



## Forum Syd – Individual UPR Submission – Sweden – May 2010

1. The Swedish government embraces a limited view of Multilateral Development Banks' (MDBs) human rights responsibility, as witnessed by a recent government paper on “aid in support of democracy” which claims that  
     “the statutes of the multilateral development banks stipulate that only economic aspects shall be considered when taking decisions.” (Government of Sweden 2008a, p 71)
2. However, it is now increasingly being recognized that this article was not intended to legitimize human rights violations, but only to restrain World Bank staff from interfering with member states internal political affairs, and to avoid favouring one political party over another.
3. Furthermore, it is ironic that owners like Sweden should make reference to the statutes, since intervention into domestic affairs, including the proscription of specific economic policies, has been a hallmark of the World Bank for decades, and continues to the present.
4. But more important in connection with Sweden’s position is the fact that human rights are not something which a state or an international institution can freely choose to adhere to or to disregard. Human rights are not unjustified political intervention in a country’s domestic affairs but international binding law.
5. Fortunately, the World Bank has already recognized (partially) that it has human rights obligations by incorporating human rights considerations into three of the Bank's safeguards, namely those regarding indigenous peoples rights (WB Operational Policy 4.10, January 2007, and IFC Performance Standard No 7, April 2006), and labour rights (in IFC Performance Standard No 2, April 2006).
6. This means that the World Bank already in words has recognized that it in fact does have human rights obligations. Now it is up to Sweden to realize this fact of international human rights law.
7. By applying a human rights perspective, we should not only be concerned that the MDBs are forcing countries to adopt policies which contradict the claim that "ownership" is a leading principle; equally important is that the policies which are in fact pursued respect, protect and contribute to fulfilling the human rights obligations of the countries in question.
8. But does this imply that if the MDBs give more attention to human rights, they are in fact applying a kind of human rights conditionality, equally oppressing as any economic policy conditionality? No, this is not the case since human rights conditions only hold countries accountable for obligations that they themselves have agreed to by signing the human rights conventions. Thus, by forcing the MDBs to accept their human rights obligations countries like Sweden can assure that they are not hindering or weakening the human rights obligations of other member states.
9. But the Swedish government has chosen the opposite direction, and gone out of its way to dissociate itself from some of its human rights responsibilities, particularly concerning the MDBs. As we have seen, the government reiterates the by now abandoned position – even by the World Bank itself – that the World Bank is hindered by its statutes to take human rights into account. (Government of Sweden 2008a).

10. The Swedish government position paper regarding aid in support of democracy was preceded by a government paper (riksdagsskrivelse) outlining the overall relationship between Swedish foreign policy and human rights (Government of Sweden 2008). This policy paper is remarkable as it disregards the interlink between the two main human rights conventions, the Convention for Civil and Political Rights (CPR, 1976) and the one concerning Economic, Social and Cultural Rights (ESCR, 1976). These conventions are seen by human rights law as mutually supportive, and no serious human rights discussion would favour one before the other (e.g. by arguing in favour of CPR at the expense of ESCR, or vice-versa).
11. The Swedish government pays lip-service to this principle, but when it comes to the formulation of policies, *all* of the eight priority areas identified for action belong to the political realm (i.e. the CPR) and *none* to the economic and social sphere (i.e. the ESCR). The priority areas include democracy, freedom of expression, death penalty, torture, executions, and discrimination. In effect, this means that Sweden here sides with the USA, which so far has refused to ratify the ESCR convention.
12. A similar disconnect is evident in the government publication commemorating the 60 years anniversary of the UDHR: "So what has first priority?" (Government of Sweden 2008b) where a number of invited individuals express their personal opinion about the declaration and human rights. None of the contributions deal with the economic, social and cultural rights. This confirms the impression that the government of Sweden holds that only civil and political rights should be given priority in Sweden's foreign policy.
13. With this policy stance in mind – political and civil rights are more important than economic, social and cultural rights – it is perhaps no wonder that Sweden does not apply human rights considerations to the MDBs, since these institutions primarily deal with the ESCR, i.e. with the rights that are of least concern to the Swedish government. One instance, where Sweden could have applied human rights principles but missed the opportunity, was the recent replenishment of funds to the International Development Association (a part of the World Bank which extends loans to the poorest countries of the world).
14. Sweden is not alone among the owners of the MDBs, many of them are very reluctant to take human rights obligations seriously, and they reject the notion that international institutions have human rights obligations of their own. The Swedish government positions itself in this not rights-negating group by opting for a non-position of its own.
15. After choosing to present the statutes of the World Bank as if they were "anti-rights", Sweden then turns around and sums up its own position in a confusing way, without presenting any conclusion:
 

"For a long time there has been an argument in the [development] banks and among the member countries of the banks concerning whether democracy and human rights should be considered to be political interference, or not. Thus, it is of high importance that Sweden makes a strategic choice deciding how we will deal with this issue."
16. No such choice is presented, however, and we still do not know what the Swedish government has opted for, if anything. But it is not only the absence of clarity which is important here, although it is alarming. Sweden fails to recognize the obligations that it itself holds after having acceded to and ratified the human rights declarations and conventions.
17. In contrast to Sweden's position, human rights activists and legal scholars alike may have an ally in the international business community when it comes to promoting

human rights obligations of the MDBs. Multinational enterprises as well as commercial banks are already today inclined to behave pro-actively in order to avoid being criticized for violating human rights in the course of conducting their business activities. Some of the commercial banks, e.g. Barclays, Standard Chartered, Citigroup and Rabobank, have been more explicit in their human rights obligations than required by the set of rules of the World Bank commercial lending arm, the International Finance Corporation (IFC).

18. The foggy wording of the Swedish government is also unacceptable on account of the need that exists to strengthen the human rights in the MDBs, as evidenced by a study that links complaints raised with the IFC Compliance Advisory Ombudsman, as well as with a number of similar complaints mechanisms of MDBs, by affected communities. All in all, 61 complaints were analysed, and in the majority of cases violations of one or several central human rights were implicated. A majority of complaints cover at least four essential human rights.

**Table 1. Rights violations implicated in 61 cases**

<b>Rights</b>	<b>No of cases</b>
Right to food	46
Right to property	44
Right to life	43
Right to health	37
Right to housing	28
Right to adequate standard of living	26
Right to freedom of movement	15
Right to freedom of torture	13
Right to culture	12
Right to freedom of opinion/religion	9
Right to assembly	5
Right to be free from forced labour	5
Right to participate in government	4
Right to work	1
Right to family life	1
Right to privacy	1
Right to fair trial	0
Right to intellectual property	0
Right to education	0

Source: Bank Information Center, Washington DC

### **Where should Sweden go from here?**

19. Sweden must acknowledge the overriding duty to promote respect for human rights and freedoms as an obligation which must be at the centre of its political concern when it comes to formulate foreign policies.
20. Likewise, Sweden must in practice accept that the various human rights instruments constitute a mutually supporting set of international binding law, which Sweden is not allowed to pick and choose from as if it were a "smorgasbord".
21. Furthermore, Sweden should not side with the limited and outdated perception that the statutes of the MDBs hinder them from acknowledging their human rights obligations, allegedly prohibiting them from taking human rights consideration on board. As we have seen, this is no longer the position of the World Bank or the IFC,

since both institutions have included human rights wordings into their safeguards (although far from sufficiently), and since a former World Bank legal counsel, Roberto Daniño, has acknowledged that the World Bank is permitted and sometimes obliged to accept its human rights obligations. This is also the position that is gaining ground in the UN human right system. Sweden should not fight this development but on the contrary support it.

22. To put pressure behind words, Sweden should then utilize its position in the MDBs to argue in favour of human rights, thus enabling the MDBs to fulfil their human rights obligations, while simultaneously fulfilling its own. Likewise, when new finance is put at the disposal of the MDBs, just as when Sweden participates in debt rescheduling mechanisms.
23. Sweden has extraterritorial human rights obligations, and those obligations extend to the MDBs as well. As the human rights scholar Margot Salomon puts it, basing herself on repeated judgments of the European Court of Human Rights:
 

“human rights responsibilities of member states continue even after the transfer of competences to international organisations.”
24. In order to fulfil its own human rights obligations, Sweden must require that the MDBs fulfil theirs.

### **Six Human Rights Demands that Sweden Needs to Meet**

25. First, in order to secure that the MDBs assume their responsibilities regarding human rights, it is essential that their charters be rewritten in conformity with international law. Here, the World Bank, which, as we have seen, has already taken the first steps towards recognizing its obligations. But more steps must follow.
26. Secondly, the MDBs must begin to evaluate their own work in human rights terms, not only in terms of financial results or development outcomes in general. This in turn necessitates a dramatic change in the internal control mechanisms that the World Bank and the IFC have established, the Inspection Panel and the Compliance Advisory Ombudsman, respectively. The mandate of these control mechanisms is restricted to the safeguards and policy guide lines of the institutions themselves, and does not include judging their performance against human rights (apart from the three cases mentioned above where the World Bank and the IFC do recognize their human rights obligations).
27. Thirdly, the MDBs must fulfil their obligations as bearers of human rights obligations and report to the relevant instances of the UN, a duty which is not upheld today.
28. Fourthly, the whole set-up of safeguards, operational policies and performance standards has to be rewritten with human rights at the centre of attention. This would allow the MDBs to evaluate their own performance against internationally agreed standards, and not just against their own more or less informed rules and regulations. Likewise, it would authorize the IDBs, and especially the IFC, to hold all its commercial partners responsible for human rights violations.
29. Fifthly, a central human right is access to information, in its own right and also since it may facilitate the realization of other rights. Today, the MDBs claim that they have the right to limit such access with reference to states' interests or the interests of their commercial partners, but by accepting the standards established by the Global transparency initiative regarding the right to information, the MDBs could strike a balance between conflicting rights and thus contribute to spreading acceptable international norms in conformity with their human rights obligations.
30. Here, the internal disclosure policy of the World Bank is found to be seriously flawed, with a presumption of non-disclosure of information. By contrast a rights

based approach, accepting the right to information, would turn the logic around: information shall be made available unless there are reasons not to, in other words a policy based on disclosure.

31. Finally, WB standards have an influence beyond the institution itself in that they impact on internationally agreed standards, which are becoming international law. Hence, their norms are not just an internal affair of relevance only to the MDBs themselves. Firstly, because the preamble of the UDHR states that every organ of society has a duty to promote the respect for human rights. And, secondly, as the IFC performance standards have been accepted by over 60 commercial banks, the so called Equator Banks. This multiplies the importance of the policies and rules of the of the MDBs, especially considering the fact that the Equator Banks account for more than 70 percent of all project finance in emerging markets.

**Table 2. Transparency scorecard for the World Bank 2008**

Transparency principle	World Bank
The right to access information	Needs improvement
Automatic disclosure	Needs improvement
Access to decision making	Needs improvement
Right to request information	Unacceptable
Limited exceptions	Unacceptable
Appeals	Unacceptable
Whistleblower protection	Needs improvement
Promotion of freedom of information	Needs improvement
Regular review	Needs improvement

Source: Global Transparency Initiative 2008

32. An example: the right to free and informed prior consent is a principle of international human rights law established by ILO Convention 169. When this principle appears in the Operational Policy of the World Bank and in the Performance Standard of the IFC, the requirement of “consent” has been watered down to “consultation” (which neatly allows the IFC to keep the same acronym, FPIC, for two very different principles).
33. It should be obvious by now that there is no foundation for the option picked by the Swedish government only to care about civil and political rights. Just as in the Universal Declaration of Human Rights, economic, social and cultural rights stand on an equal footing with the civil and political rights. There simply is no ground, legally, for separating the two human rights conventions from each other.

#### **Government of Sweden official positions quoted:**

Government of Sweden. 2008. *Human rights and Sweden's foreign policy* (in Swedish), Paper to Parliament Skr 2007/08:109

Government of Sweden. 2008a. *Free of oppression* (in Swedish), Paper to Parliament, September 26, 2008

Government of Sweden. 2008b. *So what has the highest priority?* (in Swedish), Ministries for Foreign Affairs and Integration and Gender Equality, 2008