January 1988

Remarks (as panelist) on "Environment, Economic Development and Human Rights: A Triangular Relationship?"

David A. Wirth
Boston College Law School, wirthd@bc.edu

Follow this and additional works at: https://lawdigitalcommons.bc.edu/lsfp
Part of the Administrative Law Commons, Environmental Law Commons, and the International Law Commons

Recommended Citation

This Article is brought to you for free and open access by Digital Commons @ Boston College Law School. It has been accepted for inclusion in Boston College Law School Faculty Papers by an authorized administrator of Digital Commons @ Boston College Law School. For more information, please contact nick.zydlowski@bc.edu.
vant government agency supports and can implement measures that will defend the well-being of tribal people effectively.

The Bank's policies are beginning to have an impact on the legislation of the countries concerned. For instance, under most domestic laws the scope of compensation in cases of resettlement was limited to compensating landowners; however, we are now advocating that compensation should include all those affected whether they are landowners or not—in fact, the landless more so than the landowners.

In short, in all its efforts to further economic development, to combat poverty, disease, and illiteracy and to fight for the preservation of the environment and an enhanced role for women in development, the World Bank not only is promoting economic and social human rights, it also is playing a catalytic role in creating conditions in which all basic rights can develop and flourish. While the Bank is prohibited from being influenced by political considerations, its staff increasingly realizes that human rights needs are not limited to the material and "basic needs" often emphasized in the 1970s.

Personally, I believe that civil rights are basic to human development and happiness. No balanced development can be achieved, in my view, without realizing a minimum degree of all human rights, be they material or otherwise.

The Bank is conscious of and concerned with the broad effect of its loans on human welfare. Human rights violations in specific cases may have broader implications. They can affect the country's stability, prospective creditworthiness, and ability to carry out Bank-financed projects, and they can impede the Bank's ability to supervise the investments it sponsors. Obviously, these are factors that the Bank must take into account to the extent that they prove relevant in the circumstances of a specific case and not as a factor to politicize its activities.

The Bank's record in meeting the economic and social needs of the populations of its developing member countries, though admittedly not perfect, is impressive. Its increasing efforts to save the environment, promote human rights, and protect the poor from the adverse effects of adjustment policies should, I am sure, gain greater importance in the years to come.

REMARKS BY DAVID WIRTH*

The environment and natural resources in much of the developing world are under severe stress. Forest resources in tropical countries such as Brazil and Indonesia are being destroyed at a total global rate of 27 million acres annually. More than 85 percent of the rangelands in Africa are at risk of being, or have already been, turned to desert.

This trend of resource degradation has severe consequences for the peoples of the developing world. While endangered species may be threatened with extinction and natural preserves destroyed because of unwise exploitation, the quality of resource management in the developing world has even more profound implications for people's welfare. In countries of the Third World, where much of the population often relies on the natural resource base to make a living, sound resource utilization may be a matter of survival. For example, desertification threatens the livelihoods of 850 million people worldwide.

As both Professor Lutz and Mr. Shihata have noted, the issues of development, environment, and human rights are inextricably related. I disagree with Mr. Shihata,

*Senior Attorney, Natural Resources Defense Council.
however, on at least one point. The World Bank and other donor agencies need to face these issues squarely to insure the economic and environmental viability and integrity of the investments they make.

Over the past few years, there has been increasing concern about the environmental quality of donor-financed development assistance. Aid that emphasizes large-scale “megaprojects” and heavy reliance on cash crops for export has been blamed for aggravating rather than alleviating environmental problems in the developing world. For instance, dossiers of World Bank-financed projects compiled by environmental organizations, such as the Natural Resources Defense Council (NRDC), have identified defects in a jungle colonization scheme in Brazil—mentioned previously by Mr. Shihata—a series of large dams in India, a cattle development project in Botswana, and a program to relocate settlers to the outer islands of Indonesia. Next week will mark the one-year anniversary of a highly publicized expansion of the environmental staff of the World Bank in response to public demands from around the world. Now, nearly a year after the Bank’s announcement, is a good opportunity to examine precisely what progress this institution has made in improving its environmental performance and what kinds of goals this institution should be setting for itself.

A procedural model for designing environmentally sustainable development projects has been emerging among environmentalists and human rights activists in both the developing and the developed world. Some categories of projects, such as hydroelectric dams and forest clearing projects, are inherently a source of environmental concern no matter how they are planned. It is now clear, however, that the process by which a development assistance project is designed is crucial to eliminating or mitigating adverse environmental impacts. There is even a small but growing body of law setting out standards for this process.

Probably the most crucial feature in assuring the environmental sustainability of a development assistance project is the participation of environmental groups, human rights organizations, and the public generally at the planning stage. If neither governments nor donors provide for public input into project design, there is a severe risk that development assistance will be out of touch with the needs of people and with the goal of environmental sustainability. Local people often simply have more information than central governments about the local impacts of a proposed project and the elements of sound design. Even more important, it is crucial to give the affected populace a voice in the design of projects that affect their lives and livelihoods.

NRDC is constantly approached by Third World environmental organizations that have been excluded from the development process by institutions such as the World Bank and by their own governments. For instance, I have been assisting a coalition representing environmental, academic, and economic interests in Guatemala in stopping a project proposed by the United States Government to eradicate Mediterranean fruitfly from that country by using massive aerial spraying of toxic pesticides. This project would primarily benefit powerful agricultural interests in the United States and actually would harm the environment and export economy of Guatemala. After considerable pressure, the U.S. Agency for International Development (AID) and the U.S. Department of Agriculture—the sponsors of the project—convinced the Government of Guatemala to hold a public hearing on this project. That hearing revealed such intense public opposition that the project probably will be terminated altogether. Unfortunately, this kind of public participation is often the exception rather than the rule in the design of development assistance projects.

Equally important is the participation of environment and public health officials of recipient countries in the design of development assistance strategies. Donors often
consult only the finance or planning ministries of developing country governments when they are designing projects, and larger issues of public health and the environment are often excluded from the planning process. To assure that development makes sense for people and the environment, consultation with government officials representing other concerns is crucial. As in our own government, cabinet officials holding environment or public health portfolios typically are less powerful than Ministers of Finance or Foreign Affairs. For this reason, donors must make an extra effort to solicit the views of government officials who otherwise would not be part of the planning process.

For example, last year I attended an environment seminar hosted by the African Development Bank. The Finance Minister from one African country complained of increased emphasis on environment as a luxury and an expensive add-on. The Environment Minister from another African country immediately objected, arguing that sound environmental planning was crucial to achieving development objectives in the long term. A debate of this kind which includes governmental officials representing a wide variety of concerns in the recipient country raises the profile of environmental and human rights issues in the planning process.

Access to information is crucial to effective input into the development process. However, negotiations between donor and recipient countries typically occur in strict secrecy. Environmental and human rights organizations from developing countries are often totally unaware of projects planned in their countries and cannot obtain any information from donor agencies. It is not uncommon for explicit inquiries to the World Bank from the public in borrowing countries to be met with a total brush-off. Inability to obtain information about development projects planned in their country renders the people affected by projects totally powerless.

The World Bank and other donors typically justify their policies of secrecy by asserting that borrowing and recipient countries do not want to have this information released and that the integrity of negotiations would be compromised by greater public availability of documents. In reality donor institutions establish their own information policies. In stark contrast to the World Bank, AID, which has projects in many of the same countries as the Bank, is quite open with documentary information.

I recently returned from Botswana, which I visited at the invitation of the government of that country to discuss a controversial World Bank-financed cattle development project there. Before I departed for Africa, the World Bank denied a request for a document made on my behalf by the United States Government. After I arrived there, I discovered to my surprise that the same document was a public document within Botswana and freely available to the public in Botswana and abroad.

One result of my trip was a formal agreement that NRDC negotiated with the Government of Botswana confirming that Botswana would instruct the World Bank to make all Bank documents concerning projects and policies in that country freely available to RNDC and the public both with Botswana and worldwide. Botswana's governmental policy of free access to information flatly contradicts the Bank's own information practices and calls the application of those practices into question when applied to other borrowing countries. The bank's response to our agreement with Botswana, which is currently awaiting approval by that country's cabinet, will be highly revealing.

Another procedural necessity for designing a project that meets minimum environmental standards is effective monitoring and enforcement. Again, the Botswana case provides a good example. The World Bank-financed project is designed to combat overgrazing by cattle on free-for-all, collectively owned rangelands by carving out
ranches that would be subject to stricter controls. It is well documented that previous projects in Botswana with an identical design have failed because of an absence of monitoring and enforcement. Government officials acknowledge that some ranches are carrying up to twice the permitted number of animals. Incentives for sound management of the ranches are lacking because ranchers are not required to relinquish their rights to graze their animals on the communal areas when they obtain a ranch lease. As a result, the privately operated ranches have been as badly overgrazed as the commons. The World Bank itself has suspended disbursements on this new project because of these earlier failures.

Donors should assure that the local public is involved in the monitoring and enforcement of projects they finance whenever possible. As in project design, local people often have extensive and accurate information about how the project is operating. This information can be crucial to mid-course corrections that are often essential to a project's success. Moreover, involving local people in implementation and monitoring increases public acceptance of the project.

There is now a widespread international consensus that has formed around the utility of a process known generically as "environmental impact assessment" (EIA), which simultaneously furthers these and other crucial goals. EIA can be defined as a component of a planning process by which environmental considerations are integrated into decisionmaking procedures for activities that may have adverse environmental effects. U.S. legislation known as the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. §§ 4321-4370) was the first detailed national legal requirement for EIA. Since then, numerous other countries have adopted national standards for EIA. In 1985 the European Community adopted a directive that applies within all 12 member countries. The Organization for Economic Co-operation and Development (OECD) has adopted recommendations on national application of EIA. The United Nations Environment Program (UNEP) in 1987 adopted a set of nonbinding Goals and Principles of Environmental Impact Assessment.

The UNEP instrument, in setting out the following basic requirements, restates an international consensus on the minimum standards for an adequate environmental analysis of the proposed action: (1) preparation of environmental impact assessments for any proposed activity that may significantly affect the environment; (2) examination of environmental effects prior to governmental authorization; (3) consideration of environmental effects at an early stage of the planning process; (4) inclusion in the EIA of a description of the proposed action, a description of the potentially affected environment, possible alternatives to the proposed action, a description of the environmental impacts of the proposed action and alternatives, and a consideration of mitigating measures; (5) provision for public participation; and (6) a publicly available

---


228 O.J. EUR. COMM. (No. L 175) 40 (1985).


explanation of the final decision on the proposed project describing how environmental concerns were taken into account.

Let me now turn to the legal instruments that govern the process of designing donor-financed development assistance projects. There is a small but growing body of law and practice asserting the desirability and necessity for the types of procedural standards I have just described. As a result of a lawsuit brought by NRDC and three other environmental organizations in 1975, AID promulgated regulations (22 C.F.R. § 216) requiring full-scale environmental assessments including consideration of alternatives and consultation with local public, in the design of environmentally problematic projects. The Agency also has an established practice of open access to information and involvement of the local public in the implementation of projects. The Organization for Economic Cooperation and Development (OECD) has adopted two recommendations since 1985 which call upon other bilateral donors to implement similar standards. Those recommendations stress the importance of involving local people in project design and of monitoring the implementation of projects.

The U.S. Congress has called for environmental reform of the multilateral banks first in a set of legislative recommendations7 and then in binding appropriations measures for the past three years.8 Last year permanent authorizing legislation directing United States representatives to the multilateral development banks (MDBs) to promote improved environmental performance by these institutions, including the adoption of ELA procedures, were signed into law (22 U.S.C. §§ 262m to 262m-6). There is currently an amendment pending to NEPA that would apply the standards of that Act to votes in the MDBs, which would require environmental impact assessments for the World Bank projects. All these measures also require the involvement of the local public and health and environment ministers from borrowing countries in project design, improved access to information, and strict monitoring and enforcement.

Despite the widely publicized staffing expansion at the World Bank, however, the institution itself has made little progress on these critical issues. The Bank does not routinely perform environmental assessments or their equivalents that meet international standards. The Bank still has no policy requiring consultation with the local public as a routine matter in the design of development assistance projects. Key Bank documents describing the design of projects are kept from the public in borrowing and donor countries alike. In some cases, even representatives of member governments are denied access to Bank documents.

These policies of secrecy and restricted public access have direct—and in many cases harmful—consequences for the environment. After the reforms undertaken a

---

year ago, the Bank itself has stated that it should be judged by the quality of the projects coming out of the pipeline. Based on that standard, there is little to suggest that the Bank's reforms have had much beneficial effect on final project design. For example, last December the Bank's Board of Directors approved a $50 million subsidy for massive pesticide purchases for the Sudan. This project explicitly contradicted the Bank's own pesticide guidelines adopted two years earlier which emphasize alternative pest management procedures over chemical pesticides. The U.S. Executive Director to the World Bank abstained on the project because the conditions for improving pest management by the borrowing country were too weak.

Just this week the U.S. Government published a list containing 26 more proposed World Bank projects that are under investigation because they may have adverse environmental impacts. This is more than 10 percent of the total number of projects approved by the World Bank's Board of Directors in all of last year. Until reforms in public participation and access to information are instituted at the Bank, we will probably continue to see an equally high proportion of environmentally questionable projects.

REMARKS BY PHILIP ALSTON*

My topic relates to the role of international organizations in the environment and development fields with respect to human rights. That is an extremely wide topic and the variety of agencies on which we could focus is enormous, including the International Monetary Fund, the U.N. Children’s Fund, the International Labor Organization (ILO), the Food and Agriculture Organization, and so on. I am not going to endeavor to make comments of universal applicability but rather will focus on the World Bank, since that has been the focus of the discussion so far.

To set the outline immediately, the general thrust of my analysis is that for both legal and policy reasons the World Bank should take account of human rights (although of course there are qualifications to be applied to that proposition). Second, the Bank clearly has not done so, for the most part, and its justifications for that neglect are not at all compelling. Third, there are human rights policies that the Bank could pursue without in any way jeopardizing the integrity of its mandate.

I want to begin by noting that any criticism we make of the World Bank in this context could be directed equally well at the great majority of international agencies in the development field. If I may use the jargon of human rights, there is a form of apartheid and a system of homelands in place in the human rights area when it comes to the activities of international organizations. The “homeland” for human rights is the U.N. Center for Human Rights located in Geneva, and that homeland is segregated in every conceivable way from the other parts of the U.N. system.

If you go to any U.N. agency and tell it that you wish to talk about human rights, the people there will tell you that you have the wrong address and that in fact you should be in Geneva talking to the people who deal with human rights. Having been in that homeland myself, as an official for seven years, I can assure you that the U.N. Center for Human Rights does virtually nothing at all that has any direct impact on the work of the development and environment agencies. To my knowledge, there is not a single official there who is other than a lawyer or a generalist. There is no one with economic, anthropological, or sociological training that would equip her or him to respond to those sorts of issues. By contrast, in the development agencies there is a

*Associate Professor, The Fletcher School of Law and Diplomacy, Tufts University; Lecturer, Harvard Law School; Member and Rapporteur, U.N. Committee on Economic, Social and Cultural Rights.