Abstract

How does the World Bank respond when one of its partner governments is overthrown in a coup d’etat or revolution? Such power transitions remain frequent in the developing world. Their occurrence gives rise to vexing challenges for the Bank, whose mandate prohibits it from considering politics in its decision-making. To disburse, or not to disburse? That is the question.

The paper analyzes the Bank’s policy for responding to this question. Operational Policy OP7.30 outlines the circumstances under which the Bank may suspend disbursements under existing financing agreements to governments that have changed power through coup d’etat, revolution or other means outside that country’s constitution. The policy lacks clarity, precision and guidance. Recent practice suggests that the policy is not being applied faithfully and that extraneous issues are being considered, including political considerations in contravention of the Bank’s Articles of Agreement.

The paper proposes four recommendations to strengthen the Bank’s policy. The Bank should (1) issue a clarification reconciling the Bank’s Articles of Agreement with OP 7.30; (2) publish its decisions and rationale for suspending disbursements to de facto governments; (3) amend OP 7.30 to clarify the effective control test; and (4) amend OP 7.30 to authorize the Bank to consider the views of relevant organizations in its decision-making. While these recommendations will not resolve all outstanding issues, their adoption would strengthen the effectiveness and legitimacy of Bank decision-making in this challenging area.

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Strengthening the World Bank’s policy on de facto governments

i. The World Bank and de facto governments

a. The World Bank

In 2010, the Bank committed more than $72 billion in assistance to partner governments in the developing world for the purposes of economic development and poverty alleviation. In conducting its operations, the Bank’s mandate is governed by the International Bank for Reconstruction and Development Articles of Agreement, which prohibits the Bank from having regard to political considerations in its decision-making. The Articles of Agreement requires that ‘the Bank and its officers shall not interfere in the political affairs of any member; nor shall they be influenced in their decisions by the political character of the member or members concerned. Only economic considerations shall be relevant to their decisions, and these considerations shall be weighed impartially.’ To date, 187 Bank Member States have ratified the Articles of Agreement, making it one of the most widely endorsed treaties in the world.

Despite this, the World Bank has long been accused of being a tool of its developed country shareholders. Empirical studies have shown positive relationships between the Bank’s lending practices and recipient countries’ voting behavior in the UN. Yet, there has been little scrutiny or scholarship on the role of political considerations in Bank decision-making after a lending operation has been approved. Focusing on scenarios where disbursements have begun to flow, researchers can control for a range of pre-approval factors, including political considerations that may be masked during the pre-approval phase. Further, there is a paucity of academic scholarship on the Bank’s decision-making regarding the suspension of disbursements under existing financing operations to de facto governments. This article takes a step toward addressing that void.

b. De-facto Governments

A ‘de facto’ government is one that arises by means outside of that country’s own system of political governance. De facto governments may come to power following a coup d’état or revolution, or by usurpation, abrogation or suspension of that country’s constitution. They need not come to power through the use of armed force or violence (though often they do), and they can arise in countries of any political governance (whether democratic,
What characterizes these governments is the fact that they arise outside of the rule of law, but in actuality govern the country.

De facto governments frequently arise in the developing world. In the last decade alone, more than 30 coups d’etat were attempted in over 20 countries, mostly in sub-Saharan Africa. The Bank had existing financing arrangements with the overwhelming majority of those countries.

c. Implications of dealing with de-facto governments

Political instability is closely linked with the Bank’s goals of poverty and economic under-development. Among the predominant causes of coups d’etat and revolutions are low income and slow growth. Political crises can also jeopardize a country’s economic stability, as investors flee and the local currency fluctuates, economic growth is often stunted, pushing people (further) into poverty. For these and other reasons, countries that experience de facto governments are more likely than other developing countries to need assistance from the Bank.

However, de facto transitions of political power are the realm of high politics – that place where Bank officials fear to tread. When one of those countries has an existing agreement with the Bank, the Bank can find itself squarely in the middle of a contested and controversial space. This is amplified when, as is often the case, the Bank is a large donor in the country.

Continuing disbursements may lend confidence and legitimacy to a de facto government, signaling stability and trustworthiness, and increasing the likelihood that other countries and organizations will recognize the legitimacy of the new government. Continuing disbursements can also strengthen the government’s ability to conduct state functions and further entrench its control over territory. Whereas, suspending disbursements may deal that government a fatal blow in terms of confidence, legitimacy and finance. Further, the Bank often plays intermediary and donor coordination roles in the countries, conferring on it considerable informal influence with donor governments, international organizations, and NGOs.

d. Parallels with broader governance challenges facing the Bank

Parallels may be drawn between the Bank’s approach to dealing with de facto governments, and the Bank’s approach to dealing with governance and anti-corruption challenges more broadly.

For much of its history, the Bank had been silent on issues of governance
and corruption because it deems them ‘too political’. By the late 1980s, evidence of the relationship between governance and economic development had strengthened. Lessons were emerging about the failure of macrocentric structural adjustment policies to cater for the prevailing governance and institutional environment in recipient countries. By the mid-1990s, governance and institutional quality were squarely on the agenda, and the Bank’s longstanding hesitancy to address governance concerns gave way to increasing engagement with corruption, financial accountability, and civil service reform. Two decades on, criticism persists that the Bank’s work in governance is overly selective and that the Bank is ‘forever chasing its own tail, in an effort to remove the political form of its work on institutions, accountability, legal reform, increase participation and so on.’

Like in the broader governance debate, the Bank appears wedged on this issue between its Articles of Agreement and the evolving directions of economic development policy.

**ii. The Bank's policy on suspending disbursements to de facto governments**

In 2001, the Bank adopted *Operational Policy 7.30: Dealing with De Facto Governments* (OP7.30), which outlines the conditions under which the Bank shall either continue or suspend disbursements under existing operations to a de facto government. OP7.30 stipulates that the Bank may not unilaterally suspend disbursements under existing loans, provided that the Bank is satisfied that the situation meets the following five criteria:

- **Criterion A** - holds effective control of the country;
- **Criterion B** - recognizes the country’s past international obligations;
- **Criterion C** - states it is willing and able to assume all of its predecessors’ obligations to the Bank;
- **Criterion D** - ensures the continued implementation of Bank projects and programs;
- **Criterion E** - authorizes a representative for the purpose of withdrawals.

OP7.30 is supported by Bank Procedure (BP7.30), which requires that immediately upon a change of government power, staff must ‘gather all relevant information about the status, policies, and public acceptance of the new government,’ and initiate an internal process to determine whether to continue or suspend disbursements. If, upon analysis, the policy criteria above are met, the Bank is obliged to continue disbursements under its existing
agreement. The decision to continue or suspend is made by the relevant Regional Vice President, in consultation with the Country Director, the Legal Vice President and the Credit Risk Group.

**a. Lack of clarity and guidance in OP7.30**

OP7.30 fails to provide Bank officials with the necessary guidance in responding to de facto governments.

Criterion A, effective control, is vague and imprecise. The term ‘effective control’ has overlapping meanings under international law. Under the laws of armed conflict, it refers to the circumstances when a belligerent armed force is in control of a hostile territory such that their forces become obliged to provide certain minimum guarantees to civilians in that territory as an occupying power.\(^{xv}\) Under human rights law, the term refers to whether a State operating extra-territorially has sufficient control over an individual such that it must protect their rights.\(^{xvi}\) In a third context, the UN Secretary General has used the term to specify which of two rival governments, ‘exercises effective authority within the territory of the State and is habitually obeyed by the bulk of the population.’\(^{xvii}\) It is not clear whether Criterion A of OP7.30 refers to one of these concepts or to an internal concept of the same name.

Criteria B and C, assuming obligations, and Criterion D, ensuring implementation, are difficult to apply in practice. These criteria emphasize that the policy’s primary concern is the solvency of the Bank’s investment. This suggests that financial risk is indeed more relevant than political considerations in Bank decision-making. Though this prioritization may draw its critics, the focus on lending is faithful to the Articles of Agreement and the Bank’s traditional ‘economics first’ approach. However, a de facto government’s commitment to international obligations and Bank projects and programs cannot be known *ex ante*. As a result, much of the Bank’s assessment under OP7.30 requires prediction and conjecture by Bank staff about the credibility and veracity of the new government’s statements. This introduces subjectivity to the policy, and creates potential space for extraneous considerations, including political considerations.

Lastly, Criterion E, authorizing a representative, is a formality: it merely requires that de facto governments nominate a payee for the disbursement of checks.

In all, OP7.30 provides Bank officials with little objective guidance on the precise meaning of the five criteria, creating wiggle room for the Bank to
continue or suspend disbursements in a given case.

b. Lack of transparency in applying OP7.30

OP7.30 and BP7.30 are publicly available. However, they include a caveat that they are ‘not necessarily a complete treatment of the subject,’ without referring to additional guidelines or documents to elucidate a more complete treatment. Bank officials, including advisers and decision-makers, as well as observers and de facto governments themselves, are all thus left with an incomplete framework for the Bank’s decision-making.

Further, the Bank does not disclose its decisions or deliberations, and is selective in addressing the issue in the media. It is thus difficult to discern the Bank’s exact practice. Not knowing how these decisions are made reduces accountability, hinders experiential learning and limits the ability of the Bank and other actors to improve the Bank’s practice in dealing with de facto governments over time. Further, the opacity does not align well with the Bank’s stated commitment to transparency and its track record as a leader in access to information and open development.xviii

iii. OP7.30 in practice

The author has collated over a dozen case studies of de facto governments that have arisen over the last five years. Below are some illustrative examples of the application of OP7.30 in those cases, based on the limited publicly available information.

a. Recent case studies of the Bank’s application of OP7.30

i. Coup d’état in Honduras, 2009

The Bank’s suspension of disbursements in response to the 2009 coup d’état in Honduras appears at odds with OP7.30. When a military coup replaced then-President, Manuel Zelaya, with Congressional President, Roberto Micheletti, the new government quickly gained control of the territory and functions of government, including economic policy. In response, the Inter-American Development Bank (IADB) suspended all loans and the Organization for American States (OAS) suspended Honduras’ membership. The Bank suspended $250 million in loans. In explaining the position, Bank President Robert Zoellick noted that the Bank was ‘working closely with the OAS and looking to the OAS to deal with its handling of the crisis under its
‘democratic charter’.xix When asked under what conditions the Bank would consider resuming lending, Zoellick stated that the situation was ‘in flux and fluid’ and that the Bank was ‘trying to play a supportive role with the region and its overall goals to restore democracy’.xx No mention was made of any OP7.30 criteria, such as the government’s effective control or its ability to meet Bank commitments. Zoellick’s statement suggests that the position of regional organizations, such as the OAS and the IADB, factored into the decision-making process, along with overarching considerations of democracy and the rule of the law.

ii. Election stand-off in Cote d’Ivoire, 2010

The Bank’s suspension to Cote d’Ivoire during the 2010 post-election stand-off is also difficult to reconcile with OP7.30. In early December 2010, the Bank and the African Development Bank (AfDB) issued a joint statement expressing concern over the post-election crisis, in particular concerns about governance, peace and stability.xxxi In late December, the Bank suspended all disbursements to Cote d’Ivoire, stating that it ‘supported ECOWAS and the AU in sending the message to President Gbagbo that he lost the elections and he needs to step down’ in favor of President-elect Alassane Ouattara.xxxii The international community’s response has been described as ‘a remarkably united international coalition intent on cutting funds’ to Gbagbo.xxxiii

However at that time, Gbagbo maintained control throughout Cote d’Ivoire, including the government and business capitals. Meanwhile, Ouattara was confined in an Abidjan hotel and the militia groups that ultimately seized control were only just beginning to mount in the north of the country. Further, applying Criterion C, there is little to suggest that Gbagbo’s economic policies had changed since before the election, when he was the de jure government and funds were flowing, nor that his government had changed so drastically to render the Bank’s existing projects and agreements unworkable. Lastly, applying Criteria B, there is little indication that Gbagbo would not honor the obligations his government had assumed during the previous 10 years of his presidency. In April 2011, Ouattara’s forces defeated Gbagbo and formed a government, at which time the Bank and other donors immediately reactivated disbursements.

iii. Tunisian Revolution, 2011

The Bank’s continued disbursements to Tunisia during the Jasmine Revolution in 2011 also appear at odds with OP7.30. There, a popular uprising led to the ouster of President Ben Ali and the appointment of an Interim
Within a week the Interim Authority had gained authority throughout the country and enjoyed broad support. Donors appeared eager to engage with the Interim Authority, whose stated goals of development, growth and governance aligned well with those of the donor community. The Interim Authority stated publicly its willingness to honor the international obligations of the previous Ben Ali government. Like others, the Bank did not suspend disbursements, an outcome which appears consistent with OP7.30.

However, there is also evidence to suggest that the Bank took into account extraneous factors in its decision-making, including democracy promotion and political expediency. In a statement in February 2011, Bank Vice President Akhtar stated that the root cause of political turmoil in North Africa is ‘fatigue with long-standing authoritarian rule and weak political and economic governance as confirmed by public concerns regarding issues of voice, social justice, fairness, accountability and access to public services.’ xxiv The Bank highlighted the importance of ongoing support to the Interim Authority and has since fast-tracked programs and increased lending fivefold to ‘build on the revolution’s achievements in breaking from past practices, including increasing transparency, social accountability, citizen’s participation and social and economic inclusion.’xxv These statements suggest that the nature of the revolution, including its democratic goals, may have also factored into Bank decision-making.

iv. Mali, coup d’état, 2012

The Bank’s suspension to Mali during the 2012 military coup d’état is also difficult to reconcile with OP7.30. Applying Criterion A, the coup leaders would probably not have satisfied either form of the ‘effective control’ test. Indeed, the coup was precipitated by an ongoing rebellion in the north of the country. In the chaotic aftermath of the coup, the Tuareg ethnic group appeared to gain control there and sought to proclaim independence. Application of this criterion would have been sufficient to suspend disbursements. Within one day of the coup, the Bank and the AfDB issued a joint statement suspending disbursements to Mali.

While this outcome appears superficially consistent with OP7.30, there is again evidence to suggest that the Bank considered extraneous factors in its decision-making. xxvi In its five-sentence statement, two sentences referred to democratic governance in Mali. A further sentence confirmed that the Bank was ‘join[ing] the African Union and ECOWAS in condemning the military coup’. No reference was made to any OP 7.30 criteria, such as the
lack of effective control. A plain ready of the Bank’s statement thus suggests that the non-democratic nature of the transition and the views of regional organizations may have factored into the Bank’s decision-making.

b. Analyzing the divergence between the Bank’s policy and its recent practice

The examples above suggest that the Bank’s decisions are coordinated with the international community and, in particular, with the regional organizations and major bilateral donors operating in a particular country. In cases where disbursements were suspended in Cote d’Ivoire, Honduras and Mali, the Bank stated publicly that it was following the lead of others, or at least closely considering their views. This practice is curious for two reasons. First, consideration of the views of regional organizations and donors is not a criterion under OP7.30 for deciding whether to suspend disbursements under existing agreements to partner governments (though it is a criterion for considering new lending). Second, regional organizations and donors often make politically motivated decisions, unencumbered by the Bank’s rules prohibiting political considerations. In spite of OP7.30, the Bank consistently arrives at the same conclusions as political organizations, while generally perpetuating the idea that it bases its decisions on non-political criteria.

The examples may also suggest that the Bank is less likely to suspend disbursements to countries that are geo-politically or strategically important. While the world watched revolutions unfold in North Africa in 2011, the Bank was quick to reinstate disbursements to Tunisia and did not suspend disbursements to Egypt. Meanwhile, after coups d’état in less prominent countries like Mauritania, Mali and Niger, the Bank was quick to suspend disbursements. This trend of differential treatment based upon geo-political status suggests that the Bank takes into account political considerations in contravention of its Articles of Agreement.

iv. Policy recommendations to strengthen OP7.30

The recommendations below aim to strengthen the Bank’s policy to deal with de facto governments, by improving the consistency and quality of Bank decision-making and ensuring compliance with the Articles of Agreement.
a. Aligning the Bank’s Articles of Agreement and OP7.30

Presently, the Bank is exposed, as its policy and practice in the public domain would appear at odds with its founding Articles of Agreement. Theoretically, the option exists to amend the Articles of Agreement to broaden the Bank’s capacity to consider political governance when dealing with governments. However, such a proposal would be highly unlikely to gain support, given popular critiques that the Bank is already overly politicized, and given the technical and logistical challenges of amending such a large multi-lateral treaty.xxvii

More likely, the Bank could issue a legal opinion clarifying a modern day interpretation of the Agreement that aligns the Bank’s practice with the Articles of Agreement. Such a clarification was issued by the Bank’s General Counsel in the 1990s to support the Bank’s work in governance.xxviii Another was issued in 2006 to support the Bank’s work in human rights.xxix A clarification on dealing with de facto governments could reconcile the apparent inconsistency by enabling the Bank to consider the de facto government’s institutional quality and governance arrangements, while still prohibiting the political color of the regime from being itself a consideration.

b. Improving transparency of decision-making under OP7.30

The Bank should also publish the results and rationale of the decisions it makes to suspend disbursements under OP7.30. Publishing decisions could significantly improve accountability and predictability in the Bank’s dealings with de facto governments, and would encourage experiential learning and precedential guidance. Like the Bank’s other knowledge generation efforts, publication of Bank decision-making under OP7.30 may enhance the Bank’s influence by encouraging other international organizations, donor governments and non-governmental organizations to follow the Bank’s policy and practice. The Bank’s policy and practice has previously influenced other organizations in this area, and publication of these decisions could reasonably be expected to have a similar effect.xxx Publication would also give guidance to potential emerging de facto leaders and rival governments in the event of a political transition. Such a policy would seem to align well with the Bank’s existing commitment to transparency and open development.

As with the publication of any material, the publication of decisions to suspend or continue disbursements poses the risk that such decisions may be criticized. That risk would need to be managed carefully during the period
leading up to each decision, in consultation with the legal and public affairs departments of the Bank. However, the risk could be expected to decline over time as consistency and experiential learning improves.

c. Amending OP7.30 to clarify the scope of the ‘effective control’ criterion

The policy should be amended to clarify that the scope of the effective control test used in Criterion A is an objective assessment of the extent to which the de facto government is in actual control of the territory, using the same as that applied under the laws of armed conflict.

Adoption of this test would best align with the Bank’s existing framework as an inter-governmental body that deals primarily with countries rather than individuals. By comparison to other tests, this test provides the most clarity and precedents, thus providing the Bank with maximum guidance. This test is not foolproof, and may continue to give rise to some divergence of views. However, that divergence would be narrower than the contestation and ambiguity that prevails under the existing policy.

Further, application of this test would avert the need for the Bank to consider whether a particular government is ‘habitually obeyed by the bulk of the population’, which could raise concerns that the Bank is considering democratic governance and politics in contravention of its Articles of Agreement.

d. Amending OP7.30 to authorize consideration of the views of relevant organizations

The Bank should amend OP7.30 to add a criterion that authorizes Bank officials to ‘consider the views of relevant international and regional organizations when determining its response to a de facto government. Such an amendment to OP7.30 would not require the Bank to follow the views of relevant international or regional organizations, but would enable the Bank to consider those views in a given situation. The Bank could thus align its practice with that of key international and regional organizations when it considers doing so is appropriate, while still enabling the Bank to ‘go it alone’ if deemed necessary by decision-makers.

The policy on new lending to de facto governments already enables the Bank to consider the views of relevant international organizations. As a result,
amendment to this policy would align the two policies that deal with de facto governments. Recent practice suggests that the Bank already considers these views in its decision-making. This amendment would merely align policy with prevailing practice and thus improve policy coherence and streamline decision-making.

Adoption of this amendment may promote greater coordination and consistency among donors working in politically unstable environments. Gaining consensus for a common voice on this issue is in the Bank’s interest for several reasons. First, decisions to suspend or disburse funds may be more impactful when organizations and governments maintain a coherent and consistent line with the recipient government. Second, the process of securing consensus may enhance the Bank’s coordinating role and convening power among organizations and donors. It would also be consistent with the Bank’s role as a UN agency.

Adoption of this amendment poses the risk that the Bank would follow the politically motivated views of others, rather than deciding the appropriate use of its own funds under an existing binding loan agreement. A further downside is that the Bank could be perceived as following regional opinion rather than providing global leadership. However, that risk balances favorably against that of the current practice: considering those views without express authorization under OP7.30.

Conclusion

The Bank is in a difficult position, wedged between its Articles of Agreement, the evolving realities in economic development and the decisions and opinions of others. This paper has proposed four recommendations, both substantive and procedural, to strengthen the Bank’s policy for dealing with de facto governments. The Bank should:

i. clarify the policy’s consistency with the Articles of Agreement;

ii. publish its decisions under OP7.30;

iii. amend clarify the effective control test; and

iv. amend the policy to authorize the Bank to consider the views of relevant organizations. Adoption of these recommendations could ensure that the Bank’s work in these challenging environments is more effective,
legitimate, and consistent with its founding principles.

Endnotes


iii. Article 4 Section, Articles of Agreement.


vii. OP7.30, paragraph 1.


Prior to 1994, the World Bank lacked any stated policy on dealing with de facto governments. In 1994, the Bank adopted an initial policy on dealing with de facto governments, but it was sparse and few official records of it are available. The 2001 policy elaborates and replaces the 1994 version.

OP7.30, paragraph 1. It is also worth complimenting the Bank for having a policy on dealing with de facto governments. Many international and bilateral organizations do not, and they base their decisions on whether to suspend programs, or pull out of countries, on an ad hoc basis.


See for example, the case of Al-Skeini v the United Kingdom, where the European Court of Human Rights held that UK forces had sufficient control over civilians and prisoners in Basra, Iraq, that they were obliged to ensure and protect their human rights. Available at http://emiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=887952&portal=hbkm&source=externalbydocnumber&table=F69A27FD8FB86142BF01C1166DEA398649.

UN Secretary General Tryggvie Lie, Memorandum on the Legal Aspects of the Problem of Representation in the United Nations, 1950, UN Doc S/1466.


http://news.bbc.co.uk/2/hi/americas/8127503.stm

http://www.reuters.com/article/2009/06/30/idUSN30445897


http://web.worldbank.org/WSITE/EXTERNAL/COUNTRIES/AFRICAEXT/CDIVOIREEXTN/0,,contentMDK:22795867~menuPK:50003484~pagePK:2865066~piPK:2865079~theSitePK:382607,00.html. The Bank must necessarily have applied OP7.30 and assessed that Gbagbo's refusal to step down amounted to an assumption of power by extra-constitutional means. On this rationale, Gbagbo and his team became a de facto government, without the de jure authority of a democratic electoral process. Presumably, the Bank then also assessed that Gbagbo's team did not satisfy the criteria outlined in OP7.30.

continues.


xxx. The Bank’s policy on dealing with de facto government’s has already influenced other agencies to develop their own policies. See for example, the policy of the International Fund for Agricultural Development, available at http://www.ifad.org/pub/basic/governments/defacto_e.pdf. The Asian Development Bank took a similar approach in deciding whether to deal with a de facto government in Fiji. See http://developmentasia.org/Documents/Economic_Updates/FIJ/in43-11.pdf at page 4.