to actively provide for the realisation of economic, social and cultural rights on the other hand, is no longer reflecting the reality in the implementation of human rights. Instead, the division of obligations of States into three levels: the obligation to respect, the obligation to protect and the obligation to fulfil, has gained widespread acceptance in the international human rights community.
5. The responsibility for implementing human rights is universal and concerns all — state and non-state — actors whose activities may affect people’s lives. The primary responsibilities and obligations in the field of domestic human rights enjoyment, however, remain with the State: States cannot ‘delegate’ human rights obligations to, for instance, international institutions and relieve themselves of these obligations. 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.
6. The two IFIs are also Specialised Agencies, having entered into Relationship Agreements with the United Nations in accordance with UN Charter Article 63. This is another indication of their international legal personality separate from their members, which carries with it rights and obligations according to international law. According to the Relationship Agreements the organisations are, and are required to function as, independent international organisations. It provides an organisational independence from the UN, not from international law.
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.
8. As members of the UN the member States of the two IFIs have legally committed themselves to uphold the purposes and principles of the UN Charter, including the

promotion of respect for human rights. According to Article 103 of the UN Charter, the obligations of States under the Charter, including obligations in the field of human rights, take primacy over other international obligations.

Linking Legal Obligations in the Field of Human Rights to Economic and Political Realities

9. Markets are to ensure economic effectiveness in processes of production, distribution and consumption of goods and services. From a macro-economic perspective they may contribute to generally improved living conditions. To ensure, however, that outcomes of economic processes also conform to standards of social justice and meet obligations in regard to the daily livelihoods of poor people, human rights standards must be an integral part of decision-making by actors in market-oriented environments.

10. While most governments have ratified human rights conventions, the status of human rights in many societies — in all its dimensions — remains precarious at best. The implementation of rights is often impeded by weak legal systems, particularly relating to the poor, the powerless, minorities and indigenous peoples as well as to the realisation of the right to a clean environment. The negative experience with capacity building and institutional development is a major problem for any discussion on the mainstreaming of human rights in development institutions.

11. Practice often shows that one part of government does not necessarily know what another part is doing, even if both parts are working in the same field. One segment of the government might even be resistant to what another governmental agency is doing. Often, governments do not ensure that all relevant departments are familiar with international human rights norms that bear upon policy-making processes. This is a problem in all States in the world, albeit in varying degrees.

12. When the UN was created, it was endowed, through its Charter, with a mandate to deal with problems of international co-operation, in particular economic and social co-operation. Today, much of the economic policy dialogue has shifted to the World Bank and the IMF (and to the WTO, which is not addressed in these Guiding Principles).

13. The World Bank and the IMF currently also address global concerns that are within the expertise of different UN organs and Specialised Agencies, inter alia, security, environment, social policy, gender, development, poverty reduction, debt relief, health and educational issues. They exert significant influence on these issues either directly, by setting actual policies, or indirectly, by prescribing economic policy directives.

14. In practice, there is a striking asymmetry of power and influences between the UN and both IFIs. The World Bank and the IMF have considerable resources available to fulfil their mandates and they dispose of powerful means to have their decisions enforced. The UN on the other hand has only a limited budget, apart maybe from the UN Security Council, which is insufficient to effectively perform the wide spectrum of functions it is expected to fulfil.

15. There is a troubling lack of dialogue and co-ordination between the UN and the two IFIs. The World Bank and the IMF, albeit UN Specialised Agencies, exhibit a large degree of independence from the UN. Based on their interpretation of the Relationship Agreements with the UN, the IFIs have contrived to distance themselves from many UN resolutions and recommendations that reflect the broad wishes of the international community.

16. Although the World Bank and the IMF increasingly adopt partnerships with other organisations, including those within the UN system, these partnerships often mean that the IFIs set the policy directions while the respective partner organisation is tasked with the implementation. Partnership in the design of policy directions is rare.

Evaluation and Redress of Adverse Human Rights Impacts

17. Rights and obligations demand accountability, while it is up to the duty-holders to determine which accountability mechanisms are most appropriate in particular cases. In any case, however, these mechanisms must be accessible, transparent and effective.

18. A human rights impact assessment can be done *ex ante*, i.e. in the stage of decision-making, or *ex post*, i.e. when projects have evolved or have come to an end.

19. Strategies to supervise the implementation of economic, social and cultural rights should not be limited to the monitoring of violations. In relation to economic, social and cultural rights, the poor's access to these rights is one of the core issues. In particular, firm links need to be established between legal/constitutional reform and social policy. This includes the incorporation of international economic, social and cultural rights in national law, accompanied by a change in legal, political and social systems, structures and institutions.

20. The monitoring and assessment of human rights violations can normally be done on a case by case basis. However, in the framework of assessing the human rights impact of World Bank projects and IMF programmes, a case by case approach might work for individual projects and country strategies, but not for the evaluation of broad and general policies that are problematic from a human rights point of view.

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

22. The IMF Independent Evaluation Office's mandate allows flexibility in possible evaluation topics and consultations with informed and interested parties outside. The key lacuna in the Office's terms of reference, however, is that affected or interested parties cannot challenge IMF programs if flawed. For that reason, there is still a need to establish a complaint office.

Guiding Principles

Human Rights Obligations for International Financial Institutions

23. While joint statements by the World Bank and the IMF increasingly recognise that macroeconomic and financial aspects cannot be considered separate from the structural, social and human aspects of development, their macro-economic policy should take into account its impact on human development objectives, including human rights.

24. The World Bank and the IMF should integrate human rights considerations into all aspects of their operations and internal functioning. Both financial institutions should ensure that prevention of human rights violations is given high priority in their processes, policies, financed projects and in the implementation of various programs and strategies. If violations do occur in the course of these operations, then measures for mitigating the impact thereof and mechanisms of accountability and redress should be put into place.

25. The IMF Articles of Agreement acknowledge the need to respect domestic social and political policies of members. Such policies include international commitments to human rights. Neither the IMF nor the World Bank should impede the Borrower from honouring such legal obligations, or agree to measures depriving individuals of their rights under domestic and international law.

26. In concluding agreements with their members, the IFIs shall respect the obligations of the members according to Article 103 of the UN Charter, including giving priority to respect for human rights.

27. When determining the policies, programmes and projects of the World Bank and the IMF, member States must comply with their obligations under international human rights law, including the duty to engage in international assistance and co-operation. Moreover, when member States decide upon policies, programmes and projects that impact upon a State, they must take into account and respect the relevant national and international human rights laws that apply to that State. Member States should not agree to measures that will impede their ability to comply with their national and international human rights obligations.

28. For reasons of operationalisation, general human rights obligations for the World Bank and the IMF should be specified in a practical and accessible instrument by which the two IFIs are to be guided in all their decisions and on the basis of which they can be held accountable.

29. The World Bank Articles of Agreement need to be interpreted in the light of the current definition of development, which includes respect for human rights.

30. The Bank's operational policies are an appropriate instrument for assisting staff in ensuring that Bank-financed projects do not result in human rights violations. The following clause should be included in the operational policies of the World Bank: 'The World Bank shall not finance projects that contravene applicable international human rights law.' A clause to the same effect should be included in loan agreements concluded between the Bank and member States. The loan agreements are international treaties, which are binding both on the international organisations and the State concerned, and are governed by international law. The Bank should ensure compliance with the human rights clause during implementation.

31. The following clause should be included in the policies of the IMF: 'The IMF shall not enter into financial agreements that contravene applicable international human rights law.' A clause to the same effect should be included in programme support agreements between the IMF and States. The IMF should ensure compliance with the human rights clause during implementation of its programmes.

Linking Legal Obligations in the Field of Human Rights to Political and Economic Realities

32. Concrete policies, programmes, projects and actions activate specific duties, including in particular with regard to people whose lives are affected by the decisions taken. In order to establish the nature and implications of such concrete duties, decision-making by the World Bank and the IMF should be open and transparent, so that the interests of all stakeholders be represented and acknowledged in the light of applicable international human rights standards.

33. The World Bank and the IMF are required to ensure that people who are affected by their projects and strategies as well as civil society organisations are given the opportunity to participate actively in taking the decisions that affect them. This participation should be facilitated and conducted in the light of applicable international human rights standards — including the principle of non-discrimination and the right to information, the right to be consulted, and the right to free and informed consent — and take into account marginalised groups and peoples, including indigenous peoples, with respect for their right to (internal) self-determination.

34. In adopting partnerships, the World Bank and the IMF need to pursue the equity of goals of other solid and financial partners and to take on board the goals and instruments of partner organisations, including those within the UN system, and to see how they relate to the Bank's and the IMF's policy orientations and decision-making processes. This would not only benefit all constituents of the World Bank and the IMF but also enrich the policy agenda of other actors. The World Bank and the IMF need to search systematically for common ground and co-operation so as to increase the impact of their projects and programmes on poverty reduction.

Evaluation and Redress of Human Rights Impacts

35. The World Bank and the IMF should ensure that all accountability mechanisms are easily accessible for affected individuals and groups, inter alia through supporting capacity building initiatives that would enable individuals and groups to engage more effectively with these institutions.

36. The World Bank and the IMF should support initiatives in which co-operation between human rights NGOs and development NGOs is strengthened in order to maximise their effective engagement with the IFIs and the communities affected by World Bank- and

IMF-funded activities. It enables both IFIs to ensure the development of policies that are consistent with the rights and needs of these communities.

37. Given the wealth of information and data held by the World Bank and the IMF on issues closely bearing upon the implementation of human rights within States, both IFIs are urged to make this material available, on a regular basis, to relevant bodies within the UN human rights system, such as the UN Committee on Economic, Social and Cultural Rights. The IFIs should also make their staff available to discuss such material with the relevant UN human rights organs.

38. The World Bank and the IMF should evaluate the human rights impact of their projects and policies, ex ante as well as ex post, through the collection of disaggregated data according to, inter alia, gender, race, religion, ethnicity, age and poverty level.

39. The insertion of a human rights clause in the World Bank operational policies will enable the World Bank Inspection Panel to include international human rights law in its review of the standards against which Bank actions are tested.

40. As a complement to the Inspection Panel procedure, the Bank should agree to engage in international arbitration for settling disputes with private parties. Affected parties might claim that the Bank with its operational policies has adversely affected their human rights.

41. Human rights considerations should be integrated in the IMF's Independent Evaluation Office's terms of reference, mandate and functioning. The Office, as well as the World Bank Inspection Panel, should build up human rights capacity and resources, including staff training.

42. The IMF should review its accountability mechanisms, in order to provide for settlement of complaints, brought by affected individuals and communities, challenging IMF programs and policies.

Annex IV

Global Unions “IFI Actions must contribute to building a fair and sustainable global economy” Statement by Global Unions to the 2017 Spring meetings of the IMF and World Bank

Washington, 21-23 April 2017

Introduction

1. A slight uptick in global growth prospects announced in the international financial institutions’ latest economic forecasts does not signal an improvement in the situation of working people. Global Unions¹ cite data showing wage stagnation and weak employment growth in much of the world, and urge the IFIs to focus on the creation of quality jobs, achieving the transition to a low-carbon future and reducing inequality. The trade union movement is concerned by the growth of right-wing nationalism in many countries, due in part to a lack of confidence in the global economic system. The IFIs should join those calling for fairer rules in international trade and investment agreements, not push for liberalization that further strengthens investors’ rights at the expense of everyone else.

2. Global Unions’ statement puts forward detailed recommendations for IFI action to make progress on gender equality and a just transition to a sustainable economy. The statement also recommends specific measures that the IMF and World Bank should take in order to contribute to reductions in income and wealth inequality. While welcoming the World Bank’s first-time adoption in 2016 of a labour standards lending requirement, Global Unions urge the Bank to fulfil commitments to cooperate with trade unions and the ILO for its implementation. Joint work with other development banks that have several years’ experience in applying labour safeguards is also suggested.

IFI forecasts do not announce improvements for working people

3. In updates to their global economic growth forecasts published at the beginning of the year, both the IMF and World Bank predict slightly higher growth for 2017 and 2018 due in large part to the impact on exporters of firmer prices for oil and some other commodities.

4. The IMF also factored in expectations of fiscal stimulus applied by the US, but both IFIs emphasized that the high degree of current policy uncertainty has increased “downside risks”. Signs of tighter credit conditions and reduced investment in emerging and developing economies, along with political instability and uncertainty in several countries, could further undermine the positive trends suggested in the latest IFI forecasts.

5. It should be noted that the IFIs’ growth predictions have been widely off the mark in recent years because of the failure to correctly assess the impacts of austerity policies, continued high unemployment and under-employment, and stagnant wages. At the beginning of 2016, the Fund and the Bank also predicted a growth uptick for that year. Instead, 2016 registered the slowest rate of global economic growth since the Great Recession year 2009.

6. Even if the slightly higher growth for 2017 predicted by the IFIs materializes, it will not significantly improve the situation of working people. Recent reports published by the International Labour Organization identify a steady deceleration of wage growth since 2012 in developing and emerging countries, and forecast a modest increase in the global unemployment rate in 2017 due to a deterioration in emerging economies (Global Wage

¹ The Global Unions group is made up of the International Trade Union Confederation (ITUC), which has 181 million members in 163 countries; the Global Union Federations (GUFs), which represent their respective sectors at the international trade union level (BWI, EI, IAEA, IFJ, Indutrial, ITF, IUF, PSI and UNI); and the Trade Union Advisory Committee (TUAC) to the OECD.

Report 2016/17; World Employment and Social Outlook — Trends 2017). The ILO further estimates that there will be only slight improvements for those at the bottom of the income scale in 2017. Close to 43 per cent of workers worldwide will remain in a situation of vulnerable employment and almost 29 per cent in “working poverty”. The fair and effective integration of migrants and refugees into labour markets is also a key concern, as these populations are often vulnerable to unemployment, low quality jobs and social exclusion.

7. The IFIs currently predict that the economies of emerging and developing countries will grow more than twice as fast as developed countries, which as a whole have grown at an average annual rate of only 1.6 per cent since 2010. Indications of increased joblessness and slowing wages in emerging economies identified by the ILO will undermine the IFIs’ predictions of improved growth prospects for the entire global economy in 2017 and 2018.

8. Some IFI forecasts note that political developments over the past year will further complicate attainment of a sustainable growth path for the global economy. The rise of right-wing nationalism in several countries is of great concern to trade unions around the world, but the response of policymakers should not be to ignore the growing lack of confidence in the global economic system. For years, some international institutions including the IFIs have shrugged off the adjustment costs from trade liberalization and the losses suffered by a significant number of working people from trade and investment agreements. Further liberalization without fairer rules for all is not the way forward. As a recent Trade Union Statement to G20 Finance Ministers² noted, policymakers must correctly identify the direction of causality between trade and growth when they formulate policy responses:

“The recent trend of trade slowing down is mainly caused by weak domestic demand (prompted by austerity, internal devaluation, debt deleveraging), not by a surge in protectionism. Ignoring this causality by trying to push for more trade runs the risk of falling into the ‘competitiveness’ trap where economies depress wages in order to try to export themselves out of the crisis, which ends up deepening the global lack of demand, further slowing down trade dynamics.”

9. The IMF and World Bank should endorse a rebalancing of investors’ rights and obligations in trade and investment agreements by supporting the inclusion of enforceable labour provisions based on ILO standards, as well as the repeal of investor-state dispute settlement mechanisms that undermine governments’ right to regulate. To respond to the global lack of aggregate demand, growing inequality and the challenge of climate change, Global Unions urge the IFIs to support an extensive programme of public investment in energy efficient infrastructure and quality public services, and coordinated wage increases.

Promote gender equality through decent work and public investment in social infrastructure

10. Gender equality and female labour force participation efforts must deliver lasting economic empowerment for women. Working women around the world are often concentrated in precarious, low-wage jobs in the service sector, domestic work and the bottom end of global value chains, and women are more likely than men to have informal jobs. Meaningful progress on decent work and transition from the informal to formal economy will be a particular boon for women and drive inclusive development. The global economy currently functions through the underpaid and unpaid work of women. Increasing female labour force participation in isolation from a decent work agenda will fail to adequately address gender equality.

11. Progress on gender equality is undermined by policy advice and conditionality involving austerity for social programmes, public sector retrenchments, labour market deregulation, cutbacks in public services and dismantling of collective bargaining systems. In Greece, labour market reforms and austerity applied at the behest of the IMF and EU creditors disproportionately affected women through job losses in the majority-female public sector, increased precarious work and a spike in gender-based firings. Women suffer

² TUAC, March 2017 (http://www.tuac.org/en/public/e-docs/00/00/13/2C/document_doc.phtml).

most when social programmes are cut and care reverts to unpaid labour. Global Unions commend the IMF for supporting increased female labour force participation, for example in the 2016 Egypt programme, but caution that the failed model of austerity now being applied in the Middle East and North Africa will harm women and risks outweighing progress in participation.

12. Global Unions urge the IFIs to support public investment in social infrastructure, including health, education and care systems. Investing in the care economy in particular, would help to create jobs, raise productivity, reduce the burden of unpaid labour and catalyse economic growth.³ Responsible public investment is needed in this sector along with improved job quality for care workers in order to improve the attractiveness of jobs in the sector, address shortages in the supply of care services and ensure the accessibility and quality of these services. Expansion of social infrastructure will create new physical infrastructure projects and procurement that offer further economic benefits. Global Unions support investments in both physical and social infrastructure, and call on the IFIs to promote them in tandem.

13. Gender budgeting with the participation of social partners will also help achieve gender equality. In Iceland, where 86 per cent of the workforce is unionized, tripartite dialogue led to adoption of the Equal Pay Standard, a trailblazing initiative and global example. The core labour standards of collective bargaining and freedom of association give women effective tools to create safe workplaces free from violence, harassment, discrimination and health and safety risks. The full realization of these rights is central to gender equality.

Financing a just transition to a sustainable global economy

14. A zero-carbon, zero-poverty future is possible through a coherent response to the social, economic and climate challenges facing our world. The influence and financial resources of the IFIs are necessary to reach this future through a just and equitable transition. The conversion to a sustainable economy can be a net creator of jobs, but the substantial economic changes involved could leave workers behind and create further inequality. The danger of unemployment, forced migration and rising energy costs loom over working people.

15. Sustainable infrastructure built in the coming years can form the backbone of a sustainable global economy involving better transport, agriculture, industry and more. Public investment in essential services — such as housing, electricity, sanitation and water — is also essential in order to enable individuals to fully participate in society as well as the labour market. Major climate change mitigation projects are also necessary. Global Unions urge the World Bank to take a leadership role in ensuring that global infrastructure is sustainably built, energy-efficient and creates quality jobs. The IMF and World Bank can assist countries in policy and fiscal planning for a just transition and the achievement of the Nationally Defined Commitments under the UN Framework Convention on Climate Change. Additionally, the IFIs can follow up on their research on carbon taxes as well as discussions held with trade unions and other parties and move toward implementation. Equitable carbon taxes can fund a just transition and investments in infrastructure.

16. The shocks of climate change, including rising sea levels and temperature changes, will increasingly displace people from their jobs and homes. This problem will particularly affect lower-income people in developing countries. Adequate, universal social protection is needed to help working people survive and adjust. Whenever possible, plans should be made to directly help fossil fuel workers transition to new jobs. This is especially important for communities with low levels of economic diversification that rely on a single facility or sector, where retooling facilities to sustainable activities is one way to create a direct path to jobs. Social dialogue is crucial to planning these changes at the local, national and international level. Global Unions ask the IFIs to support dialogue and the negotiation of binding agreements for sustainable economic transformation.

³ ITUC, *Investing in the Care Economy*, January 2017 and March 2016 (<https://www.ituc-csi.org/investing-in-the-care-economy>).

Reduction of inequality: Actions should follow words

17. The IFIs' increased attention to the negative impacts of income and wealth inequality and its causes is a welcome development. The World Bank has emphasized that measures to make income distribution more equal are a necessary condition for attainment of Sustainable Development Goal 1.1 on eradicating extreme poverty, as well as SDG 10.1 on boosting the bottom 40 per cent (Poverty and Shared Prosperity, October 2016). The IMF has published several research papers showing that countries with lower inequality have higher and more durable growth; that fiscal policies have become less redistributive in most countries; and that weaker labour market regulations and institutions, reflected in declining trade union density and collective bargaining coverage, are the main drivers of increased inequality in many countries.

18. However, action in lending programmes or country-level policy advice has been slow to catch up to the IFIs' discourse and research on the need to reduce inequality. Many IMF programmes or policy recommendations continue to support measures that weaken minimum wages, employment protection regulations or collective bargaining institutions. For example, the IMF has encouraged many countries to substantially weaken or dismantle national or sector-level collective bargaining, despite the role that coordinated collective bargaining systems have played in achieving more equal income distribution. In February 2017, the UN's Independent Expert on the effects of foreign debt and other related international financial obligations submitted a report to the Human Rights Council, which documented numerous cases of the IMF promoting austerity-related labour market reforms that erode workers' rights.⁴ The report found little evidence that the deregulatory measures, put forward on the pretext of preventing or resolving debt crisis, contributed to economic recovery; but they did contribute to increased inequality.

19. The Fund's advice or loan conditions in the area of social policy have also had potentially troubling impacts on inequality. Some IMF programmes include a "social spending floor" as a Quantitative Indicative Target, but these are purely symbolic since a failure to meet minimum spending targets has no effect on loan disbursements. The main object of IMF involvement in social programme reforms is to control their fiscal cost, not to improve their adequacy or coverage. In some countries, for example in Egypt, the Fund and the Bank have supported the extreme targeting of social benefits over universal approaches: for example by replacing universal consumer subsidies with severely means-tested benefits. The "proxy means test" mechanism often used has been shown to typically exclude 50 per cent or more of those that should be eligible by virtue of income level, according to research published by the ILO.⁵ Social protection reform measures promoted by the IFIs that leave a majority of lowest-income people without any assistance are incompatible with inequality reduction and shared prosperity goals.

20. To its credit, the World Bank has in recent years expressed support for universal healthcare coverage and universal social protection. In 2016, it launched a joint programme with the ILO for increasing the number of countries with universal protection. The Bank has endorsed these initiatives in conformity with its support for the SDGs, specifically targets 1.3 on social protection for all and 3.8 on universal health coverage. The Bank should ensure that its country programmes deliver on the promise of protection for all by helping establish comprehensive systems based, for example, on the social protection floor concept developed at the ILO. The IMF should also support this approach, following up on country-level research work it has already been involved in for identifying fiscal space for social protection floors.

21. Additionally, the World Bank has supported the SDG targets linked to Goal 4 on ensuring inclusive and quality education for all, which is another key instrument for

⁴ United Nations Human Rights Council, A/HRC/34/57, 27 December 2016 (http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/34/57).

⁵ Kidd, Gelders and Bailey-Athias, *Exclusion by design: An assessment of the effectiveness of the proxy means test poverty targeting mechanism*, (<http://www.developmentpathways.co.uk/resources/wp-content/uploads/2017/03/Exclusion-by-design-An-assessment-of-the-effectiveness-of-the-proxy-means-test-poverty-targeting-mechanism-.pdf>).

achieving more equal distribution of income as well as contributing to countries' growth of productivity and access to prosperity. The Bank's 2018 World Development Report, on the theme of "Education for Development", provides an opportunity for the institution to describe in detail the strategies it needs to develop to support education targets, starting with SDG target 4.1: "By 2030, ensure that all girls and boys complete free, equitable and quality primary and secondary education leading to relevant and effective learning outcomes". The Bank should make certain that all the schooling initiatives it supports are consistent with and supportive of the commitment to free, equitable and quality education.

Cooperation for implementing World Bank's new labour safeguard

22. If the World Bank's announced plans are respected, in 2018 it will join several other multilateral development banks (MDBs) that, over the past several years, have implemented comprehensive labour standards lending requirements or safeguards. "Environmental and Social Standard 2: Labour and Working Conditions" (ESS 2) is part of the Bank's new Environmental and Social Framework, adopted in August 2016. ESS 2 provides for basic occupational health and safety requirements, obligations to provide information to workers and a requirement to respect certain fundamental workers' rights.

23. The World Bank's introduction of a labour safeguard is an important development, but the effectiveness may be impaired by the fact that in some aspects its version is weaker than those of the other MDBs. Principal among the weaknesses is the absence of any reference to the core labour standards (CLS) conventions of the ILO, which prohibit discrimination, child labour and forced labour, and require respect for freedom of association and the right to collective bargaining. Whereas ESS 2 stipulates that the first three practices will not be tolerated in Bank-funded projects whether or not they are prohibited in the client country's law, it requires respect of freedom of association only "in a manner consistent with national law". This proviso is at odds with the requirements of the other MDBs and also contrary to the universal nature of the CLS as established by the ILO since 1998.

24. In order to avoid that weaknesses or ambiguities in ESS 2 lead to tolerance of unacceptable labour practices or denial of workers' rights in Bank-financed activities, it will be imperative that the Bank cooperates fully with parties knowledgeable about the labour conditions in its projects and programmes, notably the ILO and trade unions. The Bank should move forward with cooperation as it develops staff directives, training material, monitoring mechanisms and consultation procedures for implementing ESS 2. The Bank should also examine possibilities of working jointly with other MDBs that have had years of prior experience in implementing labour safeguards. Joint work could take place, for example, in training of staff and project managers on labour standards requirements, and in establishing effective monitoring and information-gathering procedures to identify risks of safeguards violation.

Global Unions' recommendations

Measures to support economic recovery

25. The IMF and World Bank should

- Support and help implement a global recovery strategy aimed at boosting aggregate demand and consisting of a policy mix of public investment stimulus and coordinated wage increases to reverse the falling labour share in national income.
- Contribute, as part of this strategy, to public investments in education, the care economy, water and sanitation and other quality public services, including actions to support the integration of migrants and refugees.
- Support public investments in energy-efficient infrastructure and climate change mitigation projects to protect against climate change damages, improve long-term productive potential, and support the transition to a low-carbon economy including through the adoption of carbon taxes.

- Support the inclusion in trade and investment agreements of enforceable labour provisions based on ILO standards and the repeal of investor-state dispute settlement mechanisms that undermine governments' right to regulate.

Measures for creating decent work and reducing inequality

26. The IMF and World Bank should

- End the promotion of labour market deregulation, including through its funding conditionality, and instead help to reverse the rise in income inequality by supporting social dialogue, strengthened collective bargaining and robust minimum wages as part of a coherent set of labour market and social policies for more inclusive growth. This work should entail enhanced cooperation with international organizations with expertise in labour market and social policy, such as the ILO and World Health Organization.
- Support gender equality and women's economic empowerment through wage increases, formalization and respect of workers' rights in majority-female sectors, along with public investments, notably in the care economy, to create quality jobs and reduce the burden of unpaid labour.
- Help countries restore or establish fiscal policies that reduce inequality through more progressive tax regimes including through greater tax revenues from higher incomes, and increased coverage of social protection programmes.
- Develop actions to contribute to attainment of the Sustainable Development Goals, which include targets on full and productive employment, protection of workers' rights, reduction of inequality, universal health coverage, universal primary and secondary education, and national social protection systems for all including floors.

27. The World Bank should

- Ensure that its projects and programmes respect fundamental workers' rights and provide safe working conditions and adequate wages, and work jointly with trade unions and the ILO in the implementation of "Environmental and Social Standard 2: Labour and Working Conditions" to ensure that Bank-financed activities comply fully with recognized international labour standards.
- Examine possibilities of joint work with other development banks that have adopted labour safeguards on their implementation, for example in training activities and developing effective monitoring procedures.

Measures for effective financial regulation and taxation

28. The IMF should

- Support the extension and completion of steps taken since 2008 to correct under-regulation of the financial sector, such as shadow banking systems, too-big-to-fail financial groups and under-taxation of the financial industry, and oppose efforts to roll back the measures already adopted.
- Support the creation of a multilateral framework for negotiating binding international debt restructuring agreements when countries face unsustainable sovereign debt.
- Promote stronger actions to counter the erosion of tax bases and achieve reform of taxation systems in order to move towards broader-based and more progressive taxes, and to shift taxation from employment to environmentally damaging and non-productive activities.
- Support stronger measures to ensure that fiscal revenue is not lost through tax havens by requiring automatic exchange of information and action to stop base erosion and profit shifting by multinational enterprises.

- Support the introduction of financial transactions taxes to discourage speculative behaviour and create new sources of finance, including by offering assistance for the coordinated implementation of the comprehensive FTT initiative supported by several Eurozone countries.

Annex V

Statement by the Intergovernmental Group of 24 at the 2017 Spring meeting of the World Bank and the International Monetary Fund (excerpts)

1. We held our ninety-seventh meeting in Washington D.C. on April 20, 2017 with Abraham Tekeste, Minister of Finance and Economic Cooperation of Ethiopia in the Chair, Ravi Karunanayake, Minister of Finance of Sri Lanka as First Vice-Chair; and Julio Velarde, Governor of the Central Bank of Peru as Second Vice-Chair.

Financing for Development

8. Strong fiscal frameworks are essential to mobilize domestic resources to effectively support development efforts. We are encouraged by the progress made in improving tax revenue-to-GDP ratios and enhancing spending efficiency in EMDCs. Progressive and growth-enhancing tax policies and expenditure measures also play an important role in improving income equality and broadening opportunity. We underscore the important role of IFIs and donors in supporting capacity building for revenue mobilization and encourage more peer learning and capacity building among EMDCs through collaborative platforms. We welcome the work of the Platform for Collaboration on Tax and look forward to its engagement with tax officials in EMDCs.

9. We welcome ongoing initiatives on international tax cooperation such as the Automatic Exchange of Information (AEOI) initiative and the Base Erosion and Profit Shifting (BEPS), and call for a framework that ensures effective participation of EMDCs. We support the development of a digital global platform with least compliance cost for implementation of AEOI. We appreciate the work of the UN Tax Committee and encourage multilateral support to upgrade the Committee to an intergovernmental body to enhance the voice of EMDCs on international tax policy matters. We also call for more attention to developing fair tax rules to guide the taxation of multinational corporations and for international cooperation to prevent harmful international tax competition, negative spillovers from shifts in tax policies in major countries, and illicit financial flows ...

Reforming the Bretton Woods Institutions

15. We support a quota-based, adequately-resourced IMF that is less dependent on borrowed resources. We call for the full implementation of the 2010 Governance Reforms on Board Representation. We call for the completion of the 15th General Review of Quotas, including a new quota formula, by the Spring Meetings of 2019 and no later than the Annual Meetings of 2019. We call for a revised quota formula that further shifts quota shares from AEs to dynamic EMDCs, reflecting their growing weight in the global economy, while protecting the quota share of the poorest countries, and puts greater weight to GDP PPP within the GDP blend. The realignment of quota shares must not come at the expense of other EMDCs. We reiterate our longstanding call for a third Chair for Sub-Saharan Africa, provided that it does not come at the expense of other EMDCs' Chairs.

16. We look forward to a World Bank's Shareholding Review that upholds the Istanbul Principles to achieve equitable voting power between developed and developing and transition countries (DTCs), and produces an outcome that is broadly acceptable to the membership, while protecting the smallest poor countries. We call for the timely implementation of the Lima Roadmap. As the review moves toward the conclusion of the new shareholding package, we call for exploring options to ensure a meaningful realignment with a balanced shareholding outcome, including allocations in line with the agreed formula, special allocations, forbearance, and limits on dilution of individual DTCs.

17. We reiterate our support for a stronger WBG to provide continued assistance to developing countries of all income levels, as laid out in its Forward Look. In the meantime, we are concerned with the IBRD's and IFC's strained financial capacity and the consequent

expected decrease in annual lending over the coming years. This will adversely affect the WBG's ability to engage its member countries and to catalyze private financing, which are essential to meet the ambition of its Forward Look. To strengthen the financial capacity of the IBRD and IFC and build on their ability to leverage their shareholders' capital, we call for exploring all options, including capital increases, further balance sheet optimization, and review of financial transfers from IBRD and IFC to IDA. Furthermore, we recognize the importance of having a balanced portfolio, which contributes to the financial sustainability of IBRD. We welcome the shift in the WBG's development financing approach towards greater strategic use of official resources to further catalyze public and private investments and mobilize private capital.

18. We call for strengthening the efforts of the IMF and the WBG towards greater representation of under-represented regions and countries in recruitment and career progression, including at managerial levels. We reiterate the importance of staff diversity and gender balance at all levels, including diversity of educational institutions.

Annex VI

Declaration of the Coalition on Human Rights and Development, Petition of 14 July 2016

1. (Washington, July 14, 2016) — Development banks should respect human rights in their investments around the world and ensure their activities are not putting human rights defenders at risk, the Coalition for Human Rights in Development said today in a joint petition signed by over 150 developments, human rights, and environment groups.

2. Major development banks have long touted the importance of public participation for effective development, the organizations said. But a growing number of governments have been shrinking the space for safe and effective participation in development processes through criminalizing activities by land, environment, and human rights activists and adopting restrictions on nongovernmental groups.

“I hope that civil society will have the opportunity to contribute towards sustainable development,” said Abhijeet, an Indigenous community member in Nepal who does not want his identity disclosed for security concerns. “Unfortunately, the fundamental human rights of many peoples are being systemically violated as a result of development projects. And when we help communities defend their rights we are met with threats and violent attacks.”

3. The petition is directed to international financial institutions (IFIs), including the World Bank, African, Asian, European, and Inter-American Development Bank, as well as the newest institutions, the Asian Infrastructure Investment Bank, and BRICS New Development Bank.

4. In March 2016, Berta Cáceres, a renowned indigenous land rights and environmental defender in Honduras, was killed in the middle of the night as she slept in her bed. Two of those facing charges for Cáceres’ murder were employees of a company involved in the construction of the Agua Zarca dam, a project that Cáceres and her organization, Civic Council of Popular and Indigenous Organizations of Honduras (COPINH), have long opposed and campaigned against. The murder sparked a high-profile movement to demand accountability of the Dutch, Finnish, and Central American banks financing Agua Zarca for failure to ensure their investments weren’t fuelling human rights abuses.

5. But as recent reports have documented, the Cáceres case is not unique.

“In Uzbekistan, the World Bank is pouring money into projects that benefit the government’s abusive cotton sector, marred primarily by systemic forced labor,” said Dmitry Tikhonov, an Uzbek human rights defender who is in exile following government reprisals. “The World Bank has not taken any meaningful measures to ensure that independent human rights defenders like me can monitor for abuses linked to the projects they fund. Nor have Bank staff spoken out against the government’s attacks on my colleagues and I.”

6. Human Rights Watch has recently documented numerous abuses against individuals and communities impacted by projects financed by the World Bank and its arm for corporate loans, the International Finance Corporation.

“Those who try to engage in development processes have suffered threats, harassment, physical assault, or worse,” said Jessica Evans, senior international financial institutions advocate at Human Rights Watch. “Development banks have a responsibility to ensure that their investments don’t interfere with human rights, and that people can participate in or express their opinions about development projects without fearing for their safety.”

7. The joint petition — International Financial Institutions’ responsibility to ensure Meaningful and Effective Participation in their Investments — details ways in which the institutions should

“ensure that the activities they finance respect human rights and that there are spaces for people to participate in the development of IFI projects and hold IFIs to account without risking their security.” The organizations call on the financial institutions “to actively support the realization of rights to freedom of expression, assembly, and association, and related human rights, including economic, social and cultural rights in all their activities.”

“Development banks and their member states can’t hope to achieve sustainable development or eliminate poverty if their investments are contributing to human rights violations or if those who are meant to benefit from development find themselves subjected to abuse,” said Adam Shapiro, Head of Communications and Visibility for Front Line Defenders. “The banks should take responsibility for the outcomes of their investments and take meaningful action to safeguard human rights defenders on the ground.”

Annex VII

Summary of CAO Cases

1. The CAO investigation of IFC Investment in Eco Oro Minerals Corp. Ltd., a Canadian mining company conducting open-pit mining in Colombia. Concerning the lack of consultation and disclosure the CAO concluded:

“IFC identified significant gaps in the company’s stakeholder engagement strategy as the project proceeded. This became evident in late 2009, following the submission of the open-pit mine EIA to the government that was rejected due to non-conformance with national requirements. IFC recognized that the project faced considerable opposition from the citizens of Bucaramanga. At this point IFC recommended that the company improve its stakeholder engagement strategy so as to strengthen community support. CAO notes that the limited scope applied to the project at appraisal and categorization of the investment for IFC’s purposes did not reflect affected community members’ understanding of risks.”

2. With regard to community health, safety and security, CAO determined that:

“there was not sufficient information to establish whether IFC assured itself of the company’s compliance with PS4 requirements.”

3. With regard to conservation and sustainable natural resource management, CAO concluded:

“IFC supervision documentation does not show substantive progress on the completion of necessary studies. IFC has not pursued a remedy, but has made subsequent investments in the company.”

4. The CAO investigation in Corporación Dinant S.A. de C.V., Honduras, published in December 2013 made findings that should have motivated IFC to fundamentally review its practices:

“IFC was or should have been aware of a series of public allegations and negative perceptions in relation to its client that went significantly beyond those that were considered in the course of its integrity due diligence process... The detailed six-part integrity due diligence process should have been adhered to. IFC’s failure to do this was out of compliance with the relevant procedure. ...IFC’s failure to disclose the Dinant E&S Assessment was not compliant with its Policy on Disclosure of Information (para 13). IFC remains non-compliant on this point. IFC supported a breach of Performance Standard 1 (paras 20 & 26) by (a) accepting the client’s disclosure of a modified translation of the ESRS in the place of the E&S Assessment, and (b) failing to assure itself that the client’s ESAP was disclosed to affected communities in an accessible form. IFC failed to ensure that the Dinant E&S Assessment met the consultation requirements set out in PS1 (para.21) ... IFC failed to adequately assess its client’s performance against the full range of ESAP CODs that had fallen due prior to making its November 2009 disbursement to Dinant ... IFC failed to “develop and retain the information needed to assess the status of [its client’s] compliance with the Performance Standards during supervision ...

5. In the light of the above, IFC decided to continue financing Dinant indirectly, through loans to Honduran Banks. The CAO Investigation of IFC Environmental and Social performance in relation to Investments in Banco Financiera Comercial Hondureña concerned the circumvention of WB rules concerning upper limits for loans to projects by providing the loans to banks that would in turn loan to the project — no strings attached. The IFC had already lent \$15 million to an agribusiness company in Honduras, which was under investigation in connection to allegations of violence against farmers on and around Dinant palm oil plantations. The CAO found that:

“IFC took insufficient measures to identify activities where Ficohsa was exposed to environment and social risk through its existing portfolio. This is of particular concern given background E&S risk that emerges from the regulatory and governance context in which Ficohsa was operating.”

6. CAO further noted that IFC had failed to conduct an adequate review of Ficohsa’s social and environmental management system, or its capacity to implement IFC’s environmental and social requirements.

“As a result, IFC acquired an equity stake in a commercial bank with significant exposure to high risk sectors and clients, but which lacked capacity to implement IFC’s environmental and social requirements ... This included additional exposure to Dinant, a company which IFC knew to be affected by a violent land conflict.”

7. In relation to the decision to disburse, CAO found that IFC’s review of the applicable conditions of disbursement did not comply with the requirement that E&S staff clear any E&S conditions following a review of evidence of compliance:

“CAO finds that IFC cleared disbursement against its investment agreements, without assuring itself that Ficohsa had submitted the environmental and social information that was required.”

8. In relation to project supervision CAO found that:

“IFC had not assured itself in an adequate or timely manner that Ficohsa was operating as envisaged at the time of appraisal or that Ficohsa was applying the Performance Standards to its sub-projects”.

9. In relation to Dinant, CAO found that:

“highly relevant information on the conflict and related D&S risks surrounding Dinant, that was held by members of IFC’s Dinant investment team, was not shared with key members of its Ficohsa team, even though there were staff working across both teams ... By waiving a key financial covenant and then taking an equity position in Ficohsa, however, IFC: (a) increased its exposure, and (b) facilitated a significant ongoing flow of capital to Dinant, outside the framework of its environmental and social standards; and thus at a time when IFC management was aware of serious unmitigated environmental and social risks regarding its agribusiness client.”

10. This remarkable investigation also sought to explain the underlying causes of the numerous instances of non-compliance. CAO observed:

“a primacy of financial considerations in IFC’s decision making”. CAO also noted “a siloing of information with the result that relevant information was not shared among key members of IFC’s Ficohsa team.”

Annex VIII

Inspection Panel Form — Sample form

*(More information about the Inspection Panel Form is available at:
http://ewebapps.worldbank.org/apps/ip/Documents/Guidelines_How%20to%20File_for_web.pdf)*

To: Executive Secretary, the Inspection Panel
1818 H Street NW, MSN 10-1007, Washington,
DC 20433, USA Email: ipanel@worldbank.org
or the appropriate World Bank Country/Regional Office

- We [insert names] live and/or represent others who live in the area known as [insert name of area].
- Our addresses are attached.
- We have suffered, or are likely to suffer, harm as a result of the World Bank's failures or omissions in the [insert name and/or brief description of the project or program] located in [insert location/country].
- [Describe the damage or harm you are suffering or are likely to suffer from the project or program.]
- [List (if known) the World Bank's operational policies you believe have not been observed.]
- We have complained to World Bank staff on the following occasions [list dates] by [explain how the complaint was made]. No response was received, [or] we believe that the response received is not satisfactory as it does not answer or solve our problems for the following reasons:
- We request the Inspection Panel recommend to the World Bank's Executive Directors that an investigation of these matters be carried out.

Signatures:

Date:

Contact address, telephone number, fax number, and e-mail address:

List of attachments

We [do/do not] authorize you to disclose our identities

Bibliography

Action for Solidarity Environment Equality and Diversity (ASEED), World Bank Conditionality — Poor Deal for Poor Countries, Amsterdam, 2008.

Yilmaz Akyüz, Crisis Mismanagement in the United States and Europe: Impact on Developing Countries, South Centre, Geneva, 2014.

Aviva, A Roadmap for Sustainable Capital Markets: How can the UN Sustainable Development Goals harness the global capital markets? London, 2015.

Radhika Balakrishnan, James Heintz and Diane Elson, Rethinking Economic Policy for Social Justice, Routledge, London, 2016.

Graham Bird and Dane Rowlands, The International Monetary Fund: Distinguishing Reality from Rhetoric, Edward Elgar, Cheltenham, 2016.

Daniel Bradlaw, “The World Bank, the IMF and Human Rights”, Transnational Law and Contemporary Problems 6: 47-90, 1996.

Bretton Woods Project,

(a) Behind the fumes: the dirty truth behind the World Bank’s commitments on climate change, 2017, <http://www.brettonwoodsproject.org/2017/01/behind-noxious-fumes-dirty-truth-behind-banks-commitments-climate-change/>;

(b) One man, one vote, one option: World Bank set to coronate Kim for second term, 2016, <http://www.brettonwoodsproject.org/2016/09/one-man-one-vote-one-option-world-bank-set-coronate-kim-second-term/>;

(c) The Bank and the IMF in 2016: year in review, 2017, <http://www.brettonwoodsproject.org/2017/02/bank-imf-2016-year-review/>;

(d) The rise and fall of World Bank funded megaprojects, 2017, <http://www.brettonwoodsproject.org/2017/01/rise-fall-world-bank-funded-megaprojects/>;

(e) The World Bank’s failed accountability experiment: Why the Inspection Panel’s ‘Pilot’ should dead end, 2016, <http://www.brettonwoodsproject.org/2016/08/world-banks-failed-accountability-experiment-inspection-panels-pilot-dead-end/>.

Compliance Advisor Ombudsman (CAO),

(a) A Journey Toward Solutions: A Story of Community-Company Dispute Resolution in Uganda, Washington, DC, 2015;

(b) Building Hope and Health through Dialogue: A Story of Company-Community Dispute Resolution in Nicaragua, Washington, DC, 2016;

(c) Solutions, Accountability, Learning: Annual Report 2016, Washington, DC.

Corporate Europe Observatory, Profiting from Crisis, Brussels, 2014.

Robert T. Coulter, Leonardo A. Crippa and Emily Wann, “Principles of International Law for Multilateral Development Banks: The Obligation to Respect Human Rights,” in Free, Prior and Informed Consent: Pathways for a New Millennium, American Indian Law Program and Getches-Wilkinson Center for Natural Resources, Energy & the Environment, University of Colorado Law School, Boulder, 2013.

Mac Darrow, Between Light and Shadow: The World Bank, the International Monetary Fund and International Human Rights, Oxford, 2003.

Peter Dolack, It’s Not Over: Learning from the Socialist Experiment, Zero Books, Portland, Oregon, 2016.

Marwan Elkhoury, Credit Agencies and their Potential Impact on Developing Countries, UNCTAD Discussion Paper No. 166, 2008.

Marco Fasciglione, “The Protection of Economic, Social and Cultural Rights of Persons Belonging to Marginalized and Vulnerable Groups in Times of Financial Crisis: How to Reconcile the Irreconcilable?” *European Yearbook of Minority Issues* 11: 5-58, 2012.

Maria Lucia Fattorelli, *Citizen Public Audit*, CETIM, Geneva 2014.

David Freestone, *The World Bank and Sustainable Development*, Martinus Nijhoff, Leiden 2013.

Sanae Fujita, “The challenges of mainstreaming human rights in the World Bank”, *The International Journal of Human Rights*, March 5(3): 374-396, 2011.

Willem van Genugten, *The World Bank Group, the IMF and Human Rights. A Contextualised Way Forward*, Intersentia, Cambridge, 2015.

Willem van Genugten, Paul Hunt and Susan Matthews (eds.), *The World Bank, IMF and Human Rights: A Contextualised Way Forward*, Intersentia, Nijmegen, 2003.

Susan George, *Shadow Sovereigns: How Global Corporations are Seizing Power*, Transnational Institute, Amsterdam, 2015.

Paul Gertler et al., *Impact Evaluation in Practice*, Inter-American Development Bank and World Bank, Washington, DC, 2016.

François Gianviti, “Economic, Social and Cultural Rights and the International Monetary Fund”, in IMF, *Current Developments in Economic and Financial Law*, Oxford University Press, 2005.

Khalil Hamdani and Lorraine Ruffing, *United Nations Centre on Transnational Corporations: Corporate Conduct and the Public Interest*, Routledge, London 2015.

Günther Handl, *Multilateral Development Banking: Environmental Principles and Concepts Reflecting General International Law and Public Policy*, Kluwer, 2001.

John F. Helliwell, Haifang Huang, Shawn Grover and Shun Wang, *Good Governance and National Well-Being: What Are the Linkages?* OECD Working Paper on Public Governance No. 25, Paris, 2014.

John F. Helliwell, Haifang Huang and ShunWang,

(a) New Evidence on Trust and Well-being, National Bureau of Economic Research Working Paper No. 22450, Cambridge, 2016;

(b) “Social capital and Well-Being in Times of Crisis”, *Journal of Happiness Studies*, 15(1): 145-162, 2014.

John Helliwell, Richard Layhard and Jeffrey Sachs (eds.),

(a) World Happiness Report 2016 Update.

(b) World Happiness Report 2017.

Human Rights Watch,

(a) Abuse-Free Development: How the World Bank Should Safeguard against Human Rights Violations, 2013;

(b) At Your Own Risk: Reprisals against Critics of World Bank Group Projects, 2015;

(c) Development without Freedom: How Aid Underwrites Repression in Ethiopia, 2010;

(d) Harassed, Imprisoned, Exiled: Azerbaijan’s Continuing Crackdown on Government Critics, Lawyers and Civil Society, 2016;

(e) Toxic Toil: Child Labor and Mercury Exposure in Tanzania’s Small-Scale Gold Mines, 2013;

(f) Waiting Here for Death: Forced Displacement and “Villagization” in Ethiopia’s Gambella Region, 2012;

(g) World Bank Group: India Tea Investment Tramples Rights, 2016, <https://www.hrw.org/news/2016/11/08/world-bank-group-india-tea-investment-tramples-rights>.

International Finance Corporation, IFC Sustainability Framework Policy and Performance Standards on Environmental and Social Sustainability, 2012.

International Labour Organization, Declaration on Fundamental Principles and Rights at Work and its Follow-up (1998, with annex revised 15 June 2010)

International Monetary Fund, The Managing Director's Global Policy Agenda: A More Inclusive and Resilient Global Economy, 2017.

International Monetary Fund Independent Evaluation Office, The IMF and the Crises in Greece, Ireland and Portugal, Washington, DC, 2016.

International Network for Economic, Social and Cultural Rights (ESCR-Net), Ten Key Proposals for the Treaty: A Legal Resource for Advocates and Diplomats Engaging with the UN Intergovernmental Working Group on Transnational Corporations, 2016.

Omer Javed, The Economic Impact of International Monetary Fund Programmes, Springer, Heidelberg, 2016.

Naomi Klein, The Shock Doctrine, Penguin Books, London, 2008.

Pierre Klein, "The Attribution of Conduct to International Organizations" in James Crawford et al. (eds.), The Law of International Responsibility, Oxford, 2010.

Sangheon Lee, Deirdre McCann and Nina Torm, The World Bank's "Employing Workers index: Findings and critiques", International Labour Review 147(5): 416-432, 2008.

Jakob Möller and Alfred de Zayas, United Nations Human Rights Committee Case-Law, N.P. Engel, Strasbourg, 2009.

Oakland Institute, Down on the Seed: The World Bank Enables Corporate Takeover of Seeds, 2017.

Office of the United Nations High Commissioner for Human Rights (OHCHR),

(a) Comments and Recommendations in relation to the draft Environmental and Social Framework, 2015;

(b) Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework, New York and Geneva, 2011;

(c) Realizing the Right to Development: Essays in Commemoration of 25 Years of the United Nations Declaration on the Right to Development, New York and Geneva, 2013.

Oxfam, The IFC and Tax Havens: The need to support more responsible corporate tax behaviour, Oxford, 2016.

Oxfam, World Bank, <https://www.oxfam.org/en/tags/world-bank>.

August Reinisch, The Privileges and Immunities of International Organizations in Domestic Courts, Oxford University Press, 2013.

August Reinisch and J. Wurm, "International Financial Institutions before National Courts" in Daniel D. Bradlow and David B. Hunter, International Financial Institutions and International Law, Wolters Kluwer, Alphen aan den Rijn, 2010.

Jeffrey Sachs, Investing in Development: A Practical Plan to Achieve the Millennium Development Goals, United Nations Development Programme, 2005.

Margot Salomon and Clin Arnett, "Better Development Decision-Making: Applying International Human Rights Law to Neoclassical Economics", Nordic Journal of Human Rights 32 (1): 44 -74, 2014.

Joseph E. Stiglitz Globalization and Its Discontents, W. W. Norton & Company, New York, 2003.

Sustainable Development Solutions Network, *An Action Agenda for Sustainable Development: Report for the UN Secretary General*, 2013.

The World Bank Should Champion Human Rights, *New York Times* (27 June 2016).

Transnational Institute, *Land grabbing and Land Concentration in Europe*, Amsterdam, 2016.

United Nations General Assembly, *Addis Ababa Action Agenda of the Third International Conference on Financing for Development (Addis Ababa Action Agenda)*, Resolution 69/313.

United Nations Conference on Trade and Development (UNCTAD),

- (a) Annual Report 2015: *Delivering a Sustainable Development Agenda*;
- (b) Key Statistics and Trends in Trade Policy 2016: *G20 Policies and Export Performance*, Geneva, 2017;
- (c) Trade and Development Report 2014: *Global governance and policy space for development*;
- (d) Trade and Development Report 2015: *Making the international financial architecture work for development*;
- (e) Trade and Development Report 2016: *Structural transformation for inclusive and sustained growth*;
- (f) World Investment Report 2014: *Investing in the SDGs: an Action Plan*, New York and Geneva;
- (g) World Investment Report 2015: *Performing International Investment Governance*, New York and Geneva;
- (h) World Investment Report 2016: *Investor Nationality, Policy Challenges*, New York and Geneva;
- (i) World Investment Report 2017: *Investment and the Digital Economy*, Geneva.

United Nations Department for Economic and Social Affairs,

World Economic and Social Survey 2017, New York.

United Nations Development Programme,

- (a) Human Development Reports 2014: *Sustaining Human Progress: Reducing Vulnerabilities and Building Resilience*, New York;
- (b) Human Development Report 2015: *Work for Human Development*, New York;
- (c) Human Development Report 2016: *Human Development for Everyone*, New York.

United Nations Global Compact, *Corporate Sustainability and the United Nations Post-2015 Development Agenda*, 2013.

Wouter Vanderhole (ed.), *Challenging Territoriality in Human Rights Law: Building Blocks for a Plural and Diverse Duty-Bearer Regime*, Routledge 2015.

World Bank & IMF, *International Union Rights 24: 1-28*, 2017.

World Bank Group.

- (a) Action Plan: *Improving the Management of Safeguards and Resettlement Practice and Outcomes*, 2015;
- (b) Atlas of Sustainable Development Goals 2017: *From World Development Indicators*, Washington, DC;
- (c) Climate Change Action Plan, 2016;

- (d) Doing Business 2017: Equal Opportunity for All, Washington, DC;
 - (e) Enabling the Business of Agriculture 2017, Washington, DC;
 - (f) Environmental and Social Framework, 2017;
 - (g) Global Economic Prospects January 2017: Weak Investments in Uncertain Times, Washington, DC;
 - (h) Global Monitoring Report 2015/2016: Development Goals in an Era of Demographic Change, Washington, DC, 2016;
 - (i) “Globalization Backlash,” South Asia Economic Focus: Spring 2017, Washington, DC, 2017;
 - (j) Involuntary Resettlement Portfolio Review: Phase I: Inventory of Bank-financed Projects Triggering the Involuntary Resettlement Policy (1990-2010), 2012;
 - (k) Involuntary Resettlement Portfolio Review: Phase II: Resettlement Implementation, 2014;
 - (l) Public-Private Partnerships in Health: World Bank Group Engagement in Health PPPs: an IEG Synthesis Report, Washington, DC, 2016;
 - (m) The World Bank and Sustainable Development, <http://www.worldbank.org/en/topic/sustainabledevelopment>.
- World Bank Inspection Panel,
- (a) Inspection Panel Annual Report: July 1, 2015 — June 30, 2016, Washington, DC, 2016;
 - (b) Emerging Lessons Series No. 1: Involuntary Resettlement, Washington, DC, 2016;
 - (c) Emerging Lessons Series No. 2: Indigenous Peoples, Washington, DC, 2016;
 - (d) Emerging Lessons Series No.3, Environmental Assessment, Washington, DC, 2017.
- World Bank Institute,
- (a) Public-Private Partnerships Reference Guide: Version 3, Washington, 2017.