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10 August 2011

**Re: Further Revised Request for Inspection by World Bank Inspection Panel  
(Red Sea Dead Sea Water Conveyance Study Program)**

Executive Secretary  
The Inspection Panel  
1818 H Street, NW  
Washington, DC 20433

## **I. Introduction**

1. The Global Initiative for Economic, Social and Cultural Rights (GI-ESCR), the Palestinian Grassroots Anti-Apartheid Wall Campaign (Stop the Wall Campaign) and the Palestinian Farmers Union (collectively “the Requesters”) are submitting this request for inspection of the Red Sea Dead Sea Water Conveyance Study Program.

2. The Global Initiative for Economic, Social and Cultural Rights is an international human rights non-governmental organization working to promote and protect human rights with a particular focus on economic, social and cultural rights and has been active in such work in the occupied Palestinian territory and in Israel. The GI-ESCR also works to promote the human rights based approach to development and works at the intersection of

human rights, development and environmental protection and works to link local organizations to international institutions.

3. Stop the Wall Campaign is a grassroots Palestinian campaign concerned with unlawful annexation and exploitation of Palestinian resources, including land and water resources. Further, Stop the Wall Campaign is a part PENGON which is a member of the Emergency Water, Sanitation and Hygiene (EWASH) network and thus often represented through the activities of the group including the EWASH Advocacy Task Force.
4. The Palestinian Farmers Union is a platform for Palestinian farmers to raise their voices to demand their rights related to the agricultural sector. The Palestinian Farmers Union also is a supporting arm for farmers in their just cause against the confiscation of land and water resources in Palestine.
5. Stop the Wall Campaign and the Palestinian Farmers Union are made up of and represent persons affected by the Red Sea Dead Sea Water Conveyance Program. Both organizations represent Palestinian civil society and residents of the West Bank that presently are harmed by lack of access to water resources. For instance, Palestinian residents represented by these organizations have been denied access to fresh water sources from the Jordan River Basin – as well as land resources including the banks of the Dead Sea and the Lower Jordan River – and rely on ground water resources that are put at risk by the decline of the Dead Sea and which do not appear to be effectively addressed by the Red Sea Dead Sea Water Conveyance Program, particularly the changing interface between freshwater of the eastern aquifer and the hyper-saline Dead Sea and surrounding saline springs.<sup>1</sup> Recognizing the Dead Sea as a future source of income generation from tourism among others, as well as the traditional used natural resources as the indigenous community, Palestinians living in the West Bank in close proximity to the Dead Sea are highly concerned with the likely effect of the proposed project on the unique Dead Sea ecosystem and on its chemical composition, and we express no confidence in the Red-Dead program and in particular the Dead Sea analysis undertaken by the quasi-Israeli government entity of Tahal which is directly linked by its history to the decline of Dead Sea through the development of the Israeli National Water Carrier. Of course, the threat of rupture of the proposed Red Sea Dead Sea Conveyance system which flows almost exclusively through the territory of Hashemite Kingdom of Jordan is an environmental concern for all the region and all its inhabitants including Palestinians in the Occupied Palestinian Territory and in particular those in the West Bank.

## **II. Interventions with the World Bank**

6. On 20 June 2010, during consultations on the Red Sea Dead Sea Water Conveyance Program in Ramallah, members of the Emergency Water, Sanitation and Hygiene group

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<sup>1</sup> See statements of Dr. Amjad Alewi on 20 July 2010 at the Red Sea-Dead Sea Water Conveyance Program public consultations held in Ramallah, occupied Palestinian territory. The audio recordings of the 20 July 2010 Red Sea-Dead Sea Water Conveyance Program public consultations as related to the Economic Feasibility and Environmental and Social Assessment are a matter of public record available from the Palestinian Hydrological Group.

(EWASH), working with the Requesters, brought a number of the following concerns to the attention of the World Bank. More specifically, Mr. Jamal Juma as Director of the Stop the Wall Campaign publicly addressed the assembled panel of the World Bank consultants engaging in the Economic Feasibility Study and Environment and Social Assessment, as well as a representative of the Task Team Managing the Program and effectively supervising the mitigation of reputation risk of the World Bank. Mr. Juma was joined in this public consultation by more than 100 other Palestinians as individuals, water professionals, and representatives of civil society who emphatically raised their voices of discord with the overall Red Sea Dead Sea Conveyance Program and the proposed project. This public consultation is a matter of public record and the audio recordings are available through the Palestinian Hydrological Group. Importantly, the EWASH Advocacy Task Force followed up on 29 August 2010 with a phone call to Mr. McPhail who acts as the Task Team Leader managing the Red Sea Dead Sea Water Conveyance Program. To date, however, these concerns have not been adequately addressed by the World Bank.

7. A follow up letter from the Requesters was sent to Mr. McPhail on 23 May 2011 which reiterated the concerns now expressed in the Request for Inspection. On 24 May 2011 Mr. McPhail stated he would respond by 3 June 2011. No response was received as of 24 June 2011 when the Requesters first submitted a request for investigation to the World Bank's Inspection Panel.

8. After submitting a request for an investigation with the World Bank's Inspection Panel on 24 June 2011, the Requesters were subsequently informed that the request for an Inspection Panel investigation might not meet the threshold requirement of raising concerns with the World Bank management, although the Requesters through Global Initiative for Economic, Social and Cultural Rights had sent the letter to Mr. McPhail on 24 May 2011 (see annex 1). A response letter was eventually received from Mr. McPhail dated 25 July 2011 in which a response was made to some of the stated concerns. We thank Bank management for providing the Requesters an opportunity to elaborate and clarify on the Requesters concerns for violations of World Bank policies and practice which the Requester do by amending now the original request for an Inspection Panel investigation. The Requesters acknowledge Bank management's invitation to a specific meeting to discuss the concerns, but the Requesters would highlight the numerous concerns made through the public consultations of the Economic Feasibility Study and the Environmental and Social Assessment, phone communications with the Bank's Task Team Leader, and in particular Bank management's failure to respond in a timely manner to the letter of 23 May 2011. The Requesters are persuaded that Bank management's response of 25 July 2011 was only forthcoming after the Requesters publicly announced the original filing of a request for an investigation by the Inspection Panel, but more importantly are not satisfied with the Bank's response to the letter and earlier concerns raised in the public consultation and communications to the Bank. More importantly, the Requester's are persuaded that the invitation for a specific mission is in fact an attempt by Bank management to delay an amended filing and subsequent registration as the Red Sea Dead Sea Water Conveyance Study Program which is presumably approaching the 95 per cent disbursement beyond which an investigation by the Panel is not permitted by the World Bank rules. The Requesters raise the concern of the percentage disbursement because nowhere is that information publicly available.

9. The Global Initiative for Economic, Social and Cultural Rights has consulted Friends of the Earth Middle East as well, and understand that Friends of the Earth Middle East has highlighted the issues and concerns related to the Red Sea Dead Sea Water Conveyance Studies Program, including meetings with World Bank representatives. However, it is commonly known that the Friends of the Earth Middle East has been highly criticized for this role and even strongly discouraged from presenting a request for an investigation. It is hoped that other affected parties or representative of affected parties, including Friends of the Earth Middle East, would consider submitting an *amicus curia* brief in support for an Inspection Panel Investigation.

10. Lastly, the Requesters believe that in the Inspection Panel Secretariat's hesitancy to register the original filing is in part due to the narrowing of the scope of the mandate of the Inspection Panel in the last year. Given that this request originates with Palestinian civil society, the Requesters are inclined to believe that even with clear convincing evidence of a breach in World Bank OPs/BPs, the Inspection Panel will be hesitant to recommend an investigation and more importantly Executive Directors of certain nations are likely to veto the request from affected Palestinians in light of prioritized political support for the Government of Israel. Nonetheless, the Requesters submit a detailed request noting that the Inspection Panel Secretariat has suggested additional actions on the part of the Requesters to communicate with Bank management raising and advancing the burden of proof of a violation and making the mechanism as a whole more discouraging to affected parties.

### **III. Appropriateness of Investigating the Red Sea Dead Sea Water Conveyance Program**

11. While the Red Sea Dead Sea Water Conveyance Program is still ongoing and possible to re-orient to address its numerous shortcomings, the World Bank Inspection Panel should exercise its jurisdiction to recommend an investigation so as to proactively address violations of the World Bank's Operational Policies (OP) and Bank Procedures (BP), including in particular OP/BP 4.01 (Environmental Assessment), OP/BP 4.04 (Natural Habitats), and OP/BP 7.50 (Projects on International Waterways) among others.<sup>2</sup>

12. First, the Red Sea Dead Sea Water Conveyance Program involves **approximately US\$ 17 million**, which is a higher amount than many World Bank projects where the Bank's Operational Policies and Bank Procedures are applicable.

13. Second, the World Bank has clearly stated that it applies its Operational Policies and Bank Procedures to the Red Sea Dead Sea Water Conveyance Program, stating that "any involvement by the World Bank requires consultation with all affected stakeholders, careful analysis to ensure that the project would be implemented in adherence with the World Bank's environmental and social safeguard policies which are designed to protect the environment and affected populations, and approval from the Bank's Board."<sup>3</sup>

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<sup>2</sup> It should be emphasized that other concerns likely to form specific violations of World Bank OP/BPs have been raised to Mr. McPhail and Dr. Linter.

<sup>3</sup> World Bank Group Statement on Red Sea-Dead Sea Water Conveyance Study Program, 29 June 2009.

14. Third, as elaborated upon below, the World Bank is in contravention of several of its Operational Policies and Bank Procedures and should not be able to shield itself from accountability simply because the Red Sea Dead Sea Water Conveyance Program is not yet a formal “project.” Indeed, remedying the violations at the earliest possible phase will not only prevent further and mitigate current adverse impacts, but be more cost effective in the long run.

15. Finally, the studies being funded under the Red Sea Dead Sea Water Conveyance Program are of such significance that they will likely be the basis for political decisions of the beneficiary parties (three of the five riparians of the Basin) as well as by the International Financial Institutions and bi-lateral donors. Consequently, the application of the Bank’s Operational Policies and Bank Procedures is crucial at this phase of the program so as to ensure that all relevant decision-makers and the affected stakeholders have reliable and accurate information.

#### **IV. Operational Policies and Bank Procedures violated by the Red Sea Dead Sea Water Conveyance Program**

##### **A. OP 4.01 Environmental Assessment**

16. OP 4.01 requires that:

The borrower is responsible for carrying out the EA (Environmental Assessment) [and that] for Category A projects, the borrower retains independent EA experts not affiliated with the project to carry out the EA [and] for Category A projects that are highly risky or contentious or that involve serious and multidimensional environmental concerns, the borrower should normally also engage an advisory panel of independent, internationally recognized environmental specialists to advise on all aspects of the project relevant to the EA.<sup>4</sup>

17. Under the Terms of Reference for the Red Sea Dead Sea Water Conveyance Program (19 April 2005), its paragraph 13.1.19 entitled *Task 19 – Alternatives at the Regional and Project Specific Level, Including Definition and Description of the No-Action Alternative* states in relevant part *Sub-Task 2 – Alternatives at the Regional Level* that a “Technical Steering Committee shall provide the Consultant, for use in the Environmental and Social Assessment, with a report on alternatives/options that have been proposed, studied and/or are undertaken in a variety of initiatives to arrest the decline of the Dead Sea.” While the Requesters strongly agree that such a report on alternatives is crucial, the Terms of Reference were in violation of OP 4.01 because the Technical Steering Committee is made up almost entirely of representatives of the beneficiary parties rather than “independent, internationally recognized environmental specialists.”

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<sup>4</sup> World Bank Operational Policy 4.01 (Environmental Assessment), paragraph 4.

18. Recognizing that the Terms of Reference were likely in violation to OP/BP 4.01, the Beneficiary Parties and Bank Management revisited the Terms of Reference with regard to Analysis of Regional Alternatives in *Clarifications, Task and Guidance for the Study Program December 3, 2007*. In the clarification to Section 13.1.19, Sub-Task 2 under the Terms of Reference, the Beneficiary Parties and the Bank Management agreed to the following:

The analysis of alternatives at the regional level will be undertaken jointly by a team of three independent consultants, who will be selected from a list of three candidates submitted by each of the beneficiary parties. The World Bank will select one qualified individual from each of the submitted lists in consultation with the Study Technical Steering Committee for the three-person team of consultants and will recruit them in accordance with World Bank procurement guidelines.

The team of three independent consultants, not otherwise affiliated with the study program, will undertake the analysis in a manner consistent with the provisions of Section 13.1.19 of the TOR. The Study Technical Steering Committee will review the consultants' draft report. Once the Study Technical Steering Committee determines that the report is satisfactory, the report will be incorporated into the Environmental and Social Assessment Report, which will be reviewed by the Independent Panel of Experts in accordance with Section 17 and disclosed as part of the public consultations process in accordance with Section 14.2.2 of the TOR.

19. Thus, alone on the specific issue of Analysis of Regional Alternatives, the Requesters believe that the Beneficiary Parties and Bank Management have carved the Analysis of Alternatives out of the Environmental and Social Assessment in contravention of best international practices and are in violation of OP/BP 4.01, or at least in violation of OP/BP4.01 in how the Analysis of Regional Alternatives has been implemented.

20. OP 4.01 requires that the EA:

Examines project alternatives; identifies ways of improving project selection, siting, planning, design, and implementation by preventing, minimizing, mitigating, or compensating for adverse environmental impacts and enhancing positive impacts ... the Bank favors preventive measures over mitigatory or compensatory measures, whenever feasible.<sup>5</sup>

Most relevant OP 4.01 recognizes:

Depending on the project, a range of instruments can be used to satisfy the Bank's EA requirement: environmental impact assessment (EIA), a regional and sector EA, environmental audit, hazard of risk assessment, and environmental management plan. EA applies one or more of these

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<sup>5</sup> World Bank Operational Policy 4.01 (Environmental Assessment), paragraph 2.

instruments or elements of them, as appropriate. When the project is likely to have sectoral or regional impacts, sectoral or regional EA is required.<sup>6</sup>

And that the EA:

For a Category A project examines the project's potential negative and positive environmental impacts, compares them with those of feasible alternatives (including the "without project" situation), and recommends any measures needed to prevent, minimize, mitigate, or compensate for adverse impacts and improve environmental performance.<sup>7</sup>

21. Given that the Red Sea Dead Sea Water Conveyance Program is of a regional nature, and this is recognized in the language of the Terms of Reference, including the Analysis of Regional Alternatives, it is important to recall Annex A to OP 4.01 "Definitions" defines "*Regional EA*" in the following:

An instrument that examines the environmental issues and impacts associated with a particular strategy, policy, plan, or program, or with a series of projects for a particular region; **evaluates and compares the impacts against those of alternative options; assesses legal and institutional aspects relevant to the issues and impacts; and recommends broad measure to strengthen environmental management in the region . . .**

22. Thus, OP 4.01 clearly envisions the incorporation of the Analysis of Alternatives at the Regional Level in the Environmental and Social Assessment to effectively evaluate and compare the impacts of the proposed project to "those of alternative options". The undertaking of the evaluation of regional alternatives by the consultant to the Environmental and Social Assessment is rational in that the consultant is able to evaluate the regional alternatives contemporaneously with the evaluation of the proposed project. The harm in the approach taken by the Beneficiary Parties and Bank management is that the analysis of regional alternatives is not integrated structurally into the Environmental and Social Assessment reflecting contemporaneously in parallel to the Economic Feasibility study of the proposed project.

23. The clarification to the Terms of Reference also suggests that the three consultants are independent. The Requesters note the obvious problem created around the issue of the Analysis of Alternatives at the Regional Level in the Terms of Reference and the subsequent clarification that are both widely known to have been highly contested among the Beneficiary Parties. The Requesters would further note that it is commonly known that some of the Beneficiary Parties were solely interested in the proposed project and did not want any effort analyzing the regional alternatives which would obviously need to look deeper into the root causes of the decline of the Dead Sea levels. The Requesters presume that at least the consultants selected by certain of the Beneficiary Parties are highly likely to evaluate the analysis of regional alternatives in a light favorable to the desired proposed project, and thus are likely to cause harm to the broader affected stakeholders by not

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<sup>6</sup> World Bank Operational Policy 4.01 (Environmental Assessment), paragraph 7.

<sup>7</sup> World Bank Operational Policy 4.01 (Environmental Assessment), paragraph 8(a).

engaging in a genuine independent and impartial analysis of regional alternatives as required under OP 4.01.

24. The Requesters further consider the clarifications requirement that the draft of the analysis of alternatives at the regional level by the Technical Steering Committee creates essentially a pocket veto over the regional alternatives given that the draft is not to be incorporated in the Environmental and Social Assessment (and thus not reviewed by the Independent Panel of Experts) before the Technical Steering Committee reviews the consultants' draft report and the "Technical Steering Committee determines that the report is satisfactory" that certainly contravenes best international practices and violates OP 4.01.

25. The Requesters would direct the Inspection Panel to the Terms of Reference for the Study of Alternatives which provides in Attachment B "LIST OF REPORTS" a clear list of deliverables that are to follow the "INDICATIVE SCHEDULE FOR THE STUDY OF ALTERNATIVES" found in Attachment C. The adherence to the schedule in Attachment of deliverables under the Analysis of Regional Alternatives would be critical not only in the hopes of integrating the analysis into the Environmental and Social Assessment, but equally important that the analysis was available for timely presentation at public consultation in order that all stakeholders including affected parties represented by the Requesters could review and provide comment if there is to be meaningful public consultation of the entire Environmental and Social Assessment and Economic Feasibility of the proposed project. Given that the analysis of alternatives at the regional level was late in the overall program when it was initiated in October 2009, the failure for public consultation on even the draft of the Study of Alternatives would seem to clearly violate the spirit of Disclosure under paragraph 16 of OP 4.01 let alone the failure to comply with the Terms of Reference in the failure to "Issue Final Study of Alternatives Report – Executive Summary and Main Report" by October 2010. For the Requesters, it is clear that the Study of Alternatives which is meant to be the equivalent of the Analysis of Regional Alternatives is clearly not important to the Beneficiary Parties and Bank Management, and maybe be actively retained in draft form so that it is not shared with affected parties as well as all relevant stakeholders except the political decision-makers on the Technical Steering Committee. In fact, more than 20 months after the beginning of the Study of Alternatives, the Requesters and other affected parties are only able to find the Annotated Outline of the Study of Alternatives Report and the Consultation Plan on the World Bank website.<sup>8</sup>

26. Furthermore, rather than the Regional EA with an analysis of alternatives being conducted by Environmental Resource Management and its consortium with a diversity of expertise and the ability to engage additional resources, the analysis of alternatives at the regional level is being conducted by a separate team of three consultants – notably a water economist, a dam engineer and a political scientist – who lack the full range of skills and specialization (e.g. expertise in water conservation, environmental flows, energy, etc.) necessary to evaluate the full range of regional level alternatives. This too places the Terms of Reference in contravention of OP 4.01.

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<sup>8</sup> See <http://web.worldbank.org/WBSITE/EXTERNAL/COUNTRIES/MENAEXT/EXTREDSEADEADSEA/0,contentMDK:21844180~menuPK:5215939~pagePK:64168445~piPK:64168309~theSitePK:5174617,00.html> last visited on 9 August 2010.

27. Even if the Study of Alternatives was able to conduct an effective evaluation of analysis of alternatives at the regional level to address the decline of the Dead Sea, the Technical Steering Committee chaired by the World Bank is not taking the alternatives into serious consideration because they have not presented the alternatives for public consultation and incorporated the information into overall assessment of the Environmental and Social Assessment and Economic Feasibility of the Red Sea Dead Sea Water Conveyance Program. For instance, the affected parties represented by the Requesters might prefer a Jordan River Basin alternative which entails regenerating the flow of the Jordan River which could be a viable alternative to the Red Sea Dead Sea Water Conveyance project. The Jordan River Basin alternative would not have the serious environmental and social risks that are associated with the Red Sea Dead Sea Water Conveyance project, and would provide the indigenous Palestinians with the opportunity to utilize in future the Jordan River Basin flows which they historically accessed prior to the onset of the Israeli occupation.

28. Other alternatives explored should include demand management, but because the Technical Steering Committee consists almost entirely of representatives of the beneficiary parties, it is doubtful that consideration of anything other than current water allocation, pricing and management practices would be taken under consideration.

29. During the 20 July 2010 public consultation in Ramallah regarding the Economic Feasibility Study and the Environmental and Social Assessment, the Requesters and other affected Palestinians once again raised the issue of the Study of Alternatives and the lack of information provided by the World Bank and the Beneficiary Parties. At the same consultation, the Requesters would note that the Bank representative when discussing the current situation of the lower Jordan River and the root cause of the decline of the Dead Sea specifically referenced the outtake and utilization of Jordan Basin flows by Israel, Jordan and Syria as a justification of the Red Sea Dead Sea Program. Unfortunately, given that those responsible for the Red Sea Dead Sea Water Conveyance study have not notified or consulted with all Jordan River Basin riparians, notable Lebanon and Syria, the three consultants engaging in the Study of Alternatives could not hope to fully evaluate the problem and current situation in order to evaluate or offer a robust set of solutions that also might include actions and activities required by Lebanon and Syria. The Requesters see these glaring oversights as having a serious likelihood to harm the affected parties along the Jordan River Basin, and thus likely to result in the supply side solution of the proposed project to be a foregone conclusion without serious comparison with other alternatives, or equally important a combination of alternative options.

#### **B. OP 4.04 Environmental Damages**

30. OP 4.04 states that:

The Bank promotes and supports natural habitat conservation and improved land use by financing projects designed to integrate into national and regional development the conservation of natural habitats and the maintenance of ecological functions. Furthermore, the Bank promotes the rehabilitation of

degraded natural habitats.... The Bank does not support project involving the significant conversion of natural habitats unless there are no feasible alternatives for the project.<sup>9</sup>

OP4.04 also states:

The Bank expects the borrower to take into account the views, roles, and rights of groups, including local nongovernmental organizations and local communities,<sup>6</sup> affected by Bank-financed projects involving natural habitats, and to involve such people in planning, designing, implementing, monitoring, and evaluating such projects. Involvement may include identifying appropriate conservation measures, managing protected areas and other natural habitats, and monitoring and evaluating specific projects. The Bank encourages governments to provide such people with appropriate information and incentives to protect natural habitats.

31. Again, without the full exploration of all feasible alternatives, the Red Sea Dead Sea Water Conveyance Program can not have satisfied OP 4.04. Indeed, the project as envisioned would jeopardize pristine natural habitats along the length of the conduit. The project as envisioned also poses risks to Palestinians who depend on water sources that could be detrimentally impacted, for instance should the Red Sea Dead Sea Water Conveyance program fail to investigate the freshwater and saline water interface in the Eastern aquifer. The Eastern Aquifer is a crucial water source for Palestinians in the West Bank. There is concern as well about detrimentally altering the chemical makeup of the Dead Sea which jeopardizes the future uses of the Dead Sea and its coastline which the Palestinians would hope to access subsequent to the end of the occupation. A Jordan River Basin alternative will not only prevent these risks but would also promote the Bank's aim of rehabilitation of degraded natural habitats and contribute to solving the decline of the Dead Sea, but again this alternative has not been taken into consideration due to the many factors raised above, placing the Terms of Reference in contravention of OP 4.04.

32. The Requesters assert that the Bank has not encouraged the Beneficiary Parties to take into account the views, roles and rights of groups, including local non-governmental organizations and local communities, with respect to natural habitats because the affected Palestinians in the Jordan Valley, for example, have not been provided with appropriate information and incentives to protect natural habitats. During the public consultation in the Jordan Valley, a number of Palestinians complained that they affected communities had almost no notices of the public consultation as it was published in only one local paper only a few days prior to the actual consultation meeting violating the not only the specific safeguard policies such as requirements under OP 4.04, but also the general Policy on Access to Information. Most importantly, the scope of the analysis of the Natural Habitats policy cannot be limited under a regional environmental assessment strictly to the route of the proposed project and project specific alternatives, but to all regional alternatives that are to be analyzed in achieving the stated objectives of the program with environmental protection of ecosystems – throughout the Jordan River Basin – being a fundamental aspect to a regional program.

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<sup>9</sup> World Bank Operational Policy 4.04 (Environmental Damages), paragraphs 3 and 4.

### C. OP 7.50 Projects on International Waterways

33. OP 7.50 requires that:

The Bank recognizes that the cooperation and goodwill of riparians is essential for the efficient use and protection of the waterway. Therefore, it attaches great importance to riparians' making appropriate agreements or arrangements for these purposes for the entire waterway or any part thereof. . . . The Bank ensures that the international aspects of a project on an international waterway are dealt with at the earliest possible opportunity. If such a project is proposed, the Bank requires the beneficiary state, if it has not already done so, formally to notify the other riparians of the proposed project and its Project Details. If the prospective borrower indicates to the Bank that it does not wish to give notification, normally the Bank itself does so. If the borrower also objects to the Bank's doing so, the Bank discontinues processing of the project.

34. The Red Sea Dead Sea Water Conveyance Study Program fails to consult with all riparians of the Jordan River Basin since Syria and Lebanon not been provided notice of the project nor has their inclusion in consultations been sought. Consequently, the Study Program is in contravention of OP 7.50.

35. In Mr. McPhail's response letter dated 25 July 2011, he has asserted that "the activities are restricted to the ongoing Study Program" even while noting World Bank and the three Beneficiary Parties "have articulated a shared vision of the Red Sea-Dead Sea Water Conveyance Study Program, centered on:

- Saving the Dead Sea from environmental degradation;
- Desalinating water and generating energy at affordable prices; and
- Building a symbol of peace and cooperation in the Middle East."

36. Mr. McPhail writes that "The Study Program includes the preparation of five complimentary studies: (a) Feasibility Study; (b) Environmental and Social Assessment; (c) Study of Alternatives, (d) Red Sea Modeling Study; and (e) Dead Sea Modeling Study" under a timeline and practices that presumably allows for the respect of all World Bank Operational Policies and Bank Procedures and for **an amount of approximately 17\$ million**. The response letter states the "Beneficiary Parties are the leaders and owners of the Study Program . . . The activities of the Study Program are being overseen by a Technical Steering Committee (TSC) consisting of a four-member delegation from each Beneficiary Party. **At the request**, the Committee also **has two representatives from, and is chaired by, the World Bank**. Mr. McPhail does acknowledge that "[G]iven the complexity of the Study Program" the World Bank appointed "an independent Panel of Experts (PoE) of international stature to provide advice during the implementation of the Study Program", but his letter does not mention the Study Management Unit (SMU) created for the "Program" that although with representatives selected by Israel, Jordan and the Palestinian Authority are often **directly under the control of Mr. McPhail** and the World Bank or at

least in the case of the Palestinian Authority the representative to the SMU is not under the control of the government it represents.

37. In Annex A accompanying the 25 July 2011 letter, Mr. McPhail addresses the violation of the OP 7.50 and BP 7.50 raised by the Requesters<sup>10</sup>, and he responds with the following assertion:

The Beneficiary Parties are undertaking a Study Program that concerns examination of the technical, financial, **economic, environmental and social aspects of the proposed Red Sea – Dead Sea Water Conveyance**. The provisions of OP/BP 7.50 – “Projects on International Waterways” do not apply to studies unless those studies are “detailed design and engineering studies of projects . . .” which these are not.

The Feasibility Study supported under the Red Sea – Dead Sea Study Program does not include detailed design or engineering studies. The Feasibility Study does provide the early potential project configuration, schematics, and diagrams for assessment of the overall scope, cost and time required for the proposed action, for evaluation by high level decision makers and other parties. However, there is insufficient information for this to be considered at the detailed design and engineering studies phase.

If at the completion of the Feasibility Study, the proposed action is found feasible and a decision were to be taken to proceed with full scale project preparation, the overall system configuration, schematics, diagram, and layouts developed during the Feasibility Study phase would be used as input to the detailed design and engineering studies. Moving to the detailed design phase would require, among other measures, complete and full description of the project through detailed engineering analysis and construction drawings, specifications of material requirements, test requirements for reliability, risk management plans, development of operating parameters and procedures, a detailed budget and construction schedule, construction bidding documents, etc.

38. The Requesters emphasize that the World Bank has neither responded that Lebanon and Syria are not riparians in the Jordan River Basin of which the Dead Sea is clearly a component or sub-basin, nor has the World Bank asserted that the Dead Sea is not a component of the Jordan River Basin in its response. In fact, for a number of reasons it would be ironic should Mr. McPhail and Dr. Lintner be making these assertions. For instance, during her tenure as a legal advisor in the World Bank, Dr. Karen Hudes wrote an article entitled “Shared Water Resources in the Jordan River Basin” in which she chronicled the history of river basin development plans of the Jordan River basin riparians (Israel, Jordan, Lebanon, the Palestinian Authority, and Syria) and analyzed the agreements among

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<sup>10</sup> “The Red Sea - Dead Sea Water Conveyance Study Program fails to consult with all riparians of the Jordan River Basin since Syria and Lebanon not been provided notices of the project nor has their include in consultations been sought. Consequently, the Study Program is in contravention of OP 7.50.” See Salman M.A. Salman, *The World Bank Policy For Projects on International Waterways: A Historical and Legal Analysis*, at page 176.

the Jordan River basin riparians in light of international law principles. The Senior World Bank attorney clearly includes the Dead Sea as a component of the Jordan River Basin writing:

The Jordan River basin is formed by two rivers -- the Jordan and the Yarmouk. The Jordan, which runs from north to south, has as its source three spring-fed streams: the Hasbani (in Hebrew, Nahal Senir) begins in Syria with a small part of its watershed in Lebanon, the Banyas (Nahal Hermon) begins in Syria, and the Dan (Nahal Liddani) begins in Israel. These three tributaries combine in Israel's Huleh Valley into the Jordan River, which then flows south into Lake Tiberias (known in Israel as Yam Kinneret and referred to in the Bible as the Sea of Galilee).

The Yarmouk River arises to the East of the Jordan River in Syria, and emerging from Syrian territory, forms the boundary between Jordan and Syria for eight miles and then forms the boundary between Jordan and Israel. The Yarmouk and Jordan Rivers converge below the Southern part of the Sea of Galilee and then flow through the Jordan Valley into the Dead Sea 70 miles downstream.

39. Also, the foremost authority on the World Bank OP/BP 7.50 "Projects on International Waterways" is Dr. Salman M.A. Salman who served for many years as the Senior Legal Advisor responsible for Safeguard Policies such as OP 7.50, and who while still with the World Bank in 2009 published a comprehensive review entitled *The World Bank Policy For Projects On International Waterways: An Historical and Legal Analysis*. In this analysis of the policy, Dr. Salman also considers the Dead Sea as part of the Jordan River Basin writing:

The Jordan River is the main surface water body feeding the Dead Sea, but since most of the waters of the Jordan River are being used for water supply and irrigation activities, little or no water is reaching the Dead Sea. This situation has led to the significant decline of the Dead Sea and the environment of the Basin.

40. It is also an important side note that the current Chairman of the Palestinian Authority delegation to the Red Sea – Dead Sea Water Conveyance Study Program Technical Steering Committee, Dr. Shaddad Attili, has published extensively on the Jordan River Basin emphasizing that it is an international watercourse shared by five co-riparians (Israel, Jordan, Lebanon, Palestinian territory, and Syria).<sup>1112</sup> Ironically, notwithstanding

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<sup>11</sup> **The Jordan River** is the only major source of surface water rightfully available to Palestine. This river system is shared by five co-riparians (Lebanon, Syria, Israel, Jordan and Palestine). Palestine's status as a co-riparian is derived from the fact that its territory (as defined by the 1967 borders) is contiguous to the river towards its lower reaches, and also from the fact that much of the eastern portion of the West Bank drains into the lower Jordan River. Several attempts have been made previously to calculate the equitable allocations of water from the Jordan River to the five countries, the best-known of these being the Johnston Plan of 30 September 1955. Palestine is a downstream co-riparian to the Jordan River, and does not currently receive its adequate share of water from this source. This is because Israel abstracts most of the available water at Lake Tiberias, diverting this to the National Water Carrier and diverting very minor (highly contaminated) flows to the lower Jordan River. Israel is in a mid-stream position with respect to the Jordan River, but also in a

publishing on the Jordan River Basin, including notably with Prof. Steven McCaffrey as one of the foremost authority on International Water Law, Dr. Attili seemingly has agreed with the other Beneficiary Parties that it was not necessary to consultation on the Red Sea - Dead Sea Water Conveyance Study Program being fully aware of the important notice requirements under Article 12 of the 1997 United Nation Convention on the Non-Navigational Uses of International Watercourses that President Mahmoud Abbas committed Palestine to ratifying in March 2009. In identifying the Basis of the Duty to Notify under OP/BP 7.50, Dr. Salman writes that there are two elements on which the Bank policy for projects on international waterways is based stating:

The first element is the recognition by the Bank that cooperation and goodwill of all riparians is essential for the efficient utilization and protection of the international waterway, and the readiness and willingness of the Bank to assist riparians in achieving such cooperative modalities. The second is the general rule that all riparians should be notified, subject to certain specified exceptions, of Bank financed projects on international waterways.

The duty to notify other states of activities that may affect them stems from the good faith, good neighborliness, and reciprocity. It is an extension of the general obligation under international law to cooperate, and to exchange data and information on shared watercourses. Such cooperation is no doubt the *sine qua non* for an efficient, equitable and sustainable utilization of international watercourses. In turn, notification is the only effective way for knowing about, and checking unilateral activities that may affect other riparian states.”<sup>13</sup>

41. Most relevant, the World Bank OP/BP 7.50 on “Projects on International Waterways” are clearly to be extended to all riparians on an international waterway if OP/BP

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downstream position in relation to its land on the shores of the Dead Sea. Abstraction rates by Israel from the Jordan River in recent years have averaged 700-800 MCM/year. Palestine has not been permitted by Israel to utilize any significant water volumes from the Jordan River during the period of the occupation. The present flows in the lower Jordan River equate to about 75 MCM/year (as opposed to a historical flow of about 1,400 MCM/year) and are comprised mainly of saline flows diverted by Israel around Lake Tiberias, and **wastewater flows from Israel, Syria and Jordan relevant to the pollution of the lower Jordan River and the Dead Sea’s ecology.**

**Palestine as a Co-riparian to the Jordan River Basin (including the Dead Sea):** It is known that Israel wishes to annex land along the western bank of the Jordan River and Palestinian territory forming the northwest bank of the Dead Sea, under the guise of “security concerns”. Despite these attempts to annex land Palestine would not lose its status as a co-riparian of the Jordan River Basin under such a scenario, as other parts of the West Bank drain to the Jordan River and the Dead Sea. However, Palestine wishes to achieve direct access to the lower Jordan River and the Dead Sea.

<sup>12</sup> See **The Jordan River Basin: 1. Clarification of the Allocations in the Johnston Plan** by David J.H. Phillips, Shaddad Attili, Stephen McCaffrey, and John S. Murray; see also **The Jordan River Basin: 2. Potential Future Allocations to the Co-riparians.** David J.H. Phillips, Shaddad Attili, Stephen McCaffrey, and John S. Murray.

<sup>13</sup> See Salman M.A. Salman, *The World Bank Policy For Projects on International Waterways: A Historical and Legal Analysis*, at page 105.

7.50 is applicable to a project or something which should qualify it as the earliest possible stage. In explaining why the policy has been extended beyond an exhaustive list of types of projects to include detailed design and engineering studies for the projects specified, Dr. Salman identifies as an important factor the following:

First, the obligation of the Bank to act prudently in the interest of all its members, together with its guiding principles of dispute avoidance, both dictate that the Bank take **extra care** when handling any kind of activities on international waterways. Detailed design and engineering studies for projects on international waterways pave the way for carrying out those projects, whether through Bank funding, financing by other donors, or from the country's own resources. Accordingly, such activities need to fall under the ambit of the policy at that stage, and not when they mature into projects. The Bank, as an international financial cooperative institution, **cannot overlook other riparians' interest and rights even at that early stage.**

42. However, Mr. McPhail's response has explicitly stated that OP/BP 7.50 is not applicable because the Red Sea - Dead Sea Water Conveyance Program Study is a feasibility study and not a detailed design and engineering study to which the policy would apply. Beyond all the "cooperative" and "efficient, equitable and sustainable" basis underlying the principle of notification, which are arguably important at the earliest possible stage even before detailed design and engineering studies, Dr. Salman distinguishes the former from water resource surveys and feasibility studies:

For the former group of activities the policy applies, and notification is required. With regards to water resources surveys and feasibility studies, although the policy applies, those activities fall under the exception to the notification requirement, as will be discussed later. Thus, the challenge would be on how to distinguish between the two categories of activities. **The mere calling of an activity a feasibility study is not sufficient to exempt it from notification, and an analysis of the detailed terms of reference would need to be undertaken to ascertain which category of activities it would fall under. There would still be a gray area falling between the two, for which judgment will need to be exercised.**

43. The Requesters feel that Mr. McPhail and Dr. Lintner are invoking the exception to policy to avoid notification, and believe there are a number of persuasive reasons, which are addressed below, why notification or at least consultation should be provided to Lebanon and Syria as co-riparians of the Jordan River Basin which has as a natural common terminus into the Dead Sea.

44. The Requesters would highlight the Red Sea-Dead Sea Water Conveyance Study Program is not solely a feasibility study, but as noted by Mr. McPhail it is five '*complimentary*' activities undertaken by four consortiums of consulting firms and collaboration of three experts selected as representatives of the three lower riparians of the Jordan River Basin. Mr. McPhail's response as representative of the World Bank noted the "complexity" of the program requires an independent Panel of Expert which appears to align with other World Bank policies and practices [for Category A projects under OP/BP 4.01]. Also, the financial

cost of the activities of approximately 17\$ million suggest a scale that should demand the World Bank exercise extra care and prudence because it is not comparable to most water resource survey or feasibility studies.

45. The Requester would also emphasize that the Red Sea-Dead Sea Water Conveyance Study Program should not be analyzed for application of OP/BP 7.50 without evaluating the ongoing advancement of the Government of Jordan's Jordan Red Sea Project by Montgomery Watson Garza (MWH).<sup>14</sup> In presentations by the Jordanian Ministry of Water and Irrigation and Skip Holland of MWH on 6 January 2011, the Government of Jordan indicated that the first indicated Project Mission and Key Objectives of the Jordan Red Sea Project (JRSP) was to “[E]stablish a secure and affordable water supply for Jordan **while saving the Dead Sea from extinction**” with part of the presentation dedicated to explaining how seawater and desalination brine negates evaporation from the Dead Sea.<sup>15</sup> Although the JRSP dovetails perfectly with the development of the Red Sea –Dead Sea Water Conveyance Program objectives and approach to staving the decline of the Dead Sea, Dr. Lintner has gone on the record with the Bank Information Center (BIC) that the Red Sea – Dead Sea Water Conveyance was distinct from the JRSP in several ways including in “the transfer of water resources from the Red Sea to the shrinking Dead Sea.”<sup>16</sup> It is notable that the contact person for the JSRP is identified on the project website as “Eng. Fayeze Botany, Advisor to the Minister & **Red-Dead Sea Project Manager**”. In analyzing difficult questions related to OP/BP 7.50, Dr. Salman has elaborated on how the Bank approaches related components to projects on international waterway and “connected projects”. Dr. Salman writes:

One of the questions that the Bank faces relates to projects that include a component on an international waterway, which the Bank is not financing, but is limiting its funding to other components of the same project. The funding for the component on the international waterway could come from another financier, or from the borrower's own resources. The Bank has long determined that under those types of projects, the policy for projects on international waterways still applies notwithstanding the fact that the Bank is not financing the component on the international waterway. This determination has been made to avoid the perception that the component to which the policy applied was intentionally carved out for other financiers simply to avoid application of the policy. . . .

A more complex matter relates to what is generally referred to as ‘connected projects.’ The issue here does not relate to one of the components of the same project. The issue relates to different, but somehow connected projects. One example concerns a pipeline to be financed by the Bank that runs over land, but connects to another pipeline already under construction and about to be completed, not financed by the Bank, which runs across an international waterway. Should the riparians on the waterway be notified

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<sup>14</sup> See <http://www.jrsp-jordan.com/>

<sup>15</sup> See JSRP Information Meeting Presentation - 06 January 2011.pdf.

<sup>16</sup> See <http://www.bicusa.org/en/Article.11420.aspx>

although the Bank project only runs through land? Similarly, what if the Bank is financing a water treatment plant project on an international waterway, and both plants would use the water distribution network financed under the project? Should notification be limited to the riparians of the waterway under the first treatment plant, or should it include the riparians of the waterways of both treatment plants?

Those are difficult questions and the Bank policy for projects on international waterways does not provide any guidance on how to deal with them. In those type of situations, the Bank would most likely apply, as a general rule, the criteria of “significant and direct relationship” between the two projects. If such a significant and direct relationship exists, then the policy might apply. The elements of the criteria for this relationship are now set forth in more details in the Bank Policy on Involuntary Resettlement. The criteria include (i) direct and significant relationship between the two activities, (ii) necessity of the other activity for achieving the objectives of the Bank-financed project, and (iii) contemporaneous implementation of the other project with the Bank-financed project. Applying these criteria, both of the above examples would be require notification of the affected riparians, even though the other project is not financed by the Bank. The overall objectives of the Bank policy of dispute avoidance and acting prudently in the interest of all members would require application of the policy. Thus, the leveraging effect of the policy, in cases of both, different components and different projects, is clearly quite substantial.

46. The fact that the JRSP has as its objectives to desalinate water from the Dead Sea, convey the Desalination Brine to the Dead Sea ostensibly to reverse its decline, and transfer at least part of the produced desalinated water to Amman compelling results in the “significant and direct relationship” test being met to the Red Sea-Dead Sea Water Conveyance Program. In further avoiding the application of OP/BP 7.50, Mr. McPhail and Dr. Lintner will likely suggest that the JSRP is not itself a detailed design and engineering study advance sufficiently enough for it to impact the analysis of the Red Sea-Dead Sea Water Conveyance Program. To this it should be noted that many water professionals in the region openly discuss that it is the intention of the Government of Jordan to utilize the World Bank managed Red Sea-Dead Sea Water Conveyance Program for the benefit of the JSRP. Application of OP/BP 7.50 to the earliest possible intervention should be considered if the World Bank has good reason to believe that a co-riparian, in this case the Government of Jordan, may advance the program towards the project or a component or connected project with nearly identical objectives of the program where that co-riparian is unlikely to provide notification to other co-riparians of the Jordan River Basin.

47. Despite how difficult it might be for Mr. McPhail or Dr. Lintner or the World Bank’s Chair of the Technical Steering Committee to get a straight answer out of the Government of Jordan on the obvious overlap between the Red Sea-Dead Sea Water Conveyance Program and the JRSP,<sup>17</sup> the Requesters assert that the World Bank not only

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<sup>17</sup> See **Behind the Story: Is There a Red-Dead Project?** (February 24, 2010) at [http://www.jo.jo/index.php?option=com\\_content&view=article&id=1215:behind-the-story-what-is-the-](http://www.jo.jo/index.php?option=com_content&view=article&id=1215:behind-the-story-what-is-the-)

clearly has fiduciary duties to the donors funding the Red Sea-Dead Sea Water Conveyance Program to confirm whether the Government of Jordan is serious about going forward with the proposed project to justify continued expenditures under the program, but the World Bank has a responsibility to the Palestinians hoping for the distant prospect of water from the Red Sea-Dead Sea Water Conveyance if one of the other co-riparians not only plans to unilaterally deposit brine water into the Dead Sea, but also retain all desalinated water produced under the JRSP despite the average Palestinian receives one third the amount of the average Jordanian and this discrepancy increases when comparing to Red Sea-Dead Sea program affected Palestinians in the Jordan Valley and Area C in those living in the southern West Bank. Affected Palestinians should know if MWH, led in this initiative by Mr. Skip Holland, which after not being short-listed under the Red Sea-Dead Sea Water Conveyance Feasibility Study then decided to persuade the Government of Jordan to back a competing project concept that MWH developed under a contract it was awarded by the Government of Jordan?

48. Despite the World Bank management invocation of the exception to OP/BP 7.50 to avoid notification, the Requesters assert that clearly persuasive reasons why notification or at least consultation should be provided to Lebanon and Syria as co-riparians of the Jordan River Basin is to be found in Dr. Lintner's own statements at the 20 July 2010 Public Consultation in Ramallah. In front of an audience of over 100 Palestinians including the undersigned head of the Stop the Wall Campaign, Dr. Lintner stated that the cause of the decline of the Dead Sea is the result of over-abstraction of water from the Basin by Israel, Jordan and **Syria**.<sup>18</sup> Therefore, the application of the OP/BP 7.50 is critical in relationship to OP/BP 4.01 with relation to if nothing else the regional Analysis of Alternatives. If the experts representing the lower Jordan co-riparians who are mandated to undertake the regional Analysis of Alternatives cannot evaluate possible solutions which might be contributed from alternatives or components of alternatives identified derived from Syria, then the clear harm to affected Palestinian is that all possible alternatives to the proposed Red Sea – Dead Sea project cannot fully be evaluated and elaborated, such as water conservation and efficiency in Syria and throughout the Jordan Rive Basin. Simply, the inability to assess the source of the problem impedes the search for the optimal solution for the addressing the decline of the Dead Sea.

49. The Requesters believe that a further persuasive reason why notification or at least consultation should be provided to Lebanon and Syria as co-riparians of the Jordan River Basin is found in the responsibility of the World Bank as an International Organization mandated to uphold international law. On 22 Jun 1999 Jordan ratified the 1997 Convention on the Law of the Non-Navigational Uses of International Watercourses following both the ratification of Syria on 2 April 1998, and the accession of Lebanon on 25 May 1999. Article 12 of the 1997 Convention on the Law of the Non-Navigational Uses of International Watercourses requires notification of planned measures, and even if the Convention has not come into force, then it should be reminded that the Convention is a codification of customary international law, and also under the Vienna Convention of the Law of 'Treaties'

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[jordan-red-sea-project&catid=81:politics&Itemid=197](#)

<sup>18</sup> The audio recordings of the 20 July 2010 Red Sea-Dead Sea Water Conveyance Program public consultations as related to the Economic Feasibility and Environmental and Social Assessment are a matter of public record available from the Palestinian Hydrological Group.

*Article 18 “Obligation not to defeat the object and purpose of a treaty prior to its entry into force”* requires that a State is obliged to refrain from acts which would defeat the object and purpose of a treaty when: (a) it has signed the treaty or has exchanged instruments constituting the treaty subject to ratification, acceptance or approval, until it shall have made its intention clear not to become a party to the treaty.”

50. With regard to the Jordan River Basin, the World Bank as an International Organization has an obligation to encourage the adherence of treaty commitments by states, such as Jordan, to the 1997 Convention on the Law of the Non-Navigational Uses of International Watercourses including the notification requirements found in Article 12, especially where co-riparians Lebanon and Syrian are also signatories, and thus truly advancing the Red Sea-Dead Sea Water Conveyance Program’s states objective of “[B]uilding a symbol of peace and cooperation in the Middle East” based on adherence to customary international law and international treaty law.

51. Finally, and most importantly, the Requesters find compelling that there is a clear contradiction in Mr. McPhail’s statement that OP/BP 7.50 does not apply to detailed design and engineer studies in response to the Requesters assertion that the Red Sea Dead Sea Water Conveyance Program fails to consult with all riparians of the Jordan River Basin since Syria and Lebanon not been provided notice of the project nor has their inclusion in consultations been sought. If the exception of the OP/BP 7.50 applies to the Red Sea-Dead Sea Water Conveyance Program because the \$17 million program, albeit of great complexity, is only a feasibility study, then why has the World Bank specifically engaged in consultations with Egypt and Saudi Arabia as co-riparians of the Red Sea, and not with Lebanon and Syria as co-riparians of the Jordan River Basin? In fact, Dr. Salman writes that “[A]s a general rule, the Bank has followed a basin-wide approach to projects and programs which would include all the riparians, and thus would not require an exception to the notification requirement.” In direct contradiction to Mr. McPhail’s response letter dated 25 July 2011, Dr. Salman writes about consultation with all riparians and the provision of data and information the following in his comprehensive analysis of OP/BP 7.50:

Notwithstanding the fact that feasibility studies fall under the exception to the notification requirement under the policy, the Bank ensures that the international aspects of projects on international waterways are dealt with at the earliest possible opportunity. Thus, when the feasibility studies concern large or complex projects, the Bank would ensure that other riparians are consulted and data and information are provided to them.

52. Dr. Salman is only partially correct in his specific analysis of the Bank management consultation of other riparians in the instance of the Dead Sea stating:

Another feasibility study where the other riparians have been either briefed or consulted concerns the Red Sea – Dead Sea Water Conveyance Feasibility Study and Environmental and Social Assessment. The falling level of the Dead Sea has become a major concern to the international community, and has been a topic of discussion in a number of international water conferences. At the expressed jointly signed request from Jordan, the Palestinian Authority and Israel, the Bank is managing the financial and

technical aspects of the feasibility study to determine what can be done to save the Dead Sea from further declines in its level. Conveyance of water from the Red Sea (at Aqaba) to the Dead Sea is the option proposed by the three parties at this time. The feasibility study would consider environmental, economic, technical, social and financial aspects of the proposal. Although this is a feasibility study that falls under the exception to the notification requirement, the other two littoral states to the Gulf of Aqaba, Egypt and Saudi Arabia, are being consulted, and information about the study is being publicly disclosed and updated periodically. This is being done because of the substantial scope and considerable visibility of the feasibility study.

53. Recognizing all the reasons mentioned above, the World Bank should consider that it has violated OP/BP 7.50 by not consulting with Lebanon and Syria, let alone providing formal notification, and in so doing have harmed the affected parties and others given that foregoing notification has an impeding factor to a thorough regional Analysis of Alternatives necessary to identify the optimal solution for the decline of the Dead Sea.

#### **D. OP/BP 7.60 Projects in Disputed Areas**

54. Given that the Red Sea Dead Sea Water Conveyance Program implicates for affected Palestinians access to the northwest coast of the Dead Sea, as well as the lower Jordan River, both as part of the Jordan River Basin, the positions and actions of the Government of Israel as an occupying powers contravenes the Bank's policy on Projects in Disputed Areas. In general, the Government of Israel considers all territory in the West Bank as disputed territories and not lands under occupations. This can be confirmed by reference to "Israel Palestinian Conflict: The truth about the West Bank" by Danny Ayalon Israel's Deputy Minister of Foreign Affairs publicly available on Youtube.<sup>19</sup> During the course of the Red Sea Dead Sea Water Conveyance Program, the Government of Israel has taken steps to confiscate Palestinian lands in the West Bank including all of the coast along the Dead Sea which provoked Palestinian officials to consider withdrawing from the project and asking the World Bank to discontinue funding.<sup>20</sup> Since 1967, the Government of Israel has severely limited Palestinian access to the lower Jordan River by making it a security zone and cutting off access to existing freshwater, as well as taking a similar approach to resources available at the Dead Sea. In fact, this phenomenon is not limited to the Jordan Valley and areas directly around the Dead Sea and the Lower Jordan River, but Government Media Center of the Office of the Prime Minister has highlighted these confiscations in its recent media release dated 23 July 2011 entitled "**Israeli government taking illegal and unilateral actions to annex Palestinian territory and instigate violence as a prelude to the request for Palestinian state recognition at the UN**" noting that "70% of Area C (Palestinian Territory) has been designated for Israeli settlement or military use." The prevailing activities and policies the Government of Israel with regards to the Jordan River Basin,

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<sup>19</sup> See "Israel Palestinian Conflict: The truth about the West Bank" by Danny Ayalon Israel's Deputy Minister of Foreign Affairs at <http://www.youtube.com/watch?v=XGYxLWUKwWo> last visited 9 August 2011.

<sup>20</sup> See "Israel grab threatens Red-Dead Water Conveyance Project - Palestinians" (Jordan Times, 9 July 2009) available at <http://www.jordantimes.com/?news=18260> last visited in 9 August 2011.

including the coastline of the Dead Sea, necessitate that the World Bank apply OP/BP 7.60 “at the earliest possible stage”, and providing all relevant information in the World Bank documents to fully discuss “the nature of the dispute” and described to the affected communities to ensure they are aware that the Red Sea – Dead Sea Water Conveyance Program will not prejudice their collective claim.

#### **E. OP/BP 4.10 Indigenous Peoples**

55. With the signing of the Oslo Agreement in 1995, the Government of Israel and the Palestinian Liberation Organization agreed to section the West Bank into three areas – Area A, Area B, and Area C – to apportion Administrative and Security responsibility during the interim period of five years, which has now extended to the current day. Area C is nearly 61 per cent of the West Bank including most of the Jordan Valley and areas in close proximity to the Dead Sea, and more importantly Area C is under the full administrative and security control of the Government of Israel. With this de facto legal regime, as well as Israel’s continued policy of resettling its citizens in Area C throughout the West Bank including the Jordan Valley, the indigenous Palestinian population is now an overall minority in Area C vis-à-vis Israeli settlers and is subject to a system of governance which is not of their choosing and proven to be highly discriminatory. These facts require that the World Bank apply the higher level of information disclosure and consultation under OP 4.10 which they have not in general done during the course of the Red Sea – Dead Sea Water Conveyance Program let alone with regards to the specifics of the public consultation of the Study of Alternatives.

56. OP 4.10 states:

This policy contributes to the Bank’s mission of poverty reduction and sustainable development by ensuring that the development process fully respects the dignity, human rights, economies, and cultures of Indigenous Peoples. For all projects that are proposed for Bank financing and affect Indigenous Peoples, the Bank requires the borrower to engage in a process of free, prior, and informed consultation. The Bank provides project financing only where free, prior, and informed consultation results in broad community support to the project by the affected Indigenous Peoples.

57. It further emphasizes:

The Bank recognizes that the identities and cultures of Indigenous Peoples are **inextricably linked to the lands on which they live and the natural resources on which they depend**. These distinct circumstances expose Indigenous Peoples to different types of risks and levels of impacts from development projects, including loss of identity, culture, and customary livelihoods, as well as exposure to disease. Gender and intergenerational issues among Indigenous Peoples also are complex. As social groups with identities that are often distinct from dominant groups in their national societies, Indigenous Peoples are frequently among the most marginalized and vulnerable segments of the population. As a result, their economic,

social, and legal status often limits their capacity to defend their interests in and rights to lands, territories, and other productive resources, and/or restricts their ability to participate in and benefit from development.

58. During the course of the Red Sea –Dead Sea Water Conveyance Program, Palestinian affected communities indigenous to the Jordan Valley in Area C have been forced to migrate and resettle, for example the community of Farasiya where the Israeli Defense Forces cut off water supply, while at the same time the program and the Beneficiary Parties ostensibly look for solutions to provide all the people of the water scarce region with additional freshwater.<sup>21</sup>

59. The Requesters assert that the World Bank has violated OP/BP 4.10 in not meeting the “free, prior, and informed consultation” requirements for indigenous Palestinian people in Area C and obtaining “broad community support” for the program. In fact, the limited public consultations, and specifically the public consultation in the Jordan Valley which was not publicized well in advance and in only one media outlet which did not make it widely known to the affected communities, clearly indicate that the World Bank has failed to meet the simple threshold of its Policy on Access to Information, let alone the specific information and consultation requirement of OP/BP 4.10 among others.

60. The Requesters assert that continued Israeli policy of cutting of water and other services to the indigenous Palestinians in Area C that are affected communities under the Red Sea – Dead Sea Water Conveyance Program which is to explore the water availability and solve the water problem is highly likely to indirectly violate the Involuntary Resettlement Policy. Other than the obvious harm to these indigenous communities, the forcible migration of indigenous Palestinians from these areas changes the demand requirement that underpin the analysis of the Economic Feasibility and Environmental and Social Assessment consultants as the Palestinian population decreases due to the administrative, security and resettlement policies of the Government of Israeli in Area C including where affected by the program.

## V. Human rights implications

61. In its statement to the Board regarding the Chad – Cameroon Petroleum and Pipeline Project (2002), the World Bank Inspection Panel stated that it “finds human rights implicitly embedded in various policies of the Bank” and to that extent human rights “is within the boundaries of the Panels’ jurisdiction.”

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<sup>21</sup> See at “**IDF destroys West Bank village after declaring it military zone**” by Amira Hass (Haeertz, 21 July 2010) available at <http://www.haaretz.com/print-edition/news/idf-destroys-west-bank-village-after-declaring-it-military-zone-1.303098> last visited 9 August 2011; See also “**Dispossession & Exploitation: Israel's policy in the Jordan Valley & northern Dead Sea**” (B’Tselem, 2011) pg. 32 available at [http://www.btselem.org/download/201105\\_dispossession\\_and\\_exploitation\\_eng.pdf](http://www.btselem.org/download/201105_dispossession_and_exploitation_eng.pdf), and generally [http://www.btselem.org/presentations/jordan\\_valley/water\\_eng.htm](http://www.btselem.org/presentations/jordan_valley/water_eng.htm).

## **A. Right to Participation**

62. As mentioned above, for Palestinians affected by the Red Sea Dead Sea Water Conveyance project to meaningfully participate in consultations and decisions related to the project, including the current studies, they would require full disclosure of and information on all aspects of the project including on all feasible alternatives to address the degradation of the Dead Sea. They would also require adequate notice of consultations.

## **B. Right to Water**

63. Feasible alternatives to the Red Sea Dead Sea Water Conveyance option should include those that better respect, protect and fulfill the human rights obligations of the riparian/beneficiaries. The Jordan River alternative, for instance, would contribute to respecting, protecting and fulfilling the human right to water since the current degradation of the Jordan River results in denial of access to water for Palestinians living in the West Bank.

64. On 3 August 2010, the United National General Assembly adopted Resolution 64/292 on the human right to water and sanitation, in which it recognized “the right to safe and clean drinking water and sanitation as a human right that is essential for the full enjoyment of life and all human rights”.<sup>22</sup> This action was followed by the United National Human Rights Council which adopted resolution 15/9 on 6 October 2010, which expressly tied the right to water and sanitation to specific human rights treaty frameworks including in particular the International Covenant on Economic, Social and Cultural Rights which Israel ratified on 3 January 1992 and Jordan ratified on .

65. The Committee on Economic, Social and Cultural Rights, mandated to monitor compliance with the International Covenant on Economic, Social and Cultural Rights, adopted General Comment No. 15 which states in relevant part that:

The right to water contains both freedoms and entitlements. The freedoms include the right to maintain access to existing water supplies necessary for the right to water, and the right to be free from interference, such as the right to be free from arbitrary disconnections or contamination of water supplies. By contrast, the entitlements include the right to a system of water supply and management that provides equality of opportunity for people to enjoy the right to water.<sup>23</sup>

66. General Comment No. 15 also states that the human right to water requires that:

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<sup>22</sup> United Nations General Assembly resolution 64/292, The Human Right to Water and Sanitation, adopted 3 August 2010.

<sup>23</sup> Committee on Economic, Social and Cultural Rights, General Comment 15, The right to water (Twenty-ninth session, 2003), U.N. Doc. E/C.12/2002/11 (2002), reprinted in *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, U.N. Doc. HRI/GEN/1/Rev.6 at 105 (2003), para. 10.

Water and water facilities and services have to be accessible to *everyone* without discrimination ... including physical accessibility and economic accessibility.

67. The current water allocation of the Jordan River not only contributes to the degradation of the Dead Sea, but also discriminatorily denies Palestinians access to water for domestic and agricultural needs.<sup>24</sup> Consequently, alternatives should be explored that both mitigate the degradation of the Dead Sea and end human rights violations in the occupied West Bank.

68. The Requester would highlight that during the 20 July 2010 public consultation in Ramallah – contemporaneous with the Israel Army’s destruction and seizure of water infrastructure in the Palestinian community of Farsiya in Area C of the Jordan Valley – representatives of the Palestinian affected communities to the Red Sea Dead Sea Water Conveyance Program specifically requested the representative from the Environmental and Social Assessment consultant to address in their work the issue of Palestinian rights to water in the Jordan Valley and areas affected by the program. Mr. Raymond Colley of ERM responded that the Environmental and Social Assessment would look into this matter, as witnessed by the assembled Palestinians as well as the representative of the World Bank, Mr. Stephen Lintner. Given the above, World Bank management cannot simply respond to the Requesters earlier communications that “We would like to indicate that the Study Program only considers the technical, financial, economic, environmental and social aspects of the proposed Red Sea Dead Sea Water Conveyance.” In the World Bank’s obligation and responsibility to adhere to international law and rights as an international organization, it cannot limit this obligation by reliance on the Terms of Reference arrangement of the three Beneficiary Parties as Bank Management has suggested to the Requesters.

## **VI. Conclusion**

69. The flaws in the Terms of Reference not only contravene Bank Operational Policies and Bank Procedures, but would result in inadequate and incomplete Environmental and Social Assessments. Palestinian civil society affected by the proposed project, including those represented by Stop the Wall Campaign and the Palestinian Farmers Union, require adequate and complete Environmental and Social Assessments, including a full exploration and examination of feasible regional alternatives, in order to meaningfully participate in the consultation processes related to the Red Sea Dead Sea Water Conveyance Study Program, and for there to be broad consensus in those indigenous communities of Area C affected by the program.

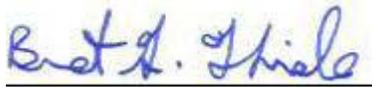
70. Consequently, the Requesters urge the World Bank Inspection Panel to initiate an investigation of the Red Sea Dead Sea Water Conveyance Study Program to ensure that it comes into full compliance with the World Bank’s Operational Policies and Bank Procedures.

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<sup>24</sup> See, Centre on Housing Rights and Evictions (COHRE), Politics of Denial: Lack of Access to Water in the West Bank, Geneva: COHRE 2008 (in particular chapter 3).

71. The Global Initiative for Economic, Social and Cultural Rights, Stop the Wall Campaign and the Palestinian Farmers Union reserve the right to provide further information on this matter.

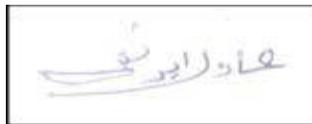
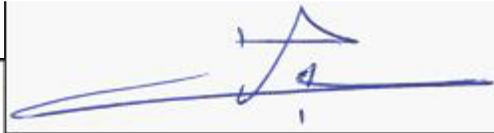
Sincerely,



Bret Thiele  
Attorney at Law  
Co-Executive Director  
Global Initiative for Economic, Social and Cultural Rights



Jamal Juma  
Director  
Stop the Wall Campaign  
PENGON  
PO Box 25220  
Beit Hanina, Jerusalem  
Palestine



Adel Abu Ne'meh  
Director  
Palestinian Farmers Union  
Al-Rabea Building, Fifth Floor  
Court St. Ramallah  
West Bank, Palestine

**Annex 1: Letter from Requesters to Mr. McPhail and Dr. Lintner**

Global Initiative for Economic, Social and Cultural Rights  
8 N. 2<sup>nd</sup> Avenue East  
Suite 208  
Duluth, MN 55802  
U.S.A.  
e-mail: [globalinitiative@globalinitiative-escr.org](mailto:globalinitiative@globalinitiative-escr.org)

23 May 2011

**Re: Red Sea Dead Sea Water Conveyance Study Program**

World Bank Group  
1818 H Street, NW  
Washington, DC 20433

Dear Dr. McPhail and Dr. Lintner,

I am a Co-Executive Director of the Global Initiative for Economic, Social and Cultural Rights (GI-ESCR) and am writing with regard to the Red Sea Dead Sea Water Conveyance Study Program. I am writing on behalf of the GI-ESCR as well as the Stop the Wall Campaign and the Palestinian Farmers Union.

The Global Initiative for Economic, Social and Cultural Rights is an international human rights non-governmental organization working to promote and protect human rights with a particular focus on economic, social and cultural rights. The GI-ESCR also works to promote the human rights based approach to development and works at the intersection of human rights, development and environmental protection.

Stop the Wall Campaign is a grassroots Palestinian campaign concerned with unlawful annexation and exploitation of Palestinian resources, including land and water resources.

The Palestinian Farmers Union is a platform for Palestinian farmers to raise their voices to demand their rights related to the agricultural sector. The Palestinian Farmers Union also is a supporting arm for farmers in their just cause against the confiscation of land and water resources in Palestine.

Stop the Wall Campaign and the Palestinian Farmers Union are made up of and represent persons affected by the Red Sea Dead Sea Water Conveyance Study Program. Both organizations represent Palestinian civil society and residents of the West Bank that presently are harmed by lack of access to water resources. For instance, Palestinian residents

represented by these organizations have been denied access to water from the Jordan River and rely on ground water resources that could be put at risk by the Red Sea Dead Sea Water Conveyance, particularly if water conveyance infrastructure were to rupture.

We have concerns about the Red Sea Dead Sea Water Conveyance Study Program, namely:

**1. OP 4.01 requires that:**

The borrower is responsible for carrying out the EA (Environmental Assessment) [and that] for Category A projects, the borrower retains independent EA experts not affiliated with the project to carry out the EA [and] for Category A projects that are highly risky or contentious or that involve serious and multidimensional environmental concerns, the borrower should normally also engage an advisory panel of independent, internationally recognized environmental specialists to advise on all aspects of the project relevant to the EA.<sup>25</sup>

Under the Terms of Reference for the Red Sea Dead Sea Water Conveyance Study Program, its states in paragraph 13.1.19 that a “Technical Steering Committee shall provide the Consultant, for use in the Environmental and Social Assessment, with a report on alternatives/options that have been proposed, studied and/or are undertaken in a variety of initiatives to arrest the decline of the Dead Sea.” While we strongly agree that such a report on alternatives is crucial, the Terms of Reference are in violation of OP 4.01 because the Technical Steering Committee is made up almost entirely of representatives of the beneficiary parties rather than “independent, internationally recognized environmental specialists.”

OP 4.01 also requires that the EA:

Examines project alternatives; identifies ways of improving project selection, siting, planning, design, and implementation by preventing, minimizing, mitigating, or compensating for adverse environmental impacts and enhancing positive impacts ... the Bank favors preventive measures over mitigatory or compensatory measures, whenever feasible.<sup>26</sup>

And that the EA:

For a Category A project examines the project’s potential negative and positive environmental impacts, compares them with those of feasible alternatives (including the “without project” situation), and recommends any measures needed to prevent, minimize, mitigate, or compensate for adverse impacts and improve environmental performance.<sup>27</sup>

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<sup>25</sup> World Bank Operational Policy 4.01 (Environmental Assessment), paragraph 4.

<sup>26</sup> World Bank Operational Policy 4.01 (Environmental Assessment), paragraph 2.

<sup>27</sup> World Bank Operational Policy 4.01 (Environmental Assessment), paragraph 8(a).

The above requirements are further elaborated upon in Annex B to OP 4.01 (Content of an Environmental Assessment Report for a Category A Project), which state that:

The EA report should include the following items: (f) Analysis of alternatives. Systematically compares feasible alternatives to the proposed project site, technology, design and operation – including the “without project situation – in terms of their potential environmental impacts; the feasibility of mitigating these impacts; their capital and recurrent costs; their suitability under the local condition; and their institutional, training, and monitoring requirements.. For each of the alternatives, quantifies the environmental impacts to the extent possible, and attached economic values where feasible.<sup>28</sup>

Alternatives to address the decline of the Dead Sea have not been taken into serious consideration by the World Bank or those undertaking the Red Sea Dead Sea Water Conveyance study. For instance, the Jordan River alternative entails regenerating the flow of the Jordan River which could be a viable alternative to the Red Sea Dead Sea Water Conveyance project. Furthermore, the Jordan River alternative would not have the serious environmental and social risks that are associated with the Red Sea Dead Sea Water Conveyance project, such as risks of salination of ground water resources that Palestinians rely on.

Other alternatives explored should include demand management, but because the Technical Steering Committee consists almost entirely of representatives of the beneficiary parties rather than “independent, internationally recognized environmental specialists”, it is doubtful that consideration of anything other than current water allocation, pricing and management practices would be taken under consideration.

Furthermore, while the OP 4.01 requires exploration of alternatives “including the ‘without project’ situation”, the Terms of Reference only allow for an exploration of the “without project situation” and a report on alternatives at the regional level, and not an exploration of alternatives outside the scope of these two examinations. Furthermore, the regional level analysis is not integrated into the EA but is being conducted by a separate team lacking the skills necessary to evaluate the full range of regional level alternatives. This too places the Terms of Reference in contravention of OP 4.01.

## **2. OP 4.04 Environmental Damages**

OP 4.04 states that:

The Bank promotes and supports natural habitat conservation and improved land use by financing projects designed to integrate into national and regional development the conservation of natural habitats and the maintenance of ecological functions. Furthermore, the Bank promotes the rehabilitation of degraded natural habitats.... The Bank does not support project involving

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<sup>28</sup> World Bank Operational Policy 4.01 (Environmental Assessment), Annex B, paragraph 2.

the significant conversion of natural habitats unless there are no feasible alternatives for the project.<sup>29</sup>

Again, without the full exploration of all feasible alternatives, the Red Sea Dead Sea Water Conveyance Study Program can not have satisfied OP 4.04. Indeed, the project as envisioned would jeopardize pristine natural habitats along the length of the conduit. The project as envisioned also poses risk to Palestinians who depend on water sources that could be detrimentally impacted should the Red Sea Dead Sea water conveyance infrastructure fail. Furthermore, the Jordan River alternative would promote the Bank's aim of rehabilitation of degraded natural habitats and contribute to solving the decline of the Dead Sea, but this alternative has not been taken into consideration, placing the Terms of Reference in contravention of OP 4.04.

### **3. OP 7.50 Projects on International Waterways**

OP 7.50 requires that:

The Bank recognizes that the cooperation and goodwill of riparians is essential for the efficient use and protection of the waterway. Therefore, it attaches great importance to riparians' making appropriate agreements or arrangements for these purposes for the entire waterway or any part thereof. ... The Bank ensures that the international aspects of a project on an international waterway are dealt with at the earliest possible opportunity. If such a project is proposed, the Bank requires the beneficiary state, if it has not already done so, formally to notify the other riparians of the proposed project and its Project Details. If the prospective borrower indicates to the Bank that it does not wish to give notification, normally the Bank itself does so. If the borrower also objects to the Bank's doing so, the Bank discontinues processing of the project.

The Red Sea Dead Sea Water Conveyance Study Program fails to consult with all riparians of the Jordan River Basin since Syria and Lebanon not been provided notice of the project nor has their inclusion in consultations been sought. Consequently, the Study Program is in contravention of OP 7.50.

### **4. Human rights implications**

In its statement to the Board regarding the Chad – Cameroon Petroleum and Pipeline Project (2002), the World Bank Inspection Panel stated that it “finds human rights implicitly embedded in various policies of the Bank” and to that extent human rights “is within the boundaries of the Panels’ jurisdiction.”

#### **A. Right to Participation**

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<sup>29</sup> World Bank Operational Policy 4.04 (Environmental Damages), paragraphs 3 and 4.

As mentioned above, for Palestinians affected by the Red Sea Dead Sea Water Conveyance project to meaningfully participate in consultations and decisions related to the project, including the current study, they would require full disclosure of and information on all aspects of the project including on all feasible alternatives to address the degradation of the Dead Sea.

## **B. Right to Water**

Feasible alternatives to the Red Sea Dead Sea Water Conveyance option should include those that better respect, protect and fulfill the human rights obligations of the riparian/beneficiaries. The Jordan River alternative, for instance, would contribute to respecting, protecting and fulfilling the human right to water since the current degradation of the Jordan River results in denial of access to water for Palestinians living in the West Bank.

On 3 August 2010, the United National General Assembly adopted Resolution 64/292 on the human right to water and sanitation, in which it recognized “the right to safe and clean drinking water and sanitation as a human right that is essential for the full enjoyment of life and all human rights”.<sup>30</sup> This action was followed by the United National Human Rights Council which adopted resolution 15/9 on 6 October 2010, which expressly tied the right to water and sanitation to specific human rights treaty frameworks including in particular the International Covenant on Economic, Social and Cultural Rights which Israel ratified on 3 January 1992.

The Committee on Economic, Social and Cultural Rights, mandated to monitor compliance with the International Covenant on Economic, Social and Cultural Rights, adopted General Comment No. 15 which states in relevant part that:

The right to water contains both freedoms and entitlements. The freedoms include the right to maintain access to existing water supplies necessary for the right to water, and the right to be free from interference, such as the right to be free from arbitrary disconnections or contamination of water supplies. By contrast, the entitlements include the right to a system of water supply and management that provides equality of opportunity for people to enjoy the right to water.<sup>31</sup>

General Comment No. 15 also states that the human right to water requires that:

Water and water facilities and services have to be accessible to *everyone* without discrimination ... including physical accessibility and economic accessibility.

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<sup>30</sup> United Nations General Assembly resolution 64/292, The Human Right to Water and Sanitation, adopted 3 August 2010.

<sup>31</sup> Committee on Economic, Social and Cultural Rights, General Comment 15, The right to water (Twenty-ninth session, 2003), U.N. Doc. E/C.12/2002/11 (2002), reprinted in *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, U.N. Doc. HRI/GEN/1/Rev.6 at 105 (2003), para. 10.

The current water allocation of the Jordan River not only contributes to the degradation of the Dead Sea, but also discriminatorily denies Palestinians access to water for drinking as well as domestic and agricultural needs.<sup>32</sup> Consequently, alternatives should be explored that both mitigate the degradation of the Dead Sea and end human rights violations in the occupied West Bank.

It is our hope that by bringing these concerns to the attention of Bank Management they can be addressed within the current study phase. We hope that you are able to respond to this letter as soon as possible.

Sincerely,

A handwritten signature in blue ink that reads "Bret Thiele". The signature is enclosed in a thin black rectangular border.

Bret Thiele  
Co-Executive Director  
Global Initiative for Economic, Social and Cultural Rights

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<sup>32</sup> See, Centre on Housing Rights and Evictions (COHRE), Politics of Denial: Lack of Access to Water in the West Bank, Geneva: COHRE 2008 (in particular chapter 3).