

## ***Tilburg Guiding Principles on World Bank, IMF and Human Rights***

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### Abstract

The Tilburg Guiding Principles on World Bank, IMF and Human Rights have been drafted by a group of experts, meeting at Tilburg University, The Netherlands, in October 2001 and April 2002. They relate to human rights obligations for international financial institutions (like the World Bank and the International Monetary Fund), link these legal obligations in the field of human rights to the economic and political realities the organizations are confronted with, and discuss the possible redress of adverse human rights impacts of the activities of the financial institutions.

# **TILBURG GUIDING PRINCIPLES ON WORLD BANK, IMF AND HUMAN RIGHTS**

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## **Underlying Notions and Observations**

### *Human Rights Obligations for International Financial Institutions (IFIs)*

1. The Universal Declaration of Human Rights of 1948 is a 'common standard of achievement for all peoples and all nations' (Preamble of the Declaration). At the beginning of the new Millennium, the Declaration goes far beyond being merely a moral or political obligation, as large parts of it belong to international customary law, while some rights have developed into *jus cogens* standards.
2. As a follow-up to the 1948 Declaration, a large number of human rights conventions have been adopted by the United Nations, including its Specialised Agencies, and by regional organisations. Regional and international supervisory bodies and national courts have established a serious and extensive body of case law and jurisprudence.
3. International human rights law includes civil, cultural, economic, political and social rights, as well as the right to development. These rights are, each in their own way, relevant in the struggle against poverty as well as for other activities performed by World Bank and IMF, and, *mutadis mutandis*, other IFIs.
4. The traditional division between obligations of States not to interfere with civil and political rights on the one hand, and obligations of States to actively provide for the realisation of economic, social and cultural rights on the other hand, is no longer reflecting the reality in the implementation of human rights. Instead, the division of obligations of States into three

levels: the obligation to respect, the obligation to protect and the obligation to fulfil, has gained widespread acceptance in the international human rights community.

5. The responsibility for implementing human rights is universal and concerns all – state and non-state – actors whose activities may affect people's lives. The primary responsibilities and obligations in the field of domestic human rights enjoyment, however, remain with the State: States cannot 'delegate' human rights obligations to, for instance, international institutions and relieve themselves of these obligations. As international legal persons, the World Bank and the IMF have international legal obligations to take full responsibility for human rights respect in situations where the institutions' own projects, policies or programmes negatively impact or undermine the enjoyment of human rights.
6. The two IFIs are also Specialised Agencies, having entered into Relationship Agreements with the United Nations in accordance with UN Charter Article 63. This is another indication of their international legal personality separate from their members, which carries with it rights and obligations according to international law. According to the Relationship Agreements the organisations are, and are required to function as, independent international organisations. It provides an organisational independence from the UN, not from international law.
7. The World Bank and the IMF are governed by their member States. When representatives of member States determine the policies of the two IFIs, they are bound by their States' international obligations, including those arising from international human rights law. This includes an obligation on those States in a position to assist, to provide international assistance and co-operation. The obligation of international assistance and co-operation includes the duty to work actively towards an equitable financial investment and multilateral trading system that is conducive to the reduction and eradication of poverty and the full realisation of all human rights.
8. As members of the UN the member States of the two IFI's have legally committed themselves to uphold the purposes and principles of the UN Charter, including the promotion of respect for human rights. According to Article 103 of the UN Charter, the obligations of States under the

Charter, including obligations in the field of human rights, take primacy over other international obligations.

*Linking Legal Obligations in the Field of Human Rights to Economic and Political Realities*

9. Markets are to ensure economic effectiveness in processes of production, distribution and consumption of goods and services. From a macro-economic perspective they may contribute to generally improved living conditions. To ensure, however, that outcomes of economic processes also conform to standards of social justice and meet obligations in regard to the daily livelihoods of poor people, human rights standards must be an integral part of decision-making by actors in market-oriented environments.
10. While most governments have ratified human rights conventions, the status of human rights in many societies – in all its dimensions – remains precarious at best. The implementation of rights is often impeded by weak legal systems, particularly relating to the poor, the powerless, minorities and indigenous peoples as well as to the realisation of the right to a clean environment. The negative experience with capacity building and institutional development is a major problem for any discussion on the mainstreaming of human rights in development institutions.
11. Practice often shows that one part of government does not necessarily know what another part is doing, even if both parts are working in the same field. One segment of the government might even be resistant to what another governmental agency is doing. Often, governments do not ensure that all relevant departments are familiar with international human rights norms that bear upon policy-making processes. This is a problem in all States in the world, albeit in varying degrees.
12. When the UN was created, it was endowed, through its Charter, with a mandate to deal with problems of international co-operation, in particular economic and social co-operation. Today, much of the economic policy dialogue has shifted to the World Bank and the IMF (and to the WTO, which is not addressed in these Guiding Principles).
13. The World Bank and the IMF currently also address global concerns that are within the expertise of different UN organs and Specialised Agencies,

*inter alia*, security, environment, social policy, gender, development, poverty reduction, debt relief, health and educational issues. They exert significant influence on these issues either directly, by setting actual policies, or indirectly, by prescribing economic policy directives.

14. In practice, there is a striking asymmetry of power and influences between the UN and both IFIs. The World Bank and the IMF have considerable resources available to fulfil their mandates and they dispose of powerful means to have their decisions enforced. The UN on the other hand has only a limited budget, apart maybe from the UN Security Council, which is insufficient to effectively perform the wide spectrum of functions it is expected to fulfil.
15. There is a troubling lack of dialogue and co-ordination between the UN and the two IFIs. The World Bank and the IMF, albeit UN Specialised Agencies, exhibit a large degree of independence from the UN. Based on their interpretation of the Relationship Agreements with the UN, the IFIs have contrived to distance themselves from many UN resolutions and recommendations that reflect the broad wishes of the international community.
16. Although the World Bank and the IMF increasingly adopt partnerships with other organisations, including those within the UN system, these partnerships often mean that the IFIs set the policy directions while the respective partner organisation is tasked with the implementation. Partnership in the design of policy directions is rare.

#### *Evaluation and Redress of Adverse Human Rights Impacts*

17. Rights and obligations demand accountability, while it is up to the duty-holders to determine which accountability mechanisms are most appropriate in particular cases. In any case, however, these mechanisms must be accessible, transparent and effective.
18. A human rights impact assessment can be done *ex ante*, i.e. in the stage of decision-making, or *ex post*, i.e. when projects have evolved or have come to an end.
19. Strategies to supervise the implementation of economic, social and cultural rights should not be limited to the monitoring of violations. In relation to

economic, social and cultural rights, the poor's access to these rights is one of the core issues. In particular, firm links need to be established between legal/constitutional reform and social policy. This includes the incorporation of international economic, social and cultural rights in national law, accompanied by a change in legal, political and social systems, structures and institutions.

20. The monitoring and assessment of human rights violations can normally be done on a case by case basis. However, in the framework of assessing the human rights impact of World Bank projects and IMF programmes, a case by case approach might work for individual projects and country strategies, but not for the evaluation of broad and general policies that are problematic from a human rights point of view.
21. The effectiveness of the World Bank Inspection Panel as a human rights accountability mechanism is limited by its inability to invoke specifically human rights law, its lack of decision-making power, the absence of a role for the petitioners in the Inspection Panel procedure itself, and the limited human rights expertise of the Panel.
22. The IMF Independent Evaluation Office's mandate allows flexibility in possible evaluation topics and consultations with informed and interested parties outside. The key lacuna in the Office's terms of reference, however, is that affected or interested parties cannot challenge IMF programs if flawed. For that reason, there is still a need to establish a complaint office.

## **Guiding Principles**

### *Human Rights Obligations for International Financial Institutions*

23. While joint statements by the World Bank and the IMF increasingly recognise that macroeconomic and financial aspects cannot be considered separate from the structural, social and human aspects of development, their macro-economic policy should take into account its impact on human development objectives, including human rights.
24. The World Bank and the IMF should integrate human rights considerations into all aspects of their operations and internal functioning. Both financial

institutions should ensure that prevention of human rights violations is given high priority in their processes, policies, financed projects and in the implementation of various programs and strategies. If violations do occur in the course of these operations, then measures for mitigating the impact thereof and mechanisms of accountability and redress should be put into place.

25. The IMF Articles of Agreement acknowledge the need to respect domestic social and political policies of members. Such policies include international commitments to human rights. Neither the IMF nor the World Bank should impede the Borrower from honouring such legal obligations, or agree to measures depriving individuals of their rights under domestic and international law.
26. In concluding agreements with their members, the IFIs shall respect the obligations of the members according to Article 103 of the UN Charter, including giving priority to respect for human rights.
27. When determining the policies, programmes and projects of the World Bank and the IMF, member States must comply with their obligations under international human rights law, including the duty to engage in international assistance and co-operation. Moreover, when member States decide upon policies, programmes and projects that impact upon a State, they must take into account and respect the relevant national and international human rights laws that apply to that State. Member States should not agree to measures that will impede their ability to comply with their national and international human rights obligations.
28. For reasons of operationalisation, general human rights obligations for the World Bank and the IMF should be specified in a practical and accessible instrument by which the two IFIs are to be guided in all their decisions and on the basis of which they can be held accountable.
29. The World Bank Articles of Agreement need to be interpreted in the light of the current definition of development, which includes respect for human rights.
30. The Bank's operational policies are an appropriate instrument for assisting staff in ensuring that Bank-financed projects do not result in human rights violations. The following clause should be included in the operational

policies of the World Bank: ‘The World Bank shall not finance projects that contravene applicable international human rights law.’ A clause to the same effect should be included in loan agreements concluded between the Bank and member States. The loan agreements are international treaties, which are binding both on the international organisations and the State concerned, and are governed by international law. The Bank should ensure compliance with the human rights clause during implementation.

31. The following clause should be included in the policies of the IMF: ‘The IMF shall not enter into financial agreements that contravene applicable international human rights law.’ A clause to the same effect should be included in programme support agreements between the IMF and States. The IMF should ensure compliance with the human rights clause during implementation of its programmes.

*Linking Legal Obligations in the Field of Human Rights to Political and Economic Realities*

32. Concrete policies, programmes, projects and actions activate specific duties, including in particular with regard to people whose lives are affected by the decisions taken. In order to establish the nature and implications of such concrete duties, decision-making by the World Bank and the IMF should be open and transparent, so that the interests of all stakeholders be represented and acknowledged in the light of applicable international human rights standards.
33. The World Bank and the IMF are required to ensure that people who are affected by their projects and strategies as well as civil society organisations are given the opportunity to participate actively in taking the decisions that affect them. This participation should be facilitated and conducted in the light of applicable international human rights standards – including the principle of non-discrimination and the right to information, the right to be consulted, and the right to free and informed consent – and take into account marginalised groups and peoples, including indigenous peoples, with respect for their right to (internal) self-determination.
34. In adopting partnerships, the World Bank and the IMF need to pursue the equity of goals of other solid and financial partners and to take on board the goals and instruments of partner organisations, including those within the UN system, and to see how they relate to the Bank’s and the IMF’s



policy orientations and decision-making processes. This would not only benefit all constituents of the World Bank and the IMF but also enrich the policy agenda of other actors. The World Bank and the IMF need to search systematically for common ground and co-operation so as to increase the impact of their projects and programmes on poverty reduction.

#### *Evaluation and Redress of Human Rights Impacts*

35. The World Bank and the IMF should ensure that all accountability mechanisms are easily accessible for affected individuals and groups, *inter alia* through supporting capacity building initiatives that would enable individuals and groups to engage more effectively with these institutions.
36. The World Bank and the IMF should support initiatives in which co-operation between human rights NGOs and development NGOs is strengthened in order to maximise their effective engagement with the IFIs and the communities affected by World Bank- and IMF-funded activities. It enables both IFIs to ensure the development of policies that are consistent with the rights and needs of these communities.
37. Given the wealth of information and data held by the World Bank and the IMF on issues closely bearing upon the implementation of human rights within States, both IFIs are urged to make this material available, on a regular basis, to relevant bodies within the UN human rights system, such as the UN Committee on Economic, Social and Cultural Rights. The IFIs should also make their staff available to discuss such material with the relevant UN human rights organs.
38. The World Bank and the IMF should evaluate the human rights impact of their projects and policies, *ex ante* as well as *ex post*, through the collection of disaggregated data according to, *inter alia*, gender, race, religion, ethnicity, age and poverty level.
39. The insertion of a human rights clause in the World Bank operational policies will enable the World Bank Inspection Panel to include international human rights law in its review of the standards against which Bank actions are tested.
40. As a complement to the Inspection Panel procedure, the Bank should agree to engage in international arbitration for settling disputes with private

parties. Affected parties might claim that the Bank with its operational policies has adversely affected their human rights.

41. Human rights considerations should be integrated in the IMF's Independent Evaluation Office's terms of reference, mandate and functioning. The Office, as well as the World Bank Inspection Panel, should build up human rights capacity and resources, including staff training.
42. The IMF should review its accountability mechanisms, in order to provide for settlement of complaints, brought by affected individuals and communities, challenging IMF programs and policies.