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The World Bank and Human Rights: An Analysis of the Legal Issues and the Record of Achievements

IBRAHIM F. I. SHIHATA*

I. INTRODUCTION

In the beginning, the International Bank for Reconstruction and Development (the World Bank) and the institutions it helped create¹ had one objective in common, the promotion and financing of investment for productive purposes. For example, in the late forties and the early fifties, the World Bank financed the reconstruction of Europe and Japan. However, the World Bank has since expanded its scope. Today, it is the leading center for research, advisory services, and finance for the advancement of developing countries. Indeed, the World Bank Group, the International Development Association (IDA) and the International Finance Corporation (IFC), have financed efforts to fulfill the universal right to economic development and a broad range of human rights associated therewith in the amount of 203 billion dollars.

However, the Bank's leading role in the promotion of these rights should not be confused, with a role that the Bank has refused to play. The Bank does not interfere in the political affairs of its members, including their positions on political rights² because it falls outside the scope of the Bank's authority as an international financial institution.

Unfortunately, the World Bank has been judged at times as promoting the political beliefs of borrowing countries due to the Bank's silence on the subject. This silence has led to some domestic legislation attempting to force the Bank to refrain from lending to countries which consistently violate various rights. Indeed, in the past, the debate centered around the Bank's failure to implement U.N. recommendations requesting it to withhold assistance from certain countries, and around U.S. legislation instructing the U.S. Executive Director on the Bank's Board to

* Vice President and General Counsel, World Bank; Secretary-General, International Centre for Settlement of Investment Disputes. This article is based on a paper presented by the author to the International third World Legal Studies Association Panel on the World Bank, Development Projects, and Human Rights, at Miami, Florida on January 8, 1988.

1. These institutions are the International Finance Corporation (IFC), which was established in 1956; the International Development Association (IDA), set up in 1960; the International Centre for Settlement of Investment Disputes (ICSID), created in 1966; and the Multilateral Investment Guarantee Agency (MIGA), whose constituent convention is expected to enter into force in the near future.

2. See, e.g., Marmorstein, *World Bank Power to Consider Human Rights Factors in Loan Decisions*, 13 J. INT'L. L. & Econ. 113 (1978).

oppose loans to certain countries. However, the Bank's involvement in human rights issues goes far beyond the political arena where it is prohibited from interfering. The Bank's involvement encompasses such varied subjects as the alleviation of poverty, the fulfillment of basic human needs for nutrition, safe water, education, health and housing, the concern for resettlement of people affected by large development projects and of tribal peoples, the role of women in development, and the avoidance of the negative impact of development on the environment. This paper examines in detail the Bank's impressive record in these aspects of human rights after explaining the limitations on the Bank's action concerning the promotion of civil and political human rights.

II. INSTITUTIONAL LIMITATIONS ON THE POWER OF THE WORLD BANK TO CONSIDER CIVIL AND POLITICAL HUMAN RIGHTS ISSUES - A LEGAL ANALYSIS

The preliminary issue of whether the World Bank can take into account civil and political human rights considerations in its lending and other activities³ requires an analysis not only of the specialized functions of the World Bank but also of the other limitations imposed by its charter as well as by other applicable instruments of international law. Such analysis necessarily addresses issues such as the binding force of the various resolutions of the U. N. General Assembly related to human rights and more specifically, their particular relevance to the World Bank. While the latter is a specialized agency of the United Nations, it is explicitly prohibited by its Articles of Agreement from interfering in the political affairs of its members.

A. *The World Bank's Specific Responsibilities and Functions*

The World Bank is entrusted with specific responsibilities and functions. The Bank's purposes are set forth in its Articles of Agreement. They include, the financing of "reconstruction and development of territories of members", the promotion of private foreign investment and supplementing them by its own financing, the promotion of the "long-range, balanced growth of international trade and the maintenance of equilibrium in balances of payments," through the provision of loans and guarantees, and the encouragement of international investment for productive purposes.⁴ These objectives, all related to economic growth and development, have enabled the Bank to become the leading multilateral development lending institution in the world, who together with IDA, have financed a wide spectrum of development activities too diverse to be discussed here.

3. See *id.*; Kneller, *Human Rights, Politics, and the Multilateral Development Banks*, 6 YALE STUD. WORLD PUB. ORD. 361 (1980).

4. See Articles of the International Bank for Reconstruction and Development, Dec. 27, 1945, art. 1., 2 U.N.T.S. 134. The same Article provides that the Bank "shall be guided in all its decisions by the purpose set forth above."

B. *The Legal Effect of U.N. General Assembly Resolutions*

The controversy over the legal effect and binding force of U.N. General Assembly resolutions is well known.⁵ However, there is little disagreement that resolutions do not have the same legal value of effective international conventions and cannot instantly establish rules of international custom even when the resolutions are normative in nature or are a general declaration. It is also clear, as stated by the *Institut de Droit International*⁶, that certain provisions of a General Assembly resolution, especially those which purport to have a normative function or purpose, may represent a mere restatement of existing customary law or may contribute over time to the evolution of new international custom. For example, resolutions adopted without a significant dissent, such as those related to human rights, are likely to play such roles. There is a need, however, to find in each case additional evidence to determine the legal effect of that resolution. To use the terms of the *Institut*, it must be determined whether the resolution is "law-declaring" or "law-developing".⁷ This is quite different from the case of international conventions, including the international covenants on human rights whose texts were approved by the U.N. General Assembly,⁸ as these are treaties in the full

5. For the view that even the Universal Declaration of Human Rights does not have a legally binding effect, see Sloan, *The Binding Force of a 'Recommendation' of the General Assembly of the United Nations*, 1948 BRIT. Y.B. INT'L. L. 1, 31; Lauterpacht, *The Universal Declaration of Human Rights*, 1948 BRIT. Y.B. INT'L. L. 354, 369; O. ASAMOAH, *THE LEGAL SIGNIFICANCE OF THE DECLARATIONS OF THE GENERAL ASSEMBLY OF THE UNITED NATIONS* 190 (1966); Ermacora, *Human Rights and Domestic Jurisdiction*, in 124 RECUEIL DES COURS 371, 427-30 (1968). Other writers state that the Declaration constitutes a binding obligation for Member States of the U.N. and forms part of customary international law or even *jus cogens*. See remarks of M. McDougal at the AM. SOC'Y INT'L LAW PROC. 329 (April 26-28, 1979); see also P. SIEGHART, *THE INTERNATIONAL LAW OF HUMAN RIGHTS* 54-55 (1983). Others, while maintaining that the resolutions of the General Assembly incorporating declarations "are not in themselves acts creative of new rules of international law" do, however, ascribe a "legal function" to them which is not negligible. See M. SORENSEN, *MANUAL OF PUBLIC INTERNATIONAL LAW* 162 (1968).

6. The resolution was adopted by the Institute of International Law at its Cairo Session on Sept. 13-22, 1987. In connection with its work on non-contractual instruments which had a normative function or objective, the Institute gave special attention to the resolutions of the U.N. General Assembly. A draft Resolution on "Resolutions of the General Assembly of the United Nations" containing twenty-seven "Provisional Conclusions" was presented to the Institut at its 1985 Session. The Resolution as adopted contains twenty-six Conclusions.

7. Conclusion 6 of the Institut's Resolution prescribes, *inter alia*, the following elements to identify the category to which a resolution belongs:

- (a) the intent and expectations of States;
- (b) respect for procedural standards and requirements;
- (c) the text of the resolution;
- (d) the extent of support for the resolution;
- (e) the context in which the resolution was elaborated and adopted, including relevant political factors;
- (f) any implementing procedures provided by the resolution.

8. *The International Covenant on Economic, Social, and Cultural Rights*, G.A. Res. 2200, 21 U.N. GAOR Supp. (No. 16) at 49, U.N. Doc. A/6316 (1967). This Covenant entered

sense of the term. Once such covenants enter into force, they are fully binding on the parties thereto and may also contribute to the evolution of customary international law.⁹ The substantive rules embodied in international conventions on human rights may thus reproduce or contribute to the making of international law rules which are not only valid *erga omnes* but are also peremptory in nature (*jus cogens*).¹⁰

The question of the legal effect of U.N. General Assembly resolutions, including its declarations on human rights, has a special relevance to the World Bank. In making decisions on loans and guarantees relating to matters directly within the competence of "any general international organization" or of "public international organizations having specialized responsibilities in related fields," the Bank is required by Article V, section 8(b) of its Articles of Agreement to "give consideration" to the views and recommendations of such organizations. However, pursuant to Article V, section 8(a) of the Bank's Articles of Agreement, such cooperation must be consistent with the terms of the Bank's Articles of Agreement and cannot involve a modification of these Articles, unless they have been amended according to their terms.

Details of the Bank's status as a specialized agency of the U.N. are spelled out in its Relationship Agreement with the U.N. This Agreement clearly states that,

[t]he Bank is a specialized agency established by agreement among its member governments and having wide international responsibilities, as defined in its Articles of Agreement, in economic and related fields within the meaning of Article 57 of the Charter of the United Nations. By reason of the nature of its international responsibilities and the terms of its Articles of Agreement, *the Bank is, and is required to function as, an independent organization.*(emphasis added)¹¹

The Bank is required under the Relationship Agreement to take note of

into force on January 3, 1976. As of January 1, 1988, 91 States have adhered to this Covenant. *The International Covenant on Civil and Political Rights*, G.A. Res. 2200, 21 U.N. GOAR Supp. (No. 16) at 52. This Covenant entered into force on March 23, 1976. As of January 1, 1988, 87 States have adhered to it. See HUMAN RIGHTS: A COMPILATION OF INTERNATIONAL INSTRUMENTS 3 (1983). See also, HENKIN, PUGH, SCHACHTER & SMIT, INTERNATIONAL LAW, CASES AND MATERIALS 990 (2d ed. 1987).

9. See Article 38 of the Vienna Convention on the Law of Treaties which provides: "Nothing in articles 34 to 37 precludes a rule set forth in a treaty from becoming binding upon a third State as a customary rule of international law, recognized as such." *United Nations Conference on the Law of Treaties, Official Records, Documents of the Conference*, U.N. Doc. A/CONF/39/27, 1971. See also, Shihata, *The Treaty as a Custom Making Instrument*, 22 EG. REV. INT'L L. 51 (1966); R. Baxter, *Treaties and Customs*, in 129 RECUEIL DES COURS 25, 75 (1970).

10. Barile, *The Protection of Human Rights in Article 60, Paragraph 5 of the Vienna Convention on the Law of Treaties*, in STUDY IN ONORE DI ROBERTO AGO 1, 4-5 (1987).

11. Agreement Between the United Nations and the International Bank for Reconstruction and Development, Nov. 15, 1947, art. 1(2), 16 U.N.T.S. 346 (Emphasis added) [hereinafter agreement]. See also, 265 U.N.T.S. 314 and 394 U.N.T.S. 222 for similar agreements related to IFC and IDA respectively.

the obligations assumed by its members. The Bank is also required to have "due regard for decisions of the Security Council under Articles 41 and 42 of the United Nations Charter,"¹² in the conduct of its activities. However, the situation is quite different as far as General Assembly resolutions are concerned. For the latter, the applicable provisions in the Relationship Agreement only state the following:

1. The United Nations and the Bank shall consult together and exchange views on matters of mutual interest.
2. Neither organization, nor any of their subsidiary bodies, will present any formal recommendations to the other without reasonable prior consultation with regard thereto. Any formal recommendations made by either organization after such consultation will be considered as soon as possible by the appropriate organ of the other.
3. The United Nations recognizes that the action to be taken by the bank on any loan is a matter to be determined by the independent exercise of the Bank's own judgment in accordance with the Bank's Articles of Agreement. The United Nations recognizes, therefore, that it would be sound policy to refrain from making recommendations to the Bank with respect to particular loans or with respect to terms or conditions of financing by the Bank. The Bank recognizes that the United Nations and its organs may appropriately make recommendations with respect to the technical aspects of reconstruction or development plans, programmes or projects.¹³

The first test of the effect of a U.N. resolution on the World Bank occurred in the 1960s. In the sixties, the General Assembly passed resolutions regarding South Africa and Portugal which prohibited the Bank from giving financial assistance to these countries.¹⁴ In the controversy that ensued, both the Bank and the U.N. raised various legal arguments about the scope of the Bank's undertakings under the Relationship Agreement and the limitations imposed by the Bank's Articles of Agreement.

The Bank argued that, by virtue of the Relationship Agreement, it was under no obligation to implement the U.N. General Assembly resolutions, not to mention those on which there was no prior consultation with

12. Agreement, *supra* note 11, at art. VI (1). Articles 41 and 42 of the U. N. Charter cover the measures which the Security Council may take to maintain international peace and security. Article 48 of the Charter states that Security Council decisions should be "carried out by Members of the United Nations directly *and through their action in the appropriate international agencies of which they are members*" (emphasis added). See Kneller, *supra* note 3, at 421 for the view that, as far as obligations to the U. N. are concerned, members of the Bank are compelled to deviate from the Bank Charter "only to comply with the United Nations Security Council decisions for the maintenance of international peace and security."

13. Agreement, *supra* note 11, at art. IV. In addition, by a resolution dated September 13, 1951, of the Bank's Board of Governors, the Bank unilaterally undertook in the conduct of its activities to have due regard also for the recommendations of the General Assembly made pursuant to its "Uniting for Peace" resolution.

14. See 14 WHITEMAN, DIGEST OF INTERNATIONAL LAW 1004 (1970)

the Bank.¹⁵ It further argued that it would be improper to accept the recommendations of the General Assembly in the cases involved because of the prohibition contained in article IV, section 10 of the Bank's Articles of Agreement which reads:

The Bank and its officers shall not interfere in the political affairs of any member; nor shall they be influenced in their decisions by the political character of the member or members concerned. Only economic considerations shall be relevant to their decisions, and these considerations shall be weighed impartially in order to achieve the purposes stated in Article I.¹⁶

The Bank did recognize that on occasion it does take into consideration, and is influenced in its lending decisions by, the *economic effects* which stem from the political character of a member and from the censures and condemnations of that member by United Nations organs. (Emphasis added.) It emphatically stated that:

by virtue of Article IV, Section 10, of its Articles of Agreement, the Bank, in exercising its judgment, must consider such economic effects together with all other relevant economic factors, in the light of the purposes of the Organization. What it is precluded from considering is the political character of a member as an independent criterion for decision.¹⁷

The controversy over the South Africa and Portugal resolutions ended with the Bank maintaining its position that it was prohibited under its Articles from interfering in the political affairs of its members. However, they would review the economic conditions and prospects of these two countries "to take account of the situation as it developed."¹⁸ Since 1966, the Bank has not provided loans to South Africa on the grounds that it was no longer eligible to borrow under the Bank's "graduation policy" which is based on the economic positions of member countries. Further, the Bank suspended lending to Portugal for a long while on the grounds that the country had high reserves, could otherwise borrow on

15. See *Memorandum of the Legal Department of the IBRD*, 22 U.N. GAOR Annex II, at 9, U.N. Doc. A/6825 (1967).

16. World Bank's Articles of Agreement, art. 4, sec. 10, 2 U.N.T.S. 134. See also, World Bank's Articles of Agreement, art. 3, sec. 5(b), 2 U.N.T.S. 134, which requires that the proceeds of Bank loans be used "without regard to political or other non-economic influences or considerations."

17. *Memorandum*, *supra* note 15, at 6. The U.N. Legal Counsel disagreed with the Bank's position and maintained that the first sentence of the said Article did not relate to criteria involving the international conduct of a State affecting its fundamental Charter obligations and that what it prohibited was interference in the internal political affairs of the Bank Member and discrimination against a Member because of the political character of its government. 21 U.N. GAOR 4-20, U.N. Doc. A/C.4/SR.1653 (1966). See Marmorstein, *supra* note 2, at 121-31. *But see*, Kneller, *supra* note 3, at 418-21.

18. For the relevant correspondence between the Secretary General of the U.N. and the President of the World Bank ending the controversy, see WHITEMAN, *supra* note 14, at 1008-09.

reasonable terms, and, during that time, lacked positive development policies.

The issue of human rights reemerged a decade later under a different situation arising in response to U.S. Public Law 95-118 which provided that:

Sec. 701. (a) The United States Government, in connection with its voice and vote in the International Bank for Reconstruction and Development, the International Development Association, the International Finance Corporation, the Inter-American Development Bank, the African Development Fund, and the Asian Development Bank, shall advance the cause of human rights, including by seeking to channel assistance toward countries other than those whose governments engage in:

- (1) a consistent pattern of gross violations of internationally recognized human rights, such as torture or cruel, inhumane, or degrading treatment or punishment, prolonged detention without charges, or other flagrant denial to life, liberty, and the security of person; or
- (2) provide refuge to individuals committing acts of international terrorism by hijacking aircraft.

(f) The United States Executive Directors of the institutions listed in subsection (a) are authorized and instructed to oppose any loan, any extension of financial assistance, or any technical assistance to any country described in subsection (a) (1) or (2), unless such assistance is directed specifically to programs which serve the basic human needs of the citizens of such country.¹⁹

While the language of this legislation made it possible for the U.S. Executive Director to "abstain" and not necessarily "vote against"²⁰ loans to countries which engage in violations of human rights and did not provide rigid criteria for defining such countries, it raised an important legal question under the Bank's Articles of Agreement. Namely, can an Executive Director raise issues of a political nature in spite of the prohibition in both Article IV, Section 10, cited earlier, and Article V, Section 5(c) of

19. Pub. L. No. 95-118, 91 Stat. 1069, 22 U.S.C., sec. 262(d) (1982). The language of this section quoted above was maintained in subsequent legislation except that reference to the African Development Bank was added by Pub. L. No. 97-35, and the word "consistent" was struck out by Pub. L. No. 98-181, sec. 1004(1). See U.S. SENATE/U.S. HOUSE OF REPRESENTATIVES, *Legislation on Foreign Relations through 1987*, pp. 775-77 (June 1987). U. S. legislation relating to human rights first affected bilateral aid under a 1975 amendment to the Foreign Assistance Act of 1961 which governs the activities of USAID. It then appeared in the 1976 Harken Amendment to the Inter-American Development Bank Act, Pub. L. No. 94-302, sec. 103(a)(1), 90 Stat. 592 (1976), and the African Development Fund Act, Pub. L. No. 94-302, sec. 211, 90 Stat. 595 (1976), where the U. S. Executive Director in the Boards of these institutions was instructed to vote against, rather than simply oppose, the loans, with the exception of loans that "directly benefit the needy people," rather than those made for "basic human needs," as in the 1977 Act.

20. The legislative history of Pub. L. No. 95-118 makes clear that the U.S. Executive Director can "oppose" by abstaining, voting "present", or taking any action other than voting "yes". See S. CONF. REP. No. 95-363, 95th Cong., 2nd Sess. 10 (1977).

the Bank's Articles? Section 5(c) provides:

The President, officers, and staff of the Bank, in the discharge of their offices, owe their duty entirely to the Bank and to no other authority. Each member of the Bank shall respect the international character of this duty and shall refrain from all attempts to influence any of them in the discharge of their duties.

To answer these questions, the Bank had to address the issue whether the said Articles apply to Executive Directors who are officials of the Bank, but are appointed or elected by members of the Bank. The Bank's legal department took the view that the prohibition set forth in Article IV, Section 10 applied to the Executive Directors but recognized that there was no legal sanction available to challenge a vote by an Executive Director that was motivated by political considerations.

Recently, this author had the occasion to give a legal opinion on the relevance to the work of the Bank's Executive Directors of the provisions of the World Bank Articles of Agreement which prohibit political activities, after the human rights record of a certain Bank member was cited by some members of the Board in their comments on a large loan proposed for that member. My conclusions were as follows:

1. The Board of Executive Directors, as an organ of the Bank, is subject to the provision of Article IV, Section 10 of the Bank's Articles of Agreement and is therefore prohibited from interfering in the political affairs of any member or from being influenced in its decisions by the political character of the member concerned. Only economic considerations, which are weighed impartially, are relevant to the Board's decisions. However, political events which have a bearing on the economic conditions of a member or on the member's ability to implement a project or the Bank's ability to supervise the project may be taken into consideration by the Board.
2. An Executive Director is an official of the Bank who is appointed or elected by a member or members of the Bank and whose votes depend on the voting strength of the member or members who appointed or elected him, owes his duty both to the Bank and his "constituency." He may express the views of such a "constituency" and vote on its instructions, but he may not split his votes. However, he is not to act simply as an ambassador of the government or governments which appointed or elected him and is expected to exercise his individual judgment in the interest of the Bank and its members as a whole. Members of the Bank are under an obligation not to influence the Bank's President and staff in the discharge of their duties, and Executive Directors are under the duty not to act as the instrumentality of members to exert such prohibited influence.
3. The Chairman of the Board is entitled to rule out of order a political debate or statement which does not have a clear relevance to the economic considerations related to the subject matter under discussion.²¹

21. *Prohibition of Political Activities Under the IBRD Articles of Agreement and Its*

While these conclusions clearly indicate that, as a general principle, the Bank, including its Executive Directors, may not take into account political considerations, they do suggest that there are political situations which have effects on the country's economy or on the feasibility of project implementation or monitoring which should therefore be taken into account. Human rights may, under this opinion, become a relevant issue but the degree of respect paid by a government to human rights cannot by itself be considered an appropriate basis for the Bank's decision to make loans to that government or for the voting of its Executive Directors. As Professor Reisman observed, "there is a limit to 'institutional elasticity', i.e., the extent to which institutions created and still used for other purposes can be 'stretched' in order to get them to perform human rights functions, especially when those functions are accomplished *at the expense* of their manifest functions."²² Ignoring the limitations to this "institutional elasticity" could only be detrimental to the Bank and its members as a whole. This is especially true in matters where views differ sharply and political prejudice often colors the judgment of governments. While a loan to an authoritarian government may be seen as a form of support to that government, a development loan from the World Bank to a member country which is made to finance or facilitate investments and thereby improve the people's standards of living casts a different light. Arguably, if a loan is rejected solely on the basis of the authoritarian and suppressive character of the government involved, the result may only add another injury to the country's population who already the victims of actions of their own government and the inaction by the Bank. Further, such a decision would violate the explicit language of the Bank's Articles.

Sir Joseph Gold, the former General Counsel of the International Monetary Fund (IMF), recently commented as follows:

Noneconomic considerations, particularly of a powerful moral character, may make decisions on some occasions appear, to some or even many members, to be applications of the maxim *dura lex sed lex* (hard law, but law). If some application of the law of the Fund is too hard to be acceptable to the membership, procedures for amendment exist under the Articles. The organs of the Fund, such as the Executive Board, are not authorized to adopt avowed amendments or decisions that have a similar though unavowed effect. The organs of the Fund, unlike to organs of some other international organizations, have not been granted the power to amend the treaty that governs the Fund. Members have reserved that power for themselves and have agreed on how it shall be exercised. They have required high majorities of their number and voting power to change the rules by which they have undertaken to be governed. The power may not be usurped

Relevance to the Work of the Executive Directors, sec. M87-1409, at 8 (Dec. 23, 1987) (unpublished World Bank doc.).

22. Reisman, *Through or Despite Governments: Differentiated Responsibilities in Human Rights Programs*, 72 *IOWA L. REV.* 391, 395 (1987).

by the organization created by members to administer the rules.²³

The importance of maintaining the apolitical character of international financial institutions takes on an additional dimension in the case of those, such as the Bank, which rely in the funding of their operations on borrowing from private markets, as the latter obviously have a clear stake in the management on sound business principles of the funds they provide.²⁴ As the Bank increases its "policy-based" lending and policy-related conditions abound even in its specific project loans, it becomes all the more important to emphasize the apolitical character of the Bank. The Bank's dialogue with borrowing governments would obviously be greatly undermined if these governments were to doubt the Bank's objectivity or to see its conditionality as simply a reflection of certain political interests or views.

III. HUMAN RIGHTS PROMOTED BY THE BANK'S OPERATIONS

While the preceding remarks have shown that there are limits on the possible extent to which the World Bank can become involved with human rights, especially those of civil and political nature, the Bank certainly can plan, and has played, within the limits of its mandate, a very significant role in promoting various economic and social rights. This should become clear from the following discussion of human rights in which the Bank's role is particularly noteworthy.

A. *Right to Development*

The "right to development" was proclaimed by the U.N. General Assembly in a Declaration adopted on December 4, 1986.²⁵ Article 1, paragraph 1 of this Declaration states:

The right to development is an unalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural, and political development, in which all human rights and fundamental freedoms can be fully realized.

Article 2, paragraph 1 provides:

The human person is the central subject of development and should be the active participant and beneficiary of the right to development.

Article 4 reads:

23. Sir Joseph Gold, *Political Considerations Are Prohibited by Articles of Agreement When the Fund Considers Requests for the Use of Resources*, INT'L MONETARY FUND SURV. 146, 148 (1983). Sir Joseph concluded by reminding his readers that "The swimmer who goes out too far may seem to be waving but is drowning. The Fund that swims out too far, even in a moral cause, will risk drowning. It will have lost the full confidence of its members. It will be less able to promote universal prosperity. That task is the Fund's moral cause."

24. See Kneller, *supra* note 3, at 366.

25. Res. No. 41/128, *reprinted in* 13 COMMONWEALTH L. BULL. 1013 (1987).

1. States have the duty to take steps, individually and collectively, to formulate international development policies with a view to facilitating the full realization of the right to development.
2. Sustained action is required to promote more rapid development of developing countries. As a complement to the efforts of developing countries, effective international cooperation is essential in providing these countries with appropriate means and facilities to foster their comprehensive development.

The right to development as defined in this Declaration is one human right which the World Bank has been promoting throughout its history. In agriculture, irrigation, rural development, industry and various other types of Bank Group financing, the end beneficiaries are the individuals who should reap the benefits of the development brought about by Bank-financed projects. The magnitude of Bank Group assistance for development is reflected in the following. The World Bank has made loan commitments of about \$146.5 billion up to January 31, 1988, while IDA had made commitments of about \$46.6 billion up to that date.²⁶

B. Freedom from Poverty

Some basic human rights such as the right to an adequate living standard, education, nutrition, health, and so forth are often denied by poverty. Thus, the right to the freedom from poverty has been universally recognized.

Article 11 of the International Covenant on Economic, Social, and Cultural Rights (hereinafter the International Covenant) addresses the universal right to adequate standard of living and of the right to freedom from hunger. Specifically, it provides that:

1. The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing, and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international cooperation based on free consent.
2. The States parties to the present Covenant, recognizing the fundamental right of everyone to be free from hunger, shall take, individually and through international cooperation, the measures, including specific programmes, which are needed.

Enunciation of similar rights, as well as of the rights to nutrition, and elimination of hunger, are contained also in the U.N. Declaration on Social Progress and Development of December 11, 1969. Also relevant is the Universal Declaration on the Eradication of Hunger and Malnutrition

26. International Bank of Reconstruction and Development's Jan. 31, 1988 Statement of Loans, at 484; IDA's Jan. 31, 1988 Statement of Development Credits, at 314. The figures cover the total amount of loans and credits committed at the date of commitment and include two billion dollars lent by the Bank to the International Finance Corporation.

adopted on November 16, 1974 by the World Food Conference convened under General Assembly Resolution 3180 (XXVIII) of December 17, 1973, and endorsed by General Assembly Resolution 3348 (XXIX) of December 17, 1974.

In the first operative paragraph of the Universal Declaration, the Conference proclaimed the principle that:

Every man, woman, and child has the unalienable right to be free from hunger and malnutrition in order to develop fully and maintain their physical and mental faculties. Society today already possesses sufficient resources, organizational ability, and technology and hence the competence to achieve this objective. Accordingly, the eradication of hunger is a common objective of all the countries of the international community, especially of the developed countries and others in a position to help.²⁷

The Bank has recognized and focused on eradicating poverty in its lending operations. In the early years of the Bank's operations, it was assumed that if economic growth could be accelerated, poverty itself would be reduced. When it became clear in the 1960s that this was not necessarily the case, "expanding employment and raising the productivity of the poor" were added to the development agenda. The Bank set for itself the goal of raising the poorest groups within its borrowing member countries above the poverty line.²⁸ The Bank sought to achieve this in a number of ways. For example, it began to give strong emphasis to poverty alleviation in its lending program.²⁹ The Bank Group commitments to low-income-group countries, those with per capita annual incomes below \$680, in 1979 increased from 37 percent of the total program before 1968 to 58 percent in the 1979-83 lending program. From 1979 through 1986, in terms of 1984 dollars, the low-income-group countries with per capita income below \$790, received 54 percent of the Bank Group lending. The countries with per capita Gross National Product (GNP) of up to \$400 received 93 percent of IDA lending in fiscal year 1986.³⁰ It should be noted that more than half of Bank Group lending has, since 1969, been to the low-income-group countries and that IDA lending is exclusively to this group, with countries with less than 4400 GNP receiving the bulk, nearly 95 percent, of IDA funds.³¹

Another way in which the Bank tackled poverty alleviation was by increasing its lending to sectors and subsectors which provided the most

27. UNITED NATIONS ACTION IN THE FIELD OF HUMAN RIGHTS, U.N. Pub., 205 U.N. Sales No. E.79.XIV. 6 (1980).

28. IBRD: FOCUS ON POVERTY 2 (World Bank Publ. rev. ed. 1983) [hereinafter FOCUS].

29. *Id.* at 4.

30. FOCUS ON POVERTY, A REVIEW OF BANK OPERATIONS IN FY86 26 (unpublished 1987) [hereinafter FOCUS - A REVIEW].

31. See Beckmann, *The World Bank and Poverty in the 1980s*, 23 FIN. & DEV. 26, 27 (1986).

direct benefit to the poor. Thus, it designed rural development projects and emphasized primary education, health, nutrition, small-scale industry, water supply and waste management, and urban development in its operations. This poverty-oriented, sectoral emphasis increased from five percent in 1968 to 30 percent in fiscal year 1986.³²

The Bank considers agriculture and rural development as central to poverty alleviation. Its lending to this sector reached more than thirteen billion dollars in fiscal years 1970 through 1981. Not only were the poorest countries the beneficiaries of such an increase, but there was greater emphasis on crops most likely to be grown or eaten by the poor.

The Bank also engaged in the more difficult task of tackling urban poverty. Over the last three decades, the urban population of developing countries has increased at the rate of about five percent per annum, nearly twice the rate of the overall population growth of these countries.³³ The population of cities such as Cairo, Calcutta, Mexico City, and Shanghai has surpassed ten million in each case. In 1972 a Bank study noted the growing shortages of shelter, sanitation, and drinking water affordable by the large urban population of developing countries. Under Bank Group lending, the upgrading of existing slums and squatter settlements, and the provision of serviced sites for low-income housing have directly benefited more than two million households through about fifty projects.

It cannot, of course, be maintained that all Bank projects have been equally successful in alleviating poverty. As one Bank study pointed out, in a minority of Bank projects, the landless may have become worse off. "In some instances, financing for combines, tractors, or modern rice mills has reduced employment, thereby adding to rural poverty."³⁴ Some other projects have "ignored the role of women in the production process and, by changing techniques and cropping patterns, adversely affected women's income-earning capacity."³⁵ In the case of urban projects, one study found significant problems, bottlenecks, and delays in the plot allocations.³⁶

It is unfortunately obvious that the great mass of poverty is not likely to disappear in the near future. In fact, despite the national and international efforts, in some regions the trend is disquieting. For example, while incomes have suffered massive decline in the wake of international recession and debt crises in Latin America, unfavorable commodity prices, rapid population growth, and rising debt service payments have contributed to a greater deterioration in Africa. Average per capita real incomes in most of Latin America are no higher now than they were in

32. See FOCUS, *supra* note 28, at 6; FOCUS - A REVIEW, *supra* note 30, at 28.

33. Jaycox, *The Bank and Urban Poverty*, in *THE WORLD BANK AND THE WORLD'S POOREST* 7 (1980).

34. FOCUS, *supra* note 28, at 13.

35. *Id.* at 15.

36. COOPER, *DESIGNING THE SITE AND SERVICE PLOT ALLOCATION PROCESS: LESSONS FROM PROJECT EXPERIENCE* 19 (World Bank publication 1982).

the mid-1970s. In much of Africa, they are back to the level of 1970. It is feared that due to slow growth, poverty may be increasing in some countries of the Middle East as well. In South Asia, the moderate rates of economic growth have not brought about any appreciable change to the poverty picture.

For some time it has been clear to the Bank that, for growth, the countries must make meaningful structural changes in their respective economic policies. It is also clear that past policies with respect to the poor cannot be continued. How the policy-based lending of the Bank is likely to affect the poor is an issue which the Bank is studying in each case with increasing care. All seven structural adjustment operations of fiscal year 1986, and thirteen out of seventeen sector adjustment operations of the same period, include estimates of the effect of adjustment policies on the poor. These operations are designed in such a way as to reduce the adverse effects on the poor as far as possible. The remaining four sector adjustment operations focused primarily on efficient restructuring, and no estimate of their poverty orientation was possible.³⁷

Alleviation of poverty remains at the top of the Bank's development agenda and is now under scrutiny by a special task force in the institution. The Bank intends to work closely with the governments of its borrowing members on finding new and effective ways of involving NGOs, both international and local, as well as the private sector in the poverty eradication efforts.³⁸ The relevance of these efforts cannot be overemphasized, because the enjoyment of a number of basic rights cannot, in many parts of the world, be divorced from eradication of poverty. How to bring this about has become the predominant preoccupation today. Although the Bank has come a long way, it is obvious that the road is still long and narrow.

C. Education

Article 13 of the International Covenant provides that the states recognize the right of everyone to education. Paragraph 14 of the Proclamation of Teheran, adopted at the twenty-seventh plenary meeting of the U.N. International Conference on Human Rights on May 13, 1968, points out that:

The existence of over seven hundred million illiterates throughout the world is an enormous obstacle to all efforts at realizing the aims and purposes of the Charter of the United Nations and the provisions of

37. FOCUS - A REVIEW, *supra* note 30, at 37 *et seq.* See also, Development Committee, PROTECTING THE POOR DURING PERIODS OF ADJUSTMENT (1987), which refers to the establishment of new programs to benefit the poor during adjustment programs supported by the World Bank. For examples of adjustment programs designed to improve prospects for the poor, see Addison and Demery, *Alleviating Poverty under Structural Adjustment*, 24 FIN. & DEV. 41-43 (1987).

38. Address by Barber B. Conable, President of the World Bank and International Finance Corporation, to the Board of Governors, in Wash., D.C. (Sept. 29, 1987).

the Universal Declaration of Human Rights. International action aimed at eradicating illiteracy from the face of the earth and promoting education at all levels requires urgent attention;³⁹

Eradication of illiteracy was at the top of the agenda of many developing countries during the phase of their independence struggle and has remained so during the phase of post-independence economic and social development. In 1970, the General Assembly of the United Nations resolved: "As the ultimate purpose of development is to provide increasing opportunities to all people for a better life, it is essential. . .to expand and improve facilities for education, health, nutrition, housing, and social welfare, and to safeguard the environment."⁴⁰

The Bank Group's involvement in education from 1962 to 1979 has resulted in the financing of 192 education projects in 81 countries. Nearly all subsectors of education are covered by Bank projects. It has lent money for primary, secondary, technical, agricultural, vocational, university, and basic education and rural skill training, adult training, paramedical training, etc.⁴¹ Between 1963 and 1986, the Bank Group financed 284 projects costing more than \$12.1 billion for education. This assistance helped create more than 2.6 million new student trainee places in approximately 21,000 educational institutions, which include 185 universities, 651 teacher training colleges, 2,903 secondary schools, and 18,000 primary schools.⁴² A Bank study in 1983 noted that about five percent of Bank lending was for education. Furthermore, in order to provide the poor with skills to improve productivity, the Bank increased the proportion of lending for primary education to 33 percent of its total lending for education, compared with eight percent in 1969.⁴³ The Bank is also emphasizing the need for improvement in the quality of education.

As in the case of poverty, the magnitude of the problem of illiteracy is also staggering. The numbers of people still without education are overwhelming. Though some economists postulate that a 40 percent literacy rate is the threshold level for a developing country's economic take-off, only half the developing countries have attained a literacy rate of more than 40 percent. For a few African countries, the literacy rate is still within the range of seven to eight percent. The developing world currently has about 2.25 billion people of whom less than one-fifth, about 400 million, may be considered "literate."⁴⁴ Of those remaining, about 522 million are now enrolled in the formal education system. Two hundred

39. HUMAN RIGHTS, *supra* note 8 at 18-19.

40. G.A. Res. 2626, 25 U.N. GAOR Supp. (No. 28) at 41, U.N. Doc. A/8028 (1971).

41. EDUCATION 127-140 (3d ed. 1980) (International Bank of Reconstruction and Development Sector Policy Paper).

42. THE QUALITY OF EDUCATION AND ECONOMIC DEVELOPMENT, A WORLD BANK SYMPOSIUM v (Heyneman & White ed. 1986).

43. FOCUS, *supra* note 28, at 22.

44. A. NOOR, EDUCATION AND BASIC HUMAN NEEDS 4-5 (International Bank of Reconstruction and Development Staff Working Paper No. 450, 1981).

and fifty million children have limited or no access to formal schooling and about 600 million adults have missed the opportunity of formal education. Females constitute about 60 percent of this group. "All this means that, for every person presently enrolled in school in the developing world, there are three people who are waiting in line for access to education and for whom new educational provision needs to be made."⁴⁵ The problem is getting worse as the numbers of people are growing faster than the resources to educate them. The Bank is calling attention to the need to spend more public funds on basic education in developing countries.

D. The Right to Health

Article 12 of the International Covenant recognizes the right of everyone to the enjoyment of the highest attainable standards of physical and mental health. Article 25 of the Universal Declaration of Human Rights provides, in paragraph 1, that:

Everyone has the right to a standard of living adequate for the health and well-being of himself and his family, including food, clothing, housing and medical care and necessary social services. . .

In spite of the importance of sound health and nutrition in the development process, the Bank found that:

despite their importance in broadly based programs for poverty alleviation, the areas of population, health, and nutrition still receive [in 1983] less than 1 percent of the Bank's total lending. Their slow growth in the 1970s suggests that a concentrated effort by the Bank will be required if they are not to be shunted aside in the 1980s because of resource constraints and other pressures on country budget allocations.⁴⁶

After several years of informal activity, the Bank adopted a formal health policy in 1974. However, the Bank Group's health operations were limited to components of projects in other sectors. From 1975 through June 1978, 44 countries received technical and financial assistance through health components of projects in a variety of sectors at a total cost of \$405 million.⁴⁷ The Bank also published a number of studies and established working arrangements with the World Health Organization and with other major bilateral donor agencies.

In spite of the increase in life expectancy in the developing countries in the last three decades, the level remains low compared to the developed countries. Thus, while for the latter it is about 70 years, for Africa it is about 47, for South Asia about 49, and For Latin America about 61 years.⁴⁸ The low level of life expectancy is attributable to the high rate of

45. *Id.*

46. FOCUS, *supra* note 28, at 23.

47. HEALTH 5, 56 (1980) (International Bank of Reconstruction and Development Sector Policy Paper).

48. *Id.* at 10.

infant mortality. In Africa as a whole, the infant mortality rate is over one hundred deaths per thousand births. In Afghanistan this rate is estimated at 269, in Bangladesh at 140, and in India at 122. This may be compared to fifteen deaths per thousand for developed countries as a group, or eight such deaths for Sweden. It should be borne in mind that the mortality rates are much higher for rural areas and that infant mortality is "grossly unreported in most developing countries."⁴⁹ Health care facilities are also abysmally poor in developing countries. For example, there is one physician for every 70,000 people in Ethiopia, or 55,000 for Niger. There is only one hospital bed for nearly 6,600 people in Nepal and Afghanistan.⁵⁰ For the sake of comparison, it may be noted that in West Germany there is one hospital bed for twenty people, and one physician for 520 people.⁵¹ While in countries such as the United States, the public and private health expenditures as a percentage of GNP amount to approximately 6.3 percent. In the mid-1970s in the Philippines they added up to only about 1.9 percent.⁵² However, government expenditures on health in low-income countries seldom exceed two percent of GNP.⁵³

The problem of health cannot be dissociated from adequate nutrition and other "basic needs" such as safe drinking water. The most widespread diseases in developing countries such as intestinal parasitic and infectious diarrheal diseases, as well as poliomyelitis, typhoid, and cholera, spread easily in areas without community water supply systems. There are still some countries where the safe water supply has not reached even five percent of the population.

Regarding nutrition, an earlier study of selected countries showed the following results. In 1974 in Bangladesh, 64 percent of the population consumed below 100 percent of the calories requirement. For the same year in India, 26 percent consumed below this requirement. In 1976, 44 percent of the population in Indonesia consumed below the required calorie intake. For Pakistan, the percentage was 50 in 1972. Only Sri Lanka, among South Asian states, showed a better record for 1971, when the calorie intake was more than what is required.⁵⁴ A recent Bank study examined the prevalence of energy-deficient diets in 87 developing countries using two energy standards. Namely, "below 90 percent of FAO/WHO requirement, which implies "not enough calories for an active working life" and "below 80 percent of FAO/WHO requirement", which is considered as not enough calories to prevent stunted growth and serious health risks. The study concluded that:

If the energy standard adopted is merely enough calories to prevent

49. *Id.* at 12.

50. *Id.* at 79.

51. *Id.* at 82.

52. *Id.* at 85.

53. *Id.* at 37.

54. NUTRITION AND FOOD NEEDS IN DEVELOPING COUNTRIES 36 (IBRD Staff Working Paper No. 328, 1979).

stunted growth and serious health risks, an estimated 340 million people, or a sixth of the people in eighty-seven developing countries, had energy-deficient diets. If the standard is enough calories for an active working life, some 730 million people, or a third of the people in the same countries, lived with dietary deficits. Most of these people — four out of every five — were in low-income countries. This higher figure is the better guide to the harm that inadequate diets impose on development.⁵⁵

Another study carried out by the Bank suggested that “there are powerful arguments for monitoring health and nutritional status in surveys of living standards, particularly if the studies are carried out in developing countries. . . Clearly, no assessment of the quality of life would be complete without including health and nutritional data.”⁵⁶

For the past few years, the Bank has started financing separate health projects and is placing more emphasis on primary health care and preventive measures. Although multisectoral nutrition projects have proved hard to administer, Bank projects and policy work, notably in Brazil, Colombia, and Indonesia, have raised the priority of nutrition in the national policies. The goal of universal access to basic health services by the year 2000 accepted by most governments, will require a major effort. The Bank is endeavoring to deliver its share. From fiscal years 1970 to 1979, the Bank Group lent approximately \$340 million in the areas of population, health, and nutrition under twenty-one projects. From 1979 to the end of fiscal year 1987, the Bank Group lent an additional \$1.2 billion under another 45 projects.

E. Women in Development

From around the beginning of this century, women's rights have been a concern of international conventions and conferences. Before the League of Nations was established, attempts were made to deal with conflict of laws relating to such matters as marriage and divorce and the suppression of traffic in women. An idea of the range of issues covered by international endeavors can be deduced from the following examples: equality of rights with men, prohibition of discrimination, protection of women and children in emergency and armed conflict, political rights of women, nationality of married women, minimum age for marriage, participation of women in public life at the national and local levels, property rights, inheritance, improvement of the status of the unmarried mother, prohibition against discrimination in education, women in rural areas, and women in development. For this article, the discussion will be confined to the integration of women in the development process, a subject of

55. POVERTY AND HUNGER, ISSUES AND OPTIONS, FOR FOOD SECURITY IN DEVELOPING COUNTRIES 17 (1986) (World Bank Policy Study).

56. MARTORELL, NUTRITION AND HEALTH STATUS INDICATORS: SUGGESTIONS FOR SURVEYS OF THE STANDARD OF LIVING IN DEVELOPING COUNTRIES 3 (IBRD Working Paper No. 13, 1987).

growing concern in the Bank's work.

Article 8 of the Declaration of Right of Development states: "Effective measures should be undertaken to ensure that women have an active role in the development process." Article 10 of the International Covenant highlights the family as a unit and requires that "special protection should be accorded to mothers during a reasonable period before and after childbirth." Paragraph 15 of the Proclamation of Teheran also deals with women.

Women are disadvantaged by tradition in a great many societies. The discriminatory treatment often finds sanction often in custom or religious tenets, but also in legislation. They have to fight against heavy odds to be gainfully employed at non-discriminatory wages and to share in the benefits of the development process, be that for credit, housing, education, or other basic needs. At times, the bias against women is so strong in a country's culture, that those who fight against it are disdained by the majority of men and women alike.

In recent years, the Bank has been fairly active in developing programs and projects for women. The challenges to the Bank in this area are formidable. Studies on women's role are few and far between. Some statistics, while giving a reasonable composite picture of women's role in the labor force, appear to undercount women's participatory role.⁵⁷ Some of them highlight the complexity of the problem. For example, one such study in the field of Agricultural Extension of three states in India points out that "women's role in the field of agriculture varies with caste, tribe, economic strata, influence of cities or urban situation, presence or absence of male head of families, age, marital status, authority and hierarchical pattern in the families, capabilities, etc."⁵⁸ In Kenya, where women play an important role in agriculture, they "rarely own land,"⁵⁹ which may prevent their access to credit. A study of Nepalese women also points out the dependence of women on land owned by males, due to the prevalent patrilineal system of inheritance.⁶⁰ Barber Conable, the President of the World Bank, summed it up in his first annual speech before the Board of Governors when he said,

Women do two-thirds of the world's work. Their work produces 60 to 80 percent of Africa's food, 40 percent of Latin America's. Yet they earn only one-tenth of the world's income and own less than 1 percent of the world's property. They are among the poorest of the world

57. Berger and Horenstein, *Integrating Concerns for Women into the World Bank's Indonesia Program*, I.C.R.W. (Mar. 1987) (unpublished).

58. This statement was made by Dr. Krishna Mahapatra in an unpublished and undated draft entitled "Role of Women in Agricultural Extension Program: A Review."

59. *Broad Assessment of Kenya's Development Objectives and Ways to Further those Objectives by Assisting Women* (unpublished World Bank document, available at World Bank headquarters).

60. M. ACHARYA AND L. BENNETT, *WOMEN AND THE SUBSISTENCE SECTOR: ECONOMIC PARTICIPATION IN NEPAL 44-46* (IBRD Sector Working Paper No. 526, 1983).

poor.⁶¹

The Bank Group's approach to women in development is still in the formative phase. A recent example is the Agricultural Development Project in Imo State of Nigeria where the Bank is promoting a "package" which involves cassava, late maize, and cowpeas which are overwhelmingly "women's crops," and efforts are underway for a "dramatic increase" in extension contact with female farmers.⁶² The Second Borgou Rural Development Project in Benin also includes assistance to women's groups for food crops and processing. The Agricultural Extension Project in Togo will study the role and contribution of women in agriculture and rural development. The Bank has been working to develop practical ways of reaching women farmers in other countries. The development of women's access to credit and of entrepreneurship among them are also a major focus of the Bank. In the case of Bangladesh, consideration has been given to the training of women, strengthening of research-extension services for rural women's cooperatives, supporting rural women's group participation in small business ventures, development of experimental projects for promoting women's cooperatives, for savings mobilization and group loans for small businesses, establishing a banking facility offering daily and weekly loans along the lines of the People's Bank in Sri Lanka, and the promotion of female education opportunities.⁶³

Education poses a special problem in respect to women. In the rural areas of Pakistan, only six percent of women are literate.⁶⁴ The female literacy rate in Bangladesh, at about thirteen percent, is around half that of males.⁶⁵ In Papua, New Guinea, enrollment of girls has lagged behind that of boys at a rate of about 2 to 3 because girls are normally kept at home to care for younger children and perform other tasks. Many parents in rural areas of the highland provinces do not wish their daughters to be educated because of perceived negative effects on the matrimonial eligibility of educated girls.⁶⁶ Thus, Bank projects, such as a recent one in Papua New Guinea, thus are aimed at improving the enrollment ratios for girls.⁶⁷

At times, the Bank has specified that a certain percentage of benefi-

61. Address, *supra* note 38, (Sept. 30, 1986).

62. R. L. Blumberg, Through the "Window of Opportunity": Enhancing the World Bank's Agricultural Development Project in Imo State, Nigeria, by Enhancing Extension and Incentives for Women Farmers (Oct. 1986) (unpublished World Bank draft document, available at World Bank headquarters).

63. J. Jiggins, Outline of a Programme to Strengthen Women's Economic Contribution (Mar. 1987) (unpublished World Bank document, available at World Bank headquarters).

64. B. Herz, Women in Development (May 11-12, 1987) (unpublished World Bank document, available at World Bank headquarters).

65. Promoting Economic Opportunities for Women (unpublished and undated World Bank document, available at World Bank headquarters).

66. P. R. on a Proposed Loan and Credit to Independent State of Papua, New Guinea for a Primary Education Project (Dec. 1, 1980).

67. *Id.* at 18.

ciaries of the projects financed by it must be women.⁶⁸ Special emphasis is also being placed on the monitoring and evaluation of the impact of projects on women.⁶⁹

In connection with the subject of women, mention should be made of the recent Safe Motherhood Initiative. In February 1987, the Government of Kenya hosted an international conference on safe motherhood which was cosponsored by the WHO, the U.N. Fund for Population Activities, and the World Bank. It has been estimated that about half a million women die from pregnancy-related causes every year. Almost 300,000 of these deaths occur in South and West Asia, 150,000 in Africa, 34,000 in Latin America, and 12,000 in East Africa developing countries as against 6,000 in all developed countries. The magnitude of this tragedy is simply staggering if one bears in mind that women who die in the childbearing period leave, on average, two or more children.⁷⁰ The Safe Motherhood Study carried out by the Bank firmly holds that most maternal mortality can be prevented by a "system" approach to health care in conjunction with broader development measures to improve the health status, education, and incomes of women.

The Bank's firm commitment to women in development has been enhanced under its present management. There is little doubt that the Bank's increased emphasis on this subject is going to strengthen the effectiveness of the Convention concerning Equal Remuneration for Men and Women Workers for Work of Equal Value, adopted by ILO on June 29, 1951, as well as further the general objectives and some specific provisions of the U.N. General Assembly Declaration on the Elimination of Discrimination against Women of November 7, 1967.

F. Refugees

Another major human problem which falls within the activities relation to human rights is that of the refugees which shows no signs of abatement. In 1985, the total number of refugees was estimated at 10,069,700.⁷¹ Of this number, more than nine million refugees have sought asylum from thirteen developing countries. The highest concentrations of refugees is generally in the poorer countries. At present, Pakistan has 2.8 million, the Sudan over one million, and Somalia over half a million. While some refugee problems have been solved over time, such as those of the refugees in India from the former East Pakistan, others, like those of Palestinian refugees, have defied solutions for decades. The tragic human suffering of the refugees and the enormous economic burden that the

68. See, e.g., Uganda: Southwest Regional Agricultural Rehabilitation Project (negotiated but not signed).

69. See, e.g., Malawi: Smallholder Agricultural Credit Project, Credit (No. 1851) (signed Dec. 22, 1987).

70. HERZ AND MEASHAM, *THE SAFE MOTHERHOOD INITIATIVE, PROPOSALS FOR ACTION 3* (IBRD Discussion Paper No. 9, 1987).

71. *THE WORLD ALMANAC* 634, 635 (1987).

countries of asylum have to carry scarcely need emphasizing. By June 1984, the UNHCR had, through its programs, assisted Pakistan to the extent of about \$79 million, Somalia \$39 million, Thailand \$33 million, and Sudan \$30 million.⁷²

The international law relating to refugees is primarily contained in the 1951 Convention Relating to the Status of Refugees and the 1967 Protocol Relating to the Status of Refugees.⁷³ Article 17, paragraph 1 of the 1951 Convention states that: "The Contracting States shall accord to refugees lawfully staying in their territory the most favourable treatment accorded to nationals of a foreign country in the same circumstances, as regards the right to engage in wage-earning employment."

As an example of the Bank's role in alleviating the problems of refugees, the Bank assisted Pakistan in providing work opportunities to the refugees and the local population under a project identified in 1982. To implement this project, the Bank and UNHCR entered into a memorandum of understanding for further cooperation; the Bank appraised an "Income-Generating Project in Refugee Areas" for Pakistan, prepared all documentation required for the negotiations, and negotiated the agreement on behalf of the UNHCR. All funds provided by the donors for the project were transferred to the Bank.⁷⁴ UNHCR entrusted the administration of these funds, as well as the supervision of the project, to the Bank. An agreement for a second project, along similar lines, was recently concluded between the UNHCR and Pakistan.

G. Environment

The close relationship between the environment, human rights, and development has been recognized since the early 1970s. However, the 1972 U. N. Conference on the Human Environment focused attention on the subject and emphasized the right of all human beings to a healthy and productive environment, including the right to adequate food, sound housing, and safe water. The 1972 Conference adopted the Declaration on the Human Environment and an "Action Plan" for the protection and enhancement of the environment. It has been noted that,

This Declaration may be regarded as doing for the protection of the environment of the earth what the Universal Declaration of Human Rights of 1948 accomplished for the protection of human rights and fundamental freedoms, that is to say it was essentially a manifesto, expressed in the form of an ethical code, intended to govern and influence future action and programmes, both at the national and interna-

72. Lee, *The Right to Compensation: Refugees and Countries of Asylum*, 80 AM. J. INT'L. L. 532, 551 (1986).

73. 1951 Convention Relating to the Status of Refugees, 189 U.N.T.S. 150 (1954); 1967 Protocol Relating to the Status of Refugees, 606 U.N.T.S. 267 (1967).

74. Memorandum of Understanding between the International Bank for Reconstruction and Development and the Office of the United Nations High Commissioner for Refugees (Oct. 1982) (unpublished World Bank doc.).

tional level.⁷⁵

Indeed, since the Conference, a spate of international agreements have been entered into. Legislation and other forms of law establishing governmental institutions for the purpose of the protection, management, and enhancement of the environment have also been passed in many countries.⁷⁶

Conscious of the environmental dimensions of Bank-financed projects, the Bank created the position of Environmental Adviser in 1970. More importantly, as is recognized by the Brundtland Commission,⁷⁷ the Bank was the first multilateral development institution to issue guidelines to its staff for dealing with environmental issues raised in the formulation, appraisal, and execution of projects. These guidelines were later expanded into a booklet⁷⁸ which was made available to economic development agencies, governments, universities, and other public and private institutions. In addition, the Bank was in the forefront of the adoption of a declaration of environmental policies and procedures relating to economic development which was also adopted by almost all the multilateral development agencies⁷⁹, the EEC, the Organization of American States, the United Nations Development Program and the United Nations Environment Program. The most important part of the declaration, paragraph 4, states that the institutions should support project proposals that are specially designed to protect, rehabilitate, manage, or otherwise enhance the human environment, the quality of life, and resources thereto related.

There are various tenets related to human rights which underlie the Bank's guidelines and its operational policies which have evolved over several years. The most relevant one for this purpose is that the Bank endeavors not to finance projects which cause severe or irreversible environmental or natural resource deterioration or unduly compromise public health and safety or that displace people or seriously disadvantage certain vulnerable groups without undertaking mitigatory measures acceptable to the Bank.⁸⁰ Thus, in all its projects, whether in the agriculture, energy, industry, urban development, and transportation sectors, the Bank assesses the possible impact of the project on the environment, including the public health and welfare so as to mitigate its effects.

75. J. STARKE, *INTRODUCTION TO INTERNATIONAL LAW* 386 (9th ed. 1984).

76. *Register of International Treaties and other Agreements in the Field of the Environment*, UNDP/GC/Information/11/ Rev. 1. (Nairobi) (1985). See also, UNEP, *DIRECTORY OF PRINCIPAL GOVERNMENTAL BODIES DEALING WITH THE ENVIRONMENT* (1985).

77. *Our Common Future*, 337-338 (report by the Brundtland Commission) (1987).

78. *Environmental, Health, and Human Ecological Considerations in Economic Projects* (World Bank publication, 1972).

79. African Development Bank, Arab Bank for Economic Development in Africa, Asian Development Bank, Caribbean Development Bank, and Inter-American Development Bank.

80. See *Environment and Development*, at 32-35 (World Bank Publication, Nov. 1979).

One or two projects are illustrative of the Bank's role. In the Environmental Control Project in Singapore, the Bank financed the construction of an incinerator for domestic and commercial waste. Specific safeguards were included in the project design to ensure that emissions from the plant complied with the Clean Air Act of Singapore. In addition, the design included noise abatement features. More importantly, adequate monitoring procedures were established to ensure that the operation of the facility would continue to be safe. In the Valesul Aluminium Project in Brazil involved the construction of an aluminium smelter. In that project, the main sources of pollution were identified the facilities to be constructed were designed to incorporate pollution abatement equipment in order to avoid a potentially adverse effect on the highly populated areas near the proposed plant. The pollution abatement feature was included in the project even though Brazil did not have detailed pollution control regulations. In this particular case, the Bank was instrumental in stalling start-up operations when the pollution control equipment failed. The project went into operation only after the problem had been remedied. In short, the Bank takes seriously the possible effects of the projects it finances on the human environment consistent with its operational policies and paragraph 4 of the above mentioned declaration of environmental policies and procedures. It should be noted in these projects, as in many others financed by the Bank, that the obligations of the borrower in this connection are set forth in covenants in the loan or credit agreement entered into between the Bank and the borrower. These covenants often take the form of specific undertakings requiring completion of specific tasks in addition to the general covenants requiring the project to be carried out with due regard to ecological and environmental factors.

A Bank study reviewing a total of 1,342 loans and credits for the period July 1, 1971, to June 30, 1978, shows that: (i) in 845 of such loans or credits, 63 percent revealed no apparent or potential environmental problem; (ii) in 22 cases, representing 1.6 percent of all loans and credits, some other agency such as U.N. Development Program (UNDP) or WHO had already taken appropriate action in respect to needed safeguards; (iii) in 365 projects, 27 percent of the total, the environmental problems identified were dealt with by Bank staff; and (iv) 110 projects had problems apparently sufficiently serious to require special studies by consultants and incorporation of safeguard measures as a condition of lending.⁸¹

Under its new organization, the Bank has established a full-fledged Environment Department as well as environmental units in each of its regional offices to assess the environmental impact of each project proposed to be financed by the Bank and to monitor each project's progress to determine the accuracy of Bank forecasts of the environmental impact. The Bank is also engaged in a review of the legal and institutional framework for environment and natural resource management in several coun-

81. *Id.* at 9-10, reprinted in World Bank Publication Jan. 1986.

tries with a view to advising on measures that would assist in the implementation of effective governmental programs and projects.

H. Involuntary Resettlement

A problem interrelated with environmental issues and human rights is the involuntary settlement of people that some development projects entail. Involuntary resettlement causes profound social disruption to the individuals concerned. It can also cause serious damage to the environment.

Recently, a good deal of public attention has been accorded to this particular aspect of some Bank-financed projects. Resettlement raises a host of sensitive issues. The right of a State to exploit its natural resources and its right take private property for public purposes, are universally recognized. It is also generally accepted that a State has an obligation to provide, at a minimum, opportunities that would allow for the welfare of its people. Initially, it was understood that the doctrine of "eminent domain" as developed and applied within a State and the provision of compensation for the lost assets could take care of the problem of the affected population. But compensation is by definition only awarded to owners of the lost assets, while the vast majority of the affected population, in both rural and urban areas, is composed of possessors, laborers, or squatters who may not be entitled to any compensation. In addition, compensation, at best, will reflect the market value of the lost assets which may well be below the replacement cost. Moreover, compensation cannot, and is not intended to, fully compensate for the emotional and cultural loss which occurs when people are cut off from their traditional habitat. Nowhere is this more acute than in the case of indigenous classes or the tribal people in whose case there is danger of the extinction of their entire lifestyle. Thus, compensation may not by itself constitute an adequate means to reestablish the standard of living of the affected population and provide for their welfare.

Conscious that balanced development cannot be achieved through the hardship and suffering of a sector of society, the Bank in the early 1980s adopted a policy aimed at avoiding the involuntary resettlement of people in Bank-assisted projects. In cases where resettlement is unavoidable, the objectives of the policy are to lessen, as far as possible, the hardship and stress imposed by forced resettlement and to enable the affected people to acquire, as quickly as possible, living standards that at least match those enjoyed before resettlement. The policy stresses the importance of well prepared resettlement plans, including careful preparatory work with the involuntary settlers, the host community, and their respective leaders prior to the move.⁸² The policy of the Bank is thus that compensation should go beyond cash payments for lost assets, requiring, in

82. See Escudero, *Involuntary Resettlement in Bank Assisted Projects: An Introduction to Legal Issues*, WORLD BANK, LEGAL DEPARTMENT (1988).

addition, measures to permit the actual restoration or improvement of the standards of living of the settlers.

The policy sets forth certain procedures to be followed in Bank-assisted projects causing involuntary resettlement. These procedures require that, as early as the project identification stage, the Bank must discuss with the borrower its policies, plans, or preliminary ideas for the resettlement sites, and the institutional and legal arrangements for planning and executing the resettlement. It is further required that planning and financing of the resettlement should be an integral part of the project that the borrower should agree with the Bank to carry out the resettlement in accordance with plans consistent with the Bank's policy, and that Bank supervision missions should pay careful attention to the implementation of such plans. Since the adoption of its involuntary resettlement policy, the Bank Group has financed nearly fifty projects that involve involuntary resettlement of significant numbers of people.⁸³ Depending on the magnitude of the resettlement involved and because of the importance that the Bank attaches to the resettlement of the oustees, it has in recent years proposed specific projects whose major component is resettlement.⁸⁴

While the task of reconstructing the livelihood of people living within the conventional socioeconomic sectors of society is complex and difficult, the challenge is even greater when dealing with isolated or semi-isolated tribal communities whose way of life differs markedly from that of the wider society. Although "it is not the Bank's policy to prevent the development of areas presently occupied by tribal people,"⁸⁵ the Bank adopted a policy in 1982 requiring it to refrain from assisting development projects that knowingly involve encroachment on traditional territories being used or occupied by tribal people, unless adequate safeguards are provided.⁸⁶ Under this policy, the Bank will only assist projects when the borrower or relevant government agency supports and can implement measures that will effectively safeguard the well-being of tribal people without either perpetuating isolation from the national society or promot-

83. *Id.*

84. For example, the Itaparica Resettlement and Irrigation Project in Brazil, the Mahaweli Ganga Development Projects in Sri Lanka, the Third Dhaka Water Supply Project in Bangladesh, and the Narmada Sardar Sarovar Dam and Power Project in India.

85. R. Goodland, *Tribal Peoples and Economic Development*, (World Bank publication 1982).

86. In dealing with the subject of tribal societies, one encounters a somewhat difficult task in defining them. The Bank's policy defines tribal people as ethnic groups typically with stable, low-energy, sustained-yield economic systems. In an attempt to make the definition more precise, the policy indicates that hunter-gatherers, shifting or semipermanent farmers, herders, or fisherman are examples of tribal people as long as they exhibit certain social, cultural, and economic characteristics representative of unacculturated ethnic minorities. For somewhat broader definitions of tribal and indigenous people, see ILO Convention No. 107 entered into force June 2, 1959, *International Labour Conventions and Recommendations, 1919-1982* at 858 (1982); see also J. Martinez de Cabo, *Study of the Problem of Discrimination Against Indigenous Populations* (U.N. Publication, reissued 1986).

ing forced, accelerated acculturation unsuited to the future well-being of the affected tribal people.

It is no exaggeration to say that the Bank's policies are beginning to have an impact on the policy of its borrowers in respect of involuntary resettlement and tribal people. Even countries whose constitutions take a narrower view of the duty to compensate (e.g., India) have agreed in the context of Bank loans to measures going well beyond their local laws and have enhanced existing policies or adopted new ones along the lines of the Bank's policies. In other cases, Bank-assisted projects have served to promote the enforcement of existing domestic law regarding the treatment of tribal people (e.g., In Brazil and India).

IV. OTHER HUMAN RIGHTS

Thus far this paper has addressed a few basic human rights essentially of economic and social content. The enjoyment of civil and political rights and the accomplishment of economic development both constitute necessary elements for human progress. In this respect, reference may be made to the Proclamation of Teheran of May 13, 1968, which states that:

The widening gap between the economically developed and developing countries impedes the realization of human rights in the international community. The failure of the Development Decade to reach its modest objectives makes it all the more imperative for every nation, according to its capacities, to make the maximum possible effort to close this gap;⁸⁷

The Proclamation goes on to say:

Since human rights and fundamental freedoms are indivisible, the full realization of civil and political rights without the enjoyment of economic, social, and cultural rights, is impossible. The achievement of lasting progress in the implementation of human rights is dependent upon sound and effective national and international policies of economic and social development;⁸⁸

By joining hands with developing countries and other international agencies in the alleviation of poverty, in combating disease, malnutrition, illiteracy, and fighting for the preservation of the environment, in seeking an enhanced role for women in development, and by being partners with these countries in the gigantic task of economic development, the Bank is not only promoting economic and social human rights, but is no doubt playing a catalytic role in creating conditions in which all basic right can develop and flourish. While the Bank is prohibited from being influenced by political considerations, its staff increasingly realize that human needs are not limited to the material "basic needs" often emphasized on the 1970s. Civil rights are also basic to human development and happiness. In

87. Human Rights, *supra* note 39, at 19, para. 12.

88. *Id.* at para. 13.

the view of this author, and of an increasing number of others, no balanced development can be achieved without the realization of a minimum degree of all human rights, material or otherwise, in an environment that allows each people to preserve their culture while continuously improving their living standards.

This is not to suggest in any way that the World Bank should fail to carry out its mandate and deprive the peoples of developing countries of opportunities to achieve a greater measure of economic development simply on the basis of the harsh treatment which their own governments might be inflicting on them. It suggests, however, that the Bank should be concerned with the broad effect of its loans on the welfare of the beneficiary individuals. Human rights violations may in specific cases also have broader implications related to the country's stability and prospective creditworthiness or to its ability to carry out Bank-financed projects, or to the Bank's ability to supervise them, which obviously are factors that the Bank must take into account to the extent they prove relevant in the circumstances of a specific case. The Bank's record in meeting the requirements of economic and social entitlements of the populations of its developing member countries is impressive, in spite of some possible adverse effects on the poor in certain cases. Its efforts regarding the alleviation of poverty and the protection of the poor segments from the adverse effects of adjustment policies are being reinforced at present and should gain greater importance in the years to come.