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# A Shiny Fragmentary Skeleton: The World Bank and Workers' Human Rights in the 2013 World Development Report

## **Abstract**

This article intends to describe the scope of the right to work in the World Bank's 2013 *World Development Report: Jobs*. In the first place, the article analyses, from a legal prospective, the right to work as phrased in the main international human rights instruments. Academic comments and judicial developments are included in the analysis, as well as international organisms' contributions. Second, the article compares this interpretation to the World Bank's ideas on the issue, as expressed in the report. Through this comparison, the Bank's contradictions and restrictive constructions become apparent. Finally, the article describes the risks faced by borrower countries if their policies are designed according to the World Bank proposals.

## **Keywords**

World Bank - Workers' Rights - Economic, Social and Cultural Rights

## Introduction

The World Bank (WB) is a key global player in development policymaking. Developing countries usually turn to this institution looking for financial support and policy guidance. The WB has remarkable intellectual and financial resources. It can design policies and it can also finance its implementation. It is an unsettled question whether such policies are appropriate ways to achieve development. A different, much less discussed question can be phrased as follows: Are the WB proposals consistent with human rights? Do human rights treaties have any relevance in development policymaking? Does the WB take human rights into account in the process of policy design? If not, what does this imply for borrower countries?

Here I address these questions in a specific case. I focus on the WB's flagship publication, the *World Development Report* (hereinafter, *WDR* or *Report*). I analyse the WB's vision on workers' human rights, as articulated in the 2013 edition of the *WDR*, entitled *Jobs*. In this work, the institution describes which jobs are good for development and which policies foster them. Although the *Report* seems to embrace a human rights approach, I will show in the following pages that several policy recommendations included in the text contradict specific human rights included in covenants ratified by most States in the world. Therefore, borrower countries will probably face a political and legal dilemma in trying to follow economic policy advice from the WB while honoring their human rights obligations.

In this article, I begin by discussing how the *Report* embraces inconsistent notions of human rights. The first section outlines workers' human rights as part of international human rights law. Then, I analyse the WB's position on the binding nature of human rights instruments. In the third part, I describe the relationship between human rights and job policies set out in the 2013 *World Development Report*. Finally, I focus on the risks borrower countries face if they accept WB proposals without a thorough rights-based revision.

### 1. Workers' human rights

Traditionally, human rights are associated with civil and political rights, such as freedom from torture, the right to vote, religious freedom, the right to marry, freedom of speech, or the right to have an attorney in criminal trials. The 1948 UDHR, for instance, grants this group of rights, in articles 3 to 21. Similar rights have an expanded version in the 1966 ICCPR, sponsored by the UN.

Human rights also include economic, social and cultural rights. Most of them can be found in articles 22 to 27 of the UDHR, and the 1966 ICESCR is completely devoted to this kind of human rights. As of September 2014, the ICESCR has been ratified by 162 countries.<sup>1</sup> Some of them relate to protection against misfortune (such as the right to health, for instance), while some others enable people to develop their own life plans (the right to take part in cultural life offers an interesting example). In addition to that, some economic, social and cultural rights are clearly linked to labor relationships: these are workers' human rights.

The right to work bears extraordinary importance. According to article 6 of the ICESCR, everyone has the right to “the opportunity to gain his living by work he freely chooses or accepts”. All States who are parties to the Covenant “will take appropriate steps to safeguard this right”, including “policies [...] to achieve steady economic, social and cultural development and full and productive employment”, with due respect to “fundamental political and economic freedoms”. Harvey defines this right as “an individual entitlement to a freely chosen job paying wages capable of supporting a dignified existence”. It is not a right to keep a certain job (Harvey, 2002, pp. 371-373, 381). It was first recognised as a positive right in article 21 of the 1793 French Declaration of the Rights of Man and Citizen.<sup>2</sup> Full employment is an objective of the UN and its members, according to articles 55 and 56 of the Charter, which is a binding international treaty. Harvey emphasises that full employment is a situation where “adequately paid work is available to all job-seekers”. Yet many economists define it as the lowest unemployment level compatible with low inflation rates, the “non-accelerating-inflation rate of unemployment”. Therefore, the real goal for these economists is to keep inflation in check (Harvey, 2002, pp. 373, 405, 468), an objective that cannot override a State's legal obligations based on international human rights treaties.

As the Covenant's monitoring organ, the UN Committee on Economic, Social and

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1 Seven countries have signed but not yet ratified the Covenant: Belice, Comoros, Cuba, Palau, Sao Tome and Principe, South Africa and the United States of America. Updated information available at:

[http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-3&chapter=4&lang=en](http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-3&chapter=4&lang=en)

2 “*La société doit la subsistance aux citoyens malheureux, soit en leur procurant du travail, soit en assurant les moyens d'exister à ceux qui sont hors d'état de travailler*” (“Society owes maintenance to unfortunate citizens, either procuring work for them or in ensuring the means of existence for those who are unable to work”). The complete French text, available at: <http://www.conseil-constitutionnel.fr/conseil-constitutionnel/francais/la-constitution/les-constitutions-de-la-france/constitution-du-24-juin-1793.5084.html>

Cultural Rights (here in after, the Committee) has explained the content and scope of the right to work. According to the Committee's General Comment No. 18 (issued in 2005), this is an individual right. It is not an “absolute and unconditional right to obtain employment”, but it imposes several obligations on the States parties, including the obligation to take all necessary measures to achieve full employment, “as expeditiously and effectively as possible” (parags. 6, 19 and 20). Again, full employment is described as part of the right to work. The progressive realisation of this right implies that, in principle, no retrogressive measures should be taken (parag. 21). The Committee also underscores that in negotiations with international financial institutions, such as the WB, all States parties should “ensure protection of the right to work of their population”. In turn, countries who have a bearing in decision-making procedures at those institutions should promote policies and programmes that support the effective enforcement of the right to work in borrower States (parag. 30). Abouharb and Cingranelli (2007) offer a review of several studies on the effects of structural adjustment; they also perform their own empirically based study to show that structural adjustment programs affect the right to work, among other human rights. For instance, privatisation processes lead to massive layoffs and cuts in subsidies; trade liberalisation harms local industries while labor flexibilisation weakens workers' rights.

Article 6 of the Covenant, according to the Committee, must be read together with articles 7 and 8, which define conditions and features of “decent” work.<sup>3</sup> Such a job, for instance, must be done under safe and healthy working conditions, and it must ensure a remuneration enough to provide decent living, as defined by the Covenant, for the worker and his or her family. This includes all the rights enshrined in the ICESCR, from food to healthcare to housing and education, all of them included in art. 11. The Covenant also grants equal pay for equal work and the right to form a union, to join a union or to refuse to do so. Periodic holidays with pay and a reasonable limitation of working hours are also part of the “decent work” concept, since they are included in article 7 of the Covenant. In addition to that, ensuring the right to work provides also a means to foster other economic and social rights, because labor provides goods and services, increasing societal resources and national wealth (Harvey, 2002, pp. 466-467). As to the applicable measures, the usual Keynesian strategy is to foster labor demand in the private sector, as the Roosevelt administration did in the 1940s. According to Harvey, right to work advocates should take also into account a different strategy, discussed in the beginning of the New Deal: direct government job creation (Committee on Economic Security, 1935). Harvey (2007, pp. 122, 139) explains

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3      General Comment No. 18 (2005), parag. 8.

that government job creation is an adequate instrument to deal with job shortages; he adds it is “the only mechanism that provides a potentially justiciable means of securing the right”. The main obstacles to achieving full employment are job shortages, not structural barriers such as gender- or age-discrimination.

I now turn to the WB and its vision on human rights and on workers' rights, in order to get a deeper understanding of the 2013 edition of its *World Development Report*.

## **2. The World Bank and human rights.**

The International Bank for Reconstruction and Development, or “World Bank” was founded in the 1944 Bretton Woods Conference, where Allied nations designed the international financial order to be developed in the postwar period. As an international financial institution, the Bank raises most of its funds on global markets by selling bonds (World Bank, 2007, pp. 13, 44, 60). Its influence becomes apparent in the amount of resources it lends: between 15 and 25 billion dollars each year, while the UNDP expends less than 3 billion (Killinger, 2003, p. 74).

After 1980, international financial institutions, including the WB, design their recommendations along the lines of the so-called “Washington Consensus” (Ghazi, 2005, p. 46), an array of neoliberal tenets that foster “a shift in power from the state to the market” (Abouharb and Cingranelli, 2007, p. 3). Strict budget discipline, privatisations, trade and financial sector deregulation and cuts in social spending make the core of “structural adjustment”, the key policy to be implemented as a condition to receive loans. This is known as the “conditionality” system, or “policy-based lending”. Stabilisation, adjustment and liberalisation coexist with an explicit concern with poverty. The 1990 *World Development Report* proposes a two-part strategy: labor-intensive growth and a widespread provision of basic social services, including health, education and safety nets. Social lending increases, but the “market liberalisation” mindset keeps a dominant position (Kanbur and Vines, 2000, pp. 101-103). Poverty is not seen as a human rights issue, but just as an economic problem with social implications. The WB commits itself to find the appropriate technical solution, but it does not see human rights, and particularly socioeconomic rights, as a limit. Therefore, the institution explores and endorses different policy alternatives, but it does not check if those policies are consistent with human rights obligations assumed by borrower States. Political feasibility or fiscal sustainability are the defining criteria in designing policy recommendations; human rights are not. For instance, WB staff may offer

differential minimal wage levels for female workers as a way to improve their employability –as I describe below. Yet this proposal is openly in conflict with 1979 Convention on the Elimination of All Forms of Discrimination Against Women, and this may become relevant if the borrower country has ratified the Convention. In Section 3, I will analyse in more detail how the WB understands the relationship between human rights and policy options.

The WB is described today as a “teaching institution”. It conducts large-scale research and dissemination activities, yet some critics underscore it does not take into account other institutions' relevant work on development issues. In spite of their diverse national origins, most economists at the WB have been trained in the same environment: graduate schools of American universities (Fine, 2002). WB publications, in general, are self-referential, with no adequate review of previous works or local research. Publications keep the WB remarkably alive not only in the general public sphere, but also in the international market of academic journals (Sindzingre, 2004).

Yet some unsettling features also appear in the WB's institutional life. Internal reports have critically exposed “loan approval” culture, which may stimulate shallow evaluations (Fine, 2002, p. 208). Many WB projects lack effectiveness, as shown by Wapenhans (1992): over one-third of the projects had failed according to the institution's own criteria. Every failed project leaves a financial burden on the borrower country (Rich, 2009, pp. 27-28, 46). Sarfaty (2009, pp. 668-670), based on her research at the WB, sums up the institution's incentive system in a statement by one staff member: “The culture of the [World] Bank is getting a project to the Board [...] That's what gives you standing”. This may lead to an excessive concern on the Executive Board's approval for a project, regardless of the subsequent concrete results. Promotions, as Sarfaty explains, are based on the size (in money lent) and number of projects approved by the Board. In this context, safeguard policies (to protect the environment or indigenous peoples' rights, for example) become time-consuming obstacles that reduce opportunities for promotion. Project teams find reasons to exclude safeguard policies as much as possible in their preparation process. Moreover, project managers are allowed to put these policies in line with other objectives.

### **3. Human rights: the Bank's approach.**

The WB does not evaluate its projects according to human rights standards (Darrow, 2003, pp. 19, 51, 149). There is no formal consideration, for instance, of economic, social and cultural rights, such as the right to work, the right to social

security or the right to holidays with pay. It is not surprising, then, that poverty or unemployment are not analysed as human rights problems.

International human rights treaties, such as the 1948 UDHR or the 1966 ICESCR, only bind States; international organizations, such as the WB, cannot become parties to these instruments. In turn, Darrow (2003, p. 128) argues this does not mean human rights conventions are absolutely irrelevant for the IMF or the WB. As members of the UN system, both institutions are bound by the UN Charter and UN-sponsored human rights standards. Sarfaty (2009, pp. 658-659) argues that a clear consensus has not been reached among international law scholars on the WB's legal obligations under international human rights law. While the World Bank (2007, p. 40) defines itself as a specialised agency of the UN, under the Economic and Social Council's formal jurisdiction, the Council has not been able to exercise its supervisory function over the WB (Killinger, 2003, p. 70).

The WB holds a different conception. According to its view, human rights are beyond its mission. The WB, self-described as a technical institution with a non-political mandate, does not consider itself bound by international human rights instruments (Ghazi, 2005, pp. 82-83). The non-political mandate preserves the WB's apolitical and technical image, a necessary condition to raise its funds in capital markets. Killinger (2003, pp. 3, 158-159) argues the WB sees development as a technical and apolitical process.

The WB has always favored a restrictive interpretation of its Articles of Agreement. These Articles do not prevent the WB from extending its mission to include civil and political rights. Yet according to Killinger, the Articles do not require the WB to do it, except for a few human rights standards known as *ius cogens* (Killinger, 2003, pp. 69, 116, 167-168). The “political” prohibition in the Articles of Agreement are consistent with the principle of non-intervention. But this respect for a country's policy choices cannot be construed as a permission to violate human rights (Klein, 1999). At the same time, the General Counsel's office at the WB has gradually expanded the mandate to include social and political dimensions of development, anticorruption programmes and judicial reform projects (Sarfaty, 2009, pp. 658-659).

The WB has not released any Operational Policy on human rights, unlike other institutions such as UNESCO or UNICEF (Ghazi, 2005, p. 60). Human rights, according to Sarfaty (2009, pp. 647-648), is still a marginal issue at the WB. No policy aims to reduce the impact of any project on human rights. In engaging in policy dialogue with a member country, no requirement is made to consider the borrower's duties under international human rights law. In recent years, the WB

makes indirect references and carry out activities linked to human rights, though there is no acceptance of legal obligations based on these rights (Ghazi, 2005, pp. 82-83).

In the case of economic, social and cultural rights, the WB argues that its poverty reduction efforts and its development assistance help to create the conditions for the enjoyment of those rights and for the provision of basic services in education, health and nutrition. This, according to the WB, will turn the ideals included in the 1948 Declaration into a living reality. A 1998 WB report (*Development and Human Rights: the role of the World Bank*) endorsed the indivisibility of human rights, but highlighted the need of development as a necessary condition for the effective enjoyment of those rights (Ghazi, 2005, p. 60). The World Bank (1993) delivered this line of arguments in its official contribution to the 1993 World Conference in Human Rights. Yet Abouharb and Cingranelli (2007, pp. 137, 230-235) expose how structural adjustment programs sponsored by the IMF and the WB affect respect for human rights. Social and economic rights of the poor, in particular, suffer the hardest impact.

In the past twenty years, different groups inside the WB have attempted to mainstream human rights issues and standards in the institution's procedures and concerns. Sarfaty (2009, pp. 647-648) describes a series of internal meetings and reports between 2002 and 2006 which show a mounting interest in the issue of human rights, and an internal advocacy was becoming visible. However, all of these initiatives were not successful. Sarfaty explains, based on her interviews with WB staff, that the institution continues to neglect human rights obligations of borrower countries when it designs or assesses policies. Therefore, constitutional questions or human rights issues may become apparent only when policies are implemented. For instance, when the WB suggests imposing student fees on primary schools (Darrow, 2003, p. 254), this may conflict with the borrower country's constitutional clause on free education, or with an international commitment (e. g., if the country is party to the ICESCR, which requires, as a general rule, free elementary education in art. 13).

The current situation at the WB shows the prevalence of a particular conception of human rights: the one held by economists. According to it, human rights have largely an instrumental value. They are just another means to bring about development, economic growth or other objectives. Human rights implementation, as a consequence, must be pragmatic: it may even imply trade-offs when resources are scarce. States may make choices between one right or another, and people must endure this sort of illegitimate exchange. This differs from the vision held by many lawyers (even inside the WB), who give human

rights an intrinsic value. Under this approach, human rights must be enforced and protected because of their own value (Sarfaty, 2009, pp. 677-678).

The instrumental vision on human rights includes, of course, the set of workers' human rights. In the next section, I analyse how the WB tries to introduce human rights language in its most important publication, while keeping these rights in the narrowest interpretation possible. This goes along the WB's traditional approach to human rights, described by Killinger as "highly inconsistent", since it does not use accepted human rights standards nor accounts for the full scope of the rights involved (Killinger, 2003, p. 126).

#### **4. Workers' human rights: The World Bank vision**

Among its many publications, the *World Development Report (WDR)* has a prominent place. Every year, the *Report* clearly exposes the WB's current concerns and ideas in a particular area or issue. It expresses how concepts evolve in the WB and it also fosters that evolution (Sindzingre, 2004, p. 166). While it is not the only element used to design specific policies, the *WDR* offers a thorough explanation on the reasons to adopt certain policies in a certain field.

The *WDR 2013*<sup>4</sup> is entitled *Jobs*, and it deals with the relationship between employment and development. It stresses that "development happens through jobs", because "working is the most effective way out of poverty".

This edition has been received with generally positive remarks. It has been praised for its extensive review of the existing literature. The International Labor Organisation (ILO), in its official comment on the publication, describes this as a "major achievement". Moreover, the ILO appreciates the "close consultation" that the *WDR* team carried out with the ILO experts, and it states that the Organisation finds "much common ground with the report" (ILO, 2012).

At first sight, the *Report* offers a nuanced perspective. Some policies which are not part of the traditional "Washington Consensus" are seriously discussed. Many problems are only described, and no particular solution is favored. In many cases, the WB makes clear that there is no perfect, singular solution for certain problems. For instance, the report admits that budget deficits "are more or less worrisome depending on how quickly an economy is growing", or that "the

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4 For a complete reference, see World Bank (2012) in the Reference List at the end of this article.

independence of central banks needs to be weighed against the overall coherence of the country's development strategy”(WDR 2013, pp. 23, 294). Both statements seem compatible with a more open attitude toward non-orthodox economic thought. In commenting the 2008 financial crisis, the WB also concedes that “heated debates on the appropriate regulation of the financial sector” have been reopened (WDR 2013, p. 294). The ILO (2012) praises the report for departing from the “one size fits all” approach, and for not promoting the usual neoliberal position on labor market flexibility. In fact, the report acknowledges that “there is no consensus on what the content of labor policies should be”, because “views are polarised” (WDR 2013, pp. 26, 260).

Moreover, the report also makes clear references to human rights. This appears to be an important breakthrough, in light of the WB's traditional stance on human rights. Yet these mentions lose all their potential as the document goes on, since the notion of human rights becomes increasingly restricted.

The report proposes in its initial pages a broad, appealing normative definition of “jobs”: “activities that generate income, monetary or in kind, *without violating human rights*” (WDR 2013, p. 5; emphasis added). Any activity that affects human rights cannot be considered a job. “Basic human rights”, the report explains, are the “boundaries of what is unacceptable”. The same paragraph states that international human rights norms include the 1948 UDHR and the 1998 ILO Declaration on Fundamental Principles and Rights at Work<sup>5</sup>. The UDHR, as I explained before, includes various socioeconomic rights, with specific references to workers' rights. The ILO Declaration grants only four basic labor principles: “(a) freedom of association and the effective recognition of the right to collective bargaining; (b) the elimination of all forms of forced or compulsory labour; (c) the effective abolition of child labour; and (d) the elimination of discrimination in respect of employment and occupation” (art. 2).

This human rights-based definition entails several interesting consequences. For instance, there is no “job” when wages are not fair, or when working conditions are not safe and healthy, or when there are no periodic holidays with pay, since all of these rights are part of the UDHR (arts. 23 and 24). [...]

A few pages later, the publication starts to delineate a narrower approach. In a new definition, the WDR 2013 (p. 49) states that “activities [...] involving violations of *fundamental* human rights should not be considered jobs” (emphasis

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5 Available at <http://www.ilo.org/declaration/thedeclaration/textdeclaration/lang--en/index.htm>

added). There is no clear indication of which rights are deemed “fundamental”. Maybe some of the UDHR rights do not belong to this category. If this were the case, periodic holidays with pay, for instance, could be considered a “non-fundamental” right. A job that does not guarantee it could still be called a job.

Later on, the report redefines the concept of “basic human rights”, adopted in the initial pages. This new version encompasses the four “core labor standards” established by the 1998 ILO Declaration. It does not include all rights enshrined in the UDHR, but only two: “the right to work” and “protection from discrimination” (*WDR 2013*, p. 65). Fair wages, periodic holidays with pay, safe and healthy working conditions, among other clauses, are lost in the new definition.

Now the WB is ready for the final reformulation. By the end of Chapter 1, a new definition of “jobs” can be found: “activities that generate actual income, monetary or in kind, and do not violate *fundamental rights and principles at work*” (*WDR 2013*, p. 66; emphasis added). This is a clear reference to the 1998 ILO Declaration's title. In just sixty pages, the WB goes from a broad, inclusive reference to “human rights” as the normative basis for acceptable jobs, to the four “core labor standards” included in the 1998 Declaration. This is a remarkable change: in a few steps the WB moves the boundary between “acceptable” and “unacceptable” jobs, reducing the scope of applicable rights and shifting many “unacceptable” jobs into the “acceptable” realm.

In the rest of the report, only the 1998 ILO Declaration becomes a clear rule, the “global agenda of labor rights” (*WDR 2013*, p. 156), the core labor standards which “provide a floor” and “provide guidance on what is unacceptable” on the four distinct areas covered by the document (child labor, discrimination, forced labor and freedom of association and collective bargaining) (*WDR 2013*, pp. 25, 155, 297). According to Alston and Heenan (2004, pp. 230-232, 241-242), this four-core-standard system developed in the trade sphere, not in the labor movement; and it leads to a “watering down or even an undermining of the notion of international labor standards”. First, because this approach gives space to diverse and perhaps inconsistent definitions of these standards, drafted by different actors (public and private), which can choose among them according to their convenience. Second, because it concentrates on procedural labor standards, related to civil and political liberties. Economic and social rights lose relevance, affecting the indivisibility principle even beyond the labor realm. In addition to that, the singling out of certain standards as “core” explicitly differs from the traditional ILO system, where no standard had prominence. Third, because the Declaration favors promotion, dialogue and technical assistance over actual legal

enforcement.

In contrast, the WB report includes more than one explicit mention to property rights, with no restrictions. “Clear property rights”, including secure intellectual property rights, are advised, since “the link between respect for property and development is well established” (*WDR 2013*, pp. 292, 297). A similar phrasing appears in the 2005 edition of the *Report*, which stresses the importance of enforcing property rights (in particular, rights to land) and contracts, curbing crime and stopping uncompensated expropriations (World Bank, 2004, pp. 9, 79-80). An additional weakening feature is added to labor rights: while the rule of law “ensures the enforcement of contracts”, it includes only the “*progressive realisation*” of workers’ rights (*WDR 2013*, pp. 22, 292). In other words, not all labor rights must be respected at once. Some violations may be admitted in initial stages, until “progress” is made.

The right to work, granted in art. 23 of the 1948 UDHR, is mentioned in some passages (*e.g.*, *WDR 2013*, p. 156). Yet there is no explanation of its content or consequences. No reference is made to the UN Committee’s General Comment 18, which fleshes out the meaning and scope of the right to work. No policy options are discussed to promote or fulfill this right. There is no discussion of scholarly arguments about this right, such as the ones I described before.

Labor informality is not analysed as a human rights issue. Informal workers have no labor rights, such as those included in article 23 of the UDHR. Probably, they are also excluded from social security, which is granted in art. 22. The *Report* only considers the link between informality and low productivity. The economic analysis leaves no place for a rights-based review of unregistered labor. The concept of social security is also somewhat restricted. To remain eligible for unemployment benefits, for instance, the *Report* states that “a forthcoming attitude by jobseekers” is required (*WDR 2013*, p. 270). Access to a human right (though not described as such) appears to be conditioned to a certain psychological status. This approach seems hard to reconcile with the notion of universal human rights.

Even the notion of “progressive realisation” of workers’ rights<sup>6</sup>, included by the

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6 The “progressivity principle” is a well-known standard in the realm of economic, social and cultural rights. It comes from art. 2 of the ICESCR: States commit themselves to achieve every step possible in order to reach the most extensive enjoyment of these rights. In its General Comment 3, issued in 1990, the UN Committee on Economic, Social and Cultural Rights explains that “progressive realization” means that States have to move “as expeditiously as possible” towards the full enjoyment of every right included in the ICESCR. *See, e.g.*, Kalantry *et al.*, 2010,

WB in the report, is not taken seriously. The *Report* includes regressive measures among acceptable policy alternatives. Poland's pension reform is shown as an "example" of success in achieving sustainability. In that country, the WB explains, "old-age pension benefits adjust downward as life expectancy increases", making them "significantly lower than the average in the European Union". This "downward" adjustment is an explicit regression. According to the report, in 2012 retirement age was raised in 2 years for men and 7 years for women (*WDR 2013*, pp. 31, 302), marking a new regressive turn: people now have to work more years than they had to under previous regulations.

Health, nutrition or education are not defined as human rights, but as "development goals". The *Report* stresses that they are important as part of "human capital formation", because they "equip people for productive employment"; these goals "necessitate attention" from governments (*WDR 2013*, pp. 24-25, 296-297). The notion of human rights-based State obligations is absent when it comes to food, education or healthcare. Property rights, on the other hand, are part of the rule of law.

Protection against unemployment is a human right, enshrined in article 23 of the 1948 UDHR. Article 6 of the ICESCR, in turn, grants the right to work: unemployment relief measures are implicit. The *Report's* description of employment protection legislation does not include a rights-based analysis. The text only highlights that the overall impact of this legislation is quite modest. In particular, the WB stresses that "efficiency effects" are "relatively modest". Countries can choose a particular protection against unemployment, "depending on their normative preferences" (*WDR 2013*, pp. 260-262). Once again, the report tries to transform a human rights issue into a problem of policy choices. International obligations based on the UDHR and the ICESCR are wrongly reformulated as options which remain open to States.

Minimum wage is not considered as a right (*WDR 2013*, p. 270), or as an element of the right to work, or as a genuine limit to the State and employers in their contracting practices. On the contrary, it appears to be another economic instrument, just another tool that can be used for multiple purposes, not only (or not necessarily) to ensure workers' basic needs. For instance, the WB understands it can be used in combination with wage levels at public works programs, usually adopted as part of a social safety net. As the WB explains, "careful setting of the wage level can be a self-targeting tool" for potential beneficiaries (*WDR 2013*, p. 261). In other words, if public works programs' pay ranks below an already low

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pp. 267-268.

official minimum wage, only those in the greatest need would sign up for the programs. “Efficient” targeting would be achieved through minimum wage setting. This idea appears in previous *WDR* editions; one of them includes other proposals, such as creating “lower subminima for some groups (young workers) or for subnational labor markets” (World Bank, 2004, p. 2), and it offers this example: “erosion of the minimum wage in Mexico in the 1990s is credited with boosting female employment”. Affecting a human right may be seen as a positive measure. To improve the investment climate, the WB advises to implement different levels of minimum wage. This, in turn, implies different meanings of worker's dignity, according to article 7 of the ICESCR. When gender is one of the defining criteria for specific subminima, deeper human rights issues come to the surface. That previous edition also explains that when minimum wage is too high, it hurts the chances of low-skilled workers, because that wage is “much higher than their productivity potential” (World Bank, 2004, pp. 142, 144). According to *WDR 2013* (pp. 262-263), minimum wage levels are to be calculated according to its impact on efficiency levels, or to be assessed in terms of employers' interests, without considering the human rights dimension. Wage levels in general should be decided in “competitive conditions”, which implies that wages are just another price, and not a human right.

A similar approach appears with regard to protection for people with disabilities. It is included as a right in art. 25 of the 1948 UDHR, but the report has a different vision: disability benefits “can provide important income protection, but costs have mounted [...], and the benefits can create work disincentives among the general population” (*WDR 2013*, p. 273). The WB believes disability benefits may erode able-bodied workers' willingness to find a job.

Generally speaking, economic, social and cultural rights included in the 1948 Declaration are not mentioned or analysed. The broad reference to “human rights” in the first pages does not infuse the rest of the report, since the only binding standards come from the ILO's 1998 Declaration.

Migrant workers' rights are also given a superficial consideration. After outlining some of the problems associated with migration, the report describes the “diverse” views on what needs to be done: some favor the free movement of labor; another vision demands barriers and migration control; finally, other groups underscore “the moral imperative of protecting the human rights of migrants, no matter their legal status”. According to the *Report*, “none of these views suffices”, because they fail to “address the complex tradeoffs that migration poses for policy design” (*WDR 2013*, pp. 34, 310). This passage offers two main worrisome elements. First, it describes human rights protection as a “moral imperative”, leaving aside

the binding nature of applicable international legal instruments, such as the 1990 UN Convention on the Protection of the Rights of All Migrant Workers and Members of their Families<sup>7</sup>. Second, the report includes migrant workers' human rights on a bargaining table, where compromises are reached.

In analysing all labor policies, the WB adopts a pragmatic, case-by-case approach, where rights are not part of the defining criteria. According to this view, labor regulations should “at least partially address labor market imperfections without reducing efficiency” (*WDR 2013*, p. 27). A genuine rights-based regulation would not reformulate rights in light of efficiency, since the latter is not a right in itself. Human rights have to be harmonised between them. For instance, property rights must coexist with workers' rights; the right to work should not affect freedom of contract. Yet “efficiency”, as such, is not a human right, and human rights are not to be “balanced” with it. Quite to the contrary, efficiency is to be achieved without affecting human rights –just like crime reduction is to be achieved without affecting defendants' rights or guarantees. The WB holds a very different approach: labor rights are to be respected to the extent that “efficiency” is not affected.

Rights (in this case, workers' rights) are subject to a cost-benefit analysis, in a pragmatic approach. The report highlights that “calculations are different when the overall development impact is the guiding objective” (*WDR 2013*, p. 29). In other words, this time the WB tries to have a more comprehensive view, but the analytical framework remains the same: costs and benefits. According to its previous publications, the WB “generally supports measures that seek to improve or protect human capital, such as labor market interventions, publicly mandated unemployment or old-age insurance, and targeted income support”. These measures, according to the WB, “contribute to a country's solidarity, social cohesion and social stability” (World Bank, 2007, p. 170). Again, all these measures are justified by their positive impact, not by their relationship to human rights such as the right to social security. This pragmatic view gives rights an instrumental, not intrinsic, value<sup>8</sup>. Under this approach, efficiency is the only relevant criteria in defining labor and social policies. This matches the institutionally accepted meaning of economic, social and cultural rights. As explained before, this is the dominant view at the WB: the economic vision of human rights.

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7 The Convention is in force since 2003. As of September 2014, it has 47 member parties. See [http://treaties.un.org/Pages/ViewDetails.aspx?mtdsg\\_no=IV-13&chapter=4&lang=en](http://treaties.un.org/Pages/ViewDetails.aspx?mtdsg_no=IV-13&chapter=4&lang=en)

8 The Bank explains, for instance, that “India has learned how to live with cumbersome regulatory obstacles” in the labor market through “widespread noncompliance”. In other words, labor rights can be set aside in order to achieve efficiency; see World Bank, 2012: 313.

## The case of child labor

Even some elements of the 1998 Declaration appear under a restrictive approach. While the ILO Declaration requires the effective abolition of child labor, the WB report only rejects the worst forms of it. In a box entitled “*Not all child work is child labor*” (WDR 2013, p. 66), the report argues that ILO standards and the Convention on the Rights of the Child on this issue should not be taken too strictly: “international standards also provide countries with some latitude in setting allowed boundaries for involvement of children in productive activities (regarding ages or the definition of hazardous work, for example)”. The WB adds that “children work for diverse and complex reasons”; while “child labor may affect schooling, health, fertility and behaviour”, it is difficult to establish the links to these effects. Then it goes on to say that “the participation of children 12 years and older in family farming and small household enterprises can in some cases contribute to the acquisition of skills”. It is easy to see that the WB is going beyond the 1998 ILO Declaration. While article 2 of this document calls for the effective abolition of all forms of child labor<sup>9</sup>, the WB only rejects “child prostitution” and “harmful forms of child labor” (WDR 2013, pp. 14-15, 155-156). This implies that some child labor may be deemed acceptable. In General Comment 18, the UN Committee on Economic, Social and Cultural Rights establishes that States must adopt measures to prohibit labor by children under the age of 16 (parag. 24).

## 5. Risks for borrower countries

The WB's narrow conception of workers' human rights may influence borrower countries' vision through the negotiation process. If policies are informed by restrictive approaches, member nations may find themselves in contradiction with binding human rights treaties. WB-sponsored regressive measures and instrumental approaches to human rights may prove inconsistent with international obligations based on human rights law.

For instance, a loan to implement a pension reform may include a rise in retirement age, or a reduction of pension benefits, as it happened in the case of Poland, discussed before. In such a case, these regressive measures appear to be inconsistent with the progressivity principle. Another example can be found in conditional cash transfer programs. In these programs, access to welfare payments is subject to specific actions by the receivers. An official WB publication

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9 The Bank itself acknowledges this is the ILO position (WDR 2013, p. 156).

describes these conditions as “prespecified investments in the human capital [of children]” (Fiszbein *et al.*, 2009, p. 1). At the same time, these programs have been commended for being compatible with free market principles<sup>10</sup>. The WB has promoted conditional cash transfers as a tool to reduce poverty, and it has granted loans to finance them in various countries. In some cases, cash benefits may be subject to conditions that contradict the human right to equal treatment and nondiscrimination, granted in art. 2 of the UDHR and art. 2 of the ICESCR. Argentina's Universal Child Allowance program, partially funded by the WB through loan 7703-AR<sup>11</sup>, requires unregistered and unemployed workers to provide proof of their children's health checks and school attendance. This is not required to registered workers who are entitled to a family allowance under a preexisting system. No explicit justification, from a human rights perspective, has been offered for this differential. In any of these examples, if the borrower country is a State party to the ICESCR and its Optional Protocol<sup>12</sup>, affected people may file individual complaints<sup>13</sup> before the UN Committee on Economic, Social and Cultural Rights, based on the progressivity principle, or on the right to equal treatment.

Through the negotiation process, the WB's instrumental vision on human rights becomes part of accepted policies. There is a long “policy dialogue” between the WB and the borrower country in several phases (Ghazi, 2005, pp. 250-251; World Bank, 2007, pp. 78-80). All of them are expressed in diverse documents: policy framework paper, country strategy paper, etc., which outline a macro-economic strategy and its sectoral version. In the first stage (identification), feasible projects to sustain these strategies are singled out. In the second (pre-appraisal), the borrower country (usually with assistance from the WB) prepares a detailed report on the project's feasibility. After these two stages, the WB carries out its own assessment from four standpoints: technical soundness, institutional capacities at the borrower country, economical relevance for development, and financial ability to obtain further funding. When the WB's appraisal is complete, the formal documents for the loan are drafted through a series of discussions with the borrower country. The project is then submitted to the Board of Executive Directors. After its approval, the parties sign the loan agreement. The borrower

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10 This opinion is analyzed in Valencia Lomelí, 2008: 479.

11 Official text of the loan agreement, available at: <http://go.worldbank.org/VTF6V1O8W0>

12 The Optional Protocol to the ICESCR entered into force on May 5, 2013. As of September 2014, it has 15 State parties: Argentina, Belgium, Bolivia, Bosnia and Herzegovina, Cabo Verde, Ecuador, El Salvador, Finland, Gabon, Mongolia, Montenegro, Portugal, Slovakia, Spain and Uruguay; *see* [http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-3-a&chapter=4&lang=en](http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-3-a&chapter=4&lang=en)

13 Optional Protocol to the ICESCR, art. 2.

country starts then to put the project into practice. Evaluation is the last phase: after a project finishes, the WB's Independent Evaluation Group examines the results against the original purposes. The report is not public.

The “dialogic” process, of course, has a strong limitation: the final document has to be acceptable for the Board, where largest shareholders have a decisive weight. It seems difficult to move too far from the dominant institutional vision, namely, an instrumental, economy-centered conception of human rights.

## **6. Conclusion**

In the 2013 edition of its flagship publication, the WB articulates its view. The right to work and workers' rights are again diluted, subject to efficiency concerns and economic objectives. A foggy reformulation of human rights in the labor sphere puts borrower countries in risk of adopting policies which are inconsistent with legally binding international human rights obligations. In order to obtain a loan from the WB, a borrower country may weaken or curtail socioeconomic rights. A few examples can be summed up here. A rise in retirement age could be used to balance the national budget. A more tolerant policy on child labor could be a recommended way to attract investors and to increase poor families' income. Unemployment benefits could be reduced in order to encourage people to seek a new job, which in turn will reduce unemployment. Less protection of migrant workers would encourage them to return to their homes abroad, making some jobs available for native workers. A set of different minimum wage levels may be used as an incentive to hire women or young, unexperienced workers. Low wages in public works programs would be useful to keep a balanced budget and to ensure only people in the most desperate condition sign up for these programs. Each of these measures violates at least one human right. This, in turn, may trigger judicial challenges, which are available in many countries, to strike these policies down, usually through constitutional review. In addition to that, under the ICESCR Optional Protocol, formal individual complaints may be filed against borrower countries.

The absence of a strong human rights approach in the WB's policy design process yields these results. Until internal advocacy and international pressure lead to a change in this situation, borrower countries bear an important responsibility to ensure WB-sponsored policies are consistent with human rights standards and constitutional commitments. Civil society and social and political movements, both local and global, must also contribute to perform a thorough revision of World Bank proposals in light of civil, political, social, economic and cultural human rights. It is, once again, a crucial, unavoidable undertaking.

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