



WRITTEN SUBMISSION OF

RIGHTS ACTION

AND

THE GLOBAL INITIATIVE FOR ECONOMIC, SOCIAL AND CULTURAL RIGHTS

TO THE

WORLD BANK COMPLIANCE ADVISOR / OMBUDSMAN

RELATED TO THE

CORPORACIÓN DINANT LOAN (HONDURAS)

CAO REF. CODE C-I-R9-Y12-F161

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I. THE WORLD BANK COMPLIANCE ADVISOR/OMBUDSMAN (CAO) MUST CONSIDER INTERNATIONAL HUMAN RIGHTS IN INTERPRETING THE WORLD BANK'S POLICIES AND DIRECTIVES

1. As a Specialized Agency of the United Nations, the World Bank is obligated not to defeat the purposes of the Charter of the United Nations (UN Charter). Additionally, the World Bank must work to further the objectives of the UN Charter, and of course must not undermine those objectives.¹ This requirement is laid out in Article 59 of the Charter, which mandates that “the creation of any new specialized agencies require[s] accomplishment of the purposes set forth in Article 55.”² The purposes and objectives articulated in Article 55 include, *inter alia*, the promotion of “universal respect for, and observance of, human rights and fundamental freedoms for all.”³ Furthermore, Article 103 of the UN Charter makes clear that “in the event of a conflict between the obligations of the Members of the United Nations under the present Charter and their obligations under any other international agreement, their obligations under the present Charter shall prevail.”⁴ In other words, these UN Charter obligations would trump any contradictory clauses in donor project agreements.

2. The World Bank Inspection Panel has acknowledged that human rights are part of the various policies of the World Bank. For instance, in its statement to the Board regarding the Chad & Cameroon Petroleum and Pipeline Project (2002), the World Bank Inspection Panel stated that it “finds human rights implicitly embedded in various policies of the Bank” and to that extent human rights “is within the boundaries of the Panel’s jurisdiction.” It is hoped that the CAO will reaffirm this position of the World Bank Inspection Panel.

3. Consequently, the CAO should use international human rights law, including the International Covenant on Civil and Political Rights; the International Covenant on Economic, Social and Cultural Rights; the American Convention on Human Rights; and the American Declaration on the Rights and Duties of Man to interpret and define the policies and directives of the World Bank in such a way that those policies and directive further the observance of human rights.

¹ See, e.g., Mac Darrow, *Between Light and Shadow: The World Bank, The International Monetary Fund and International Human Rights Law*, pp. 127-133, Oxford: Hart Publishing, 2003.

² *Id.*

³ Charter of the United Nations, Art. 55(c), *adopted* 26 June 1945, 59 Stat. 1031, T.S. 993, 3 Bevens 1153, *entered into force* 24 October 1945. Other human rights obligations are enshrined in Article 1 and Article 56 of the UN Charter, and these too are binding upon all Member States of the United Nations. Article 1(3) states that the “purposes and principles” of the United Nations is “to achieve international co-operation in ... promoting and encouraging respect for human rights and for fundamental freedoms for all...” While Article 56 states that “all Members pledge themselves to take joint and separate action ... for the achievement of the purposes set forth in Article 55.”

⁴ Charter of the United Nations, Art. 103, *adopted* 26 June 1945, 59 Stat. 1031, T.S. 993, 3 Bevens 1153, *entered into force* 24 October 1945.

II. THE MEMBER STATES OF THE WORLD BANK ARE LEGALLY OBLIGATED TO ABIDE BY THEIR RESPECTIVE HUMAN RIGHTS OBLIGATIONS WITHIN THE CONTEXT OF DECISIONS AND ACTIONS TAKEN AS SUCH MEMBER STATES

4. The International Law Commission (ILC) has addressed the issue of the international responsibility of States for the internationally wrongful act of an international organization. The ILC, in draft articles on the Responsibility of International Organizations, states in Article 1 that the articles apply to the international responsibility of States for the internationally wrongful act of an international organization. Furthermore, the provisionally adopted Article 4 states, *inter alia*, that an internationally wrongful act has occurred when conduct consisting of an action or omission: (a) is attributable to the international organizations under international law; and (b) constitutes a breach of an international obligation.

5. The Articles also recognize that there may be shared responsibility for an internationally wrongful act, in other words while the State in which an internationally wrongful act occurs may also be liable and held accountable for that act, other States that have contributed to that internationally wrongful act share responsibility and consequently can be held accountable. Specifically, Article 16 states that:

A State which aids or assists another State in the commission of an internationally wrongful act by the latter is internationally responsible for doing so if:

(a) That State does so with knowledge of the circumstances of the internationally wrongful act; and

(b) The act would be internationally wrongful if committed by that State.⁵

6. Furthermore, the Articles on Responsibility of States for Internationally Wrongful Acts address violations of preemptory norms, which could include gross violations of human rights.⁶ Article 40 considers serious breaches of preemptory norms as those that involve a gross or systematic failure by the responsible State to fulfill the obligation⁷ in question. And Article 41 addresses consequences for such serious breaches, including cooperating to bring to an end through lawful means any serious breach within the meaning of Article 40⁸ and mandates that no State shall recognize as lawful a situation created by a serious breach within the meaning of Article 40, nor render aid or assistance in maintaining that situation.⁹

⁵ *Id.* at Art. 16.

⁶ The international community has twice stated that forced evictions amount to gross violations of human rights; see UN Commission on Human Rights resolutions 1993/77 and 2004/28.

⁷ *Id.* at Art. 40.

⁸ *Id.* at Art. 41(1).

⁹ *Id.* at Art. 41(2).

7. The Maastricht Principles on Extra-Territorial Obligations were adopted in 2011 by leading international human rights experts and provide a concise restatement of existing customary and conventional international law in the area of extra-territorial human rights obligations.¹⁰ Principle 3 makes clear that “All States have obligations to respect, protect and fulfill human rights, including civil, cultural, economic, political and social rights, both within their territories and extraterritorially”¹¹ and Principle 24 makes clear that extra-territorial obligation to protect includes that “All States must take necessary measures to ensure that non-State actors which they are in a position to regulate, as set out in Principle 25, such as private individuals and organisations, and transnational corporations and other business enterprises, do not nullify or impair the enjoyment of economic, social and cultural rights.”¹²

8. The Maastricht Principles also reaffirm the obligations enunciated in the International Law Commissions draft articles. Regarding State responsibility, Maastricht Principle 11 states that:

State responsibility is engaged as a result of conduct attributable to a State, acting separately or jointly with other States or entities, that constitutes a breach of its international human rights obligations whether within its territory or extraterritorially.¹³

9. Regarding obligations of States as members of international organizations, Maastricht Principle 15 states that:

As a member of an international organisation, the State remains responsible for its own conduct in relation to its human rights obligations within its territory and extra-territorially. A State that transfers competences to, or participates in, an international organisation must take all reasonable steps to ensure that the relevant organisation acts consistently with the international human rights obligations of that State.¹⁴

10. Member States of the World Bank must not only ensure that their decisions and actions don’t result in complicity in human rights violations, but they must also ensure that those decisions and actions actually further the fulfillment of human rights. Maastricht Principle 29 recognizes the requirement under international law that:

¹⁰ The Maastricht Principles are a restatement of law based on existing conventional and customary international law. They were adopted by leading experts from around the world, including a former member of the Human Rights Committee and members and former members of other treaty bodies. Drawn from international law, the Maastricht Principles clarify the content of extra-territorial State obligations to realize economic, social and cultural rights but also explicitly apply to the full spectrum of civil, cultural, economic, political and social rights.

¹¹ Maastricht Principles on Extra-Territorial Obligations of States in the area of Economic, Social and Cultural Rights, Principle 3 (adopted 28 September 2011).

¹² *Id.* at Principle 24.

¹³ *Id.* at Principle 11.

¹⁴ *Id.* at Principle 15.

States must take deliberate, concrete and targeted steps, separately, and jointly through international cooperation, to create an international enabling environment conducive to the universal fulfilment of economic, social and cultural rights, including in matters relating to bilateral and multilateral trade, investment, taxation, finance, environmental protection, and development cooperation.

The compliance with this obligation is to be achieved through, *inter alia*:

- a) elaboration, interpretation, application and regular review of multilateral and bilateral agreements as well as international standards;
- b) measures and policies by each State in respect of its foreign relations, including actions within international organisations, and its domestic measures and policies that can contribute to the fulfilment of economic, social and cultural rights extraterritorially.¹⁵

11. Furthermore, Principle 33 reaffirms elements of the human rights-based approach to development, and is highly relevant to decision-making within IFI governance bodies. Principle 33 requires that:

In fulfilling economic, social and cultural rights extraterritorially, States must:

- a) prioritize the realisation of the rights of disadvantaged, marginalized and vulnerable groups;
- b) prioritize core obligations to realize minimum essential levels of economic, social and cultural rights, and move as expeditiously and effectively as possible towards the full realization of economic, social and cultural rights;
- c) observe international human rights standards, including the right to self-determination and the right to participate in decision-making, as well as the principles of nondiscrimination and equality, including gender equality, transparency, and accountability; and
- d) avoid any retrogressive measures or else discharge their burden to demonstrate that such measures are duly justified by reference to the full range of human rights obligations, and are only taken after a comprehensive examination of alternatives.¹⁶

¹⁵ *Id.* at Principle 29.

¹⁶ *Id.* at Principle 33.

12. Notwithstanding these human rights obligations and the Bank's own policies as informed by human rights obligations, it is also clear that at the time of the first loan dispersal in November 2009 a rights protective context did not exist, as was made evident in the chronic violation by the State of Honduras, as well as the Member States of the World Bank, of their respective obligations to protect life and provide access to justice, prioritizing the realization of rights for the most disadvantaged, marginalized and vulnerable populations of the country.

13. The lack of a rights protective framework for project affected populations was also abundantly evident at the time of the loan dispersal given the existence of a de facto government engaged in large scale violation of the rights of the population of Honduras generally and specifically in the Bajo Aguan region. This was made evident in statements from the Inter American Commission on Human Rights following visits to Honduras conducted 17 to 21 August 2009, whose preliminary findings were published on 21 August 2009 in PR No. 60/09, as well as in the report on that mission approved by the IACHR on 30 December 2009 entitled "Honduras: Human Rights and the Coup de État," and during the 15 to 17 May 2010 visit to Honduras by the IACHR as reflected in the press release PR No. 54/10 dated 19 May 2010, and the report "Preliminary Observations of the Inter-American Commission on Its Visit to Honduras, 15 to 18 May 2010" published 3 June 2010.

14. Dozens of orders were emitted by the IACHR directed to the State of Honduras instructing the State to implement protective measures for journalists, indigenous leaders, labor activists, human rights defenders, campesino activists and others, and the subsequent findings of the IACHR that the State was not adequately implementing the ordered protective measures, which further illustrates the lack of protection for the fundamental rights of the population of Honduras.

15. Further, the IACHR in its statement upon the closure of the 143rd Regular Period of Session on 4 November 2011, expressly addressed the situation in the Bajo Aguan:

The IACHR expresses its deep concern over the serious security situation in the Mesoamerican region. The homicide rates are among the highest in the world, and most of the cases remain in absolute impunity. The IACHR is particularly concerned about the situation in the Bajo Aguán region of Honduras, where 42 individuals affiliated with campesino organizations, as well as a journalist and his spouse, reportedly were killed between September 2009 and October 2011, in the context of an agrarian conflict. In a hearing on this situation, the Commission received information regarding the criminalization of the campesino struggle and the militarization of the area, which has reportedly placed the peasant farmers and human rights defenders in the Bajo Aguán in a state of high risk.

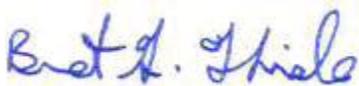
16. Further, in a subsequent statement also issued on 4 November 2011 the IACHR expressed the following concern:

The IACHR also received with concern information indicating that individuals who had planned to travel to participate in the hearings decided not to, apparently for fear of suffering reprisals after having received threats. This reportedly occurred in the case of a member of the Garifuna community who is a beneficiary of precautionary measures, as well as a group of individuals from the Bajo Aguán region, both of these cases involving Honduras.

17. As the above-mentioned international human rights norms demonstrate, these human rights violations that occurred in the context of the Corporación Dinant loan violate the respective human rights obligations of not only Honduras but of the Member States of the World Bank. Consequently, the CAO should find that Member States are in violation of their respective human rights obligations on account of the human rights violations that resulted from the Corporación Dinant loan.

18. Furthermore, the CAO should require that the World Bank do all it can to end these violations and ensure that those responsible are held accountable and that the victims are afforded just remedies and that those victims are allowed to actively, freely and meaningfully participate in any decision related to such accountability and remedies as well as any further projects aimed at development within their territories.

Sincerely,



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