

***Unfinished Business:
Why Multilateral Development Banks Need to Carry Out Post-
Project Environmental Assessments***

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ABSTRACT

Multilateral development banks assist their member states by financially supporting project developments that members facing budget constraints are unable to achieve alone. However, because of the environmental concerns plaguing the developing world, banks are now considering environmental protection in their initial assessments of projects. By requiring states to submit environmental and social management plans, multilateral development banks ensure that they can assist states in their fight to enhance environmental standards and revive their economies.

This Note focuses explicitly on two multilateral development banks: the World Bank and the African Development Bank (AfDB). Projects begin with environmental protection assessments. Using Zimbabwe's water sanitation projects carried out by both banks as an example, their reports show that those assessments were only carried out in the initial portion of those projects. However, when reading through the final project reports, there is no mention of a post-project environmental assessment to determine whether those involved carried out the project in an environmentally conscious manner. This lack of a post-project assessment raises the question of whether those in charge of executing these projects did so in a manner consistent with the requirements articulated in the pre-funding stage. This is especially concerning when one considers that corrupt governments and other political issues affect the appropriate use of money allocated to projects.

The first part of this Note will introduce the environmental assessment procedures of two multilateral development banks, the World Bank and the AfDB, including the current implementation of those assessments. The second part will focus on Zimbabwe as the case study of this discussion, where there is a water shortage crisis. This crisis led the World Bank, AfDB, and the United Nations to implement water sanitation projects in different regions of the country. This Note's

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discussion will only focus on the projects implemented by the two multilateral development banks. The third part will discuss the progression of projects based on the implemented environmental assessments. The fourth and final part will introduce the legal basis for the argument that current environmental and social management plans are not complete without a post-project evaluation conducted in the project's final stages.

I. INTRODUCTION

Nothing puts a damper on one's morning routine more than a croaking tap. Imagine turning on your faucet, ready to wash up for the day, only to hear a dragged-out croaking sound with no water coming out. You soon find out that the problem is not just with that tap; there is a problem with every single tap in your household and those throughout the entire neighborhood. Whatever the issue is, you may think the solution will be available in minutes—hours at most. However, as the news spreads around your city—yes, the problem affects your entire city—you realize that it might be days before you get a drop of water flowing through the pipes to your household again. To make matters worse, you hear your city officials calling this problem *Day Zero*, and you are confused because you were never aware of a countdown to anything.¹

This is not the synopsis of an apocalyptic movie's poorly written plot, but a real-life situation currently affecting many people in developing and developed countries. So far, the countries that have or nearly experienced this phenomenon are South Africa,² Zimbabwe,³ Brazil,⁴ and Australia.⁵ The encroaching reality of climate change fuels

1. Day Zero is a day when water is shut off for an entire population (might be for a city or country as a whole), such that people have to go to a communal place to get water for their most basic needs.

2. Aryn Baker, *What It's Like To Live Through Cape Town's Massive Water Crisis*, TIME (n.d.), available at <https://time.com/cape-town-south-africa-water-crisis/> (last visited Apr. 30, 2021).

3. Patrick Kingsley & Jeffrey Moyo, *In Zimbabwe, the Water Taps Run Dry and Worsen 'a Nightmare'*, N.Y. TIMES (July 31, 2019), available at <https://www.nytimes.com/2019/07/31/world/africa/zimbabwe-water-crisis.html> (last visited Apr. 30, 2021).

4. *20 Lessons From São Paulo's Day Zero*, 50 LITERS (Nov. 10, 2019), available at <http://50liters.com/sao-paulo-day-zero-lessons/> (last visited Apr. 30, 2021).

5. Nicole Trian, *Australia Prepares for 'Day Zero' – The Day the Water Runs Out*, FR. 24 (Sept. 9, 2019), available at <https://www.france24.com/en/20190919-australia-day-zero->

the fear of a global *Day Zero* as water reservoirs dry up and rainy seasons become dryer. The most significant division created by climate change is how different countries handle the stress that accompanies this crisis. Developed countries have better access to resources, while developing countries suffer because of the lack of infrastructure to keep clean, safe drinking water running. The lack of funding and absence of the resources necessary to fix the problem only further exacerbate the issue.

States turn to multilateral development banks, from which they can borrow funds, to address the issues surrounding this lack of finance and resources. Multilateral development banks are responsible for providing monetary assistance to promote economic and social development in developing countries.⁶ The funding for these banks comes from member states' contributions and is used to fund their needs. However, this funding model affects the types of projects the banks focus on and how they carry them out. For example, the United States is a contributing member of the World Bank and five other multilateral development banks.⁷ As the World Bank's largest shareholder, the United States is one of the most influential members whose role affects the Bank's priorities and practices. Therefore, whenever the World Bank's practices seem to favor one group of member states over another, the disadvantaged group is more likely to alter those practices if it builds a coalition with the United States.⁸ This, however, is not an easy task. As a result, when major shareholders and contributors like the United States do not support a project, the World Bank is less likely to fund that project or change its practices to accommodate that project's demands. Of particular interest to this discussion is how multilateral development banks have incorporated an environmental focus in their pre-funding evaluation process.

The first part of this Note will introduce the environmental assessment procedures used by two multilateral development banks, the World Bank and the African Development Bank (AfDB), including what drove the change and the current implementation of those assessments.

drought-water-climate-change-greta-thunberg-paris-accord-extinction-rebe (last visited Apr. 30, 2021).

6. Rebecca M. Nelson, *Multilateral Development Banks: Overview and Issues for Congress*, CONG. RSCH. SERV. (Feb. 11, 2020), available at <https://fas.org/sgp/crs/row/R41170.pdf> (last visited Apr. 30, 2021).

7. Rebecca M. Nelson, *Multilateral Development Banks: U.S. Contributions FY 2000-2020*, CONG. RSCH. SERV. (Jan. 23, 2020), available at <https://fas.org/sgp/crs/misc/RS20792.pdf> (last visited Apr. 30, 2021).

8. Daniel L. Nielson & Michael J. Tierney, *Delegation to International Organizations: Agency Theory and World Bank Environmental Reform*, 57 INT'L ORG. 241, 254-56 (2003).

The second part will focus on Zimbabwe as a case study. Currently, Zimbabwe is facing a water shortage crisis. This crisis led the World Bank, AfDB, and the United Nations (U.N.) to implement water sanitation projects in different regions of the country. This discussion will only focus on the projects implemented by World Bank and AfDB. The third part of this Note will discuss the projects' progression based on the environmental assessments carried out. The fourth and final part will introduce the legal basis for the argument that the current environmental and social management plans are incomplete without a post-project evaluation conducted during the projects' final stages.

II. ENVIRONMENTAL ASSESSMENTS

A. The World Bank's Environmental Impact Assessment

Like all other multilateral development banks, the World Bank receives funding from its member states. Historically, the World Bank has funneled these funds into economic and development projects, with little to no concern for their environmental impacts.⁹ Environmental assessments of proposed projects were not a state practice until 1969, when the United States became the first country, and World Bank member state, to require environmental assessments in the National Environmental Policy Act (NEPA).¹⁰ However, as other member states grew concerned about the environmental disasters affecting Third World countries, intense financial pressure led the World Bank to change its financial programs assessments by adopting environmental safeguards.¹¹ These safeguards are collectively known as the Environmental Impact Assessment (EIA).

The main objective of EIAs is to assess the foreseeable environmental impacts of a proposed project for which a state is requesting World Bank funds.¹² When a member state makes a project proposal, regardless of the project's field, the Bank requires the proposal to show that the process will environmentally be sound and sustainable.¹³

9. Jose O. Castaneda, *The World Bank Adopts Environmental Impact Assessments*, 4 PACE INT'L L. REV. 241, 261; see also *id.* at 241.

10. Nicholas A. Robinson, *International Trends in Environmental Assessment*, 19 B.C. ENVTL. AFF. L. REV. 591, 593 (1992).

11. Castaneda, *supra* note 9, at 241.

12. *Id.*

13. THE WORLD BANK OPERATIONAL MANUAL: OPERATIONAL POLICY 57 (1999), available at <https://www.env.go.jp/earth/coop/coop/materials/10-eiae/10-eiae-7.pdf> (last visited Apr. 30, 2021).

This, in turn, helps the Bank improve its decision-making process and fulfill the overall objective of evaluating a proposed project's environmental risks and impacts. The assessment also includes examining the project in light of its alternatives, which may help identify ways to improve its design, siting, and implementation.¹⁴ Any alternative improvements must prevent, mitigate, or compensate for adverse environmental impacts and enhance positive impacts.¹⁵ When feasible, the World Bank will opt for preventative measures, as opposed to those that simply mitigate or compensate for an environmental impact.¹⁶ All of these factors—prevention, mitigation, and compensation—are considered at different stages of the EIA.

The EIA itself has four main stages. In the first stage, the Bank screens the project to evaluate the EIA's detail level and determine its applicability. In the second stage, the focus is on scoping. At this stage, the Bank assesses whether the proposal considered the most pressing issues and completed the terms of reference for the EIA. Following this, the environmental assessment report is prepared and completed—including identified impacts, evaluated alternatives, and designated mitigation measures. The final stage, which involves preparing an environmental management plan, can be part of the environmental assessment report or brought up as its own separate report.¹⁷

B. African Development Bank's Integrated Safeguards

The AfDB is a regional developmental bank comprised of fifty-four African or regional member states and twenty-seven non-regional member states. Some of the non-regional member states are the United States, United Kingdom, France, and China.¹⁸ The African Development Fund finances the AfDB, which has thirty-two contributing or donor countries.¹⁹

Like the World Bank, the AfDB requires regional member countries to show they will implement their projects in an environmentally sound

14. *Id.*

15. *Id.*

16. *Id.*

17. Robinson, *supra* note 10, at 593.

18. *Member Countries*, AFR. DEV. BANK (2021), available at <https://www.afdb.org/en/about-us/corporate-information/members> (last visited Apr. 30, 2021).

19. *About the ADF*, AFR. DEV. BANK (2021), available at <https://www.afdb.org/en/about-us/corporate-information/african-development-fund-adf/about-the-adf> (last visited Apr. 30, 2021).

manner, aligned with the Integrated Environmental and Social Impact Assessment (IESIA).²⁰ Specifically, the IESIA provides the regional member countries guidance on carrying out pre-funding environmental impact assessments.²¹ The Bank's staff members, who are in charge of reviewing and clearing the proposals, also use these guidance materials for the review-and-approval process and project supervision stages.²² The guidance materials are also subject to review and regular updates, requiring the Bank and the regional member countries to evaluate what they have implemented thus far and agree on any necessary adjustments.²³

All subsequent stages of the project apply the environmental and social assessment procedures. These phases are country programming, and project identification, preparation, appraisal, and implementation.²⁴ The main difference between the AfDB's IESIA and the World Bank's EIA is that the AfDB's guidelines specifically require member states to ensure that the environmental impact requirements from the pre-funding stage are adequately met.²⁵ To meet these standards, the Bank requires that environmental and social experts be available throughout the various stages of the project cycle—especially in Category 1 and Category 4 projects.²⁶ Category 1 projects require a full IESIA and Environmental and Social Management Plan (ESMP) because they are more likely to cause irreversible, adverse environmental and social harm. The displacement of more than 200 people is just one example of a Category

20. *Bank Group's New Guidance on Environmental and Social Impact Assessment to Boost Sustainable Development in RMCs*, AFR. DEV. BANK (2015), available at <https://www.afdb.org/en/news-and-events/bank-groups-new-guidance-on-environmental-and-social-impact-assessment-to-boost-sustainable-development-in-rmcs-15256> (last visited Apr. 30, 2021) [hereinafter *Bank Group's New Guidance*].

21. *Id.*

22. *Id.*

23. *Id.* The IESIA guidelines have been in place since 2001 and were last reviewed in 2015. One of the main changes to the guidelines includes guidance on providing specific support where critical environmental and social risks are concerned when carrying out projects in several priority sectors.

24. *AfDB Launches Revised Version of its Environmental and Social Assessment Procedures for 2015*, AFR. DEV. BANK (2015), available at <https://www.afdb.org/en/news-and-events/afdb-launches-revised-version-of-its-environmental-and-social-assessment-procedures-for-2015-15013> (last visited Apr. 30, 2021).

25. *Id.*

26. *Id.*; see also AFR. DEV. BANK, ENVIRONMENTAL & SOCIAL ASSESSMENT PROCEDURES BASICS FOR PUBLIC SECTOR OPERATIONS 6 (AfDB, 2011), available at https://www.afdb.org/sites/default/files/documents/environmental-and-social-assessments/esap_basics_guide_en.pdf (last visited Apr. 30, 2021).

1 project's adverse social impact.²⁷ Category 4 projects, on the other hand, are those "that involve subprojects which may result in adverse environmental and/or social impacts and for which the AfDB's investments are handled by a financial intermediary."²⁸

C. Summary of the Two Banks' Environmental Assessments

Although both banks require EIAs in the pre-funding stages, they do not consider the assessments in post-project evaluations or reports. The case study in Part III of this Note will show how, in funding a project in Zimbabwe, each bank implemented its own environmental assessments.

III. CASE STUDY: ZIMBABWE'S WATER SHORTAGE CRISIS

Zimbabwe is a landlocked developing country in Southern Africa. Like other landlocked countries, Zimbabwe faces social and economic difficulties because it lacks access to seaports and the world trade market.²⁹ To engage in importing and exporting, Zimbabwe relies on neighboring countries for transit routes, making trade expensive.³⁰

The country also underwent political reform following the overthrow of the late Robert G. Mugabe, whose administration is blamed for many of Zimbabwe's political issues.³¹ Some Zimbabweans also

27. AFR. DEV. BANK, *supra* note 26, at 6.

28. *Id.*

29. See Kacana Sipangule, *Trade Needs Ports*, DEV. & COOPERATION (Mar. 28, 2017), available at <https://www.dandc.eu/en/article/landlocked-developing-countries-struggle-high-trade-costs-and-depend-transit-countries> (last visited Apr. 30, 2021) ("Landlocked developing countries thus pay a high price for not having a sea-port of their own. Their trade depends on the ports of other countries. The worse transport links are, the higher the transaction costs rise. Moreover, many transit countries impose fees and road tolls that raise costs even further[.]").

30. See Michael L. Faye et al., *The Challenges Facing Landlocked Developing Countries*, 5 J. HUM. DEV. 31, 32 (2004) ("Landlocked countries not only face the challenge of distance, but also the challenges that result from dependence on passage through a sovereign transit country, one through which trade from a landlocked country must pass to access international shipping markets. While rivers were a more common form of trade transit . . . the principle of dependence on neighbors applies equally to the more modern transport modes of roads and railways. Such dependence can take several forms, many of which are less deliberate than . . . power politics.").

31. See Mwita Chacha & Jonathan Powell, *It's Been One Year Since Zimbabwe Toppled Mugabe. Why Isn't it a Democracy Yet?*, WASH. POST (Nov. 17, 2018), available at

blame President Mugabe's administration for the decline in the country's economic growth.³² The political unrest and economic failure of President Mugabe's administration largely contributed to the mismanagement of the infrastructure needed to supply clean water.³³ As a result, local municipalities and governments resorted to rationing the water supply to ensure that people had enough clean drinking water without draining the reservoirs.³⁴

Rationing the water supply only temporarily fixed the issue of the drying reservoirs. Climate change also led to drier rainy seasons, leaving the reservoirs to dry up without replenishment. Reservoir depletion led to the closure of treatment plants used to purify drinking water. Closing these facilities meant there was no remaining infrastructure to purify water, which led to other problems. Water pollution levels rose as a

<https://www.washingtonpost.com/news/monkey-cage/wp/2018/11/17/its-been-one-year-since-zimbabwe-toppled-mugabe-why-isnt-it-a-democracy-yet/> (last visited Apr. 30, 2021) ("Certainly, the 2018 elections were better than previous Zimbabwean elections, at least in the high voter turnout and calmly observed on election day. But it does not appear to have been a turning point toward democracy. Throughout the electioneering period, the ZANU-PF showed that it would still go to great lengths to ensure that it retained power, much like Mugabe and other dictators who manipulate elections.").

32. See Kingsley & Moyo, *supra* note 3 ("But the water crisis is only a microcosm of Zimbabwe's malaise. Years of mismanagement under Robert Mugabe, who governed Zimbabwe for 37 years until he was finally ousted in 2017, have left the economy in tatters.").

33. See *Urgent Water Supply and Sanitation Rehabilitation Project Phase 2*, AFR. DEV. BANK (2013), available at https://www.afdb.org/fileadmin/uploads/afdb/Documents/Project-and-Operations/Zimbabwe_-_Urgent_Water_Supply_and_Sanitation_Rehabilitation_Project_-_Phase_2_-_Appraisal_Report.pdf (last visited Mar. 13, 2021) ("In the late 1990s, Zimbabwe was among the top-ranking countries in the provision of basic water supply and sanitation services in sub-Saharan Africa. In the following decade, due to the declining economy and political crisis, the country's infrastructure collapsed with severe socioeconomic impacts reaching the worst level in 2008/9 resulting in the devastating cholera epidemic which took the lives of more than 4300 people.").

34. See *Urgent Water Supply and Sanitation Rehabilitation Project*, AFR. DEV. BANK (Oct. 2010), available at https://reliefweb.int/sites/reliefweb.int/files/resources/Full_Report_390 (last visited Mar. 13, 2021) ("The country has approximately 2200 dams, of which 213 are classified as large dams under the International Commissions for Large Dams (ICOLD) definition. Like the rest of the infrastructure, some of the dams are at risk due to the prolonged period without adequate maintenance.").

ramification of open defecation³⁵ and chemical dumping that affected the potability of groundwater.³⁶

The first, most dangerous consequence of the pollution was its devastating health effects. In 2008 and 2009, the country experienced one of the worst cholera epidemics in Africa, it claimed over 4000 lives and affected more than 98,000 people.³⁷ To address the problem, private individuals, local governments, and donors drilled boreholes, yet they faced two main issues with this solution. First, some of the boreholes required electricity to pump water. This was problematic because Zimbabwe relies primarily on hydroelectricity, which climate change has affected by depleting water levels in the reservoirs that serve as hydroelectricity sources.³⁸ As a result there were, and still are, many power cuts—when the local government cuts off electricity for an uncertain time—making it difficult to operate the boreholes.³⁹ The pipes also became rusty, making the water unclean and unsafe to drink,⁴⁰ but people resorted to drinking that water anyway because there were few better alternatives. As a result, in 2018, Zimbabwe experienced another cholera outbreak that claimed at least fifty victims and affected the health

35. See *Zimbabwe: Water and Sanitation Crisis - Government Mismanagement, Corruption Risks Lives of Millions*, HUM. RTS. WATCH (Nov. 19, 2013), available at <https://www.hrw.org/news/2013/11/19/zimbabwe-water-and-sanitation-crisis> (last visited Apr. 30, 2021) (“Harare’s water and sanitation system is broken. The government isn’t fixing it . . . In many communities, there is no water for drinking or bathing, there is sewage in the streets, there is diarrhea and typhoid, and the threat of another cholera epidemic. The water shortage and the lack of functioning indoor toilets or community latrines sometimes gave them no choice but to defecate outdoors.”).

36. See Jane Cohen, *Troubled Water - Burst Pipes, Contaminated Wells, and Open Defecation in Zimbabwe’s Capital*, HUM. RTS. WATCH (Nov. 2013), available at <https://www.hrw.org/report/2013/11/19/troubled-water/burst-pipes-contaminated-wells-and-open-defecation-zimbabwes> (last visited Apr. 30, 2021) (“Despite government statistics pointing to a low rate of open defecation in urban areas, people we interviewed said they often resorted to open defecation because they were unable to flush their toilets as a result of lack of water, or their toilets were clogged and overflowing, rendering the toilets unusable.”).

37. Jeremy Youde, *Don’t Drink the Water: Politics and Cholera in Zimbabwe*, 65 INT’L J. 687, 690-91 (2010).

38. Problem Masau, *Zimbabweans Work at Night to Beat Hydropower Shortage as Drought Bites*, CLIMATE CHANGE NEWS (July 2019), available at <https://www.climatechangenews.com/2019/07/24/zimbabweans-work-night-beat-hydropower-shortage-drought-bites/> (last visited Mar. 13, 2021).

39. Zimbabwe Peace Project, *The Water Crisis Fact Sheet No. 2, 2019*, RELIEF WEB (2019), available at <https://reliefweb.int/report/zimbabwe/water-crisis-fact-sheet-no-2-2019> (last visited Mar. 13, 2021).

40. *Id.*; see also Liliiosa Pahwaringira et al., *The Impacts of Water Shortages on Women’s Time-Space Activities in the High-Density Suburb of Mabvuku in Harare*, 4 J. GENDER & WATER 65, 66 (2017).

of more than 8000 people.⁴¹ Safe drinking water remains a concern as more water purification plants shut down.

The water pollution crisis also caused a second problem: waiting hours in queues to use the boreholes threatens the safety of women and children.⁴² When it gets dark, women and children must choose between staying line and waiting their turn, or returning the next day. This predicament is not an easy choice since returning home without water means another day without drinking water and food. On the other hand, staying in the queues late at night exposes individuals to the potential to be attacked on the walk home, as the boreholes are often neither conveniently nor located within a short distance of local homes.⁴³

The water pollution crisis also affects education. When there is no water, children miss school because they do not have food to eat, clean uniforms, or enough drops of water to clean themselves. As a result, they must choose between waiting in queues to get water, thereby missing school, and attending school where they risk being turned away or isolated because of poor hygiene.

A. Responsibility and Resources

In addressing these problems, one needs to understand both who has either claimed or actually has responsibility for solving these problems, and the means by and extent to which those parties have solved it thus far.

i. State Level

Section 77 of the Zimbabwean Constitution stipulates that “[e]very person has the right to safe, clean and potable water . . . and the State must take reasonable legislative and other measures, within the limits of the resources available to it, to achieve the progressive realisation of this right.”⁴⁴ Although the Constitution recognized the right to clean water, two issues hindered the government’s ability to address the problem. The first issue is that there too many institutions were involved in the water

41. *Cholera-Zimbabwe*, WORLD HEALTH ORG. (Oct. 5, 2018), available at <https://www.who.int/csr/don/05-october-2018-cholera-zimbabwe/en/> (last visited Mar. 13, 2020).

42. Zimbabwe Peace Project, *supra* note 39.

43. People taking over public boreholes and selling water to others is also a concern.

44. Constitution of Zimbabwe Amendment (No.20) Jan. 31, 2013, ch. 4, art. 77 (Zim.).

and sanitation sector, making it quite difficult for the government to determine who was accountable.

The government assigned the Ministry of Water Resources Development and Management with overall responsibility for the water and sanitation sector. However, the involvement of other government ministries made it difficult to reach a consensus when implementing policies. For example, the Zimbabwe National Water Authority (ZINWA), Ministry of Local Government, Urban and Rural Development—which, as the name suggests, is also responsible for water supply in urban areas—and the Department of Environmental Health, housed under the Ministry of Health and Child Welfare, share responsibility for water supply to rural areas.

The second problem is with the phrase “within the limits of the resources available to it.” As of 2019, the World Bank reported that Zimbabwe was experiencing extreme poverty due to an El Niño-induced drought and a recent cyclone, nicknamed *Idai*, that worsened the drought when it devastated the provinces that account for 30% of the country’s agricultural output.⁴⁵ Because of its current debt to the World Bank, Zimbabwe’s lending program is inactive, leaving the country to rely on financial aid from other governments and intergovernmental organizations (IGOs) to fund projects geared toward fixing the infrastructure.⁴⁶

ii. International Level

The U.N. expressed its commitment to water sanitation when the United Nations General Assembly (GAOR) declared “safe and clean drinking water and sanitation a human right essential to the full enjoyment of life and all other human rights.”⁴⁷ This resolution further called for states and international organizations to work together by “provid[ing] financial resources, capacity-building and technology transfer[s] . . . to developing countries, to scale up efforts to provide safe, clean, accessible and affordable drinking water and sanitation for all.”⁴⁸ In terms of accessibility, the World Health Organization (WHO) requires that the clean water source be “within 1000 meters [about two-thirds of a mile] of the home and collection time should not exceed [thirty] minutes.”

45. *The World Bank in Zimbabwe*, THE WORLD BANK (Aug. 2020), available at <https://www.worldbank.org/en/country/zimbabwe/overview> (last visited Mar. 13, 2021).

46. *Id.*

47. G.A. Res. 64/292, at 2 (July 28, 2010).

48. *Id.*

This means that even if the boreholes drilled in the Zimbabwean communities met the sanitation levels, the current situation level in Zimbabwe would still fail to meet the “physical accessibility” criteria of the right to water and sanitation.

One of the ways the U.N. has collaborated with states to work towards realizing this right is by setting sustainable development goals (SDGs). Of specific relevance to this Note is SDG 6, which aims at “[e]nsur[ing] the availability and sustainable management of water and sanitation for all.”⁴⁹ SDG 6’s goals include achieving universal and equitable access to safe and affordable drinking water for all by 2030. Target indicator 6.3 of SDG 6 stipulates that the U.N. plans to “improve water quality by reducing pollution, eliminating dumping and minimizing [the] release of hazardous chemicals and materials, halving the proportion of untreated wastewater and substantially increasing recycling and safe reuse globally.”⁵⁰

Zimbabwe has carried out infrastructure-renewal projects to ensure that currently available water sources are treated to provide people with greater access to safe drinking water, even though reservoirs are drying up. One such project is the Urgent Water Supply and Sanitation Rehabilitation Project (UWSSRP). The next two parts of this Note will explore the project’s background, current performance, and the results this project has purportedly achieved. The bulk of the discussion will focus on accountability, transparency, and compliance with the project’s budget and terms as stipulated by the funding organizations.

IV. THE BANKS’ PROJECTS

A. AfDB: UWSSRP

i. Background

The UWSSRP began in 2013 due to the work and support of the Zimbabwe Multi-Donor Trust Fund (Zim-Fund), a group of donors who came together in 2010 to support the Government of Zimbabwe’s management of activities geared toward recovery and development.⁵¹

49. *Ensure Availability and Sustainable Management of Water and Sanitation for All*, DEP’T U.N. ECON. & SOC. AFF. (2020), available at <https://sustainabledevelopment.un.org/sdg6> (last visited May 2, 2021).

50. *Id.*

51. Catherine Benson Wahlen, *ZimFund Project to Improve Water Supply and Sanitation in Six Zimbabwean Municipalities*, SDG KNOWLEDGE HUB (Apr. 23, 2013),

Zim-Fund launched the project, and the AfDB managed it with a focus on increasing the “availability, quality and reliability of water, restor[ing] wastewater treatment capacity and reduc[ing] water-borne related diseases.”⁵² Zim-Fund implemented the project in six major Zimbabwean urban areas: Chitungwiza (Harare), Chegutu, Kwekwe, Masvingo, and Mutare. By restoring the treatment capacity of the water sources in these urban areas, the project also aimed to “reduce pollution to the raw potable water sources and hence reduce [the] cost of the water treatment chemicals used.”⁵³ At the conclusion of this project, these urban areas should have received refurbished pumping equipment and treatment plants. This would increase the facilities’ usage by 4% and improve the quality of the water supply and sanitation sector services.⁵⁴

ii. Rehabilitation of Water Supply and Sewerage Infrastructure

The rehabilitation part of the project was concerned with the restoration, replacement, and/or refurbishment of existing water facilities and infrastructure. This included the “rehabilitation of the main outfall and trunk sewers, booster pump stations, treatment plants to achieve at least preliminary treatment, sludge digestion and disposal and repair of sewers blockages.”⁵⁵ To ensure that the solutions were long-term, the project’s rehabilitation phase required water supply and sanitation departments of urban municipalities to be equipped with the treatment plants, equipment, and transportation necessary to improve the quality of

available at <http://sdg.iisd.org/news/zimfund-project-to-improve-water-supply-and-sanitation-in-six-zimbabwean-municipalities/> (last visited May 2, 2021).

52. *Urgent Water Supply and Sanitation Rehabilitation Project Appraisal Report*, AFR. DEV. BANK (Oct. 2010), available at <https://docplayer.net/amp/3580405-Urgent-water-supply-and-sanitation-rehabilitation-project-country-zimbabwe-project-appraisal-report-october-2010.html> (last visited May 2, 2021) (“The Program Oversight Committee (POC), comprising of contributing donors and representative of the GOZ, is to oversee the implementation of the Zim-Fund, ensure alignment and coherence of the activities with the Government’s recovery program and development programmes, endorse project briefs and proposals and recommend to the Bank the allocation of funding to the approved projects. The Operations Manual will guide the processing and implementation of the project financed by the Zim-Fund developed for the Fund. In line with the procedures, the proposed project’s brief was approved by the Zim-Fund Policy Oversight Committee (POC) on 25 October 2010, which led to the preparation and appraisal of the project in detail.”).

53. *Id.*

54. *Id.*

55. *Id.*

operation, maintenance, service, and delivery.⁵⁶ While carrying out these tasks the AfDB was aware of the environmental impact, as evinced by discussions about taking measures to replace destroyed vegetation and protect surrounding areas when disposing of discarded equipment and materials.⁵⁷

iii. Promotion of Improved Sanitation and Hygiene Education

The sanitation and hygiene component focuses on teaching community residents about ways to improve hygiene levels to reduce the chance of contracting water-borne diseases, improving the overall health of the environment. Additionally, there would also be a focus on educating the community on common ownership of the infrastructure and power supply equipment to reduce the number of incidents connected to vandalism and theft. Educating the community with this information would mitigate environmental degradation.

iv. Institutional Support

The project also aimed to ensure that water supply and sanitation sector staff improved their knowledge of how to operate equipment and maintain facilities. Proposed training modules focused on educating the staff on how to reduce non-revenue water, introduce efficient operation and maintenance techniques, and “recommend the most suitable financial and billing programs together with the necessary hardware for running the [water supply and sanitation] services.”⁵⁸

v. Project Management and Engineering Services

Project management and engineering focused on compliance and accountability issues by ensuring that a Project Implementation Entity (PIE) was responsible for assessing the different stages of the project. This component included assessments and supervision of the

56. *Id.*

57. *Urgent Water Supply and Sanitation Rehabilitation Project*, *supra* note 34, at 13 (“The environment and social management plan will entail how the upgrade should be undertaken such that the sludge is not disposed of in a manner that will contaminate the soil and groundwater resources. Included in the mitigation measures would be the prevention of nuisance in terms of dust, noise, vermin, and odor.”); *see also Urgent Water Supply and Sanitation Rehabilitation Project Appraisal Report*, *supra* note 52.

58. *Id.* at 10.

specifications, drawings, rehabilitation works, and design. There was also an annual audit of the project, carried out by an independent audit firm.⁵⁹

Per these four points of focus, as provided by the AfDB, Zim-Fund implemented the UWSSRP in two phases.⁶⁰ Phase I ran from December 2011 and focused on rehabilitating water supply and sewer infrastructure and facilities, as stipulated under the first component. Phase II focused on ensuring the long-term survival of the effects of Phase I, i.e. emphasizing community education and the institutional support of the staff in the water sanitation and supply sector.

vi. Integrated Environmental and Social Impact Assessment

Zimbabwean environmental legislation does not require project management to conduct EIAs when implementing rehabilitation programs to existing water sources and wastewater facilities.⁶¹ However, per the Bank's protocol, the AfDB carried out an EIA because the UWSSRP was a Category 2 project—that is, likely to have a detrimental social and environmental impact on the construction site.⁶² It might appear useless to carry out an EIA for a project to correct activities that have resulted in environmental pollution and other kinds of damage.⁶³ However, the Bank found the assessment necessary because of the potential environmental harm that could occur without proper management.⁶⁴

In carrying out the ESMP, the Bank had several objectives. The first was to ensure that there would be continuous improvement of social and

59. *Id.* at 10.

60. *Portfolio of Projects Financed Under the ZimFund*, AFR. DEV. BANK (Nov. 2015), available at <https://www.afdb.org/en/topics-and-sectors/initiatives-partnerships/zimbabwe-multi-donor-trust-fund/portfolio-of-projects> (last visited May 2, 2021).

61. *Environmental and Social Management Plan*, AFR. DEV. BANK (Oct. 2012), available at <https://www.afdb.org/fileadmin/uploads/afdb/Documents/Environmental-and-Social-Assessments/Zimbabwe%20-%20Urgent%20Water%20Supply%20and%20Sanitation%20Rehabilitation%20-%20ESMP%20Summary.pdf> (last visited May 2, 2021).

62. *Id.* at 2. See also AFR. DEV. BANK, *supra* note 6 (stating that Category 2 projects are those that are “likely to induce detrimental, site-specific environmental and social impacts that can be minimized by including mitigation measures in an ESMP and an Abbreviated Resettlement Action Plan (ARAP), when applicable.”).

63. *Id.* (“It is worth noting that the project mainly involves correcting activities that harm the environment, such as discharging untreated wastewater into the natural environment; pollution through sewage leaks; drinking water leakages, etc.”).

64. *Id.*

environmental performance throughout the project's implementation. This objective focused on reducing negative impacts and enhancing positive effects during the facilities' rehabilitation process. Fulfilling this objective would also help meet the second objective, which focused on ensuring that the project does not cause any immitigable social and environmental problems. The third objective was to outline mitigation measures that could increase the management of social and environmental impacts associated with the project. The fourth objective focused on ensuring that the rehabilitation or upgrades of the water and wastewater infrastructure would be conducted according to the Bank's guidelines throughout the project. The fifth objective was to comply with national and local legislatures. Lastly, the Bank aimed to identify the roles, responsibilities, and management costs of social and environmental protection.⁶⁵

Although temporary and localized, some of the project's negative impacts involved environmental concerns about soil and groundwater contamination if wastewater treatment was inadequate.⁶⁶ Additionally, because the rehabilitation process and wastewater treatment required de-sludging, environmental pollution was still likely to occur.⁶⁷ To mitigate the occurrences of these issues, the AfDB proposed measures like "local chlorination . . . to address potential recontamination and ensure delivery of safe water, develop appropriate sludge management measures including increased re-use of the sludge and [use of] vacuum trucks to remove impounding sewage and other contaminants spillages."⁶⁸ To ensure that the project implemented these measures, the Bank relied on the local agencies to closely monitor the execution of these tasks.⁶⁹

65. *Id.*

66. *Environmental and Social Management Plan*, *supra* note 61, at 4 ("Expected negative environmental and social impacts . . . Soil and groundwater contamination from the storage of fuel and chemicals and wastewater flows or leaks during the rehabilitation of pumping and treatment facilities and replacement of pipes.").

67. *Id.*

68. *Id.* at 5.

69. See *Urgent Water Supply and Sanitation Rehabilitation Project Appraisal Report*, *supra* note 52; see also *Urgent Water Supply and Sanitation Rehabilitation Project*, *supra* note 34 (it is not exactly clear which "agency" was in charge of implementing this. The appraisal report simply mentioned that a Project Implementing Entity (PIE) and Procurement Agency (PA) would oversee the implementation of the project on behalf of the Government of Zimbabwe [pg. viii]).

B. The World Bank: The Zimbabwe National Water Project

i. Background

The World Bank founded the Zimbabwe National Water Project (National Water Project) to “improve access and efficiency in water services in selected growth centers and to strengthen planning and regulation capacity for the water and sanitation sector.”⁷⁰ The Zimbabwe National Water Authority (ZINWA) implemented the project, which was financed by the Zimbabwe Reconstruction Fund, a multi-donor trust fund established by the World Bank’s Board of Executive Directors.⁷¹ In implementing the project, ZINWA focused on the watersheds, also known as drainage basins—Madziwa, Nembudziya, Zimunya, Mataga, Lupane, Guruve, and Gutu—located near the seven major rivers in the country.⁷² A watershed, or drainage basin, is a land area that moves rainfall or water from melted snow to a river, lake, or other larger body of water.⁷³

The main reason for the program’s implementation was the Zimbabwean government’s belief that the country’s growth centers were missing water supply and sanitation support.⁷⁴ Zim-Fund, the financing agency through AfDB, provided water supply and sanitation support to large towns via the UWSRRP discussed above; the U.N. International Children’s Education Fund (UNICEF) funded projects for rural areas through its Water, Sanitation, and Hygiene (WASH) program.⁷⁵ Like the

70. *Zimbabwe National Water Project: Resettlement Policy Framework*, THE WORLD BANK (Feb. 2018), available at <http://documents.worldbank.org/curated/en/804611521551293477/pdf/RPF-Zimbabwe-National-Water-Project-P154861-World-Bank-DISCLOSED.pdf> (last visited May 2, 2021) [hereinafter *Resettlement Policy Framework*].

71. *Zimbabwe Reconstruction Fund (ZIMREF)*, THE WORLD BANK (Feb. 2018), available at <https://www.worldbank.org/en/programs/221imbabwe-reconstruction-fund> (last visited May 2, 2021).

72. *Resettlement Policy Framework*, *supra* note 70, at 7.

73. Howard Perlman, *Watersheds and Drainage Basins*, U.S. GEOLOGICAL SURVEY (2003), available at https://www.usgs.gov/special-topic/water-science-school/science/watersheds-and-drainage-basins?qt-science_center_objects=0#qt-science_center_objects (last visited May 2, 2021).

74. THE WORLD BANK, INTERNATIONAL DEVELOPMENT ASSOCIATION PROJECT APPRAISAL 3 (2016), available at <http://documents.worldbank.org/curated/en/247961467989558934/pdf/PAD1569-PAD-P154861-Box396267B-PUBLIC-National-Water-Development-Project-PAD.pdf> (last visited May 2, 2021) [hereinafter PROJECT APPRAISAL].

75. *See id.*

UWSRRP, the National Water Project was divided into different components: Growth Center Water and Sanitation Improvement; Technical Assistance; and Project Management.⁷⁶

ii. Growth Center Water and Sanitation Improvements

With \$14.04 million USD allocated to this component, the aim was to finance investments in UWSSRP for the seven watersheds.⁷⁷ This amount was based on the short-, medium-, and long-term investment needs of these areas following the evaluation of their designs and preliminary environmental impact assessments.⁷⁸

iii. Technical Assistance

To assist various institutions associated with this project, \$5.11 million USD was allocated “to ensure the sustainability of investments and improve the overall planning, regulation, and reform of the sector in line with the National Water Policy.”⁷⁹ The \$5.11 million USD was allocated to five subcomponents: (A) National Water Resources Master Plan (\$3 million USD); (B) Technical Assistance for a Water Services Regulator (\$0.25 million USD); (C) Technical Assistance to Local Authorities (\$0.4 million USD); (D) Institutional Strengthening of ZINWA (\$1.25 million USD); and (E) Training (\$0.21 million USD).⁸⁰ Subcomponents (A) and (B) were set up in response to the Zimbabwean government’s request.⁸¹ Subcomponent (C) was set up to finance three key activities proposed by two ministry departments.⁸² Subcomponent (D) financed a “skills audit and strategic gap analysis,” which ZINWA

76. *Id.* at 6.

77. *Id.*

78. *Id.* (“Investments will include expanding and rehabilitating water treatment works, boreholes, transmission mains, storage and service reservoirs, distribution systems, connections, and meter installation and replacement.”).

79. PROJECT APPRAISAL, *supra* note 74, at 7 (noting that the covered institutions are both national, such as ZINWA, and local institutions that cover the municipalities in the seven catchment areas).

80. *Id.* at 7-8.

81. *Id.* at 7.

82. *Id.* (“Three key areas were identified as priorities: (a) separating ZINWA’s utility and water resources functions, (b) improving commercial orientation, and (c) improving customer focus and poor stakeholder management. This subcomponent will also help ZINWA to carry out sanitation needs assessment for growth centers, including developing options for sanitation in these areas.”).

requested to help identify the areas that would strengthen the department.⁸³ Subcomponent (E), the Training plan, was necessary because it assisted ZINWA, the Ministry of Environment, Climate, and Water, and other associated ministry departments to ensure the sustainability of the project.⁸⁴

iv. Project Management

As the implementing agency, ZINWA was in charge of setting up a Project Implementation Unit to be the secretariat of the different ministers under Subcomponents (A)-(C) of the Technical Assistance Component, and to manage the Growth Center WSS improvements under Component 1.⁸⁵

v. Environmental Impact Assessment

Like the UWSRRP, the National Water Project had negative environmental impacts that were temporary and site-specific, making it a Category B project under the World Bank's Environmental and Social Management Plan (ESMP).⁸⁶ One of the major negative environmental impacts of the project was the effect on aquatic life because some of the water supply would be from bodies of water with fish and other river species.⁸⁷ Another concerning negative environmental effect, although limited in scale, was soil erosion and water pollution.⁸⁸ A significant difference between the World Bank's ESMP and the AfDB discussed earlier is that the ESMP has a specific agency that can be held accountable for implementing the project consistent with the mitigation requirements. ZINWA took responsibility for ensuring compliance with the ESMP

83. *Id.*

84. PROJECT APPRAISAL, *supra* note 74, at 7. The other ministry departments are the Ministry of Rural Development and Preservation of Cultural Heritage (MRDPCH); the Ministry of Local Government, Public Works and National Housing (MLGPWNH), and the Ministry of Agriculture, Mechanization, and Irrigation Development. Local authorities would also be covered in this training.

85. *Id.* at 8.

86. *Id.* at 23; *see also Environmental and Social Management Plan (ESMP): Weather Surveillance Radar*, THE WORLD BANK (2017), available at <http://documents1.worldbank.org/curated/en/801501521170801261/pdf/Environmental-and-social-management-plan-for-weather-surveillance-Radar-in-Punjab-Lahore.pdf> (last visited May 2, 2021) (“‘Category B’ as per the World Bank OP 4.01, [are] the activities under the project [that] would involve small scale constructions with temporary and reversible environmental and social impacts.”).

87. *Id.*

88. PROJECT APPRAISAL, *supra* note 74, at 24.

guidelines, during both the project's internal implementation phases and the contractors' winning bid to carry out other parts of the project.⁸⁹

C. Summary of the Two Projects and Introduction to International Environmental Law

The pre-funding evaluations and appraisal reports of each project show that both banks followed the guidelines set within their ESMPs. Such transparency and attention to detail help shield multilateral-development banks from criticisms that they are still funding "dirty" deals masquerading as environmentally sound projects.⁹⁰ However, the post-project evaluations do not discuss whether the environmental impact assessments conducted before funding and implementation were in fact carried out, or whether the allocated funds were adequate to complete the ESMP requirements.

V. INTERNATIONAL ENVIRONMENTAL RULE OF LAW AND ITS APPLICATION TO THE ENVIRONMENTAL IMPACT ASSESSMENTS

A. Introduction to the International Environmental Rule of Law

The U.N. defined the international environmental rule of law as having three related components: "[l]aw should be consistent with fundamental rights; law should be inclusively developed and fairly effectuated; and law should bring forth accountability not just on paper, but in practice—such that the law becomes operative through observance of, or compliance with, the law."⁹¹ These three components are interdependent, and the environmental rule of law requires their implementation.⁹² The same weakness affects whether the parties contributing the most to environmental harm will consider changing their business conduct or investment ideals.⁹³ Due this weakness, the U.N.

89. *Id.*

90. See Nielson & Tierney, *supra* note 8, at 260 ("After the 1987 reforms, the Bank increased the number of environmental loans. But many NGOs questioned whether these new loans were in fact 'environmental,' rather than traditional sector loans with new labels.")

91. BRUCH ET AL., ENVIRONMENTAL RULE OF LAW: FIRST GLOBAL REPORT 8 (2019).

92. *Id.* at 8.

93. See *id.* ("Often environmental ministries are among the weakest ministries, with comparatively fewer staff and less political clout; yet the political economy often drives

found it particularly important to pay close attention to the environmental rule of law and its enforcement.

There are two main reasons why enforcement of the environmental rule of law is paramount. First, even though many countries have voluntarily implemented environmental protections laws and regulations, such voluntary measures are insufficient to address the range of environmental issues faced throughout the globe.⁹⁴ Additionally, voluntary measures are inadequate because countries choose different caps for the scope of their regulations or differ on the amount they are willing to sacrifice to ensure environmental protection for the global community. The second reason for enforcing the environmental rule of law is that legal goals and their objectives are easier to satisfy if there is an established, broadly recognized rule of law.⁹⁵

B. Application to the Environmental Impact Assessments of Multilateral Development Banks

In cases of projects in developing countries where the U.N. and the international community invest to ensure achieving Sustainable Development Goals (SDGs), environmental rule of law is the key part of their realization. Considering Zimbabwe, for example, projects such as UWSRRP, National Water Project, and WASH are geared towards ensuring that the population has access to clean drinking water, thereby satisfying the goals of SDG 6: Clean Water and Sanitation.⁹⁶ To achieve this globally, the U.N. argues that “[m]ore efficient use and management of water are critical.”⁹⁷ When policy, regulation, or law fulfills the three interdependent components of the environmental rule of law, efficient use and management are more likely.

environmental violations. Why should companies invest in pollution control technologies if there is little likelihood of enforcement, the penalties are too low and can be incorporated as a cost of doing business, and there is widespread non-compliance?”).

94. *Id.* at 9.

95. *Id.* at 10.

96. *Sustainable Development Goal 6*, U.N. (2019), available at <https://sustainabledevelopment.un.org/sdg6> (last visited May 2, 2021).

97. *Progress of Goal 6 in 2019*, U.N. (2019), available at <https://sustainabledevelopment.un.org/sdg6> (last visited Mar. 13, 2021).

C. Analysis of the Multilateral Development Banks' Environmental Impact Assessments Through the Lens of the Environmental Rule of Law

The following analysis evaluates whether the EIAs of multilateral development banks, such as the World Bank and the AfDB, fulfill the interdependent components of environmental rule of law. Paying particular attention to SDG 6, the analysis below will determine whether the current application of these assessments is in line with the U.N.'s contention that environmental rule of law is the key to achieving SDGs. It is also important to note that this analysis focuses on elements that are interdependent components, all of which must be satisfied for the MDBs' assessments to be consistent with the environmental rule of law.

i. Consistency with a Fundamental Human Right

The employment of EIAs is consistent with fundamental human rights. The Universal Declaration of Human Rights (UDHR) articulates and enumerates the rights and freedoms to which every human being is "equally and inalienably entitled."⁹⁸

Article 3 of the UDHR states that everyone has, among other things, the right to life.⁹⁹ While this right does not specifically indicate a right to or in the environment, the U.N. proclaimed in the Declaration of the United Nations Conference on the Human Environment that "[b]oth aspects of man's environment, the natural and the man-made, are essential to his well-being and to the enjoyment of basic human rights [and] the right to life itself."¹⁰⁰ The fact that the international community has promulgated laws and enforced international agreements that address the connection between human rights abuses and the deterioration of the environment further supports this declaration.¹⁰¹

98. See *Universal Declaration of Human Rights*, U.N. (2015), available at https://www.un.org/en/udhrbook/pdf/udhr_booklet_en_web.pdf (last visited May 2, 2021) ("The extraordinary vision and resolve of the drafters produced a document that, for the first time, articulated the rights and freedoms to which every human being is equally and inalienably entitled.") [hereinafter UDHR].

99. *Id.* at art. 3.

100. U.N. Conference on Environment & Development, *Rio Declaration on Environment and Development*, U.N. Doc. A/CONF.151/26/Rev. 1 (1973) [hereinafter U.N. Conference on Environment & Development].

101. See *Right to Environment of Human Right*, LAWTEACHER (Dec. 2020), available at <https://www.lawteacher.net/free-law-essays/human-rights/right-to-environment-of-human-right.php?vref=1> (last visited May 2, 2021) ("Of late, the worldwide society has

In the case of multilateral development banks, the pressure from member states for policies addressing the environmental impacts of projects help recognize this right. As mentioned earlier, the United States was the first country to make EIAs a part of its project-review process in 1969. By 1992, the U.N., in the Rio Declaration on Environment and Development, embraced the environmental impact assessment as a requirement for states to use when implementing projects that posed a threat to the environment.¹⁰² Since states began requiring assessments for projects funded by their governments, it seemed logical to require multilateral development banks to do the same, especially since some of the states contribute significantly to the banks' funds.

Therefore, because states recognized the right to enjoy the environment as a fundamental human right, requiring multilateral development banks to carry out EIAs is also consistent with fundamental human rights.

ii. Inclusive Development and Fair Effectuation

As with any international agreement or law, the participation of the entire international community is necessary, especially by those state and non-state entities that will be most affected or bear the most burden. Due to the conception that SDGs are generated with the developing world in mind, it is important that the U.N. includes the leaders and representatives of those states in the development of the environmental rule of law. An example of this inclusivity was at the first Africa Colloquium on Environmental Rule of Law in Nairobi, Kenya, during which judges and other prominent law enforcement figures and the legal field agreed on the enforcement and implementation of the environmental rule of law.¹⁰³ Of significant importance to this discussion is that the agreement developed a roadmap by which the African countries present at the Colloquium

amplified its alertness on the relationship between environmental dilapidation and human rights abuses.”).

102. U.N. Conference on Environment & Development, *supra* note 100, at Principle 17 (“Environmental impact assessment, as a national instrument, shall be undertaken for proposed activities that are likely to have a significant adverse impact on the environment and are subject to a decision of a competent national authority.”).

103. Green Economy, *Environmental Rule of Law Critical to Achieving Inclusive, Sustainable Development in Africa, Concludes Regional Colloquium*, U.N. ENV'T (Oct. 16, 2015), available at <https://www.unenvironment.org/news-and-stories/story/environmental-rule-law-critical-achieving-inclusive-sustainable-development> (last visited May 2, 2021).

would implement Principle 10 of the Rio Declaration on Environment and Development.¹⁰⁴

Like the second component of the environmental rule of law, Principle 10 of the Declaration calls for active participation and inclusivity from the international community when dealing with environmental issues.¹⁰⁵ Effectuating the rule of law fairly comes from successful, inclusive development of the law, where the people affected by the enforcement of that law have the means to seek redress for grievances and remedy for violations.¹⁰⁶

Here, the multilateral development banks' pre-funding and proposal assessments concerning environmental impact show inclusivity in development. For example, the AfDB, in agreement with its regional member states, implemented the IESIA out of concern for the burden they bear as a result of the effects of climate change. In its implementation of the IESIA, the Bank's guidelines provided a process to periodically review the assessment plan to address any inconsistencies and implement improvements. This kind of review satisfies the inclusive development prong because as the bank figures out what works in practice, states implementing the plan in their proposals will be a part of its expansion. Concerning fair effectuation, multilateral development banks ensure that the states have access to information concerning implementing these assessments by publishing the guidelines so that all the member states are aware of the procedure when requesting funds.

iii. Accountability in Practice

Accountability ensures that liability is imposed when there is a violation of law, and the affected individuals seek redress or remedy. This is accountability—on paper, in practice, and as an interdependent component of the environmental rule of law. It would be futile to develop and implement this rule, or any other, if the rights and responsibilities associated with it cannot be enforced by the judiciary or are

104. *Id.*

105. U.N. Conference on Environment and Development, *supra* note 100, at Principle 10 ("Environmental issues are best handled with the participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes.").

106. *See id.* ("States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided.").

unaccountable to the legislature.¹⁰⁷ Additionally, because lax compliance is one of the major criticisms of international law, it is paramount to the environmental rule of law's enforcement that accountability is given as much weight, if not more. This is especially true when considering the adequacy of any law or policy implemented adhering to its standards. However, one of the major hindrances to accountability in practice is the lack of reliable data on policy and compliance.¹⁰⁸

The multilateral development banks' current implementation of EIAs fails to satisfy the standards of accountability in practice, in part because there is no clarity about the consequences an implementing agency will face if the assessment's requirements are not met. As seen in the example of the UWSSRP, the AfDB's assessment of the project's negative environmental impacts simply alluded to the fact that an agency would be in charge of ensuring mitigation. While it is understandable that, in funding the projects, the MDBs do not interfere with the governments' sovereignty to oversee the implementing agencies, international accountability guidelines are necessary for three reasons.

First, the banks fund these projects using contributions from other member states, some of which are non-regional members that contribute to funding more than one multilateral development bank. Since those contributions come from the state's taxpayers, it is necessary to enact regulations that ensure accountability if the funds allocated to the project are inappropriately used.

Secondly and closely tied to the use of allocated money is the concern that, while some degree of corruption exists in every government, it is more crippling in some than others. During the time the AfDB was funding the UWSSRP in 2013, for example, Zimbabwe was ranked the thirteenth most corrupt country in the world.¹⁰⁹ This was a huge concern for donors, since corruption could affect the effectiveness of financial donations narrowly intended to improve water sanitation and availability. This ranking is also concerning when one considers that the

107. Alexandra Dapolito Dunn & Sarah Stillman, *Advancing the Environmental Rule of Law: A Call for Measurement*, 21 SW. J. INT'L L. 283, 291 (2015).

108. *See id.* ("Policymakers and practitioners struggle to demonstrate the effectiveness of efforts aimed at strengthening the rule of law partly because there is a lack of empirical data on policy and compliance effectiveness.").

109. *See* Jane Cohen, *Troubled Water*, HUM. RTS. WATCH (Nov. 2013), available at <https://www.hrw.org/report/2013/11/19/troubled-water/burst-pipes-contaminated-wells-and-open-defecation-zimbabwes#page> (last visited May 4, 2021) ("Officials from donor agencies and international organizations in meetings and discussions with Human Rights Watch have repeatedly cited endemic corruption as key to the inability of donor interventions to improve the availability of water and sanitation services.").

UWSSRP began in 2011 and Phase I was purportedly completed; in 2019, however, approximately two million Zimbabweans in the capital still struggled to access clean water.¹¹⁰

The third reason why the current implementation fails to satisfy the accountability requirement is that there is no transparency in post-project environmental impact assessments. Neither the World Bank nor the AfDB provided access to post-project evaluations that show whether the mitigation requirements suggested during the pre-funding/proposal phase were implemented. This was also the case with projects in other member states that addressed issues beyond water sanitation. As mentioned earlier, the lack of reliable data is one reason why accountability is a major concern in the enforcement of the rule of law. In the case of Zimbabwe, such a lack of post-project data will perpetuate the same issues that caused the initial water sanitation crisis. In such cases accountability is important to stop corruption in the allocation of funding, and the sustainability of the project's results.¹¹¹ Without post-project environmental impact assessments, there is no guarantee that issues designated as temporary and other local negative impacts will not become long-term issues. For example, if groundwater contamination is a perceived environmental impact of the project but limited to the site of the implementation of the project, a post-project assessment would help show whether the implementing agency followed the instructions in monitoring the use of chemicals at the site to avoid or reduce contamination.

VI. CONCLUSION

In conclusion, multilateral development banks' current implementation of the EIAs is inadequate to meet the goal of the international environmental rule of law concerning the achievement of SDGs. Although the implementation satisfies the first two components, it fails miserably at accountability in practice. Because accountability is closely tied to the sustainability of projects in developing countries, multilateral development banks need to strengthen their current project

110. See Kingsley & Moyo, *supra* note 3 (“More than half of the 4.5 million residents of Harare’s greater metropolitan area now have running water only once a week, according to the city’s mayor, forcing them to wait in lines at communal wells, streams, and boreholes.”).

111. See Cohen, *supra* note 109 (“For example, many residents informed Human Rights Watch that donor agencies had drilled boreholes to help relieve water scarcity during the 2008/2009 cholera epidemic and that these boreholes provided communities with an important source of water. According to residents, many boreholes were not maintained, and now a significant number of them are either broken or contaminated.”).

evaluation policies. It is not clear whether they already practice post-project assessments and fail to publish them, or simply do not conduct them. If the former, then transparency is needed to show the contributing countries that their funds were used based on the budget allocations shown in the proposal documents. If the latter, then the current implementation is incomplete and illusory, showing that multilateral development banks, especially the World Bank, have not changed their business conduct away from the days when accusations of funding “dirty” projects that negatively impact the environment were more common.

Not only will this help the banks ensure that the funds they allocate are used for its intended or stated purposes, but it will also help them appear more accountable to their member states. This is especially important when reporting the progress that the banks have made to help the international community achieve SDGs to contributing and other member states. It will also help the international community acquire more reliable data on how to improve development and SDG projects in a manner that does not worsen environmental issues in the developing countries. This will mean more than just relying on reports from the benefiting countries because these countries could simply take pictures of an isolated “success” and a few testimonials to pass them on as completed projects. Unless multilateral development banks follow through with post-project assessments, the application of the international environmental rule of law is incomplete and insufficient to fulfill the objective of achieving the Sustainable Development Goals.