



BRINGING HUMAN RIGHTS CLAIMS TO THE WORLD BANK INSPECTION PANEL

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The World Bank Inspection Panel has explicitly considered human rights issues in several of its investigation reports. This paper reviews and summarizes the Inspection Panel's approach to these issues to provide guidance for affected people and others to raise, in an explicit manner, *human rights-based* concerns in Inspection Panel claims. It should be read in conjunction with several other documents that provide a more general overview of how affected people can use the Panel to seek accountability and redress.¹

Introduction

The World Bank Inspection Panel (the Panel) was created in 1993 to enhance the accountability of the World Bank to people who are affected by its projects and programs. According to its mandate, the Panel may hear claims from any two or more persons “with common interests or concerns” who believe they have been, or are likely to be, harmed as a result of the Bank’s failure to follow its policies and procedures during the design, appraisal and/or implementation of projects.² The Panel does not prescribe remedies or recommend how the policy violations it uncovers should be redressed.

¹ A Citizen’s Guide to the Inspection Panel (<http://www.ciel.org/Publications/citizensguide.pdf>); Strategic Guide: Strategic tips for filing complaints with international financial institutions (http://www.accountabilityproject.org/downloads/strategic_guide.pdf); Gender Justice: A Citizen’s Guide to Gender Accountability at International Financial Institutions (http://www.genderaction.org/images/Gender%20Justice_Final%20LowRes.pdf); Clark, Fox and Treakle, ed. DEMANDING ACCOUNTABILITY: CIVIL SOCIETY CLAIMS AND THE WORLD BANK INSPECTION PANEL (2003).

² “The affected party must demonstrate that its rights or interests have been or are likely to be directly affected by an action or omission of the Bank as a result of a failure of the Bank to follow its operational policies and procedures with respect to the design, appraisal and/or implementation of a project financed by the Bank (including situations where the Bank is alleged to have failed in its follow-up on the borrower’s obligations under loan agreements with respect to such policies and procedures) provided in all cases that such failure has had, or threatens to have, a material adverse effect.” Resolution of the Executive Directors of the International Bank for Reconstruction and Development and the International Development Association, “The World Bank Inspection Panel,” at ¶ 12 (Sept. 1993) <http://siteresources.worldbank.org/EXTINSPECTIONPANEL/Resources/ResolutionMarch2005.pdf>.

Rather, Bank Management proposes remedies and corrective action plans for approval by the Board of Executive Directors.³

The Panel has always been careful to respect the jurisdictional limits on its mandate. It has scrupulously avoided drawing conclusions that relate to matters other than the Bank's compliance with its own policies. For example, when the borrowing country and the Bank have overlapping policy and legal/regulatory obligations, the Panel has endeavored to isolate and evaluate only the Bank's implementation of its policy commitments - avoiding comment on the government's fidelity to its own obligations.⁴

The Panel has only rarely been asked to consider claims that have been framed explicitly in human rights terms. Nevertheless, in its consideration of claims that directly or indirectly raise human rights concerns it has identified four circumstances in which Bank policies and procedures may require the Bank to take human rights issues into account:

1. The Bank must ensure that its projects do not contravene the borrower's international human rights commitments;
2. The Bank must determine whether human rights issues may impede compliance with Bank Policies as part of its project due-diligence;
3. The Bank must interpret the requirements of the Indigenous Peoples policy in accordance with the policy's human rights objective; and
4. The Bank must consider human rights protections enshrined in national constitutions or other sources of domestic law.

Taken together, the Panel's prior treatment of human rights issues opens the door for claimants to incorporate a wide range of human rights-related concerns into their complaints. However, many issues remain to be clarified. One such issue is how the substantive content of the Bank's human rights responsibilities should be defined and interpreted. The Panel has not expressed an opinion about the sources of law and normative standards that Bank Management must take into account to discharge these human rights responsibilities. Nevertheless, the International Bank for Reconstruction and Development's (IBRD's) Articles of Agreement provide a basis for the Panel to conclude that IBRD's interpretation and implementation of its policies must reflect the

³ Unfortunately, the Action Plans developed to respond to Bank failures often do not respond adequately or fully to the Inspection Panel's findings. See Tess Bridgeman, *Accountability to Whom? The Effectiveness of the World Bank Inspection Panel*, Global Economic Governance Working Paper (forthcoming, 2009).

⁴ Thus, in the *Chad: Petroleum Development and Pipeline Project* claim, the Panel limited its discussion of a human rights claim with the disclaimer that "[i]t is not within the Panel's mandate to assess the status of governance and human rights in Chad in general or in isolation..." See: World Bank Inspection Panel, *Investigation Report: Chad: Petroleum Development and Pipeline Project, Management of the Petroleum Economy Project, and Petroleum Sector Management Capacity Building Project*, at ¶ 215 (2002). Similarly, when the Requesters in the *Honduras: Land Administration Project* claim alleged that Bank support for the project would facilitate the government's violation of its treaty-based obligations, the Panel was careful to note that "it is a matter for Honduras to implement the obligations of an international agreement to which it is party and [the Panel] does not comment on this matter." See: World Bank Inspection Panel, *Investigation Report: Honduras: Land Administration Project (IDA Credit 3858-HO)*, at ¶ 258 (2007).

views of specialized international organizations, including internationally-recognized human rights bodies.

A Note on the Use of Precedent in Panel Reports

The Panel has generated a substantial body of interpretation of Bank policies and procedures. As of the spring of 2009, the Panel has considered over fifty Requests for Inspection. Many of these reviews have resulted in a full set of findings and conclusions. Yet it remains unclear how this body of work should affect new cases that come before the Panel. The Panel’s mandate does not specify--and the Panel itself has never clarified--the extent to which it should look to its previous interpretations of Bank policies to guide its work. And as a practical matter, the Panel has rarely referred to its previous findings and conclusions to support its reasoning.

Although the Panel cannot be said to be bound by its prior interpretations, there are good reasons to believe that the Panel will strive to treat new claims like prior ones in the absence of distinguishing circumstances. Consistent interpretation of Bank policies over time serves important institutional values. It increases the predictability of the review process and helps to clarify stakeholder expectations. It also bolsters the Panel’s credibility as an intellectually rigorous, reason-based institution. For this reason, the Panel is likely to be amenable to arguments based on previous Panel findings and conclusions, and claimants will strengthen their arguments by relying on them where possible.⁵

Practice Tip: While the Panel is not bound by its previous decisions, it may be useful to remind the Panel how it has addressed similar issues in previous claims.

1. THE INSPECTION PANEL’S HUMAN RIGHTS-RELATED FINDINGS AND CONCLUSIONS

A. The Bank must ensure that its projects do not contravene the borrower’s international human rights commitments.

1. Discussion: The *Honduras: Land Administration Project* Claim

⁵ In treating its past decisions as persuasive authority, the Inspection Panel would follow the practice common among other international tribunals. These tribunals generally do not adhere to the principle of stare decisis, in which previous decisions are considered binding. However, they often treat past decisions as persuasive evidence of what the law is. For example, Article 59 of the statute of the International Court of Justice provides that “[t]he decision of the Court has no binding force except between the parties and in respect of that particular case.” Nevertheless, the ICJ frequently cites its previous decisions to support its reasoning. Other tribunals such as the European Court of Justice and the European Court of Human Rights also pay close attention to their past decisions. See Damrosch, et al., *International Law*, at 134-35 (4th ed 2002); *Restatement of Foreign relations Law of the United States* (Third), Volume 1, at 37 (1986).

The *Honduras: Land Administration Project* (2007) claim was the first time that the Panel explicitly addressed the merits of a claim based on international human rights law.⁶ The *Honduras Land Administration* claim involved a project to help the Government implement land tenure reforms throughout the country. A key component of the project was a program to survey, regularize, title, and register Ethnic Lands in areas with high concentrations of indigenous peoples.⁷ A community of indigenous Garífuna people brought a claim to the Panel alleging that flaws in the design and implementation of the project would cause them to lose their rights over parts of their ancestral lands and would bring about the demise of their traditional system collective ownership of property.⁸

In addition to arguing that the project violated the Bank's Indigenous Peoples policy and other operational policies, the Garífuna also claimed that it violated the Government of Honduras' commitments under ILO Convention No. 169.⁹ With regard to the ILO Convention claim, the Panel recognized that its mandate is limited to questions of compliance with the Bank's operational policies, and was careful not to comment on Honduras' implementation of its ILO obligations.¹⁰ Nevertheless, the Panel concluded that the ILO Convention provisions were applicable to the Bank through the Bank's operational policy on project appraisal (OMS 2.20), which requires the Bank to ensure that financed activities are consistent with a borrower's international agreements regarding its environment and the health and well-being of its citizens.¹¹ For the Panel, OMS 2.20 created an independent obligation for the Bank to "consider whether the proposed Project plan and its implementation would be consistent with ILO Convention No. 169."¹² In reaching this conclusion, the Panel expressed its "serious concern" with the Bank General Counsel's argument that OMS 2.20 should apply only to international obligations that are "essentially of an environmental nature."¹³

2. Analysis

The Panel's willingness to hear international law-based claims under OMS 2.20 over the concerted objection of the Bank's General Counsel suggests that it would be amenable to hearing other such claims in the future. The Panel's interpretation of OMS 2.20 in the *Honduras Land Administration* claim provides a firm basis for project-affected peoples to raise a wide array of human rights claims. Since a borrower's

⁶ World Bank Inspection Panel, *Investigation Report: Honduras: Land Administration Project (IDA Credit 3858-HO)* (2007).

⁷ *Id.*, at ix.

⁸ *Id.*, at x.

⁹ *Id.*, at ¶243.

¹⁰ *Id.*, at ¶258.

¹¹ OMS 2.20 requires that a "project's possible effects on the country's environment and on the health and well-being of its people must be considered at an early stage... Should international agreements exist that are applicable to the project and area, such as those involving the use of international waters, the Bank should be satisfied that the project plan is consistent with the terms of the agreements."

Id., at ¶¶ 253, 255, citing World Bank, Operational Manual Statement (OMS) 2.20 (Project Appraisal).

¹² *Id.*, at ¶258.

¹³ *Id.*, at ¶ 254.

international human rights commitments inevitably address the “health and well-being of its people,” the Panel’s reasoning should apply to all of a borrower’s human rights obligations.

Human rights commitments that could be applied under the reasoning of the *Honduras Land Administration* Report would include obligations that are set out under the United Nations Charter,¹⁴ international and regional human rights agreements, interpretations of these agreements by competent courts,¹⁵ and obligations that have achieved the status of customary international law.

Practice Tip: The Panel has previously considered a claim under OMS 2.20 that a project has violated the international human rights commitments of the host country. To properly present such a claim to the Panel, claimants should demonstrate how the country’s commitments address the “health and well-being of its people.”

B. The Bank must assess whether human rights issues impede compliance with Bank Policies.

1. Discussion: The *Chad: Petroleum Development and Pipeline Project* Claim

In the *Chad: Petroleum Development and Pipeline Project* (2002) claim, the Inspection Panel addressed whether the Bank was required to consider the overall governance and human rights situation of a borrowing country in designing and implementing its projects. The requesters in the *Chad Petroleum Development* claim alleged that the project was violating unspecified operational directives on governance and human rights.¹⁶ In response, Bank Management insisted that its mandate to consider human rights issues was narrowly circumscribed by its Articles of Agreement. Management argued that since the Articles require the Bank to focus on economic considerations and not on political or other non-economic influences, human rights issues could be relevant to the Bank’s work only if they may have a “significant direct

¹⁴ Virtually all borrowing members of the Bank are signatories to the Charter. Articles 55 and 56 of the Charter impose a broad obligation on all signatories to promote and respect human rights. Article 55 provides:

[T]he United Nations shall promote:

- c. universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.

Article 56 provides:

All Members pledge themselves to take joint and separate action in co-operation with the Organization for the achievement of the purposes set forth in Article 55.

¹⁵ The Inter-American Court of Human Rights, for example, has developed an extensive body of authoritative interpretation of the American Convention of Human Rights.

¹⁶ Inspection Panel, *Investigation Report Chad: Petroleum Development and Pipeline Project, Management of the Petroleum Economy Project, and Petroleum Sector Management Capacity Building Project*, at ¶ 210 (2002).

economic effect on the project.”¹⁷ Since Management believed that the project could achieve its development objectives despite the political repression in Chad, it concluded that it was not required to take human rights into account.¹⁸

The Inspection Panel rejected this narrow formulation. For the Panel, human rights considerations are relevant not only when they have a direct economic effect on the project, but also when they “impede the implementation of the Project in a manner compatible with the Bank’s policies.”¹⁹ Applying this standard, the Panel found that the human rights situation in Chad raised serious questions about the Bank’s compliance with its policies on informed and open consultation.²⁰

2. Analysis

The *Chad Petroleum Development* report establishes that it is not necessary for a claimant to show that human rights concerns may have a significant direct economic effect on the project. Rather, it makes clear that the Bank has a more general obligation to determine whether the human rights situation in a borrowing country may frustrate compliance with its operational policies. The *Chad Petroleum Development Report* also demonstrates the Panel’s willingness to review the adequacy of the Bank’s efforts to address governance and related human rights concerns that could impact implementation of a project in a manner compatible with Bank policies.

As in the *Chad Petroleum Development* claim, the human rights violations that are most likely to impede the Bank’s compliance with its policies are those related to political repression and denial of participatory rights, since those rights are inexorably linked to Bank policies on free and open consultation and participation. But similar linkages between other human rights concerns and bank operational policies may also trigger the Bank’s obligation to consider human rights. For example, the Bank’s Involuntary Resettlement Policy (O.P. 4.12) requires that particular attention must be paid to the needs of vulnerable groups among those displaced, including women and ethnic minorities.²¹ It seems clear that the Bank should assess the borrower’s record of respecting gender and minority rights to assure compliance with this provision.

Practice tip: The Panel has considered whether Management to appropriate steps to ensure that human rights concerns do not impede the implementation of the project in accordance with Bank policies. To properly raise this issue, claimants should demonstrate how the human rights situation has compromised compliance with specific Bank policies.

¹⁷ *Id.*, at ¶ 212.

¹⁸ *Id.*

¹⁹ *Id.*, at ¶ 215.

²⁰ *Id.*, at ¶ 217.

²¹ World Bank, *Operational Policy 4.12: Involuntary Resettlement*, ¶ 8 (Dec. 2001).

C. The Bank must interpret the requirements of the Indigenous Peoples policy in accordance with the policy’s human rights objective

1. Discussion: The *China: Western Poverty Reduction Project* Claim.

In the *China: Western Poverty Reduction Project* (2000) claim, the Panel used the human rights objectives of the Indigenous Peoples policy as a guide in interpreting its substantive provisions. At issue in the *China: Western Poverty Reduction* claim was the Qinghai component of the project, which would voluntarily resettle over 50,000 poor farmers to lands that would be watered by a new irrigation project.²² The Requesters claimed that ethnic Tibetan and Mongolian peoples living in the “move-in” areas would be harmed by the project, and that those harms could be attributed to the Bank’s failure to comply with its policies and operational procedures.²³ A critical issue in the claim was whether the Bank had prepared an Indigenous Peoples Development Plan (IPDP) as required by the Indigenous Peoples Policy (OD 4.20). Management agreed that an IPDP was required for the Qinghai Project, but contended that the Project as a whole constituted the IPDP because a majority of the Project’s beneficiaries were indigenous minorities.²⁴

The Panel refused to accept this interpretation. It noted that Management’s reading would allow the project to subvert the development aspirations of indigenous peoples in the “move-in” area in favor of providing benefits to the much larger population of other indigenous peoples from the “move-out” area.²⁵ For the Panel, this would be inconsistent with the objectives of the policy “...to ensure that the development process fosters full respect for [indigenous peoples’] dignity, human rights, and cultural uniqueness...” and to “ensure that indigenous peoples do not suffer adverse effects during the development process..., and that they receive culturally compatible social and economic benefits.”²⁶

2. Analysis

In July 2005, the Bank replaced OD 4.20 with a new Indigenous Peoples policy (OP/BP 4.10). OP 4.10 includes a slightly revised statement of objectives that explains that the policy “contributes to the Bank’s mission of poverty reduction and sustainable development by ensuring that the development process fully respects the dignity, human rights, economies, and cultures of Indigenous Peoples.”²⁷ This purpose statement is

²² World Bank Inspection Panel, *Inspection Report: China: Western Poverty Reduction Project* (Credit No. 3255-CHA and Loan No. 4501-CHA), at xii (2000).

²³ *Id.*, at xiii.

²⁴ In support of this interpretation, Management cited paragraph 13 of the Indigenous Peoples policy, which provides, “... When the bulk of the direct project beneficiaries are indigenous people, the Bank’s concerns would be addressed by the project itself and the provisions of this OD would thus apply to the project in its entirety.” *Id.*, at ¶ 271.

²⁵ *Id.*, at ¶ 275-76.

²⁶ *Id.*, at ¶ 280.

²⁷ World Bank, *Operational Policy 4.10: Indigenous Peoples*, ¶ 1 (July 2005).

somewhat stronger than OD 4.20's, in that it no longer includes the aspirational objective of "fostering" respect for indigenous peoples' dignity, human rights and culture. Rather, the purpose of the policy is now to *ensure* that they are fully respected.

Taken together, the *China Western Poverty Reduction Report* and the revised policy statement provide a firm foundation for indigenous peoples to bring claims based explicitly on the internationally recognized rights of indigenous peoples. The Panel's conclusion that the IPDP requirements of the OD 4.20 must be interpreted in light of the policy's overall objectives should apply with equal force to all of OP 4.10's substantive provisions. Accordingly, claimants may reasonably argue that OP 4.10's objective of "ensuring that the development process fully respects ...human rights" requires the Bank to implement its indigenous peoples policy in accordance with the provisions of international conventions and the pronouncements of the official bodies that have been charged with interpreting those conventions. This would include both the general corpus of human rights law and interpretation, and the body of law and interpretation that applies specifically to indigenous peoples.

Indigenous peoples may strengthen their claims by arguing that international norms and standards provide specific content to OP 4.10's open-ended policy commitments. OP 4.10 addresses issues such as property rights, compensation, access and benefit sharing and rights to participate in decision-making in somewhat general language that could be read to afford Bank Management substantial latitude in interpretation. The *China Western Poverty Reduction Report*, however, suggests that Management's discretion must be exercised within the parameters of internationally recognized human rights norms. Thus, where provisions of the indigenous peoples policy are ill-defined, claimants may invoke more detailed international norms and standards to clarify the boundaries of Management discretion. For example, OP 4.10 provides that the Bank will finance projects only where free, prior and informed consultation with affected indigenous peoples results in their "broad community support." However, the policy does not fully explain what constitutes broad community support or how it is to be achieved. Under the reasoning of the *China Western Poverty Reduction Report*, claimants may argue that in order to be consistent with the human rights objective of the policy, this provision must be understood in accordance with the substantial body of interpretation of the internationally-recognized right to "free, prior and informed consent."²⁸

Practice tip: A goal of the Bank's Indigenous Peoples policy is to ensure that investments respect indigenous peoples' human rights. The Panel has previously used this provision as a guide to interpret ambiguous provisions of the Indigenous Peoples Policy. Indigenous claimants may wish to argue that the Bank must interpret the Indigenous Peoples policy in conformity with international norms and standards regarding the rights of indigenous peoples.

²⁸ See, e.g. *Saramaka People v. Suriname*, Inter-American Court of Human Rights, Judgment of November 28, 2007.

D. The Bank must take into account human rights protections enshrined in national constitutions or other sources of domestic law.

1. Discussion: The *Honduras: Land Administration Project Claim*.

Several Bank policies require Management to take into account the requirements of domestic law in project appraisal and implementation. Operational Policy 4.01 (Environmental Assessment) requires that the environmental assessment of a proposed project take into account "...the country's overall policy framework, [and] national legislation...related to the environment and social aspects..." of the project.²⁹ Bank Procedure 4.01 further elaborates that the Bank must "identify any matters pertaining to the project's consistency with national legislation or international environmental treaties and agreements." Similarly, OP 4.10 (Indigenous Peoples) requires the borrower to conduct "a review...of the legal and institutional framework applicable to Indigenous Peoples"³⁰ as part of its evaluation of the project's social impacts on indigenous peoples.³¹ Finally, OP 7.00 (Choice of Borrower and Contractual Agreements) explains that the Bank "tries to work within existing law to the extent possible."³²

In the *Honduras Land Administration* claim, the Panel noted that Management had an obligation to assess the impacts of the domestic legal framework on the protections afforded indigenous peoples under OD 4.20, the Bank's indigenous peoples policy. That policy required Management to prepare an Indigenous Peoples Development Plan that included "an assessment of (i) the legal status of the groups covered by this OD, as reflected in the country's constitution, legislation, and subsidiary legislation (regulations, administrative orders, etc.); and (ii) the ability of such groups to obtain access to and effectively use the legal system to defend their rights."³³ At issue was whether Bank had properly considered how future regulations implementing a new Land Law might adversely affect the rights and interests of the indigenous claimants under the project. Noting that Bank policies recognize the importance of the legal context in which a Project is designed and implemented, the Panel found that Management was required to analyze how future regulations under the Land Law might affect the implementation of the Project.³⁴

2. Analysis

²⁹ World Bank, Operational Policy 4.01: Environmental Assessment, ¶ 3 (Jan. 1999).

³⁰ *Id.*, at Annex A: Social Assessment, ¶ 2(a) (July 2005).

³¹ World Bank, Operational Policy 4.10: Indigenous Peoples, ¶ 9, (July 2005).

³² World Bank, Operational Policy 7.00: Choice of Borrower and Contractual Agreements, ¶ 14 (Feb. 2001).

³³ World Bank, Operational Directive 4.20: Indigenous Peoples OD 4.20 further explains that "[p]articular attention should be given to the rights of indigenous peoples to use and develop the lands that they occupy, to be protected against illegal intruders, and to have access to natural resources (such as forests, wildlife, and water) vital to their subsistence and reproduction."

³⁴ *Id.*, at ¶ 242.

Taken together, the *Honduras Land Administration* Report and OP 4.01 and OP 7.00 require that when domestic law and Bank policies provide divergent social standards, the Bank must ensure that the project adheres to the standards that are more protective of the rights and interests of claimants. As the Panel explained in the *Honduras Land Administration* Report, Management must determine whether the provisions of domestic law (including proposed amendments and implementing regulations) might undermine the protections provided by Bank policy, and must act to ensure that this does not occur. Moreover, OP 4.01's requirement that the Bank consider the project's consistency with national legislation, and OP 7.00's requirement that the Bank must try to work within existing law mean that provisions of domestic law that do not undermine Bank policies must be respected. Thus, when domestic law provides more robust protections of the rights and interests of claimants than the Bank's policies and procedures, provisions to secure compliance with domestic law requirements must be adopted.

Practice tip: Human rights protections may be enshrined in domestic law or regulations. Claimants may argue that Bank management has an obligation to ensure that projects will comply with these provisions.

2. THE INTERPRETATION OF THE BANK'S HUMAN RIGHTS-RELATED POLICY REQUIREMENTS.

A. Bank Policies Should Be Interpreted in Conformity with the Views of Specialized International Law and Human Rights Bodies.

1. Discussion: Article V, Section 8 of IBRD's Articles of Agreement.

The Articles of Agreement of the International Bank for Reconstruction and Development (IBRD), the World Bank institution that provides loans and development assistance to middle and low income countries, require it to cooperate with and consider the views and recommendations of "international organizations" that have specialized responsibilities in related fields. More specifically, Article V, §8(a) provides: "The Bank, within the terms of this Agreement, **shall cooperate** with any general international organization and with public international organizations having specialized responsibilities in related fields..." (emphasis added). Section 8(b) further provides, "In making decisions on applications for loans or guarantees relating to matters directly within the competence of any international organization of the types specified in the preceding paragraph and participated in primarily by members of the Bank, the Bank **shall give consideration** to the views and recommendations of such organization" (emphasis added).

2. Analysis

Section 8 is intended to ensure that IBRD extends appropriate deference and maintains policy coherence with other international organizations that have particular expertise or authority in related fields. Section 8's requirements that the IBRD cooperate with other international organizations and "give consideration" to their views and recommendations should provide a basis for affected people to use the human rights-related work of other international organizations to strengthen their Inspection Panel claims. In general, Section 8(a)'s "shall cooperate" language suggests that IBRD should support the initiatives of international organizations with specialized human rights responsibilities, and refrain from providing any assistance that would undermine their efforts to achieve their objectives.

The meaning of Section 8(b)'s requirement that IBRD "give consideration" to the views and recommendations of other international organizations will depend upon the nature of the right at issue and the character of the other institution. Where the "views and recommendations" at issue are interpretations of international law that are binding upon the borrowing government—such as a ruling by the Inter-American Court of Human Rights--Section 8(b) must be understood to require IBRD to fully implement the pronouncements of the other institution. This reading is consistent with the Inspection Panel's determination in the *Honduras Land Administration* Report that the Bank may not provide assistance that would put a borrowing country out of compliance with its international obligations. On the other hand, where the views and recommendations at issue are advisory or non-binding, due "consideration" should require IBRD to make a good faith assessment of their substance and relevance and the "authoritativeness" of the other organization on that particular issue.³⁵ Where IBRD decides not to follow these views and recommendations, it should publicly explain its reasoning. In this way, IBRD's fidelity to its charter obligations can be reasonably evaluated, and decision-makers can be held accountable for how the views of other international organizations have been considered.³⁶

International organizations whose "views and recommendations" the IBRD must consider under Section 8 include specialized human rights bodies such as the monitoring committees to the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of Racial Discrimination, and the Convention on the Rights of the Child. These bodies have the mandate to consider compliance with human rights treaties, clarify the meaning, scope and application of human rights norms and assess the human rights situation at a country-level. Under Section V of the Articles of Agreement, the Bank should consider the work of these bodies in all phases of its operations, including project design, appraisal, and oversight; the design of mechanisms

³⁵ For example, the IBRD may be called upon to consider the views and recommendations of a treaty body where the borrowing country is not a Party to the treaty. After due consideration, IBRD may determine that the treaty body's work is not relevant to the project at hand. Or it may decide that the treaty body's interpretation is still relevant despite the fact that the borrower is not a Party to the treaty, because the principle at issue is customary international law, or because it directly implicates the country's economic development.

³⁶ Cass R. Sunstein, *Why Societies Need Dissent* (Cambridge: Harvard University Press, 2003), p. 150.

of public participation and accountability; the development of country strategies; and the interpretation of its operational policies.

On occasion, these entities have expressed views and recommendations that relate specifically to activities of the World Bank. For example, the Committee on Economic, Social and Cultural Rights, established to implement the International Covenant on Economic, Social, and Cultural Rights (ICESCR), has noted that:

“all United Nations organs and agencies involved in any aspect of international development cooperation,” including the World Bank and IMF, “should do their utmost to ensure that their activities are fully consistent with the enjoyment of civil and political rights. In negative terms this means that the international agencies should scrupulously avoid involvement in projects which, for example, involve the use of forced labour in contravention of international standards, or promote or reinforce discrimination against individuals or groups contrary to the provisions of the Covenant, or involve large-scale evictions or displacement of persons without the provision of all appropriate protection and compensation. In positive terms, it means that, wherever possible, the agencies should act as advocates of projects and approaches which contribute not only to economic growth or other broadly defined objectives, but also to enhanced enjoyment of the full range of human rights.”³⁷

The Committee has also found that:

“Every effort should be made, at each phase of a development project, to ensure that the rights contained in the Covenants are duly taken into account. This would apply, for example, in the initial assessment of the priority needs of a particular country, in the identification of particular projects, in project design, in the implementation of the project, and in its final evaluation.”³⁸

³⁷ <http://cesr.org/generalcomment2?PHPSESSID=91...a78f9969da61bd9>

³⁸ Ibid. Additionally, in 1999, this Committee underscored the need for action by IFIs to secure the right to education, highlighting a need for IFIs to adopt a rights-based approach to lending. One such example is General Comment 13, addressing the right to education, in which the Committee on Economic, Social and Cultural Rights noted, “In particular, the international financial institutions, notably the World Bank and IMF, should pay greater attention to the protection of the right to education in their lending policies, credit agreements, structural adjustment programmes and measures taken in response to the debt crisis. When examining the reports of States parties, the Committee will consider the effects of the assistance provided by all actors other than States parties on the ability of States to meet their obligations under article 13. The adoption of a human rights-based approach by United Nations specialized agencies, programmes and bodies will greatly facilitate implementation of the right to education.” Committee on Economic Social Cultural Rights, General Comment 13, The right to education (Twenty-first session, 1999), U.N. Doc. E/C.12/1999/10 (1999), reprinted in *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, U.N. Doc. HRI/GEN/1/Rev.6 at 70 (2003). This Committee, has also underscored the obligation of States, acting through IFIs, to secure the right to health. In General Comment 14, the Committee states, “Similarly, States parties have an obligation to ensure that their actions as members of international organizations take due account of the right to health. Accordingly, States parties which are members of international financial institutions, notably the International Monetary Fund, the World Bank, and regional development banks, should pay greater attention to the protection of the right to health in influencing the lending policies, credit agreements and international measures of these

The International Law Commission (ILC) is another institution with specialized responsibilities whose “views and recommendations” the IBRD should consider in its project decision-making. The International Law Commission is a United Nations body charged with “the promotion of the progressive development of international law and its codification.” It restates and clarifies existing rules of international law, and proposes new ones. The ILC’s views on the requirements of international law are afforded great respect and are considered to be authoritative.

The ILC has undertaken to restate and clarify the responsibilities of international organizations under international law. The Commission’s *Draft Articles on the Responsibility of International Organizations* provide that “[e]very internationally wrongful act of an international organization entails the international responsibility of the international organization.”³⁹ The *Draft Articles* clarify the nature of those responsibilities, including the responsibility to pay damages for harms caused by the organization.⁴⁰ What it means for the Bank to “give consideration to the views and recommendations” of the ILC with regard to its responsibilities under international law will necessarily vary from project to project. But as a general proposition, the Bank should either (1) take appropriate steps to meet the legal responsibilities of international organizations as defined by the ILC, or (2) explain how it has considered the ILC’s views and recommendations, and why it has decided not to adhere to them.

Practice tip: The Bank’s Articles of Agreement require it to give consideration to the views of specialized international law and human rights bodies. Claimants may wish to ask the Panel to investigate how Management has taken these views into account with regard to issues such as the scope and application of human rights norms and the human rights situation at a country-level.

3. CONCLUDING THOUGHTS ON BRINGING HUMAN RIGHTS-BASED CLAIMS TO THE PANEL

institutions.” Committee on Economic Social Cultural Rights, General Comment 14, The right to the highest attainable standard of health. (Twenty-second session, 2000), U.N. Doc. E/C.12/2000/4 (2000).

The Committee on the Rights of the Child similarly urged, in a 2003 report, that “States parties, UN specialized agencies, funds and programmes, the World Bank and regional development banks, and civil society ... adopt a broader rights-based approach to indigenous children based on the Convention and other relevant international standards such as ILO Convention 169.” COMMITTEE ON THE RIGHTS OF THE CHILD, 34th Session, 15 September – 3 October 2003, DAY OF GENERAL DISCUSSION ON THE RIGHTS OF INDIGENOUS CHILDREN

³⁹ United Nations Int’l L. Comm’n, First Report on Responsibility of International Organizations, Art. 3 (March 2003).

⁴⁰ United Nations Int’l L. Comm’n, Fifth Report on Responsibility of International Organizations, Art. 34 (May 2007).

The Inspection Panel's mandate is limited to assessing the Bank's compliance with its own policies and procedures. Claimants therefore should look first to Bank policy as the source of their claim. However, the Panel has considered human rights claims that are directly linked to policy violations. When claimants seek to raise human rights issues, they should be careful to show how alleged violations of their human rights were caused by the Bank's failure to adhere to its own policies

Because the Panel has explicitly considered human rights issues in only a handful of claims, it is not yet clear how far it may ultimately go in allowing human rights-based claims. What is clear, however, is that (1) the Panel's recent cases have already opened the door for affected people to incorporate a wide range of human rights-related concerns into their complaints, and (2) under the Panel's previous decisions, there may be important opportunities for affected peoples to strengthen or augment their complaints by incorporating human rights-based claims. Accordingly, potential claimants may wish to consider the following points:

- A party considering a claim to the Inspection Panel should evaluate whether the harm it has suffered amounts to a violation of its human rights, and whether framing the claim as such will strengthen its claims for accountability and redress;
- In assessing whether human-rights related claims may be available, claimants should first determine whether the harms that they have suffered are addressed in the international human rights commitments and domestic human rights legal provisions of the host country;
- Where the harms the claimants have suffered are the result of being denied access to project information, opportunities for effective consultation, or access to meaningful redress, claimants should consider asking the Panel to determine whether the Bank adequately assessed how the governance and human rights situation in the host country would impede compliance with Bank policies;
- The work of specialized human rights and international law bodies may provide critical support for human rights-based claims. Their interpretations of what human right standards require are authoritative, and claimants should cite them to support their arguments. Moreover, the Panel should be willing to assess whether the Bank properly considered the views and recommendations of these entities in designing and implementing the operations under review;
- To the extent possible, claims should explicitly describe the human right at issue, how it is being impacted or may be impacted, and the Bank action that has caused the harms. It is preferable, but not necessary, to identify the policies and procedures pursuant to which the claim is being filed;

- Claimants should always view potential human rights claims within the context of their broader campaign objectives and strategies.⁴¹ Where it is consistent with these objectives and strategies, Panel investigations may also be used to create an evidentiary basis for bringing claims to other domestic or international human rights bodies. The Inspection Panel has earned a reputation for impartiality and investigative rigor, and its findings may therefore be persuasive in other fora.

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⁴¹ A Citizen's Guide to the Inspection Panel (<http://www.ciel.org/Publications/citizensguide.pdf>); Strategic Guide: Strategic tips for filing complaints with international financial institutions (http://www.accountabilityproject.org/downloads/strategic_guide.pdf); Gender Justice: A Citizen's Guide to Gender Accountability at International Financial Institutions (http://www.genderaction.org/images/Gender%20Justice_Final%20LowRes.pdf); Clark, Fox and Treakle, ed. DEMANDING ACCOUNTABILITY: CIVIL SOCIETY CLAIMS AND THE WORLD BANK INSPECTION PANEL (2003).

Appendix I: Examples of Internationally-recognized Rights that May Be Implicated in World Bank Financed Projects

Examples of rights often implicated in development finance projects include the right to food, the right to health, the right to life, the right to property, the right to an adequate standard of living, among others. The following chart describes the types of activities that most often implicate these rights, as indicated by a recent survey of private sector lending projects.⁴²

Rights	Activities
Right to Food	<ul style="list-style-type: none"> • Activities that pollute land, destroying use for production of food • Community's last usable agriculture land is expropriated • Community is deprived of clean usable water
Right to Health	<ul style="list-style-type: none"> • Health and safety standards appropriate to maintain health, safety, and hygiene are not implemented • Chemicals are not transported, stored, or disposed of in a manner that protects against pollution of land or water • Procedures are not in place to prevent and address all health emergencies and industrial accidents
Right to Life, Liberty and Security	<ul style="list-style-type: none"> • Project activities contribute to environmental damage that significantly threaten the well-being of communities • Security personnel are permitted to overstep their authority and improperly engage in national law enforcement activities
Right to Property	<ul style="list-style-type: none"> • Indigenous peoples fail to benefit monetarily from activities on lands/resources occupied/used by indigenous peoples. • Resources shared by the local community are overused • Free prior informed consent is not obtained from Indigenous Peoples prior to resettlement

⁴² In a recent survey of 60 private sector lending claims, these rights were implicated in most of the claims. See, Herz, Genovese, Herbertson, and Perrault. [The International Finance Corporation's Performance Standards and the Equator Principles: Respecting Human Rights and Remediating Violations?](http://www.ciel.org/Publications/pubifi.html) (August 2008) <http://www.ciel.org/Publications/pubifi.html>.