

New Development

The World Bank's Draft Comprehensive Development Framework and the Micro-Paradigm of Law and Development

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INTRODUCTION

In January 1999, World Bank President James D. Wolfensohn circulated a proposal for a "Comprehensive Development Framework" (CDF) to World Bank personnel.¹ Building upon Wolfensohn's previous policy statements,² as well as consultative meetings held worldwide

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1. Memorandum from James D. Wolfensohn to the Board, Management, and Staff of the World Bank Group (Jan. 21, 1999), available at <<http://www.worldbank.org/cdf/cdf.pdf>> [hereinafter CDF Proposal].

2. See James D. Wolfensohn, The Other Crisis, Address to World Bank Board of Governors (Oct. 6, 1998), available at <<http://www.worldbank.org/html/extdr/am98/>>

with various international development actors,³ the CDF calls for a new “holistic approach to development.”⁴

It seeks a better balance in policymaking by highlighting the interdependence of all elements of development—social, structural, human, governance, environmental, economic, and financial. It emphasizes partnerships among governments, donors, civil society, the private sector, and other development actors. Perhaps most important, [it puts] the country . . . in the lead, both “owning” and directing the development agenda, with the Bank and other partners each defining their support for their respective plans.⁵

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This New Development examines the CDF and its implications for international development. Specifically, using microdevelopment theory, including micro-law and development theory, it analyzes the CDF and compares it to the Bank’s previous approaches to development. On its face, the CDF appears to give the poorest of the poor more of a voice in formulating their countries’ development policies. Examination of the implementation of the CDF in several pilot countries, however, reveals that it is most often being used as a tool to improve relationships between those countries’ governments and international development donors; the voices of those countries’ citizens in poverty, as well as other elements of civil society, are largely being ignored. According to micro-law and development theory, unless countries pay attention to civil society, especially the poorest of the poor, development policy is doomed to fail. To that end, this New Development encourages civil society, and especially non-governmental organizations that represent the poor, to use the CDF as a means of getting to the table and assuming their appropriate place as full participants in the formulation of development policy.

jdw-sp/am98-en.pdf> (describing need for new, holistic approach to World Bank’s development method) [hereinafter Wolfensohn, *The Other Crisis*]; James D. Wolfensohn, *The Challenge of Inclusion*, Address to World Bank Annual Meeting (Sept. 23, 1997), available at <http://www.worldbank.org/html/extdr/am97/jdw_sp/jwsp97e.htm> (same).

3. For reports and briefings on the outcome of these consultations, see WORLD BANK, PARTNERSHIP FOR DEVELOPMENT: PROPOSED ACTIONS FOR THE WORLD BANK (1998), available at <<http://www.worldbank.org/html/extdr/pfd-discpaper.pdf>>; World Bank, *Partnership for Development: From Vision to Action* (briefing to the World Bank Board of Executive Directors), available at <<http://www.worldbank.org/html/extdr/pfd-vistoact.pdf>>.

4. World Bank Group, *Comprehensive Development Framework* (visited Apr. 19, 2000) <<http://www.worldbank.org/cdf>>.

5. *Id.*; see also *Development Plan*, BANKER, Oct. 1, 1999, at 30 (quoting head of World Bank’s CDF Secretariat that major premises behind CDF include need to take “long-term and holistic view of development issues,” need to secure “ownership” of development schemes by countries concerned, and need to include NGOs in the process in order to secure an internal and external “partnership” on development and to “get results on the ground”).

I. THE WORLD BANK'S DRAFT COMPREHENSIVE DEVELOPMENT FRAMEWORK

A. *The Bank's Pre-CDF Philosophy*

The World Bank⁶ was created in the wake of the Great Depression and post- World War II worldwide economic crisis.⁷ Its initial role was to provide loans for long-term projects furthering reconstruction and economic development.⁸ During the 1960s and 1970s, the Bank expanded its role to encourage “growth with equity” by investing in broader anti-poverty human development projects, including education, agriculture, health and nutrition, and rural development.⁹

As a result of the debt crisis in the 1980s, however, the Bank's focus once again turned to macroeconomic, structural adjustment lending.¹⁰ The Bank began the policy of “conditionality,” requiring country recipients of structural loans to undergo financial reforms “regarding such areas as inflation, public deficits, liberalization of foreign trade and investment, exchange rates, and land and tax reforms.”¹¹ The terms of “conditionality”—also known as the “Washington Consensus,” as the structural reforms were designed and mandated in concert with the Washington-based International Monetary Fund (IMF)¹² —largely failed: only one in three countries subject to these conditions was able to meet them.¹³ In the process, the Bank became the subject of worldwide

6. The Bank actually consists of several institutions: the International Bank for Reconstruction and Development (IBRD), the International Development Association (IDA), the International Finance Corporation (IFC), the International Center for Settlement of Investment Disputes (ICSID), and the Multilateral Investment Guarantee Agency (MIGA). See Sandra Blanco & Enrique Carrasco, *The Functions of the IMF and World Bank*, 9 TRANSNAT'L L. & CONTEMP. PROBS. 67, 77–78 (1999).

7. See *id.* at 68–70.

8. See *id.* at 78–79; Dominique Carreau, *Why Not Merge the International Monetary Fund (IMF) with the International Bank for Reconstruction and Development (World Bank)?*, 62 FORD. L. REV. 1989, 1992, 1999 (1994).

9. See Sandra Blanco, *The 1960s and 1970s: The World Bank Attacks Poverty; Developing Countries Attack the IMF*, 9 TRANSNAT'L L. & CONTEMP. PROBS. 109, 111–12 (1999); Blanco & Carrasco, *supra* note 6, at 80–81; Carreau, *supra* note 8, at 1999.

10. See Blanco & Carrasco, *supra* note 6, at 81; Carreau, *supra* note 8, at 1999–2000.

11. Carreau, *supra* note 8, at 2000; see also Enrique R. Carrasco & M. Ayhan Kose, *Income Distribution and the Bretton Woods Institutions: Promoting an Enabling Environment for Social Development*, 6 TRANSNAT'L L. & CONTEMP. PROBS. 1, 29–31 (1996).

12. See Tony Hawkins, *Bespoke Approach Beats One-Size-Fits-All Policies: Consensus*, FIN. TIMES (London), Sept. 24, 1999, at 29; see also Jeswald W. Salacuse, *From Developing Countries to Emerging Markets: A Changing Role for Law in the Third World*, 33 INT'L LAW. 875 n.39 (2000) (noting term “Washington Consensus,” coined by a U.S. economist in 1989, consists of ten broad reforms: (1) fiscal discipline; (2) reordering public spending priorities; (3) tax reform; (4) financial liberalization; (5) competitive stable exchange rates; (6) trade liberalization; (7) reduction of barriers to foreign investment; (8) privatization of state enterprises; (9) deregulation; and (10) property rights reform).

13. See Hawkins, *supra* note 12, at 29.

criticism,¹⁴ particularly for “pay[ing] too little heed to the ‘little man’” and to the human side of development, and for not coordinating its efforts with other international development actors.¹⁵

⁵ In the 1990s, therefore, the Bank refocused its efforts on both macroeconomic and human development.¹⁶ This refocus culminated in 1999 with the CDF proposal, which advocates that the Bank and its country-clients pay more attention to the structural, social, and human side of development, and that development actors increase their cooperation in their efforts to eliminate poverty.¹⁷ The CDF sets forth the Bank’s current development ideology, subject to tweaking after initial pilot programs, consultations, and worldwide input.¹⁸

B. *The CDF*

⁶ The core of the CDF is a matrix showing the interaction among the structural, social, and human elements of development and the actors involved with development.¹⁹ The vertical columns of the matrix encompass the four human aspects of development, as the Bank sees them:²⁰

- *structural*—good and clean government; an effective legal and justice system; a well-organized and supervised financial system; and a social safety net and social programs;
- *human*—education; health; and population issues;

14. See Blanco & Carrasco, *supra* note 6, at 81 (noting criticism from many quarters that Bank is “top-down, unresponsive institution that is out of touch with grassroots development realities in member countries”); Enrique R. Carrasco, *The 1980s: The Debt Crisis and the Lost Decade of Development*, 9 TRANSNAT’L L. & CONTEMP. PROBS. 119, 124–26 (1999); Carrasco & Kose, *supra* note 11, at 31–34; Nicole Wendt, *50th Anniversary of the World Bank and the IMF Prompts Criticisms*, 9 TRANSNAT’L L. & CONTEMP. PROBS. 149, 149 (1999).

15. Henry Owen, *The World Bank: Is Fifty Years Enough?*, FOREIGN AFF. Sept.–Oct. 1994, at 97, 108.

16. See Carrasco & Kose, *supra* note 11, at 37–39; Nicole Wendt, *The IMF and the World Bank Respond to Criticisms*, 9 TRANSNAT’L L. & CONTEMP. PROBS. 165, 169–70 (1999). See generally Wolfensohn, *The Other Crisis*, *supra* note 2, at 13–14; World Bank, *The World Bank Showcase Sites* (visited Apr. 19, 2000) <<http://www.worldbank.org/html/extdr/showcase.htm>> (containing links to World Bank programs addressing nonmacrodevelopment facets).

17. See CDF Proposal, *supra* note 1; see also Robert Chote, *The Holistic Approach*, FIN. TIMES (London), Feb. 8, 1999, at 18; Hawkins, *supra* note 12.

18. See CDF Proposal, *supra* note 1, at 7.

19. See *id.*; Chote, *supra* note 17, at 18.

20. See CDF Proposal, *supra* note 1, app.1; Chote, *supra* note 17, at 18. While the CDF does not specifically mention gender, the Bank considers gender issues implicit in the entire framework and urges governments to consider gender in each of these columns. See World Bank Group, *Comprehensive Development Framework Questions and Answers* pts. B.1, B.5 (visited Apr. 19, 2000) <<http://www.worldbank.org/cdf/cdf-faq.htm>> [hereinafter CDF Q&A].

- *physical*—water and sewerage; energy; roads, transportation and telecommunications; and sustainable development, environmental, and cultural preservation; and
- *sector strategies*—rural; urban; private sector; country-specific.

Along the left side of the matrix are four horizontal rows specifying the actors involved in development:²¹

- *government*—national; provincial and state; and city and municipal;
- *multilateral and bilateral organizations*—e.g., United Nations organizations; regional economic blocs such as the European Union; regional development banks such as the African Development Bank;
- *civil society*—e.g., religious groups; trade unions; local and international non-governmental organizations; and groups of indigenous peoples; and
- *private sector*—foreign and national business.

Using the matrix, development actors can coordinate their efforts, using the following four principles.²²

First, individual countries, rather than the Bank, should take the lead in setting their own development goals and strategies as well as the timing such strategies take.²³ Individual countries must take ownership of development policies and programs, with other actors assisting through the coordination of the host country.²⁴

21. See CDF Proposal, *supra* note 1, at 24–27.

22. See CDF Proposal, *supra* note 1, at 22–24; Anthony Rowley, *Leading Men: IMF/World Bank*, *BANKER*, Oct. 1, 1999, at 22 (discussing how CDF matrix allows “development banks and institutions [to] interlock their efforts”); James Smalhout, *Wolfensohn Shuffles the Deck*, *EUROMONEY*, Apr. 10, 1999, at 44; Romanian Gateway Project, *Comprehensive Development Framework* (visited Apr. 19, 2000) <<http://world-gateway.org/romania/static/s/cdf/whatis.htm>>.

23. See CDF Proposal, *supra* note 1, at 22–23 (“[T]here is no way that the World Bank should be seen as assuming the role of the coordinator of all programs in the matrix. . . . The existence of the matrix is not a clandestine attempt on the part of the Bank to dominate the international development arena, or the donor dialogue in a given country.”); Ramgopal Agarwala, *A Commentary on the CDF* (visited Apr. 19, 2000) <www.dse.de/ef/wbeu/agarwala.htm> (discussing individual country’s responsibility to implement the CDF); *Development Plan*, *supra* note 5; Romanian Gateway Project, *supra* note 22 (same).

24. See CDF Proposal, *supra* note 1, at 23, 31; Cielito F. Habito, *The Comprehensive Development Framework: A Discussion*, Address to Global Finance and Development Symposium 3 (Mar. 1–2, 1999), *available at* <<http://www.worldbank.org/japan/sympo/sympap/habito.pdf>> (“[T]he host country must be in the driver’s seat. . . . [G]overnment, business, and civil society together must undertake a principled partnership in working

9 Second, development should be holistic, focusing on social problems as well as economic ones.²⁵ In terms of social development, the Bank emphasizes the varied categories of the CDF matrix, stating that “[g]overnment should aspire to have programs under each of the 14 headings along the top of the matrix and these will be entered into the grid.”²⁶ Thus, a development policy that addressed urban education to the exclusion of rural health would not be considered ideal.

10 Third, all development actors should be involved in formulating and implementing development policy.²⁷ As national governments set their development agenda, they should use the CDF matrix to include other actors in the planning of programs and projects.²⁸ The CDF is thus a “summary management tool,”²⁹ a “compass,”³⁰ for countries to use. One country’s CDF matrix will differ from another country’s, because each country should use the CDF to address that country’s unique development needs.³¹ The CDF should promote transparency, information sharing, and overall coordination among the various actors by providing a place where all actors can “see quickly what is [and what is not] going on in a country from the point of view of structural and social development.”³² The CDF thus focuses on the important process of *formulating* development policies, as well as the identification and coordination of the actors who will *implement* them.³³

11 Finally, development should be a “participatory process” with development policies taking a long-term focus.³⁴ As far as possible “within the political climate prevailing in each country,”³⁵ development

out such a comprehensive strategy.”).

25. CDF Proposal, *supra* note 1, at 4–7; Romanian Gateway Project, *supra* note 22.

26. CDF Proposal, *supra* note 1, at 24.

27. *Id.* at 21–28; Romanian Gateway Project, *supra* note 22.

28. *See* CDF Proposal, *supra* note 1, at 22–23; *see also* Agarwala, *supra* note 23 (discussing role of donor community in implementing the CDF); Habito, *supra* note 24, at 3 (discussing cooperation among development actors); *Development Plan*, *supra* note 5, at 30 (describing CDF as a “a master blueprint for co-ordinating development efforts” among government ministries, NGOs, private sector bodies, U.N. agencies, regional development banks, and other aid organizations). Wolfensohn recognizes, however, that “the pace of coordination and of inclusion, of openness and accountability, will vary by country and by stage of political development.” CDF Proposal, *supra* note 1, at 23.

29. CDF Proposal, *supra* note 1, at 23. As Wolfenson states, “the foremost objective of the matrix is to give all the players, but most especially national governments and parliamentary bodies, a framework of information which can ensure openness, a basis for coordination of effort, and for judgment of the effectiveness of programs and strategies.” *Id.*

30. CDF Q&A, *supra* note 20, pt. A.1.

31. *See id.* pt. B.6; Agarwala, *supra* note 23 (discussing importance of flexibility and country-specific strategy in CDF); Hawkins, *supra* note 12, at 29 (stating that CDF recognizes that “development policies are interdependent,” meaning that “what works well in one country may fail in another”).

32. CDF Proposal, *supra* note 1, at 27–28; *see also* Chote, *supra* note 17, at 18 (stating the CDF “describes what various players are doing in a number of policy areas, thereby preventing duplication and conflict”).

33. *See* Hawkins, *supra* note 12, at 29.

34. CDF Proposal, *supra* note 1, at 30.

35. *Id.*

should be based on broad national consultation and consensus.³⁶

C. Implementing the CDF

The CDF is being implemented directly in self-selected pilot countries: Bolivia, Côte d'Ivoire, the Dominican Republic, Eritrea, Ethiopia, Ghana, Jordan, the Kyrgyz Republic, Morocco, Romania, Uganda, Vietnam and the West Bank and Gaza.³⁷ During the eighteen-month pilot program, which ends in September 2000, the countries are to formulate a CDF matrix and generate "broad consultation and consensus-building" with other development actors in the country.³⁸ Some non-pilot countries are also using CDF principles to their benefit; for instance, the Bank says that the Zambian government is using the CDF to begin defining national development priorities.³⁹ Based on the pilot programs, as well as information elicited at international conferences⁴⁰ and an online discussion forum,⁴¹ the CDF will be revised before widespread implementation.

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II. LAW AND DEVELOPMENT THEORIES

The concept of "development" is difficult to define. It is both "a set of goals and . . . a process by which those goals might be attained."⁴² Development theorists generally have focused upon both the goals and the process through macro- and micro-level theory.⁴³ Law and

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36. *Id.* at 5, 9–10, 30–31; see also *Development Plan*, *supra* note 5, at 30; Romanian Gateway Project, *supra* note 22.

37. See CDF Q&A, *supra* note 20, pt. E.1. Implementation of the CDF in Ethiopia and Eritrea, also pilot countries, has apparently slowed because of a war over a border dispute. See Bretton Woods Project, *Briefings: A Wolf in Sheep's Clothing* (visited Apr. 19, 2000) <<http://www.brettonwoodsproject.org/brief/wolf.html>>.

38. CDF Q&A, *supra* note 20, pt. E.1. For more information on the CDF pilot program, see World Bank, *CDF Pilots* (visited Apr. 19, 2000) <<http://www.worldbank.org/cdf/piloting.htm>>.

39. See World Bank Group, *Progress Report to the World Bank's Executive Board* para. 22 (visited Apr. 19, 2000) <<http://www.worldbank.org/cdf/progressreport.htm>> [hereinafter *Progress Report*].

40. See World Bank Group, *Background and Overview of the Comprehensive Development Framework* (visited Apr. 19, 2000) <<http://www.worldbank.org/cdf/overview.htm>>; MINISTRY FOR FOREIGN AFF. (Sweden), MAKING PARTNERSHIPS WORK ON THE GROUND: WORKSHOP REPORT (1999), available at <<http://www.worldbank.org/cdf/stockholm.pdf>> (summarizing the Stockholm conference); Daily Yomiuri, *World Bank Symposium: Forum Sees Need for Reform of IMF, Forex* (visited Apr. 19, 2000) <<http://www.yomiuri.co.jp/wbank/wb-top.htm>>.

41. See World Bank Group, *Development Forum: Comprehensive Development Framework* (visited Apr. 19, 2000) <http://www.worldbank.org/devforum/forum_cdf.html> (containing summaries of the online discussion of CDF).

42. Salacuse, *supra* note 12, at 876.

43. Some development scholars also argue that there is an intermediate level between the macro- and micro-level. See James Mayfield, *Rural District Empowerment and Networking Strategy* (visited Apr. 19, 2000) <<http://www.choice.humanitarian.org/20points/RDE.html>>. Law and development scholars, however, have not yet examined

development (L&D) theorists borrow from these two approaches, and L&D lawyers critique development policy from the macro- and micro-levels. Macro-L&D theorists, however, have generally ignored micro-L&D theory. This Part provides a brief background to both macro- and micro-L&D theory, and concludes that L&D scholars and practitioners must pay more attention to micro-L&D theory in their analyses.

A. *Macro-L&D Theory*

L&D theory began in the 1960s as an outgrowth of the “modernization” theory of development.⁴⁴ Modernization theory assumed that the developing world was “backwards,” and concluded that as developing countries created “economic, political, and social institutions similar to those in the West,” economic development would inevitably result.⁴⁵ Early L&D theorists, applying modernization theory, “attempted to assist developing countries in establishing Western-style legal institutions.”⁴⁶ They ignored, however, the roles that ethnicity and culture play in development.⁴⁷ This fault, among other things, resulted in an “open crisis”⁴⁸ in L&D in the mid-1970s. Many of the movement’s founders began pursuing other academic and professional goals, research money for L&D projects dried up, and the movement, some thought, was all but dead.⁴⁹

Despite the L&D “crisis,” lawyers continued to have a dramatic influence on the developing world, drafting foreign laws and constitutions, and providing legal advice on cross-border and

this theory.

44. See Elliot M. Burg, *Law and Development: A Review of the Literature & A Critique of “Scholars in Self-Estrangement,”* 25 AM. J. COMP. L. 492, 495 (1977); Amy L. Chua, *Markets, Democracy, and Ethnicity: Toward a New Paradigm for Law and Development*, 108 YALE L.J. 1, 11 (1998); John H. Merryman, *Comparative Law and Social Change: On the Origins, Style, Decline & Revival of the Law and Development Movement*, 25 AM. J. COMP. L. 457, 457 (1977); Francis G. Snyder, *Law and Development in the Light of Dependency Theory*, 14 LAW & SOC. REV. 723, 731 (1980); Brian Z. Tamanaha, *The Lessons of Law-and-Development Studies*, 89 AM. J. INT’L L. 470, 472–73 (1995), reviewing LAW AND DEVELOPMENT (Anthony Carty ed., 1992); David M. Trubek & Marc Galanter, *Scholars in Self-Estrangement: Some Reflections on the Crisis in Law and Development Studies in the United States*, 1974 WIS. L. REV. 1062, 1065.

45. Tamanaha, *supra* note 44, at 471; see also Snyder, *supra* note 44, at 726–27.

46. Chua, *supra* note 44, at 12; see also Merryman, *supra* note 44, at 483; Tamanaha, *supra* note 44, at 473; David M. Trubek, *Back to the Future: The Short, Happy Life of the Law and Society Movement*, 18 FLA. ST. U. L. REV. 4, 23–24 (1990); David M. Trubek, *Toward a Social Theory of Law: An Essay on the Study of Law and Development*, 82 YALE L.J. 1, 45–46 (1972).

47. See Chua, *supra* note 44, at 12; Tamanaha, *supra* note 44, at 473; Trubek & Galanter, *supra* note 44, at 1080–82 (noting ethnocentric character of law and development models).

48. Chua, *supra* note 44, at 12 (referring to Trubek & Galanter, *supra* note 44).

49. See Chua, *supra* note 44, at 12–13; Merryman, *supra* note 44, at 459–60; Francis G. Snyder, *The Failure of “Law and Development,”* 1982 WIS. L. REV. 373, 373, reviewing JAMES A. GARDNER, *LEGAL IMPERIALISM: AMERICAN LAWYERS AND FOREIGN AID IN LATIN AMERICA* (1980).

international commercial transactions.⁵⁰ Practitioners and theorists continued to publish L&D literature.⁵¹ Recent efforts to improve upon L&D models, for instance, focus on the potential problems of ethno-economic inequities.⁵² For the most part, however, the L&D script still reads as a macro-level account,⁵³ and ignores the vast literature in microdevelopment and micro-L&D theory.⁵⁴

B. *Micro-L&D Theory*

Even before the L&D crisis in the mid- to late-1970s, modernization theory, upon which initial macro-L&D theorists relied, was criticized and falling into disfavor.⁵⁵ Many recognized that macro-level efforts were not “trickling down” to benefit the poorest of the world’s poor,⁵⁶ and focused on articulating a micro-level theory of development.⁵⁷ Empirically, microdevelopment theory assumes that poverty results from “lack [of] access to resources essential to the satisfaction of basic human needs,” and that the lack of access is “a product of lack of power in social relations.”⁵⁸

Based upon these premises, microdevelopment theory makes two normative assumptions. First, development should be “an ongoing process of helping the poor to become *empowered* [themselves] in order that *they* might confront conditions of impoverishment and exclusion, gain access to essential resources and act collectively in other ways to articulate, advance and protect other vitally shared interests, as *they* perceiv[e] them.”⁵⁹ In other words, to eradicate poverty and

50. See Chua, *supra* note 44, at 13–19; Salacuse, *supra* note 12, at 886–90; Tamanaha, *supra* note 44, at 474.

51. See Chua, *supra* note 44, at 14–17, 19–21, 33–63 (describing practical L&D literature and proposing new theoretical L&D model); Salacuse, *supra* note 12.

52. See generally Chua, *supra* note 44 (proposing new L&D model that accounts for ethnic conflict).

53. See, e.g., Chua, *supra* note 44; Salacuse, *supra* note 12. Neither Chua’s nor Salacuse’s articles describe themselves as having a macro-level focus; their analyses of development are characteristic of a macro-level analysis, however, as their focus remains at the national and regional levels.

54. See *infra* Part II(B).

55. See Snyder, *supra* note 44, at 727–28; Tamanaha, *supra* note 44, at 472.

56. See James C.N. Paul & Clarence J. Dias, *Contrasting Paradigms: State-Managed Development vs. Alternative People-Managed Development*, 1982 THIRD W. LEG. STUD. 6, at 8–9; Jacques Chonchol, *The Declaration on Human Rights and the Right to Development: the Gap Between Proposal and Reality*, in INT’L COMMISSION OF JURISTS, DEVELOPMENT, HUMAN RIGHTS AND THE RULE OF LAW 109 (1981).

57. See Robert Chambers, *Putting “Last” Thinking First: A Professional Revolution*, in THIRD WORLD AFFAIRS 1985, at 78 (Altat Gauhar et al. eds., 1985); Chuck Kleymeyer, *What is “Grassroots Development”?*, 15 GRASSROOTS DEVELOPMENT 38 (1991); Daniel Stiles, *Classical Versus Grassroots Development*, 11 CULTURAL SURVIVAL Q. 3 (1987).

58. James C.N. Paul & Clarence J. Dias, *Developing Law and Legal Resources for Alternative, People-Centered Development: A Human Rights Approach*, in THE INTERNATIONAL CONTEXT OF RURAL POVERTY IN THE THIRD WORLD 61, 65 (David Dembo et al. eds., 1986) [hereinafter Paul & Dias, *Developing Law*].

59. *Id.* at 65–66.

underdevelopment, development must focus primarily on the poor and underdeveloped.⁶⁰ Second, microdevelopment assumes that development will be most successful if “disadvantaged people organize themselves to overcome the obstacles to their social, cultural, and economic well-being.”⁶¹ The poor “participate fully not only in identifying common problems, setting priorities, and designing strategies and programs, but also in carrying out project activities and distributing the benefits.”⁶² Outsiders “respond to the initiatives of local organizations and collaborate with them in a supportive role” rather than imposing their own initiatives on them.⁶³

18 In practice, microdevelopment is highly multidisciplinary and includes “a mix of economic, social, and cultural objectives,”⁶⁴ including education and literacy, health services, income improvement and poverty alleviation, environmental protection, community cooperation and participation, and social and cultural cohesiveness.⁶⁵ Success in microdevelopment is not measured merely through economic growth:

Results . . . can be intangible—improved skills in communication, leadership, or management; a stronger sense of self; the establishment of rights to civil liberties; or the increased ability to leverage services from the state. Results can also be tangible—increases in production of agricultural or manufactured goods; a rise in family incomes; a building to be used for organizational activities; or a road or water system.⁶⁶

19 Additionally, microdevelopment focuses not only on persons in developing nations but on the poorest of the poor in developed nations. As microdevelopment advocates have argued, “[t]here is no country in the world whose inhabitants can confidently say, ‘we have no further need for development’, meaning: ‘there is nothing further that can be done to enhance the life of individual citizens in our state’. The mere

60. See Chambers, *supra* note 57, at 79 (stating that development must “start[] with the situation and priorities of the rural poor”). One of the most impassioned supporters of the idea that development must focus on the poorest of the poor is Muhammad Yunus, founder of the Grameen Bank in Bangladesh, which makes microloans to impoverished women. See Grameen Bank, *Grameen: Banking for the Poor* (visited Apr. 19, 2000) <<http://www.grameen-info.org>>. For a basic background to Yunus’ philosophy and the Grameen Bank, see THE GRAMEEN READER (David S. Gibbons ed., 2d ed. 1994).

61. Kleymeyer, *supra* note 57, at 38.

62. *Id.*; see also Stiles, *supra* note 57, at 3–4.

63. Kleymeyer, *supra* note 57, at 38; see also Stiles, *supra* note 57, at 3–4.

64. Kleymeyer, *supra* note 57, at 38.

65. See generally JAMES B. MAYFIELD, ONE CAN MAKE A DIFFERENCE: THE ROLE OF RURAL DEVELOPMENT FACILITATORS (RDFs) IN THE PROCESS OF RURAL DEVELOPMENT (1997) (describing role of these fields in rural development). Mayfield is one of the founders of the Center for Humanitarian Outreach and Intercultural Exchange (CHOICE), a not-for-profit rural development organization. See CHOICE, *Choice Humanitarian* (visited Apr. 19, 2000) <<http://www.choice.humanitarian.org>>.

66. Kleymeyer, *supra* note 57, at 38–39.

assertion is grotesque.”⁶⁷

After the L&D “crisis,” some L&D scholars investigated microdevelopment theory, and in the early 1980s began generating a micro-L&D theory.⁶⁸ In contrast to the original L&D theory’s sole focus on macrodevelopment of markets and democracy,⁶⁹ micro-L&D theory focuses on developing law and legal resources for the poorest of the poor:

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The task of developing law entails recourse to many different kinds of law—ranging from various kinds of international law [including human rights law] to the law of torts and contracts to endogenous law derived from customs and widely shared values. The task of developing legal resources entails many activities, undertaken at both national and international levels, ranging from grassroots’ projects aimed at reciprocal education to provision of legal advocacy for groups and the development of new kinds of legal expertise and professional skills. The process of using law and legal resources to empower and help victim groups may entail recourse to the media and schools, to international forums and diverse governmental bodies as well as the courts.

A focus on law and legal resources is important. Unless victim groups choose to fight back by acting outside the law they must inevitably reckon with it.⁷⁰

Several organizations sprung up that focused on micro-L&D, including the International Center for Law in Development, founded in 1982, the International Development Law Institute, founded in 1983, and the International Third World Legal Studies Association, founded in 1980.⁷¹ Academic journals, beginning with *Third World Legal Studies*

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67. Antony Allott, *Development for What?—False Gods and Holy Writ*, 1984 THIRD WORLD LEG. STUD. 1, 3.

68. See Johan Galtung, *What Kind of Development and What Kind of Law*, in INT’L COMMISSION OF JURISTS, *supra* note 56, at 121, 122–24, 128 (1981); Paul & Dias, *Developing Law*, *supra* note 58, at 64. See generally Symposium, *Law in Alternative Strategies of Rural Development*, 1982 THIRD WORLD L. STUD. (discussing alternative development theory and its application to law).

69. See, e.g., Paul & Dias, *supra* note 56 (comparing macro-state-managed development with small-scale people-centered development).

70. Paul & Dias, *Developing Law*, *supra* note 58, at 93.

71. For a discussion of the mission of these organizations, see James C.N. Paul, *American Law Teachers and Africa: Some Historical Observations*, 31 J. AFR. L. 18, 26–27 (1987); International Development Law Institute, *IDLI’s Mission* (last modified Apr. 12, 2000) <<http://www.idli.org/idli’s.htm>>; A. Peter Mutharika, *Introduction*, 1982 THIRD WORLD LEG. STUD. i. Other organizations with a micro-L&D focus include Women, Law & Development International, founded in 1979; the Rural Development Institute at the University of Washington School of Law, founded in 1981; and the Foundation for International Environmental Law and Development (FIELD) at the Law Department of the School of Oriental and African Studies, University of London, founded in 1989. See Women, Law & Development International, *Home Page* (visited Apr. 19, 2000)

in 1982, arose to provide forums for “alternative” L&D scholarship.⁷²

Micro-L&D practice is as broad based and diverse as microdevelopment practice in general. Micro-L&D practitioners operate in a number of substantive legal areas, such as human rights,⁷³ land reform,⁷⁴ environmental and natural resources,⁷⁵ legal literacy,⁷⁶ legal services,⁷⁷ gender law,⁷⁸ labor law,⁷⁹ consumer law,⁸⁰ and housing and tenant law.⁸¹ Micro-L&D lawyers litigate,⁸² but they also educate community groups, advocate causes through alternative dispute resolution schemes, create opportunities for the poor to participate in the political process, lobby, represent small-scale groups or nongovernmental organizations (NGOs) as clients, and help draft new laws.⁸³ They are not just lawyers, but agents for social change and full participants in a broader, multidisciplinary effort to improve the lot of the world’s poor.

Microdevelopment is not a panacea: “Many problems cannot be effectively addressed by grassroots techniques alone.”⁸⁴ Additionally, micro-L&D efforts are often stymied because of skepticism about law

<<http://www.wld.org>>; Rural Development Institute, *Home Page* (visited Apr. 19, 2000) <<http://www.rdiland.org>>; FIELD, *Home Page* (visited Apr. 19, 2000) <<http://www.field.org.uk>>.

72. Each *Third World Legal Studies* volume focuses on a different L&D topic. Other journals also focus primarily on L&D, including the *Boston College Third World Law Journal*, founded in 1978, available at <http://www.bc.edu/bc_org/avp/law/lwsch/thirdrev.html>, and the *Yale Human Rights & Development Law Journal*, founded in 1997, available at <<http://diana.law.yale.edu/yhrdlj>> (full text available online).

73. See, e.g., 1984 THIRD WORLD LEG. STUD.; YALE HUM. RTS. & DEV. L.J.

74. See, e.g., AGRARIAN REFORM AND GRASSROOTS DEVELOPMENT: TEN CASE STUDIES (Roy L. Prosterman et al. eds., 1990); ROY L. PROSTERMAN & JEFFREY M. RIEDINGER, LAND REFORM AND DEMOCRATIC DEVELOPMENT (1987).

75. See, e.g., Dominic McGoldrick, *Sustainable Development and Human Rights: An Integrated Conception*, 45 INT’L & COMP. L.Q. 796 (1996).

76. See, e.g., LEGAL LITERACY: A TOOL FOR WOMEN’S EMPOWERMENT (Margaret Schuler & Sakuntala Kadirgamar-Rajasingham eds., 1992).

77. See, e.g., COMMITTEE ON LEGAL SERVICES TO THE POOR IN THE DEVELOPING COUNTRIES, LEGAL AID AND WORLD POVERTY: A SURVEY OF ASIA, AFRICA, AND LATIN AMERICA (1974); LAW, HUMAN RIGHTS AND LEGAL SERVICES: A NEGLECTED FIELD OF DEVELOPMENT COOPERATION (1988) [hereinafter LEGAL SERVICES: A NEGLECTED FIELD].

78. See, e.g., 1991 THIRD WORLD LEG. STUD. (volume dedicated to legal rights of women in development processes).

79. See, e.g., Mahomed Navsa, *The Aims and Activities of the Legal Resources Centre—South Africa*, in LEGAL SERVICES: A NEGLECTED FIELD, *supra* note 77, at 189, 190.

80. See, e.g., *id.* at 191.

81. See, e.g., *id.* at 191–92.

82. See *id.* at 190–92.

83. See generally Hans-Jürgen Brandt, *Human Rights, Legal Services and Development: Theory and Practice*, in LEGAL SERVICES: A NEGLECTED FIELD, *supra* note 77, at 17; Clarence J. Dias, *Realizing the Right to Development*, in INTERNATIONAL COMMISSION OF JURISTS, *supra* note 56, at 187, 194–97; Paul & Dias, *Developing Law*, *supra* note 58, at 93–103; James C.N. Paul & Clarence J. Dias, *Lawyers, Legal Resources and Alternative Approaches to Development*, in LAWYERS IN THE THIRD WORLD 362, 363 (Clarence J. Dias et al. eds., 1981).

84. Kleymeyer, *supra* note 57, at 39.

and lawyers among the poorest of the poor.⁸⁵ Micro-theory is, however, “a constructive, hopeful path for the disadvantaged.”⁸⁶ It is also a more direct way to fulfill the human rights duty of States to make individuals the focus of development.⁸⁷

Macro-L&D theorists have not given much attention to micro-L&D theory. For instance, two recent articles, one by Professor Amy Chua and another by Professor Jeswald Salacuse, discuss macro-level L&D paradigms.⁸⁸ These articles fail, however, to discuss the vast micro-L&D theory literature, much less critique their paradigms against micro-theory. These articles make the same basic (some would also say inaccurate)⁸⁹ assumption made by traditional macrodevelopment theories: that the benefits of development will “trickle down” to the poorest of the poor.⁹⁰ They assume that development policy is best made from policymakers at the top,⁹¹ which ignores microdevelopment theorists’ criticism that development can only occur with planning and participation—indeed ownership of the process—by the poorest of the poor themselves.⁹² They also assume that development is only necessary in relatively poor countries, ignoring the fact that some citizens even in more developed countries experience social and economic underdevelopment, as well as barriers to political participation, on the same level as persons in the developing world.⁹³

It is true that important development work occurs—in fact can only occur—at the macro-level. For example, from a legal standpoint, drafting of constitutions, import/export laws, and labor codes, among others, must occur at a country level. Even microdevelopment theorists acknowledge that their approach is not a cure-all.⁹⁴

Microdevelopment’s focus on the poorest of the poor is important, however, and a revival in micro-L&D theory is necessary, for the benefits of development still fail to reach the poorest of the poor. When policymakers critique development efforts using a macro-theory alone, potentially constructive micro-level criticism slips through the analytical cracks. Analyzing development policy from the micro-level ensures that the poorest of the poor will not only be remembered, but

85. See, e.g., Michael Fremerey, *Legal Education in Rural Development: An Outsider’s View*, in LEGAL SERVICES: A NEGLECTED FIELD, *supra* note 77, at 89.

86. Kleymeyer, *supra* note 57, at 39.

87. See Declaration on the Right to Development, art. 2, G.A. Res. 41/128, U.N. GAOR, 41st Sess., Annex, Supp. No. 53, at 186, U.N. Doc. A/41/53 (1986).

88. See Chua, *supra* note 44; Salacuse, *supra* note 12.

89. See Stiles, *supra* note 57, at 3.

90. See *supra* note 56 and accompanying text.

91. See Chua, *supra* note 44, at 62–63.

92. See Kleymeyer, *supra* note 57, at 38; Stiles, *supra* note 57, at 3–4.

93. See *supra* note 67 and accompanying text; see also Rodolfo Mata & Lawrence Friedman, *Welcome to the Third World: Reflections on the Anniversary of the Boston College Third World Law Journal*, 15 B.C. THIRD WORLD L.J. 77 (1995) (exploring various definitions of the developing world, including many involving persons living in the developed world).

94. See Kleymeyer, *supra* note 57, at 39.

will actively be involved in the process of their own development. Professor Galtung's statement two decades ago remains true today: "the current [development] processes are so overwhelmingly of the macro-oriented . . . type[,] . . . a strong emphasis on the [micro] type is needed," both in theory and in practice.⁹⁵

III. THE CDF AND MICRODEVELOPMENT THEORY

²⁷ Having advanced the need for a resurgence in the use of microdevelopment theory, including micro-L&D theory, this Part uses micro-theory to analyze the CDF,⁹⁶ focusing on the framework itself and upon its implementation in the pilot countries. Without doubt, the Bank has "great[] influence on the developing world,"⁹⁷ and it is using that influence to campaign for the CDF as a means to alleviate world poverty. The key question is whether the CDF will, from a micro-perspective, actually accomplish that goal and, more specifically, whether the CDF improves upon past Bank policies such as "growth with equity" and "conditionality." From a micro- approach, one sees many positive points to the CDF, but also some potentially serious problems.

A. *Microdevelopment Critique of the CDF*

²⁸ Before beginning a facial critique of the CDF itself, it is helpful to recall that some of the Bank's strongest critics continue today to fault its focus on large-scale projects, its disregard for the poorest of the poor, and its unwillingness to cooperate with the NGOs that typically represent the interests of the poor.⁹⁸ Some critics suggest that the

95. Galtung, *supra* note 68, at 123; *see also Summary of Discussions and Conclusions of the International Commission of Jurists 1981 Conference on Development and the Rule of Law*, in INT'L COMMISSION OF JURISTS, *supra* note 56, at 223, 223–24. *But see* Tayyab Mahmud, *Postcolonial Imaginaries: Alternative Development or Alternatives to Development?*, 9 TRANSNAT'L L. & CONTEMP. PROBS. 25, 29–30, 33–34 (1999) (arguing that entire concept of development—macro or micro—should be abandoned, and that an alternative concept to development should replace it).

96. This is not to say that a macro-level critique could not also be fruitful. For instance, Chua would almost certainly give the CDF a failing grade for ignoring the importance of ethnicity in development. The CDF matrix does not address ethnic aspects of development. *See* CDF Proposal, *supra* note 1, app.1. None of the Bank's CDF explanatory information contains any derivative of the word ethnicity. *See, e.g.,* CDF Q&A, *supra* note 20; *Progress Report*, *supra* note 39. According to Chua, ignoring ethnicity in development "recapitulates a basic and potentially fatal error" that, "if left unaddressed, [would] threaten to undermine the long-term success" of the CDF. Chua, *supra* note 44, at 19–20, 21. This article focuses primarily on a micro-level analysis because, as Galtung emphasized, micro-development has traditionally been ignored in favor of macro-level approaches. *See* Galtung, *supra* note 68, at 123.

97. Chua, *supra* note 44, at 17.

98. *See* Saladin Al-Jurf, *Participatory Development and NGOs: A Look at the World Bank*, 9 TRANSNAT'L L. & CONTEMP. PROBS. 175, 177–81 (1999); Allan H. Meltzer & Adam Lerrick, Editorial, *What the World Bank Ought to Be Doing*, WASH. POST, Apr. 11, 2000,

Bank's "conditionality" programs in the 1980s actually deepened poverty and strained income distribution, although the evidence is not conclusive.⁹⁹ Criticism of the Bank recently took center stage in Washington, D.C., as protestors unsuccessfully attempted to stop the annual meetings of the Bank and the IMF.¹⁰⁰ The activists were successful, however, in sharing their anti-Bank message and in getting the attention of delegates¹⁰¹ and the support of the leaders of developing countries.¹⁰²

In that light, one must remember the core microdevelopment question: "Will this policy improve the situation of the poorest of the poor?" and a key micro-L&D inquiry: "How can resources be mobilized to improve the law and legal resources for the poorest of the poor?"¹⁰³

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1. *Ownership and Participation*

Under the CDF, individual countries will oversee development planning themselves rather than have that planning imposed on them, as it was through conditionality.¹⁰⁴ The "Washington Consensus" was a prescription given to each developing country without regard for individual country maladies.¹⁰⁵ The CDF, on the other hand, puts individual nations, specifically their governments, in the driver's seat to ensure that development policies and programs reflect the consensus of that nation's people, creating a sense of "ownership" in the country.¹⁰⁶ The CDF also reflects the interdependent nature of development, recognizing that the same prescription does not work in each case.¹⁰⁷ The concept of ownership, planning, and implementation of development policies by the people striving for development, rather than by outside groups, is one of the fundamental principles of microdevelopment. Thus, the CDF appears to borrow this traditionally micro-level method.¹⁰⁸

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at A23; Owen, *supra* note 15, at 108.

99. See Carrasco & Kose, *supra* note 11, at 31–32.

100. See, e.g., Jonathan Peterson, *Clashes in the Capital: Protesters in D.C. Fail to Halt Finance Meetings*, L.A. TIMES, Apr. 17, 2000, at A1.

101. See Nora Boustany, *In Defense of the Protesters—And the World Bank*, WASH. POST, Apr. 19, 2000, at A19 (commenting on protestors); James Wolfensohn, Press Conference at IMF Headquarters (Apr. 12, 2000), available in LEXIS, News Library, FEDNEW File (expressing concern about "the noise outside" the meetings).

102. See John Ward Anderson, *Poor Nations' Leaders Back Washington Protestors*, WASH. POST, Apr. 16, 2000, at A31.

103. See *supra* Part II(B).

104. See *supra* note 11 and accompanying text.

105. See *supra* notes 11–13 and accompanying text.

106. See CDF Proposal, *supra* note 1, at 24 ("[T]he governmental structure of a country must be in charge of the process of development strategy and implementation."); *Development Plan*, *supra* note 5, at 30 (emphasizing country ownership in development process).

107. See Hawkins, *supra* note 12, at 29.

108. See Kleymeyer, *supra* note 57, at 38.

31 The CDF's policy of country-level planning and ownership has the potential to allow "the poor to become *empowered*" by giving them an opportunity "to articulate, advance and protect" their interests before policymakers.¹⁰⁹ The CDF also represents a greater shift in Bank policy towards cooperation with all development actors:¹¹⁰ not just governments, but civil society and the private sector.¹¹¹ On its face, the CDF sets a place for all of these actors at the development planning table by stating that development planning should be a "participatory process," in which "integration of effort" is central.¹¹² In the past, the Bank has worked exclusively with governments, sometimes disregarding and duplicating the efforts of other development actors. Specifically, NGOs, the development actor that most often represents the voice of marginalized groups in society, were brushed aside.¹¹³ The CDF has the potential to promote increased coordination, and to facilitate development planning with the views of civil society, including the poorest of the poor, squarely in mind.

32 Several aspects of the CDF, however, raise the question of whether that potential will actually be realized. For example, the Bank's CDF proposal acknowledges that in "some countries," development policy "will be set by a process of public debate and consensus building led by the government with all sections of society. [However, in] other countries, the establishment of goals *will continue to be set more centrally*."¹¹⁴ Thus, the Bank recognizes that public participation is not always integral to the CDF, suggesting that ownership really means country or government ownership, rather than citizen ownership. Additionally, it is telling that the CDF is a program that the Bank's president created mostly himself, rather than a true cooperative effort with other development actors from the start, making it appear that it is merely another "Washington Consensus" camouflaged in clever rhetoric.¹¹⁵ How can true country ownership and participation come

109. *Id.* at 65–66; see also Caroline Hartnell, *Bank Pilot in Bolivia Fails to Create 'Clear, Structured Space' for CSOs* (visited Apr. 19, 2000) <<http://www.brettonwoodsproject.org/brief/cdf.html>> (quoting ActionAid Chief Executive Salil Shetty as saying the CDF "is potentially useful if it can create greater national ownership of country action plans and a coordinated donor response—these are things [NGOs have] been arguing for ages").

110. See Al-Jurf, *supra* note 98, at 178–79 (describing Bank's previous efforts to cooperate with NGOs—one level of civil society).

111. See CDF Proposal, *supra* note 1, at 25–27; *Development Plan*, *supra* note 5, at 30 (describing CDF as "master blueprint for co-ordinating development efforts" among development actors); Hawkins, *supra* note 12, at 29 (stating CDF is tool for "consensus" and "participation").

112. CDF Proposal, *supra* note 1, at 30–31; *Development Plan*, *supra* note 5, at 30.

113. See, e.g., Owen, *supra* note 15, at 108 ("[The] Bank must also seek to create new and closer relations with NGOs in both donor and receiving countries. Not only do NGO views deserve attention, NGOs can sometimes work with the Bank in shaping and executing needed programs, as they are now doing in some developing countries.>").

114. See CDF Proposal, *supra* note 1, at 9–10 (emphasis added).

115. See, e.g., Robert Chote, *Wolf at the Door*, FIN. TIMES (London), Apr. 14, 1999, at 18 (stating Bank directors support CDF in principle but not practice); *Development Plan*,

from a program created entirely by outsiders?

In the final analysis, it is fundamentally unacceptable from a microdevelopment viewpoint that development planning under the CDF occurs at a national government level pursuant to a framework prescribed by the Bank.¹¹⁶ Microdevelopment theory assumes that development policy and planning should originate with the poorest of the poor themselves, not their governments. The people themselves know “the obstacles to their social, cultural, and economic well-being”¹¹⁷ better than anyone else; thus, it should be the poor themselves who “identify[] problems, set[] priorities, . . . design[] strategies and programs, [and] carry[] out project activities.”¹¹⁸ From a microdevelopment standpoint, government-planned and implemented development is as much an imposition on the poor as Washington-imposed conditionality programs were on their governments. Ironically, then, through the CDF “the Bank is insensitive to the very groups it seeks to champion”—those in poverty.¹¹⁹ In fact, the CDF makes people-centered ownership less likely by putting the onus for development policy and implementation on the national government, at a macro-level. From the microdevelopment position, the level of ownership the CDF delivers is not deep enough; it must go down to the level of the people.

This criticism is squarely before the Bank. During its worldwide online CDF discussion, commentators expressed concern that, because the CDF is in the hands of the national government, the poorest of the poor may not have a full voice in formulating development strategies.¹²⁰ Additionally, the obstacles to true country ownership and participation stemming from implementation of a Bank-created program is the greatest criticism the CDF has received from the press, NGOs, and even Bank staff.¹²¹ The Bank acknowledges the concern in a CDF progress

supra note 5 (discussing controversial nature of CDF among Bank’s staff); C.T. Kurien, *Addressing the Universal Malady of Underdevelopment*, INDEPENDENT (Bangladesh), Dec. 22, 1999, available at <<http://independent-bangladesh.com/news/dec/22/221299op.htm>> (opining that CDF is merely another Washington Consensus conditionality plan); Chakravarthi Raghavan, *Dead-On-Arrival Draft Declaration Text?* (visited Apr. 19, 2000) <www.twinside.org.sg/title/deadon_cn.htm> (stating that CDF “pursue[s] the same policies” as the Washington Consensus “under the guise of a new framework of development and poverty focus”); Rowley, *supra* note 22, at 22 (stating that CDF could be attempt by Bank to dictate the entire global agenda for aid and development); Smallhout, *supra* note 22, at 44 (reporting that some call CDF “Wolfenstein’s little checklist”); Angela Wood & Matthew Lockwood, *The “Perestroika of Aid”? New Perspectives on Conditionality* (visited Apr. 19, 2000) <<http://www.brettonwoodsproject.org/poa/poa.html>> (questioning whether CDF is “paradigm changing” or “simply repackaging”).

116. See Rowley, *supra* note 22, at 22.

117. Klymeyer, *supra* note 57, at 38.

118. *Id.*

119. Abid Aslam, *World Bank Fighting Poverty in the Dark* (visited Apr. 19, 2000) <<http://www.twinside.org.sg/title/poverty-cn.htm>>; see also Hartnell, *supra* note 109.

120. See CDF Q&A, *supra* note 20, pt. C.3; *Progress Report*, *supra* note 39, para. 40.

121. See *supra* note 115 and accompanying text.

report,¹²² but it remains to be seen how the CDF may be amended to account for ownership and participation problems between the poor and their governments.¹²³

2. *Level of Focus*

³⁵ The CDF improves upon the Bank's previous and almost exclusive focus on large-scale projects. It specifically puts rural-sector and high-density urban-sector strategies on the development policy map, reminding development actors of the necessity of projects aimed at those who traditionally live in the most poverty-stricken areas.¹²⁴ This improvement is also seen in the CDF's acknowledgment that the appropriate level of government at which development policy should be implemented is sometimes *local* government.¹²⁵ Specifically, from a micro-L&D viewpoint, the recognition in the CDF that governance and justice reform must occur not only on a national scale but also on a rural level hopefully means that small-scale reforms, for which micro-L&D organizations often push, will find a place in development planning. Whether the CDF's increased focus on rural and urban sectors translates into increased development policy and planning for those areas, however, remains to be seen. The CDF has the potential to focus on smaller-scale projects, but it is all too easy to see that if CDF development planning occurs at a national government level, and the national government is not interested in pursuing small-scale programs involving local governments, development policy will still occur mostly on the macro-scale.

3. *Scope of Development*

³⁶ Implicit in the CDF is a realization that development is a much broader concept than economic development alone.¹²⁶ The CDF's holistic focus on all aspects of development (economic, social, and cultural) recognizes a fundamental microdevelopment premise—that development is multifaceted.¹²⁷ The CDF also maintains a sense of flexibility allowing countries to address individual country needs.¹²⁸ From an L&D perspective, the CDF acknowledges the importance of judicial and governmental reform, including legal reform, to

122. See *Progress Report*, *supra* note 39, para. 40.

123. See Hawkins, *supra* note 12, at 29 (noting the current gap between CDF's policy and practice with respect to development actors' cooperation).

124. See CDF Proposal, *supra* note 1, at 18–19; Chote, *supra* note 17, at 18.

125. See CDF Proposal, *supra* note 1, at 24.

126. See *id.* at 10–18; Chote, *supra* note 17, at 18 (reviewing CDF's multidisciplinary focus); Hawkins, *supra* note 12 (same).

127. See text accompanying *supra* notes 64–66.

128. See Agarwala, *supra* note 23; CDF Proposal, *supra* note 1, at 20.

development.¹²⁹ On its face, the CDF thus appears to be an improvement upon the exclusively macroeconomic focus of conditionality, the Bank's most recent development philosophy, and harkens back to the "growth with equity" philosophy of the 1960s and 1970s.¹³⁰

Some commentators, however, think that the CDF's holistic focus, if mandated for all developing countries, may actually overstretch countries' resources as they attempt to simultaneously attain goals in every aspect of development.¹³¹ Similarly troubling is the CDF's inherently prescriptive nature: by suggesting to developing countries that the elements in the CDF matrix are *the* important aspects to development, and focusing on these elements in discussions with the Bank,¹³² the CDF appears less flexible and more like a Bank-imposed edict on developing countries.¹³³ To the extent that the CDF, in practice, encourages the flexibility necessary for a country to focus on the particular aspects of development that its own citizens, especially the poorest, determine are most important,¹³⁴ it will be a success from the microdevelopment perspective. To the extent that the CDF perpetuates prescriptive policies, as the Bank's conditionality program did, it will be a failure.

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4. *Participants in the CDF*

The CDF implies that only developing countries need the framework; for instance, all CDF pilot countries are developing countries.¹³⁵ A tenet of microdevelopment theory, however, is that development must occur wherever extreme poverty exists—which, unfortunately, is in every country.¹³⁶ This exclusive focus on developing countries is somewhat absurd from a microdevelopment perspective. Although the Bank generally does not lend to more developed countries, it should acknowledge that all countries could use the CDF as a tool for

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129. See CDF Proposal, *supra* note 1, at 10–11.

130. See *supra* note 9 and accompanying text.

131. See Rowley, *supra* note 22, at 22; Smalhout, *supra* note 22, at 44 (reporting that one NGO believes CDF reforms far exceed many developing countries' institutional capacity).

132. See Smalhout, *supra* note 22, 44.

133. See, e.g., *Development Plan*, *supra* note 5, at 30 ("The CDF is now seen as a more direct attempt to impose a global agenda by doing it at a country level."); Hartnell, *supra* note 109 (reporting Nancy Alexander's statement in *Globalization Challenge Initiative Newsletter* that the CDF's predetermined categories mean inflexibility rather than flexibility; also that even Bank staff is unsure whether CDF is diagnostic tool to assess development needs or strategic tool to prescribe change); Kurien, *supra* note 115 (commenting that CDF is another Washington Consensus prescription); Anthony Rowley, *Developmental Problems*, BANKER, June 1, 1999, at 57 (discussing Asian Development Bank's criticism that CDF is inflexible).

134. See *supra* Part II(B).

135. See CDF Q&A, *supra* note 20, pt. E.1; *Development Plan*, *supra* note 5, at 30.

136. See *supra* note 67 and accompanying text.

further development.

B. *Microdevelopment Critique of the CDF Pilot Programs*

39 Limited information is currently available on implementation of the CDF in the pilot countries. A progress report is scheduled for May 2000,¹³⁷ and a final report will presumably be issued sometime after the pilot programs finish in September 2000.¹³⁸ Some information is available from Internet web sites launched by the governments of several pilot countries,¹³⁹ as well as a report on the CDF pilots that the Bretton Woods Project, a Bank/IMF watchdog group, issued after direct contact with coordinators in pilot countries.¹⁴⁰ This critique of the CDF's implementation in pilot countries is therefore not only preliminary but also confined to the modest information available.

40 Even from this limited information, however, one common problem emerges from a microdevelopment perspective: the CDF is not being implemented in the pilot countries with the full participation of any level of civil society, much less the poorest of the poor. Hopefully, the Bank is serious when it says that the CDF will be tweaked based upon the shortcomings of the pilot programs.¹⁴¹ Unless modified to require more civil society participation, the CDF may never have a real impact on poverty.

1. *Bolivia*

41 Bolivia was the first CDF pilot chosen; in fact, the government of Bolivia created a type of CDF matrix in 1997,¹⁴² a copy of which was attached to the formal CDF proposal that the Bank issued in early 1999.¹⁴³ NGOs and other elements in Bolivian civil society, however, indicate that they were marginalized in the 1997 national dialogue leading up to the first Bolivian CDF matrix.¹⁴⁴ For instance, the

137. See Letter from Pablo Guerrero, Head of CDF Secretariat, World Bank Group, to author (Mar. 7, 2000) (on file with *The Yale Human Rights and Development Law Journal*); see also *infra* Part III(D).

138. See *Progress Report*, *supra* note 39, pt. II.

139. See World Bank Group & Government of Ghana, *Comprehensive Development Framework* (visited Apr. 19, 2000) <<http://www.ghanacdf.org.gh/>>; Kyrgyzstan Development Gateway, *Comprehensive Development Framework in the Kyrgyz Republic* (visited Apr. 19, 2000) <<http://kyrgyzinvest.org/en/cdf/index.html>>; Romanian Gateway Project, *Romania's Shared Vision* (visited Apr. 19, 2000) <<http://world-gateway.org/romania/static/s/cdf.htm>>; World Bank Group, *Toward Comprehensive Development Framework in Vietnam* (visited Apr. 19, 2000) <<http://www.worldbank.org.vn/partner/part2.htm>>.

140. See Bretton Woods Project, *supra* note 37.

141. See CDF Proposal, *supra* note 1, at 31.

142. See *id.* at 30; Hartnell, *supra* note 109.

143. See CDF Proposal, *supra* note 1, app. IV.

144. See Abid Aslam, *IMF's New Poverty Focus a Hard Sell* (visited Apr. 19, 2000) <<http://www.twinside.org.sg/title/sell-cn.htm>>; Bretton Woods Project, *Bolivian NGOs Angry at Misrepresentation* (visited Apr. 19, 2000) <<http://www.brettonwoodsproject.org/>>

Bolivian government officially invited only two NGOs to the discussions, and the NGOs were not provided meaningful information or time to prepare.¹⁴⁵ Furthermore, the entire dialogue occurred over a very short period of time, two to three weeks, giving very little time for meaningful discourse and input.¹⁴⁶ Finally, the Bolivian government did not invite NGOs to follow-up meetings with international donors for eighteen months after the 1997 consultations, effectively barring civil society from the post-matrix dialogue and implementation.¹⁴⁷

Unfortunately, civil society has been further excluded from participation in Bolivia's formal CDF pilot program. Tardy invitations to attend consultation meetings held specifically for civil society in February 1999 left participants only one week to prepare; the number and diversity of NGOs invited to participate was very limited (only NGOs headquartered in the capital of La Paz were invited, excluding most indigenous groups); and relevant materials were available almost entirely in English, not Spanish.¹⁴⁸ Another coordination meeting in June, this time with all the development actors involved in the Bolivian CDF pilot, was held in Paris, France, to accommodate the attendance of high-level international donors. The location obviously meant that Bolivian civil society participation was limited, and even the Bolivian NGOs that could go received relevant documents late and in English, leaving them little time to effectively prepare after translation into Spanish.¹⁴⁹

The gap in civil society participation is also manifest in a lacuna in the CDF matrix itself. At the time the Bolivian CDF matrix was shown to Bank staff, it included a column addressing rural development issues, but the row set aside to show NGO participation was almost entirely blank.¹⁵⁰ Apparently, despite additional drafts of the matrix further outlining Bank and other multilateral donor roles, the NGO row has yet to evolve.¹⁵¹

The lack of civil society input in the national dialogue creating the CDF matrix, the dearth of civil society participation in further CDF consultations, and the failure to delineate NGO participation on the Bolivian CDF matrix leads to only one conclusion at this point: that the Bolivian CDF is being used as a tool to coordinate efforts between the Bolivian government and the international donor community. This may

march99/march99a.html#bolivian> [hereinafter *Bolivian NGOs*]; Hartnell, *supra* note 109.

145. See *Bolivian NGOs*, *supra* note 144; Aslam, *supra* note 119; Hartnell, *supra* note 109.

146. See *Bolivian NGOs*, *supra* note 144; Hartnell, *supra* note 109.

147. See *Bolivian NGOs*, *supra* note 144; Hartnell, *supra* note 109.

148. See Hartnell, *supra* note 109; Bretton Woods Project, *supra* note 37.

149. See Bretton Woods Project, *supra* note 37.

150. See CDF Proposal, *supra* note 1, app.4. From a micro-L&D viewpoint, it is positive that legal reforms were addressed in the first Bolivian CDF draft. See *id.* Information on the implementation of legal reforms addressed in the CDF, however, is not available.

151. See Bretton Woods Project, *supra* note 37.

be positive for Bolivia in some respects; from a microdevelopment perspective, however, it will not result in poverty reduction and social development because it fails to include the subjects of development—the poorest of the poor—in planning and implementation of development policy.¹⁵²

2. *Ghana*

45 One of the Government of Ghana's stated goals for its CDF pilot is "a genuine partnership with donors, civil society and the private sector."¹⁵³ In the recent past, the Ghanaian government has solicited the views of such groups on economic issues. In September 1997, the government held a "National Economic Forum" in which it consulted with "civil society, the private sector, academics and researchers, [and] the opposition" to discuss the country's economic strategy.¹⁵⁴ The Forum did not, however, discuss issues other than economic development, giving civil society little opportunity to contribute to the broader Ghanaian development agenda.¹⁵⁵

46 The initial steps in the Ghanaian CDF pilot program indicate that Ghana is using the CDF primarily to plan development efforts with donors rather than with civil society.¹⁵⁶ For instance, Ghana's first progress report to the Bank's executive directors in March 1999 discussed its "partner group" arrangement for the various development sectors on which the government was focusing (i.e., represented in the CDF matrix columns).¹⁵⁷ Under Ghana's plan, each group is to include a lead government agency and a multilateral agency as "focal support" leaders. The education group, for example, is led by the Ministry of Education and UNICEF.¹⁵⁸ It is in these "partner groups" that the government intended to draft the CDF matrix and to develop a sense of ownership and partnership.¹⁵⁹ Regarding civil society's participation in these groups, however, the government merely indicated that "[t]hese groups are open to all partners who wish to attend—including NGOs and private sector representatives—and their outputs will be circulated to all partners."¹⁶⁰ From this initial progress report, it appeared that

152. *See supra* Part II(B).

153. MINISTRY OF FINANCE, GOVERNMENT OF GHANA, A FIRST DRAFT COMPREHENSIVE DEVELOPMENT FRAMEWORK TOWARDS GHANA VISION 2020, para. 107, at 24 (1999), available at <<http://www.ghanacdf.org.gh/mofcdf.doc>> [hereinafter FIRST DRAFT].

154. Bretton Woods Project, *supra* note 37.

155. *See id.*

156. *See* Bretton Woods Project, *supra* note 37 (stating Ghanaian "[g]overnment's focus [is] on building government-donor partnerships").

157. *See* PETER HARROLD, THE GHANA CDF PILOT: THE FIRST STEPS app.1 (1999), available at <<http://www.ghanacdf.org.gh/firststeps.doc>> (report by the World Bank's Country Director for Ghana).

158. *Id.*

159. *See id.* para. 10.

160. *Id.*

the government was not actively soliciting input from anyone but the donor community in the CDF pilot.

In November 1999, the government issued its first CDF draft,¹⁶¹ which continues to focus on the “partner group” system, with input from civil society and the private sector permitted but not necessarily invited.¹⁶² Subsequently, the Bank encouraged an organization called Civisoc to help facilitate input from NGOs and other parts of civil society in the CDF pilot and other Bank programs in Ghana.¹⁶³ Still, it is clear that input and participation from civil society is not the Ghanaian government’s prime goal in its CDF pilot.

From a micro-L&D viewpoint, the Ghanaian CDF is making some strides forward. The first issue paper submitted by the governance partner group, responsible for recommending improvements to the judiciary and legal system, does highlight, as a key development necessity, increased access to legal services “for all[,] especially the poor.”¹⁶⁴ It also emphasizes the importance of including civil society in the improvement of democracy and governance,¹⁶⁵ and points out efforts that have been made to improve grassroots participation in government,¹⁶⁶ and in legal education.¹⁶⁷ For instance, the issue paper reports that with outside funding, a legal education program is underway in one geographical region to “train[] women leaders in human rights and legal issues to assist them [to] empower women in the communities of the region.”¹⁶⁸

While the governance issue paper addresses topics that are necessary from a micro-L&D standpoint, such as increased legal services and participatory government, it is still unclear to what extent civil society was involved in formulating these goals and preparing the issue paper. Even if the goals are theoretically satisfactory, the approach is still deficient from a micro-L&D framework, because the process of formulating development policy with civil society’s participation is just as important as the policy itself. Coordination is what appears to be lacking in Ghana—even in the governance partner group.

3. *The Kyrgyz Republic*

As in other countries, the government of the Kyrgyz Republic is

161. See FIRST DRAFT, *supra* note 153.

162. See *id.* paras. 11–12.

163. See Bretton Woods Project, *supra* note 37.

164. NATIONAL INSTITUTIONAL RENEWAL PROGRAMME, REPUBLIC OF GHANA, GOVERNANCE ISSUE PAPER secs. 3.1.3, 6 (1999), available at <<http://www.ghanacdf.org.gh/govern.doc>>.

165. See *id.* sec. 3.2.

166. See *id.* sec. 5.1.4.

167. See *id.* secs. 5.2, 5.3.

168. *Id.* sec. 5.3.

actively coordinating the implementation of the CDF.¹⁶⁹ After initial meetings to which only international organizations and key donors were invited—one of which occurred in Washington, D.C.¹⁷⁰—the government held a two-day CDF workshop in July 1999 in the Kyrgyz capital of Bishkek, which included a broad range of stakeholders, including NGOs and other civil society groups.¹⁷¹ Unlike some countries, the Kyrgyz government has established a specific NGO consultative group to assist in formulating and implementing development policy.¹⁷² This is an important step toward realizing the government's statement that "[p]articipation of all interested parties, including the civil society . . . , is essential for the development and implementation of the CDF,"¹⁷³ and a step which other countries using the CDF should emulate.

51 The NGO group met again in December 1999,¹⁷⁴ but it appears that its participation may be limited in scope. Of the five major development themes on which the Kyrgyz CDF focuses,¹⁷⁵ it appears that the NGO group has only been asked to contribute to one: poverty reduction and social protection.¹⁷⁶ The government should expand the role of the NGO group so that civil society may contribute to all the development themes; otherwise, the Republic risks undertaking development without input from the subjects of development—the Kyrgyz people themselves.

52 With respect to micro-L&D, very little information is available on plans the Kyrgyz CDF is making for legal and judicial reforms. During the July 1999 workshop, a specific session on "Good Governance, Legal and Judicial Reforms" was held.¹⁷⁷ The Kyrgyz CDF web site states that among the topics to be discussed were "(1) legal protection of individuals, (2) law enforcement, (3) availability of information on laws and acts to public, and (4) judiciary reform and incentives for judges."¹⁷⁸ The site, however, contains no further information on what was actually discussed at the workshop and what specific reforms are being

169. See Kyrgyzstan Development Gateway, *Comprehensive Development Framework Core Group* (visited Apr. 19, 2000) <http://kyrgyzinvest.org/en/cdf/e_cdf_core.htm> (listing key government officials constituting "core group").

170. See Bretton Woods Project, *supra* note 37.

171. See *id.*; Kyrgyzstan Development Gateway, *Comprehensive Development Framework in the Kyrgyz Republic* (visited Apr. 19, 2000) <<http://kyrgyzinvest.org/en/cdf/index.html>> [hereinafter *CDF in Kyrgyz Republic*].

172. See Bretton Woods Project, *supra* note 37; Kyrgyzstan Development Gateway, *Kyrgyz Republic CDF Consulting Groups* (visited Apr. 19, 2000) <http://kyrgyzinvest.org/en/cdf/e_cdf_group.htm>.

173. *CDF in Kyrgyz Republic*, *supra* note 171.

174. See Kyrgyzstan Development Gateway, *Minutes of NGOs Meeting* (visited Apr. 19, 2000) <http://kyrgyzinvest.org/en/cdf/e_cdf_news4.htm> [hereinafter *Minutes*].

175. *CDF in Kyrgyz Republic*, *supra* note 171 (stating five major development themes: (1) macroeconomic stability and growth, (2) governance and legal reform, (3) private sector, (4) poverty alleviation, and (5) regional cooperation and trade).

176. See *Minutes*, *supra* note 174.

177. *CDF in Kyrgyz Republic*, *supra* note 171; Kyrgyzstan Development Gateway, *Workshop # 3: Good Governance, Legal and Judicial Reforms* (visited Apr. 19, 2000) <http://kyrgyzinvest.org/en/cdf/e_cdf_workshop3.htm>.

178. *Id.*

planned. It remains to be seen what micro-L&D steps the Kyrgyz CDF takes.

4. Romania

The Romanian Government asked to be included in the CDF pilot program.¹⁷⁹ The initial consultative meetings in May through June 1999, however, were led not by the Romanian government but by the Bank itself.¹⁸⁰ These consultations were broad-based and inclusive of a variety of Romanian individuals and groups,¹⁸¹ and the Bank “is ‘especially keen’ to have NGOs and civil society more generally involved [since] input from NGOs has been very valuable.”¹⁸² Apparently, Romanian NGOs have responded positively to the CDF. One NGO representative is reported to have said, “I’ve worked with the Bank in Romania since 1990 and I just wanted to tell you that the CDF is the most important thing which the Bank has ever done here. This is the new Bank.”¹⁸³ Hopefully, as the Romanian CDF program matures, it will continue to do what it has recognized is crucial: “giving voice to the poor, through consultation with civil society, [which hopefully] means that resources will go where they are most needed—and the benefits can be sustained.”¹⁸⁴

As with other pilot countries, more information is available on civil society’s participation in the Romanian CDF than on specific development issues the CDF will address. From a micro-L&D standpoint, it does appear that legal reform, especially vis-à-vis property rights and land reform, is among the issues on which the Romanian CDF will focus,¹⁸⁵ hopefully with the input of civil society and to the benefit of the poor.

5. Vietnam

One of the main areas of focus for the Vietnam CDF pilot program is the coordination of all development actors, including NGOs, in order to create a more synergistic development atmosphere.¹⁸⁶ As in the Kyrgyz Republic, the Vietnam CDF pilot formed a civil society working

179. See Bretton Woods Project, *supra* note 37.

180. See *id.*; Romanian Gateway Project, *The CDF in Action in Romania* (visited Apr. 19, 2000) <http://world-gateway.org/romania/static/s/cdf/in_action.htm> [hereinafter *CDF in Romania*].

181. *CDF in Romania*, *supra* note 180; Bretton Woods Project, *supra* note 37.

182. Bretton Woods Project, *supra* note 37.

183. Romanian Gateway Project, *Results and Feedback* (visited Apr. 19, 2000) <http://world-gateway.org/romania/static/s/cdf/res_feedback.htm>.

184. Romanian Gateway Project, *CDF—Sources of Potential Change* (visited Apr. 19, 2000) <http://world-gateway.org/romania/static/s/cdf/pot_change.htm>.

185. See Romanian Gateway Project, *CDF’s Priority Development Issues* (visited Apr. 19, 2000) <http://world-gateway.org/romania/static/s/priorities_cdf.htm>.

186. See Bretton Woods Project, *supra* note 37.

group,¹⁸⁷ as well as an NGO working group.¹⁸⁸ The NGO group is focusing specifically on poverty alleviation,¹⁸⁹ while the civil society group is working on broader development planning and implementation, including the drafting of an NGO law.¹⁹⁰ One report, however, indicates that while there was some internationally-based NGO participation in CDF consultative meetings in June 1999, participation of local NGOs was limited, and that the “Bank wants to encourage greater public discourse.”¹⁹¹

6. *Other Pilot Countries*

⁵⁶ Although most available information on implementation of the CDF pilot program relates to the above five countries, some very limited information is available on several other pilot countries. As the Ethiopian CDF pilot started, one observer noted that the government was focusing only on coordinating efforts with international donors, “whilst consulting with national stakeholders [was] not a priority or even an objective.”¹⁹² Since then, Ethiopia’s CDF has apparently fizzled due to its war with Eritrea.¹⁹³ In Côte d’Ivoire, it appears that civil society may not have been included in the formulation of the first drafts of the CDF matrix, but is being included in the follow-up consultative discussions on the CDF.¹⁹⁴ This is similar to what is occurring in Uganda, where the initial CDF was drafted exclusively by the government and donors, leaving civil society out of development planning until later stages.¹⁹⁵

⁵⁷ The situation looks better for several other countries, however. In Morocco, civil society has not only been included in the CDF matrix drafting and consultative process, but has co-organized some CDF seminars with the government.¹⁹⁶ In the West Bank and Gaza, moreover, civil society (including NGOs) has been included in CDF matrix planning meetings, at which formulation of development priorities is occurring.¹⁹⁷

187. See World Bank Group, *Civil Society and Community Participation Group* (visited Apr. 19, 2000) <<http://www.worldbank.org.vn/partner/work4.htm>> [hereinafter *Community Participation Group*].

188. See World Bank Group, *Joint Government-Donor-NGO Poverty Working Group* (visited Apr. 19, 2000) <<http://www.worldbank.org.vn/partner/work9.htm>>.

189. See *id.*

190. See *Community Participation Group*, *supra* note 187.

191. See Bretton Woods Project, *supra* note 37.

192. Angela Wood, *What Role for the Multilateral Institutions, Donors, and NGOs in the New Framework for Poverty Eradication?* (visited Apr. 19, 2000) <<http://www.brettonwoodsproject.org/issues/npf.html>>.

193. See Bretton Woods Project, *supra* note 37.

194. See *id.*

195. See *id.*

196. See *id.*

197. See *id.*

C. Micro- Recommendations for the CDF

Based upon this evaluation of the CDF and its implementation in the pilot countries, one major failing is evident: lack of full civil society participation. The CDF framework was created without major input from the development actors, including developing countries, that the CDF insists are so necessary to the development process.¹⁹⁸ The Bank's CDF proposal itself mentions that civil society participation in development planning is not expected in each country.¹⁹⁹ Perhaps as a result, civil society participation has been sidelined in many pilot countries in favor of government coordination with the international donor community.²⁰⁰ In the pilot countries where civil society participation has occurred, it has generally been after the initial CDF matrix priorities were drafted²⁰¹ or has been confined to limited aspects of CDF priorities.²⁰² The problem with exclusive government coordination with donors is that donor-driven programs are donor-dominated programs, leaving civil society's input in policy and implementation by the wayside.²⁰³ From a micro-perspective, such limited participation from "the very groups [the CDF] seeks to champion,"²⁰⁴ namely poverty-stricken civil society in developing countries,²⁰⁵ is unacceptable. While microdevelopment theory applauds the CDF's focus on those in poverty,²⁰⁶ it strongly criticizes not only the lack of participation of the poor themselves in development planning under the CDF, but the imposition of this Bank-created program in the first place.²⁰⁷

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For the CDF to truly realize its potential as a vehicle for poverty alleviation, the Bank must amend it not only to encourage, but to require, full-scale involvement of civil society in all stages of the CDF, from the initial development priority brainstorming through implementation. "There is a wide gulf between participating in the design of a poverty reduction strategy," which microdevelopment requires, "compared with being consulted on a proposed strategy,"²⁰⁸ which is how the CDF currently is being implemented, at best. In some

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198. See *supra* Part III(A)(1).

199. See *id.*

200. See, e.g., *supra* Part III(B)(1).

201. See, e.g., *supra* Part III(B)(6).

202. See, e.g., *supra* Parts III(B)(1), III(B)(3).

203. See Hartnell, *supra* note 109 (citing Nancy Alexander's concern that "there is a danger that the process will be too donor-driven, with especially the larger donors such as the Bank itself dominating the agenda").

204. Aslam, *supra* note 119.

205. See CDF Proposal, *supra* note 1, at 2, 31 (focusing CDF's efforts on alleviating problems of those in poverty).

206. See Chambers, *supra* note 57, at 79 (stating that development must "start[] with the situation and priorities of the rural poor"); Paul & Dias, *Developing Law*, *supra* note 58, at 64-67 (noting focus of development should be on the poor themselves).

207. See Kleymeyer, *supra* note 57, at 38; Stiles, *supra* note 57, at 3-4.

208. Wood, *supra* note 192.

pilot countries, the Bank has encouraged more civil society participation.²⁰⁹ Publicly, at least, the Bank claims that the CDF “is aimed at engaging civil society,” and that “working with civil society . . . is an essential part [of development work] for us.”²¹⁰ It must take that encouragement one step further after the pilot programs to insist upon civil society participation in the CDF.

⁶⁰ To improve its focus on civil society participation, the Bank could look to the widespread public participation that surrounded the drafting of South Africa’s post-apartheid constitution. The racial tension and violence that occurred after the implementation of the 1984 constitution, which did not contain a bill of rights and gave only limited franchise rights to persons of Indian and mixed-race, but not Black, ancestry,²¹¹ is well known.²¹² Recognizing this, a noted South African legal scholar (now a judge on that country’s Constitutional Court) stated that the success of South Africa’s future constitution depended heavily “on the meaning it has for the public affected by it.”²¹³ Accordingly, drafters of South Africa’s current constitution elicited widespread public participation, both from individuals and civil society groups: they released working drafts of the constitution for public comment, published a regular newsletter available in print and via the Internet, established email accounts and phone lines through which individuals could make suggestions (over two million submissions were made), went to the people by holding public meetings throughout the country, and actively sought the voices of traditionally disempowered groups.²¹⁴

⁶¹ Because of the widespread public participation, the South African constitution “represents the collective wisdom of the South African people and has been arrived at by general agreement.”²¹⁵ Of course, difficult policymaking decisions were made, and not every South

209. See Bretton Woods Project, *supra* note 37 (discussing Bank’s encouragement in Ghana, Romania, Uganda, and Vietnam).

210. Wolfensohn, *supra* note 101.

211. See Lennox S. Hinds, *The Gross Violations of Human Rights of the Apartheid Regime Under International Law*, 1 RUTGERS RACE & L. REV. 231, 306 (1999).

212. See Peter J. Spiro, Note, *State and Local Anti-South African Action as an Intrusion Upon the Federal Power in Foreign Affairs*, 72 VA. L. REV. 813, 816 & n.17 (1986).

213. See Melanie Beth Oliviero, *Human Needs and Human Rights: Which are More Fundamental?* 40 EMORY L.J. 911, 926 n.24 (1991) (quoting Justice Albie Sachs).

214. See Albie Sachs, *The Creation of South Africa’s Constitution*, 41 N.Y.L. SCH. L. REV. 669, 675–76 (1997); Barbara Bennett Woodhouse, *The Constitutionalization of Children’s Rights: Incorporating Emerging Human Rights Into Constitutional Doctrine*, 2 U. PA. J. CONST. L. 1, 35–36 (1999); Richard Cameron Blake & Lonn Litchfield, Comment, *Religious Freedom in Southern Africa: The Developing Jurisprudence*, 1998 BYU L. REV. 515, 524–25; see also Robert F. Williams, *Comparative Subnational Constitutional Law: South Africa’s Provincial Constitutional Experiments*, 40 S. TEX. L. REV. 625, 654 n.127 (1999) (discussing public participation surrounding drafting of Western Cape Constitution in South Africa).

215. Woodhouse, *supra* note 214, at 35 (quoting Explanatory Memorandum of South African Constitutional Assembly).

African agrees with every aspect of the new constitution. However, the inclusive drafting process of the document makes it more likely that it will stand the test of time and help heal the wounds of racial division. The Bank should encourage public participation in the CDF on the scale present in the drafting of the South African constitution.

From civil society's standpoint, the CDF should be used as a tool to compel greater participation in the development planning and implementation process. By approaching government with the CDF in hand, reminding the government that the CDF encourages (and hopefully after amendment *requires*) broader cooperation with civil society,²¹⁶ those with the greatest stake in a country's development—its own citizens—should be able to join the development planning and implementation process. As one NGO executive said, "We should try to exploit [the CDF] to the maximum [rather than leaving it as] just a piece of paper."²¹⁷

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D. *Postscript: May 2000 Progress Report*

As this New Development went to press, the Bank issued a progress report that discusses the CDF pilot countries.²¹⁸ The Report provides a summary of efforts in each CDF pilot country through March 2000, as well as the Bank's analysis of the CDF pilot program as a whole.²¹⁹ Rather than suggesting specific changes to the CDF at this time, the Report merely mentions "emerging issues" that the Bank must address in the future.²²⁰

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The Report strengthens the main conclusion of the micro-level analysis above: the primary shortcoming to implementation of the CDF is the failure to fully engage civil society in development planning. Summaries of ten of the thirteen pilot countries, for instance, indicate that consultation with civil society has thus far been weak or needed greater attention.²²¹ The Report praises only three countries' efforts to include civil society in CDF planning: the Dominican Republic, Uganda, and the West Bank/Gaza.²²² Microdevelopment theory posits that development can only occur with the involvement of the subjects of

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216. See CDF Proposal, *supra* note 1, at 25–26.

217. Hartnell, *supra* note 109 (quoting ActionAid Chief Executive Salil Shetty).

218. See World Bank, *Comprehensive Development Framework Mid-Term Progress Report* (May 2000), available at <<http://www.worldbank.org/html/extdr/cdf/report2000.pdf>> [hereinafter *Mid-Term Progress Report*].

219. See generally *id.* Of interest to microdevelopment and micro-L&D theorists is the Report's discussion of legal reform and micro-sector efforts and challenges. See *id.* at 3–4, 11, 20, 41, 52.

220. See *id.* at 19–22.

221. These pilot countries include Bolivia, Côte d'Ivoire, Eritrea, Ethiopia, Ghana, Jordan, the Kyrgyz Republic, Romania, Vietnam and the West Bank and Gaza. See *id.* at 28, 30, 34, 36, 38, 39, 41–42, 46, 49–50, and 52.

222. See *id.* at 31, 47, 51.

development.²²³ For the CDF pilot programs to be successful in eradicating poverty, consultation with all aspects of society, especially the poorest of the poor, must occur.

65 The Report illustrates the Bank's awareness of the lack of full-scale participation in the CDF pilots.²²⁴ How is the Bank addressing the problem? The Report suggests that the Bank might actually be scaling down its encouragement of full scale participation in some pilot countries where participation may "undermine existing democratic institutions . . . [that] are relatively fragile."²²⁵ Overall, however, the Report indicates that the Bank continues to emphasize civil society participation; the Report frequently mentions that the CDF development process "needs to involve" all affected stakeholders.²²⁶ The Bank should, however, use even stronger language, such as that included in a questionnaire sent to pilot countries to elicit information for the Report: "Ownership *requires* consultations with stakeholders to promote consensus . . ."²²⁷ Additionally, as recommended above, future codifications of the CDF should require—rather than merely encourage—participation of civil society and other relevant stakeholders, and the Bank, in its consultations with developing countries, should follow up with pilot country governments on their efforts to engage civil society in development policymaking and implementation.²²⁸

66 Finally, the Report also illuminates a specific problem with participation in the CDF: lack of wide-scale participation is often the fault of the pilot countries' governments.²²⁹ The opposite is also obviously true: full participation occurs in countries whose governments actively encourage it.²³⁰ To the extent that this New Development recommends that the Bank require widescale public participation in CDF planning efforts, it also urges CDF pilot countries' governments to initiate broader engagement with civil society and the private sector.²³¹ Likewise, it reiterates that civil society groups should approach their governments with the CDF in hand, using it as a tool to get to the development planning table.²³²

IV. CONCLUSION

67 The World Bank's Comprehensive Development Framework is, in many ways, an important advance in the international development

223. See *supra* Part II(B).

224. See, e.g., *Mid-Term Progress Report*, *supra* note 218, at iv–v.

225. *Id.* at iv; see also *id.* at vii, 21.

226. See *id.* at 5; see also *id.* at vii, 10, 21.

227. *Id.* at 59 (emphasis added).

228. See *supra* Part III(C).

229. See *Mid-Term Progress Report*, *supra* note 218, at 24, 50.

230. See *id.* at 47.

231. See *supra* Part III(C).

232. See *id.*

field. Bank policies have long been based on macrodevelopment theories, which ignore microdevelopment. The microdevelopment approach, including micro-L&D theory, is essential for the economic, social, and cultural development of the poorest of the poor. How much of an advance the CDF makes depends in part on how well it withstands analysis from a microdevelopment, and micro-L&D, perspective.

The micro-L&D critique in this New Development shows that, on its face, the CDF has potential but is not without its faults; most unfortunately, it only encourages rather than requires civil society input. As implemented in pilot programs, this particular fault has come to a head, as pilot country governments have used the CDF as an instrument to improve relations with international donors rather than with the poorest of the poor in their own countries. Unless these concerns are addressed, the CDF promises to be merely another Washington-imposed program rather than a real tool to improve the lot of the “three billion people still living under \$2 a day.”²³³

The implications of the CDF’s failure for the Bank are serious. The Bank has received great criticism for past development policies, including its conditionality programs of recent times.²³⁴ In the eyes of many, especially in the developing world, the Bank is unsuccessful and lacks legitimacy.²³⁵ Should the CDF fail, the Bank’s legitimacy will no doubt be increasingly questioned, and its credibility in the eyes of the development world tarnished. Even worse, however, are the implications for the poorest of the poor throughout the world. At a minimum, the CDF’s failure will delay, in the words of Bank President James Wolfensohn, “the betterment of mankind and [] improvement in the lives of many in poverty.”²³⁶ At the very worst, the CDF could actually worsen the lot of the poor, as many argue the Bank’s conditionality programs did.²³⁷

233. CDF Proposal, *supra* note 1, at 2.

234. *See supra* Part I(A).

235. *See, e.g.*, Anderson, *supra* note 102, at A31; Kurien, *supra* note 115 (stating view of academic in developing world).

236. CDF Proposal, *supra* note 1, at 1.

237. *See supra* note 99 and accompanying text.