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Co-Chairs and Members of the Commission, it is a privilege to be able to address you today on this very important issue. This Commission has previously made an important contribution to furthering understanding of the role that human rights could and should have in the work of the World Bank, and of course the United States is a key actor in helping to shape the Bank’s policies.

In addition to being a Professor of Law at New York University Law School, where I have taught since 2002, I am currently the Special Rapporteur on extreme poverty and human rights, appointed by the United Nations Human Rights Council. The Council has a number of independent experts who are appointed to advise it on specific issues such as extrajudicial executions, torture, violence against women, the right to education, and many other topics.

In the context of my mandate on extreme poverty and human rights, the World Bank is arguably the single most important international agency. Some might question this characterization on the grounds that the \$40 billion or more that the Bank committed to borrowing countries in 2014 represents only a fraction of total private capital flows to developing countries from all multilateral and national development banks, bilateral donors and private investors. However, not only is the elimination of extreme poverty one of its two central goals, its research is more voluminous and influential than that of its peers. It remains the key standard-setter in many areas, its knowledge and expertise are often crucial and its seal of approval frequently encourages the participation of other donors or investors.

But the World Bank’s pre-eminent position and its policies are being challenged by the emergence in 2015 of two new major multilateral development banks, the New Development Bank BRICS (NDB), and the Asian Infrastructure Investment Bank (AIIB). While the World Bank has been depicted by some of its critics as being dominated by the United States and its allies, the new banks have been championed by China. The NDB presents itself officially “as an alternative to the existing US-dominated World Bank and International Monetary Fund.”<sup>1</sup> Notwithstanding spirited denials by its leadership, the World Bank is under pressure to change in order to be able to compete more effectively with the new banks and this is sometimes suggested to be one of the reasons why it is not keen to engage substantively with human rights.

In a report which I will be presenting next month to the UN General Assembly I argue that the Bank has a number of inconsistent, indeed incoherent, approaches to human rights.

For most purposes, the World Bank is a human rights-free zone. In its operational policies, in particular, it treats human rights more like an infectious disease than universal values and obligations.

The biggest single obstacle to moving towards an appropriate approach is the anachronistic and inconsistent interpretation of the “political prohibition” contained in its Articles of Agreement. As a result, the Bank is unable to engage meaningfully with the international human rights framework, or to assist its member countries in complying with their own human rights obligations. That inhibits its ability to take adequate account of the political economy aspects of its work within countries and contradicts and undermines the consistent recognition by the international community of the integral relationship between human rights and development. It also prevents the Bank from putting into practice much of its own policy research and analysis, which points to the indispensability of the human rights dimensions of many core development issues.

In my view the Bank’s approach can be boiled down to the following propositions: (a) pay lip service to human rights in official settings, as long as there are no consequences; (b) acknowledge the theoretical significance of human rights in studies and analyses of issues in relation to which they are incontestably relevant; (c) ensure that, as a general rule, the Bank does not engage with any aspect of human rights in its actual operations and lending; and (d) be prepared to make exceptions when political imperatives require it, even if that involves a high degree of inconsistency.

The Bank’s formalistic acceptance of the relevance of human rights in public relations statements and general publications which do not bind it, contrasts dramatically with its steadfast refusal to incorporate human rights dimensions into the programs and projects it supports. Let me give an example of the incongruity. About a year ago, World Bank President Jim Yong Kim gave a speech at Howard University entitled “Boosting Shared Prosperity”. He spoke of the far-reaching reorganization of the Bank over the previous two years and explained that it was designed to enable it to better achieve its twin goals of ending extreme poverty by 2030 and boosting shared prosperity among the poorest 40 percent in developing countries. He called for an increase in individual incomes through economic growth. And he called for “improving gender equity and low income people’s access to food, shelter, clean water, sanitation, health care, education and jobs.”

President Kim’s speech made no mention of rights, let alone human rights, but he ended with a lengthy tribute to the Reverend Martin Luther King, Jr., whom he called a childhood hero of his. After recalling some of King’s eloquent but unsettling comments about the horrors of poverty, President Kim observed that the Bank’s “two main goals stand in lockstep with the agenda Dr. King laid out ...”. He concluded by saying: “To paraphrase Dr. King, we will bend the arc of history toward justice.”

The implication of this analysis seems to be that poverty eradication can be severed from the struggle for rights that defined everything that Martin Luther King, Jr. stood for and spoke about. It is as though King’s ‘dream’ was about the creation of a large and benevolent bureaucracy, perhaps based here in Washington DC, which could, by working through governments and not

talking about rights, bring prosperity and dignity to the poorest in our societies. But King's legacy is really all about how people who are not free, people whose rights are not respected, will never really be able to escape from poverty.

I want to emphasize that I think the World Bank is an organization that has immense potential to do good in the world. I do not wish to denigrate the Bank, I do not wish to tarnish its reputation. But I believe firmly that the Bank is effectively shooting itself in the foot by insisting on a policy approach that seeks to insulate itself from human rights standards and norms and acts as though these are matters that should be considered entirely independently of the Bank's own work.

But the real challenge is not to point to the Bank's refusal to take human rights seriously, but to think constructively about how change might be brought about. In my report to the UN General Assembly in late October I canvas a number of recommendations directed primarily at the Bank itself. I would like to recount those here. But before doing so I would also like to acknowledge that the challenge for the United States, and thus for Congress, is to work out how it can best encourage and facilitate that process. I plan to return to this issue in the follow-up to this important process. The struggle for the integration of human rights into the work of the World Bank and other international financial institutions has been long and not always successful, but I have faith in the willingness and ability of this Congress to act on an issue that has such enormous implications for the future of development.

## **Recommendations**

### ***The World Bank***

1. The President of the World Bank, assisted by his staff, needs to take the initiative in developing a coherent and consistent human rights policy, as has been the case in relation to almost every major policy initiative of this kind. There are many options and paths that could reasonably be taken. The Bank is a very special organization and it will need a carefully tailored policy that takes adequate account of the many concerns that will undoubtedly be expressed. Most of all, there needs to be a transparent discussion, based on carefully thought-through proposals. Even though an outsider cannot prescribe an ideal recipe for the Bank to follow in adopting a human rights policy, certain next steps and elements of such a policy are crucial:

- a) The Bank needs to remove the roadblock that has been erected by its anachronistic, artificial and unjustifiable interpretation of the political prohibition contained in its Articles of Agreement. Just as the phrase "economic considerations" has been interpreted to accommodate Bank measures to combat corruption and to promote the rule of law and criminal justice reform, so too can the phrase accommodate a policy which takes account of the economic consequences of ignoring or violating human rights in a given project.
- b) The starting point for any policy is to acknowledge that human rights are relevant to the twin goals of the Bank.
- c) Engagement with human rights experts and mechanisms should become routine. A good starting point would be for the Human Rights Council to invite the President of the Bank to address it and engage in a dialogue with its members. The Bank should also set up a forum in which it could engage human rights leaders on a regular basis, just as it has done with religious and faith leaders.

- d) The Bank should have a human rights due diligence policy that spells out some of the circumstances under which it would be unable to continue providing support for a given project. The United Nations due diligence policy in relation to peacekeeping is of direct relevance here.
- e) Another key principle in any Bank policy should be to encourage and assist Governments to meet their existing obligations under international law in relation to human rights. Other international organizations explicitly seek to do this and the Bank has long done it in relation to international environmental treaty obligations.
- f) In general, the policies of the Bank should emphasize the ways in which it can provide positive support, advice and assistance to States in relation to human rights. It could start by establishing a program to assist Governments that wish to establish domestic institutional mechanisms to promote the integration of human rights into development policies.
- g) The Bank human rights policy should address economic, social and cultural rights as human rights. Its frequent claims to be almost inadvertently doing this already are not persuasive, but there is much that it could do to promote a basic program in this area, which would add enormous value to what the international community has so far been able to achieve.

### ***Member countries***

2. At the same time, member countries and especially Executive Board members, need to begin to grapple seriously with what a policy should look like, rather than simply saying they are for or against any such policy. Governments especially need to explore ways to ensure that there is policy coherence between the positions they take in human rights forums and those they take in the context of the Bank.

### ***Civil society***

3. Diverse civil society actors also need to think through in a more systematic and nuanced way what exactly they would like to see from a human rights initiative. In the view of the Special Rapporteur, it is debatable whether some of the roles that the Bank has been called upon to undertake in the past are appropriate. The Bank cannot be expected to carry the burden of the expectations of every human rights demand that might be made in a given situation. Placing unreasonable demands on the Bank merely reinforces the fears of those who are currently resisting change in that area.

### ***A move away from sanctions***

4. All stakeholders need to rethink the approach to “sanctions” imposed upon borrowing States in response to human rights violations. In the past, such policies have too often been arbitrary, inconsistent, and even counterproductive. If the Bank were to sanction every member State that is accused of a serious human rights violation it would have very few borrowers and just as few lenders. As long as sanctions are considered to be the main element in a human rights policy, many Governments will continue to resist progress in this area. Based on experience to date, their position is not difficult to understand. The debate needs to move beyond the sanctions mentality and take a far more positive and nuanced turn.

### ***Relevance for other lenders, including NDB and AIIB***

5. Finally, those calling upon the World Bank to adopt a human rights policy need to pay equally focused attention to the policies being adopted by other multilateral lenders. The recently

established New Development Bank and Asian Infrastructure Investment Bank are particularly relevant in that regard.

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<sup>i</sup> <http://ndbbrics.org/>