

**EXAMINING THE HUMAN RIGHTS IMPLICATIONS OF THE POLITICAL  
PROHIBITION CLAUSE OF THE WORLD BANK OPERATIONS IN AFRICA**

**A DISSERTATION SUBMITTED TO THE FACULTY OF LAW OF THE UNIVERSITY  
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## DECLARATION

I, YANKAM LEMDJO FRANCK MAXIME, hereby declare that this dissertation is my original work, and other work cited or used are clearly acknowledged. This work has never been submitted to any University, College or other institution of learning for any academic or other award.

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## DEDICATION

I dedicate this work to God, my creator King, my parents, the persons through whom I was *born*, Mr. Lemdjo Samuel and Mrs. Lemdjo Y. Odette.

My sisters, Mireille, Gaelle, Nadege, Marie and Ines and my brother, Roger are also part of this dedication.

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## LIST OF ABBREVIATIONS AND ACRONYMS

ACHPR	African Charter on Human and Peoples Rights
ACPR	African Convention
ACIDP	African Convention on Internally Displaced Populations
ACHRJ	African Court of Human Rights and Justice
AU	African Union
HRBA	Human Rights Based Approach
IACHPR	Inter-American Commission on Human and Peoples' Rights
IBRD	International Bank for Reconstruction and Development
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
IDA	International Development Association
IFI	International Financial Institution
ILO	International Labour Organisation
NEPAD	New Partnership on Africa Development
NGO	Non Governmental Organisation
OAU	Organisation of African Union
UN	United Nations
WB	World Bank

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# EXAMINING THE HUMAN RIGHTS IMPLICATIONS OF THE POLITICAL PROHIBITION CLAUSE OF THE WORLD BANK OPERATIONS IN ARICA

## CHAPTER ONE: INTRODUCTION

### 1.1 Background of the study

The studies on the liability or the human rights obligations of International Financial Institutions (IFI) appear to be quite limited. The reasons might be due to the following considerations related to the definition of the scientific domain under which IFI were considered to belong to.

Historically excluded from the field of Public International law, IFI have been considered as part of International Economic Law. Public International Law organises rules governing the relations between States<sup>1</sup> and the inclusion of non-states actors like International Organisations in this field was limited to those whose role or activities had implications on the distribution of the well-being (justice and fairness) in the International Human Society.<sup>2</sup> Therefore, IFI were exclusively analysed in an International Economic Law perspective with the justification that their relations with States including their impartial purpose of borrowing loans to States, implied that IFI were International Institutions that are existing without necessarily having obligations under International Law. Reason why the international human rights obligations of international organisations has been a contested concept.

Nevertheless, the first actors of IFI are States; therefore the rules governing its relations with States, subjects of international law, could not escape the rules and principles of international law. Hence, IFI could no more being impartial financial institutions since their role to support financially States in various infrastructural development projects as well as the production of other facilities encounter the realisation of human rights enshrined in the International Bill of Rights but also in regional human rights conventions which States are also parties to.

Hence, it is not obvious how IFI like the World Bank, although they are not party to international human rights instruments, can be possibly held responsible for the realisation of human rights today. As a general principle, there are three avenues considered to argue that they hold such obligations: as organisations with international legal personality bound by general norms of international law; as specialized UN agencies, bound by the UN Charter; and through the international human

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<sup>1</sup> J Dugard 'International Law, A South African Perspective' (2011) 1

<sup>2</sup> S Skogly 'The Human Rights Obligations of the World Bank and the IMF' (2001) 5



rights obligations of member states.<sup>3</sup> Accordingly, IFI have progressively recognised their human rights obligations. The inclusion of human rights principles in their Charters, the modification of their traditional practices, policies and operations to be in line with human rights standards, are practical proofs that IFI are sensitised to human rights issues.

But the World Bank Group<sup>4</sup> (the Bank) has not given a clear recognition of its human rights obligations. The main reason advanced by the Bank is found in its Charter (Articles of Agreement) drafted in 1944. The 1944 Bank's Charter prohibits it from interfering in the political affairs of its members and from taking political considerations into account in its operations.

The political prohibition clause, defined in Article IV, Section 10 of the World Bank Articles of Agreement states that: "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 1". The provision of Article IV Section 10 is accentuated by Article III, section 5(b) of the IBRD Articles of Agreement which provides that "the Bank's loan proceeds must be used only for their intended purposes and "with due attention" to economy "without regard to political or other non-economic influences or considerations".

In spite of the fact that the Bank is considered as a UN specialised agency, it was based on the political prohibition clause that it has always refused to consider its human rights obligations as part of its mandate. For example, the Bank has declined the invitation to take part in the drafting of the UN Convention on Economic, Social and Cultural Rights in 1966. Equally, the Bank has refused to follow the instructions of the UN Security Council to suspend its loans and withhold assistance from the South African Apartheid Regime for its human rights violations<sup>5</sup> as well as Portugal, in 1977, for its rigorous treatment against its former colonies.<sup>6</sup>

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<sup>3</sup>See F Gianviti 'Economic, Social and Cultural Human Rights and the IMF' (2001) 17

<sup>4</sup>The World Bank Group includes the International Bank for Reconstruction and Development (IBRD); the International Development Association (IDA); the International Finance Corporation (IFC); the Multilateral Investment Guarantee Agency (MIGA); and the International Centre for Settlement of Investment Disputes (ICSID).

<sup>5</sup>See UN doc A/AC09/124 (10 June 1984), s116. See also 'The Policies of Apartheid of the Government of the Republic of South Africa' G.A. Res. 2054, U.N. GAOR, 20th Sess., Supp. No. 14, at 16, U.N. Doc. A/6014 (1966) (recommending that economic sanctions be applied against South Africa due to its government's continuation of its apartheid policies).

<sup>6</sup>G.A. Res. 2105, U.N. GAOR, 20th Sess., Supp. No. 14, at 4, U.N. Doc. A/6014 (1965) on the implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples, (requesting that all international institutions withhold assistance from the governments of Portugal and South Africa until they reverse their policies of racial discrimination and colonial domination).

The same guideline has remained at the Bank. The Bank has continued to interpret Article 4 Section 10 of its Charter, in a manner that considers merely economic factors in its operations with its Member States. Pursuant to this, the Bank maintains that it is only allowed to deal with the economic aspects of development and is compelled to leave aside issues that may be defined as political. In Shihata's opinion, the political prohibition even extends to preventing the Bank's Executive Directors from raising a state's human rights record when debating a loan proposal.<sup>7</sup>

This approach of the World Bank operations has been the source of a negative impact on civil and political rights, as well as economic, social and cultural rights in Africa. Evidences of the human rights violated by the Bank come from the Bank own study of its operations issued from projects of development that it has financially supported.<sup>8</sup> The Bank operations did not always fully respect human rights standards defined by global, regional and national human rights standards.

In 1990, the UN Committee on Economic Social and Cultural Rights has addressed that matter in its General Comment No 2, the potential role of IFI to deter the promotion and safeguard of human rights. The Committee stated that:

“[...] Development co-operation activities do not automatically contribute to the promotion of respect for economic, social and cultural rights. Many activities undertaken in the name of “development” have subsequently been recognised as ill-conceived and even counter-productive in human rights terms. In order to reduce the incidence of such problems, the whole range of issues dealt with in the [Economic and Social Rights] Covenant should wherever possible and appropriate be given specific and careful consideration.”<sup>9</sup>

Meanwhile, regional human rights system has been progressively put in place globally but also at regional levels. In Africa, a specific framework has been defined as regard to the promotion and protection of human rights<sup>10</sup> in general and particularly the right to development<sup>11</sup> in line with the 1991 UN declaration on the right to development. These approaches, at the level of the UN, as well as the level of others regional human rights systems like in America<sup>12</sup>, have all involved a political dimension to development inclusive to the economic aspects.

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<sup>7</sup> See Shihata ‘The World Bank and Human Rights: An Analysis of the Legal Issues and the Record of Achievements’ (1988) 46-47 *Denver Journal of International Law and Politics*.

<sup>8</sup> The Bank's own study on its operations involving resettlement provides stark evidence of substantial denials of economic, social and cultural rights. See ‘Environment Department of Projects involving involuntary resettlement’ (1996) 1986-1993.

<sup>9</sup> UN Committee on Economic, Social and Cultural Rights, General Comments No 2, UN doc E/1990/23, Para 7

<sup>10</sup> For a good comprehension of the African Human Rights System, see F Viljoen, *International Human Rights in Africa* (2007) Oxford University Press (eds)

<sup>11</sup> See the African Charter for Popular Participation in Development (1990) and the Declaration on the Political and Socio-Economic Situation in Africa and the Fundamental Changes Taking Place in the World (1990).

<sup>12</sup> Article 1 of the Inter-American Democratic Charter defines the link between democracy and development: “Democracy is essential for the social, political, and economic development of the peoples of the Americas”.

## 1.2 Statement of the research problem

This study aims to answer the question to know if economic factors are enough to achieve the purpose of “development” by means of a non-political approach by the World Bank in Africa. The African States are borrowers of Bank and *at the same time* bearers of human rights obligations under global and regional human rights systems. These systems define comprehensive frameworks on the contents and standards of human rights. This first relation States-Bank has therefore implications on the relation States - Human Rights. The challenge is therefore to identify the human rights threatened by the Bank’s ignorance of “political and other non-economic influences or considerations” in its loans decisions to African countries in the name of “development”.

## 1.3 Statement of the research questions

*A priori*, by the 1944 clause, a principle has been set up: the Bank should ignore human rights considerations in its lending operations. Only economic factors should be relevant in that process.

Thus the relevance of these questions that the study aims to answer:

- What are the foundations of such a prohibition by the Bank? Is the current interpretation of the Bank 1944 Articles of Agreement as well as the political prohibition clause by the Bank still relevant today in a globalised human rights environment, hence impelling on African States?
- What are the implications of the Bank political prohibition clause on the African human rights system?
- What could be the better approach for the World Bank that could best integrate measures designed to promote full respect of human rights particularly for economic, social and cultural rights in its operations?

## 1.4 Significance of the research

The significance of this study is at many levels:

First of all, the relation States – Human Rights is going lower in Africa, when the relation Bank – States is going higher since the Bank remains one of the largest development financial Institution and source of technical assistance of countries in developing countries around.<sup>13</sup>In fiscal 2011, IBRD committed \$26.7 billion for 132 new operations in 43 countries. IDA committed \$16.3 billion for 230 new operations in 72 countries. The

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<sup>13</sup> World Bank Lending PowerPoint 2011, P.2. Document found at: <http://web.worldbank.org/WBSITE/EXTERNAL/EXTABOUTUS/EXTANNREP/EXTANNREP2011/0,,contentMDK:22997396~menuPK:8121401~pagePK:64168445~piPK:64168309~theSitePK:8070617,00.html> (accessed 23 October 2012).

largest share of funding went to Africa, at \$7 billion, followed by South Asia (\$6.4 billion).<sup>14</sup>

The Bank operations are going stronger and higher in Africa; and the Bank has not yet a clear policy towards human rights issues. The World Bank partners with 48 countries in Sub Saharan Africa and is involved in 506 projects in the region. The Banks' portfolio includes projects and programs in multiple sectors from trade and transportation to energy, education, health care, water and sanitation. In fiscal year 2010, the Bank committed \$11.5 billion in new project lending in Africa, and disbursed over \$1.1 billion in grants, in addition to almost 90 analytical studies.<sup>15</sup>The discovery of new minerals (oil, mines, gas, gold, timber) in Africa and others projects of development (dams, electric lines...etc.) have been progressively involved in new and central projects of development in the continent by the Bank. But some projects of development generating serious human rights violations in Africa were financially supported by the World Bank, a support granted to States, bearers of human rights obligations.

Meanwhile, the clash between the exigencies of the global as well as the African regional human rights frameworks and the Bank's negation to integrate human rights in its operations in line with those frameworks appears to be at its apex. This will legally implies the Bank's 1944 Articles of Agreement to be revised or re-interpreted to fit with the current global and regional Human Rights systems.

It is also important to say that some recent World Bank operations showed that its political non-interference rule is no more absolute. The Bank has started to be interested in more political questions and has started to manifest its concern to human rights issues. This has been accented after the sound failure of the Structural Adjustment that was purely an exclusive economic approach to development. The Bank has started to be involved in the security sector or criminal justice reform in some countries, contrary to the political prohibition clause. Similarly, the question of the Bank's relations with de facto Governments and the questions of its recent treatment of human rights have also been an evidence of the Bank's political interference.

### **1.5 Limitations of the study**

This study will be focused exclusively on the question of the political prohibition clause of the Bank operations in relation with the treatment of human rights by African States. The study will analyse the implications of the Bank political prohibition clause on human

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<sup>14</sup> As above

<sup>15</sup>World Bank public information available at:

<http://web.worldbank.org/WBSITE/EXTERNAL/COUNTRIES/AFRICAEXT/0,,menuPK:258652~pagePK:146732~piPK:146828~theSitePK:258644,00.html> (accessed 12 September 2012).

rights in Africa. The study is limited on the World Bank operations in Africa, focused only on the human rights issues of the World Bank operations.<sup>16</sup> Particularly, the study will analyse the World Bank responsibilities for ensuring that the design and implementation of the projects, programs, policies and in-country activities are consistent with internationally recognized human rights standards and human rights obligations of those States.<sup>17</sup>

The study will not take into account bilateral investments which are involved in projects of development with human rights implications. For example, even liberal donors such as Sweden lent to brutal regimes in the belief that the poor would be better with the help than without.<sup>18</sup> The participation of external financial support of Countries like China in Africa is more and more important.<sup>19</sup> Private actors like multinational extractive industries are also involved in projects of development with serious human rights implications without necessarily taking into account those factors.

## 1.6 Research methodology

The methodology of this study will be textual analysis and descriptive. Based on some cases like the World Bank financial support for the Pipeline Petroleum Development Cameroon-Chad<sup>20</sup>, we will see how the political prohibition clause of the World Bank

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<sup>16</sup> See D Bradlow 'The World Bank, the IMF and Human Rights' (1996) 51

<sup>17</sup> Daniel Bradlow distinguishes between the operational human rights issues and the institutional human rights issues of the World Bank; the operational issues "pertain to the human rights impact of the IFIs' operations in their member states," and focus "on the IFIs' responsibilities for ensuring that the design and implementation of their projects, programs, policies and in-country activities are consistent with internationally recognized human rights standards.

<sup>18</sup> J Nelson 'Good Governance: Democracy and Conditional Economic Aid' (1992) 310

<sup>19</sup> According to the Guardian, "China has offered \$20bn (£12bn) in loans to African countries over the next three years, cementing an alliance that appears increasingly hostile to the west. China's alliance with Africa dates back to the 1950s, when Beijing backed liberation movements fighting to overthrow western colonial rule. In the past decade, China says its trade with Africa jumped from little more than \$10bn (£6.35bn) in 2000 to \$166.3bn in 2011, driven by Chinese hunger for resources and African demand for cheap Chinese products. Western critics say China supports governments with dubious human rights records. The Asian country's biggest African trading partners in 2010 were Angola, ruled by one man for 33 years, South Africa and Sudan, whose president is wanted by the international criminal court" See more comments on: <http://www.guardian.co.uk/world/2012/jul/19/china-offers-loans-african-nations>.

<sup>20</sup> "With a total cost originally estimated at US 3.7 billion \$ and an actual cost of US 6.5 billion \$ at the end of 2008, the Chad-Cameroon pipeline project was at the time of its inspection, the largest private-sector investment and energy infrastructure development on the African continent" See L Cotula 'Human Rights, Natural Resources and Investment Law in a Globalised World, Shades of grey in the shadow of the law' (2012) *Routledge Research in International Economic Law*.

operations can be risky with serious implications on a sustainable development in Africa based on human rights. The recent development of the Inspection Panel of the World Bank show grave concern about how human rights are limitedly considered with such an approach by the Bank as well as States receiving loans.

### 1.7 Literature review

Since 1944, the interpretation of the Bank political prohibition clause has been done majorly in a manner that restricts human rights from the Bank mandate. This restrictive interpretation of the 1944 clause can still be seen from the views inside the Bank even if some voices inside Bank rose, calling for an inclusion of issues related to human rights and democracy as the conditionality to the Bank's lending.

According to views of the staff inside the Bank, the political prohibition clause is justified by the position that restricts political considerations to factors that have direct importance to the economic performance of a country. The views of Ana Palacio<sup>21</sup>, the current Senior Vice President and General Counsel of the World Bank Group as well as Shihata her predecessor, set clear limitations to the political conditionality of the Bank to economic factors of borrowing countries. Dr Shihata, during the Regional Seminar on Economic, Social and Cultural Rights, held in Abidjan in 1998 declared that:

"In spite of the Articles' clear provisions, both with respect to the mandates of the institutions and the prohibition of political considerations, some academics, politicians and NGO activists suggest that the Bank must recognise the relevance and importance of political rights and democracy to economic development and should use its powers to serve these objectives. The academics base their arguments mainly on three grounds. The first is that human rights are indivisible and interdependent. The second is that the Articles of Agreement should not be read literally but should be subject to the overriding values and policies that they are meant to serve, taking into account the evolution of such values and policies over time. [...] The third argument assumes that human rights are of a higher order than the Bank's Articles which should only be read in a manner consistent with the law.

As clear as these arguments are, the responses given by the former Senior Vice President and General Counsel of the World Bank Group are to a certain extent questionable. He declared subsequently that:

"As to the first argument, I agree that human rights are indeed interdependent and mutually reinforcing. This does not mean, however, that each international organisation must concern itself with every human right. Each of these organisations is a juridical body, the legal capacity of which is confined by its respective mandate as defined in its Charter [...].

As to the second argument, I also agree that the Bank's Articles of Agreement should not always be read literally. This may suggest that they should be interpreted in a purposive, teleological manner.

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<sup>21</sup>Ana Palacio 'The way forward, Human Rights and the World Bank'(2006) 2 *Special Report*

It cannot reasonably suggest that they should be interpreted in a way that totally negates the ordinary meaning of the text in the light of its object [...]

The third agreement is really irrelevant, as the Articles of Agreement in no way contradict human rights law [...].<sup>22</sup>

The view has been further stressed by another publication of the World Bank later. The paper was considered as the main explicit position of the Bank on the issues related the human rights. The report states that

“Article 4 Section 10 defining the political prohibition clause prevents the Bank from adequately confronting the issue of human rights; [because] to be sure, some aspects of human rights do fall outside its mandate. But the Bank’s economic and social approach to development advances a comprehensive interconnected vision of human rights that is too often overlooked. He argues that, there is also practical, operational value in the way the articles are drafted. Because lending decisions are based on the quality of the project, and the effectiveness of the programs in reducing poverty, the Bank has been able to escape the costly experience of committing scare funds based on the short-term political or ideological considerations, which have little to do with relieving the burden of poverty.

None of this means that the Bank views other factors- factors that go to the heart of civil and political rights- as any less important to development. It does mean that, constituted as it is, and with the expertise and resources it possesses, the Bank makes its greatest contribution to development- and simply is able to help more people- by continuing to focus on the important work of economic and social development.”<sup>23</sup>

Increasingly, voices within the Bank are calling out for it to cast aside its non-political mandate and embrace democracy as a condition for Bank lending. Joseph Stiglitz, formerly the Bank’s Chief Economist, connected its work on corruption to democratisation.

‘Earlier, discussions of corruption would have been off limits for the World Bank, which was generally proscribed from engaging in political matters not directly related to development. But the new thinking argues that there is no bright line of demarcation: corruption, though a matter of politics, is at the heart of underdevelopment. But once that line has been breached, the limits of what should be the Bank’s purview are no longer clear. Openness, transparency, and democratic processes provide an important check on the operation of special interest groups and the extent of corruption.’<sup>24</sup>

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<sup>22</sup> H Steiner & P Alston ‘International Human Rights in context’, Globalisation, Development and Human Rights’ (2000)1338; also available on: [www.worldbank.org/html/extdr/rights/hrintro.htm](http://www.worldbank.org/html/extdr/rights/hrintro.htm)

<sup>23</sup> H Steiner & Philip Alston (above n 22) 1337

<sup>24</sup> Quoted by H Marquette ‘The creeping politicisation of the World Bank: the case of corruption’(2004) Political Studies 413-430.

But these voices have not yet changed the position of the Bank which has been to define different issues from an exclusive economic perspective. With regard to corruption for instance, President Wolfensohn frankly stated that the Bank decided "to redefine the word corruption, regarding it as an economic, rather than a political matter."<sup>25</sup>The Bank's position also belies the fact that almost all human rights have economic implications and most economic issues involve a series of political calculations and considerations.<sup>26</sup> Shihata defines issues related to "the art and practice of running a country or governing," as "political," but he excludes "such typical economic and technical issues as the 'management of money or the finances' or more generally the efficient management of the countries' resources."<sup>27</sup>The Bank's 'good governance programs and criteria provide more information about the scope of the latter aspect and include attention to "the manner in which power is exercised in the management of a country's economic and social resources for development."<sup>28</sup>

Outside the Bank, views are different. Making a point on the drafting Bradlow notes that the record of the Bretton Woods Conference indicates that participants of the Conference enacted the political prohibition to ensure that the Bank conducts its decision-making processes and operations impartially, without reference to the political character of the state or states involved.<sup>89</sup>

Similarly, Later Bleicher wrote:

"The policy goals underlying article 10, section IV, should not be construed as making no distinction between 'political affairs' and violation of the basic legal norms of the international system. Much of the corpus of human rights law is generally considered part of the basic legal norms of the international system."<sup>29</sup>

The position of the Human Rights Committee formally stated in its General Comments, equally recommends that international aid to development should be done in a manner to promote respect, protect and fulfill human 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 of socio-economic

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<sup>25</sup>T Fuster, "The World Bank's Fear of the Word "Politics " Walking a Fine Line in the Call for "Good Governance ", NEUE ZURCHER ZEITUNG, Sept. 18,1999, at <http://www.nzz.ch/english/background/background1999/background.../bg990918worldbank.htm>.

<sup>26</sup> As above

<sup>27</sup> F Mackay, "Universal rights or a universe unto itself? Indigenous people's human rights and the World Bank Draft's Operational Policy 4.10 on Indigenous peoples" (American University Law Review) 548

<sup>28</sup> As above

<sup>29</sup> As above



rights, 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 international agencies should act as advocates of projects and approaches which contribute not only to economic growth or other broadly defined objectives, but also to enhance enjoyment of the full range of human rights. But, while the Bank in some cases plays a positive role in promoting economic, social, and cultural rights, it has never undertaken a systematic evaluation of the impact of its operations on human rights in order to support its claims.<sup>30</sup>

This position is supported by other scholars are for the view that Article 10 Section 4 is outdated and should be revised. In a singular article published in 2002, Heather Marquette demonstrates that development is highly political in itself. This is, according to her,

“The World Bank has always been political in its work as it deals with national Government, development strategies, budgeting decisions, as so on”. She built her views on the points defined by “many scholars [who] see the Bank’s non-political stance as a myth, arguing that lending to nations is inherently political, especially because of the influence of powerful nations such as the US.”<sup>31</sup>

Similarly, for Fergus Mackay,

“The Bank’s Articles are not immune from the prescriptions of international law, human rights law in particular and therefore cannot rule out attention to the full range of human rights. [The counter argument to the Bank’s position<sup>32</sup>] also questions the prevailing interpretation of the political prohibition in the Articles and proposes alternative, and in light of contemporary international practice, more appropriate, interpretations.”<sup>33</sup>

Sigrun I Skogly is for the view that the political clause of the Bank is a limitation based on the principles and purposes of the Organisation and represents a significant limitation of the capacities of the Bank.<sup>34</sup>

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<sup>30</sup>F Mackay ‘Universal rights or a universe unto itself? Indigenous people’s human rights and the World Bank Draft’s Operational Policy 4.10 on Indigenous peoples’ (2002) *American University International Law Review* 530

<sup>31</sup>H Marquette ‘The creeping politicisation of the World Bank: the case of corruption’ (2004) *Political Studies* 413-430.

<sup>32</sup>F Mackay reminds that “the Bank has never engaged in an analysis of whether it has any legal obligations with regard to human rights, but rather only whether, under its Articles and as a matter of discretion, it *may* or *should* promote or condition operations on human rights considerations and, if so, which” See supra note 26

<sup>33</sup>As above

<sup>34</sup>S Skogly, (n 2 above) 111

These studies on the question failed to address the problem of the human rights implications of the Bank political prohibition clause specifically in Africa. The aim of this study is to see in practical terms the human rights sullied by the political clause although protected under the African human rights framework. This gap will be filled by updating the conventional obligations of African States and the practices related to the notion of development in human rights terms that is, involving a political dimension to it.

## 1.8 Chapter outline

In the second chapter, I will analyse the foundations of the political prohibition, a review of the historical, political and economic justifications given by the Bank, as article 4 Section 10 of the Bank's articles of agreement is currently interpreted *inside* the Bank.

The third chapter will be an analysis of the human rights implications of the political prohibition clause in the African human rights system. The dissimilarities analysed will be based on the conflicting practice of the Bank political prohibition with the African States' conventional obligations on human rights. Secondly and more importantly, the implications analysed will be those of the Bank political prohibition on the African human rights system, defining a political approach to development, the existing standard for that being the NEPAD.<sup>35</sup>

Chapter 4 will present solutions to the dysfunctions of the political prohibition. From the possible amendment of the Bank Charter to an interpretation of Article 4 Section 10 in line with the human rights standards impelling on African States. This will be done on a case study, the Chad-Cameroon pipeline, which was the most important financial project in the African continent, for the forthcoming projects that the Bank will finance.

The last Chapter will conclude by bringing the challenges of the Bank current applications of its political prohibition clause and the advantages of following a normative approach that will take into account, in its interpretation of its Charter, all human rights standards not only at the global level but more again the African regional system.

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<sup>35</sup>The New Partnership for Africa's Development (NEPAD): Declaration on Democracy, Political, Economic and Corporate Governance, O.A.U. Doc. AHG/235 (XXXVIII), Annex I. The New Partnership for Africa's Development (NEPAD): The African Peer Review Mechanism (APRM), O.A.U. Doc. AHG/235 (XXXVIII), Annex II; NEPAD - Democracy and Political Governance Initiative.

## CHAPTER TWO: THE FOUNDATIONS OF THE POLITICAL PROHIBITION CLAUSE OF THE WORLD BANK OPERATIONS IN THE PERSPECTIVE OF THE BANK'S MANDATE

### 2.1 Introduction

This chapter is focused on the examination of the foundations of the political prohibition clause of the World Bank operations as defined in its 1944 Articles of Agreement. To start with, the legal foundations of the political prohibition clause of the World Bank are set by Article 4 Section 10 of its Articles of Agreement; these articles are also considered as the Charter of the Organisation. The Charter basically defines the mandate, the functions and the extent of the powers or operations of the Bank. The Article 4 of the Bank's Charter deals with the Bank's operations and the tenth section of that article is related to the "political prohibition". Drafted in 1944, many issues were debated that time to justify the clause that has defined the Bank policies and decisions since then. Today, the relevance of the political prohibition clause of the Bank's operations is discussed, and requests for its revision are more and more raised. But the Bank still justifies the relevance of the political prohibition of its operations on three principal grounds: a historical, a political and an economic basis.

One of the latest attempt by the Bank to give more clarifications on the issues related to the political prohibition clause was the "Justice and Development Week" organised in November 2010 by the World Bank Legal Vice Presidency Law. The purpose of that colloquium was to reexamine and address the issue of the political prohibition clause in International Development Finance and on human rights. From the report published later<sup>36</sup>, it has been accented by the Bank's lawyers that:

"The political prohibition clause has been at the heart of the World Bank policy decisions over the year of its operations. The Bank has progressively been challenged by numbers of topics which raise important and cutting edge issues with respect of the political prohibition clause. These include:

- the Bank relations with de facto Governments,
- the question of treatment of human rights,
- the Bank involvement in the security sector or criminal justice reform, and
- the Stolen Asset Recovery Initiative."<sup>37</sup>

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<sup>36</sup> See The World Bank Legal Vice Presidency Law, Justice and Development Week 2010 'Navigating the Muddy Waters of Politics in International Development Finance – Should the Political Prohibition in Charters of International Financial Institutions be Revisited? The case of the World Bank' 9<sup>th</sup> November 2010.

<sup>37</sup> As above.

Inside the Bank, the position to safeguard in its Charter the 1944 political prohibition clause is based on historical, political and economic justifications with an extensive interpretation of the meaning of “political” issues that exclude, according to the Bank’s own interpretation of that clause, issues related to human rights.

## **2.2 The political prohibition clause *inside* the Bank**

One of the clearer statements on the Bank’s political prohibition clause has been made by Ibrahim Shihata, the former General Counsel of the Bank, who elucidated the reasons why the Bank still has a protective approach for not interfering in the political affairs of its members States. He declared in 1990 that:

“There is the need to honor the charter of each organization and to respect the specialization of different international organizations as reflected in the statutory requirements of their respective charters. Such is the case, in particular, with the charters of specialized U.N. agencies, such as the World Bank, which delimit the mandate of each organization; and, for any international financial institution, such as the World Bank, the question becomes, not whether human rights are relevant to development, but whether the mandate of any institution, as defined and limited by its Articles of Agreement, can cover the promotion and protection of all human rights, or is limited to the rights which have an economic or social character as opposed to a political character”.<sup>38</sup>

The justification of the political prohibition clause has an important historical background, existing since the drafting of the Bank’s Charter; a provision of the Bank Articles of Agreement that has shaped the Bank’s policy decisions over the years of its operations. More importantly for the Bank, the political prohibition clause has an economic justification as well as a political explanation that delimits the mandate as an International Financial Institution.

### **2.2.1 Its historical foundations**

Historically, the foundations of the Bank’s political prohibition clause are rooted on the context that prevailed during the establishment of the World Bank in 1944. The founders of the Bank decided to exclude in its Charter, any influence of the political order existing during that time and even later. Hence, they decided to consider *only* economic factors to be relevant, with the purpose to make the Bank effectively operating as a universal financial institution, involved in the reconstruction and development of States destroyed by the war, without consideration of their political order. The following reasons are given to resume the historical background of the Bank’s political prohibition clause:

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<sup>38</sup>I Shihata ‘Democracy and Development’ 638 (1997) 46

First of all, the founders of the World Bank Group, in defining the mandate, were impartial and not influenced by the political environment that existed in 1944 at the end of the Second World War. It is held by the Bank that, the necessity to help European countries destroyed by the World War II was on the range of the immediate needs of that time. The mandate of the Bank was therefore to foster the “reconstruction” and the “development” of those countries. The Charter was carefully drafted to include all the *different* countries in need of (economic) help independently of their political system. The purpose was therefore to create an institution that would ‘operate as a universal financial institution’. This non-political mandate was devised by the Bank's founders to protect it from the political vagaries of the Cold War and was designed to 'assure all members [of the Bank] of equality before the law because membership involves both obligations and rights.<sup>39</sup>

Secondly, it is accented that, the need to separate the Bank from all kinds of political activities further emerged after the cold-war between liberalist and communist countries. At the time of the bipolar race for balance of power during the Cold War, both the US and USSR sought to 'purchase' the loyalty of developing nations through aid, and recipients often held a degree of power in these negotiations. Fearing that rejected states would turn instead to communist countries for aid, the West propped up several totalitarian regimes in order to stabilise the political climate.<sup>40</sup> Some more notorious examples include Chile under Pinochet, the Philippines under Marcos, Uganda under Amin, Equatorial Guinea under Macias, and perhaps most famously, Zaire under Mobutu.

It was not only this unique political climate that encouraged both bilateral and multilateral donors to support authoritarian regimes. The number of totalitarian regimes in the World in that time was important. Therefore, the possibility to exclude a country based on its political regime would have made the recipients of multilateral aid, insignificant. It is held that:

“There were simply many more dictators in the developing world than there are today. As the norm, rather than the exception, donors were unlikely to take the nature of a political regime into account when distributing aid. If they did, there would indeed be few recipients to take advantage of aid.<sup>41</sup>

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<sup>39</sup>J Gold 'Political Considerations are Prohibited By Articles of Agreement when the Fund Considers Requests for Use of Resources' (1983) *IMF Survey* 147.

<sup>40</sup>A Hoogvelt '*Globalisation and the Post-Colonial World: The New Political Economy of Development*' (1997) 172 London Macmillan Press.

<sup>41</sup>M Heather 'The origins and development of the world bank's anti-corruption programme' (2002) PhD thesis, Durham University, Department of Politics, 21

This is why, “the mandate of the Bank was designed to protect its reputation as a conservative, technocratic financial institution.”<sup>42</sup> Hence, “political considerations [were] supposed to be irrelevant... especially as the Bank’s credibility and strength has traditionally depended on its status as a quintessential technocracy exclusively concerned with economic efficiency”.<sup>43</sup>

To resume with, the following table resume the historical evolution of the treatment of human rights in the World Bank lending with the time as drafted by Gilles.

**Table 1.1: Gillies' Four Eras of Politics in World Bank Lending<sup>44</sup>**

1946-mid-1970s	Avoided politics by-and-large to build its reputation and credibility and also to stay out of the Cold War
Mid-1970s to 1980	Carter's human rights legislation; 'hotch potch' application
1980s	Reagan influenced for geopolitical and ideological reason
Late 1980s onwards	Rise of political conditionality and good governance

### 2.2.2 Its economic explanations

The confidence of the capital markets is advanced as the economic reasons to justify the importance of the political prohibition clause inside the Bank: The Bank has always believed that economic freedom is the solution for its development and efficiency as a universal financial institution. It has focused exclusively on economic dimensions of development as a rule of a capital market.

Table 1.2 below lists the Bank's top twenty recipients of loans and credits from 1948 to 1980. At that time, few countries were considered as real democracies. In fact, most of them were authoritative regimes. Therefore, it is argued that, if the Bank had only financed democracies, it would have had a very limited lending portfolio indeed.

On the same perspective, according to Mason and Asher, the Bank often cut lending to newly democratic countries because of their unsatisfactory economic performance,

<sup>42</sup> I Shihata 'The World Bank in a Changing World' (2000) The Hague Martinus Nijhoff Publishers 165.

<sup>43</sup> S George & F Sabelli 'Faith and Credit: The World Bank's Secular Empire' London: Penguin Books, (1994) 50. Contains a partial quote from I Shihata 'The World Bank in a Changing World: Selected Essays' (1991).

<sup>44</sup> Source: Gillies, D. (1996). 'Human Rights, Democracy and Good Governance: Stretching the World Bank's Policy Frontiers'. In Griesgraber, J.M. & Gunter, B. (eds). *The World Bank: Lending on a Global Scale*. London: Pluto Press, p. 119.

while concurrently increasing loans to military dictatorships with the power to implement austerity measures.<sup>45</sup>

**Table 1.2: Twenty Largest Recipients of Bank Loans, IDA Credits, and Bank/IDA Resources, Combined, Cumulative, 1948 to 1980 (in US\$ millions) 24 Bank IDA Bank/IDA<sup>46</sup>**

<b>Bank</b>	<b>IDA</b>	<b>Bank/IDA</b>
Brazil 5,313.7	India 8,285.2	India 11,055.8
Mexico 4,113.6	Bangladesh 1,454.2	Brazil 5,313.7
Indonesia 3,056.0	Pakistan 1,244.9	Mexico 4,113.6
South Korea 2,948.5	Indonesia 931.8	Indonesia 3,987.8
India 2,770.6	Egypt 783.6	South Korea 3,059.3
Colombia 2,761.4	Tanzania 538.7	Colombia 2,780.9
Yugoslavia 2,684.1	Sudan 522.5	Yugoslavia 2,684.1
Turkey 2,407.4	Kenya 408.3	Turkey 2,585.9
Philippines 2,389.9	Sri Lanka 369.6	Philippines 2,512.1
Thailand 1,960.4	Ethiopia 368.1	Pakistan 2,128.9
Romania 1,502.8	Burma 363.0	Thailand 2,089.9
Morocco 1,437.3	Zaire 277.0	Egypt 1,908.6
Nigeria 1,380.7	Madagascar 255.2	Romania 1,502.8
Argentina 1,350.3	Nepal 235.7	Bangladesh 1,500.3
Iran 1,210.7	Cameroon 230.5	Morocco 1,488.1
Malaysia 1,132.6	Yemen Arab Republic 208.3	Nigeria 1,416.2
Egypt 1,129.0	Senegal 187.7	Argentina 1,350.3
Algeria 1,091.0	Ghana 179.0	Iran 1,210.7
Pakistan 884.0	Turkey 178.5	Kenya 1,197.6
Japan 862.9	Mali 173.2	Malaysia 1,132.6

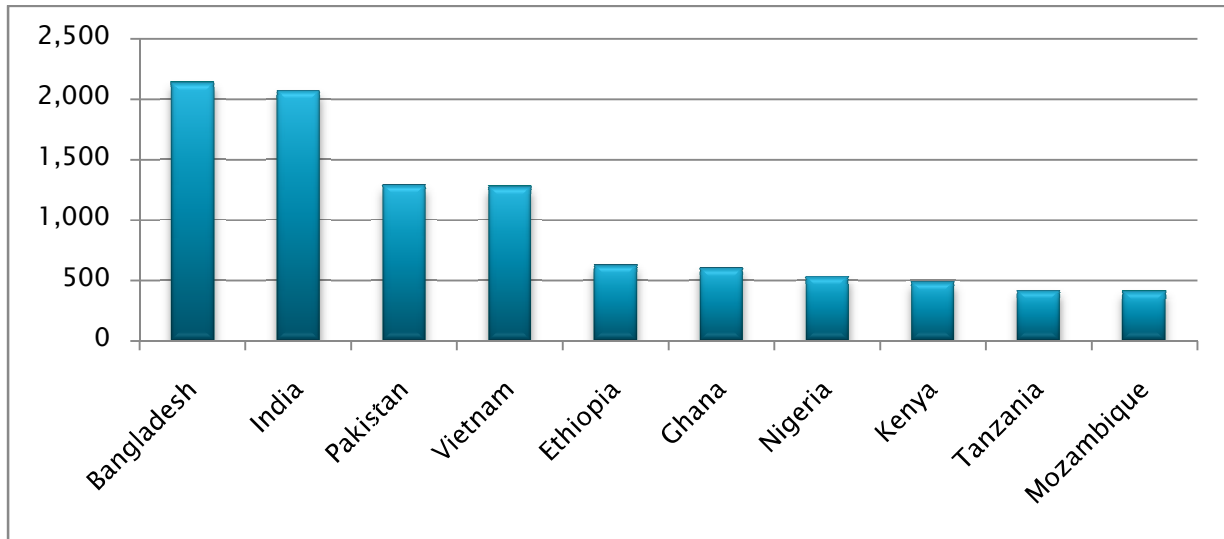
From this cumulative list of the twenty (20) largest recipients of the World Bank and IDA loans, credits and resources from 1848 to 1980, there are fourteen (14) African countries concerned: Algeria, Egypt, Cameroon, Ghana, Ethiopia, Kenya, Madagascar, Mali, Morocco, Nigeria, Senegal, Sudan, Tanzania, and Zaire (now DRC).

This picture has no deeply changed in recent times. Africa countries remain great borrowers of the Bank. The IDA top ten borrowers during the fiscal year 2011 shows that six (6) African countries over ten (10) figures on the list: Ethiopia, Ghana, Nigeria, Kenya, Tanzania, and Mozambique. As we will see, corruption remains a serious matter in those countries but also in Africa in general.

<sup>45</sup>E Mason & R Asher 'The World Bank since Bretton Woods Washington D.C: The Brookings Institutions(2000) 478 quoted by M Heather (above n 40) 11

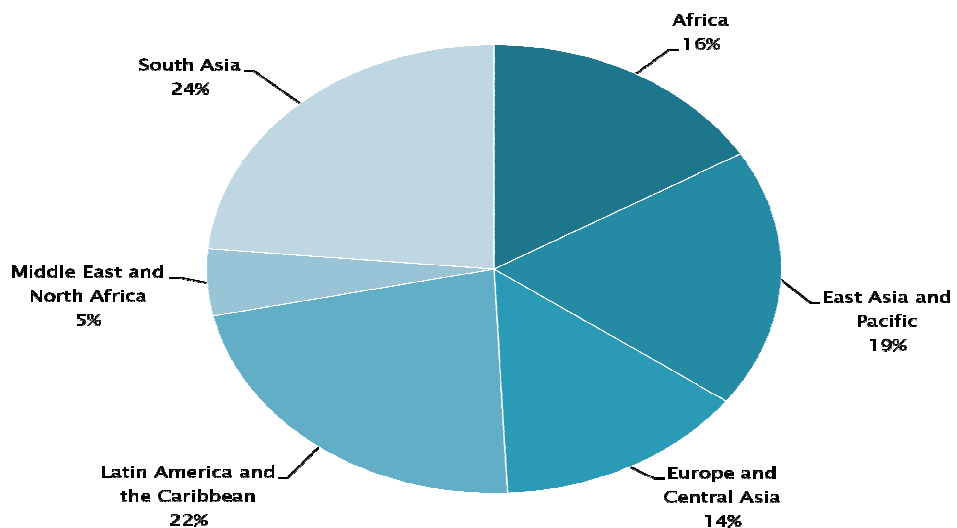
<sup>46</sup>Source: Ayres, R. (1983). *Banking on the Poor*, p. 258

**IDA Top 10 Borrowers | Fiscal 2011**  
millions of dollars



This table clearly shows that African States remain at the top of the list of the Bank borrowers. The reality is also that compared to other regions Africa receive in 2011, 16% of the IBRD and IDA total loans.

**IBRD and IDA Lending by Region | Fiscal 2011**  
Share of Total Lending of \$43 Billion



Source: World Bank Annual Report 2011<sup>47</sup>

<sup>47</sup> Report available at:  
<http://web.worldbank.org/WBSITE/EXTERNAL/EXTABOUTUS/EXTANNREP/EXTANNREP2011/0,,contentMDK:229>



Nowadays, the World Bank partners with 48 countries in Sub Saharan Africa and is involved in 506 projects in the region. In fiscal year 2010, the Bank committed \$11.5 billion in new project lending in Africa, and disbursed over \$1.1 billion in grants, in addition to almost 90 analytical studies.<sup>48</sup> An important number of these projects have a series of human rights implications that are not in line with the States obligations.

This is without the most important financial intervention of the World Bank in Africa, which is still the pipeline Chad-Cameroon, a project to extract and transport the Chadian oil to be sold at the coastal city of Kribi in Cameroon, that cost around \$ 6.5 billion itself alone.<sup>49</sup> This project has had numerous human rights concerns and in relation with the Bank Articles of Agreement specifically Article 10 Section 4 dealing with the political prohibition clause that we will analyse to discuss the inconsistencies of the Bank political prohibition.

### 2.2.3 The political justifications

The reason advanced here is that the Bank did not want to be an institution for the settlement of political disputes with its members. The avoidance of turning the Bank into a forum for the settlement of political disputes or using its loans and guarantees as instruments of political negotiation and pressure the Bank argued that its work in non-democratic countries was vital because its mission was to help the poor regardless of the regime, and the 'worst' countries might have found it difficult to find funding elsewhere.<sup>50</sup>

Now as a reaction to these dysfunctions, the Bank has put in place a mechanism to deal specifically with the human rights claims of the projects it has financed. 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.<sup>51</sup>

But since 1993 that the Panel is operating, it has always been careful to respect the jurisdictional limits on its mandate. The interpretation of the mandate of the World Bank

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[97396~menuPK:8121401~pagePK:64168445~piPK:64168309~theSitePK:8070617.html](#) (accessed 23 October 2012).

<sup>48</sup>World Bank public information available at:

<http://web.worldbank.org/WBSITE/EXTERNAL/COUNTRIES/AFRICAEXT/0..menuPK:258652~pagePK:146732~piPK:146828~theSitePK:258644,00.html> (accessed 12 September 2012).

<sup>49</sup> L Cotula (n 20 above)

<sup>50</sup>R Ayres Banking on the Poor(1983) 56

<sup>51</sup> S Herz & A Perrault 'Bringing human rights claims to the World Bank inspection Panel' (year) 11.

panel has been done in a way that excludes anything which is not directly related to the Bank's compliance with its own existing policies and procedures without considering States obligations in international human rights law. Two cases decided by the Panel in Africa and South America concerning claims on two Bank projects generating human rights violations allow us to sustain this position.

In the *Chad Petroleum Development and Pipeline Project* claim, the Panel limited its discussion of 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."<sup>52</sup> Similarly, in the *Honduras Land Administration Project*, claims 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."<sup>53</sup>

## 2.3 Conclusion

The political prohibition clause has a strong historical background that has shaped the Bank's policy decisions over the years of its operations. The drafters of the Bank's Charter have carefully defined a neutral political provision to make the Bank functioning as a universal financial institution that would be able to deal with all states regardless to their political status. The economic reasons are merely to confidence on capitalism and free market. The political justification was to avoid the Bank being an institution for the settlement of political disputes with its members.

Now these historical, economic and political reasons given by the Bank to validate its apolitical position are not strong to validate the clash created by the political prohibition clause with the current international human rights environment. The problem with this approach by the Bank is that, it is conducive to States human rights obligations and even now is contrary to the standards to development.

African countries are significant borrowers of the Bank but are the same time, are well characterized by poverty, corruption and other human rights abuses, authoritative regimes and limited good governance. At the same time those countries are bound by human rights treaties they have ratified. Because of the political prohibition approach to the Bank loans decisions, several human rights are exposed and weakened at their domestic levels. The following chapter will analyse them.

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<sup>52</sup>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* (2002) at para 215.

<sup>53</sup>See: World Bank Inspection Panel, *Investigation Report: Honduras: Land Administration Project (IDA Credit 3858-HO)* (2007) at para 258.

## **CHAPTER THREE: EXAMINING THE HUMAN RIGHTS IMPLICATIONS OF THE POLITICAL PROHIBITION CLAUSE OF THE WORLD BANK OPERATIONS IN AFRICA**

### **3.1 Introduction**

This chapter examines the human rights implications of the political prohibition clause of the World Bank operations. To begin with, the chapter analyses the implication of the Bank's clause on the rights protected by the Conventions ratified by African States namely under the African Human rights framework but also the Conventions binding them at the global level. As we will see, the rights concerned are not only the 5 rights Steven Herz and Anne Perrault who in an article published in October 2009<sup>54</sup>, confined to 05 examples, "[the] rights often implicated in development finance projects".<sup>55</sup> The purpose of this chapter is, on one hand, to look at the contrast of the political prohibition clause of the World Bank Charter with international human rights obligations of African States. These human rights implicated are extended and include civil and political rights, socio-economic rights as well as third generation rights, all regarded as obligations binding States.

On a second hand, the chapter discusses the contrast of the 1944 political prohibition clause of the Bank's operations with the African development framework, the NEPAD mechanisms, an approach of development that clearly include political aspects in development of Africa. This point is the same, if we consider the current normative framework of numerous treaties or norms binding States in the continent as well as the relevant decisions of the regional institutions in charge of promoting and protecting human rights in Africa.

### **3.2 The contrast of the political prohibition clause of the World Bank operations with international human rights obligations of African States**

The political prohibition clause of the World Bank operations is in contrast with international specific human rights obligations of African States. Because human rights are not taken into account, some of the projects of development financed by the Bank, cause the violation of the rights of indigenous peoples and local communities, the rights recognised to internally displaced persons, other vulnerable group's rights are also threatened, as well as the obligations related to the protection of the environment.

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<sup>54</sup>S Herz & Anne Perrault as above n 50

<sup>55</sup> These rights according to them "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". In a drafted chart, the two authors present the types of activities that most often implicate these rights, as indicated by a recent survey of private sector lending projects.

The political prohibition clause on the projects financed by the Bank is not in line with the obligations of African States to respect civil and political rights, namely in the area of good governance and the fight against corruption.

In the area of socio-economic rights, we agree with Steven Herz and Anne Perrault that “the right to food, the right to health, the right to life, the right to property, and the right to an adequate standard of living, among others”<sup>56</sup> are seriously threatened by the Bank non-political approach to its operations. The right to fair compensation on property’s expropriation, the right to cultural life and adequate resettlement are also include in this list of socio-economic rights.

### **3.2.1 The implications of the World Bank political prohibition clause on specific human rights obligations of African States**

Specific human rights in this context, we are stressing on the rights protected for specific groups or human rights concerns that should benefit a particular attention by States. States obligations here, reading within the Bank development policies and particularly the non-political approach are not only related to indigenous peoples rights and duties to conserve the environment but also to States duties towards internally displacement as well as women and children rights.

#### **3.2.1.1 The Conventional obligations on indigenous peoples and local communities’ rights**

By only considering economic factors in its loans decisions for projects of development, the World Bank negatively impacts on indigenous people’s rights, local communities and other disadvantaged populations as the case of ethnic minorities.

If is true that the Bank has managed some efforts to take safeguard the rights of indigenous peoples in its funded-operations, the question is to know if the Bank implementation of its policy on indigenous peoples rights is consistent with international human rights standards recognised on that matter. The World Bank has previously acknowledged that indigenous peoples require special attention, as they are especially vulnerable to negative effects caused by Bank-funded operations. To account for this, theBank has adopted a number of policy statements that attempt to provide safeguards for indigenous peoples. But in reality the Bank policy is weak and lacks reliable norms that effectively protect the rights of indigenous peoples. For instance, the OP. 4.10 on indigenous peoples is elusive in some points. It simply requires States Borrowers to “take into account” indigenous individual and collective rights and based on the borrower’s legislation, “that consideration is given to establishing legal recognition of the

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<sup>56</sup> As above

customary and traditional land tenure systems of affected indigenous peoples or granting them long-term renewable rights of custodianship and use”.<sup>57</sup>

This approach causes violations of States obligations in this regard especially also because the Bank Operational Policy on indigenous rights is said to be weak. The areas of the indigenous rights most exposed are:

- Indigenous land rights and
- Cultural related rights.

The political prohibition clause under which the Bank only considers economic factors in its loans attribution to projects of development is contrary to States obligations to respect Indigenous lands rights. These rights are protected not only directly at the global level by the Convention (No. 169) Concerning Indigenous and Tribal Peoples in Independent Countries but also indirectly at the Regional level by the African Convention on the Conservation of Nature.<sup>58</sup>

At the global level, Professor Siegfried Wiessner, for instance, concludes that state practice and *opinio juris* permit the "identification of specific rules of a customary international law of indigenous peoples." These rules are related to several areas:

“First, indigenous peoples are entitled to maintain and develop their distinct cultural identity, their spirituality, their language, and their traditional ways of life. Second, they hold the right to political, economic, and social self determination, including a wide range of autonomy and the maintenance and strengthening of their own systems of justice. Third, indigenous peoples have a right to demarcation, ownership, development, control, and use of the lands they have traditionally owned or otherwise occupied and used. Fourth, governments are to honor and faithfully observe their treaty commitments to indigenous nations.”<sup>59</sup>

The African Convention on the Conservation of Nature, in its article 6 binds States parties to "take effective measures to prevent land degradation and to that effect, [to] develop long-term integrated strategies for the conservation and sustainable management of land resources, including soil, vegetation and related hydrological processes".<sup>60</sup> The nature of States obligations in this regard is both negative and positive.

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<sup>57</sup> Paragraphs 12 and 13 of OP 4.10 on indigenous peoples

<sup>58</sup> Adopted in 1968 by the OAU, the Convention of Nature and Nature Resources entered into force in June 1969. On 11 July 2003 in Maputo Mozambique, the AU adopted an amended version of the Convention.

<sup>59</sup> See S. J Anaya "Indigenous Peoples in International Law" 49- 58, 107 (1996) quoted by Fergus Mackay in Universal Rights or a Universe unto Itself? Indigenous Peoples' Human Rights and the World Bank's Draft Operational Policy 4.10 on Indigenous Peoples, American University International Law Review, Vol.17, Issue 3, article 2.

<sup>60</sup> See article 6(1) of the AU Convention on the Conservation of the Nature

The negative obligation is to prevent land degradation i.e. by not allowing projects that are constitutive of such degradation as the case of extensive mines extraction projects. Furthermore, States obligations on indigenous land rights are also, following article 6(2) of the Convention, [to] “adopt and implement land tenure policies able to facilitate the *above measures*, *inter alia* by taking into account the rights of local communities”.

The rights of local communities should be interpreted here as including “people’s rights” whose form part of the indigenous peoples as it has been done by African legal experts<sup>61</sup>, later precised by the African Working Group on indigenous groups.<sup>62</sup>The international human rights standards on indigenous peoples rights requires that the indigenous peoples’ ownership and other rights to their lands, territories and resources be legally recognised and respected, which includes titling, demarcation, and ensuring their integrity.<sup>63</sup> Similarly, these rights are protected under international law in connection with a variety of other rights, including the general prohibition of racial discrimination, the right to property, and the right to cultural integrity as part and parcel of the right to self determination.<sup>64</sup>

The right to self-determination of indigenous people is one of the “political rights”<sup>65</sup> and even socio-economic rights<sup>66</sup> ruined by the Bank political prohibition clause. There is no clear specific convention on indigenous peoples rights namely to self determination

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<sup>61</sup> Justice Jallow cites the late President Leopold Sedar Senghor, the first President of Senegal and an eminent African Statesman, who told the inaugural meeting of African Legal Experts to draft the Charter, the following: “People will perhaps expatiate for a long time upon the ‘People Rights’ we were very keen on referring [sic] to. We simply meant, by so doing, to show our attachment to economic, social, and cultural rights, to collective rights in general, rights which have a particular importance in our situation of a developing country. We are certainly not drawing lines of demarcation between the different categories of rights. We want to show essentially that beside civil and political rights, economic, social and cultural rights should henceforth be given the important place they deserve. We wanted to lay emphasis on the right to development and the other rights which need the solidarity of our States to be fully met; the right to peace and security, the right to a healthy environment, right to participate in the equitable share of the common heritage of mankind, the right to enjoy a fair international economic order and, finally the right to natural wealth and resources.” See ACHPR, *Endorois v. Kenya*, Communication 276/2003, Para 64

<sup>62</sup>“Given such specificity, it is surprising that the African Charter fails to define “peoples” unless it was trusted that its meaning could be discerned from the prevailing international instruments and norms. Two conclusions can be drawn from this. One, that the African Charter seeks to make provision for group or collective rights, that is, that set of rights that can conceivably be enjoyed only in a collective manner like the right to self determination or independence or sovereignty.” See Report of the African Commission Working Group of Experts on Indigenous populations/Communities, at page 72-73, Part 3.4 Jurisprudence from the African Commission on Human and Peoples’ Rights, under Chapter 3; An analysis of the African Charter and its Jurisprudence on the Concept of ‘Peoples’, published jointly by the ACHPR/IWGIA 2005

<sup>63</sup> F Mackay (above n 29) 590

<sup>64</sup> As above

<sup>65</sup>Article 1 of the ICCPR

<sup>66</sup>Article 1 of the ICESCR

under the African human rights framework. Even if we can rely on the provisions of articles 19 through 24 of the African Charter on Human and Peoples' rights<sup>67</sup> with the jurisprudence of the IACHR to interpret "peoples" in this regard as including indigenous peoples. People's right to self-determination is clearly provided in the ICCPR and the ICESCR. This right is also protected by the African Charter. Comparatively, a clear provision exists under the Inter-American human rights system. The Inter-American Commission on human rights recognised some measures of this right under its proposed American Declaration on the Rights of Indigenous Peoples. Article 15(1) of the Declaration states that: "Indigenous peoples have the right to freely determine their *political status*"<sup>68</sup>, and because of this right, they have the right "freely pursue their economic, social and cultural development".<sup>69</sup> The Inter-American human rights system has interesting provisions on the rights of indigenous peoples. The Inter-American declaration states that: [indigenous peoples] have the right to autonomy and self-government with regard to inter-alia culture, religion, education, information, media, health, housing, employment, social welfare, economic activities, lands and resource management, the environment and entry by non-members and to the ways and means for financing these autonomous functions".<sup>70</sup>

It is difficult to understand how the Bank can therefore sustain the point that socio-economic rights can be achieved without any regard to political aspects of such rights. Self-determination is a clear example to show that the political prohibition clause of the Bank funded-operations is contrary to international human rights law. For instance on a negative side, Zanzibari separatists threatened the federal republic formed between Tanganyika and Zanzibar in 1964 to create present-day Tanzania.<sup>71</sup> In seek of independence, the recent discovery of oil and minerals in that region can be an opportunity for Zanzibari to claim back their independence from Tanzania.<sup>72</sup> Any project of development to extract those minerals now for example if controlled by the Government of Tanzania could threaten the right to development linked to the right to self determination of the Zanzibari.

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<sup>67</sup> These articles provide for the rights of peoples, including the right to self-determination, the right to freely dispose of natural wealth, and the right to a satisfactory environment.

<sup>68</sup> Compare with article 1 of the ICCPR and article 1 of the ICESCR

<sup>69</sup> See Inter-American Declaration article 1

<sup>70</sup> As above

<sup>71</sup> Michael J. & Kelly, P. "Political downsizing: The re-emergence of self-determination, and the movement toward smaller, ethnically homogenous States"

<sup>72</sup> <http://www.cnn.com/video/#/video/international/2012/10/15/inside-africa-tanzania-zanzibar-c.cnn>  
(accessed 10/2012)

In the contrary, on a positive side, the project of the road construction between Enugu (Nigeria) and Bamenda in the Anglophone Cameroon<sup>73</sup>, also known as the Cameroon-Nigeria-Highway aims at strengthening trade relations between the two countries; It can then be seen as a political catalyst between Nigeria and Cameroon. The venture, officially titled the Nigeria - Cameroon Multinational Highway and Transport Facilitation Project, will ultimately connect Bamenda in northwestern Cameroon to Enugu in eastern Nigeria via a 433 km-long corridor. It's being funded by the African Development Bank, the World Bank and Japan's Agency for International Development to the tune of close to \$500 million and is scheduled for completion in 2013. It's a longstanding project, first discussed in the mid-80s. It received a significant boost in 2008, when donors considered it a strategic catalyst in diffusing lingering political unease between Cameroon and Nigeria after the nonviolent resolution of the Bakassi border dispute.<sup>74</sup> In this perspective, the project can be positively received by Anglophone Cameroonians considered as minorities and linguistically and ethnically<sup>75</sup> closer to (eastern) Nigerians and at the same time considered as marginalised by the Cameroonian government seen as majorly francophone.<sup>76</sup>

The Chad- Cameroon pipeline is another good example in this regard. This largest African oil project, also funded by the World Bank, was a development project in which serious violations of indigenous peoples' rights were recorded. For example, the original development process for the Indigenous Peoples Plan (IPP) stipulated by World Bank policy had failed to provide culturally meaningful space to enable Bagyéli participation in the design of the IPP. This meant it did not address Bagyéli's main priorities – securing their access to agricultural land, and protecting their customary rights in forests. Instead the IPP focused solely on supporting Bagyéli agricultural, health and education, but without any meaningful participation by Bagyéli in the design, planning or implementation of the work of the Foundation for Environment and Development in Cameroon (FEDEC).<sup>77</sup>

Similarly, in a country like Mozambique where the Operational Policy O.P 4.10 of the Bank on indigenous peoples cannot legally be implemented because of the non-existence of recognised "indigenous peoples", the question is to know how the so called "local communities" can be truly protected in development projects funded by the Bank. Clearly, the legal protection of such communities is weaker since the OP.4.10 designed

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<sup>73</sup>The road forms part of the Trans-African Highway, which is intended to link Lagos, Nigeria, to Mombasa, Kenya.

<sup>74</sup><http://www.voanews.com/content/cameroon-nigeria-highway-designed-to-boost-trade-between-west-and-central-africa--115929449/159744.html> (accessed 10/14/2012)

<sup>75</sup>Gumne case

<sup>76</sup>As above

<sup>77</sup>See J Nelson, "Securing indigenous land rights in the Cameroon Oil pipeline zone", Forest Peoples Programme (2007) page i



for indigenous peoples itself is already weak and more cannot be legally applied. Waiting for the AU Convention on the conservation of Nature in its article 6(2) to come into force, only relevant national legislations, which themselves are limited<sup>78</sup> can be invoked. Due to the importance of the right to self-determination in the enjoyment of other human rights, the first implication of the political prohibition clause of the World Bank operations is that the rights attached to self-determination as interpreted by the UN treaties bodies are also violated. The political prohibition clause should be therefore revised because the right to self-determination under international human rights law, is a peremptory norm, or *jus cogens*, considered to be non derogable and binding on the Bank as well as Borrowers States.<sup>79</sup>

To conclude with, the Rio Declaration on environment and development clearly states that “Indigenous people and their communities, and other local communities, have a vital role in environmental management and development because of their knowledge and traditional practices. States should recognize and duly support their identity, culture and interests and enable their effective participation in the achievement of sustainable development”.<sup>80</sup>

### 3.2.1.2 The Conventional obligations on internally displaced populations

Another human rights implication of the political prohibition clause of the World Bank operations deals with the rights of internally displaced populations. These category of people are defined by the convention binding States under the African human rights framework as “the persons or group of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalised violence, *violation of human rights or natural or human-made disasters*, and who have not crossed an internationally recognised state border.”<sup>81</sup>

Article 3 of the convention defines the general obligations of States parties to the convention. Article 3(1b) clearly urges States parties to undertake measures to respect and ensure respect for the present Convention. In particular, States parties shall “prevent *political*, social, cultural and economic exclusion and marginalisation that are likely to cause displacement of populations or persons by virtue of their social identity, religion or political opinion”. The Bank political prohibition clause that considers only economic factors to development projects is contrary to States obligations in this regard.

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<sup>78</sup> See report of the Constitutional and legal protection of indigenous peoples in 24 African Countries, Centre for Human Rights, ILO (2007).....

<sup>79</sup>F Mackay (above n 29) 593

<sup>80</sup> Principle 22 of the Rio Declaration on Environment and Development

<sup>81</sup> See AU convention on internally displaced peoples

On one hand, the positive obligation of States is to avoid any kind of political exclusion that can cause displacement. This is the case for example of a Government that will discriminate a particular region or ethnic, linguistic or social group from receiving projects of development to advantage another social, linguistic or ethnic group within its territory.

In the case *Kevin Mgwanga Gumne et al v Cameroon*<sup>82</sup>, the African Commission on Human and People's Rights found the Defendant State in violation of article 19 of the African Charter, dealing with the right to development. In that case, the Anglophone Cameroonians, considered as minorities claimed that the Government of Cameroon, seen as majorly francophone, gave little attention to that part of the Country with a greater priority to the French speaking zone of the Country. For instance, complainants submitted that Southern Cameroonians are discriminated against by the Respondent State, in various forms. These include under-representation of Southern Cameroonians in national institutions, economic marginalisation through the denial of basic infrastructure, such as roads, persistence high levels of unemployment and illiteracy in Southern Cameroon. They also submitted that Southern Cameroonians are discriminated against in the legal and judicial system.

On the other hand the negative obligation of States is to prevent displacement to happen namely by displacement induced projects of development. This last point is reiterated by article 10(1) of the same Convention that binds States to prevent displacement caused by projects carried out by public or private actors". Therefore, the Bank decision to give loans to African States without considering these aspects binding them, implicitly violate their obligations to respect them. This obligation will not allow States to accept the construction of dams, extractive industries of large scale that are considered as displacement induced projects of development.

### **3.2.1.3 The Conventional obligations on the protection of women and children**

States obligations to protect women and children in Africa are specified in two majors African instruments: The protocol to the African Charter on the rights of women<sup>83</sup> and the African Charter on the rights and welfare of the Child.<sup>84</sup>In International Human rights law, women and children are considered as vulnerable groups that should benefit specific attention from Governments. The Bank economic approach to development projects is contrary to States obligations as defined by these two major instruments.

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<sup>82</sup>See ACHPR, Communication 266/2003

<sup>83</sup> Protocol to the African Charter on the Rights of Women, adopted in Maputo, Mozambique, on 11 July 2003 and entered into force on 25 November 2005

<sup>84</sup> African Charter on the Rights and Welfare of the Child adopted in Addis Ababa, Ethiopia on 11 July 1990 and entered into force on 29 November 1999.

Regarding to rights of women, the political prohibition has a direct implication on States duties to “integrate gender perspective in their policy decisions, legislation, development plans programmes and activities”.<sup>85</sup> African societies in general remain highly patriarchal and gender issues are not clearly visible through economic considerations. Similarly Article 19 defines obligations on States to fulfill women rights to sustainable development. A good example of a State obligation damaged by the clause is defined by Article 19(b) of the Protocol that obliges States to “ensure participation of women at all levels in the conceptualisation, decision-making, implementation and evaluation of development policies and programmes”.

The right of the African child challenged by the Bank economic approach is defined by Article 5 of the African Charter on the rights of the child. Following that provision, States parties at the Charter shall “ensure to the maximum extent possible, the survival, protection, and development of the child”. Those rights, viewed as States obligations, are not only economic factors determinants.

#### **3.2.1.4 The Conventional obligations on the protection of the environment**

The Bank exclusive economic approach to development causes serious infringement on States legal duties to protect and preserve the environment. The analysis of the conventional obligations of African States in this respect will be based on the African Convention on the Conservation of the Nature.<sup>86</sup>

In the preamble of the Convention the Heads of States and Governments of the member States of the African Union (AU) [re-affirmed] that “States are responsible for protecting and conserving their environment and natural resources and for using them in a sustainable manner with the aim to satisfy human needs according to the carrying capacity of the environment”.<sup>87</sup> Furthermore, they agreed on one fundamental obligation binding all States parties to the Convention. That fundamental obligation<sup>88</sup> binds “the parties [to] adopt and implement all measures necessary to achieve the objectives of this Convention, in particular through preventive measures and the application of the precautionary principle and with due regard to ethical and traditional values as well as scientific knowledge in the interest of the present and future generation”. This obligation

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<sup>85</sup> See article 2(c) and 19 (a) of the Women Protocol

<sup>86</sup> In September 1968, the OAU adopted the Convention on the Conservation of Nature and Natural Resources which entered into force in June 1969. On 11 July 2003 in Maputo, Mozambique, the AU adopted an amended version of the Convention. The amended Convention sets out a framework for the protection of the environment and the sustainable use of natural resources. Article 3(1) of the Convention dealing with “the right of all peoples to a satisfactory environment favorable to their development”, echoes article 24 of the African Charter specifically on environmental rights.

<sup>87</sup> Preamble, Revised African Convention on the Conservation of Nature and Natural Resources, paragraph 5

<sup>88</sup> See article 4 of the Convention.

has two main dimensions that are very important in the pursue of sustainable development: the precautionary principle<sup>89</sup> and preventive measures.

The precautionary principle applies in two circumstances that enable to show how to respond when there is some evidence, but not proof, that a practice is damaging the environment. This is the essence of Principle 15 of the Rio Declaration on environment and development.<sup>90</sup>The dimension given to development by these different instruments is the ecological dimension that the economic factors taken alone, lead States to act in opposition of their obligations under international law. Because these principles are not always respected Steven Herz and Anne Perrault observed that: “project activities contribute to environmental damage that significantly threaten the well-being of communities”.<sup>91</sup>

### **3.2.2 The implications of the prohibition clause on the obligations of African States in the area of civil and political rights**

Civil and political rights are also threatened by the political prohibition clause of the World Bank operations; Not all of them, but the right of populations to be consulted, to consent simply said to participate in those projects is then put in jeopardy. This result to torture exercised on populations that refuse or are not “collaborative” to the execution of the projects, due to economic constraints. From an economic perspective, the projects of development have some economic constraints because they involved important infrastructures and techniques from expensive consultants and enterprises. The contracts are done in a cost-effective way where time and profit is key-words. The consequence is therefore that the populations are victims of torture or forced evictions.

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<sup>89</sup> The precautionary principle largely emerged as a result of the increased awareness of the need for sustainable development. The sustainable development goal can be seen as early as 1976, when Judge Weeramanty, in the Gabcikovo-Nagymaros case, saw precautionary measures as a part of the wider legal principle of sustainable development. The precautionary principle fosters the sustainable development goal by preserving the environment by bringing the types and levels of production and consumption on a global level into line with the finite ability of the earth to sustain them. Without such an approach, an activity or substance might have an irreversible impact on the environment while scientists determine its precise effects, see <http://www.herecomesmongo.com/ae/pp.html> (accessed 10/18/2012).

<sup>90</sup> Recognizing the need to conserve and maintain genes, species, and ecosystems, urges nations, with the co-operation of the United Nations, nongovernmental organizations, the private sector, and financial institutions, to: conduct national assessments on the state of biodiversity; develop national strategies to conserve and sustain biological diversity and make these part of overall national development strategies; conduct long-term research into importance of biodiversity for ecosystems that produce goods and environmental benefits; protect natural habitats; encourage traditional methods of agriculture, agroforestry, forestry, range and wildlife management which use, maintain, or increase biodiversity.

<sup>91</sup> S Herz & A Perrault “Bringing Human Rights Claims to the World Bank Inspection Panel” (2009)

On another perspective, the Bank has paid little attention to political aspects in the fight against corruption in particular, redefining the word corruption, regarding it as an economic, rather than a political matter. The obligations of States regarding good governance in general and the fight against corruption are also put in question.

### **3.2.2.2 The Conventional obligations related to the prevention of torture (forced evictions)**

The African Commission drew inspiration in the SERAC case from the definition of the term “forced evictions” by the Committee on Economic, Social and Cultural Rights which defines this term as “the permanent removal against their will of individuals, families and/or communities from the homes and/or which they occupy, without the provision of, and access to, appropriate forms of legal protection”.<sup>92</sup> For the Commission, “whenever and whenever they occur, forced evictions are extremely traumatic. They cause physical, psychological and emotional distress. They entail losses of means of economic sustenance and increase impoverishment.

They can cause also physical injury and in some cases sporadic deaths. Evictions break up families and existing levels of homelessness.<sup>93</sup> On this point, States obligations to prevent forced evictions are given by the Committee on Economic Social and Cultural Rights. The Committee held that: “all persons should possess a degree of security of tenure which guarantees legal protection against forced evictions, harassment and other threats”.<sup>94</sup> This is why for Steven Herz and Anne Perrault “Security personnel are permitted to overstep their authority and improperly engage in national law enforcement activities”.<sup>95</sup>

### **3.2.2.1 The Conventional obligations related to good governance and the fight against corruption**

Inside the Bank, the justification of an economic definition of Governance has also held the Bank to give an economic justification to corruption. The “C” word<sup>96</sup> is apparently one of the most disqualified by the Bank.<sup>97</sup> For Shihata,

“the issues at hand is simply to identify aspects of governance that are relevant to the Bank’s work and may therefore defensibly fall within its mandate, and aspects are clearly political considerations, which cannot be taken into account without breaching the Bank’s Articles [of Agreement]. Such identification will make it possible for the Bank to determine the governance

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<sup>92</sup> S Leckie, “The Right to housing” in Eide, Krause and Rosas, quoted by ACHPR in the SERAC case, Para.63

<sup>93</sup> As above

<sup>94</sup> See General Comment No 7 (1997) on the right to adequate housing (article 11(1)): Forced evictions.

<sup>95</sup> S Herz & A Perrault “Bringing Human Rights Claims to the World Bank Inspection Panel” 2009, 14-15

<sup>96</sup> Expression of President Wolfensohn, cited by M Heather (above n 40 above)

<sup>97</sup> As above 422

issues it may formally take up in its dialogue with borrowing countries and appropriately address in its operations, and the issues it should ignore in its work”.<sup>98</sup>

Furthermore, the Bank has given an economic definition to corruption; President Wolfensohn frankly states that the Bank decided "to redefine the word corruption, regarding it as an economic, rather than a political matter." The Bank's position also belies the fact that almost all human rights have economic implications and most economic issues involve a series of political calculations and considerations.<sup>8</sup> Shihata defines issues related to "the art and practice of running a country or governing," as "political," but he excludes "such typical economic and technical issues as the 'management of money or the finances' or more generally the efficient management of the countries' resources."<sup>99</sup>

Similarly, the Bank's 'good governance programs and criteria provide more information about the scope of the latter aspect and include attention to "the manner in which power is exercised in the management of a country's economic and social resources for development. This includes accountability, transparency, and the rule of law. Shihata's legal opinions have undoubtedly influenced the practice and understanding of the Bank. However, other sources are equally, if not more relevant to understanding what is meant by the term "political affairs".<sup>100</sup>

These positions are not fully in line with the African Union Convention on Preventing and Combating Corruption.<sup>101</sup> The objectives of the Convention are to "promote and strengthen the development in Africa by each State party of mechanisms required to prevent, detect, punish and eradicate corruption and related offences in the public and private sectors".<sup>102</sup> The principles of the Convention set as follows: "States parties to this convention undertake to abide by the following principles: 1- respect for democratic principles and institutions, popular participation the rule of law and good governance; 2- respect for human and people's rights in accordance with the African Charter on Human and People's Rights and other relevant human rights instruments; 3- transparency and accountability in the management of public affairs; 4- the promotion and social justice to ensure balanced socio-economic development; 5- condemnation and rejection of acts of corruption, related offence and impunity".<sup>103</sup>

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<sup>98</sup> See I. Shihata 'The World Bank and Human Rights: An Analysis of the Legal Issues and the Record of Achievements' (1988) 46-47 *Denver Journal of International Law and Politics*

<sup>99</sup> On this question, see M Heather 'The origins and development of the world bank's anti-corruption programme' (2002) PhD thesis, Durham University, Department of Politics.

<sup>100</sup> As above

<sup>101</sup> The AU Convention on Preventing and Combating Corruption was adopted in Maputo, Mozambique, on 11 July 2003 and entered into force on 5 August 2006.

<sup>102</sup> See article 2 of the Convention.

<sup>103</sup> See article 3 of the Convention.

From these provisions, it is clear that an economic approach is limited to effectively prevent and combat corruption in Africa. From the Table 1.2 on the Twenty Largest Recipients of Bank Loans, IDA Credits, and Bank/IDA Resources, Combined, Cumulative, 1948 to 1980 (in US\$ millions) 24 *Bank IDA Bank/IDA*, African States there are fourteen (14) African countries concerned (with the 2011 Corruption Index Perception): Algeria,<sup>104</sup> Egypt,<sup>105</sup> Cameroon,<sup>106</sup> Ghana,<sup>107</sup> Ethiopia,<sup>108</sup> Kenya,<sup>109</sup> Madagascar,<sup>110</sup> Mali,<sup>111</sup> Morocco,<sup>112</sup> Nigeria,<sup>113</sup> Senegal,<sup>114</sup> Sudan,<sup>115</sup> Tanzania,<sup>116</sup> and Zaire (now DRC).<sup>117</sup> Nowadays, the World Bank partners with 48 countries in Sub Saharan Africa and is involved in 506 projects in the region. In fiscal year 2010, the Bank committed \$11.5 billion in new project lending in Africa, and disbursed over \$1.1 billion in grants, in addition to almost 90 analytical studies.<sup>118</sup>

It is clear that African countries are among the greatest borrowers of the Bank and at the same time, they are among the countries most corrupted on earth. The money received at the Bank does not always reach the purpose for which it is designed. The exclusive economic approach to corruption by the Bank is contrary to the Conventional obligations in the area of good governance and fight against corruption. The Index of Transparency International, whose report published in 2011,<sup>119</sup> clearly shows that “in the index, the link is clear between high levels of corruption and the weak *political* and *administrative institutions* that result from prolonged periods of conflict. Countries like Angola, Burundi, Chad, the Democratic Republic of Congo, Equatorial Guinea, Somalia and Sudan score lowest in the region and in the bottom twenty countries globally.

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<sup>104</sup> In 2011, Algeria scored 2.9 over 10

<sup>105</sup> In 2011, Egypt scored 2.9 over 10

<sup>106</sup> In 2011, Cameroon scored 2.5 over 10

<sup>107</sup> In 2011, Ghana scored 3.9 over 10

<sup>108</sup> In 2011, Ethiopia scored 2.7 over 10

<sup>109</sup> In 2011, Kenya scored 2.2 over 10

<sup>110</sup> In 2011, Madagascar scored 3.0

<sup>111</sup> In 2011, Mali scored 2.8 over 10

<sup>112</sup> In 2011, Morocco scored 3.4 over 10

<sup>113</sup> In 2011, Nigeria scored 2.4 over 10

<sup>114</sup> In 2011, Senegal scored 2.9 over 10

<sup>115</sup> In 2011, Sudan scored 1.6 over 10

<sup>116</sup> In 2011, Tanzania scored 3.0 over 10

<sup>117</sup> DRC scored 2.0 over 10

<sup>118</sup> <http://web.worldbank.org/WBSITE/EXTERNAL/COUNTRIES/AFRICAEXT/0..menuPK:258652~pageP:146732~piPK:146828~theSitePK:258644,00.html> [accessed 12 September 2012].

<sup>119</sup> The Index, which is closely watched by investors, economists, and civil society campaigners, is based on expert assessments and data from 17 surveys from 13 independent institutions, covering issues such as access to information, bribery of public officials, kickbacks in public procurement, and the enforcement of anti-corruption laws

For Chantal Uwimana, the *Regional Director for Africa and the Middle for Transparency International*, “political, tribal, religious and geographic interests often interfere in public decision making processes and have a direct impact on governance issues and the fight against corruption.”<sup>120</sup> With the exception of some countries like Rwanda<sup>121</sup> or Botswana<sup>122</sup>, sub-Saharan Africa remains one of the highest corrupted regions in the planet and those countries, good borrowers at the Bank fail to comply with their obligations to prevent and effectively combat corruption.<sup>123</sup>

Finally, this position has also adopted by Joseph Stiglitz, formerly the Bank's Chief Economist, who connected the work of the Bank on corruption to democratisation. He acknowledged that: “[e]arlier, discussions of corruption would have been off limits for the World Bank, which was generally proscribed from engaging in political matters not directly related to development. But the new thinking argues that there is no bright line of demarcation: corruption, though a matter of politics, is at the heart of underdevelopment. But once that line has been broached, the limits of what should be the Bank's purview are no longer clear. Openness, transparency, and democratic processes provide an important check on the operation of special interest groups and the extent of corruption.”<sup>124</sup>

### **3.2.3 The implications of the prohibition clause on the obligations of African States in the area of Socio-Economic and Cultural rights**

In the area of Socio-Economic and Cultural rights, States obligations are to realise them said to be progressive. This fact, combined with the need to develop States, make Governments taking an approach to development projects that does not always safeguard the rights of disadvantaged or affected communities. In this regard, we partially agree with Steven Herz and Anne Perrault who in an article published in

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<sup>120</sup> <http://blog.transparency.org/2011/11/30/corruption-perceptions-index-2011-a-call-to-action/> [accessed on the 10/19/2012]

<sup>121</sup> Rwanda serves as an encouraging example. Improvement is possible and can be seen within a relatively short period, through a firm commitment to strengthening political, judicial and administrative institutions.

<sup>122</sup> The 2011 least corrupt country in Africa is Botswana, a Southern African country, with scores of 6.1 points. <http://africanspotlight.com/2011/12/2011-corruption-index-of-african-countires-transparency-international/>

<sup>123</sup> More details in <http://blog.transparency.org/2011/11/30/corruption-perceptions-index-2011-a-call-to-action/> [accessed on the 10/19/2012]

<sup>124</sup> See supra note 31



October 2009<sup>125</sup>, confined to 05 examples, “[the] rights often implicated in development finance projects”. These rights according to them “include the right to food<sup>126</sup>, the right to health<sup>127</sup>, the right to life, the right to property<sup>128</sup>, the right to an adequate standard of living, among others”. In a drafted chart, the two authors present the types of activities that most often implicate these rights, as indicated by a recent survey of private sector lending projects.

To these rights, we will look particularly at the right to compensation on properties’ expropriation. This right is broad and includes the right to adequate resettlement.

### 3.2.3.1 On the right to fair compensation on properties’ expropriation

The right to fair compensation is among the socio-economic rights the most threatened for disadvantaged populations. Displacement induced projects of development for instance, at the moment of their implementation, generally create situations whereby the management practices not always comply with the Bank policies, but more importantly with States obligations in this regard. The right to compensation is linked to the right to an effective remedy for the lost of a property for instance. Partly due to corruption, communities often receive an inadequate compensation for the resources they own. The question for example of individual based compensation or community based compensation approach is not determined.

If we consider the case of the Cameroon-Pipeline that we will analyse more in chapter 4 of this study, it is clear that the right to compensation is a sensitive right threatened by the Bank political prohibition clause. The Panel found that “the consultations were conducted in the presence of security forces, which is incompatible with Bank’s policy requirements. As the Panel has said on previous occasions, full informed consultation is

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<sup>125</sup> Steven Herz and Anne Perrault “Bringing Human Rights Claims to the World Bank Inspection Panel”, October 2009, PP. xiv-xv

<sup>126</sup> From the authors’ observations, “activities that pollute land, [sometimes] destroying use for production of food; Community’s last usable agriculture land is expropriated; Community is deprived of clean usable water.”

<sup>127</sup> From the authors’ observations, “health and safety standards appropriate to maintain health, safety, and hygiene are not [always] implemented; Chemicals are not [always] transported, stored, or disposed of in a manner that protects against pollution of land or water. Procedures are not [always] in place to prevent and address all health emergencies and industrial accidents.”

<sup>128</sup> From the authors’ observations, “indigenous peoples [sometimes] 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 [always] obtained from Indigenous Peoples prior to resettlement”.

impossible if those consulted perceive that they could be penalised for expressing their opposition to, or honest opinion about, a Bank financed project”.<sup>129</sup>

States obligations are to make sure that communities as well as individuals expropriated from their lands, wealth and environment are effectively and fairly compensated. The African Charter on Human and Peoples' Rights (ACHPR) protects the right to property most explicitly in its Article 14 stating that: "the right to property shall be guaranteed. It may only be encroached upon in the interest of public need or in the general interest of the community and in accordance with the provisions of appropriate laws." Property rights are furthermore recognised in Article 13 of the ACHPR, which states that every citizen has the right to participate freely in the government of his country, the right to equal access to public services, and "the right of access to public property and services in strict equality of all persons before the law". Article 21 of the ACHPR recognises the right of all peoples to freely dispose of their wealth and natural resources and that this right shall be exercised in the exclusive interest of the people, who may not be deprived of this right. Article 21 also provides that "in case of spoliation the dispossessed people shall have the right to the lawful recovery of its property as well as to adequate compensation.

### **3.2.3.2 On the right to water**

On this point, States obligations are defined by article 7 of the African Convention on the conservation of nature. Bank Investment decisions without human rights approach have critical impacts on scarce resources like water. This provision binds States “to manage their water resources” so as to maintain them at the highest possible quantitative and qualitative level[...].<sup>130</sup> They should also “prevent damage that could affect human health or natural resources, and prevent excessive abstraction to the benefit of communities and states”.<sup>131</sup>

## **3.3 The contrast of the World Bank political prohibition clause with the African regional human rights framework**

Here we will see that the Bank political prohibition is contrary to the African Charter on Human and people’s rights and African Charter on Human and people’s rights and the African Charter on democracy, elections and good governance. The jurisprudence of the African Commission on Human and People’s Rights as well as position of the African

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<sup>129</sup>See the Inspection Panel, Investigation Report, Chad-Cameroon Petroleum and Pipeline Project Loan No.4558-CD; Petroleum Sector Management Capacity Building Project 9Credit No.3373-CD); and Management of the Petroleum Economy 9Credit No. 3316-CD)

<sup>130</sup> Article 7(a)

<sup>131</sup> Article 7(b)

Court of Human Rights and Justice's rules of procedure further show that the practice is contrary to the African Human Rights.

### 3.3.1 The dissimilarity with the African Charter on Human and people's rights and the African Charter on democracy, elections and good governance

The dissimilarity of the political prohibition clause with the African Charter on democracy, elections and good governance can be seen at two levels: the provisions of the preamble as well as the corpus of the Charter. In the preamble, the member States of the African Union committed themselves to "promote the Universal values and principles of democracy, good governance, human rights and the right to development."<sup>132</sup>

In the corpus of the Charter, the provisions affected by the Bank approach are not only the principle of "effective participation of citizens in democratic and development processes and in governance of public affairs"<sup>133</sup> but also, more fundamentally, States obligations to "promote citizen participation in the development process through *appropriate structures*".<sup>134</sup> Now the Charter does not explicitly define what "appropriate strictures" are. One thing certain is that States parties' obligations are to provide "full participation of social groups with special needs in democracy and development process".<sup>135</sup> These obligations bind them to respect full participation as a standard in development and democracy.

According to the Economic Intelligence Index:

"Participation is also a necessary component, as apathy and abstention are enemies of democracy. Even measures that focus predominantly on the processes of representative, liberal democracy include (although inadequately or insufficiently) some aspects of participation."<sup>136</sup>

In accordance with this new human rights system, the African Charter on Human and people's rights and the African Charter on democracy, elections and good governance sets a clear link between Democracy and Development. An accent is also put on popular participation to development. These elements should therefore be fully considered in Africa by financial institutions like the World Bank.

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<sup>132</sup> See preamble of the African Charter on Democracy, elections and Good governance

<sup>133</sup> See article 2 of the Charter

<sup>134</sup> See article 30

<sup>135</sup> See article 32

<sup>136</sup> See Democracy index 2011, Report from the Economic Intelligence Unit P29

### 3.3.2 The position of the African Commission on Human Rights

Lending based only to economic factors is threatening the rights of African peoples particularly because of the non democratic character of regimes. In the SERAC case, the African Commission on Human and People's rights has been seized with a communication in which complainants alleged that "the Nigerian Government has condoned and facilitated [the] violations by placing the legal and military powers of State at the disposal of oil companies. Furthermore, the communication alleged that:

*"The Government has neither monitored the operations of the oil companies nor required safety measures that are standard procedure within the industry. The Government has withheld from the Ogoni communities information on the dangers created by oil activities. Ogoni communities have not been involved in the decisions affecting the development of Ogoniland [...] The Government has also ignored the concerns of Ogoni communities regarding oil development of Ogoniland."*<sup>137</sup>

The African Commission has found the State of Nigeria among others, in violation of article 16, 18(1), 21 and 24 of the African Charter on Human and People's Rights dealing with the right to health, the right to development and satisfactory environment. The Commission held in that case that:

*"The drafters of the Charter obviously wanted to remind African governments of the continent's painful legacy and restore cooperative economic development to its traditional place at the heart of African society. Governments have a duty to protect their citizens, not only through appropriate legislation and effective enforcement, but also by protecting them from damaging acts that may be perpetrated by private parties."*<sup>138</sup>

Private or non-State actors are often involved in human rights abuses by development projects approved by States and financed by the World Bank through its branch, the IFC (International Financial Corporation) that lends loans to private companies.

Similarly, in the Endorois case, the African Commission found the Kenya in violation of the right to development, protected by article 22 of the African Charter on Human and Peoples' rights. The approach of the Commission in this regard was very innovative: the definition of right to development was based on the absence of consent and participation of indigenous peoples in a project (of development) approved by the Government and economically attractive. The political dimension of development has been then reaffirmed in Africa as proclaimed by the UN.<sup>139</sup>

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<sup>137</sup> Social and Economic Rights Action Centre (SERAC) and Another v Nigeria (2001) AHRLR 60 (ACHPR 2001) Para 4

<sup>138</sup> As above Para 57

<sup>139</sup> Article 1 of the UN declaration drafted in 1986 on the right to development makes a reference to the right to "political" development.

### 3.3.3 The position of the African Court of Human Rights and Justice's rules of procedure

The African Court will be empowered to sanction the non observance of rights protected within the regional human rights framework in Africa. Its decisions, binding States will be to ensure the respect of conventions dealing with human rights according its Statute creating the African Court. The Court has not yet decided on a case regarding this issue, but in a prospective analysis, the Court will be competent to know and decide in such cases.<sup>140</sup>

## 3.4. The contrast of the Bank political prohibition with persuasive development mechanisms in Africa

### 3.4.1 The NEPAD approaches

The Bank approach is contrary to the NEPAD mechanisms. To understand why, we will have to first interrogate the history of the different approaches in the comparative basis. For Rawia M. Tawfik,

“the ideological orientation of NEPAD, and its perspective on the role of the state in the development process, cannot be understood without considering the shift in thinking that has taken place in the neo-liberal institutions, especially the World Bank, in recent years. During the 1970s and 1980s these institutions demonized state intervention in the economy, but by the late 1990s they began to admit that the state had a role to play and that its capacity to do so needed to be enhanced”.<sup>141</sup>

NEPAD mechanisms place participation, democracy and good governance at the heart of development. Accordingly, Africa faces grave challenges and the most urgent of these are the eradication of poverty and fostering socio-economic development, in particular, through democracy and good governance. It is to the achievement of these twin objectives that the NEPAD process is principally directed.

Accordingly, the Heads of State and Government of the memberstates of the African Union have agreed to work together in policy and action in pursuit of the following objectives:-

- Democracy and Good Political Governance
- Economic and Corporate Governance
- Socio-Economic Development
- African Peer Review Mechanism”.<sup>142</sup>

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<sup>140</sup> See F Viljoen, ( above n 10)

<sup>141</sup>“NEPAD and African Development: Towards a New Partnership between Development Actors in Africa”, *African Journal of International Affairs*, Vol. 11, No. 1, 2008, pp. 55–70

<sup>142</sup> As above

Therefore it is clear that socio-economic development is read in line with good political governance and not without.

### 3.4.2 The African Peer Review Mechanism (APRM)

The Bank non-political approach to development is contrary to the APRM mechanisms. This is simple because following the system defines by the APRM the Heads of State and Government of the member states of the African Union (AU), who met in Durban, South Africa, at the inaugural Assembly of the African Union agreed that: “good economic and corporate governance including transparency in financial management are essential pre-requisites for promoting economic growth and reducing poverty. Mindful of this, [they] have approved eight prioritized codes and standards for achieving good economic and corporate governance [...]”

[T]he eight prioritized and approved codes and standards set out below have the potential to “promote market efficiency, to control wasteful spending, to consolidate democracy, and to encourage private financial flows - all of which are critical aspects of the quest to reduce poverty and enhance sustainable development.” These codes and standards have been developed by a number of international organizations through consultative processes that involved the active participation and endorsement by African countries. Thus, the codes and standards are genuinely global as they were agreed by experts from a vast spectrum of economies with different structural characteristics.

Similarly, on the question of socio-economic development, the Heads of State and Government of the member States of the African Union on the APRM “believed that poverty can only be effectively tackled through the promotion of: democracy, good governance, peace and security; the development of human and physical resources; gender equality; openness to international trade and investment; allocation of appropriate funds to social sector and new partnerships between governments and the private sector, and with civil society”.<sup>143</sup>

### 3.5 Conclusion

The rights implicated by the political prohibition clause of the Bank funded operations are numerous; The reason being that the approach is contrary to States human rights obligations at the global and regional level. These obligations are related to indigenous rights, the protection of the environment, the rights protecting internally displaced populations, women and children. The socio-economic rights often implicated in Bank

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<sup>143</sup>The African Peer Review Mechanism (APRM), O.A.U. Doc. AHG/235 (XXXVIII), Annex II;

financed development 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. Forced evictions, the fight against corruption and good governance are African States obligations impeded by the Bank exclusive economic approach to its operations. These developments are as we saw contrary to regional standards on question development in general but also to the whole range of rights implicated by the Bank approach. The NEPAD and the APRM are new mechanisms under which democracy, the respect of the rule of law, public participation are prerequisite to reduce poverty and achieve development in Africa. Doing otherwise is bringing oil to increase a lamp flame and letting it opened to wind at the same time.

## CHAPTER 4: REDEFINING THE WORLD BANK OPERATIONS IN AFRICA THROUGH HUMAN RIGHTS BASED APPROACH

### 4.1 Introduction

This chapter attempts at defining a human rights based approach in the World Bank operations in Africa. The approach here is therefore prescriptive. This objective is not a new one but has faced serious challenges due to the lack of will from the Bank to play an significant role in that process. For Fergus Mackay:

“The current discussion on a rights-based approach to development within the U.N. and elsewhere does not focus on the wisdom of such an approach, which appears to be generally accepted, but rather focuses on how it can be implemented. While the Bank has participated in some of the discussions about implementing the right to development, and maintains that its approach to poverty alleviation is aimed at realizing economic, social and cultural rights, the Bank remains conspicuously absent from the larger discussion about adopting a rights-based approach to development”.<sup>144</sup>

Similarly, responding to the Bank's argument that the political prohibition in its Articles preclude loan refusal for any non-economic reasons, the U.N.'s legal counsel, S.A. Bleicher, opines that the Bank was reading this requirement too broadly. As the record of a meeting indicates:

The first sentence of Section 10 appears to have as its purpose the prohibition of interference in the internal political affairs of a Member State and of discrimination against a State because of the political character of its government. He doubted very much that the sentence is intended to relate to criteria involving the international conduct of a State affecting its fundamental Charter obligations.<sup>9 2-</sup>

If Fergus's position is correct it is certainly because the consequences at the level of the Bank will be to amend its Articles of Agreement, particularly Article 4 section 10 to adapt the 1944 provision to the current environment of today dominated by human rights values. The amendment being the extreme measure to be taken, the least will be to interpret States obligations according to their present commitments. This point has been the one of Mr. Shihata, who declared on this issue that:

“I also agree that the Bank's Articles of Agreement should not always be read literally. This may suggest that they should be interpreted in a purposive, teleological manner. It cannot reasonably suggest that they should be interpreted in a way that totally negates the ordinary meaning of the text in the light of its object [...].The third agreement is really irrelevant, as the Articles of Agreement in no way contradict human rights law.”<sup>145</sup>

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<sup>144</sup> See F Mackay (above n ) 535

<sup>145</sup> See Shihata (above n 7)



## **4.2. The amendment of Article 4 section 10 of the World Bank Articles of Agreement**

We distinguish the direct and the teleological interpretation:

### **4.2.1 The direct amendment**

The direct amendment will be to re-write article 4 section 10 of the Bank articles of agreement as to fully taking into account States obligations to respect protect human rights and to comply with these obligations in the implementation of projects funded by the Bank within their territory with international standards on human rights. Therefore, the Bank will remain clearly an apolitical institution, but not a non-political institution since dealing with State is already a form of political activity.<sup>146</sup> Extending the relations with States with their obligations will achieve Bank purpose to reduce poverty as it is the standard on sustainable development in the World today.

Economic factors will determine Bank decisions but also, Bank policies will be read in line with States obligations binding them directly in accordance with non derogable human rights of affected populations or populations concerned with Bank funded operations within the scope of States human rights duties. The World Bank is therefore a partner to support State, without leading them to do wrong, but to do things according to international recognised human rights standards.

### **4.2.2 The purposive or teleological amendment theory**

The principal problem with the "honoring the charter" or "privileging the Articles" approach to the issue is that it makes the international human rights system inferior to the Bank Articles of Agreement; when in principle, the Charters of IFI should remain subordinate to international law. Human rights obligations emanate from the Charter of the United Nations and the Universal Declaration, and have come to represent a standard that in over 50 years of existence signifies a holistic approach to the human condition

The Bank does not operate in a legal vacuum. It operates within the international legal system and both the Bank and its constituent agreement are governed by international law,<sup>69</sup> as neither the Bank nor its Articles are above the law.<sup>69</sup> The International Court of Justice also confirmed that an interpretation and application of an international instrument must be made within the framework of the prevailing legal system at the time of its interpretation.<sup>70</sup> Additionally, Article 31(3)(c) of the Vienna Convention on the Law

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<sup>146</sup> M Heather, supra note n 29

of Treaties provides that treaty interpretation shall take into account "any relevant rules of international law applicable in the relations between the parties." Therefore, as a general proposition, the Bank is subject to international law and its Articles must be interpreted consistently with international legal principles, particularly those of a higher order, including human rights norms.<sup>147</sup>

#### **4.3 Interpreting the meaning of the Bank political considerations on projects of development in Africa: the Case study of the Chad- Cameroon pipeline project**

The Chad-Cameroon Pipeline is used here as a sample to understand how the Bank can interpret its non-political approach to foster the promotion and respect of human rights in Africa. In this regard, the project was a unique development scheme in Africa for many reasons.

Firstly because of its financial importance; it is still the highest financial intervention of the Bank in history in Africa. Around 6.5 US \$ billions needed to extract oil from the city of Doba in southern Chad through a 1070 km pipeline to the port of Kribi, located in the Cameroonian Atlantic coast. The two Countries and specifically Chad has been one of the poorest and politically unstable in the region. The project was therefore seen by the Bank as "an unprecedented framework to transform oil wealth into direct benefit for the poor."<sup>148</sup>

Secondly, the project has brought to the light important lessons and forthcoming challenges for the Bank future involvement to embrace human rights issues in its operations. Highly criticised for its environmental and indigenous rights violations, it has also been able to redefine Bank's relations with authoritative and abusive Governments today. Notwithstanding corruption which is a serious matter in those countries- Cameroon and Chad- the question of human rights and democracy also remained problematic. The Bank involvement in this large venture would not have been the same than elsewhere because of the *political risk* that affected the project.<sup>149</sup> In that part of the world, Oil and Armed conflict have already been set together and leaders in Sudan, Libya and Chad have been using the money from that extraction to finance armed conflicts.<sup>150</sup>

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<sup>147</sup>F Mackay (above n ) 545

<sup>148</sup>R Kirunda, "Political Prohibition and the World Bank's role In the protection of Human Rights in the Saga of the Chad-Cameroon Pipeline"(2008) *East African Journal of Peace and Human Rights*, 266-309

<sup>149</sup>As above

<sup>150</sup>See [www.bicusa.org/en/Region.1.aspx](http://www.bicusa.org/en/Region.1.aspx) (accessed July 2012)

Furthermore, oppositions against the project in Chad by civil society organisations<sup>151</sup> and political leaders were often severely congested by that Government. This was done until that an incident happened that moved the Bank forward to intervene; Mr. Ngarledji Yorongar, a Parliamentarian in Chad who was opposed to the project, was arrested, held in jail, tortured for nine months was about to die when NGO alerted the Bank's president who intervened for Mr. Yorongar's release.<sup>152</sup> "*This is the president of the World Bank calling...*"<sup>153</sup> was certainly an intervention that showed perhaps the Bank smart approach for human rights, neat political interference and efficient interventions when needed. The Bank suspended its lending in 2006 after the Chad government reneged on its promises to devote a percentage of its oil revenues to social spending. But, "although the political situation in Chad remains unstable and government will to prioritise poverty reduction is questionable, the two parties [had] since reached an interim agreement to resume Bank lending and unfreeze accounts holding by country's oil revenues".<sup>154</sup> In this perspective, a clear and purposive meaning to the Bank's political prohibition in general and particularly in the African context where development as we discussed is meaningless without security, human rights and democracy is required.

#### 4.4 Conclusion

The Bank political prohibition clause has not yet been amended. The Bank still bases its own non-economic factors out of its operations. The amendment of Article 10 Section 4 of the Bank Articles of Agreement appears to be the solution. But realistically, this can perhaps never happen. The reason being that the procedure of amendment of the Bank Articles of Agreement is not easy and also that it would mean implicitly the Bank, as an IFI is on the way to fully recognise its human rights obligations and comply with it. Theoretically, the Bank Charter is not superior to international law and from a teleological approach, the Bank should make sure that the design and implementation of the projects, programs, policies and in-country activities are consistent with internationally recognised human rights standards and human rights obligations of those States.<sup>155</sup>

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<sup>151</sup> The NGO in Chad requested from the Bank a moratorium to implement the project until the Government capacity was reinforced, democratic institutions strengthened and the country's human rights record improved.

<sup>152</sup> For more details see, R Kirunda, "Political Prohibition and the World Bank's role In the protection of Human Rights in the Saga of the Chad-Cameroon Pipeline"(2008) *East African Journal of Peace and Human Rights*, 266-309

<sup>153</sup> R Kirunda, (above 151) 300

<sup>154</sup> As above 149

<sup>155</sup> See Bradlow (above n 17)

## CHAPTER 5: CONCLUSION AND FINAL RECOMMENDATIONS

### 5.1 Conclusion

We have been analysing the human rights repercussions of the World Bank political prohibition clause operations in Africa. Our method was to analyse the foundations of the clause to see why. In spite of many calls, the Bank was still maintaining its position today, since 1944 at the drafting of its Articles of Agreement or Charter. We have seen that there are an economic reason and a strong political drive behind the clause. Historically, it was principally for the Bank to work as a universal financial institution by not excluding a State member based on its political status, especially during and after the Cold War. We have also seen later that the human rights architecture developed in Africa, with its own specific need has involved a political dimension to those rights. Today, African States are among the best borrowers of loans from the Bank. At the same time, they are parties under the African Human Rights system of obligations that bind them with a clear multidimensional approach to development in Africa. The practice contravenes the human rights obligations of African States from their duty to protect vulnerable groups and the environment; but also because it creates an environment improper to fulfill their obligations under international human rights law; socio-economic rights as well as civil and political rights. African States are more and more borrowing loans at the same time debt servicing is increasing and there is no clear human rights approach on the conditionality defined namely by the IMF and the World Bank.<sup>156</sup> But there is hope... for Mary Robinson, the former United Nations High Commissioner for Human Rights,

“It is important to recognize when there has been a defining moment for the international promotion and protection of human rights. One such moment, I believe, was when the World Bank Group recognized that it had an express role to play in the promotion and protection of human rights. This publication is a further step in that process, and one that I warmly welcome. *Development and Human Rights: The Role of the World Bank* is a significant contribution to the commemoration of the 50th Anniversary of the Universal Declaration of Human Rights.”<sup>157</sup>

### 5.2 Recommendations

#### 5.2.1 Recommendations to the World Bank

- The World Bank Panel recommendations should be binding upon the Bank decisions and operations;

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<sup>156</sup> See the Report of the United Nations Independent Expert on the effect of foreign debt and other related international obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights.

<sup>157</sup> Development and Human Rights, The Role of the World Bank (1998) The World Bank

- Section 10 Article 4 of the Bank's Charter should be revised or inter alia, interpreted in a purposive manner;
- Responsible lending principles should apply in Bank relations with African States;<sup>158</sup>

### **5.2.2 Recommendations to African States/ African Commission**

- Avoid loans from consumption purposes;
- Receive loans for production purposes;
- States must consider their human rights obligations in their relations with the World Bank.
- The African Commission should connect the Working group on Extractive Industries, Environment and Human Rights violations in Bank operations in the World Bank operations.

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<sup>158</sup> See for example the Tilburg Principles on World Bank and Human Rights (2002)

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