

# Animal Welfare Conditionality in the World Bank's Legal Framework

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## Abstract

The World Bank (International Bank for Reconstruction and Development [IBRD] / International Development Association [IDA]) may have passed a critical juncture in its consideration of animal welfare in the Environmental and Social Framework (ESF). This paper analyses Bank's legal framework and the extent to which animal welfare is considered. Overall, the analysis reveals an

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asymmetry in how the World Bank handles the welfare of wild versus farm animals. While the substantive welfare standards for wild animals are extremely low, a complaint can be brought fairly easily before the World Bank Accountability Mechanism. The opposite is true for farm animals. While the substantive standards for farm animals are comparably high, since an explicit standard exists in the ESF, holding the World Bank accountable for animal suffering is nearly impossible, because in many instances there are no project affected people.

## Keywords

World Bank – Animal Welfare – Inspection Panel – Accountability Mechanism – Environmental and Social Framework – Sustainable Development

## I. Introduction

The World Bank (IBDR/IDA) plays a pivotal role in shaping economic development policies and funding projects worldwide. Since the Bank's primary objectives are eradicating poverty and fostering sustainable development, the livestock sector plays a substantive role.<sup>1</sup> Currently, the World Bank has about 1.9 billion USD of active investments in livestock.<sup>2</sup> In providing loans to States, the Bank funds mostly small and medium-sized agribusinesses and livestock enterprises,<sup>3</sup> regularly exceeding 100 million USD funding per project.<sup>4</sup> One should not forget that behind the term 'livestock' there lies the fate of hundreds of thousands of individual animals in different projects. Because of the economic relevance of and the many animals affected by projects funded by the World Bank, calls from animal and climate activists to stop funding industrial livestock farming operations are becoming more and more prominent.<sup>5</sup> With the intention to contribute to the

<sup>1</sup> FAO, *Transforming the Livestock Sector Through the Sustainable Development Goals* (2018), <<https://www.fao.org/3/CA1201EN/ca1201en.pdf>>, last access 31 January 2025.

<sup>2</sup> World Bank, *Brief Moving Towards Sustainability: The Livestock Sector and the World Bank*, 22 February 2022, <<https://www.worldbank.org/en/topic/agriculture/brief/moving-towards-sustainability-the-livestock-sector-and-the-world-bank>>, last access 31 January 2025.

<sup>3</sup> World Bank, *Good Practice Note: 'Animal Health and Related Risks'*, December 2020, <<https://thedocs.worldbank.org/en/doc/6370816082137766430290022020/original/AnimalHealthGoodPracticeNote.pdf>>, last access 11 June 2025, 42.

<sup>4</sup> The World Bank, *Project List*, <<https://projects.worldbank.org/en/projects-operations/projects-list?os=0>>, last access 31 January 2025.

<sup>5</sup> Jon Ungood-Thomas, 'World Bank's Funding of "Hog Hotel" Factory Farms Under Fire Over Climate Effect', *The Guardian*, 7 April 2024, <<https://www.theguardian.com/business/2024/apr/07/world-banks-funding-of-hog-hotel-factory-farms-under-fire-over-climate-effect>>, last access 31 January 2025.

starting discourse on the protection of animals within the context of international financial institutions,<sup>6</sup> this paper turns to the significance of the welfare of animals in the World Bank's legal framework. By analysing the World Bank's founding treaty<sup>7</sup> and its Environmental and Social Framework,<sup>8</sup> the goal is to assess the level of commitment to and options for the World Bank to protect the welfare of animals as well as to explore the possibility of holding the World Bank accountable for the suffering of animals.<sup>9</sup>

The following analysis is threefold. In order to provide a brief overview of the relationship of animal welfare and the World Bank's legal framework, the first section examines how the welfare of animals fits in the World Bank's legal framework (III.). The third section explores how to hold the World Bank to account for animal suffering (IV.).

## II. Animal Welfare Conditionality in the World Bank's Legal Framework

The World Bank's founding treaty governs the mandate and competences,<sup>10</sup> whereas the ESF governs the day-to-day operations and forms part of the internal rules of the organisation. The first part of this section focuses on the obligation to consider and protect the welfare of animals of the Bank and the borrowers under the ESF (1.). The second part of this section analyses the World Bank's competence to introduce animal welfare conditionality (2.).

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<sup>6</sup> Anne Peters, *Animals in International Law*, RdC 410 (2020), 95-544 (166-174); Humane Society International: *International Financial Institutions, Export Credit Agencies and Farm Animal Welfare*, February 2016, <<https://www.hsi.org/wp-content/uploads/assets/pdfs/international-finance-institutions.pdf>>, last access 31 January 2025.

<sup>7</sup> The World Bank Group is a family of five international organisations (IBRD, IDA, IFC, MIGA and ICSID). This paper mainly focuses on the lending activities of the IBRD and IDA, which are commonly referred to as the World Bank. *Articles of Agreement of the International Bank for Reconstruction and Development (IBRD)*, 27 June 2012, <<https://thedocs.worldbank.org/en/doc/722361541184234501-0330022018/original/IBRDArticlesOfAgreementEnglish.pdf>>, last access 31 January 2025; *Articles of Agreement of the International Development Association (IDA)*, 24 September 1960, <<https://thedocs.worldbank.org/en/doc/2a209939e876fdcd0d957036daebff6e-0410011960/original/IDA-Articles-of-Agreement-English.pdf>>, last access 31 January 2025.

<sup>8</sup> World Bank, *Environmental and Social Framework*, Washington DC, <<https://thedocs.worldbank.org/en/doc/837721522762050108-0290022018/original/ESFFramework.pdf>>, last access 31 January 2025, ('ESF').

<sup>9</sup> Other issues, such as the ethical dilemma between the welfare of animals and the survival of humans, or a critique of eurocentrism or the position of individual animals in international law will be left out despite their relevance.

<sup>10</sup> See ICJ, *Legality of the Use by a State of Nuclear Weapons in Armed Conflict*, Advisory Opinion of 8 July 1996, ICJ Reports 1996, 74 (para. 19).

## 1. Animal Welfare Conditionality in the Environmental and Social Framework

In 2018 the Bank introduced its new Environmental and Social Framework. The ESF has a three-fold structure consisting of a *Vision Statement*, the *Environmental and Social Policy* and ten *Environmental and Social Standards*. The *Vision Statement* is a non-binding commitment regarding environmental and social development and human rights.<sup>11</sup> The *Environmental and Social Policy* (ES-Policy) sets out the Bank's obligations for project financing. The *Environmental and Social Standards* (ESS) define the borrower obligations. The ESF applies to all Investment Project Financing (IPF) operations of the Bank.

The legal quality of the ESF is difficult to determine,<sup>12</sup> since these rules primarily bind the staff of the organisation.<sup>13</sup> Interestingly, however, the objectives of the ESF become binding as they are incorporated in the lending contracts between the Bank and the borrowers by an individual *Environmental and Social Commitment Plan*.<sup>14</sup> In such plan, the Bank and the borrower negotiate specific obligations and measures to be initiated by the borrower to achieve the objectives of the ESF.<sup>15</sup> Thereby, the lending contracts contain all project-relevant obligations for the borrowers to

<sup>11</sup> ESF (n. 8), 1, para. 3; Philipp Dann and Michael Riegner, *The World Bank's Environmental and Social Safeguards and the Evolution of Global Order*, *LJIL* 32 (2019), 537-559 (551) argue that the Vision Statement could be useful for the interpretation of the ESF.

<sup>12</sup> See Giorgio Gaja, *Special Rapporteur of the International Law Commission: Third Report on the Responsibilities of International Organisations*, UN Doc. A/CN.4/553, 13 May 2005, paras 18-22; see for the ESF's predecessor Daniel D. Bradlow and Andria Naudé-Fourie, 'The Operational Policies of the World Bank and the International Finance Corporation Creating Law-Making and Law-Governed Institutions?', *International Organisations Law Review* 10 (2013), 3-80; for the new ESS of the World Bank Giedre Jokubauskaite, 'The Legal Nature of the World Bank Safeguards', *VRÜ* 51 (2018), 78-102; see also Vanessa Richard, 'Can Multilateral Development Banks Be more Environmentally Effective? Perspectives from the Practice of International Accountability Mechanisms', in: Sandrine Maljean-Dubois (ed.), *The Effectiveness of Environmental Law* (Cambridge University Press 2017), 313-344 (326 f.).

<sup>13</sup> See Christiane Ahlborn, 'The Rules of International Organizations and the Law of International Responsibility', *International Organizations Law Review* 8 (2011), 397-482; Lorenzo Gasbarri, *The Dual Legality of the Rules of International Organizations*, *International Organizations Law Review* 14 (2017), 87-119.

<sup>14</sup> ESF (n. 8), 9, paras 46-47; Dann and Riegner (n. 11), 552: argue that '*plans are not just a technical, administrative feature of the ESF, but a crucial legal site where the relative bargaining power of bank and borrower will play out in the future*'.

<sup>15</sup> See e.g. World Bank, Burkina Faso Livestock Resilience and Competitiveness Project, P178598, Ministry of Agriculture of Animal Resources and Fisheries, *Negotiated ENVIRONMENTAL AND SOCIAL COMMITMENT PLAN (ESCP)*, April 2023, <<https://documents1.worldbank.org/curated/en/099041423132566168/pdf/P17859807310d80d0bc350fac05ce94e9f.pdf>>, last access 31 January 2025.

achieve the objectives of the ESF.<sup>16</sup> As a result, only the specific project-relevant parts of the ESF eventually form part of international law<sup>17</sup> – not the ESF as such.<sup>18</sup> As the Bank believes that the standards it prescribes help to realise the objectives of the Bank and those of the borrowers,<sup>19</sup> one may regard the ESF as quasi ‘general terms and conditions’: a pre-formulated basis of the Bank setting out the objectives for entering into a lending contract with a borrower.

The next paragraphs analyse the obligations of the Bank (a.) and the borrower (b.) regarding the consideration and the protection of the welfare of animals arising from the ESF.

### a) The World Bank's Obligations Regarding the Welfare of Animals

The Bank itself has no obligation to consider the welfare of animals arising out of the ES-Policy. However, the ES-Policy imposes obligations regarding the conduct of the borrower. Among those are obligations regarding disclosure,<sup>20</sup> monitoring,<sup>21</sup> ongoing risk assessment,<sup>22</sup> supporting the borrower in implementation,<sup>23</sup> review of the environmental impact assessment,<sup>24</sup> and

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<sup>16</sup> ESF (n. 8), 9, paras 46–48; Dann and Riegner (n. 11), 552.

<sup>17</sup> See John W. Head, ‘Evolution of the Governing Law for Loan Agreements of the World Bank and Other Multilateral Development Banks’, *AJIL* 90 (1996), 214–234.

<sup>18</sup> However, one could argue that at least parts of the ESF become binding law if seen as a binding declaration of the bank, see on binding effect ICJ, *Nuclear Tests*, judgment of 20 December 1974, ICJ Reports 1974, 253, 267 (para. 43); ICJ, *Nuclear Tests*, judgment of 20 December 1974, ICJ Reports 1974, 457, 472 (para. 46); ICJ, *Military and Paramilitary Activities in and against Nicaragua*, merits, judgment of 27 June 1986, ICJ Reports 1986, 14 (para. 261).

<sup>19</sup> World Bank, Environmental and Social Framework (n. 8), ix, para. 4.

<sup>20</sup> World Bank, Environmental and Social Framework (n. 8), ES-Policy, 3–11, paras 1–65: Disclosure, para. 20 Project Classification, para. 21 Change of Classification, para. 26 Intent for UCL, para. 26 Summary of UCL Assessment, para. 51 Disclosure of Environmental Risk Documentation.

<sup>21</sup> World Bank, Environmental and Social Framework (n. 8), ES-Policy, 3–11, paras 1–65: Monitoring, para. 56 ‘*The Bank will monitor the environmental and social performance of the project in accordance with the requirements of the legal agreement, including the ESCP [...]. The Bank will monitor the projects on an ongoing basis in accordance with OP 10.00.*’

<sup>22</sup> World Bank, Environmental and Social Framework (n. 8), ES-Policy, 3–11, paras 1–65, Risk Analysis and Review: para. 21 Review of Risk Classification, para. 25 Review of Borrower System, para. 33 Assessment of Environmental and Social Risks and Impacts, para. 33 Assessment of Reliability of Information and Risks to the ESS, para. 34 Due Diligence Gap Analysis in Relation to the ESS, para. 36 Review of Adequacy of National Environmental and Social Requirements Relevant to Subprojects, para. 40 Review of Adequacy of National Environmental and Social Requirements Relevant to the Project.

<sup>23</sup> World Bank, Environmental and Social Framework (n. 8), 3–11, paras 1–65: Provide Assistance, para. 27 Strengthen the Borrowers ES Framework, para. 57 Implementation Support.

<sup>24</sup> World Bank, Environmental and Social Framework (n. 8), 3–11, paras 1–65: review the borrower's environmental impact assessment para. 32.

stakeholder involvement.<sup>25</sup> Notably, the wording in the ESF of the Bank's obligations changed compared to the ESF's predecessor. In particular, the verb 'to ensure' has been replaced by the verb 'to require'. It remains debated whether this change was a simple harmonisation of language or if it did water down the Bank's obligations.<sup>26</sup>

Obligations of the borrower to consider and protect the welfare of animals can be found in several parts of the ESS.<sup>27</sup> Of particular importance are the borrower's obligations under ESS6: '*Biodiversity Conservation and Sustainable Management of living Resources*'. In the following the obligations regarding the welfare of farm animals (b) and wild animals (c) are discussed.

## b) The Protection of the Welfare of Farm Animals

Obligations of borrowers to consider and protect the welfare of farm animals are directly addressed in ESS6. Borrowers must apply *Good International Industry Practice* (GIIP) in livestock operations.<sup>28</sup> However, a definition of GIIP is absent. Nevertheless, a footnote attached to the term GIIP refers to the *Good Practice Note* (GPN) on animal welfare of the World Bank's sister organisation, the International Finance Corporation (IFC).<sup>29</sup>

The Inspection Panel, the Bank's administrative tribunal, paid particular attention to this reference in the *Vietnamese Livestock Case*. In January 2017,

<sup>25</sup> World Bank, Environmental and Social Framework (n. 8), ES-Policy, 3-11, paras 1-65: para. 26.

<sup>26</sup> *Christina Passoni, Ariel Rosenbaum and Eleanor Vermunt*, 'Empowering the Inspection Panel: The Impact of the World Bank's New Environmental and Social Safeguards', N. Y. U. J. Int'l L. & Pol. 49 (2017), 922-958 (929-931, esp. fn. 34); see also Inspection Panel, Comments on the Second Draft of the Proposed ESF, 17 June 2015, <<https://consultations.worldbank.org/sites/default/files/documents/Inspection%20Panel%20Comments%20on%202nd%20Draft%20ESF%20-%202017%20June%202015.pdf>>, 4 December 2023, 2.

<sup>27</sup> Peters (n. 6), 167, with reference to: ESS3: 'Resource efficiency and pollution prevention and management', ESS4: 'Community health and safety', ESS5: 'Land acquisition, land use restrictions and involuntary resettlement', and ESS6: 'Biodiversity conservation and sustainable management of living resources'.

<sup>28</sup> World Bank, Environmental and Social Framework (n. 8), ESS6, 67-72, paras 37, 72.

<sup>29</sup> See IFC, Good Practice Note: Improving Animal Welfare in Livestock Operations, Washington DC, 2014, <[https://data.europa.eu/doi/10.2875/745687](https://www.ifc.org/wps/wcm/connect/c39e4771-d5ae-441a-9942-df4add8b679/IFC+Good+Practice+Note+Animal+Welfare+2014.pdf?MOD=AJPERES&CVI D=kGxNx5 m></a>, 4 December 2023; The strategy behind the reference to the IFC GPN is to avoid depending on WBG external decision makers see European Commission, Directorate General Health and Food Safety: Study on the impact of animal welfare international activities: volume I, main text: final report, Publications Office, 2017, <<a href=)>, last access 31 January 2025, 122.

two Vietnamese animal welfare organisations claimed that a project had failed to consider the welfare of animals in both staff training and consultation with animal welfare organisations.<sup>30</sup> The Panel rejected the case since the ESF was not applicable *ratione tempore*.<sup>31</sup> In the following *obiter dictum* the Panel used the animal welfare definition of the World Organisation for Animal Health (WOAH)<sup>32</sup> Terrestrial Animal Health Code and recognised the importance of animal welfare. It stated that, in case the ESF had been applicable, its reference to the IFC's GPN would have provided an acceptable standard for assessing animal welfare concerns.<sup>33</sup> Thereby the Panel confirmed – *argumentum e contrario* – the binding legal nature of the reference in ESS6. It follows that the IFC's GPN sets out the objectives of the ESF and applies to the borrower and the staff of the Bank. In essence, the IFC's GPN hardens to the binding minimum standard for the welfare of animals.

Due to the wording of the footnote attached to the reference to the term animal welfare, the ESF only binds large scale producers.<sup>34</sup> A definition of large-scale producers, however, is absent in the ESF. As the Bank describes its own livestock investment as mostly small- and medium-sized, it is unclear whether the standards apply to any of the current projects. The *Vietnam Livestock Case* unfortunately does not provide orientation as the project in question did not concern large-scale commercial farming.<sup>35</sup>

The IFC's GPN<sup>36</sup> itself includes a large collection of national and international standards for the welfare of animals. All in all, it mentions about 24 different standards and rulesets. These standards are organised in groups such as transport, aquaculture, pigs, or slaughter. Regularly, the IFC's GPN provides more than one standard for a sector or a production step, making it difficult in practice to specify the applicable obligation. The potpourri of

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<sup>30</sup> Inspection Panel, Vietnam Livestock Competitiveness and Food Safety Project (P090723) and Vietnam Livestock Competitiveness and Food Safety Project Additional Financing (P151946), Request for Inspection, 12 January 2017, 1-5.

<sup>31</sup> Inspection Panel, Vietnam Livestock Case (2017) (n. 30), Request for Inspection, 12 January 2017.

<sup>32</sup> Formerly known as OIE.

<sup>33</sup> Inspection Panel, Vietnam Livestock Case (2017) (n. 30), Notice of Non-Registration, 27 March 2017, para. 13.

<sup>34</sup> World Bank, Environmental and Social Framework (n. 8), ESS6, 72, para. 34: 'The Borrower involved in the industrial production of crops and animal husbandry will follow GIIP to avoid or minimize adverse risks or impacts. The Borrower involved in large-scale commercial farming, including breeding, rearing, housing, transport, and slaughter of animals for meat or other animal products (such as milk, eggs, wool) will employ GIIP<sup>19</sup> in animal husbandry techniques, with due consideration for religious and cultural principles.'

<sup>35</sup> Inspection Panel, Vietnam Livestock Case (2017) (n. 30), Notice of Non-Registration, 27 March 2017, para. 13.

<sup>36</sup> IFC, Good Practice Note (2014) (n. 29).

rules can be explained by the original function of the GPN. In the context of the IFC, the GPN is not a binding standard but shall only provide guidance and orientation in project structuring or in its pursuit. In the context of investment project financing, however, one must find the best suited standard for each specific situation. To define the applicable standard is an obligation of the Bank, as it introduces the standard to the borrower.

In addition to the IFC's GPN, the World Bank published a Good Practice Note on *Animal Health and Related Risks* in 2020.<sup>37</sup> Since the ESF does not reference it, it is not binding. In comparison to the GPN of the IFC, the Bank's GPN deals exclusively with farm animals. The Bank's GPN focuses on supporting implementation of rules in opposition to setting new standards for animals. It places the responsibility on farmers, breeders, and users.<sup>38</sup> Borrowers should at least strive to implement internationally recognised standards. Both GPNs emphasise the standards of the WOAHA.<sup>39</sup> Both GPNs attach particular importance to the welfare of animals when this is likely to generate an economic benefit.<sup>40</sup> However, in the IFC's GPN, individual standards exist that provide for the welfare of animals without a link to economic considerations.<sup>41</sup> For example, the IFC's GPN states for aquacultures: *'The water supply should [...] ensure the welfare of the farmed species. The physical environment should be designed, sited, and maintained to promote the health and welfare of the animals.'*<sup>42</sup>

### c) The Protection of the Welfare of Wild Animals

As a matter of fact, animal welfare is not solely a matter of farm animals. In the ESF, however, the welfare of wild animals forms part of biodiversity standards. This can be seen in some cases where the Inspection Panel ruled

<sup>37</sup> World Bank, Good Practice Note (2020) (n. 3).

<sup>38</sup> World Bank, Good Practice Note (2020) (n. 3), 42.

<sup>39</sup> IFC, Good Practice Note (2014) (n. 29), 21-23; World Bank, Good Practice Note (2020) (n. 3), 42-44.

<sup>40</sup> Peters (n. 6), 170, suspects the strategy of fending off *ultra vires* claims.

<sup>41</sup> IFC, Good Practice Note (2014) (n. 29), 14. See also 14: Animals should be handled using low-stress methods, equipment and facilities that allow animals to move calmly; 15: Food and water [...] should be provided in such a way that all animals have the opportunity to eat or drink without undue competition; 16: Animals that have access to exercise or live outdoors should have access to shade and shelter; 17: No electric spikes or pricks should be used when catching, loading, unloading or moving pigs.; 18: Prior to slaughter, animals should be restrained using appropriate handling techniques, lighting, space and ventilation; 18: All animals must be handled, restrained, rendered unconscious until dead and slaughtered in as painless a manner as possible by trained and competent personnel.

<sup>42</sup> IFC, Good Practice Note (2014) (n. 29), 14.

on the basis of the predecessor of the ESF. For example, in the *Ecosystem Conservation and Management Project Case* the Panel referred to the fact that the broadening and design of the drainage system of a street through the rain forest of Sri Lanka would have prevented smaller animals from passing the street.<sup>43</sup>

The ESF refers to biodiversity and natural habitats in ESS6.<sup>44</sup> Where risks for biodiversity are identified, borrowers must develop and implement a *Biodiversity Management Plan*.<sup>45</sup> The legal force of such plan is debatable, since it could either be a standalone document or be included in the *Environmental and Social Commitment Plan*.

Further, ESS6 commits borrowers to a zero-net loss of biodiversity.<sup>46</sup> A fourfold mitigation hierarchy of avoiding, minimising, mitigating, and offsetting applies to borrowers. In modified habitats there is no requirement of zero net loss and impacts must only be avoided, minimised, or mitigated 'as appropriate'. ESS6 determines the importance and level of protection of biodiversity and habitats by their vulnerability and irreplaceability. The calculation of their specific value considers *inter alia* the value attributed by affected persons.<sup>47</sup>

However, ensuring the welfare for individual animals is mostly impossible: Firstly, the ESF contains a duty to biodiversity offsets.<sup>48</sup> Biodiversity offsets aim to bring benefits to biodiversity by countering the losses from development.<sup>49</sup> The ESF states that offsets must be designed and implemented to achieve measurable, additional, and long-term conservation outcomes.<sup>50</sup> The long-term orientation of offsets impedes the consideration of the welfare of an animal because short and mid-term suffering of animals are tolerated. Additionally, the welfare of individual animals is covered only to a minor extent since the inclusion of habitat protection allows only the consideration of groups of animals.

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<sup>43</sup> Inspection Panel, Case-145, IPN Request RQ 19/15, *Ecosystem Conservation and Management Project Case*, Report No. 146090-LK, Report and Recommendation on a Request for Inspection, 14 February 2020, Management Response, para. 28.

<sup>44</sup> World Bank, Environmental and Social Framework (n. 8), ESS6, 67-72, paras 37-72; see also Paul Paquet and Chris Darimont, 'Wildlife Conservation and Animal Welfare: Two Sides of the Same Coin?', *Animal Welfare* 19 (2010), 177-190 (179).

<sup>45</sup> World Bank, Environmental and Social Framework (n. 8), ESS6, 68, para. 9.

<sup>46</sup> World Bank, Environmental and Social Framework (n. 8), ESS6, 69, para. 16.

<sup>47</sup> World Bank, Environmental and Social Framework (n. 8), ESS6, 68, para. 8.

<sup>48</sup> World Bank, Environmental and Social Framework (n. 8), ESS6, 69, para. 15.

<sup>49</sup> Jonathan Morley, Graeme Buchanan, Edward T. A. Mitchard and Aidan Keane, Implications of the World Bank's Environmental and Social Framework for Biodiversity, Conservation Letters 14 (2021), <<https://doi.org/10.1111/conl.12759>>, last access 31 January 2025, 1-6 (2-3).

<sup>50</sup> World Bank, Environmental and Social Framework (n. 8), ESS6, 69, para. 16.

In any case, borrowers are bound by the precautionary principle and GIIP in all operations.<sup>51</sup> The ESF references the *Environmental, Health and Safety Guidelines* (EHSG)<sup>52</sup> for GIIP.<sup>53</sup> Thereby EHSGs represent a binding standard for borrowers.<sup>54</sup> The EHSG system is organised in one general guideline and 61 sector-specific guidelines. None of the EHSGs required the inclusion of welfare of wildlife explicitly. Yet ESS3 ‘*Resource Efficiency and Pollution Prevention and Management*’ may indirectly protect wild animals because national law may apply to the project if national law offers a higher level of protection than the EHSGs.<sup>55</sup> However, the borrower only has to use technically and financially feasible methods.<sup>56</sup> The concern for individual wild animals’ welfare plays a subordinate role, as long as it does not result in a biodiversity loss.

To conclude, biodiversity as a standard is inadequate to protect the welfare of animals. This is not least due to its anthropocentric orientation of the protection of biodiversity.<sup>57</sup> However, conservation strategies might also benefit the welfare of animals.<sup>58</sup>

#### d) Interim Conclusion

Overall, the ESF plays a crucial role in addressing animal welfare concerns within the project financing of the World Bank. Animal welfare is inherent to specific parts of the ESF, particularly in ESS6, which addresses biodiversity conservation and the sustainable management of living resources. The lack of a specific definition for GIIP and the potpourri of diverse standards within the IFC’s GPN present challenges in defining the precise obligation of the borrower on an abstract level. While the welfare of

<sup>51</sup> World Bank, Environmental and Social Framework (n. 8), ESS6, 68, para. 12.

<sup>52</sup> IFC, Environmental, Health and Safety Guidelines, 30 April 2007, <<https://www.ifc.org/wps/wcm/connect/29f5137d-6e17-4660-b1f9-02bf561935e5/Final%2B-%2BGeneral%2BEHS%2BGuidelines.pdf?MOD=AJPERES&CVID=nPtguVM>>, 4 December 2023.

<sup>53</sup> World Bank, Environmental and Social Framework (n. 8), x, para. 11.

<sup>54</sup> World Bank, Environmental and Social Framework (n. 8), ES-Policy, 6, paras 18-19. However, the EHSGs are available to the extent that borrowers can deviate from them by citing their stage of development or project-specific circumstances.

<sup>55</sup> World Bank, Environmental and Social Framework (n. 8), ESS3, 39-43, 40, para. 11.

<sup>56</sup> World Bank, Environmental and Social Framework (n. 8), ESS3, 39, para. 4.

<sup>57</sup> Guillaume Futhazar, ‘Biodiversity, Species Protection and Animal Welfare in International Law’, in: Anne Peters (ed.): *Studies in Global Animal Law* (Springer 2020), 95-108 (99); Paquet and Darimont (n. 44), 186.

<sup>58</sup> See also Stuard R. Harrop, ‘From Cartel to Conservation and on to Compassion: Animal Welfare and the International Whaling Commission’, *Journal of International Wildlife Law and Policy* 6 (2003), 79-104 (100-104); Futhazar (n. 57), 105.

farm animals is addressed through the IFC's GPN, the welfare of wildlife is indirectly covered by biodiversity and habitat protection. Nonetheless, protecting individual welfare of animals proves challenging due to the focus of biodiversity on groups and the long-term nature of conservation efforts. Despite these deficiencies, the ESF introduces borrowers to an animal welfare conditionality while occasionally emphasising the specific moral significance of animal welfare.

## 2. The World Bank's Mandate to Introduce Animal Welfare Conditionality

In light of the above-mentioned standards and their respective shortcomings, one might ask whether the Bank has already done everything within its power to protect the welfare of animals – whether it has fully exercised its mandate and the power derived from it. The wording of the Bank's founding treaty does not contain an explicit competence to introduce animal welfare conditionality. Moreover, it demands a strict economic orientation.<sup>59</sup> Consequently, in order to consider the introduction of animal welfare conditionality as a competence arising from the founding treaty, the welfare of animals must be linked to economic advantage.<sup>60</sup> Essentially, as long as animal welfare contributes to animal productivity,<sup>61</sup> the Bank may introduce it in its lending policies.

The Bank has limited competences. Occasionally, however, the Bank has pushed these limits, while remaining conscious to avoid allegations of illegitimate overreach.<sup>62</sup> In the World Bank's legal framework, three legal aspects

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<sup>59</sup> Arts I, III Section 5, IV Section 10 Articles of Agreement of the International Bank for Reconstruction and Development (IBRD), 27 June 1946, <<https://thedocs.worldbank.org/en/doc/722361541184234501-0330022018/original/IBRDArticlesOfAgreementEnglish.pdf>>, last access 31 January 2025.

<sup>60</sup> See for such benefits Marian Stamp Dawkins, 'Animal Welfare and Efficient Farming: Is Conflict Inevitable?', *Animal Production Science* 57 (2017), 201-208; Szilvia Vetter, László Vasa and László Ózsvári, 'Economic Aspects of Animal Welfare', *Acta Polytechnica Hungarica* 11 (2017), 119-134 (127-131).

<sup>61</sup> Linda Keeling et al., 'Animal Welfare and the United Nations Sustainable Development Goals', *Frontiers in Veterinary Science* 6 (2019), Article 336, <<https://doi.org/10.3389/fvets.2019.00336>>, last access 31 January 2025, 1-12 (3).

<sup>62</sup> Ibrahim Shihata, 'Democracy and Development', *ICLQ* 46 (1997), 635-643 (639 f.); Gunther Handl, 'The Legal Mandate of Multilateral Development Banks as Agents for Change Towards Sustainable Development', *AJIL* 92 (1998), 642-665 (639 f., 648); Anne Peters, 'Constitutional Theories of International Organisations: Beyond the West', *Chinese Journal of International Law* 20 (2021), 649-698 (658); Dimitri Van Den Meerse, 'The Evolving Mandate of the World Bank, How Constitutional Hermeneutics Shaped the Concept and Practice of Rule of Law Reform', *The Law and Development Review* 10 (2017), 89-118 (92-95).

govern the limits of interpreting its mandate. Firstly, the mandate for sustainable development may serve as a means to introduce animal welfare conditionality (a). Secondly, the Bank must not engage in any political activity (b). Thirdly, the practice of other international financial institutions can be considered (c).

### a) The Mandate for Sustainable Development as a Means to Introduce Animal Welfare Conditionality

In recent years, the World Bank has increasingly become a promoter of sustainable development.<sup>63</sup> However, the welfare of animals is often overlooked in discussions and decision-making processes of sustainable development. The structural deficit of sustainable development regarding the welfare of animals roots in the underlying principle of integration which finds its origins in international environmental law and demands an integrative balancing of environmental, social, and economic interests.<sup>64</sup> These three interests form the three pillars of sustainable development.<sup>65</sup> A clear allocation of a concern to one pillar of sustainable development<sup>66</sup> is a necessary precondition for such integration and balancing.

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<sup>63</sup> See Makane Moïse Mbengue and Stéphanie Moerlose, 'Multilateral Development Banks and Sustainable Development: On Emulation, Fragmentation and a Common Law of Sustainable Development', *The Law and Development Review* 10 (2017), 389-424; David Freestone, 'The World Bank and Sustainable Development', in: David Freestone (ed.), *The World Bank and Sustainable Development – Legal Essays* (Martinus Nijhoff 2013), 7-41 (9-17); Handl (n. 62), 3 f.; see also Copenhagen Declaration on Social Development in Report of the U.N. World Summit for Social Development, U.N. Doc. A/Conf.166/9, 14 March 1995, para. 26, Commitment 2 paras g & h.

<sup>64</sup> UNGA Res 19/2 of 28 June 1997, A/RES/19/2, Annex, paras 23-24; Rüdiger Wolfrum, 'Solidarity and Community Interests: Driving Forces for the Interpretation and Development of International Law', RdC 416 (2021), 161 f.; Philippe Sands and Jacqueline Peel, *Principles of International Environmental Law* (4th edn, Cambridge University Press 2018), 217 f.; Nico Schrijver, 'The Evolution of Sustainable Development in International Law: Inception Meaning and Status', RdC 329 (2007), 217-412 (372 f.).

<sup>65</sup> UNGA Res 57/253 of 21 February 2003, A/RES/57/253: 'Reaffirming the need to ensure a balance between economic development, social development and environmental protection as interdependent and mutually reinforcing pillars of sustainable development.'

<sup>66</sup> See *United Nations*, Report of the World Summit on Sustainable Development, UN Doc. A/CONF-199/20, 4 September 2002, 6, para. 5; Schrijver (n. 64), 372 f.; Virginie Barral, 'The Principle of Sustainable Development', in: Ludwig Krämer and Emanuela Orlando (eds), *Principles of Environmental Law* (Edward Elgar 2018), 103-114 (106-107).

The concept of animal welfare eludes a definite classification of either a purely economic, social or an environmental concern.<sup>67</sup> The welfare of animals is never considered *per se*. It follows, that the welfare of animals only becomes relevant if it causes negative externalities to other pillars, revealing a fragmented picture.

The environmental pillar itself refers only to the protection of habitats, ecosystems, or endangered species.<sup>68</sup> Animal suffering becomes a negative externality when causing environmental damage.<sup>69</sup>

Prominently, the suffering of animals becomes a negative externality for the social pillar when it develops into a health hazard for humans, as seen in the Covid-19 pandemic.<sup>70</sup> In this regard, the One Health approach highlights the interdependencies between human and animal health within the broader ecological framework.<sup>71</sup> It underscores the crucial need for a holistic, interdisciplinary collaboration to effectively tackle complex health challenges. By promoting a shift towards a more inclusive and compassionate worldview, the One Health approach promises a less anthropocentric starting point,<sup>72</sup> without, however, being eco-centric.<sup>73</sup> Despite such broadening perspective, animal welfare cannot be deduced from One Health itself, because its primary focus lies in the interconnectedness of health across species, the consideration of animals does not automatically imply the imperative not to harm an animal. Nonetheless, One Health presents a more tangible approach

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<sup>67</sup> See Elien Verniers, 'Bringing Animal Welfare Under the Umbrella of Sustainable Development: A Legal Analysis', *RECIEL* 30 (2021), 349-362 (351).

<sup>68</sup> Kate Rawles, 'Sustainable Development and Animal Welfare: The Neglected Dimension', in: Jacky Turner and Joyce D'Silvia (eds), *Animals, Ethics, and Trade: The Challenge of Animal Sentience* (Earthscan 2006), 208-216 (209 f.); Futhazar (n. 57), 101-104; Kristen Stilt, 'Rights of Nature, Rights of Animals', *Harv. L. Rev. F.* 134 (2021), 276-285 (276-278).

<sup>69</sup> Vetter, Vasa and Ózsvári (n. 60), 123.

<sup>70</sup> Cleo Verkuijl et al., 'Mainstreaming Animal Welfare in Sustainable Development – A Policy Agenda', Background Paper May 2022, Stockholm+50 Background Paper Series 2022, <<https://www.sei.org/wp-content/uploads/2022/05/animal-welfare-stockholm50backgroundpaper.pdf>>, last access 31 January 2025, 5.

<sup>71</sup> See for One Health approach FAO, <<https://www.fao.org/one-health/en>>, last access 31 January 2025; see also World Bank, Brief: Safeguarding Animal, Human and Ecosystem Health: One Health at the World Bank, 3 June 2021, <<https://www.worldbank.org/en/topic/agriculture/brief/safeguarding-animal-human-and-ecosystem-health-one-health-at-the-world-bank>>, last access 31 January 2025.

<sup>72</sup> Lauren E. Van Patter, Julia Linares-Roake and Andrea V. Breen, 'What Does One Health Want?: Feminist, Posthuman and Anti-Colonial Possibilities', *One Health Outlook* 5 (2023); Simon Coghlan, Benjamin John Coghlan, Anthony Capon and Peter Singer, 'A Bolder One Health: Expanding the Moral Circle to Optimize Health for All', *One Health Outlook* 3 (2021).

<sup>73</sup> Anne Peters, 'One Health – One Welfare – One Rights', *Verfassungsblog*, 1 April 2024, doi: 10.59704/0e96426ad7c67295.



## b) Animal Welfare Conditionality and the Prohibition of Political Activity

The introduction of strict animal welfare conditionality to a borrowing state may quickly face the accusation of imposing western values or politics on developing countries. As the Bank's founding treaty prohibits to take political considerations into account,<sup>76</sup> it ensures the Bank's political neutrality.<sup>77</sup> Conceptually, the term political is defined as an antithesis.<sup>78</sup>

*Political* may be what is not economical. Accordingly, animal welfare lending policies are not political in case of a direct economic benefit.

Conversely, *political* may be what is not international. Such interpretation is in line with the historical purpose of the prohibition to open the Bank to non-capitalist countries.<sup>79</sup> To evaluate what is international, one may draw an analogy to the prohibition of intervention which protects the *domaine réservé* as the *political sphere* of a state.<sup>80</sup> What constitutes a *political* activity would then depend on the general development of international law.<sup>81</sup> The topic of animal welfare internationalised in recent years,<sup>82</sup> yet no global treaty exists. Further, domestic legislation is too diverse to extract a general principle of animal welfare.<sup>83</sup> As of today, the welfare of animals has not (yet)

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<sup>76</sup> Arts I, III Section 5, IV Section 10 Articles of Agreement (IBRD) (n. 59); Art. V Section 6 Articles of Agreement (IDA) (n. 7).

<sup>77</sup> Maria Rosaria Mauro, 'The Protection of Non-Economic Values and the Evolution of International Economic Organizations' in: Roberto Virzo and Ivan Ingravallo (eds), *Evolutions in the Law of International Organizations* (Brill Nijhoff 2015), 244-274 (251 f.).

<sup>78</sup> Carl Schmitt, *The Concept of the Political – Expanded Edition*, translated by George Schwab (The University of Chicago Press 2007), 20 ff.; see polarity legal and political ICJ, *Conditions of Admission of a State to Membership in the United Nations*, Individual Opinion M. Alvarez, ICJ Reports 1957, 69.

<sup>79</sup> Stephanie Killinger, *Das unpolitische Mandat der Weltbank* (Carl Heymanns 2003), 91-96.

<sup>80</sup> Handl (n. 62), 648.

<sup>81</sup> PCIJ, *Tunis-Morocco Nationality Decrees*, judgment no. 4 of 7 February 1923, Series B, 24; PCIJ, *The Case of the S.S. 'Lotus'*, judgment no. 10 of 7 September 1927, Series A, 19; Robert Jennings and Arthur Watts, *Oppenheim's International Law*, Vol. I (9th edn, Longman 1992), 457; see also Samuel A. Bleicher, 'UN v. IBRD: A Dilemma of Functionalism', IO 24 (1970), 31-47 (41 f.).

<sup>82</sup> Ian Robertson and Paula Sparks, 'Animal Law – Historical, Contemporary, and International Developments' in: Andrew Knight, Clive Phillips and Paula Sparks (eds), *The Routledge Handbook of Animal Welfare* (Routledge 2023), 366-378; Steven White, 'Into the Void: International Law and the Protection of Animal Welfare', *Global Policy* 4 (2013), 391-398.

<sup>83</sup> Peters (n. 6), 142 f.; see also Katie Sykes, "'Nations Like Unto Yourselves': An Inquiry Into the Status of a General Principle of International Law on Animal Welfare", *Can. Yb. Int'l L.* 49 (2011), 3-49 (10-17); Michael Bowman, Peter Davies and Catherine Redgwell, *Lyster's International Wildlife Law* (2nd edn, Cambridge University Press 2010), 672-699.

comprehensively been emancipated from the *domaine réservé* of States. Hence, the Bank has no general implicit mandate for animal welfare beyond the framework of sustainable development.

A new approach to interpret the prohibition on political activity involves using the Bank's own practices.<sup>84</sup> This method of interpretation is especially suited to the organisation as organs of the Bank itself have the mandate to interpret its own mandate.<sup>85</sup> The relevant practice is set out in the Use of Borrower's Environmental and Social Framework (UBESF).<sup>86</sup> The practice allows domestic frameworks to be used as a binding standard between the Bank and the borrower instead of standards of the Bank if the domestic standards are higher compared to the ESF.<sup>87</sup> The determination of what is considered political activity is therefore based on the individual assessment of each borrowing state.

The last approach marks a general shift from an assessment that everything beyond international minimum standards would be considered a political activity to an individual determination in the relation to each borrower. This is in line with the purpose of UBESF to protect national sovereignty – ensured by the borrower's consent.<sup>88</sup> While the UBESF theoretically weakens the Bank's role as a standard setter, it also opens the door for highly diverse approaches to protection. However, the use of the framework is limited, as most domestic frameworks stay behind the ESF standards in practice.<sup>89</sup>

<sup>84</sup> See ICJ, Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, advisory opinion of 9 July 2004, ICJ Reports 2004, 136 (para. 28); ICJ, Nuclear Weapons (n. 10), para. 27; ICJ, Whaling in the Antarctic (Australia v. Japan), judgment of 31 March 2014, ICJ Reports 2014, 226 (para. 83); ILC, 'Draft Conclusions on Subsequent Agreements and Subsequent Practice with Commentaries', UN Doc. A/73/10, 93; Kirsten Schmalenbach, 'Acts of International Organizations as Extraneous Material for Treaty Interpretation', NILR 69 (2022), 271-293 (278-280) linking practice of organs of international organisations to Article 31(3) VCLT. See also Peter Quayle, 'Treaties of a Particular Type: The ICJ's Interpretative Approach to the Constituent Instruments of International Organizations', LJIL 29 (2016), 853-877 (867f.).

<sup>85</sup> Article IX Articles of Agreement; see also Ervin Hexner, 'Interpretation by Public International Organisations of Their Basic Instruments', AJIL 53 (1995), 341-370 (350).

<sup>86</sup> Formerly called: Use of Country System, see Stéphanie de Moerloose, 'Sustainable Development and the Use of Borrowing State Frameworks in the New World Bank Safeguards', VRÜ 51 (2018), 53-77 (58).

<sup>87</sup> World Bank, Environmental and Social Framework (n. 8), ESS1, 17-18 (paras 19-22).

<sup>88</sup> Moerloose (n. 86), 53-77; see also Inspection Panel, *Investigation Report South Africa: Eskom Investment Support Project*, 21 November 2011, para. 111, <<https://www.inspectionpanel.org/sites/www.inspectionpanel.org/files/ip/PanelCases/65-Investigation%20Report%20%28English%29.pdf>>, last access 31 January 2025 citing World Bank, Expanding the use of country systems in Bank-supported operations: issues and proposals, <<http://documents.worldbank.org/curated/en/856881468780905107/Expanding-the-use-of-country-systems-in-Bank-supported-operations-issues-and-proposals>>, last access 31 January 2025.

<sup>89</sup> Moerloose (n. 86), 58.

Animal welfare conditionality is never political, if the lending policies prescribe international minimum standards for animal welfare. However, the Bank and the borrower may bilaterally agree on a standard higher than the minimum.

In conclusion, the Bank's stated purpose and prohibition on taking political considerations into account suggest that it may consider animal welfare in its decision-making as long as there might be a direct economic benefit. The Bank's use of UBESF, however, also allows for a borrower specific determination of what is considered political activity.

### c) The Practice of International Financial Institutions Regarding Animal Welfare Conditionality

There is a growing trend among international financial institutions to consider animal welfare in their policies and practices. Some institutions, such as the European Bank for Reconstruction and Development (EBRD),<sup>90</sup> the Inter-American Development Bank (IDB),<sup>91</sup> the World Bank (IBRD/IDA), and the IFC have adopted specific rules or guidelines related to animal welfare. Others specifically finance projects related to animal welfare such as the Asian Development Bank (ADB)<sup>92</sup> or the Asian Infrastructure Investment Bank (AIIB).<sup>93</sup> In 2021, the IDB dropped a USD 43 m loan for Marfrig Global Foods' Brazilian beef operations due to public pressure regarding the project's impact on deforestation, land grabbing, and human rights.<sup>94</sup> Among

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<sup>90</sup> Peters (n. 6), 169; EBRD, Environmental and Social Policy 2019, <<https://www.ebrd.com/news/publications/policies/environmental-and-social-policy-esp.html>>, last access 31 January 2025, 38 (para. 24).

<sup>91</sup> IADB, Environmental and Social Policy Framework, 31 October 2021, <<https://idbdocs.iadb.org/wsdocs/getdocument.aspx?docnum=EZSHARE-110529158-160>>, last access 31 January 2025, GL-131.

<sup>92</sup> ADB, Project in India: Zenex Improved Animal Health and Welfare Project, Project No: 55240-001, Approved: 30 September 2022, <<https://www.adb.org/projects/55240-001/main>>, last access 31 January 2025.

<sup>93</sup> Joint Project of the AIIB and the ADB, Cambodia: Cross-Border Livestock Health and Value-Chain Infrastructure Improvement Project, Project No: P000707, <<https://www.aiib.org/en/projects/details/2022/proposed/Cambodia-Cross-border-Livestock-Health-and-Value-chain-Infrastructure-Improvement-Project.html>>, last access 31 January 2025.

<sup>94</sup> IDB, Marfrig Global Foods, Project No: 13032-02, Status: Inactive, <<https://www.idbinvest.org/en/projects/marfrig-global-foods-0>>, last access 31 January 2025; Ana Mano and Jake Spring, 'IDB and Marfrig End Talks on \$200 mln Sustainability Loan', Reuters, 24 February 2022, <<https://www.reuters.com/business/sustainable-business/idb-marfrig-end-talks-200-million-sustainability-loan-2022-02-23/>>, last access 31 January 2025; Friends of the Earth, 'IDB Invest Drops Controversial Loan to Brazilian Beef Giant Marfrig Global Foods', 23 February 2022, <<https://foe.org/news/idb-drops-loan-marfrig/>>, last access 31 January 2025.

the nearly 200 organisations that sent an open letter of protest to the Board of Directors were many animal welfare organisations.<sup>95</sup>

In summary, the practices among international financial institutions regarding animal welfare vary widely, which means that suggesting a precise rule or legal conclusion may be difficult. Yet this practice indicates that these institutions generally view animal welfare as falling within their mandate and being part of sustainable development.

All in all, the Bank stayed within the limits of its mandate in its introduction of animal welfare conditionality. Nevertheless, it remained cautious in doing so.

### III. The World Bank's Accountability for the Suffering of Animals

Last but not least, we must raise the question of accountability. In 2020, the World Bank introduced its new Accountability Mechanism to ensure compliance with the ESF.<sup>96</sup> Under the umbrella of the Accountability Mechanism two distinct institutions exist. The first body is the Inspection Panel which was originally established in 1993 as an administrative tribunal.<sup>97</sup> The second body is the Dispute Resolution Service, a new and independent mechanism to provide individuals and borrowers with a voluntary dispute resolution mechanism. In the past, Non-Governmental Organisations (NGOs) already asserted animal interests in front of the Inspection Panel.<sup>98</sup>

<sup>95</sup> Open Letter to the IDB-Board of Directors, 19 October 2021, <[https://foe.org/wp-content/uploads/2022/02/IDB-Letter-Signatories-Formatted\\_281.docx.pdf](https://foe.org/wp-content/uploads/2022/02/IDB-Letter-Signatories-Formatted_281.docx.pdf)>, last access 31 January 2025.

<sup>96</sup> World Bank, The World Bank Accountability Mechanism, Resolution No. IBRD 2020-0005, Resolution No. IDA 2020-0004, 8 September 2020.

<sup>97</sup> Inspection Panel, Resolution No. IBRD 93-10, Resolution No. IDA 93-6: 'The World Bank Inspection Panel', 22 September 1993: as amended on 8 September 2020: Resolution No. IBRD 2020-0004 and Resolution No. IDA 2020-0003 ('Inspection Panel Resolution').

<sup>98</sup> Inspection Panel, *Ecosystem Conservation* (n. 43), para. 28; Inspection Panel, Vietnam Livestock Case (2017) (n. 30), Request for Inspection, 12 January 2017, 5; Inspection Panel, Case-7, *Argentina, Paraguay: Yacyretá Hydroelectric Project*, 1996, Panel Request for Inspection, INSP/ R 96-2, 26 December 1996, 15, paras 52-54; see for representation before the Inspection Panel Stefanie Ricarda Roos, 'The World Bank Inspection Panel in Its Seventh Year: An Analysis of Its Process, Mandate, and Desirability With Special Reference to the China (Tibet) Case', Max Planck UNYB 5 (2001), 473-521 (487-494).

## 1. The Inspection Panel's Competence to Review a Borrower's Breach of Obligation

A complaint must relate to a breach of obligation by the Bank that caused the borrower to fail its own obligation.<sup>99</sup> However, it is controversial if the Panel has the competence to review breaches of obligations by the borrower. Complaints relating to borrower obligations are inadmissible,<sup>100</sup> originating in the prohibition to interfere in internal affairs.<sup>101</sup> However, the competence to review the borrower's breach of obligation is a necessary condition to assess if the Bank's breach has caused the borrower to breach its obligation.<sup>102</sup> Due to the *Environmental and Social Commitment Plan*, the obligations of the borrower are no longer in his *domaine réservé*.<sup>103</sup> Hence, a review of the borrower's conduct would not constitute an unjust interference. In practice, the Panel claims such competence, albeit stressing that the Bank alone and not the borrower is subject of the investigation.<sup>104</sup> Even more problematic are cases involving a violation of UBESF. In this case the Panel would have to review the borrower's domestic law to assess a breach by the borrower. However, as the Bank's obligation is reduced to the test if the standards of the domestic laws are 'materially consistent' with the ESF,<sup>105</sup> and the domestic standard will become part of the *Environmental and Social Commitment Plan*. In practice, the Inspection Panel assumes to have the competence to review this standard.<sup>106</sup>

## 2. The Affectedness of Animals

The complainants must demonstrate that their rights or interests are at least likely to have been directly affected by the Bank.<sup>107</sup> The wording of the

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<sup>99</sup> Inspection Panel Resolution (n. 97), para. 13.

<sup>100</sup> Inspection Panel Resolution (n. 97), para. 15 (a).

<sup>101</sup> Eisuke Suzuki, 'The International Legal Responsibility of IFIs', in: David Bradlow and Daniel Hunter (eds), *International Financial Institutions and International Law* (Kluwer 2010), 63-102 (85).

<sup>102</sup> Suzuki (n. 101).

<sup>103</sup> Suzuki (n. 101), 85 with reference to PCIJ, *Nationality Decrees* (n. 81), 24.

<sup>104</sup> Andira Naudé-Fourie, *World Bank Accountability – in Theory and in Practice* (Eleven International Publishing 2016), 124-129.

<sup>105</sup> World Bank, *Environmental and Social Framework* (n. 8), ES-Policy, 6, para. 32.

<sup>106</sup> Chairperson of the Inspection Panel, Senior Vice President, and General Counsel, Joint Statement on the Use of Country Systems, R2004-0077, 0077/3, June 2004, 62; see for analysis of the standard of review Moerloose (n. 86), 72.

<sup>107</sup> Inspection Panel Resolution (n. 97), para. 13; see also 'project affected parties' in ESF (n. 8), 11, para. 61.

Internet Protocol (IP)-Resolution suggests that only humans may be affected as communities of persons are mentioned as an example of an association.<sup>108</sup> Accordingly, the welfare of animals can only be addressed in connection with rights or interests of humans. In the following a distinction is made between human interests that can be used as vehicles that are suitable to further the welfare of wild animals (a) and those that are suitable to protect the welfare of farm animals (b).

### a) When Farm Animals Are Affected

The consequences of a neglect of the welfare of animals for humans is particularly clear when we turn to food safety<sup>109</sup> or zoonoses.<sup>110</sup> Albeit, factual and legal problems make it difficult to prove a direct affectedness of humans.

On the factual side, livestock facilities are specifically designed to prevent any material adverse effect on humans. For example, in factory farms desolate conditions prevail. Despite a gruelling impact on the mental well-being and health of the animals, a quality control prevents that the suffering of animals leads to harm on humans. Therefore, the likelihood of a material adverse effect is *prima facie* decreased, as the suffering does not cross the walls of the facility.

On the legal side, an increased susceptibility to parasites and a shortened lifespan due to a violation of the applicable standards suggest an adverse impairment on animals. However, if the suffering does not cross the walls of the facility, the only affected human is the operator of the facility. The operator may not even perceive the condition of his animals as negative at all. A shortened lifespan and a quota of sick animals may very well be part of an offset calculation in the business plan, the design of the facility would prevent any adverse effect from materialising. Yet, if nothing leaks out, no one would be affected, and a complaint would not be admissible, despite the Banks primary non-compliance.

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<sup>108</sup> Inspection Panel Resolution (n. 97), para. 13.

<sup>109</sup> Laura Boyle, O'Driscoll, Kieran, 'Animal Welfare: an Essential Component of Food Safety and Quality', in: Jeffrey Hoorfar, Kieran Jordan, Francis Butler and Raffaello Prugger (eds), *Food Chain Integrity* (Woodhead Publishing 2011), 169-186 (170-177).

<sup>110</sup> Myrna A. Safitri and Firman Firman, 'Animal Welfare and Covid 19 in Indonesia: A Neglected Legal Issue', *Hasanuddin Law Review* 7 (2021), 1-11 (7-9).

## b) Disturbance of Wildlife

Regarding wildlife, the Panel takes a broad interpretation of the concept of affectedness.<sup>111</sup> This was firstly demonstrated in the *Yacyretá Hydroelectric Project Case*, which involved the financing of a hydroelectric power plant with a dam. The flooding took away a whole swathe of land. In its eligibility decision the Panel assumed that not only local groups and people have an interest in the preservation of biodiversity.<sup>112</sup> Consequently, a complaint could also be made by an NGO. This approach was again confirmed in the *Ecosystem Conservation and Management Project Case* of 2020.<sup>113</sup> This mirrors the classification of biodiversity as a community interest.<sup>114</sup> In this context, the Panel also took note of the protection of endangered species.<sup>115</sup> Even if 'affectedness' is given on the grounds of the loss of biodiversity, this requires a severe degree of impairment of wildlife. Under such circumstances, the interest of biodiversity and species conservation serves to bring the welfare of animals before the Panel.

## 3. The Asymmetric Protection of the Welfare of Farm Animals and Wildlife

In summary, the hurdles to bring an animal welfare complaint before the Panel are high, and the criterion of 'affectedness' is crucial. The welfare standards for wild animals are extremely low, because biodiversity is the only standard to protect the welfare of wildlife. Still, a complaint can be brought fairly easily before the Panel, because biodiversity is a community interest. The opposite is true for farm animals: The standards for farm animals are comparably high, since an explicit standard exists in the ESF. However, holding the Bank accountable for animal suffering is nearly impossible. The

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<sup>111</sup> Inspection Panel, *Yacyretá Hydroelectric Project* (1996) (n. 98), paras 67-68; Inspection Panel, *Ecosystem Conservation and Management Project Case* (2020) (n. 43), para. 58.

<sup>112</sup> Inspection Panel, *Yacyretá Hydroelectric Project*, (1996) (n. 98), 19, paras 67-68.

<sup>113</sup> Inspection Panel, *Ecosystem Conservation and Management Project Case* (2020) (n. 43), para. 28.

<sup>114</sup> See e.g. ICJ, *Fisheries Jurisdiction* (United Kingdom v. Iceland), merits, judgment of 25 July 1974, ICJ Reports 1974, 31 (para. 72); WTO, Appellate Body, *United States – Import of Certain Shrimp and Shrimp Products*, report of 12 October 1998, WT/DS58/AB/R, paras 130-131; Wolfrum (n. 64), 60 f. refers to 'common concern' in the preamble of the Convention on Biological Diversity; see also Bruno Simma, 'From Bilateralism to Community Interest in International Law', RdC 250 (1994), 233 f.

<sup>115</sup> Inspection Panel, *Ecosystem Conservation and Management Project Case* (2020) (n. 43), Report and Recommendation On A Request for Inspection, 14 February 2020, 8 (para. 39).

reason is that in many instances there are no people ‘affected’ by a project, since the suffering of the animals does not cross the walls of the farm.

## IV. Conclusion

In conclusion, the World Bank’s mandate allows the introduction of animal welfare conditionalities to the extent that either economic benefit is expected, or animal suffering negatively impacts the environment, or social progress. Institutionally, these requirements result in a legal situation where the welfare of *wildlife* is relatively easy to address procedurally in the Accountability Mechanism, while in substance the actual protection will often be weak or non-existent. In contrast, the welfare of *farm animals* is more difficult to address in the Accountability Mechanism as a matter of admissibility, but (if the complaint is admissible), it will enjoy a higher level of protection in substance. The resulting different treatment of wild and farm animals may be explained with the anthropocentric orientation of sustainable development and with the World Bank’s ethically consequentialist animal welfare approach.

Overall, the Bank should aim for a more integrative and balancing approach to sustainable development to ensure that the welfare of all animals receives due consideration. It should move beyond the consideration of animal suffering as a negative externality when pursuing economic, environmental or social goals, or merely seeing the welfare of animals as a means to achieve economic or environmental objectives.

In essence, the ESF underlines the ethical importance of the welfare of animals. Its approach to animal welfare mostly mirrors the World Bank’s mandate, showing readiness to incorporate animal welfare within the mandate’s economic, environmental, and social focus. The ESF’s approach seems to support a broad interpretation of the Bank’s mandate on animal welfare. This is especially apparent regarding farm animals.

The World Bank may have passed a critical juncture in its consideration of animal welfare. This involves addressing the welfare of farm animals. While the ESF’s receptivity to animal welfare offers promise, the Bank stayed behind its mandate.