

## 7 Case 2: The Dilution of World Bank

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Throughout the first decade of the new millennium, World Bank human rights policies, (i.e., safeguards) were increasingly under critique from internal and external sources. Internally, the World Bank Group's private lending arm, the International Finance Corporation (IFC) created its own safeguards policies for investment lending in 2006. The IFC policies resembled those of the World Bank, but were also distinct in their more coherent design as well as in their strict outcome orientation. The IFC model proved to be more attractive for private sector lenders (e.g., private and public banks) than existing World Bank IBRD and IDA policies, especially due to their greater flexibility (Dann & von Bernstoff, 2013). In 2012, the year the IFC revised its own policies, the World Bank's Independent Evaluation Group (IEG) launched a comprehensive report entitled "Safeguards and Sustainability in a Changing World" (IEG, 2010). In the report, the IEG looked at the performance of social and environmental Bank policies throughout the whole World Bank Group (including the IFC and MIGA). The IEG evaluation hints at systemic flaws in the protection of safeguards, pointing to an insufficiently broad scope of coverage, a lack of expertise, resources and incentives as well as the lack of a coherent, overarching framework as main sources. Also, the IEG found that attention to safeguards in the phase of project appraisal was much better than during implementation, particularly in the case of "medium-risk" projects<sup>1</sup> (which notoriously deserve less attention than "high risk" projects). Among the IEG's key recommendations hence was to broaden the thematic scope of safeguards (including for instance labour and gender impacts), to strengthen incentives for compliance, to assign clear responsibilities and a budget for safeguards oversight, but also to strengthen client capacity and ownership (IEG, 2010). In 2012, the IEG recalled that the 1990s were still a period during which "the Bank's development programs were excessively driven by a culture of lending, with insufficient attention to client needs and the quality of results, which are crucial to development effectiveness" and proposed a matrix for project evaluation as well as a reform of internal incentives to "reward quality and results" (IEG, 2012). The IEG critique of existing safeguards standards was shared by large parts of World Bank management, which widely believed that the policies lacked coherence in terms of their

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1 Categorization adopted from the IEG.

overall architecture, which made it very difficult to apply them effectively. Externally, transnational social movement constituencies such as the BIC and HRW criticized that existing environmental and social safeguards policies covered important risks, but left other crucial areas out, creating a legal vacuum especially with regard to human rights, labour standards and climate change (Dann and von Bernstorff, 2013). Moreover, there was a new emphasis on ownership, results and development effectiveness in transnational discourse as evidenced by the Paris Declaration (2005) and the Accra Agenda for Action (2008). Transnational guidelines and internal World Bank Group reform reinforced each other where the OECD standards for export credit guarantees from 2012 cite the IFC policies as the international gold standard (OECD, 2012). Finally, other MDBs, such as the EBRD in 2008, the ADB in 2009, and the AfDB in 2012, all adopted policies in line with the IFC, not the World Bank.

## 7.1 Cause: Joint Transnational Social Movement activity

Drawing on a history of joint advocacy since the 1980s (see Case 1), the protagonists of transnational social movement activism from the late 1980s / early 1990s joined forces also this time to form a coalition engaging in joint activities on the safeguards issue, though with slightly different roles<sup>2</sup>. In particular, the most important actor now was the Washington, D.C.-based BIC ever more adopting the role of a convening hub. Still in 2011 and right after the World Bank announced its willingness to engage in the reform of its safeguards system, three D.C.-based organizations—the BIC, the CIEL and the World Resource Institute - published a call for transnational mobilization entitled “Civil Society Action Alert: The World Bank Safeguards Review.” The “alert” summarizes the key debates related to the review, makes clear why joint action is needed and urges movement organizations to demand more time from the World Bank. It states:

“As part of the global movement to promote a more environmentally sustainable and socially just world, we are jointly committed to prevent harm to communities negatively affected by development” and that the “new safeguards will shape how other international donors and investors approach environmental and human rights protection.” (BIC et al., 2011, p. 1).

From that point onwards, the movement mobilized and coordinated large, transnationally operative organizations as well as smaller organizations with a focus on local development issues around the globe. Less than two months after this call, on September 14, 2011, the now transnational social movement (TSM) sent a joint letter to World Bank President Robert Zoellick, with over 300 signatory civil society organizations including the BIC, Greenpeace, Oxfam and WWF next to smaller organizations such as Amazon Watch, Community Voices Lagos or Asia Indigenous Peoples Pact Foundation

2 To clarify, not that the term “Cause” in the title to this section does not refer to the “cause of World Bank policy reform” (which was driven more by the World Bank itself), but to the “Cause” triggering the causal mechanism.

from the Global South. This letter already contained the following key TSM demands which also structure the upcoming debate:

- safeguards consistency with international laws, in particular the International Bill of Rights as well as existing UN human rights treaties,
- a broader scope of application, mainstreaming safeguards through all operations,
- the demand to clarify responsibilities,
- a reform of management incentives to reward adherence to policies
- the right of local communities to participate in “equivalency assessments” clarifying whether country systems are of equal value to World Bank provisions.

Regarding the upcoming review process, the movement demanded more time and effective consultations. The document is interesting in two respects. First, the transnational social movement makes appearance as a unified, coherent actor in relation to the World Bank. Secondly, the letter put an emphasis on conventional inside tactics, assuming “good faith” on behalf of the World Bank to improve their safeguards system and to take TSM demands into account. The World Bank’s reaction—an official response by Managing Director at the World Bank Caroline Anstey on behalf of World Bank President Robert Zoellick, was respectful and signaled that the World Bank recognized the transnational social movement (including the many organizations which had signed the letter) as an actor in its own right (World Bank, 2011). When Jim Yong Kim was elected as a new World Bank President on April 16th, 2012, he saw a re-organization of the World Bank’s safeguards system as a priority. The transnational social movement on its behalf had great hopes that such a reform, even though driven by the World Bank itself, would have good prospects under Kim’s leadership, since Kim had earned his reputation in the development world primarily as an anthropologist and doctor working on HIV/AIDS for the World Health Organization (WHO) and as a founder of the Global Health Delivery Project (The Atlantic, 2012). The handover of the World Bank’s Presidency from Zoellick to Jim Kim was officially completed in July 2012, but it took a while until Kim sat firm in his seat. One consequence of the transition was a review of the timeframe of the Safeguards Review process, providing for three years of ample consultation. From the beginning, the TSM sought to establish a constructive working relationship with Kim. In the first TSM letter to Kim in September 2012, the TSM stated that it was “hopeful your background and professional experience will add new perspective and energy to the World Bank Group” and asked for a commitment to declare in public that “there will be no dilution of our standards protecting the environment and the people affected” as the ADB President had done previously (BIC, 2016). On October 11, at a Townhall Meeting with Christine Lagarde (President of the International Monetary Fund (IMF) and Jim Kim, the TSM managed to entrap Kim rhetorically. Pol Vandevort from Belgian coalition 11.11.11 directed his word to Kim and stated,

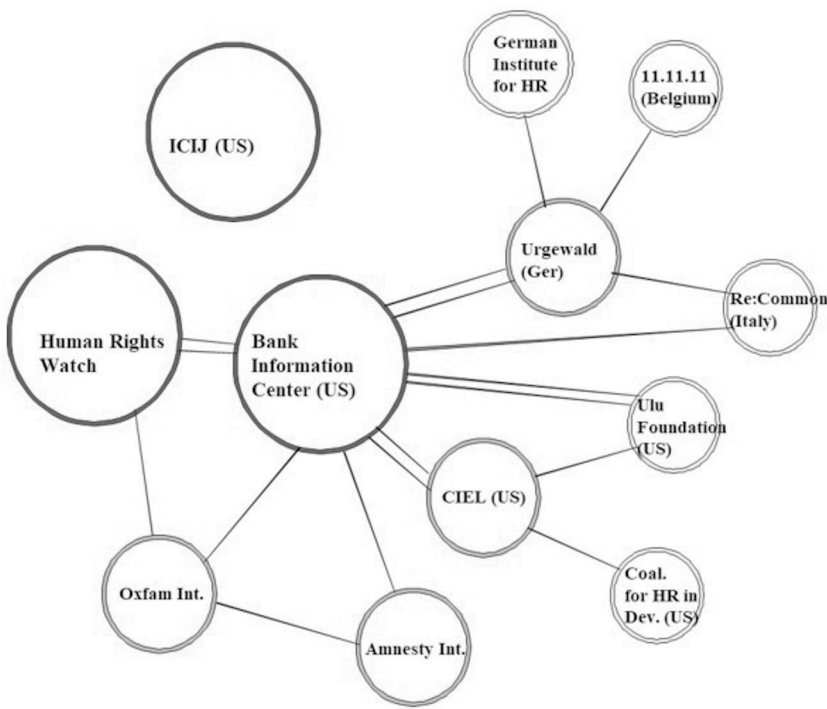
“I have a question to Dr. Kim. Some of the rules, the procedures, and policies in relation to the safeguards are going to be discussed in the next one and a half years. . . . The question is, does Dr. Kim commit that these safeguards would not be diluted and, instead, would be harmonized when they are being revised?” (IMF, 2012, p.1)

To that question, Mr. Kim replied, “In the area of safeguards, I agree with you. It is a great accomplishment of civil society. We have absolutely no intention of diluting the safeguards” (IMF, 2012, p. 1). In the following years, the TSM reminded Kim time and again that he committed “not to dilute the safeguards.” For instance, in their letter to Kim from December 20, the movement wrote that they were “encouraged by your recent statement made at the TSM Town Hall Meeting in Tokyo, expressing your commitment not to dilute the safeguards.” One day after Kim’s commitment, on April 12 (the first day of the World Bank’s Spring Meeting), World Bank management presented an “Approach Paper” at the Civil Society Policy Forum. According to interviewees, Bank management and movement representatives agreed that the safeguards process is still at the very beginning. Despite the vagueness of the Approach Paper, the U.S. ED launched his position on safeguards reform after the Spring Meetings on April 29. As expected but also hoped by movement representatives, the U.S. ED explicitly demanded the inclusion of human rights among World Bank accountability standards. Yet at this point, it remains unclear how much political and economic capital the U.S. government (and thus the U.S. ED) is prepared to commit to the adoption of human rights standards. Nonetheless, according to several TSM representatives (Lori Udall, Knud Vöcking, Korinna Horta), the movement saw a review of World Bank human rights policies under Jim Kim as a unique opportunity in the beginning. Kim upheld these hopes by reassuring the TSM of his commitment. In a letter from the World Bank to the TSM in January 13, the authors wrote that “as stated by President Kim, the World Bank will not dilute its safeguards policies,” as they also ensure an inclusive process and enough time to integrate suggestions.

In sum, these early exchanges of letters and perspectives between the movement and the World Bank under Kim can be characterized by a high degree of respect, good will and even a dash of mutual enthusiasm. On the side of the TSM, this extended early phase helped the movement to prepare, consolidate and rally behind a set of common demands. However, it is also a phase during which demands and commitments (not to “dilute safeguards”) remained on a very abstract and thus uncontroversial level. Similarly, the Approach Paper by the World Bank was vague enough to circumvent major controversies. However, despite better relationships with World Bank management compared to the early 1990s, the movement reminded itself of the success-strategy back then. As the World Bank took its time to prepare its plan of engagement, the TSM built up its protest engine. Compared to the early 1990s, the use of disruptive tactics was less a necessity in reaction to scandalous injustice and World Bank failure, but more out of a strategic conviction present in movement memory (conversation with former BIC staff). As in the early 1990s, the United States was the center of engagement, as different threads of the movement came together in relation to U.S. Congress and Annual Meetings of the World Bank. Also, important U.S.-based organizations that had been engaged in the earlier case such as Sierra Club and the CIEL remained engaged, even though to slightly different degrees. For instance, Human Rights Watch replaced Oxfam as the most representative NGO of the movement with credentials in all European and

U.S. capitals,<sup>3</sup> even though Oxfam continued to play an important role. As an information, coordination and overall strategy hub, the BIC was at the center of the campaign. The ICIJ was a new and an important player in the TSM network. The ICIJ would become crucial in providing leverage to the TSM's disruptive public shaming campaign by publishing news stories about World Bank human rights violations worldwide (see elaboration below). While the ICIJ kept loose contact to the BIC and HRW, it did not follow BIC's lead and thus acted inside the network and yet with a considerable degree of autonomy (BIC Staff, personal communication at the TSM strategy meeting, May 2015).

Graph 7: The TSM Network



Source: own illustration.

3 Next to Amnesty International, Human Rights Watch had arguably become the most influential human rights advocacy organization on human rights in the 2000s (Pruce, 2015; Forsythe, 2009).

## 7.2 Part 1: Disruptive TSM tactics causing MDB crisis

There was a fundamental difference between movement engagement in the early 1990s and that of 2012 onwards. This time, it was not the movement taking the initiative in response to a particular project. Instead, the World Bank bureaucracy took the lead and determined the agenda (nature and scope of reform) from the beginning (Interviews with World Bank Legal vice Presidency, March 2017 AND with Coalition for Human Rights staff, March 2017). As the Safeguards reform process was not case-driven (as Narmada), but policy driven, the movement spent a great deal of energy on casework in 2013. Accordingly, two comprehensive “kick-off reports” (wording used by authoring NGOs; J. Evans, personal communication, April 2017; J. Schwarz, personal communication, March 2017) covering cases of human rights violations in World Bank projects stood at the beginning of movement advocacy in 2012 and 2013.

It was HRW that published the first report on human rights violations in the context of a forced resettlement program in Ethiopia. In “Waiting Here For Death - Displacement and ‘Villagization’ in Ethiopia’s Gambella Region,” HRW accused the Ethiopian government to have forcibly moved tens of thousands of indigenous people to new villages in the Gambella region under its “villagization” program. HRW found that the relocations were forced upon the population, as there is neither consultation, let alone compensation. Moreover, HRW found that several human rights of the communities affected had been violated already, due to threats and assaults as well as arbitrary arrest for those resisting the resettlement. Those removed faced severe food insecurity. Human Rights Watch also documented 20 rapes by security forces in the course of the resettlement. The report also indicates that this was only the beginning, as the Ethiopian government plans to resettle an additional 1.5 million people throughout the next year.

While the report indicated that the United Kingdom and the European Union are the largest donors in Ethiopia, it also stressed the role of the World Bank as the head institution coordinating the largest multilateral assistance program called “Protection of Basic Services (PBS).” According to the World Bank bureaucracy’s own reporting (2011), the PBS is a multi-billion dollar program that provides budget support to local Ethiopian governments over the course of several years. Critically, the report established a connection between the PBS and the human rights violations on the ground, as the Ethiopian government used the funding to carry out its villagization program. Confronted with the allegations, the World Bank told Human Rights Watch that they had carried out an assessment on the ground, visiting 30 out of 75 villages. While the assessment was not made public, the World Bank assured HRW that a “high level delegation of World Bank experts on resettlement” found that the resettlement was “voluntary.” In an email correspondence with HRW, the World Bank (which refused to publish the assessment) summarized its two key findings as follows: first, “the relocation of households [...] appeared to be voluntary,” and secondly, that World Bank projects in the region would “not provide direct support” to the government’s villagization program (HRW, 2012). At the same time, HRW interviews in Addis Abbeba with Western donors, including World Bank officials revealed that it is not clear, how the Bank came to these conclusions (HRW, 2012, p. 69). What is more, they informally acknowledged that ‘villagizatoin’ might very well be indirectly funded through the PBS, as there was no way of disaggregating the gov-

ernment's expenditure in a reliable way (HRW Staff, personal communication, March 2017).

As World Bank management chose to avoid further comments or actions in response to the allegations and continued its budget support to local Ethiopian Governments, HRW increased the pressure. In June 2013, Human Rights Watch published a follow-up report, this time focusing on the World Bank alone. In "Abuse Free Development - How the World Bank Should Safeguard Against Human Rights Violations," HRW reiterated the findings from the first report, supplemented with detailed accounts of human rights violations in the context of a World Bank project in Vietnam. In this latter project, HRW documented "arbitrary detention, forced labor, torture, and other forms of ill treatment" in 14 detention centers under the authority of the Ho Chi Minh City government. According to HRW, refusing to work in these centers regularly resulted in punishments that amounted to torture in several instances. As a consequence, these centers produce a system of forced labour on a very large scale (around 300,000 people who passed through such center across Vietnam between 2000 and 2010). HRW also documented how the World Bank was, together with other donors, funding the project in the framework of a pilot project to combat HIV in these centers. Specifically, the World Bank provided "approximately \$1.5 million funding for various HIV-related services in drug detention centers." Human Rights Watch accuses the World Bank to have ignored its obligation to undertake an appropriate human rights due diligence, as "basic research on how these centers operate" would have indicated that detainees (including children) are subjected to forced labour, that they have no due process rights and that ill detainees who did not get any medication would be entitled to leave these centers (HRW, 2013, pp. 39-44). In October 2013, the BIC and Inclusive Development International (IDI) published the second detailed report covering extensive casework. In their study "Human Rights and the World Bank: Case Studies from IDA Countries" (2013), the BIC and IDI listed eight case studies of human rights violations involving World Bank projects in Ethiopia (villagization and dam projects), Uganda (hydropower dam and post-conflict reconstruction), the Democratic Republic of Congo (timber concession reform), Cambodia (land management), Uzbekistan (agriculture) and Kosovo (Coal-Fired Power Plant). Whereas the first case study on villagization in Ethiopia essentially drew on material from the Human Rights Watch study, the other seven case studies provided additional links between World Bank funding and human rights violations covering projects in several issue areas (i.e., energy, agriculture, resource management, and peacebuilding). Next to the World Bank's engagement in Ethiopia, the Uganda Hydro Power Dam project stood out in terms of increasing pressure on the World Bank<sup>4</sup>. According to an earlier investigation by the BIC (Nampungu & Kasabiiti, 2013), the construction of the 250 megawatt hydropower dam in Uganda came at the cost of 8,700 resettlements. The World Bank financed the project with US\$ 115 million. According to the report, there was a substantial proportion of children among those resettled. Focusing on these children, the BIC built a compelling case that World Bank standards did not cover children's rights appropriately, thus allowing for the violation of these rights in

4 In fact, one interviewee from BIC reported that the variety of issues and allegations in this study might have been counterproductive (compared to focusing on a single case study at a time).



World Bank funded projects. The report states, “The insufficient compensation given to their parents resulted in many families lacking food, which particularly affected children, causing them to suffer malnourishment and to frequently fall sick. Illnesses were exacerbated by the lack of access to medical care. Schools were so far away from the resettlement site that it was almost impossible for very young children and children with disabilities to attend” (BIC, 2016).

The Bank Information Center draws on prior research which found that children are “more severely affected and may be less able than others to rebuild their lives after resettlement” (BIC, 2016) compared to other social groups. Thus, in the context of resettlement, children are a particularly vulnerable group. Centering the Uganda case on children rights thus allowed the movement to build up pressure vis-à-vis the World Bank, establishing a direct connection between World Bank behavior and the deprivation of human rights of a particularly vulnerable group – children. Shortly before the BIC and IDI published their report, the World Bank Inspection Panel gave weight to movement demands for precise and binding accountability standards in a comment to the Safeguards Review Team. In their submission, the Inspection Panel drew on its 20 years of experience in handling complaints and drew key lessons from this experience. In a critical passage of their comment, the Inspection Panel stated that its “experience shows the importance of clarity of requirements; both for project affected communities as well as for Bank staff.” It argued that clarity and precision are paramount for effective accountability. The Panel concluded, “To ensure that rights of accountability and recourse remain fully available to affected people, it is important to have core requirements and principles in policy text and not in secondary guidance documents” as the latter have, according to the Inspection Panel, “less weight and visibility” (World Bank Inspection Panel, 2013).

Human Rights Watch and the BIC/IDI used their reports as well as the submission from the Inspection Panel to brief governments, linking the systemic lack of World Bank human rights accountability to the current safeguards review process. While this played a subordinate role in 2013, the TSM could draw on their reports throughout the campaign and especially when the TSM shifted to the member state channel as their main arena of contention (J. Schwarz, K. Vöcking and J. Evans, personal communication, April 2017). An additional case study by HRW, the BIC and IDI documented the forced eviction of the Sengwer, and indigenous community in Kenya appeared in late summer of 2014. Specifically, the World Bank funded project aimed to reduce emissions from deforestation by reviving the Embobut forest in the Cherangani hills. In the context of this project, Kenyan forest guards forcefully evicted thousands of the indigenous Sengwer community living in that area as hunter-gatherers and burned down their homes. The authoring organizations of the case study reports (i.e., HRW, BIC, and IDI), were all specialized expert organizations who formed the avant-garde of the movement. Importantly, though, the movement entered the scene in its entirety through a joint letter with more than 300 signatories shortly after. In the letter, the movement condemned the forced evictions in the harshest form as “cultural genocide.” The letter also questioned the very *raison d’être* of the World Bank as a development institution if it could not guarantee effective accountability provisions for human rights violations in the future. The harsh language used in these reports, questioning the legitimacy of the World Bank



as an organization and the accusation to have committed “cultural genocide” among key actors in the TSM network and the simultaneous absence of more cooperative tones are hoop tests confirming the dominance of disruptive tactics.

Despite this increasingly harsh rhetoric, the movement received support from James Anaya, the UN’s special rapporteur on the rights of indigenous peoples, who took up the movement claim and demanded from the World Bank that it should respect existing international human rights law, and that its policies should apply to the whole portfolio (not just investment lending; Anaya, 2013). As special rapporteur of the UN, Anaya’s public declaration of movement demands indicated support from the World Bank’s organizational environment. The still young but quickly growing online petition platform Avaaz took up the issue and collected close to one million signatories demanding the World Bank to “urgently halt the illegal evictions.”

Already at this early stage of the campaign, a critical difference between World Bank bureaucracy counter mobilization in the early 1990s and its engagement more than 20 years later became evident: instead of ignoring or belittling the critique, the World Bank bureaucracy offered to engage in extensive dialogue. What is more, the World Bank invited critical feedback on many occasions and referred to this feedback as well as its own responses in subsequent documents. For instance, the first draft of consultations already listed shortcomings of its own consultation process, as well as its approach to handle these shortcomings (World Bank, 2015, p. 3). In addition, World Bank management early on announced to extend the consultation phase to seven (instead of five) months in early 2014 (World Bank, 2015). These steps were critical instances of World Bank bureaucracy counter mobilization at part 1 of the causal mechanism. During this phase, but – to foreclose this observation – throughout the whole reform process, World Bank consultations were an important asset in the toolbox of World Bank bureaucracy counter mobilization. In contrast to earlier attempts of open defiance (see case 1), organizing consultation rounds was a subtle form of defiance. Already before consultations took place, the World Bank secretariat could selectively invite certain movement constituencies, offer funding to those who could not attend otherwise and, importantly, formulate the agenda (see chapter 8 for a more extensive analysis of counter mobilization via consultation rounds).

On March 25, 2014, the movement compiled another joint letter to Kim and the key figures of the World Bank’s policy reform team (Stefan Koeberle, Kyle Peters, Mark King, Charles di Leva, and Sri Indrawati) shortly before the Bank’s Spring Meetings. This letter was signed by 20 key organizations from the heart of the social movement, including NGOs from around the world. The letter clearly stated the core demands of the movement: World Bank accountability standards should cover all human rights, that they should apply to all World Bank activities (“cover all lending instruments”), and that the Bank should “refrain from transferring core responsibilities and accountability for safeguard outcomes away from the World Bank” (Joint Letter, 2014). Both joint movement letters, that on the project in Kenya as well as that on core demands with regard to accountability reform had considerable weight for World Bank management and Executive Directors, given the sheer number and relevance of the signing organizations.

In line with the above, organizational resources are critical as a scope condition to launch an effective campaign compiled primarily of disruptive tactics. Overall, the

movement was well-positioned to build up such a campaign. I already highlighted the important role of the long engaged organizations BIC, HRW, Oxfam, Sierra Club, CIEL, and IDI. Additional U.S.-based organizations that were new to the movement included the ULU Foundation, the Coalition for Human Rights in Development, the World Resource Institute, and Conservation International. Though the number of NGOs working on the World Bank had increased considerably over the years, the NGO community in Washington, D.C. had lost some of its organizational capacity. Following strategic decision of the Charles Stewart Mott Foundation and the Ford Foundation—the two largest foundations supporting NGO work inside the United States and abroad—to shift their focus toward NGO work on Asia (e.g., to support work on the ADB), D.C.-based NGOs working on the World Bank found it more difficult to commit highly skilled people to work on World Bank issues full-time (BIC staff, personal communication, April 2017). What constituted an additional obstacle to movement resources was the lack of a clear movement center in the Global South comparable to the NBA in the early 1990s. While impulses for the movement as a whole came from Bachalao Andean and their supporters on the ground as well as from D.C.-based (and to a lesser degree, European) organizations in the first case, D.C.-based organizations (especially BIC) had the task of movement meta-governance from 2012 onwards. While the Global South was represented to a much larger degree in terms of numbers, none of the participating organizations was integral to the movement as the NBA had been in the early 1990s. From Europe, the BIC was helped by familiar organizations (and personnel), including Urgewald and the German Institute for Human Rights (both Germany) or Both ENDS (The Netherlands). These personal continuities (e.g., between Chad Dobson (Head of BIC) and Korinna Horta (Head of Urgewald)) meant important networking resources, connecting movement activities in different locations from early on. In addition, as advocacy toward the World Bank was less connected to a specific project and since the network had grown over the years, several important internationally operating NGOs joined, too. Among them, Transparency International (TI), Amnesty International (AI) and the Forest Peoples Programme (FPP), the Bretton Woods Project (all UK), Ecological Justice Indonesia, and the Indian Law Resource Center were the most important. Finally, the aforementioned organizations were all influencers themselves, in that they were in a position to mobilize a number of additional, smaller units in their immediate national and organizational environment. In sum, then, many more organizations, ranging from small expert organizations (e.g., German Institute for Human Rights) to large, campaign-oriented organizations (e.g., Amnesty International) to NGOs combining large membership with a reputation for outstanding expertise (e.g., Human Rights Watch) and a dozen of smaller NGOs following their lead meant considerable network and mobilization capacities of the movement. Also, there was a great deal of continuity between movement engagement in the early 1990s and that from 2012. At the same time, the presence of many organizations and the simultaneous decline of experts working full time on the World Bank due to a new funding environment meant a challenge in terms of movement coordination.

In July of 2014, a first draft for policy reform began to circulate informally inside the World Bank. In response, the Inspection Panel wrote an internal letter to the Safeguards Team expressing its concern. TSM representatives and World Bank staff confirm, that

this internal letter was leaked to the movement on July 25th. This leak is interesting, as the IP is independent from World Bank management, but still part of the World Bank as an organization. From the moment of the leak onwards it was clear that the institution the World Bank had created to enhance its own accountability was now prepared to protect its standing, even if that meant alignment with the movement (and potentially against the management of its own organization). According to observers, this move was partly due to the fact that the Inspection Panel had not been involved on a high level in the safeguards review process. As a consequence, the emerging first draft did not take up the general observations and comments made by the Inspection Panel. What is more, the Inspection Panel feared being sidelined by the new policy framework, which stressed alternative “grievance redress mechanisms” over the classical Inspection Panel procedure (Interview with staff of OPCS, World Bank Safeguards Team and Inspection Panel members, June 2015).

In terms of substance, the letter welcomed the objective and efforts to strengthen the World Bank’s standards of accountability. However, it also reiterated the concerns listed in its submission in May 2013 (see above). While the official comment emphasized the need for precise standards more generally, the Inspection Panel disliked the overall direction of the emerging first draft of reform. It stated that a “fundamental concern for the Inspection Panel is the lack of clarity and specificity regarding Bank’s role and responsibilities [...] in particular, with reference to the conduct of environment and social due diligence”. As the World Bank officially refrained from using “human rights language,” the Inspection Panel here referred to “environmental and social” due diligence. Specifically, the Panel criticized the lack of obligation of the new policies when they state that World Bank projects are “expected to meet the following Social and Environmental Standards” (*italic in the original*). But the Panel also criticized the lack of clarity, particularly the introduction of qualifying statements such as “where appropriate” or “in a reasonable timeframe” in relation to its accountability standards and transparency. It concluded, that it is not clear how the proposed Framework will ensure the Bank’s financing of environmentally and socially sustainable projects and establish Bank’s accountability as a development financial institution when communities suffer harm as a result of Bank financed projects. (World Bank Inspection Panel, 2014, p. 3)

The leak of the Inspection Panel’s concerns to the movement was the first in a series of leaks. As a matter of fact, “leaks” became an integral part of the movement’s disruptive strategy. For the most part, the pattern was that World Bank staff leaked documents to the TSM who then leaked that information to the press. By definition, leaking violates the explicit or implicit agreement that the object in question (e.g., an internal document) will be treated with confidentiality. Leaking can be powerful as a tactic to catch someone red-handed, but it also comes at the cost of severely distorting trust (e.g., between movement representatives and World Bank management). The motivations to leak information may vary, ranging from the denunciation of a moral wrong to the attainment of personal gain. For transnational social movement representatives who, at critical points of their campaign, opted to leak information to the press, leaking meant an opportunity to take back control over the agenda in relation to the World Bank. Specifically, leaking information to journalists in advance of the official World Bank press conferences serves two interrelated purposes: first, it allows

journalists more time to prepare their story (which hopefully then translates into more extensive coverage). Secondly, leaking allows influencing the “spin” of a story. Instead of allowing the World Bank to communicate the information, leaks allowed the movement to frame the information in line with its own goals. Since journalism is an area where speed matters, those journalists who have their story prepared at the time of official release will be quicker to cover it. In early July, resistance to the first draft also came from within the World Bank, as senior employees (particularly Ana Revenga, the Acting Vice President for the Poverty Reduction and Equity Group) warned that the proposed accountability standards might lead to an increase in “problem projects” (Revenga cited in the Vidal, 2014).

On July 25, five days before the World Bank’s official press conference scheduled to present the first draft for safeguards reform, *The Guardian* published a story entitled “Leaked World Bank lending policies ‘environmentally disastrous” (Vidal, 2014). The article featured a link to the first safeguards draft, leaked to movement representatives and then to John Vidal from *The Guardian*. In his article, Vidal fully subscribed to the movement’s framing when he wrote, “Radical plans by the World Bank to relax the conditions on which it lends” will have “disastrous” effects for indigenous people, the world’s poor and the environment. Specifically, he stated,

“Existing environmental and social protection will be gutted to allow logging and mining in even the most ecologically sensitive areas, and that indigenous peoples will not have to be consulted before major projects like palm oil plantations or large dams palm go ahead on land which they traditionally occupy” (Vidal, 2014, p.1).

The article went on referring to Stephanie Fried (Director of the Ulu Foundation), the BIC and the International Trade Union Confederation as “World Bank watchdog groups”. Most shockingly, the draft framework provides an opt-out option for governments who do not wish to provide essential land and natural resource rights protections to indigenous peoples within their states. If this were adopted, it would represent a wink and a nod by the World Bank to governments that they should not feel compelled to respect international human rights law (Vidal, 2014). On July 30th, when the World Bank officially presented its first safeguards draft, not only the press, but also the movement had their reactions well-prepared. Especially via their network hubs in the United States, Latin America, and Africa<sup>5</sup>, the movement compiled an official response that was endorsed by 360 organizations. In their statement, the movement sharpened its tone compared to previous letters, declaring that the World Bank’s draft would eliminate “key protections at a time when it has announced its intentions to expand lending to riskier infrastructure, large dams and mega-project schemes” (BIC, 2016). According to the movement, the draft deliberately avoided reference to human rights as the only plausible base for a new safeguards framework and accordingly failed “to guarantee critical human rights protections” such as the right of nondiscrimination, worker’s rights, indigenous people’s rights or rights of the child. Moreover, the movement stated that the new safeguards would “exclude nearly half of the Bank portfolio” as it only covered traditional investment projects, but not

5 Interview BIC, Urgewald

the growing share of alternative lending instruments (e.g., development policy loans). Finally, the movement criticized the process of the review, contradicting the World Bank's dictum to guarantee an open and transparent process that would welcome the input of different stakeholders (World Bank, 2012). Instead, the movement declared, "We fundamentally reject the way in which the review and update of the safeguard policies has been conducted to date, which has been marked by exclusion and a lack of transparency" (Joint Letter, 2014, p. 1).

In retrospect, and from the perspective of movement representatives, the first draft of safeguards was the clearest evidence possible that the World Bank bureaucracy would not incorporate the comprehensive input provided by different movement constituencies. It became especially clear to the movement that the World Bank did not attempt to enhance, but rather to decrease the obligation and precision of its accountability standards. It even sought to undermine the principle of direct accountability by (re-)introducing governments in the accountability chain between the World Bank and those citizens affected by its projects. In particular, the movement radically changed its perspective on World Bank President Kim. Against his promise "not to dilute the safeguards" given in a town hall meeting in Tokio, Japan, on 11th October 2012 (IMF, 2012), the draft showed that Kim was prepared to sacrifice accountability for enhanced competitiveness and flexibility (own notes from TSM strategy meeting).

The TSM statement went out to the World Bank and the governments of major shareholders. According to movement representatives, U.S. government officials assured the movement of their concerns, while European governments (especially Germany and France) remained "strangely silent" (BIC staff, personal communication, May 2016). To supplement the written statement with more tangible protest actions and to enhance its visibility in Europe, the movement organized a demonstration in front of the World Bank office in Brussels on September 18. In an adjustment of strategy, the protest from now on focused more heavily on Kim personally. Against the background of his statement "not to dilute safeguards," the movement took the first safeguards draft as evidence that Kim essentially lied. While the protest did manage to produce some newspaper coverage with images of demonstrators portraying Kim with long Pinocchio noses (Huffington Post, 2014), the movement was not able to mobilize large numbers of protestors.

While no surprise, it became clear to the movement in September of 2014 that, absent a highly mobilized movement constituency in a particular location (such as the anti-dam movement in India in the early 1990s), it was increasingly difficult to complement D.C.-based disruption with street-based disruption. The 360 NGOs as well movement supporters outside formal organizations were dispersed around the globe—an advantage to engage in decentralized and yet coordinated activity, but a disadvantage when it came to organizing a demonstration for two hours in a given location and a specific point in time (BIC staff members, personal communication, April 2017). According to signaling theory, the effect of a demonstration of only moderate size might even be counter-productive, as it communicated only moderate relevance to decision-makers, if any at all. Unlike that demonstration, the next leak obtained by the movement of an internal report documenting safeguards violations in Kenya led to another story in *The Guardian* questioning the integrity of the World Bank President and man-

agement. By now, *The Guardian* was the established high-ranking newspaper covering movement accounts of World Bank misconduct. In the story, *The Guardian* cited an internal investigation report which essentially confirmed movement allegations earlier this year that the forest project funded by the World Bank led to the forced resettlement of the Sengwer population in that area (Vidal, 2014). What made the report delicate was that it revealed how the World Bank had not lived up to the promise by Kim more than half a year prior to actively engage and improve the situation on the ground. As a spokesperson of the UK-based Forest People's Programme summarized, "The World Bank's own leaked management response to the report denies many of the findings, evidently sees little importance in the fact that violation of safeguard policies has occurred, and presents an inadequate action plan to be considered by the bank's board" (Vidal, 2014).

While I could not obtain a decisive confirmation, it is plausible to assume that movement representatives knew about the timing of *The Guardian* article in advance. First, there was a pattern of movement-Guardian cooperation in the past, and second, the movement published a joint civil society statement two days after. In their joint statement from October 1, the movement strongly opposes the safeguards draft (Joint Letter, 2014).

Both, *The Guardian* article and the joint letter by the movement came in due time, setting the tone for the upcoming World Bank Annual Meeting beginning about a week later (from October 10-12, 2014). Confronted with such a high level of pressure and allegations that the World Bank had willingly ignored its own failures, President Kim chose to reply. He expressed his deep concern and stated that he would "personally reach out to President Kenyatta and the government of Kenya to offer our full support" as the World Bank's (and everyone else's) goal was "to find a lasting, peaceful resolution to this long unfinished business of land rights in Kenya" (Kim, 2014, as cited in Vidal, 2014). As the Kenya case reached the level of heads of state (the Kenyan President), several member states began to question the World Bank's ability to handle the issue in an appropriate manner. Following the initiative by several donor countries, the Board of Directors adopted a joint statement, acknowledging that there had been a "lack of recognition and protection of (Sengwer) customary rights," and that more attention should have been given from the outset to better identify and mitigate the risk that evictions might occur" (as cited in Vidal, 2014).

Around the same time, World Bank management was ready for enhanced organizational counter mobilization, combatting internal leaks more forcefully. The World Bank's Office of Ethics and Business Conduct hired Locke Lord, a private firm, to assist them in tracking the series of recent leaks. The investigation centered on Fabrice Houdart, a senior director for Middle East and North Africa, as well as the former president of the World Bank's internal Lesbian, Gay, Bisexual and Transgender employee organization. The main accusation was to have leaked the first draft of human rights and environmental policies. Even though the accusations that Houdart had leaked the "strictly confidential" safeguards were dropped, Houdart did acknowledge to have shared a less sensitive internal document (classified as "official-use only") on the World Bank's stance on sexual orientation and gender identity issues to the BIC, which was chairing a working group on LGBT rights in the new safeguards framework.



Despite President Kim's assurance to reject any "retaliation policy" for internal critics, the World Bank reduced Houdart's salary and declared him ineligible for promotion for three years. Houdart appealed the decision, and the World Bank's Staff Association investigated whether the proceedings had been in compliance with World Bank internal policies (Rice, 2016). According to Nezir Sinani from the BIC, the World Bank was "investigating its own staff to prevent leaks containing information that people around the world are entitled to know about in the first place." Sinani added that "if the Bank were transparent to start with, no such investigation would be necessary" (Sinani, 2015).

Shortly after, at the World Bank Annual Meeting 2014, World Bank management and movement representatives clashed over the problem definition with regard to the accountability reform, including questions such as: where does the World Bank stand? What is the scope and severity of World Bank responsibility for human rights violations in the course of recent projects? (Knud Vöcking, personal communication, March 2015). In preparation of the meeting, the BIC and CIEL co-hosted a strategy session on October 8 for civil society organizations to build and coordinate efforts to strengthen the World Bank safeguards. The overarching aim was to further pool resources and to identify key areas of advocacy that would be effective in introducing changes to current standards. Already in preparation for the Annual Meetings there was a fierce debate among movement constituencies regarding the degree to which the movement should cooperate with the World Bank (e.g., by providing their input through official channels established by the World Bank and to engage in "constructive dialogue" with Bank management during the Annual Meetings). The discussions showed that an overwhelming majority of movement constituencies was against any form of cooperation at this point. To the contrary, several individuals and organizations expressed a preference to enhance the use of disruptive tactics in a more coherent manner. The next day, on Friday, Medha Patkar from Narmada Bachao Andolan, the movement icon and protagonist in the protests of the early 1990s, called for a demonstration in front of the World Bank building the next day (Patkar, 2014).

No sooner said than done. On Saturday, October 10th the most important World Bank-TSM exchange meeting took place, starting with a presentation of the World Bank Safeguards Team. After the presentation, Soumya Dutta (convener of the Beyond Copenhagen Collective from India) stood up and read a CSO statement. In the statement, the movement criticized the World Bank for its lack of inclusiveness and transparency during the safeguards review so far and, in particular, for the direction the accountability reform process is going. In conclusion, Dutta said "The protections you now seek to dismantle—the safeguards that we fought for over decades—o not belong to you. [...] They belong to the world and its vulnerable people." After that, all movement representatives stoop up and left the conference room at once, leaving the leading Safeguards Team visibly surprised behind (World Bank, 2014). According to movement and World Bank representatives, this "walk-out" meant a turning point and a rapid deterioration of relations between the movement and World Bank. According to two interviewees who had been extremely well-connected inside the World Bank, the walk-out meant several personal disappointments and "burned bridges" (Interviews with BIC and CIEL staff, May 2015).



In November of 2014, something notable occurred. The Independent Evaluation Department (IED) of the Asian Development Bank (ADB) published the results of a study on the proposed World Bank safeguards. It came to the surprisingly harsh conclusion that the draft proposed by the World Bank only entailed “aspirational” measures which “could dilute the strength of social and environmental protections.” The IED went on to criticize the World Bank’s failure to include due diligence rights in its safeguards and stated that “the case for stronger enforcement and supervision of safeguards is compelling, especially in Asia where the push for high economic growth has taken a huge toll on the environment” (ADB, 2014). Movement representatives were equally glad and surprised when hearing about the ADB’s critique of World Bank safeguards, since this kind of direct support from another MDB had been a novelty (Stephanie Fried, 2015). Compared with the case in the early 1990s, the degree of support from the organizational environment of the World Bank was extraordinary.

Since the World Bank created the Inspection Panel in 1993, the first independent accountability mechanism of its kind (Genovese & Van Huijstee, 2016), other international organizations and, in particular, other MDBs adopted comparable mechanisms. Well-known examples include the “Independent Review Mechanism” (IRM) of the African Development Bank (AfDB), the “Complaints Mechanism” of the European Investment Bank (EIB) as well as the “Accountability Mechanism” of the Asian Development Bank (ADB). In 2014, more than a dozen independent accountability mechanisms existed for MDBs and major national development finance institutions (e.g., the U.S. Overseas Private Investment Corporation [OPIC]). The World Bank is closely associated with the respective mother institutions, due to the shared mandate (development financing) and because the World Bank’s Inspection Panel lies at the root for the emergence of these subsequent mechanisms. In addition, the accountability mechanism strengthens their in-group identity through the creation of a joint network. In the framework of this network, the mechanisms meet on a regular basis, exchange good practices and seek to evaluate their effectiveness (Scheltema, 2013). In 2012, the year the World Bank announced its review of the safeguards, the network published a report due to the 20th anniversary of the Rio Earth Summit, providing an overview over their work (Lewis, 2012).

Outside the realm of MDBs and related development finance institutions, there has been a more general trend toward the creation of accountability mechanisms among influential international organizations (e.g., NATO, the EU). Like the World Health Organization (WHO) or the Food and Agriculture Organization (FAO), or the United Nations Educational, Scientific and Cultural Organization (UNESCO), the World Bank is a specialized agency of the United Nations and thus part of the “UN family.” As the term “family” indicates, all organizations of the UN system share strong ties in terms of cooperation, purpose and identity. In the realm of interpersonal relations, the family is, after all, that social group with the strongest ties among its constituent members (for better or worse). It was only one year after the establishment of the World Bank’s Inspection Panel that the UN General Assembly established the UN Office for Internal Oversight Services with the purpose to investigate misconduct in UN Peacekeeping Missions. In sum, then, several organizations in the close circle of World Bank “relatives” had established independent accountability mechanisms by 2014 that would receive complaints

from those affected by IO operations, indicating a clear trend toward the norm of direct accountability (Heupel et al., 2017).

Then, toward the end of 2014, when the movement campaign accelerated, additional support for movement demands came from the UN family. On December 17, 2014, 28 members of the UN Human Rights Council—a subsidiary body of the UN General Assembly (UNGA)—wrote a letter to World Bank President Kim. All 28 signatories were so-called “Special procedures mandate-holders.” “Special procedures” refer to the mechanisms established by the UN Human Rights Council to gather independent expert observations and advice on human rights issues. Such mandate holders may respond to individual complaints, conduct studies, or provide advice on technical cooperation. They report back to the Human Rights Council at least once a year on developments in their human rights area of expertise (Limon & Piccone, 2014).

Interestingly, the BIC had an important role to play in the genesis of the report. According to several interviews<sup>6</sup> obtained independently with staff at the World Bank and the Bank Information Center, BIC had a very close and direct line to Philipp Alston, special rapporteur on extreme poverty and human rights, and editor in chief of the report. The BIC was aware of Alston’s general view with regard to the World Bank’s human rights obligations and pushed him to formulate these views together with his colleagues in an open letter to Kim. According to one source, the BIC even helped coordinating and pulling together the different special rapporteurs’ perspectives. Though difficult to verify conclusively, the fact that two independent sources reported on BIC’s involvement in the creation of the report point to an interesting twist here: that the movement strategically mobilizes other IOs in an ad hoc fashion to create the very scope condition (i.e., support from the organizational environment) it needs to be effective when using disruptive tactics<sup>7</sup>. In the report, the special rapporteurs took up the movement’s claim and demand that the World Bank integrates accountability on the basis of existent human rights law. The report also resorted to the World Bank’s dogma of a “nonpolitical mandate,” when it states that

“In the past, the Bank has often pointed to its ‘nonpolitical mandate’ to argue that it is prohibited from, or at least restricted in, its ability to deal with human rights more directly. But the Bank’s Articles of Agreement should be interpreted in the context of today’s international legal order, rather than that of the mid-1940s” (Alston, 2014).

The report takes up the movement argument that reference to the nonpolitical mandate cannot possibly justify a lack of human rights accountability. Given that the World Bank is a development institution,

“Consistent with international law, with its own obligations and with those of its Member States, the Bank should acknowledge the relevance of human rights in its overall program objectives, as well as incorporate human rights due diligence into its risk management policies. The Bank should also avoid funding projects that would contravene the international human rights obligations of its borrowers”. (Alston, 2014)

6 Interview BIC; World Bank Legal Department

7 Of course, investigating this mechanism conclusively would require another process tracing study and thus goes beyond the scope of this work.

The report also details the rights that affected communities should enjoy in light of the World Bank's human rights due diligence. Among the signatories were Leilani Farha (special rapporteur on adequate housing), Michael Addo (working group on human rights and transnational corporations), Hilal Elver (special rapporteur on the right to food), Heiner Bielefeldt (special rapporteur on freedom of religion or belief) as well as Victoria Lucia Tauli-Corpuz (special rapporteur on the rights of indigenous peoples), to name just a few. Thus, the degree of support for the norm of direct human rights accountability was comparatively much higher in 2014 than it used to be two decades earlier.

Around the time that the UN Human Rights Council prepared its report toward the end of 2014, European and U.S. movement constituencies sought to build on the momentum and to convince member states that the World Bank was not trustworthy by engaging in conventional tactics. Notably, the movement did not boycott but engaged in consultation rounds the World Bank organized in several European cities in late 2014. Participants of these consultations described World Bank-TSM-member state interactions as "constructive" and "mutually enriching" (A. Kämpf, personal communication, May 2016). At the same time, some NGOs such as Urgewald or WWF Norway took a more confrontational stance during consultations in Berlin and Oslo respectively (Personal conversation with participants). The Oslo consultations also resulted in a joint statement by northern movement constituencies that revealed a focus on Kim as the person chiefly being responsible. It stated, "The current safeguards draft represents a major dilution of existing World Bank safeguards, and a breach of President Jim Yong Kim's promise not to weaken the Bank's policies." (November 12th, 2014; Joint TSM statement after Oslo consultations). Only one day after, Kim received a letter from 360 endorsing organizations from all over the world. In the joint statement, the NGOs refer to his promise made in Tokio and assert that the first draft represented "a massive dilution of current Bank policy" and that it "undermined the rights of indigenous peoples," failed to protect labour rights and more generally failed "to guarantee critical human rights protections" (Joint Statement of Demands by 360 NGOs, 2014).

The end of 2014 thus saw the parallel engagement through inside and outside channels, using conventional and disruptive tactics simultaneously. In contrast to Case 1, TSM tactics (first disruptive, then conventional) were employed in a clear cut fashion, but overlapped to some degree toward the end of 2014. In the United States, the Bank Information Center, CIEL and Human Rights Watch sought to enhance their good rapport with Maxine Waters at the House of Representative's Financial Service Committee. In addition, there was a close exchange between U.S.-based movement constituencies and the Congressional Research Service team covering MDBs. As the World Bank's Safeguards reform was on the House of Representative's agenda for December 2014, the Congressional Research Service was in the course of preparing an information package that was deemed crucial to guide U.S. legislator's perspective on the matter (Personal conversation CRS staff, April 2017). At the same time, U.S.-based NGOs exercised enhanced pressure on U.S. Treasury and the State Department during Tuesday Group meetings (on Tuesday Group, see elaboration above) to take a firm stance in the new appropriations legislation. On December 9, U.S. Congress passed the "2015 Omnibus

Appropriations Act,” which included an instruction for the US, the Bank’s largest shareholder,

“to vote against any loan, grant, policy or strategy if [the Bank] has adopted and is implementing any social or environmental safeguard ... that provides less protection than World Bank safeguards in effect on September 30, 2014” (Consolidated and Further Continuing Appropriations Act, 2015, p. 1199) Furthermore, the act required that the United States in all international financial institutions (IFIs) “seek to require that such institution conducts rigorous human rights due diligence and human rights risk management, as appropriate, in connection with any loan, grant, policy, or strategy of such institution” (US Congress, 2015, p. 1199).

This was a clear sign of hope to the transnational social movement, which welcomed the Act with open arms. According to Stephanie Fried (Ulu Foundation), this Congressional act was of “utmost importance,” Michelle Chan (Friends of the Earth) reported that “we are very pleased” and Jocelyn Medallo (CIEL) said that the act was decisive at a time where the World Bank was “at a critical crossroads” to either become “the leading public development bank by explicitly committing to human rights” or not (IDI, 2014). The U.S. Congressional act was a first clear sign that important World Bank member states, foremost the US, were increasingly worried about the World Bank’s trustworthiness and legitimacy. Yet, for the time being, it was only the U.S. government that signaled its worries, while European EDs as well as those of Japan and India remained silent.

Next to the World Bank bureaucracy, it was predominantly China that openly mobilized against movement demands on behalf of member states at the Board of Directors. According to World Bank staff, China shared with the movement from early the view that the ongoing policy review presented major opportunities. Yet, for China, these opportunities consisted in less direct accountability, an interpretation of “ownership” to mean government ownership only and a chance to transition to a less bureaucratic, more flexible policy framework (Operations Department World Bank). According to these convictions, China provided a first input and recommendations in March 2015. In their “Comments and Recommendations,” the Chinese Government for instance recommended to “give some flexibility to and avoid the setting of unified indicators for ‘working conditions,’ taking into account the borrower’s realities, development stages and relevant laws,” calls for a “rational” definition of the term “indigenous peoples” that takes existing borrower’s policies on ethnic minorities into account and proposes to substitute a treatment of cultural heritage in line with “internationally recognized practices” into a treatment in line with “the Borrowers relevant laws and policies” since “China’s cultural (heritage) legislation can lower costs and facilitate operations” (Chinese Gov., 2015). This letter of comments and recommendations is an early indication and doubly-decisive for China’s willingness to mobilize against a movement demands for World Bank policy reform that centers on international human rights norms and the idea of direct World Bank accountability independent of the Borrowing state.

In January of 2015, the movement obtained an additional push, as the International Consortium of Investigative Journalists” (ICIJ) joined their ranks. The ICIJ, a consortium composed of media outlets all over the globe, informed the BIC about their willingness to expose human rights violations by the World Bank. A cliffhanger for the

ICIJ was a leaked in-house report from the Inspection Panel dealing with the World Bank's engagement in Ethiopia. Sasha Chavkin from ICIJ published an article laying out the Inspection Panel's findings. According to the leaked report, the World Bank had provided U.S. \$2 billion in funding to the Ethiopian government over the course of a decade. Despite emerging allegations that the government used some of that money to finance the forced eviction of the indigenous tribe the Anuak, the World Bank continued funding for years. In addition to allegations of forced relocations, the report also listed serious human rights violations including rapes and killings. The Inspection Panel report found an "operational link" between World Bank funding and the evictions. The Panel could not find such an operational link between World Bank funding and the occurred human rights violations, since the investigation into human rights claims is, according to the Inspection Panel, beyond its mandate. Still, the Inspection Panel concludes that World Bank management chose to ignore the operational link between funding and forced eviction over years, thereby violating the institution's standards of accountability.

The Ethiopia case provoked several reactions on behalf of member states, notably the EDs of France, UK, and Scandinavian states. Moreover, the NGO Inclusive Development International (IDI) opted to file a complaint on behalf of 26 Anuak refugees that had been victims of World Bank human rights violations and willing to testify. David Pred, director of IDI said that "the bank has enabled the forcible transfer of tens of thousands of indigenous people from their ancestral lands" (Pred, 2015, quoted in ICIJ article). Against previously established practice with regard to the Safeguards consultations, however, the World Bank chose not to comment on the allegations made in the leaked report. In a written response to the ICIJ, Phil Hay (World Bank spokesperson for Africa at the time) said: "As is standard procedure, World Bank staff cannot comment on the results of the Inspection Panel's investigation until the Executive Board of the World Bank Group has had the opportunity to review the Inspection Panel's report over the coming weeks" (Hay, 2014, cited in ICIJ article). As some movement representatives saw it, the World Bank's use of avoidance as a strategy to counter critique was a good indication that it was pursuing a worthwhile path (Interview). Apparently, the Ethiopia case had the potential to make World Bank accountability failures concrete and tangible. As in previous responses to the Ethiopia case, World Bank management even moved on to openly reject the accusations, saying that there was "no evidence of widespread abuses or evictions" and that the Anuak "have not been, nor will they be, directly and adversely affected by a failure of the Bank to implement its policies and procedures" (World Bank, 2012). Once more, this tactic of the World Bank bureaucracy constituted an attempt to *counter mobilize* against TSM pressures in form of defiance (see chapter 3.3 and 4.3).

On February 28<sup>th</sup> journalists of the Huffington Post and the ICIJ met with leading representatives of the World Bank's management and inform them that the story on the project in Ethiopia was only the tip of the iceberg. Underneath, according to the informants, is the bigger part composed of several human rights violations in World Bank projects, revealing "systemic gaps" in the bank's protections for people harmed by projects it supports (Interview with Jolie Schwarz; Article in Huff Post). Moreover, the journalist stated that they were in possession of leaked copies of a confidential internal

report by the internal audit department (IAD) confirming the allegations. In addition, the journalists reiterated their intention to launch a bigger news story on the obtained material.

Five days after that incident, the World Bank went into the offensive and publicly announced an action plan entitled “Action Plan: Improving the Management of Safeguards and Resettlement Practices and Outcomes.” In the Press Statement presenting the Action Plan, the World Bank acknowledged the violation of its own social and environmental standards. President Kim, specifically, said that he was concerned about “major problems” with regard to World Bank accountability, in particular a lack of oversight in relation to its resettlement policies. Kim’s spokesman, David Theis, elaborated on these problems and said “We must and will do better” (cited in ICIJ, 2015). According to the Action Plan, “the World Bank has prepared this action plan with a clear goal: to improve management of safeguards, in particular resettlement practices and outcomes.” The Plan explicitly links this endeavor to the ongoing reform of standards when it states “This plan is aligned with the safeguards review process” and that the solution would be “a new organizational structure that strengthens the safeguards accountability system.” The 5  $\frac{1}{2}$  pages long action plan then lists existing problems in the current safeguards system and the corresponding areas of improvement. For instance, under the heading “institutional leadership,” the plan identifies the problem that “Although mandatory, projects were often not rated for environmental and social risk due to a lack of clarity of the definition of risk. As a result, projects were not staffed in accordance with the level of risk.” To combat this problem, the plan states that the “definition of risk has been clarified, as ‘risks to the client’s achieving the expected results of the project, program, or strategy; and the risks of unintended impacts.’” With regard to enhancing accountability toward those affected under the new policy framework, the plan states that “more robust requirements for grievance mechanisms will give greater voice and opportunities to resolve the concerns of communities.” Next to the Action Plan, Kim announced a 15% funding boost for safeguards enforcement (World Bank, 2015).

The movement (including the investigative group of journalists) was not convinced by the World Bank’s reply. For the most part, the action plan remained vague with regard to specific improvements. Its reference to the new Safeguards framework as a solution to existing problems, moreover, was almost perceived as a provocation, given that the proposed reforms meant a *weakening* of accountability standards compared to the already existing status quo (Interview with ICIJ member). On April 16<sup>th</sup>, the day of the opening of the World Bank Annual Spring Meeting, the ICIJ released the first installments in the series of the investigative reports. The investigation was carried out by a team of more than 20 news organizations, including The Huffington Post, El Pais, the Guardian, Fusion, The Investigative Fund, the Ground Truth Project and Brazil’s Agência Pública. Even though this huge collaboration proved complicated at times, it results in increased capacity, larger audiences, and greater potential for impact overall. As a recent media impact analysis revealed, ICIJ report was critical as a means to establish the disparity between the World Bank’s safeguards rhetoric and its actual performance (Pitt & Green-Barber, 2017).

In the early 1990s, this disparity became evident in a single project—the Narmada Dam project. Over the years from 1988 to 1993, the disastrous environmental and social



consequences of the project and the World Bank's failure to address these failures were closely connected to movement success in the United States and Europe. Whereas the Narmada project continuously served TSM to mobilize against the World Bank effectively, the Safeguards Review did not happen as a consequence of a single scandalous project. Instead, the timing and agenda were controlled by the World Bank secretariat – a first proactive move of *counter mobilization* through manipulating the framework within which policy reforms would be negotiated. This meant a challenge for movement mobilization. Next to this early World Bank counter mobilization, properties of the *issue* at stake provide an important scope condition for the likelihood of movement success. Even though the focus was more on standards (i.e., operational policies) rather than sanctions in cases of noncompliance (i.e., an institutionalized and independent accountability mechanism) in 2014, the issue was still the direct human rights accountability of the World Bank. This issue was equal in terms of specificity, its relation to the World Bank's mandate and identity as it involved similar sovereignty costs to member states. Yet, without a scandalous case on which larger demands for reform could be built, the resonance potential of demands for accountability were severely weakened. Relatedly, the abstract discussion about Safeguards reform did not establish a short causal chain between World Bank talk and action in a similar fashion that Narmada had done. The movement was aware of this challenge and sought to establish such a link to concrete cases from early on. The Human Rights Watch Report (focusing on two projects in Ethiopia and one in Southern Viet Nam), as well as the early report by the Bank Information Center (covering eight problematic projects) sought to establish precisely that causal link between World Bank projects and human rights violations by using a case-study approach. Also, the report of the Independent Evaluation Group (IEG) on the World Bank's safeguards system from 2010 served as important reference for the movement. In the report, the IEG finds that the World Bank undermined development by disrespecting its very own safeguards.

The ICIJ report published in April 2014 surpassed the earlier Human Rights Watch and BIC Reports in terms of scope and impact. Regarding scope, the amount of projects the ICIJ exposed did not allow for any doubt that World Bank human rights violations were of a systemic nature. In specific terms, the ICIJ revealed (with the help of a whistleblower from Bank management), that the World Bank had violated its own social and environmental policies in a systematic manner. In concrete numbers, the World Bank was accused of having displaced 3.4 million people, “forcing them from their homes, taking their land or damaging their livelihoods” (ICIJ, 2015). Moreover, the Bank was accused to provide governments and companies accused of human rights violations including rape, murder and torture with funding even after the human rights violations came to the fore (ICIJ, 2015). At the same time, the report drew on specific, particularly troublesome case studies other movement constituencies and the World Bank's own Inspection Panel had covered earlier. For example, it built on Inspection Panel and Human Rights Watch investigations to report how the World Bank failed to acknowledge the link between a World Bank funded health and education initiative on the one hand, and the Ethiopian army's human rights abuses (including beatings, rapes and killings) toward villagers on the other. These human rights abuses came on top of “a mass relocation campaign” carried out by the army (ICIJ, 2014). In terms of impact, the fact that the



ICIJ involved media outlets in several countries led to more than 50 international articles and broadcasts outside the United States in several in leading newspapers (e.g., The Guardian in UK, Süddeutsche Zeitung<sup>8</sup> and DIE ZEIT<sup>9</sup> in Germany, EL Pais in Spain,<sup>10</sup> to name just a few) during the first week alone. The ICIJ as most newspapers covering the report referred to Kim's announcement to improve oversight and contrasted this with the Bank's attempt to simultaneously weakening its standards. According to the ICIJ, it was the discrepancy between the systematic and serious nature of human rights violations by the World Bank as well as its attempt to weaken accountability standards on the one hand, and the imprecise, nonbinding 5  $\frac{1}{2}$  page long "Action Plan" to "do better" as David Theis, spokesman of the World Bank put it (World Bank, 2015) on the other hand. This press release exposed the World Bank's hypocrisy. Adopting a similar line of argumentation, Michael Cernea opted to join the movement. Cernea was a respected scholar on rural development and resettlement (Cernea, 1985) and former high ranking World Bank official who has been credited with authoring the most progressive World Bank resettlement policy to date (Wade, 2011; personal conversation<sup>11</sup> with Antje Vetterlein). Cernea said that he was "saddened to see now that pioneering policy achievements of the bank are being dismantled and downgraded" and that ultimately, "The poorest and most powerless will pay the price" (ICIJ, 2014).

The investigative reports were published in the morning of April 16. Only few hours later, World Bank President Kim found himself opening the Annual Spring Meetings. Against the predictions of several observers (IDI staff members, personal communication, April 2016), Kim opted for a quiet approach: instead of going into the offensive with a public excuse and a comprehensive follow-up action plan to redress systematic flaws, Kim limited himself to briefly noting the release of the investigative stories toward the end of his speech, saying, "Finally, today, there were published reports today regarding the Bank's resettlement history." Still in the same breath, he asserted that "the stories are based on internal Bank documents that I ordered released" (Kim speech, cited in World Bank, 2015, p.1). With this coverage and the lack of reaction by Kim, public attention and pressure on the World Bank around the globe was at its peak and no less substantial than the pressure the World Bank went through in the early 1990s. It certainly was broader in terms of scope and the correlated risk of losing its reputation as a first class provider of development. Due to its combination of broad impact combined with high quality journalism, the ICIJ received several awards in subsequent years (Pitt and Green-Barber, 2017). Also, among European governments, the trust in Kim as a sincere reformer whose primary concern was with the world's poor waned (BIC staff, personal communication, May 2016; German Ministry for Economic Cooperation and Development (BMZ) staff, personal communication, August 2016), while U.S. Congress, Treasury and ED were reassured of their view that the World Bank was in urgent need

8 <http://www.sueddeutsche.de/politik/vertreibung-und-verfolgung-wie-weltbank-projekte-den-aermsten-schaden-1.2437465>

9 <http://www.zeit.de/wirtschaft/2015-04/entwicklungshilfe-weltbank-projekte-verletzen-menschen-rechte>

10 [https://elpais.com/tag/icij\\_consortio\\_internacional\\_periodistas\\_investigacion/a/](https://elpais.com/tag/icij_consortio_internacional_periodistas_investigacion/a/)

11 In contrast to an interview, a "personal conversation" is less formalized and typically not planned in advance.

of structural reform that would guarantee more oversight and human rights protection (U.S. Treasury staff member, personal communication, April 2017). In short, then, the World Bank was in crisis, which paved the way for enhanced TSM access among member state channels and the use of conventional tactics inside these channels.

### 7.3 Part 2: Conventional TSM tactics through the state channel

The ICIJ report introduced a shift in TSM tactics, as from then on conventional tactics took precedence over disruptive ones. To the extent that World Bank member states questioned the World Bank's integrity as a result of the systematic failure to safeguard for human rights violations, the movement enjoyed increasing access to decision-makers of donor countries. This access came in a timely manner, as several World Bank member states were in the course of preparing their statements on the safeguards reform draft. Human Rights Watch, for instance, organized a series of workshops and information events with the French government, which suddenly discovered an interest in World Bank safeguards (HRW staff member Jessica Evans, personal communication, April 2017). In line with core movement demands, Human Rights Watch highlighted that the "opt out" clause in policies protecting indigenous people's rights undermined their rights to self-determination and collective ownership of territories and resources, that the newly introduced worker's rights fell short of core ILO labour standards (e.g., because they excluded third party contractors and civil servants) and that they lacked specific protections of persons with disabilities, as well as for people with a sexual orientation or gender identity expression that diverged from the norm. In their statement on the safeguards reform that was submitted shortly after, the French government listed a clear stance on human rights as its core demands regarding the safeguards review. Moreover, it asked the World Bank, along with movement demands, to broaden the scope of the safeguards application to cover the whole World Bank portfolio (World Bank, French Gov. Submission, April 2015).

Despite using the same arguments and frames, HRW was somewhat less successful in other European countries including Germany, the United Kingdom, and The Netherlands. Due to the presence of organizations such as the German Institute for Human Rights and HRW, the TSM conveyed legal and academic expertise and thus high *epistemic authority*, while its *moral authority* was underlined further by human rights organizations that had built an excellent reputation around the world, including Amnesty International, Oxfam and Transparency International (NGO Advisor, 2013). In contrast to most NGOs in the movement that focused on substantive human rights issues, Transparency International covered important aspects with regard to transparency policies, including a demand for consultations and access to information at all stages of the policy cycle involving all affected stakeholders (Transparency International, 2015; German Ministry for Economic Cooperation and Development (BMZ), personal communication, August, 2016). The German position submitted in mid-2015 is indicative of the desire among European member states to negotiate a balanced compromise without antagonizing opponents of strong human rights standards. Even though Germany recognized that the safeguards are "making a major contribution toward securing and strengthening

human rights,” it also affirmed “the World Bank has no explicit human rights agenda of its own.” In addition, Germany asked the World Bank to make reference to universally recognized human rights in the Safeguard’s vision statement (World Bank, 2015). Since this vision statement is of a nonbinding nature, TSM representative assessed this position as a clear indication for a position that was willing to dilute existing standards (Interview Urgewald staff member, March 2015). With regard to actual policies, Germany only demanded that “the Bank should make a commitment in future to take account of the human rights impacts of its projects” (World Bank, 2015), thus postponing human rights policy reform to an unspecified future.

Perhaps the most promising sign of support came from the Committee on Development Effectiveness (CODE). Established in 1994, CODE is a standing committee of the World Bank’s Board of Executive Directors. The Committee on Development Effectiveness is tasked with overseeing and evaluating World Bank operations, obstacles to effectiveness, critique and management responses to such critique. In a confidential document CODE members - Germany, UK and France, as well as the EDs of Southern European<sup>12</sup> and Nordic countries<sup>13</sup> plus the constituency led by The Netherlands<sup>14</sup> - criticized the lack of human rights provisions informally, stating that,

“There are a number of areas where we would have preferred to see this draft go further [...]. Notably, human rights and labor standards deserve more emphasis, in accordance with their prominence within the international institutional architecture that the World Bank and its member are part of.” (World Bank CODE Meeting, 24<sup>th</sup> June, 2015)

Even though this CODE statement is crystal clear in its impetus to demand enhanced human rights protection, it should remain the strongest statements emerging from European member states throughout the safeguards process. Importantly, CODE did not substantiate its claims with a prospect of vetoing the reform, funding cuts or anything with similar weight (Interview with CIEL and BIC staff, April 2017).

Shortly after Matthew McGuire, the new U.S. ED, finally assumed office after years of Republican obstruction in June 2015 (see elaboration in Ch.8), the ICIJ and the *Huffington Post* published stories that documented inadequate way of the World Bank to handle whistleblowers revealing World Bank misconduct. In their article, the ICIJ cited an internal survey on staff satisfaction inside the World Bank. As the leaked 163-page-long report clearly indicated, the series of leaks and the publication of the ICIJ’s story (“Evicted and Abandoned: Inside the World Bank’s Broken Promise to Protect the Poor” referenced above), led to a great deal of suspicion and threats among management. On the other hand, the attempt at punishing whistleblowers, specifically Fabrice Houdart, had poisoned the climate (Tyson, 2015). According to one employee cited in the report, “The World Bank has evolved into a place of fear and retaliation” while another one staff member reported that “Managers have a lot of power and use it for retaliation” (cited in

12 Italy, Albania, Greece, Malta, Portugal, San Marino and Timor-Leste

13 Denmark, Estonia, Iceland, Latvia, Lithuania, Norway and Sweden

14 Armenia, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, Georgia, Israel, Macedonia, Moldova, Montenegro, The Netherlands, Romania, and Ukraine

Chavkin & Hudson, 2015, p.1). On the World Bank's accountability policies, staff members revealed deep concern and frustration, reporting that "Though safeguards exist, most employees think that they are not safe so they don't use them" while another staffer showed worries that "safeguards specialists" had been "eaten by the system and just play the game of the Bank, support disbursements and see later how to fix the issues" (cited in Chavkin & Hudson, 2015, p.1).

In July of 2015, the World Bank published its second draft of the new human rights and accountability framework. This time, notably, the draft was not leaked to the press, even though movement constituencies were in possession of that draft before its official publication. According to one interviewee central in steering the movement's strategy<sup>15</sup>, the movement sought to concentrate on its conventional tactics, adopting a less confrontational stance toward the World Bank (Frankfurt CSO Strategy meeting, April 2016)<sup>16</sup>. As the World Bank reported, the second draft included the feedback of 54 borrowing countries where consultations took place, as well as that of 130 position papers submitted by NGOs, multilateral and bilateral development partners as well as private sector representatives among others. As during consultations in previous phases, stakeholders submitted their feedback during physical face-to-face discussions, in the course of focus groups with selected experts, in audio and video conferences, and through written statements. These submissions were collected on a Safeguards Review Website<sup>17</sup>. This time, the World Bank did not only publish the second draft of accountability policies. Accompanying the draft policies was a document categorizing feedback along key themes (e.g., labour rights) and declared how the new draft incorporated this feedback. At the same time, the World Bank reported that it had to incorporate 2,500 pages of feedback and emphasized that feedback which could not be included this time would be taken into account at a later stage (World Bank, 2015). In terms of substance, a senior World Bank official from the operational policy and country services team said in a private conversation that the new version differed in several ways from the old draft and in fact meant a substantial improvement. Specifically, the requirements for "free, prior and informed consent" regarding World Bank projects in areas of indigenous peoples were strengthened, labour standards now included the right to freedom of association and collective bargaining as well as coverage for contractors and community workers. In parallel with the publication of the second draft, World Bank management sought to close the still ongoing discussion with regard to the status of human rights in their new policies. In a document entitled "Summary of Phase 2 Consultations and Bank management Responses," the World Bank states that its management had considered exhaustively the many views expressed with regard to human rights, "as well as the legal and practical opportunities and constraints" for the new policy framework "to support human rights outcomes at a project level." The World Bank goes on stating,

15 This information stems from my own participant observation at CSO strategy meetings in Washington DC and Frankfurt.

16 Even though I am not certain about the accuracy of this information, it is highly likely that the movement was in possession of a draft copy in virtue of previous happenings. The fact that they did not leak it constitutes strong evidence supporting the movement's focus on conventional tactics.

17 <http://consultations.worldbank.org/consultation/review-and-update-world-bank-safeguard-policies>

“Management has also considered this issue in light of the World Bank’s mandate, and that of other UN, international and regional agencies and tribunals, as well as the nature of the accountability system within the World Bank. All of this information has led Management [sic] to the firm view that it should refrain from proposing that Borrower human rights compliance be a standard requirement within the ESF (note by author: the new policy framework). Management shares the aspirations that underlie the Universal Declaration of Human Rights, but cannot enforce Borrowers’ fulfillment under this and other international instruments. However, Management is also committed to the view that the World Bank has and should continue to have a strong record of achievement concerning human rights and, through its projects and many other engagements, it will continue to help countries meet the obligations they have made through international human rights instruments.” (World Bank, 2015)

Hence, this official document is doubly decisive evidence for the fact that the World Bank positioned itself in the ongoing struggle between the liberal democratic script of human rights accountability favored by the transnational social movement (and its supporting states, primarily the United States ) on the one hand, and the coalition adhering to state sovereignty, noninterference and a notion of development that did not necessarily comprise human rights protection and democracy on the other.

In this phase and after a clear positioning of the World Bank, the transnational social movement seemed to wobble. The evidence I gathered showed that the actions and next moves of the TSM were few and less powerful than previous actions. In a joint statement, the organizations evaluated the new framework as disappointing and insufficient. While the movement also recognized “some improvements,” it also claimed that “the draft does not consistently ensure, throughout all standards, that unique impacts of projects on each disadvantaged or vulnerable group are differentiated to prevent harm to these groups” and called “into question the extent to which the bank has responded to public input” (Press Statement, cited in Tyson, 2015). Several movement constituencies sought concentrated on punchlines that corresponded to their area of expertise to influence national governments to push for more demanding standards during the third round of consultations. Access was generally very good, as the ICIJ report demonstrated to member states the need for independent input. Consultation rounds where national government and movement representatives met on a regular basis led to the establishment of routine contacts (Oxfam staff members, personal communication, May 2016).

In a briefing to governments, the International Trade Union Confederation criticized that the improvements on labour rights were not enough. According to Peter Bakvis (Director of International Trade Union Confederation Global), the new draft failed to reference ILO core labour standards as if the World Bank wasn’t aware of them. Also, the new policies only guaranteed rights to freedom of association and collective bargaining only where these rights were already fully covered under national law. But, Bakvis emphasized, this is not the case in several borrowing countries. This contrasts with “other financial institutions” which “make these rights a mandatory requirement notwithstanding national laws” (Peter Bakvis, cited in HRW, 2015). Human Rights Watch declared that the new policies neither made the respect for human rights a binding requirement of World Bank projects, nor did the policies reference the hu-

man rights obligations of borrowing states. According to Jessica Evans (senior advocate and researcher on international financial institutions at HRW), the second draft of accountability policies “treats human rights as merely aspirational, rather than binding international law” and that “the bank’s refusal to require respect for human rights, despite pleas to do so from communities around the world, sends a message to its own staff that respect for rights is discretionary” (HRW, 2015, p.1). The Bank Information Center and Human Rights Watch then had several meetings with U.S. Congressmen and the U.S. ED to explain that the new draft still lacked obligation and precision. As to the former, the specific human rights of certain groups were simply left out, such as the rights of “those discriminated against on the basis of political or other opinion and language.” Regarding precision, several standards were highly imprecise. For instance, the “involuntary resettlement standard” did not clarify how the needs of vulnerable groups would be addressed (Personal conversation with BIC and HRW staff, April 2017). The NGO Forum on the ADB demonstrated how the degree of organizational support from the MDB’s environment could also be valuable assets in constructing powerful arguments. At the ADB, Japan has traditionally been the largest shareholder, together with the United States.<sup>18</sup> The NGO Forum on the ADB argued in consultations with Japanese parliamentarians and representatives from the government, but also toward China, India (both holding roughly 6% at the ADB) and the (CODE that ADB policies obliged the ADB to ensure human rights compliance (irrespective of national laws) and to invite public comment on all Environmental Impact Assessments 120 days before project appraisal. Both these reforms that the ADB undertook in 2010 are absent from the proposal of World Bank accountability standards reform. Rayyan Hassan, director of the NGO Forum on ADB interpreted this move as a “clear intent to push responsibility to potentially weak and inadequate borrower systems while eliminating the bank’s mandatory due diligence requirements” (Rayyan Hassan, personal communication, 2<sup>nd</sup> May 2015) ensuring human rights protection. Also, he said that the current dilution would send the wrong signal to other MDBs at a time when organizations such as the ADB were catching up to the World Bank’s previous model. In an article “Why the World Bank should embrace Human Rights,” HRW analyst Sarah Saadoun reiterated that the World Bank should not finance projects that conflict with human rights obligations of borrowing countries and that its own policies should adhere to existing human rights standards (especially the nondiscrimination clause) (Saadoun, 2015). Compared to previous demands by HRW, these demands seemed humble. With the exception of smaller media pieces (e.g., Blog posts by Michael Hudson from ICIJ), the TSM remained remarkably silent in late summer and autumn of 2015. Even behind the scenes, crucial movement leaders report that, despite the continued presence access to decision-makers in US Congress and European parliaments, the frequency and intensity of interaction with decision-makers was rather low. According to one observer, the movement suffered from a certain fatigue and lacked central leadership to overcome the period of drought (Staff from movement NGO, December 2015).

It was due to two major events in the World Bank’s environment provided unique discursive opportunities for TSM inside tactics toward member states at the end of

18 <https://www.adb.org/site/investors/credit-fundamentals/shareholders>



2015: the first was the adoption of the Sustainable Development Goals (SDGs), the second was the adoption of the COP 21 Paris Agreement. The SDGs were passed in form of a UN General Assembly Resolution on September 25<sup>th</sup>. They were developed to replace the Millennium Development Goals (MDGs) which defined a widely accepted reference point of global development initiatives that had been valid until 2015 (UN, 2015). During the process that led to the adoption of the SDG resolution, the UN involved its 193 member states and civil society actors in the consultations that amounted to “the most consultative and inclusive process in the history of the United Nations” over the course of eight months (UN, 2015). As the UN High Commissioner on Human Rights notes correctly, the SDGs differ from the formerly valid MDGs in their strong commitment to human rights. Perhaps the most prominent slogan of the SDGs was to “leave no one behind,” meaning that the agenda envisions “*a world of universal respect for equality and nondiscrimination*” by reaffirming the responsibilities of all States to “*respect, protect and promote human rights, without distinction of any kind as to race, colour, sex, language, religion, political or other opinions, national and social origin, property, birth, disability or other status*” (UN GA, 2015). In fact, the UN and its member states made a strong effort to relate each of the 17 SDGs to specific human rights, including economic, civil, cultural, political and social rights (UN, 2015). The TSM used the heightened international attention to sustainable development worldwide to argue that the SDG’s clear commitment to human rights would be undermined if the most important UN organization in the field of development would opt out. They received instantaneous but unexpected support from a World Bank insider and former Staffer: Vinod Thomas, the Director-General of Independent Evaluation at the Asian Development Bank (ADB) - a position he previously held at the World Bank Group - published an Article in the Financial Times entitled “Time to bolster safeguards, not dilute them” together with David de Ferranti (President of Results for the Development Institute). In their article from September 25<sup>th</sup>, 2015, the two authors highlight that the World Bank’s proposal to adopt a more flexible safeguards system may hasten project ratification at the time of approval, but that it would not save time overall if adequate social and environmental protection plans were to be developed later. They warn that “a combination of flexible requirements and national standards for risky projects would dilute safeguards” and estimate that only a small fraction of borrowing countries (if any) fulfills the same standards that the World Bank used to apply. The authors conclude by stating that “MDBs [...] must ensure that safeguards accompanying these investments are strengthened, not weakened.” (Thomas and de Ferranti, 2015). Here, a former high-level World Bank expert on Safeguards questions the new route of reform in his capacity as ADB representative. In other words, the ADB puts the World Bank reform and thus its role as a norm entrepreneur of all MDBs openly into question - a rather unusual move. At the same time, the format (a Financial Times publication) suggests that the piece was widely perceived in the financial (development) community. For both these reasons, Vinod Thomas and de Ferranti provided a welcome reason for movement representatives to cite their arguments toward governments (personal communication K. Horta, October 2015). An additional impetus came from human rights advocacy in preparation for the 2015 United Nations Climate Change Conference (COP 21) which was held in Paris from 30<sup>th</sup> November - 12<sup>th</sup> December, 2015. During the conference, which was a follow-up to the 1992 Rio Earth Summit and the



1997 Kyoto Protocol, human rights advocacy groups achieved that the Agreement was the first climate change treaty that included an unequivocal reference to human rights (Mayer, 2016). Specifically, its preamble states that “that climate change is a common concern of humankind” and that “Parties should, when taking action to address climate change, respect, promote and consider their respective obligations on human rights” (Paris Agreement, 2015). Inside tactics began to gain strength in preparation of a major study entitled “Glass Half Full? The State of Accountability in Development Finance” (2016) by Kristen Genovese and Mariëtte van Huijstee. The study was financed by the Dutch Ministry of Foreign Affairs and investigated 758 complaints submitted over the past 21 years to the Accountability Mechanisms of 11 MDBs and other international financial institutions (notably the IMF). The study featured important experts from the TSM network including CIEL, Both ENDS, the Accountability Counsel, Inclusive Development as well as the Center for Human Rights and Global Justice. Scholarly expert advice came from Richard Bissell (National Academy of Sciences and former member of the World Bank Inspection Panel), and David Hunter (American University’s Washington College of Law). Due to the backing of the Dutch government, but also due to the quality of the comparative study with regard to the effectiveness of existing accountability mechanisms, the Glass Half Full Report (eventually published on January 1<sup>st</sup>, 2016) stimulated intensive dialogue between the TSM with government representatives and provided a solid basis of argumentation highlighting best practices. The outcomes of the study highlight the importance of TSM key demands. In particular, the authors recommend precise standards, transparency, that mechanisms should be “empowered to make *binding* decisions” and that MDBs should “no longer claim immunity in national courts” (Genovese & Van Huijstee, 2016, p. 9).

The report was especially picked up by NGOs in dialogue with their governments in The Netherlands, Belgium, Sweden and Finland (Interview, Both ENDS) and began to show first results when the Nordic-Baltic constituency (representing Denmark, Estonia, Finland, Iceland, Latvia, Lithuania, Norway and Sweden) decided to publish their comments on the draft. In their statement following the publication of the study, the Nordic-Baltic states declare that they would like to change the wording in the Vision Statement from “aspiring” human rights toward “respect for human rights” and, more importantly, strongly encourage the mainstreaming of human rights in World Bank policies, as the World Bank should “respect the obligations assumed by its clients under international law, including human rights and environmental law” (World Bank, 2016). In addition, the Nordic-Baltic countries demanded “direct reference to the ILO International Labor Standards,” particularly to the importance of freedom of association and collective bargaining. In the view of these states, these core labour standards hold “regardless of whether individual countries have ratified the respective conventions.” On Indigenous People’s rights, there is a clear commitment to the principle of “Free, Prior and Informed Consent.” The Nordic-Baltic states argued that the World Bank should not fall behind language already established in the UN Declaration on the Rights of Indigenous Peoples, as it should also not dilute the rights of SOGIE. Finally, the statement stresses the critical importance of transparency (especially the information disclosure of safeguards related documents) (World Bank, 2016). Now here was the support the movement needed from member states they had hoped for throughout the last cou-

ple of months (Interview Urgewald staff member, April 2015). In conjunction with the U.S. position, the strong support for core movement claims among the Nordic-Baltic countries provided the TSM with hope regarding the final reform outcome (Interview Oxfam). On the other hand, there was considerable counter mobilization against the inclusion of human rights standards among World Bank member states. Specifically, India and China lobbied against ambitious human rights policies. Due to this ongoing counter-mobilization by member states that were also emerging powers in international relations (particularly China), the Mechanism broke down in early 2016, before the third step of the causal mechanism was reached.

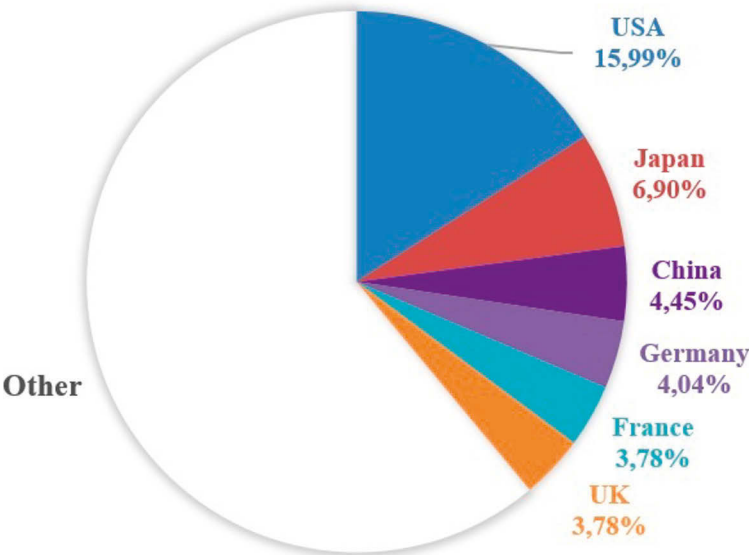
## 7.4 Interruption and breakdown of the Mechanism

The bloc of borrowers engaging in counter mobilization against movement visions for enhanced human rights accountability grew considerably in 2015. In a joint statement led by India, Mr. Subhash Chandra Garg (Executive Director for Bangladesh, Bhutan, India and Sri Lanka) reminded the World Bank that its *“primary reason for existence is to assist the developing countries in undertaking development projects”* and even follow-up with a threat, stating *“If we go ahead with this kind of imposition of standards, the Bank is likely to go out of business.”* Moreover, Mr. Garg made clear that already the slight degree of legalization of human rights and transparency standards meant *“a disappointment for the borrowers [...] as the proposed environment and social standards (ESS) make doing business with the Bank more and more difficult and costly for the borrowers.”* Specifically, the named countries are of the view that the requirement of “Free, Prior & Informed Consent” will most likely “create insurmountable hurdles to development.” Moreover, the countries report major concerns regarding the enhancement of labour rights introduced in the new draft, citing the example of rural development programs in India which “are implemented through community and voluntary labor.” Accordingly, so the countries fear, the requirement to define and respect worker’s rights related to hours of work, wages, overtime etc. could not be applied on the community level. While the constituency led by India represents a large part of the World’s population (India alone represents 18% while Bangladesh represents an additional 2% of the world’s population), the constituency only commands 3.53% of total World Bank shares (World Bank, 2015). The letter from the Indian ED constitutes a doubly-decisive test for counter mobilization from India and its constituency of member states. Their somewhat “loud approach” which leaves clear empirical traces (e.g., the CODE statement cited above) stands in contrast to the more “quiet approach” adopted by the Chinese government. China became increasingly important as a World Bank member state, as it had increased its shares considerably at the World Bank’s IBRD in 2010 (World Bank, 2010).<sup>19</sup> In 2009, at the Group of 20 (G20) meeting in Pittsburgh, the participating countries agreed to a capital increase by developing countries accompanied with a re-allocation of voting power. This reform

19 At the International Development Bank, China holds only 2.23% of all shares which puts the Chinese ED on 21<sup>st</sup> rank among all EDs. However, due to its shares at the IBRD, China commands an ED on its own even at IDA.

enabled China to become the third largest shareholder at the World Bank in 2010 after the United States and Japan – a position it still held throughout the whole Safeguards Reform process (World Bank, 2018).

Graph 8: World Bank main Donors in 2016 (IBRD)



Source: Data from World Bank Annual Report 2016

According to several observers, the Chinese government and Executive Director used this new position to exert considerable influence behind closed doors in counter mobilizing against comprehensive human rights accountability (Interviews with Chad Dobson, two World Bank staffers (Qays Hamad), Bruce Rich). At the same time, these participants emphasize how China prefers to operate behind the scene, for instance through informal meetings with key decision-makers or the mobilization of allies who speak out (at times even instead of the Chinese ED)<sup>20</sup>.

While there are several occasions during which Executive Directors participate in Committees (e.g., CODE) which public meeting minutes, several observers report that the Chinese EDs intentionally keep a low profile by traditionally carrying out its exchanges without publicity. For these reasons, TSM and other World Bank staffers report, the Chinese ED office remained somewhat “under the radar” of movement representatives, foreign media and scholars. While China published comments on the first draft of the safeguards policy, they opted for a more “quiet diplomacy” (on the term in

20 Despite some requests, I was unable to get an interview or a brief conversation with staff of the office of the Chinese Executive Director.

relation to China's International Department (ID), see Shambaugh, 2007) on the second draft. Thus, the verification of China's position, role, influence and counter mobilization to comprehensive accountability toward the end of the negotiation process presents a particular challenge. With few traces of evidence, my prior confidence in the importance of China's role was rather moderate. At the same time, using Bayesian updating, I am able to test the hypothesis that China's counter mobilization was considerable. Among the traces of evidence, there are the minutes of World Bank consultation with the Chinese Government in Beijing on October 27<sup>th</sup> 2015. While the minutes only summarize discussion points from the perspective of the World Bank, the document is telling. There is a high likelihood that the World Bank adopted language in this document which moderated the Chinese position to the extent possible, given that the minutes were made public and given that the World Bank wanted to reach compromise among contradictory positions as soon as possible<sup>21</sup>. Accordingly, the World Bank states in the introduction that the consultations "benefited from significant preparation by Chinese counterparts" and that "Chinese counterparts expressed their support for the safeguards review process, and their commitment to achieving a good outcome" (World Bank, 2015). Regarding substantive issues, the minutes of this consultation also reveal considerable resistance toward comprehensive human rights safeguards on behalf of the Chinese government. With regard to human rights, the document cites China's position in the following words: "Human rights: The Bank is suggested to seek common ground. And the language on human rights in Vision statement should be general." This is a clear stance against specific standards, as China wants human rights in the Vision statement (not actual policies) only and even there says that the language should be "general," i.e., the opposite of precise and binding.

On "nondiscrimination," the Chinese government states that several groups listed in the policy draft would not be recognized as legal by a number of Borrowing countries. China cites groups of sexual orientation and identity (SOGIE) as well as religious groups specifically. Moreover, it deems the principle of nondiscrimination inapplicable for people with disabilities, as "information on mental and physical disability or health status should be treated as private and confidential."

With regard to labour rights, the Chinese government emphasizes that in its own view, "Labor standards need to be matched with the level of development of the country." It specifies what is meant by this confinement in the following. For instance, China goes directly against the demand to include and respect core international labour rights treaties and says that the new policies "*should not be used as a tool to intervene in the political sphere. The Bank can refer to general principles, but not specific labor treaties to strike an appropriate balance.*" The balance here is one between the protection of labour rights and development. With regard to indigenous people's rights, the Chinese government is reported by World Bank staff to make clear that the concept of an "ethnic minority" was not so simple in China. It urges the World Bank to take country contexts into account. Also, China problematizes the definition of indigenous peoples - a definition also used

21 As it had announced the conclusion of the reform process for 2016.

by the ADB<sup>22</sup> - and states that *“there may be some illegal political groups who fall into this category but may violate the laws and regulations of the Borrower.”* Hence, China wanted this formulation to be changed. Thus, there was important counter mobilization in terms of human rights standards, specifically against those involving labour and minority rights. In the conclusion, the Chinese government summarizes its position by stating that *“China believes the Bank should stick to its development mandate and nonpolitical nature. Issues such as human rights and labor issues are politically very sensitive. A proper approach is needed.”*

Moreover, China explicitly welcomed the move toward “country systems” whereby national laws that are equivalent to World Bank standards should be used (instead of those World Bank standards). To recall from above, the transnational social movement had opposed the use of country systems on grounds that existing standards in several countries did not match World Bank standards, and because the use of country systems deprived the World Bank of its responsibilities to guarantee compliance and thus the people in authoritarian states of their right to have their rights enforced via the detour over the World Bank. Interestingly, China goes even a step further and turns the tables around when it says that country systems are not only welcomed where national standards are equivalent to World Bank standards, but that *“The Bank’s safeguards should be consistent with Chinese law and national policies.”* This is a bold stance that (to my knowledge and reading of the evidence) no other government had made up to this point. China clearly positions itself during these consultations as a state whose say cannot be ignored in the review of World Bank standards. In line with this, China concludes the consultation by emphasizing that *“China is not only a borrower, but also the third largest shareholder of the Bank. It is a key emerging donor. China is well-positioned to play a constructive role in the Bank.”* (World Bank, 2015).

It was only shortly after that China’s counter-mobilization received a considerable boost from a neighboring organization of the World Bank: the newly created Asia Infrastructure and Investment Bank (AIIB). In February of 2016, half a year before the final reform should be passed at the World Bank, the AIIB adopted its Safeguards framework. As Jin Liqun, President of the AIIB, made clear, the AIIB strived for rapid infrastructure expansion and large scale resettlement in the public interest (Horta et al. 2016). Consequently, strict AIIB standards would constitute obstacles to rapid development. At the same time, the AIIB needed standards to live up to an established norm in the community of development banks (Interview with expert from the NGO “Asien Haus”, May 2016). The timing and nature of the safeguard policies adopted by the AIIB were a coup. To begin with, the standards adopted by the AIIB were close to those discussed by the World Bank in its latest draft. If they had been completely different, i.e., considerably lower, substantially less precise or simply lacking on many issues, the impact would most likely not have been as big. According to one World Bank staffer closely involved in the reform process at the World Bank, substantially different standards would have

22 According to the definition, Indigenous Peoples are “Customary cultural, economic, social, or political institutions that are distinct or separate from those of the mainstream society or culture” (ADB, 2009)

made it easy to distance the World Bank from the AIIB<sup>23</sup>. Yet, the AIIB largely mirrored those developed by the World Bank Safeguards team in their second draft. Similar to the World Bank's reform proposal, the AIIB policies allowed borrowing countries to use their own human rights (e.g., social protection) systems without defining binding criteria to ensure a comparable level of protection among Bank and country standards. On labour rights, the AIIB included those standards the World Bank introduced in the consultations between the first and the second draft. Yet, similarly to the second draft of World Bank policies, the AIIB placed reference to national law above international ILO conventions. Thus, worker's rights to freedom of association (a core standard of the ILO) *de facto* becomes subject to national law – despite the fact that several borrowing states place severe restrictions on that right. Moreover, the AIIB standards follow the position of states that had mobilized against strict policies prohibiting discrimination in the implementation of projects at the World Bank, yet without neglecting the rights in question completely: the AIIB standards prohibit discrimination, but do not specify the entire spectrum of groups which are particularly vulnerable to discrimination. Thus, the AIIB went against a central pledge of the 2030 Agenda to “Leave no one behind.” According to observers, there thus was “little uniqueness within AIIB policy, much of which has been drafted by former World Bank officials” (Hanlon, 2017, p. 549). While the standards were indeed not unique or new, they closely reflected the negotiation position of World Bank member states pushing for more relaxed human rights standards and thus strengthened their position considerably *vis-à-vis* the transnational social movement and its member state allies' pledge for comprehensive human rights accountability.

It is important to note that the adoption of AIIB standards also had an effect on those states who were members of both, the AIIB as well as the World Bank. Having agreed on the AIIB standards in February of 2016, arguing for a set of entirely different standards thereafter at the World Bank would have been inconsequential. The United States had not joined the AIIB on grounds of lacking transparency, social and environmental standards (Horta et al., 2016). Similarly, Japan and Canada explained their reluctance to join the AIIB early on. Yet, 17 European states who were also shareholders at the World Bank joined the ranks of the AIIB, thereby fulfilling China's ambition to head an international development bank (and not just a regional one). Germany's Ministry of Finance declared the country's willingness to join in March 2015<sup>24</sup>. By 2016, Germany was the biggest European shareholder at the AIIB (holding 4.1 % of voting rights) and held one out of 12 seats at the Board of Directors representing all Eurozone countries. The UK, also a member of the AIIB by early 2016, represents European AIIB members outside the Eurozone. According to movement representatives, both these countries – major shareholders at the World Bank and sympathetic to movement demands – could not be counted upon after the AIIB's conclusion of safeguards (Discussion with Movement Representatives in Frankfurt, May 2016).

23 Conversation at the World Bank office in Berlin.

24 This decision was taken without prior consultation of the German Foreign Ministry and led to serious irritations at the Foreign Ministry (private conversation with a high ranking staff member of the German Foreign Ministry's Planning Unit).

Against the background of newly established AIIB Safeguards, the TSM now counted on the United States response. The D.C.-based organizations saw the reaction to the AIIB standards as the decisive battle and mobilized all their networks and contacts at U.S. Congress and at U.S. Treasury to get a strong U.S. response. At the end of February, the U.S. Treasury Assistant Secretary for International Markets and Development, Marisa Lago, frames four broad, systematic concerns with regard to the current policy draft of World Bank standards: Human rights, involuntary resettlement, the treatment of Indigenous Peoples, and labor rights. According to Lago, all four are critical for the United States. World Bank – U.S. government consultations followed the days thereafter, also involving input from TSM representatives (notably BIC, CIEL and Human Rights Watch). The minutes of that meeting in fact do reveal a strong U.S. position. For instance, the United States criticizes the fact that the current draft only refers to “aspirations of the Universal Declaration of Human Rights,” which effectively “undermines the standing of human rights as binding legal obligations and gives the impression that compliance with the international declaration is optional.” Moreover, the United States noted that the World Bank, although not being a Human Rights tribunal itself, should draw on the work of human rights tribunals and explicitly refer to existing human rights treaties as well as ILO Conventions in its policies. With regard to specific standards, the United States emphasized the importance of non-exhaustive lists specifying the characteristics of people who are likely to face discrimination, emphasized the need to assess the risk of multiple discrimination (due to several characteristics that make them vulnerable), that independence from the borrowing country was key to ensure independent human rights impact assessment and that the language in the policies should be as precise as possible. Moreover, in 55 page long minutes (and simple spacing), the U.S. position clearly points to the importance of transparency and strong enforcement mechanisms in cases of noncompliance with regard to human right standards (World Bank, 2016).

Shortly after these consultations, Amnesty International provided a summary of key points on the planned reform from a Human Rights perspective to World Bank Management as well as to all important member states (Amnesty International, 2016). Amnesty’s call for comprehensive and binding human rights standards as well as strong oversight was aided by the World Bank’s Inspection Panel. While the Inspection Panel was not fully independent from the World Bank, it had by now joined the movement coalition in its demands and framing, putting special emphasis on encompassing, precise and binding standards (World Bank, 2016). After all, its own survival as a credible oversight body was at stake (Interview World Bank Staff – Operations). With the conclusion of the policy reforms ahead, the main actors of the transnational social movement focused on their contacts in U.S. Congress. On August 4, 2016, the World Bank Board of Directors adopted the new set of Safeguards and thus completed the reform of its human rights accountability framework.



## 7.5 Outcome: The Dilution of World Bank Safeguards

The newly adopted accountability framework differed substantially from those previously in place. To begin with, it replaced the more eclectic assembly of operational policies with a more coherent framework, including a Vision Statement, the operational policies listed according to responsibility holder (World Bank or borrowing state) as well as nonbinding guidance notes specifying their application. In particular the Vision Statement was a novelty that was meant to provide structure and normative grounding to the new accountability framework. Also, the introduction of new standards covering a wider array of existing human rights law was assessed as positive by the movement and observers. However, the overall move toward “soft” law provisions and the reduction in substantive as well as quasi-judicial scope meant a dilution of the previously existing framework. In the following, I discuss the new framework in light of each outcome dimension, including standards, transparency, delegation and scope. As this assessment reveals, the World Bank effectively moved from comprehensive (value = 1.73) to limited human rights accountability adopting an aggregate value of 0.79.

### 7.5.1 Obligation and Scope 1

In terms of *obligation*, binding operational policies continued to list substantive rights. Yet, to the disappointment of the movement coalition, reference to human rights was only made in the Vision Statement—the explicitly nonbinding introduction to the binding standards. As a comprehensive and codified system of rights, Human Rights had an aspirational quality. Whether the mentioning of human rights in the vision statement meant an improvement compared to the status quo (in which human rights were not mentioned at all) remains a matter of debate among legal scholars. Some scholars argue that it does, since reference to human rights is better than no reference at all and because the Vision Statement should provide guidance in applying the subsequent standards (expert opinion by Philipp Dann voiced in GIZ consultations at World Bank office Berlin), others argue that the reference of human rights in the nonbinding Vision Statement explicitly asserts such rights an aspirational, rather than binding character. This could be worse than no mentioning of human rights, as borrowing states would be bound by their (binding) human rights treaty obligations anyhow (conversation with Human Rights Watch). On balance, I hold that both positions are equally plausible and thus do not assign a value change in the degree of bindingness of human rights standards in any direction.

More telling are thus the individual substantive standards and their *scope*, i.e., whether the new framework entails an encompassing list of single human rights issues. It was here that movement representatives, Executive Directors and observers agreed that the World Bank made some progress (World Bank Presentation of Safeguards). The World Bank Safeguards team itself emphasized that the new standards entail a more aspirational risk assessment, covered nondiscrimination clauses, labour rights and indigenous peoples rights. While the inclusion of these rights indeed increases the scope of obligation, their nature of inclusion also reveals underlying,

more systematic deficiencies of the new accountability framework. I will discuss each of them in turn.

ESS1 (Environmental and Social Safeguards No.1) which covers the *risk assessment* before project approval used to focus on social aspects only where resettlement, indigenous peoples rights or cultural heritage were at stake. In contrast, the new ESS1 also covers risks related to human security such as the risk of conflict (in particular the risk of violent conflict outbreak and crime). In addition, the risk assessment involves the health of workers and all project affected people, as well as the potential for discrimination of vulnerable groups. As the foregoing showed, the inclusion of a right to *nondiscrimination* was a matter of dispute between the Transnational Social Movement and counter-mobilizing states (primarily China, but also India and Brazil). Because the definition of “disadvantaged” or “vulnerable” groups remained contested, the final policy document only includes a footnote defining abstract criteria characterizing such groups and lists elderly and minors as concrete examples.<sup>25</sup> Thus, gender, ethnicity or sexual orientation are not themselves mentioned in the policies. They are, however, mentioned in nonbinding directives that inform the project implementation of the borrowing state. In sum, the issue of nondiscrimination is not solved, but becomes a matter of procedure in each individual case. This solution does not only constitute a clear victory of counter-mobilizing states, but also means that the World Bank failed to include binding policies prohibiting discrimination on a number of grounds that are already ratified in existing human rights treaties (race and skin colour (Art. 1 CERD), gender (Art. 1 CEDAW), religious or political orientation (Art. 26 ICCPR), as well as national or social origin (Art. 2(2) ICESCR)). Instead, respect for these grounds of discrimination remains contingent on the ratification and sufficient implementation of these rights by the borrowing state in question. In addition, while the scope of the impact assessment is broadened, the move from an *ex ante* impact assessment to a more flexible approach substantially decreases the level of obligation of the impact assessment. To provide an example, previous risk assessments needed to contain a comprehensive and fully operationalized resettlement plan before project approval. If the World Bank was of the opinion that the plan was insufficient, it could withhold project approval and funding. Under the new standards, an incomplete or even missing resettlement plan does not hinder project approval. Instead, the new approach is that risks should be managed as they emerge. While this certainly speeds up the cash flow, the World Bank effectively loses a powerful instrument to adhere compliance with existing standards. If, throughout the implementation of the project, the World Bank fears that the borrowing state undermines resettlement standards, it has only the suspension of funds at its disposal as a last resort. Particularly with regard to more powerful borrowing states, it is highly unlikely that the World Bank suspends funds completely once the contract has been signed and funds are flowing.

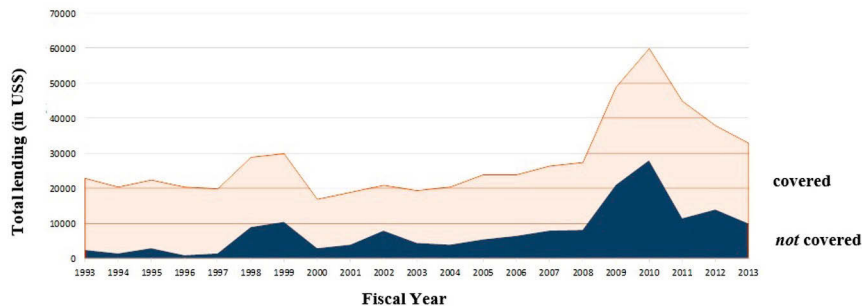
25 ESF, ESS1, S. 32, Fn. 28: “Disadvantaged or vulnerable refers to those who may be more likely to be adversely affected by the project impacts and/or more limited than others in their ability to take advantage of a project’s benefits. Such an individual/ group is also more likely to be excluded from/unable to participate fully in the mainstream consultation process and as such may require specific measures and/or assistance to do so. This will take into account considerations relating to age, including the elderly and minors, and including in circumstances where they may be separated from their family, the community or other individuals upon which they depend.”

Moreover, there is consensus that the “manage risks as they emerge” approach allows for more discretion of World Bank management and strengthens management’s role in relation to the Board of Directors as well as the Inspection Panel. Taken together, the level of obligation of risk assessment decreases under the new framework. Policy ESS2 contains *labour rights* and thus an area that the previous standards did not cover. In its accompanying Board Paper, the World Bank explains that ESS2 is supposed to mirror “core principles of ILO Fundamental Principles and Rights at work” 79. At the same time, the labour standards contain major loopholes with regard to child and forced labour. Against TSM demands (particularly those by trade unions), borrowing states have no obligation to supervise and control their suppliers (Ebert, 2018). Analogous to nondiscrimination clauses, reference to national law (and the simultaneous absence of reference to ILO labour standards in the policy document), i.e., the country system approach, undermine ILO labour standards and even threaten to weaken international treaty obligations vis-à-vis national law. To illustrate, if borrowing states do not allow for the right to freedom of assembly among workers, the World Bank may nevertheless go ahead with funding the project provided that “alternative mechanisms” that allow workers to articulate their demands exist (ESS2, para.16). Regarding *indigenous peoples rights*, the new policy ESS7 aligns with the ILO Convention 169 and now requires “free prior and informed consent” (FPIC) wherever indigenous land rights, resettlement or cultural goods are likely to be affected by a project. This constitutes an achievement of the movement, since the standards do not allow for an “alternative approach” as requested by states that do not recognize indigenous people as a group requiring special protection (e.g., Brazil and India). The “free prior and informed consent” principle exceeds existing standards among many borrowing countries and is an area where World Bank policies are likely to enhance human rights protection. The introduction of the FPIC-principle also adds precision to the policy and broadens the scope of human rights protection. In sum, a careful analysis of individual policies reveals that while the scope of human rights coverage has increased (value = 1.5), their level of obligation is low and has decreased among already existing policies (value = 0.5).

Next to an encompassing vs. restricted coverage of substantive rights, *Scope I* with regard to human rights and transparency policies also contained a second dimension: whether the policies apply to all vs. only some MDB activities and staff (Operationalization section). On this dimension, the World Bank legally confirmed a substantial decrease of scope with the passage of the reform. While this trend toward diminishing legal *obligations* was not new, a core demand of the TSM had been to reform the system in a way to close the growing loopholes. For since the late 1990s, World Bank lending has increasingly shifted away from the “traditional” investment project lending toward Development Policy Lending (DPL) and, to a much lower degree, toward “Program for Results” (P4R) lending. Neither instrument is covered by the safeguards.

The World Bank justified the exclusion of both by referring to the different financing mechanisms – a justification that has been rejected by movement representatives and even the World Bank Inspection Panel. As a successor to Structural Adjustment Programmes (SAPs), DPLs provide budget support to with the purpose to enhance an investment climate, improved service delivery or a diversification of the economy. Thus, DPLs are not aimed at project-based, physical investments, but at policy and institu-

Graph 9: World Bank lending (IBRD + IDA) covered by safeguards (1993 – 2013 )



Source: Data from Bank Information Center, 2016

tional reform. The potential social and environmental harm DPLs can have for affected communities has been established in a number of cases, ranging from the draft of a new mining law in Haiti (World Bank, 2015) to the guarantee of industrial logging concessions in the rainforest of the Democratic Republic of Congo (World Bank, 2007). P4R on the other hand is a results-oriented mechanism which works through borrowing countries' already existing institutions. Introduced in 2012, P4R links the ongoing disbursement of funds to the achievement of previously defined benchmarks, thus putting a prime emphasis on results. Today, DPL and P4R make up 40 – 50 % of World Bank financing. Compared to the early 1990s when the Safeguards were adopted to cover 100% of World Bank operations, the scope of Safeguards coverage today is at 50% (World Bank, Annual Report 2014<sup>26</sup>). The failure to update the standards to apply to all World Bank projects cemented the decrease in scope of human rights policy application (value = 0.5).

## 7.5.2 Precision

In terms of *precision*, the new Safeguards entail several clauses which reflect the stated aim of the World Bank and several borrowing states to introduce more flexibility into the system (see above). For instance, the new framework states that safeguards should be applied “where appropriate” and “in a manner or timeframe acceptable to the Bank.” Clear time frames specifying publication dates for risk analysis and response (e.g., resettlement plans for vulnerable communities) were abandoned. Instead, such risk assessment can follow project approval before it actually complies with all safeguards. Necessary risk assessments can be conducted as the project succeeds and then be published “as early as possible.” There is consensus among World Bank Management and the movement that these provisions decrease the precision of safeguards application in favor of enhanced flexibility. Yet, where specific regulations and deadlines are absent,

project affected populations cannot invoke them either. What seem to be minor linguistic changes therefore effectively impede the activity of those affected toward the World Bank in the future.

The decrease in precision has particularly damaging effects on the transparency of World Bank activity. Before the new policy framework was in place, any citizen had the unconditional right to receive full access to all relevant project information via the Inspection Panel (more precisely, the *Access to Information Appeals Board*). Specifically, whereas the old framework specified that social and environmental risk assessments were to be made public three months prior to project *approval*, the new policies only refer to a publication before project *appraisal* “as early as possible.” The lack of a specific (and binding) time frame potentially leads to considerably less time for project affected people and their representing civil society organizations to look into project details, thus lowering the transparency of the new policies. Moreover, under the new framework, documents and project information that emerge under the country system approach are no longer part of the World Bank’s “Access to Information Policy”. Thus, they must neither be shared with the World Bank, nor with the general public. According to legal experts, this does not only lower the transparency of World Bank engagement, but also threatens the human right to information as well as the World Bank’s ability to learn from failures (Riegner, 2018). With regard to *substantive policies*, vague terminology threatens to undermine their effective rights protection. Take the example of labour rights, where ESS2 does not offer a precise differentiation of those employers and employees that are protected by the standard in question. In contrast to the very specific ILO categorization into “first-tier” and “second-tier” workers (allowing for a differentiation according to the worker’s position in the chain of production), the World Bank distinguishes between “core functions” or a project and “primary suppliers,” without specifying either category (i.e., what exactly counts as a core function?). In addition, the new policies state that discrimination at the work place is not allowed, but also indicate that the relevant policy only applies in light of contradicting national law “to the extent possible”<sup>27</sup>. In sum, then, the failure to specify when standards apply as well as the use of vague terminology in the policies decreases the degree of precision of human rights and transparency provisions.

### 7.5.3 Delegation and Scope II

Finally, while the policy reform has primarily effects on the levels of obligation, precision and scope of the policies, the introduction of country systems also weakens the degree of *delegation*. To date, the inspection panel has been the most important vehicle for project-affected communities to ensure compliance with safeguards. In line with the Inspection Panel resolution, affected communities or NGOs on their behalf are allowed to submit complaints to the Inspection Panel. The Panel could then send a mission to investigate the claim and make recommendations directly to the Board of Directors,

27 ESF, ESS2, p. 54, para. 13: “Where national law is inconsistent with this paragraph, the project will seek to carry out project activities in a manner that is consistent with the requirements of this paragraph to the extent possible.”

which remained the case under the new framework. Because it was not able to make binding decisions (only recommendations), it used to have a value of 1 on the authority item (see above). However, its authority was weakened indirectly under the new framework: the lack of precise standards increases Management discretion and weakens the IP. Since the Inspection Panel – a court-like body – depends on specific benchmarks to detect violations of the law, the lack of precision among standards deprives the Inspection Panel of its most important power resource (value = 0.5). Yet in contrast to the conventional allocation of responsibilities for social and environmental protection, World Bank safeguards do not apply where the Bank invokes the country systems approach. As the inspection panel only has a mandate to oversee World Bank law, it does not have a mandate to oversee whether the borrowing country meets its obligations or not under the country system. Also, as human rights and transparency policies only apply to a fraction of the overall World Bank portfolio (see above), the scope of jurisdiction of the Inspection Panel is lowered considerably (value = 0.5). For an independent monitoring, civil society actors (e.g., NGOs, or other movement representatives) are bound to have faith in Bank Management which determines “equivalency” of protective provisions, and thus whether the country system can be invoked. But even where standards are fully equivalent on paper, this does not guarantee bona fide implementation. In cases where the Inspection Panel adopts a broad interpretation of the new policies, it could become active to check whether World Bank management did the “equivalency test” in an appropriate manner (Bugalski, 2016). However, given the decreasing standing and acceptance of the Inspection Panel in relation to World Bank Management, this is rather unlikely (Interview with ex IP member). Thus, it will be up for national courts to assess standard equivalency and compliance. In contexts where national courts are not well-equipped to investigate human rights compliance, or where the judiciary is not truly independent from the executive branch (that is, in a majority of borrowing countries), project-affected communities cannot rely any longer on an institutionalized and independent third party which takes up their complaints. What is more, the creation of a new and in fact parallel “Grievance Redress Service” (GRS), the Inspection Panel loses standing vis-à-vis project affected communities. While the latter are allowed to choose between the GRS and the Inspection Panel formally, World Bank Management is very open about their preference for the GRS. The main reason is that grievances under the GRS can be handled by Management directly, which gives Management control over the process and the ability to handle critique in a “cost-efficient” manner short of an external (i.e., independent) party (Interview at World Bank Operational Policy Department). The Inspection Panel rightly fears that in practice, Management might provide information to project-affected citizens to use the GRS instead of the Inspection Panel (Interview IP), thereby lowering citizen access to the Inspection Panel. Overall, the use of country systems and the introduction of the GRS decrease citizen access to the IP to a value of 1. Finally, there was an ongoing debate regarding the financial and human resources available to the Inspection Panel. Regarding the Inspection Panel’s budget, Inspection Panel expenditures had exceeded its budget for years, with a turning point in 2006 (before which expenditures did not meet the IP’s budget) (World Bank, 2007). Thus, while the overall budget volume has increased in absolute terms since the early 1990s, the Inspection Panel had too little resources relative to its tasks for more than



a decade. Acknowledging a shortage of funding, the Inspection Panel stated in 2009 that it had “requested and received supplementary contingency funding as needed” (World Bank, 2009, p. 19). Still, according to interviewees that had worked at the Inspection Panel, budget considerations remain an ongoing issue (Interview Washington D.C., former member of IP) (value = 1). In addition, the appointment of Panel members became a politicized matter throughout the years of the Safeguards reform process. This was mainly because Eimi Watanabe, the Inspection Panel’s Chair from 2009-2014, was seen as a very Management friendly Chair who sought to avoid conflicts by several movement representatives (Interview No.4, No.11 Washington, D.C.). After her term as a Chair ended in 2014, there were several rumors suggesting that World Bank leadership sought a “Management-friendly” and weak appointment (discussion at TSM strategy meeting in Frankfurt). At the same time, inside observers reported that World Bank Management marginalized Inspection Panel staff, which in turn suffered from a very bad standing inside the organization. In short, several observers reported that the World Bank sought to tame its own Panel through staffing and wider organizational politics (Interview former Chair of Inspection Panel; Interview World Bank OPs Staff). Hence, the value on this dimension of delegation decreased (value = 0.5). In short, the scope of Inspection Panel jurisdiction is lowered under the new policy framework. In sum, the aggregate value went down from 1.73 to 0.79, indicating a move from comprehensive to limited human rights accountability at the World Bank.

Table 6: Outcome of Case 2 – Summary

Dimension	Outcome Case 2 – Human Rights Accountability	
	Values for each item	Value of Dimension
Obligation	Human Rights only mentioned in Vision Statement. Individual policies contain escape clauses / may be substituted by “country systems approach” → 0.5	0.5
Precision	Several provisions contain unclear terminology (e.g., “to the extent possible”) and fail to specify circumstances of application (e.g., “where applicable”). Clear time-frames are substituted with an unspecified “adaptive risk management” → 0.5	0.5
Scope 1 (Policies)	Policies cover human rights to a reasonable degree → 1.5 Policies apply to roughly half of the portfolio only → 0.5	$1.5 + 0.5 = 2$ $2 / 2 = 1$
Delegation	Independent, but not sufficient budget → 1 Staff is Management-friendly and, while qualified, it does not possess an outstanding independent reputation → 0.5 Remains authorized to make nonbinding recommendations to the Board of Directors; yet reduced precision of provisions also reduces authority → 0.5	$1 + 0.5 + 0.5 = 2$ $2 / 3 = 0.66$
Scope 2 (Complaints)	Oversight body has jurisdiction over only half of World Bank activity and only if the “country system” is not applied → 1 Affected communities can file complaints. Yet, competition from Management-controlled Grievance Redress Service may undermine access → 1 Formal requirements are low → 2	$1 + 1 + 2 = 4$ $4 / 4 = 1$
<b>Aggregate Value</b>	3.99 / 5 = 0.79 <b>Limited Accountability</b>	

Source: own illustration.