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Instituting Human Rights Due Diligence into World Bank Safeguard Policies

Background – the foundation for the Bank’s ‘Responsibility to Respect Human Rights’

As specialized agencies of the United Nations (UN), the institutions of the World Bank Group (‘the Bank’) operate as a set of independent international organisations, in accordance with their Relationship Agreements with the UN, and as permitted by Article 57 and 63 of the UN Charter. While these Relationship Agreements provide independence from the United Nations, they do not provide independence from international law.¹ As international organizations they themselves have an international legal personality, with commensurate international legal responsibilities.²

The members of the Bank are States with their own international human rights obligations and responsibilities, and these attach to their representatives as they operate within the Bank. Article 103 of the UN Charter mandates that States are required to respect the primacy of human rights over their other contractual obligations. This has been supported by Bank officials, when notably in 2000 the General Counsel stated that “the Bank cannot reasonably place its members in a situation where they would be violating their obligations under the UN Charter if they agree with a proposed action by the Bank”.³ On other occasions that Bank has also elaborated on the role they have to play in engaging with human rights.⁴ The UN Special Rapporteur on the Right to Adequate Housing, Raquel Rolnik, recently elaborated one of the ways that the Bank is required to go about operationalising its responsibilities in light of evolving international business and human rights standards. In Ms. Rolnik’s report to the XXII session of the Human Rights Council she called on the Bank to “incorporate the principles outlined in the Guiding Principles on Business and Human Rights...and to ensure that the safeguard policies are aligned with the Guiding Principles”. Referring to the conduct of development finance institutions, the

¹ Tilburg Guiding Principles on World Bank, IMF and Human Rights, para 6.

² Convention on the Privileges and Immunities of the United Nations (1946); and see the ‘Reparations for Injuries’ Advisory Opinion of the International Court of Justice (1949).

³ See the *World Bank Legal Papers* (2000). The specific UN Charter provision mentioned, Article 103, states that “In the event of a conflict between the obligations of the Members of the United Nations under the present Charter and their obligations under any other international agreement, their obligations under the present Charter shall prevail”.

⁴ In 2006 Roberto Dañino, the General Counsel internally released a “Legal Opinion on Human Rights and the Work of the World Bank”. In it Dañino made conclusions such as “the articles of agreement permit, and in some cases require, the Bank to recognize the human rights dimensions of its development policies and activities since it is now evident that human rights are an intrinsic part of the Bank’s mission”. He qualified this by adding that “human rights may constitute legitimate considerations for the Bank where they have economic ramifications or impacts, and it confirms the facilitative role the Bank may play in supporting its members to fulfill their human rights obligations”.

commentary to Guiding Principle 4 of UN Guiding Principles on Business and Human Rights ('the Guiding Principles') explains in direct terms the value of abiding by Ms Rolnik's recommendation:

Where these agencies do not explicitly consider the actual and potential adverse impacts on human rights of beneficiary enterprises, they put themselves at risk – in reputational, financial, political and potentially legal terms – for supporting any such harm, and they may add to the human rights challenges faced by the recipient State.⁵

The challenge therefore is for the Bank to come to grips with incorporating the human rights into their policies and practices. While an overall human rights policy is a necessity for the Bank to guide their integration of human rights considerations across all Bank activities, policies and procedures, Human Rights Due Diligence (HRDD) is one important way that the Bank can begin to operationalise its responsibility to respect human rights within the safeguard policies, and related structures.

Beginning to Operationalise Human Rights: Human Rights Due Diligence

Given that it is a bank, the basic features of many of the Guiding Principles will not seem especially foreign to the World Bank, since risk management and other common features of best practices for financial institutions share characteristics with some of the requirements of the Guiding Principles. There are innumerable ways in which the Guiding Principles could be incorporated effectively into Bank policies and practices. The section below covers two sets of information. The first details in broad terms some of the general principles of human rights which can provide a unique framework for analysis as compared to other approaches that can be taken to evaluate due diligence. The second section briefly covers the main elements of the Guiding Principles that could be used to constitute the broad contours of a HRDD framework for the Bank.

Why Human Rights Impact Assessments?

There are many forms of project and policy risk assessment systems and approaches. An effective human rights impact assessment (HRIA) – a key component of HRDD – is grounded in the substantive features of international human rights standards. This perspective provides a distinctive means of analyzing how projects can impact people, in ways that other forms of assessment do not – or not in sufficient depth.⁶ For instance, a human rights based approach to analyzing impacts is able to 'recognise poverty as injustice and include marginalization, discrimination and exploitation as central causes of poverty... A central dynamic of [a human rights based approach] is thus about identifying root causes of poverty'⁷.

⁵ UN Guiding Principles on Business and Human Rights, Commentary to Guiding Principle 4.

⁶ While it is too much to go into here, for an HRIA process to be fully cognizant of its own impact on human rights, the design of the assessment process itself must adhere to these following principles during design and implementation, to ensure rights are respected throughout the HRIA process, as well as during the design and implementation of the development project.

⁷ Kirkemann Boesen, J. and Martin, T. 2007. 'Applying a Rights-Based Approach: an inspirational guide for civil society'. Danish Institute for Human Rights.

The Nordic Trust Fund of the World Bank has reported that HRIAs have some original elements to them that other forms of assessment do not, which provide HRIAs with a distinctive added value. The following are value added elements of using HRIAs that the Nordic Trust Fund report highlighted:

- [Firstly,] the anchorage of HRIAs in international law introduces legal accountability and gives the recommendations of HRIAs particular force. This feature is connected to the value added advantage of HRIAs in their ability to enhance accountability for negative impacts on human rights through their anchorage in binding legal frameworks. Changing the language during the assessment to “rights-holders” and “duty-bearers” emphasizes the value-added of HRIAs and gives the recommendations that ensues from the assessment additional force and significance.
- Using the framework of international human rights law as a basis for an impact assessment lends both moral and legal legitimacy to the whole exercise since human rights have become the dominant language for social justice claims in many parts of the world. The framework is “a set of universally acknowledged and shared values and norms developed over 60 years and accepted by all States through ratification of international treaties.” (Walker 2009). By contrast, other types of impact assessments are not based on such a universally recognized and legally backed framework and, as such their conclusions may not be capable of making authoritative or legitimate value judgments about the adequacy or appropriateness of particular policies or interventions.
- Second, and related to the first distinguishing element is the fact that HRIA can draw upon a developed jurisprudence for concepts such as equality or participation, whether it emanates from international or domestic courts and tribunals, or from the findings and conclusions of expert bodies charged with monitoring implementation of the international treaties which form the foundation of HRIA. Flowing from this advantage is the potential for HRIA to draw on human rights institutions and networks to play a role in implementing the recommendations of assessment.
- Third, HRIAs differ from other types of impact assessments on the level of detail and specificity with which human rights issues are addressed and in the manner in which they are covered. For instance, the notions of equality, participation, transparency and accountability are fundamental principles of a human rights framework. Although other types of HRIAs often address some of these issues—particularly those of equality and participation—HRIAs do so more systematically and comprehensively.
- Fourth, HRIAs are universal and comprehensive—they typically consider economic, social and cultural aspects as well as civil and political ones since they are based on a legal framework that includes all rights—civil, political, economic, social and cultural. The fact that the framework incorporates these rights as interdependent and interrelated, reinforces a cross-sectoral approach in the assessment process. Other forms of assessment tend to be more narrowly

focused—PSIAs and ESIA for instance, can fail to capture the full range of factors that might prompt or exacerbate human rights risks involved in a particular intervention or activity.⁸

While one of the key strengths of adopting a human rights focus for impact assessment is the foundation in international treaties, the second point above draws attention to the important rich body of human rights interpretation to that HRIAs draw from, which lays out the substantive content and contours of a human rights assessment. This framework forms the unique approach to systematically and rigorously planning how to ensure respect, protection and fulfillment of human rights in a given context, or identify what has gone wrong and how it could be remedied. Some of these key human rights features include:

Indivisible, interdependence & interrelated⁹

Each human right is intrinsically linked to all other human rights. For instance, the human rights impacts of development project to construct a school may impact upon many rights that are additional to the right to education, such as the right to food (with the provision of lunches), the right to non-discrimination if it facilitates access to girls, children with disabilities, etc and the right to work, if the quality of education prepares children for appropriate forms of employment in the future. As such, an HRIA will analyse impacts of a project from the perspective that any impact on someone's ability to engage politically, socially or economically, will have several reverberations in other areas of their life. This holistic approach to the varied impacts from projects stems from the principle in human rights referred to as indivisibility, interdependence and interrelatedness. In this sense the impact on one human right is inseparable from impacts that will be felt on other human rights. In other forms of assessment, impacts will be examined separately and categories of an assessment are featured as independent autonomous concerns, ignoring the inter-related nature of impacts on the overall life of the person who will be affected. Only analyzing the full and overall impact that one seemingly isolated impact can have on someone's life will provide the information needed to fully recognize potential harms of a project to a person, and/or their family, and design appropriate mitigation and remedy plans.

Non-discrimination¹⁰

While there are differing definitions of non-discrimination within international human rights treaties, in the context of HRIAs the general premise is that no person affected by a development project should be excluded from risk assessment processes, or project benefits, for any reason. Mainstreamed throughout an HRIA, non-discrimination analyses the differentiated risks and benefits that affect various sections of society differently. Without fully applying this principle during an assessment, certain people may remain hidden in the overall analysis, and therefore also in subsequent elements of project design and

⁸ Nordic Trust Fund – The World Bank (2013) 'Study on Human Rights Impact Assessments: A review of the Literature, Differences with Other Forms of Assessments and Relevance for Development', p. 7-8. Available [here](#).

⁹ 1993 World Conference on Human Rights, Vienna, 'Vienna Declaration and Program of Action', Article 5.

¹⁰ Universal Declaration on Human Rights, Article 2; International Covenant on Economic, Social and Cultural Rights, Article 2; International Covenant on Civil and Political Rights, Article 2.

The Complexity of Poverty

We build solutions based on how we see and identify the world around us. If one argues that a man is hungry because he has no food, the solution is to give him food. If one argues that a man is hungry because he is unable to get sufficient food from his small plot of land, then the solution will imply increasing the amount of land available or its output. If we add in extra information, i.e. that the plot is too small because most of the village land was taken over by a government farm then the solution is different again. If we also identify that he is in fact more likely to be a she, and that being a woman she was not eligible to the government scheme of redistribution of land then the complexity deepens further. Simple solutions may thus scratch only the surface of the reality that makes up poverty.

Once we realise that poverty is complex and multifaceted, we also have to acknowledge the need to address poverty by solutions that can encompass this complexity. RBA has a lot to offer in this respect, in being able to encompass the multitude of civil political, social, cultural as well as economic causes of poverty.

[When using a Human Rights Based Approach to impact assessment], poverty is not merely about a lack of adequate resources and can therefore seldom be addressed adequately by material solutions alone. Even when resources are available, access to them is often denied to the poor because of who they are, where they live, or sometimes simply because of neglect and lack of concern. Such discrimination may be the result of social norms and values causing stigmatisation and marginalisation in communities or within households, or it may be the result of discrimination in policies or the product of legal inequalities, or inequalities in status and entitlements. In this perspective, poverty is something that is done to people. One might in fact argue that people are not poor, but become impoverished. [A human rights based approach to impact assessment] is based on the concept that impoverished people must be protected from illegal and unjust discrimination, dispossession, denial and disenfranchisement.

Excerpt from: Kirkemann Boesen, J. and Martin, T. 2007. 'Applying a Rights-Based Approach: an inspirational guide for civil society'. Danish Institute for Human Rights.

implementation. For example, in the case of people with disabilities consideration of their needs in resettlement activities, especially the design of resettlement housing, specific challenges with transportation, access to appropriate services, etc, are all vitally important in order to ensure their lives are not markedly impacted. Their situation might be very distinct from the situation of other people, who might not at all be impacted in the same way. Ensuring projects utilize a proper human rights impact assessment ensures that the impacts of a project on the diverse range of people in a community are taken into account, and that plans to address their specific context are proactively developed.

Respect, Protect, Fulfill¹¹

States are obliged to respect, protect and fulfill human rights. The duty to respect refers to the State ensuring that it is not undermining the rights people currently enjoy, while the duty to protect refers to the requirement that States have to protect people in their country, for example through regulation, from having their rights interfered with by third parties, such as businesses. Finally, the duty to fulfill requires States to take affirmative measures to make

sure that human rights are realised.

¹¹ UN Committee on Economic, Social and Cultural Rights, 'General Comment on the Right to Food'. Available [here](#)

An adequate HRIA will examine a project from the perspective of each of these facets to identify any of the possible ways that state entities and third parties involved (including private businesses) might interfere with the human rights of people impacted by a project. Similarly, an effective HRIA would ensure a full examination of the potential ways that a project may impact otherwise seemingly unrelated existing (or planned) government activities by the state that are intended to further the realization of human rights, such as education, food or health projects.

Participation¹²

Development agencies have well-developed policies and procedures for ensuring widespread participation of community stakeholders in their projects. Understanding participation as a component of human rights complements this understanding.

Participation must involve all community members. People that are marginalized within communities, such as indigenous peoples, women, children and disabled people have an equal right to participate and their concerns are often very important given their greater degree of vulnerability to the changes often brought by development projects. All measures that are necessary to facilitate active and full participation from these groups of people are required before participation processes can be considered effective.

In order for everyone to be able to participate, everyone must have the necessary information that is needed, and be able to understand it, to enable them to meaningfully engage. For example, key project documents need to be provided to communities in a form they can fully understand. In some cases, this may mean project information will need to be presented in person, orally, while in other cases it may refer to translation of written materials, or both. Access to experts may be required so that technical issues can be explained in simple common language. The projected impacts of a project should be explained in great detail to affected groups so they are fully aware of how the project will affect their lives, taking into account the variation in needs within affected groups. For example some members of society might have differing levels of literacy, or people with disabilities might need particular assistance which differs from other people. Similarly, options for compensation, resettlement, remediation or other related information must also be explained in common language, and affected people must be given time to consider this in the way they are most comfortable with, on a time frame that accommodates their normal processes for deliberation.

As much of this information as is available must be provided to affected communities *before project approval has been given by the State*. Presenting information to people after official decisions have been made gives them no real control over the process, or options to significantly alter the design of how the project will affect their lives. The provision of information using the internet does not meet the standard of participation necessary to realize the right to participation, since affected people often do not have access to the internet, have language barriers preventing them from knowing where to find appropriate information and also do not have the opportunity to engage in a deliberative dialogue about any queries

¹² For example, see Rio Declaration on Environment and Development (1992); Convention on the Rights of Persons with Disabilities and ILO Convention 169.

they may have concerning information presented on the web. A much more concerted effort is required to facilitate real and active deliberations and proper community consultation and consideration.

Participation is a continuous process. Participation as a feature of human rights is not only something that occurs once, for a set number of members of a stakeholder group, in ways deemed convenient or appropriate by project proponents. The right to be involved in matters that affect the lives of people is permanent, in the same way other human rights are also. An HRIA will examine whether participation is fully incorporated into all phases of a project cycle – not only for surveys or meetings at specific times – from pre-approval through to decisions about how to best end a project and design post-project plans.

Participation as a feature of human rights is not reduced to a set of activities that can be defined by project proponents. Affected stakeholders may voice their views about a project at any stage in any peaceful manner, and these contributions are also a form of participation, even if they are beyond the normal or appropriate spectrum of participation as considered by the project proponents.

Participation that involves any form of duress or coercion (physical or financial) is not a credible process. The presence, or threatened presence, of security forces, police, military or private security contractors, renders the process subject to duress.

Free, Prior and Informed Consent (FPIC) standards, long recognized in international human rights standards, and increasingly reflected in some development policies, contain much of the substance outlined above related to participation. In projects where affected people possess the right to FPIC, a critical feature of this right is that those people have the capacity to provide or withhold their consent, which are decisions upon which official project decision making is dependent.

Conduct and Result¹³

The obligation of conduct refers to the obligation to ensure actions are taken to respect, protect and fulfill human rights. Implementation of policies, laws and practices are typically analysed when considering whether appropriate actions have been taken (or prevented) and the right policy architecture is in place. The obligation of result is a requirement that these actions taken under the obligation of conduct deliver the intended outcome, namely the actual realization of human rights on a basis of non-discrimination. As such, the obligation of result measures the effectiveness of the actions and policies undertaken, and tests whether they have genuinely facilitated the realization of human rights. The obligation of result is necessary because development activities are futile if human rights themselves are not realized – no matter the degree of effort or intent. Applying this analytical perspective significantly strengthens an HRIA over other forms of impact assessment, as it brings together the efforts undertaken together with the outcomes of those efforts, allowing analysts to draw strong conclusions about how systems are working, or not working.

¹³ See UN Committee on Economic, Social and Cultural Rights, 'General Comment 3: The nature of States parties obligations'. Available [here](#)

Progressive Realisation and Minimum Core¹⁴

States are obliged to take steps towards ensuring that human rights within the category of economic, social and cultural rights (e.g. health, education, housing, food, water, work, etc), as well as additional human rights held by people with disabilities, are realized progressively. This obligation stems from the acknowledgement that the realization of these forms of human rights is subject to the available resources of a state. So states are required to take the necessary steps to ‘the maximum of its available resources’. There is a presumption against states taking any retrogressive steps, unless they can be fully justified in light of the totality of all rights, and considering the capabilities of a state in the form of its maximum available resources. Even when retrogressive steps can be justified, there is a minimum core that cannot be subject to any form of retrogression. As such, there is a ‘minimum essential level’ for each of these rights that a state is always obliged to guarantee. “For example, a State party in which any significant number of individuals is deprived of essential foodstuffs, of essential primary health care, of basic shelter and housing, or of the most basic forms of education is, prima facie, failing to discharge its obligations”.¹⁵

An adequate HRIA would apply this principle by examining if any retrogressive steps taken as a result of a development project can be justifiable according to the criteria above, and analyse whether a minimum core is being maintained throughout the life-cycle of the project in question. While the context varies from region to region, human rights analysis can ascertain a relative retrogression in living standards based on human rights indicators. The output of the assessment is then interpreted in accordance with the human rights principles outlined above to ascertain any violations of obligations and recommendation of modifications or remedies in line with all other rights and human rights principles.

Remedy¹⁶

A key feature of human rights is that where they have been interfered with, everyone has the right to have these violations properly rectified. Where development projects err there must be effective means of accountability to redress the situation. An adequate HRIA will seek to identify an easily accessible means of effective remedy and accountability when rights violations are identified. In the case of the Bank there is the Inspection Panel, and it is a critical feature of the Bank’s architecture. Further discussion about the role of the Inspection Panel in delivering adequate and effective remedy is important, but beyond the scope of this submission.

The Substance of HRDD Contained in the UN Guiding Principles

In full consideration of the broad human rights principles outlined above, greater detail of the characteristics of the component parts of HRDD, according to the Guiding Principles, are covered in this section.

¹⁴ See UN Committee on Economic, Social and Cultural Rights, ‘General Comment 3: The nature of States parties obligations’.

¹⁵ UN Committee on Economic, Social and Cultural Rights, ‘General Comment 3: The nature of States parties obligations’, para. 10.

¹⁶ Universal Declaration on Human Rights, Article 8.

According to the Guiding Principle 17, HRDD is required “in order to identify, prevent, mitigate and account” for “adverse human rights impacts”. Furthermore, the “process should include:

- assessing actual and potential human rights impacts,
- integrating and acting upon the findings,
- tracking responses, and
- communicating how impacts are addressed”.

To understand their full meaning, it is necessary to explore each of these features in turn, outlining in more detail additional information provided by the Guiding Principles.

Assessing Actual & Potential Human Rights Impacts

In tracing the broad scope of Guiding Principle 17 the text stipulates that HRDD should cover impacts that might be caused directly by project activities, as well as those “which may be directly linked to its operations, products or services by its business relationships”. Hence the scope is broad, applying to the Bank itself as well as to the project proponents on the ground – although the application will be different in each circumstance.

As outlined in Guiding Principle 18, HRDD will also vary in complexity commensurate with the size, degree of risk of causing severe human rights impacts, and nature and context of the situation. Assessments must consider “any actual or potential adverse human rights impacts” by connection to a project’s “own activities or as a result of their business relationships”. While no exact definition is provided for ‘business relationships’ a common reading of this stipulation would extend naturally to the usual relationships the Bank and project proponents have with home or host state government agencies, including police forces, banks, joint venture partners, private security agencies, humanitarian/civil society partnerships, etc.

The assessment process is required, by Guiding Principle 18, to draw on human rights expertise. As noted in the previous section, there are distinct benefits that arise from applying a human rights lens to impact assessment, relative to other forms of impact assessment. The second key element of Guiding Principle 18 requires that HRDD procedures involve “meaningful consultation with potentially affected groups and other relevant stakeholders”. This provision, coupled with the requirement from Guiding Principle 17 that states HRDD must be an on-going process, reflects some key features of the broad principle of participation detailed above.

Integrating and Acting Upon the Findings

Guiding Principle 19 requires that, “in order to prevent and mitigate adverse human rights impacts, business enterprises should integrate the findings from their impact assessments across relevant internal functions and processes, and take appropriate action”. The substance of this component requires that responsibility for addressing the human rights impacted be assigned to the “appropriate level and function” within the Bank.

The present accountability structure employed by the Bank does not commit Bank staff to ensure the outcomes and results of a project are satisfactory from a human rights perspective. A comprehensive independent human rights assessment should be a central component of assessing whether a project has been a success – factoring into the project appraisal the views of all affected people, with the application of human rights indicators to examine if the standards of living for all diverse groups of people have risen. Once evaluated in this way, the results of independent assessments and responsibility for ensuring they are properly managed and addressed should attach to the line Bank staff and supervisors who are responsible for approving and overseeing projects.

Integrating this kind of system would assist Bank management to properly identify personnel that are consistently delivering positive development and human rights outcomes for project beneficiaries, and

Human Rights within Development Policy in Practice – Germany Government Approach

German development policy aims to contribute to poverty reduction and sustainable development by improving the implementation of human rights obligations undertaken by Germany and the developing countries. To that end, German development policy provides country-specific support with a view to building capacities of state institutions to recognize and implement their human rights obligations while also empowering civil society to assert and monitor human rights...Human rights conditionality is then applied to official development assistance if state actors in partner countries perpetuate major and systematic human rights abuses...

The human rights based-approach puts the focus on the structural causes of poverty and social exclusion. It helps to make power relations within society more equitable, and contributes to sustainable poverty reduction....

Respect, protection and fulfillment of human rights are key characteristics of good governance and are therefore important prerequisites for effective poverty reduction, sustainable development and peace. Conversely, the curtailment and violation of human rights impede development. Human rights are an instrument of development policy, and their realization is one of its goals...

The World Bank, the IMF and the regional development banks consider an explicit human rights-based approach to be problematical, but these institutions are now increasingly turning their attention to the issue of human rights compliance as well. The BMZ endorses, promotes and advocates for this approach.

Excerpts taken from: BMZ - German Federal Ministry for Economic Cooperation and Development (2011), ‘Human Rights in German Development Policy: Strategy. BMZ Strategy Paper 4, 2011e. Available [here](#).

not just evaluate their performance based on the number of loans they approve, bringing the system more in line with elements of UN Guiding Principles 16 and 19. Overall, instituting greater internal accountability for human rights outcomes, and thereby evaluating the development benefits of Bank supported projects in this way would more concretely operationalise the intent behind the Bank's mandate. It would also significantly improve the Bank's efforts at realizing the role the Bank has to support states to respect human rights, as discussed in the respect, protect, fulfill section above.

To ensure Bank staff are properly equipped to adequately fulfill these responsibilities, another feature of Guiding Principle 19 requires that "internal decision-making, budget allocations and oversight processes enable effective responses to such impacts". Short-changing efforts to fully undertake these responsibilities would amount to a violation of this standard.

According to the second main feature of this Guiding Principles, the degree of influence and leverage that the Bank has over any given situation will be a factor in determining the degree of action that is required to be taken. Degree of influence and leverage stem from all features of relationships (not just within narrow contractual provisions) that the Bank has with governments, both recipient and donor, as well as others involved that benefit from a relationship and association with the Bank.

Tracking Responses

Tracking the effectiveness of how human rights impacts are being addressed is the central feature of Guiding Principle 20. In this sense this requirement is, to some degree, a way of operationalising the obligation of conduct, to ensure fulfillment of the obligation of result.

This Guiding Principle further stipulates that tracking effectiveness be based on "appropriate qualitative and quantitative indicators", in this context referring to appropriate human rights indicators.¹⁷ An important second additional element of this requirement is that this system of tracking "draw on feedback from both internal and external sources, including affected stakeholders", itself realizing elements of the participation standard detailed above.

Communicating how impacts are addressed

To ensure transparency concerning how human rights impacts are being addressed, according to Guiding Principle 21, the Bank and project proponents "should be prepared to communicate this externally, particularly when concerns are raised by or on behalf of affected stakeholders". In substance this means that the "form and frequency" of communication should be consistent with the human rights risk of any given project, in a manner that is "accessible to its intended audiences". Sufficient disclosure is also required to "evaluate the adequacy of an enterprise's response to the particular human rights impact involved", (which could otherwise be characterized as fulfillment of the obligation of result with regard to remedy).

¹⁷ There are many effective resources to assist in identifying the best system of human rights indicators. See for example: Office of the high Commissioner for Human Rights (2012) 'Human Rights Indicators: A Guide to Measurement and Implementation'. Available [here](#).

Communication, as constructed by Guiding Principle 21, must not “pose risks to affected stakeholders, personnel or to *legitimate requirements of commercial confidentiality*”. Legitimate requirements of commercial confidentiality must be weighed against the primacy of human rights of affected people – ensuring that all information necessary to fully evaluating human rights risks is provided in a timely fashion, in a format that is understandable to affected people. Typical procedures that facilitate both of these needs should be applied, cognizant of the primacy of human rights. An understanding of what information should be communicated to help safeguard the rights of affected people should be considered broadly, ensuring the fullest possible disclosure of information concerning any potential impacts and risks. Use of commercial confidentiality to prevent disclosure of impact assessments and similarly critical project documents would result in practices that do not meet this standard.