

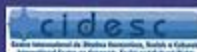
Disrespect TODAY, Conflict TOMORROW

The Politics of Economic, Social and Cultural Rights



Studies in Post-Conflict Cultures 5

Edited by
David Fraser and Graça Almeida Rodrigues



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Critical, Cultural and Communications Press
Nottingham
2009

*Disrespect Today, Conflict Tomorrow:
the Politics of Economic, Social and Cultural Rights*
edited by David Fraser and Graça Almeida Rodrigues

Series: Studies in Post-Conflict Cultures, no. 5
Series Editor: Bernard McGuirk
The books in this series are refereed publications.

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Cover design by Hannibal.

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First published in Great Britain by Critical, Cultural and Communications Press, Nottingham, 2009.

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Publisher's website: www.cccpress.co.uk

ISBN 978-1-905510-12-2 (UK)
ISBN 978-1-60271-012-2 (USA)

First edition

Printed by The Russell Press, Nottingham.

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Rights and Development What Progress at the World's Largest Aid Agency?

Korinna Horta

The issue of human rights traditionally has been associated with international treaties and lawyers seeking to address violations of international law. Today, debate and advocacy about human rights has spread beyond its initial confines to numerous fields of action. Perhaps most importantly, there is now a greater acceptance than ever that human rights play a central role in development. What remains unclear, however, is the extent to which this incremental change in attitude will impact the way Governments allocate an estimated fifty billion dollars (\$50 billion) a year in official development assistance — actually influencing conditions on the ground.

This chapter examines the role of human rights at the World Bank, a specialized agency of the United Nations and the world's largest public financial institution. With a membership of more than 190 countries, the World Bank Group (WBG) sets the tone for development discourse worldwide. The World Bank Group consists of the International Bank for Reconstruction and Development (IBRD), the International Development Association (IDA) which provide support to Governments and its branches providing direct support for the private sector, the International Finance Corporation (IFC) and the Multilateral Investment Guarantee Agency (MIGA). Its policies often represent a model for other multilateral and bilateral aid agencies and, increasingly, for the private sector.

In 2006, the International Finance Corporation, the private-sector arm of the WBG, adopted new environmental and social standards. Such standards are critical to human rights, since poor communities suffer the most when development projects displace them or destroy their natural resource-based livelihoods. Within the WBG, the IFC's new Performance Standards have gone furthest in spelling out human rights objectives.

These standards have become the basis for the "Equator Principles", a set of guidelines that serve as benchmarks for project finance at many of the world's largest private banks, known as the Equator Banks. In 2006 alone, these private banks invested an estimated \$28 billion in emerging markets (IFC 2007).

Separating Rights and Politics?

The World Bank claims that its entire mission of poverty reduction revolves around human rights. It contends that its programmes in areas such as health, agriculture and education contribute to the fulfillment of many rights articulated in the Universal Declaration (World Bank, 1999). However, there is little or no empirical evidence of human rights criteria having influenced World Bank decision-making. As a result, this claim by the Bank can be read as an attempt to preempt real debate on its role in human rights, or as Uvin put it, as a colonization of human rights discourse (Uvin 2004: 51). More optimistically, the incorporation

of human rights into the official discourse may indicate a gradual shift in the World Bank's approach to development—albeit one that can only come to fruition with substantial institutional reforms.

One major stumbling block is the World Bank's disingenuous distinction between politics and development. This approach excludes from financial decision-making considerations of a country's broader political context. The justification for this rests on a narrow interpretation of the institution's charter, known as the Articles of Agreement. The relevant Article states that "only economic considerations shall be relevant" in the World Bank's decision-making (World Bank Articles of Agreement, Art.4, Section 10, amended 1989).

Clearly, it would be undesirable for the World Bank to advocate any particular form of government as a loan condition. However, one might argue that the economic conditionalities of structural adjustment loans — now renamed "development policy lending" — do just that by pre-empting political decision-making on vital domestic policies such as employment and taxes.

In any case, empirical evidence suggests that the distinction between political and civil rights on the one hand and social and economic rights on the other is difficult to uphold. Amartya Sen has succinctly summarized their relationship: "political rights ...are not only pivotal in inducing social responses to economic needs, they are also central to the conceptualization of economic needs themselves" (1999: 154).

Clearly, the broader political environment in a country can support or undermine the World Bank's economic goals of poverty reduction. Shying away from a political analysis may be the polite and diplomatic way of cultivating relationships with borrower Governments, but does little to ensure the effectiveness of the Bank's poverty reduction programmes. It is also inconsistent with the Bank's language, which refers to "empowerment" as central to development (World Bank 2000-1). The way political institutions operate may be particularly unfavourable to poor people. Failure to take the relationship of a state to its citizens into account risks creating large blind spots and will most likely lead to yet another failed development enterprise.

A Legal Opinion Gathering Dust

In early 2006, just before he left the WBG, Robert Dañino, a former senior Vice-President and General Counsel at the institution, brought new life into the debate by publishing a legal opinion intended to clarify the role of human rights in the work of the World Bank (Dañino 2006). In his opinion, human rights and development share important conceptual and practical affinities and are fundamentally linked with one another. He argues that the stipulation that only economic considerations be taken into account is sufficiently flexible to accommodate a host of factors, including social, environmental and political elements that may affect economic growth. Therefore, he notes, it is legitimate to carry out a comprehensive analysis of a country's conditions. According to Dañino's view, the Bank can consider non-economic issues, such as human rights, as long as it is done in a

non-partisan and non-ideological manner and is related to projects the Bank intends to support. Unfortunately, since his departure from the World Bank, Mr. Dañino's legal opinion has been gathering dust. It remains to be seen if it will be brought to light again.

The Doors of Good Governance

In recent years, calls for "good governance" have grown louder in development circles. There is hope that the concept may yet open the doors to integrating human rights concerns into financial decision-making. Research by the World Bank Institute indicates a causal link between political and civil rights and improved socio-economic outcomes (Kaufmann 2004). The same research suggests that components of governance, such as corruption, represent a mediating link between first- and second-generation human rights issues, and determine development outcomes.

How has this research influenced financial decision-making? So far, governance questions have mostly been concerned with ensuring property rights and creating a predictable legal environment for foreign investors. In theory, improved legal systems and similar measures benefit both investors and citizens. In practice, however, the state-centered approach to legal reform as promoted by the World Bank may often be too narrow in focus. It ignores the distribution of political power in a country, and as a result, fails to address the vital question of access to justice by the poor majority. In order to promote the Bank's poverty reduction goals, reforms of a state's legal apparatus must be complemented by legal empowerment of the disadvantaged. Such legal assistance should be an integral part of projects such as large dams and investments in extractive industries or public health (Golub 2005).

What about corruption? The fact that the term has now become common currency in development debates is a positive sign. In practice, however, much remains to be done. Donor Governments and the World Bank continue to be reluctant to sanction multinational corporations based in the northern countries even when there is evidence that they have paid "commissions" (i.e. bribes) to obtain lucrative contracts. For example, it took the World Bank several years temporarily to suspend from its projects two prominent international dam-building companies, even after these companies had admitted to paying bribes in the Bank's Lesotho Highlands Water Project and been convicted in Lesotho courts. In the meantime, the two companies, Acres of Canada, and Lahmeyer of Germany, continued receiving World Bank contracts. The multi-billion dollar water project has impoverished highly vulnerable groups living in the harsh conditions of southern Africa's Lesotho Highlands. They have lost homes, agricultural and grazing lands and sources of fresh water and their livelihoods have not been restored.

World Bank lending for the Democratic Republic of Congo (DRC) presents another disturbing example. More than three and a half million people have died in DRC since 1998 as a consequence of what is being described as the world's current deadliest war. The fighting is largely fuelled by power struggles over control of the country's large wealth in

minerals and timber. The conflict is leading to the wholesale plunder of the country's natural resources, both by Congolese strongmen and by foreign companies taking advantage of the anarchic situation. The World Bank has committed \$3.6 billion since 1991 for the country's reconstruction. But in this context of governance crisis and weak institutions, donor funds have been systematically misused. The World Bank has not made public an audit by its Integrity Department on corruption in DRC, much to the dismay of those in Kinshasa and elsewhere who had hoped for progress in the fight against the debilitating corruption that condemns much of the country's population to extreme misery (*Financial Times*, 8 May 2007).

Extracting Wealth and Generating Poverty

DRC is not an isolated case. Countries rich in natural resources often are worse off than others when it comes to economic and social development. This cruel phenomenon, known as the "resource curse", is the result of poor governance, in which considerations for the environment or social welfare are thrown over board and investments are all about enriching national elites and their foreign corporate partners. Poisoned landscapes, displaced people, loss of livelihoods, corruption and human rights abuses are the hallmarks of many extractive investments.

Investments in the extractive sector represent one area where the WBG is often complicit in human rights violations. In response to public pressure, the World Bank in 2001 commissioned an independent report, the Extractive Industries Review (EIR), with the stated goal of better understanding how support for extractive industries can contribute to environmentally sustainable and socially equitable development. The EIR recommends that the World Bank adopt a clear position on human rights and that it finance extractive projects only in countries where a basic measure of the rule of law and other good governance indicators are already in place (EIR, 2003). Unfortunately, the WBG has rejected these recommendations.

The Chad-Cameroon Oil and Pipeline project presents an unfortunate example of the relevance of the EIR recommendations. At \$4.2 billion, the project represents the single largest on-shore investment in Africa. Despite the fact that the Governments of both Chad and Cameroon were known for severe human rights abuses and pervasive corruption, in 2000 the World Bank agreed to co-finance the project. It was built by an international oil consortium led by ExxonMobil, the world's largest private oil company. The justification for the Bank's support was that oil revenues would be used for poverty reduction. The World Bank made a significant effort to set up a legal framework in Chad that would ensure the transparent management of the oil income. However, these efforts were overturned by Chad's Government as soon as construction of the project was complete. While environmental degradation and impoverishment have come to characterize the oil producing region, the entire country has been made worse off as a result of the project (Horta, 2006). Chad has slipped lower on the United Nations Human

Development Index, and an internal power struggle over control of the oil revenues has led to violent confrontations on Chad's border with the Darfur region of Sudan.

Another example is the IFC-supported Marlin Goldmine in a remote and extremely poor region of Guatemala. In 2004 the IFC contributed \$45 million to the project by Canadian mining company Glamis Gold Ltd. in Guatemala's western highlands, which are home to indigenous Maya people. In its decision to support the project, the IFC did not consider the Guatemalan Government's violations of indigenous rights in the mining area, nor did it react to the violence resulting from community protests against the mine. The IFC's own ombudsman's office concluded that the failure resided in the IFC's lack of a clear policy to address human rights and the use of security forces in light of Guatemala's fragile peace accords and the legacy of its bloody civil war (Bretton Woods Update 2005).

The changing landscape of human rights at the IFC

The 2006 IFC Performance Standards represent clear progress when it comes to labour rights. The IFC standard on "Labour and Working Conditions" incorporates the International Labour Organization's Core Labour Standards, which prohibit the use of forced and child labour and allow the right to organize and to collective bargaining.

Overall, however, the IFC's human rights-related provisions in its Performance Standards remain vague and need to be tested. Testing is all the more necessary since the IFC does not recognize human rights as representing an intrinsic value, but as being instrumental in advancing corporate goals. According to the IFC, consideration of human rights impacts is helpful in terms of risk management and the identification of "value creation" (2005). Optimistically, one might view the instrumentalization of human rights as a marketing tool for the IFC as opening up new space for improved protections. On the other hand, it can be seen as a mere distraction from the fact that a public institution should be obligated to uphold human rights, and that IFC-supported projects should guarantee that human rights are fully respected.

The IFC Performance Standards reflect the preference of businesses for flexible guidelines in other respects as well. For example, the Performance Standard concerning Indigenous Peoples converts the principle of "Free, Prior and Informed Consent" (FPIC), which is grounded in International Law, into "Free, Prior and Informed Consultation leading to Broad Community Support". For example, the International Labour Organization's Indigenous and Tribal Peoples Convention, 1989 (No. 169) refers to the principle of free and informed consent in the context of relocation of indigenous peoples from their land in its Article 16. Article 7 recognizes indigenous peoples' "right to decide their own priorities for the process of development" and "to exercise control, to the extent possible, over their own economic, social and cultural development". The latter represents a substantial weakening of the FPIC principle and leaves ample room for subjective interpretation.

One recent project that raises concern about how the standards might be applied is the Ahafo Gold Mine in Ghana. In 2006 the IFC approved \$125 million to finance Newmont Mining Corporation's open-pit, cyanide processing mine. It will physically and economically displace nearly 10,000 people in its first phase alone, and poses significant environmental and social risks to the local communities. An additional 10,000 small farmers will be displaced by the mine's expansion northwards. There is great concern about the environmental risks and the restoration of livelihoods of the affected communities, yet no independent project monitoring has been put in place.

In addition to the Performance Standards, the IFC has produced a human rights impact assessment (HRIA). This tool is not meant to guide its own financial decision-making but as a further risk management instrument for its corporate clients. While the HRIA may become a useful tool, it was developed without consultation with affected communities or civil society organizations. Furthermore, the IFC has stated that it will take a flexible approach to the HRIA, indicating that it will not apply minimum standards to its clients. As a result, it will be at a company's discretion whether to make use of the HRIA. As a public institution with an explicit development mandate, the IFC should have an obligation to ensure that its private sector clients at the bare minimum avoid complicity in human rights violations. As with the Performance Standards, the effectiveness of the HRIA remains to be tested.

A Possible Way Forward

To date, the WBG's commitment to human rights has been largely rhetorical. But both the legal opinion of former General Counsel Robert Dañino and the IFC's new standards indicate movement within the institution toward becoming more accountable for upholding human rights.

It is not the role of the WBG to use its power as an arbiter or enforcer of human rights. What it must do is integrate a human rights approach into its own policies and programmes. It should begin by effectively implementing its existing safeguard policies, which require transparency and meaningful public participation. For example, the WBG has developed a new strategy of vastly increased lending for infrastructure. As it proceeds, the Bank must fully include the poor in decision-making. Questions about the location for a new road or whether to build a large dam require genuine—as opposed to token—public participation. The Bank's Safeguard Policy on Indigenous Peoples (OP 4.10) is explicit concerning human rights. It states that its broad objective is to ensure that the "development process fosters full respect for the dignity, human rights and cultures of indigenous peoples" (World Bank 2005).

In addition, there is a fundamental area in which the WBG and other international financial institutions must become active. They have to expose and work towards closing down the financial mechanisms that allow an estimated \$500 billion per year to pass out of poor countries and into rich countries (Baker 2005). These flows worsen inequality and

poverty, yet they are off the radar screen in WBG analyses. Surely, this is a difficult topic to tackle given that wealthy groups hold the levers of power and the embarrassing role played by rich countries who are on the receiving end of many of these illicit border transfers. Yet, it clearly is a critical area in which to make headway on the structural violence of deep inequality in much of the world.

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While much attention has been paid to the key roles of human rights mechanisms and questions of the democratic deficit in post-conflict cultures and societies, little importance has been given to the deeper institutionalized legal and social inequalities which breed and enshrine conflict.

Bringing together academic experts and leading practitioners from the disciplines of law, politics and international relations, *Disrespect Today, Conflict Tomorrow* examines the theory and practice of rights discourse in relation to efforts to concretize the normative principles embodied in the 1976 International Covenant on Economic, Social and Cultural Rights and its founding principle of "the inherent dignity of the human person".

The collection critically examines and evaluates the state of economic, social and cultural rights in the world today from "above" (the institutional perspective of various governmental and non-governmental bodies charged with ensuring these rights) and from "below" (through detailed studies of how the varied rights to food, housing, health, and education, for example, are central to building freedom, dignity, citizenship and democracy).

Disrespect Today, Conflict Tomorrow will be of direct interest to scholars and practitioners working in international relations and international law, peace studies and human rights.

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ISBN 978-1-905510-12-2 (UK)
978-1-60271-012-2 (USA)

£14.99 (UK) - \$25.00 (US) - €20.00 (EU)