Assessing Capacity Development in World Bank 'Program-for-Results' Financing

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Abstract: *Program-for-results (PforR) is an innovative instrument of World Bank financing which links disbursements to results in country-defined programs. This recently adopted instrument seeks to give recipient countries a greater sense of participation, independence and ownership over the design and implementation of their development progress. Accordingly, a key dimension of PforR is capacity development – strengthening the ability of State institutions to perform functions, solve problems and set and achieve objectives that will lead to sustainable development progress. This paper will examine whether the World Bank's legal framework for PforR is likely to enhance the explicit goal of capacity development. In particular, this paper will assess the extent to which the specific disbursement-linked indicators in a current PforR project in Nepal reflect this goal. Finally, this paper will address the apparent tension between (i) ensuring adequate baseline standards for program eligibility and implementation (from the World Bank's risk allocation perspective), and (ii) achieving capacity development through greater reliance on country systems. While PforR has the potential to achieve deeper and more sustained development impact than traditional transactions-based approaches, it also runs the risk of being perceived as a lowering of the World Bank's safeguard standards.*

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I. Introduction

Program-for-results (PforR) is a recently-adopted innovative instrument of World Bank financing which links disbursements to results in country-defined programs. PforR reflects the Bank's desire for a concrete *results-based-aid*[1] program, partly in response to demands from donors for greater incentive-based financing methods and from aid recipients for more control over their development strategies and project implementation.

A key dimension of PforR is *capacity development* – strengthening the institutional capacity of borrowers to implement development projects, with the goal of enhancing develop-

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1 See *S. Klingebiel*, Results-Based Aid and its Application to Promote Good Governance, German Development Institute / Deutsches Institut für Entwicklungspolitik (Apr. 2012), http://www.cgdev.org/doc/Initiatives/RBA_Publication_2012_04_11.pdf (last accessed on 16 April 2014).

ment impact and sustainability. Capacity development is an increasingly prevalent theme in international development, as official development aid (ODA) policies seek to become less paternalistic. Moreover, there is growing recognition that strengthening stakeholder ownership, the efficiency of policy instruments and the effectiveness of organizational arrangements is critical to achieving sustainable development results. This insight has led donors, intermediaries and recipient countries to begin to shift the focus from project-based, short-term technical fixes to programmatic approaches that emphasize country ownership and institutional capacity.

This paper will explore whether the legal framework for PforR is likely to enhance the declared goal of capacity development. I will examine the extent to which the specific *disbursement-linked indicators* employed in a current PforR project in Nepal reflect this goal. I will also assess the challenge for the Bank in balancing country ownership with the need to retain effective safeguards to protect Bank funds and to produce the necessary development impact.

II. Capacity Development

Capacity development is an increasingly important dimension of international development. It is estimated that ODA donors spend more than US$20 billion per year on products and activities designed to enhance the capacity of ‘developing’ countries to make and carry out development plans.[2] That level of financial commitment reflects donors’ belief that their aid mission, even when entailing well-funded, planned and budgeted programs, will not succeed unless recipient countries improve their ability to *use* the ODA funds and other resources at their disposal.[3] Due in part to donors’ tighter belts at home and demands for accountability, there is a growing emphasis on results-focused initiatives that incentivize recipient governments to take greater ownership over their development progress.

Development finance institutions (DFIs) such as the World Bank obviously have financial and other interests tied to their donors. Moreover, by challenging and enhancing the capacity of national institutions to independently implement development projects, DFIs, conceivably, will be able to more efficiently and effectively leverage their resources and expertise.

From the perspective of recipients, capacity development offers a more sustainable approach to development, as it empowers and strengthens local institutions to implement not only the project at hand, but to also future projects. Further, *participation*, *independence* and *ownership* are increasingly demanded by recipients as the plethora of development financing options has expanded – aid/loans from bilateral donors or other DFIs who might require lesser forms of conditionality on their support, sovereign debt, project finance and impact invest-

2 *S. Otoo, N. Agapitova and J. Behrens*, The Capacity Development Results Framework: A strategic and results-oriented approach to learning for capacity development, World Bank Institute (2009) (hereinafter, CDRF Paper), siteresources.worldbank.org/EXTCDRC/Resources/CDRF_Paper.pdf (last accessed on 16 April 2014).

3 *Id.*

ment, to name a few. Politically speaking, recipient countries have more options and can demand less intrusion in their national policy-making.

A. *Outlining the Concept of Capacity Development*

Capacity development is both a *form* and *element* of technical and financial development assistance which brings to mind the classic proverb that it is more worthwhile to teach someone to do something than to do it for them. Specific forms of technical assistance such as technology transfer, teaching and training, supervision and feedback can all contribute to more effective public administration systems, as well as good governance in general.[4]

The United Nations Development Programme (UNDP) has defined capacity development as: "*the process by which individuals, organizations, institutions and societies develop abilities to perform functions, solve problems and set and achieve objectives*."[5] The World Bank has conceived of capacity development as: "*a locally driven process of learning by leaders, coalitions and other agents of change that brings about changes in sociopolitical, policy-related, and organizational factors to enhance local ownership for and the effectiveness and efficiency of efforts to achieve a development goal*."[6] The *process* of capacity development thus involves various stakeholders including aid donors, recipient governments, DFIs, the private sector and affected citizens.

From the recipient's perspective, capacity development supports the right of *participation* in program-making and implementation, the right of *independence* in domestic policy-setting and implementation and the related right of *ownership* over applicable projects. Ownership calls for a greater role for recipient nations in their development, which includes taking an important agenda-setting role during the creation of development strategies, implementing the plans in concrete political programs, and coordinating donors' funds.[7] These normative principles are encapsulated in Dann's concept of the *collective autonomy* of recipients, as a guarantee of the sovereign ability of every recipient to structure its inner order and external relations without coercion.[8]

Capacity development also entails a positive role for donors and DFIs, involving transfer of technology, knowledge and experience to recipient countries. The areas in which capacities are most often sought to be developed are those in which DFIs are active, being the national and sub-national government institutions which are responsible for the formulation and im-

4 See UN ESC, Committee of Experts on Public Administration, The critical role of public administration and good governance in implementing the United Nations Millennium Declaration: institutional capacity development, UN ESCOR, 1st Sess., UN Doc. E/C.16/2002/4 (2002).

5 UNDP, Capacity Development, Technical Advisory Paper 2, Management Development and Governance Division (1997).

6 CDRF Paper, note 2, p. 3.

7 *P. Dann*, The Law of Development Cooperation: A Comparative Analysis of the World Bank, the EU and Germany, Cambridge 2013,p. 229.

8 *Id., p.* 295.

plementation of development policy.[9] Primarily, aid efforts are thus focused on extending the capabilities of *State institutions* (organizations and, more broadly, rules and other State structures or mechanisms)[10]; however, some efforts may be targeted primarily at the private sector[11] or civil society[12], or may have spillover or trickle-down effects.

This paper focuses on exogenous processes, as it assesses the role of transnational support rather than the domestic transformations required to build institutional capacity. However, the capacity development process does not simply involve transplanting 'Western' institutional models.[13] Donors increasingly understand that capacity cannot be imported as a turnkey operation; rather, it must be developed from within, with donors and their experts acting as catalysts, facilitators, and brokers of knowledge and technique.[14] Donors and DFIs therefore play a crucial complementary role to trigger and facilitate capacity development.

B. Some Theoretical Perspectives on Capacity Development

Law and development (L&D) literature provides one useful guide to capacity development in development finance. Simply stated, L&D seeks to examine the relationship between *law* and *development*[15] and is a broad field and involves various methodologies and conceptions of development in its studies. The institutional perspective is but one of these methodologies and it has gained increased importance since the 1990 s,[16] emphasizing the roles that law and legal institutions play in economic, social, and political development. From an L&D perspective, capacity building is at the very heart of economic, social and political development, as the

9 *S. Kuhl*, Capacity Development as a Model for Aid Organizations, Development and Change 40 (2009), p. 569.

10 For a further discussion of what constitutes an *institution* see *M.J. Trebilcock and M. Mota Prado*, What Makes Poor Countries Poor?, Cheltenham 2011,pp. 27-28.

11 The World Bank Group's International Finance Corporation (IFC), for example, focuses on the private sector.

12 See, for instance, the literature on the legal empowerment which entails the use of legal services and legal capacity building for the poor and other disadvantaged populations. See *S. Golub*, Legal Empowerment: Impact and Implications for the Development Community and the World Bank, The World Bank Legal Review: Law Equity and Development, Vol. 2 (2006).

13 For the view that developing countries are not always best served by adopting Western legal models, see, for example: *R. Cooter*, The Rule of State Law and the Rule of Law State: Economic Analysis of the Legal Foundations of Development, in: M. Bruno & B. Pleskovic (eds.), Annual World Bank Conference on Development Economics, Washington D. C.(1998), p. 212; *H. De Soto*, The Other Path: The Invisible Revolution in the Third World, Lima 1989; *K. Pistor*, The Standardization of Law and Its Effect on Developing Economies, American Journal of Comparative Law 50 (2002), p. 101; *D. Berkowitz, K. Pistor & J-F. Richard*, Economic Development, Legality, and the Transplant Effect, European Economic Review 47(2003), p. 165.

14 CDRF Paper, note 2, p. 1.

15 For a succint survey of the law and development field, see *M. Mota Prado*, What is Law and Development? Revista Argentina de Teoría Jurídica 11 (2010).

16 *Id.*, pp. 11-12.

effectiveness of national and sub-national institutions to manage and implement their development programs and policies is the sustainable route to development. Consequently, bilateral and transnational actors, like the World Bank, should emphasize institutional capacity building in their financing and other development support.

Similarly, the school of *New Institutional Economics* (NIE) views the design and functioning of public institutions and private actors that interact with these institutions as critical determinants of a country's economic and development prospects, through the incentives they create to engage in either socially productive or unproductive activities.[17] The basic assumption of NIE is that people are rational actors who respond to incentives and these incentives are influenced, if not determined, by institutions that induce individuals or organizations to engage in productive activities, or the converse.[18] North conceives of *institutions* as the "rules of the game of a society", or, more formally, as the "humanly devised constraints that structure human interaction."[19] North differentiates between institutions and *organizations* (such as political bodies such as political parties, legislative organs and regulatory agencies), which he describes as "the players: groups of individuals bound by a common purpose to achieve objectives."[20]

North asserts that developing countries often struggle because their institutions create incentives that are ill-suited for economic growth.[21] Trebilcock and Daniels offer three main reasons why institutional reform is difficult for many developing countries: (i) despite political will to reform, states may lack the necessary financial, technical or human resources to implement change; (ii) 'socio-cultural historical factors' may form a hostile environment for reform; and (iii) certain interests groups will resist reforms that eliminate their privileges, do not foster their interests or otherwise do not offer any gains (material or otherwise).[22]

Dam asserts that the idea that (legal) institutions are crucial to the process of economic development is now broadly accepted amongst academic circles and amongst the research departments of DFIs such as the World Bank.[23] With respect to the role of foreign assistance,

17 *D. C. North*, Institutions, Institutional Change and Economic Performance, Cambridge 1990.

18 This conception is given by *Trebilcock and Mota Prado*, note 10, p. 26, referring to *G.M. Hodgson*, The Approach of Institutional Economics, Journal of Economic Literature 36 (1998), p. 168.

19 *D.C. North*, The New Institutional Economics and Third World Development, in: J. Harriss, J. Hunter, and C. M. Lewis (eds.), The New Institutional Economics and Third World Development, pp., London 1995, p. 23.

20 *Id.*

21 *Id*.

22 *M.J. Trebilcock and R.J. Daniels*, Rule of Law Reform and Development: Charting the Fragile Path of Progress, Cheltenham 2009, pp. 39-40. For a further discussion of these 'political-economy' based impediments, see *P. Bardhan*, Law and Development, in: A.K. Dutt and J. Ros (eds.), International Handbook of Development Economics, Vol. II, Cheltenham 2008.

23 *K.W. Dam*, The Law-Growth Nexus: The Rule of Law and Economic Development, Washington D. C. 2006, p. 5.

Dam, acknowledging the increasing debate over the effectiveness of ODA,[24] suggests that institutional solutions can help to alleviate the concerns of skeptical policymakers.[25]

C. Multilateral Capacity Development Initiatives

There are numerous examples of multilateral development initiatives that seek to promote capacity building in international development. Most notably, it figures prominently in the Organisation for Economic Co-operation and Development (OECD)-sponsored 2005 *Paris Declaration on Aid Effectiveness*.[26] The Paris Declaration represents an ambitious and broad effort directed at donors to make aid more effective. The Declaration stresses that the capacity to plan, manage, implement, and account for results is critical for achieving development objectives.[27] Of its five grounding principles, two relate specifically to capacity development: *ownership* – recipient countries should exercise effective leadership over their development policies and strategies, and coordinate development actions; and *alignment* – donors should base their overall support on recipient countries' national development strategies, institutions, and procedures. The 2008 *Accra Agenda for Action* was designed to strengthen and deepen implementation of the Paris Declaration by taking stock of progress and setting the agenda for accelerated advancement towards the Paris targets.[28] The Accra Agenda also focused on *ownership* and advocated more use of country systems for aid delivery. The 2011 Fourth High Level Forum on Aid Effectiveness produced a loose agreement entitled the *Busan Partnership for Effective Development Co-operation*,[29] which reaffirms many of the capacity development principles of aid effectiveness previously outlined.

The UNDP declares that capacity development is the 'how' of development and is at the very heart of its work and its core contribution to development.[30] Building upon the Paris Declaration, the UNDP facilitated the three-year (2009-2012) Capacity Development for Development Effectiveness (CDDE) Facility which sought to translate the evidence gathered and lessons learned into practical support for capacity development actions. The UNDP also stresses that "institutions are at the heart of human development, and that when they are able to perform better, sustain that performance over time, and manage 'shocks' to the system,

24 Most famously propounded by the seminal paper: *A.C. Burnside and D. Dollar*, Aid, Policies, and Growth, World Bank Policy Research Working Paper No. 569252 (Jun. 1997).

25 *Dam*, note 23, pp. 21-22.

26 Paris Declaration on Aid Effectiveness (2005), http://www.oecd.org/dac/effectiveness/34428351.pdf (last accessed on 16 April 2014).

27 *Id.* Partnership Commitments 22-24.

28 Accra Agenda for Action (2008). The World Bank has endorsed the Paris Declaration and Accra Agenda, http://www.oecd.org/dac/effectiveness/34428351.pdf (last accessed on 16 April 2014).

29 The Busan Partnership for Effective Development Co-operation (2011), http://www.oecd.org/dac/effectiveness/49650173.pdf (last accessed on 16 April 2014).

30 UNDP, Capacity Development: Our Approach, http://www.undp.org/content/undp/en/home/ourwork/capacitybuilding/approach/ (last accessed on 16 April 2014).

they can contribute more meaningfully to the achievement of national human development goals."[31]

In 2009, the World Bank Institute (the capacity development branch of the World Bank Group) produced the *Capacity Development Results Framework* (CDRF), a comprehensive document which seeks to guide the design, implementation, monitoring, management, and evaluation of development programs.[32] The main technical feature of the CDRF is a standard set of indicators of capacity which can be utilized to design and evaluate capacity development initiatives. The CDRF indicators seek to express: (i) the conduciveness of the socio-political environment to achievement of the development goals; (ii) the efficiency of the policy instruments and other formal means by which the society guide action to achieve the goals; and (iii) the effectiveness of the organizational arrangements that stakeholders in government and outside government adopt to achieve the goals.[33] The instrument aims to instrumentalize capacity development and address the lack of clear definitions, coherent conceptual frameworks, and effective monitoring of results.[34]

In sum, there is a clear scholarly and political recognition of the necessity, or at least the desirability, of institutional capacity development in development policy. However, it is not clear that such recognition has translated into effective policies and programs on the ground. A 2011 Survey on Monitoring the Paris Declaration indicates that some progress has been made, but globally, donors and developing countries have fallen short of the goals that they set themselves for 2010.[35] With respect to capacity development specifically, the survey indicates that efforts to improve support for capacity development have been mixed. While donors met the target on coordinated technical cooperation, support for capacity development often remains *supply-driven*, rather than responding to developing countries' needs.[36] An important challenge for the development community is thus ensuring that capacity development initiatives are sufficiently tailored to the particular recipient country's context and circumstances and does simply seek to impose Western models where they may not be appropriate. Thus, capacity development must entail a dimension of *demand* from the recipient country, not only for legitimacy purposes, but also to enhance the efficacy of such efforts.

31 *Id*.

32 CDRF Paper, note 2, in Abstract.

33 *Id.*

34 *Id*.

35 OECD, Aid Effectiveness 2005-10: Progress in Implementing The Paris Declaration (2011), p. 3, https://web.archive.org/web/20131018100343/http://www.oecd.org/dac/effectiveness/48742718.pdf (last accessed on 16 April 2014).

36 *Id.*, p. 20.

III. World Bank Program-for-Results Financing

The World Bank's PforR[37] financing instrument considerably reflects this increased emphasis on capacity building in international development. In PforR, capacity development is an explicit and core goal of project implementation as opposed to a desirable tangential outcome. The World Bank introduced PforR in 2012, envisaged as an instrument for the future, to finance borrower-developed programs by linking the disbursement of funds to the achievement of specific targets. PforR is a significant reform as it is now the third instrument of lending for the Bank, in addition to investment lending and policy lending.

Both International Development Association (lowest-income, IDA) and International Bank for Reconstruction and Development (middle-income, IBRD) countries are eligible to for PforR financing. PforR is intended to be the Bank's instrument of choice when the objective is to support the performance of a government program using the government's own systems, when the results require expenditures, and when the risks to achieving the program's objectives relate to the capacity of the systems to achieve better results.[38] Despite the degree of independence given to the borrower to develop and implement the programs for which it will receive PforR conditional financing (reflecting the *ownership* principle of capacity development), the Bank still plays an important and active role at various stages of the project.

The legal framework for PforR consists primarily of (i) the internal law of the World Bank, and (ii) the applicable legal agreements between the Bank and the borrower country.[39] Internally, the Bank's *Operational Manual* contains *Operational Policies* (OPs) and *Bank Procedures* (BPs), which are legal instruments that act as binding legal norms for the Bank and spell out the procedures and documentation required to ensure Bank-wide consistency and quality.[40] OP 9.00[41] and BP 9.00[42] specifically cover PforR. These documents indicate that capacity

37 For a more comprehensive description of PforR, see The World Bank, A New Instrument to Advance Development Effectiveness: Program-for-Results Financing (Revised Concept Note) (Dec. 2011) (hereinafter, PforR Concept Note), p. 10, http://documents.worldbank.org/curated/en/2011/12/15590386/new-instrument-advance-development-effectiveness-program-for-results-financing (last accessed on 16 April 2014) and *Dann*, supra note 7, at 424-438.

38 PforR Concept Note, *id.*, p. 9.

39 Other general sources of World Bank 'law' which apply to PforR include the respective Articles of Agreement of the IDA and IBRD and the Guidelines on Preventing and Combating Fraud and Corruption in Program-for-Results Financing. See *Dann*, note 7, p. 361.

40 *Dann*, note 7, p. 176.

41 World Bank OP 9.00 – Program-for-Results Financing (dated Feb. 2012 and last revised Apr. 2013), http://web.worldbank.org/WBSITE/EXTERNAL/PROJECTS/EXTPOLICIES/EXTOPMANUAL/0,,contentMDK:23101116~pagePK:64141683~piPK:64141620~theSitePK:502184,00.html (last accessed on 16 April 2014).

42 World Bank BP 9.00 – Program-for-Results Financing (dated Feb. 2012 and last revised Apr. 2013), http://web.worldbank.org/WBSITE/EXTERNAL/PROJECTS/EXTPOLICIES/EXTOPMANUAL/0,,contentMDK:23105603~menuPK:4564187~pagePK:64709096~piPK:64709108~theSitePK:502184,00.html (last accessed on 16 April 2014).

considerations arise at primarily two stages of a typical PforR project: (i) initial assessments (pre-implementation) and (ii) (post-approval) implementation support.

Pre-implementation, the borrower will propose a specific development program (reflecting a *demand-driven* approach) and the Bank will assess the borrower's "program systems"[43] in the fiduciary,[44] environmental, social and governance[45] areas to ensure that these institutions are "broadly adequate" to make the program eligible for PforR.[46] It is not entirely clear what the "broadly adequate" threshold entails, suggesting that considerable discretion will be given to Bank staff to determine on a case-by-case basis whether the applicable institutions and safeguards are adequate. Fiduciary systems, for example, must provide "reasonable assurance" that the program expenditures will be used appropriately to achieve their intended purposes.[47] These assessments also determine the proposed institution-strengthening activities to be undertaken before, if deemed appropriate, and during program implementation.[48] If adequate arrangements are not yet in place or institutional capacity is weak, the Bank discusses with the government what measures could be taken prior to and/or as part of implementation to address such weaknesses and enhance capacity. If it is not possible to reach an understanding or the risks of implementation remain too high, the Bank will likely decide that the program is not ready for PforR.[49]

Post-approval, the borrower's institutions are responsible for implementing the program, monitoring its progress, evaluating results upon completion and meeting the relevant contractual obligations.[50] These responsibilities include the requirement to maintain agreed pro-

43 According to OP 9.00, footnote 2: "the term "systems" or "program systems" refers to the systems of the institutions responsible for Program implementation, including the relevant rules, procedures, controls, risk identification and mitigation arrangements, and, when applicable, past implementation experience and record."

44 In the fiduciary context, see the World Bank Guidelines on Preventing and Combating Fraud and Corruption in PforR Financing (Feb. 2012), http://siteresources.worldbank.org/EXTRESLENDING/Resources/PforR_ACS_Feb_1.pdf (last accessed on 16 April 2014). For a summary, see The World Bank, Addressing Fraud and Corruption in the proposed Program-for-Results Instrument (Nov. 2011), http://siteresources.worldbank.org/EXTRESLENDING/Resources/7514725-1316733277569/OnepagerfraudandcorruptionOct24.pdf (last accessed on 16 April 2014).

45 According to OP 9.00, footnote 3: references to the Program governance arrangements and risks refer to: (a) good governance principles (transparency, integrity, accountability and effectiveness); (b) handling the risks of fraud, corruption, coercion, collusion, and similar activities, and how such risks are managed and/or mitigated; and (c) compliance with the requirements set out in the Guidelines on Preventing and Combating Fraud and Corruption in Program-for-Results Financing *id*. See also World Bank Program for Results – Legal Aspects Related to Anticorruption, http://web.worldbank.org/WBSITE/EXTERNAL/TOPICS/EXTLAWJUSTICE/0,,contentMDK:23330481~menuPK:9203924~pagePK:148956~piPK:216618~theSitePK:445634,00.html (last accessed on 16 April 2014).

46 BP 9.00, para. 4(e).

47 OP 9.00, para. 3.

48 *Id.*, para. 5.

49 PforR Concept Note, note 37, p. 54.

50 BP 9.00, para. 37.

gram systems, as were determined at the assessment stage. The Bank maintains a role during program implementation in monitoring and verifying the program's progress and the borrower's compliance with its contractual undertakings.[51] One dimension that appears to be conspicuously absent from the PforR framework is reference to the Bank's Capacity Development Results Framework. These indicators could potentially provide additional guidance to Bank staff at both the assessment and implementation stage as to the appropriate capacity development actions to be undertaken and the manner in which to undertake them.

The *disbursement-linked indicators* (DLIs) are the key operative mechanism of any PforR project, as Bank disbursements are linked directly to their achievement. While in principle DLIs are either outputs or outcomes, they can also be indicators deemed critical for strengthening and enhancing institutional performance.[52] DLIs can include a range of results ranging from process to intermediate outcomes, such as the institutional strengthening of program management, financial management, procurement processes, environmental and social aspects, oversight and controls and monitoring and evaluation.[53] DLIs play a central role in verifying the achievement of results and form the basis of disbursements and thus need to be "specific, measurable, and verifiable."[54] The DLIs are developed by the borrower and are assessed by the Bank in its approval process.[55] For each indicator defined for a program, the Bank requires a credible indicator verification protocol, establishing how the indicator will be measured and who is responsible for verifying its achievement.[56] In the implementation phase, both the borrower and the Bank are responsible for verifying the achievement of the DLIs and the Bank retains the final decision on whether or not the DLI targets have been achieved.

BP 9.00 and OP 9.00 thus indicate that capacity development in PforR involves a significant amount of *ex ante* characterization of the country's applicable fiduciary, environmental, social and governance institutions. This includes an assessment of how the proposed DLIs are linked to continued progress toward the project's development objectives. The PforR process also clearly reflects the Paris Declaration's statement that capacity development is primarily the responsibility of recipient countries with donors playing a support role.[57]

51 OP 9.00, para. 13.

52 PforR Concept Note, *supra* note 37 at 38.

53 *Id.*

54 OP 9.00, para. 11. See also, Dann, *supra* note 17 at 429.

55 BP 9.00, para. 22, in connection with paras. 9 and 10.

56 Depending on the nature of the specific DLIs and the country and program context, the verification of DLIs can be carried out in various forms and by various parties, which may include government agencies, semi-autonomous entities, statistical or audit entities and third-party entities such as non-governmental organizations and representatives of civil society. See BP 9.00, para. 12(e) and footnote 9.

57 See Paris Declaration, note 26, Principle 22.

IV. The Nepal Bridges Program

As noted in BP 9.00, the specific and tailored capacity building and other legal obligations related to a particular PforR project will be set out in the legal agreements between the Bank and the borrower country.[58] As a case study, I will examine the IDA credit to Nepal of approximately US$60 million, authorized in June 2012, for the *Bridges Improvement and Maintenance Program*. The Program is intended to help Nepal maintain and construct bridges on its *Strategic Roads Network*, with the *Department of Roads* (DOR) being the primary government institution involved. The Bank is a supplementary financier, providing approximately 40% of the project's financing, with the Government of Nepal providing the remaining 60%.[59] The Program will maintain 89 bridges, many over 35 years old, complete major and minor maintenance on over 300 bridges and construct 121 new bridges.[60] The World Bank has noted that the entire South Asia region suffers from huge infrastructure gaps, including a lack of sound roads and transportation networks, which impede development progress, particularly for the region's large numbers of impoverished people.[61] Nepal, in particular, is a land-locked, mountainous country for which a safe and functioning road and bridge network is vital for transport and shipping purposes.

A. Program Assessments

The Nepal Bridges program is particularly interesting because it involves a transitional,[62] fragile State which might not initially be expected to have the necessary institutions and safe-

58 The actual agreements between the Bank and Nepal are confidential and the following description is based solely on publicly disclosed materials, and is accordingly qualified.

59 World Bank Press Release No: 2012/538/SAR, "World Bank Links Financing to Results under a new Bridges Maintenance and Improvement Program" (June, 28, 2012), http://web.worldbank.org/WBSITE/EXTERNAL/NEWS/0,,contentMDK:23231312~pagePK:34370~piPK:34424~theSitePK:4607,00.html (last accessed on 16 April 2014).

60 According to the Bank, poor physical connectivity has been a major challenge to Nepal's development efforts. Its road density is one of the lowest in South Asia and over one-third of the people in the hills are more than four hours away from an all-weather road. See the World Bank's Nepal country overview, http://www.worldbank.org/en/country/nepal/overview (last accessed on 16 April 2014).

61 See World Bank, Reducing poverty by closing South Asia's infrastructure gap (Apr. 2014), http://documents.worldbank.org/curated/en/2013/12/19330904/reducing-poverty-closing-south-asias-infrastructure-gap (last accessed on 16 April 2014).

62 This transition entails two interrelated processes: promulgation of a new Constitution and the completion of the ongoing peace process. The Constitution is expected to lead to a major restructuring of Nepal into a federal State while the completion of the peace process is expected to resolve the integration/rehabilitation of former Maoist combatants. See the Program Appraisal Document on a Proposed Credit in the Amount – SDR38.7 Million (US$60.0 Million) to Nepal for a Bridges Improvement and Maintenance Program, World Bank Report No. 67866-NP (June 1, 2012) (hereinafter, Project Appraisal Document), p. 1, http://documents.worldbank.org/curated/en/2012/06/16347401/nepal-bridges-improvement-maintenance-program-project (last accessed on 16 April 2014).

guards to be eligible for PforR.[63] Nepal is an extremely poor country[64] that is still emerging from a ten-year armed conflict that ended in 2006 and is currently passing through a prolonged political transition to peace and stability. This has contributed to a progressive erosion of the effectiveness of many state institutions. The historical context thus suggests that Nepal is a country which is in dire need of capacity development support from its development partners. On the World Bank's *Country Policy and Institutional Assessment* (CPIA) 'public sector management and institutions cluster average'[65] indicator, Nepal, in 2012, scored 3.0 on a scale of 1 (low) to 6 (high),[66] among the lowest scores for the ten countries which have currently-approved PforR projects.[67] The CPIA is a diagnostic tool that is intended to the measure the extent to which a country's policy and institutional framework supports sustainable growth and poverty reduction, and consequently the effective use of development assistance.[68] In

63 The Bank has noted that, overall, the uncertainties of the transition, combined with generally low institutional capacity, weak systems of governance and accountability, rugged topography, and a diverse socio-cultural mosaic, all make project implementation challenging. See International Development Association and International Finance Corporation Interim Strategy Note (FY12-FY13) For Nepal, World Bank Report No. 63381-NP (Aug. 4, 2011) (hereinafter, Interim Strategy Note), p. 11, http://documents.worldbank.org/curated/en/2011/08/14842645/nepal-interim-strategy-note-period-fy2012-2013 (last accessed on 16 April 2014).

64 Nepal is among the poorest countries in the world and currently ranks 157th out of 187 countries on the UNDP Human Development Index, http://documents.worldbank.org/curated/en/2011/08/14842645/nepal-interim-strategy-note-period-fy2012-2013 (last accessed on 16 April 2014).

65 The public sector management and institutions cluster includes property rights and rule-based governance, quality of budgetary and financial management, efficiency of revenue mobilization, quality of public administration, and transparency, accountability, and corruption in the public sector.

66 Obtained from the World Bank's online databank, http://data.worldbank.org/indicator/IQ.CPA.PUBS.XQ/countries?display=graph (last accessed on 16 April 2014).

67 Other approved projects' (as indicated as of Apr. 10, 2014), 2012 CPIA public sector management and institutions cluster average: Brazil (N/A), Ethiopia (3.4), Kenya (3.4), Morocco (N/A), Pakistan (3.0), Tanzania (3.3), Uganda (3.0), Uruguay (N/A), Vietnam (3.5). See the World Bank, Program for Results: Operations, http://web.worldbank.org/WBSITE/EXTERNAL/PROJECTS/0,,contentMDK:23223752~menuPK:268725~pagePK:41367~piPK:51533~theSitePK:40941,00.html (last accessed on 16 April 2014). Results obtained from the World Bank's databank, *id.*

68 The CPIA consists of 16 criteria grouped in four equally weighted clusters: Economic Management, Structural Policies, Policies for Social Inclusion and Equity, and Public Sector Management and Institutions. CPIA scores are used for the IDA's performance-based allocations and also inform, inter alia, the Bank's Country Assistance Strategy program and country policy dialogue; to assist in the assessment by the Bank's staff of the degree of portfolio risk; and to help identify countries for extra attention on fiduciary standards and governance. See the World Bank, Country Policy and Institutional Assessment FAQs, http://web.worldbank.org/WBSITE/EXTERNAL/EXTABOUTUS/IDA/0,,contentMDK:21378540~menuPK:2626968~pagePK:51236175~piPK:437394~theSitePK:73154,00.html (last accessed on 16 April 2014); *T. Moss*, "CPIA Revealed: World Bank sheds more light on its country ratings", Center For Global Development, (June 27, 2006), http://www.cgdev.org/blog/cpia-revealed-world-bank-sheds-more-light-its-country-ratings (last accessed on 16 April 2014); and *M. Riegner*, Measuring the Good Governance State: A Legal Reconstruction of the World Bank's "Country Policy and Institutional Assessment" IRPA Working Papers (2012), http://www.irpa.eu/

addition, Nepal's 2012 percentile rank (out of 100) in two of the World Banks's six *Worldwide Governance Indicators* (WGI) was: 16.7-Government Effectiveness[69]; and 23.0-Regulatory Quality[70] – in comparison to the other approved PforR projects, these figures also indicate that Nepal currently has relatively weak institutional capacity.[71] The WGI are cross-country indicators of governance which are intended to capture governance perceptions as reported by survey respondents, non-governmental organizations, commercial business information providers and public sector organizations worldwide.[72]

The Nepal Bridges Program, as with any PforR project, is based in large part on the Bank's broader Nepal Country Assistance Strategy (CAS).[73] With respect to capacity development and PforR, the CAS will inform the initial assessment of whether the existing institutional systems are broadly adequate for the proposed program. Given's Nepal's current democratic and constitutional transition, the Bank has an interim strategy for 2012-2013 (and it appears that a new four-year CAS will be launched in July 2014[74]). The 2012-2013 Interim Strategy

pubblicazioni-irpa/irpa-working-papers/irpa-working-paper-no-20126-michael-riegner/ (last accessed on 16 April 2014).

69 Captures perceptions of the quality of public services, the quality of the civil service and the degree of its independence from political pressures, the quality of policy formulation and implementation, and the credibility of the government's commitment to such policies.

70 Captures perceptions of the ability of the government to formulate and implement sound policies and regulations that permit and promote private sector development.

71 On Government Effectiveness and Regulatory Quality, https://web.archive.org/web/20130916060519/http://info.worldbank.org/governance/wgi/sc_country.asp and http://info.worldbank.org/governance/wgi/pdf/wgidataset.xlsx (last accessed on 16 April 2014), respectively: Brazil (50.2; 54.5), Ethiopia (40.2; 14.4), Kenya (35.4; 41.6), Morocco (53.1; 50.2), Pakistan (23.4; 24.9), Tanzania (28.2; 36.8), Uganda (32.5; 44.0), Uruguay (67.0; 65.1), Vietnam (44.5; 27.3).

72 The WGI capture six important dimensions of governance: Voice & Accountability, Political Stability and Lack of Violence, Government Effectiveness, Regulatory Quality, Rule of Law and Control of Corruption. The WGI contribute to the growing empirical research of governance which has provided activists and reformers worldwide with advocacy tools for policy reform and monitoring." "The indicators are a compilation of the perceptions of a very diverse group of respondents, collected in large number of surveys and other cross-country assessments of governance. See *D. Kaufmann, A. Kraay an M. Mastruzzi*, The Worldwide Governance Indicators:

Methodology and Analytical Issues, Global Economy and Development, Brookings Institution (Sept. 2010), http://www.brookings.edu/~/media/research/files/reports/2010/9/wgi%20kaufmann/09_wgi_kaufmann.pdf (last accessed on 16 April 2014).

73 The CAS identifies the key areas in which Bank support can best assist a country in achieving sustainable development and poverty reduction and is the central tool with which Bank management review and guide the Bank's support for the country's development programs. For more information, see World Bank BP 2.11 – Country Assistance Strategies, http://web.worldbank.org/WBSITE/EXTERNAL/PROJECTS/EXTPOLICIES/EXTOPMANUAL/0,,contentMDK:20064541~menuPK:64701637~pagePK:64709096~piPK:64709108~theSitePK:502184,00.html (last accessed on 16 April 2014).

74 Ekantipur.com, World Bank plans 4-year assistance strategy (Mar. 28, 2014), http://www.ekantipur.com/2014/03/28/headlines/World-Bank-plans-4-year--assistance-strategy/387394/ (last accessed on 16 April 2014).

Note (ISN) discloses a significant element of capacity development support to ministries and sectors to enable them to plan and manage this institutional transition.[75] The first pillar of the ISN relates to enhancing connectivity and productivity for growth.

The ISN explicitly mentions supporting bridge-related interventions in Nepal to extend year-round accessibility and improve the quality of existing bridges. Thus, the Program fits directly into the proposed capacity development goals set out in the ISN. The most critical institutional actions are related to a functioning Bridge Management System and its use for the planning, budgeting and prioritization of bridge works. This is seen as critical for the effective management of all other aspects of the Program. The Bridge Management System will provide the basis for planning and monitoring and evaluation in the sector.[76] The development of an effective grievance redress mechanism is also seen as critical to the overall governance of the Program.[77]

Prior to implementation, the Bank undertook a number of assessments (technical, fiduciary, environmental and social) to assess the capacity of the Program's implementation agencies and to identify any gaps that may require action.[78] The assessment review indicated that the current Nepalese institutional management of environmental and social impacts for the transport sector, and bridges specifically, is quite unbalanced in its implementation. This lack of balance is reflected in (i) a relatively advanced policy framework and a weak capacity to implement, and (ii) varying performance standards between domestically and internationally financed operations (i.e., the Environmental and Social Management Framework only appears to be enforced in operations that involve international financing and are subject to supervision by international financiers).[79] These features have led to generally poor performance in the implementation of applicable environmental and social policies. Specific areas noted as needing improvement include: (i) planning and budgeting; (ii) quality management; (iii) procurement and contract management; and (iv) monitoring and evaluation.[80]

B. *The Program's DLIs*

The Nepal Bridges Program's DLIs reveal a significant role for capacity development. The DOR identified the development objective for this operation, which the Bank adopted as the

75 See Interim Strategy Note, note 63.

76 *Id.*

77 Other actions seen as critical to the functioning and definition of the Program include the creation of relevant budget heads for the Program, provision of sufficient budget for design and supervision activities, a review and the revision of the environmental and social management rules and procedures to incorporate bridge specific mitigation measures, and formalization of the Department of Road's Geo-Environment and Social Unit's roles to strengthen environmental and social management. See Project Appraisal Document, note 62, p. 19.

78 *Id.*

79 *Id., p.* 39.

80 *Id., p.* 45.

Program Development Objective (PDO): *to provide safe, reliable and cost effective bridges on Nepal's Strategic Roads Network*.[81] Achievement of the objective is measured through three PDO indicators, one of which is: *strengthened performance of management in the bridge sector*.[82]

The program has six DLIs, three of which are related specifically to the 'strengthened management' PDO indicator: *DLI-4: strengthened performance management in the bridge sector*; *DLI-5: improved bridge asset management*; and *DLI-6: increased effectiveness of the institutions responsible for bridge sector management.*[83] Each of the DLIs has specific targets that must be met at the five stages of the project. DLI-4 achievement is measured by the percent of works completed on schedule. DLI-5 is achieved in period 1 and 2 by the Bridge Management System becoming fully operational in divisional/regional offices and in periods 3-5 by condition surveys having been undertaken on the Strategic Roads Network. DLI-6 is achieved in period 1 by the implementation of a grievance redressal mechanism and delivery of a report disclosing status of complaints and actions on fraud and corruption and social and environmental issues, and for periods 2-5 by delivery of equivalent reports.[84]

It should be noted, however, that the three capacity-related DLIs each only account for 5% (15% aggregate) of the total Bank loan. 85% of the loan proceeds are tied to the three other DLIs which relate to actual bridge building and maintenance. Capacity development thus only *explicitly* accounts for a minor percentage of the loan amount. However, there are certainly also indirect capacity development benefits that will be achieved from the physical bridge building and maintenance.

Given that the DLIs are largely developed by the borrower, this reflects the *ownership, participation* and *independence* dimensions of capacity development. The DOR planned and will implement and monitor the project and will thus 'learn by doing.' However, the Bank also plays an important support role throughout the program process. This support strategy can be seen as consisting of two main elements. First, there is capacity support to the DOR from Bank staff. Apart from routine supervision and monitoring, the Bank is to provide advisory support to the Program and will also provide further demand-driven technical backstopping support during implementation.[85] Second, there will be continuous monitoring and implementation support from the Bank staff on the ground. The implementation support will focus on, *inter alia*, implementation progress review, achievement of program results and DLIs, the identification and resolution of emerging issues, and the monitoring of performance of different systems (financial management, procurement, governance and social and envi-

81 *Id., p.* 7.

82 *Id., p.* 8.

83 *Id*.

84 *Id.*

85 For example, in the areas of bridge design, bridge technology, bridge asset management, supervision, monitoring and evaluation, social and environment, procurement, etc. *id.*, p. 71.

ronment).[86] These positive roles of the Bank help to alleviate the concern that the Nepalese institutions may face *obligation overload*.[87] Further, the specifically tailored DLIs and ongoing monitoring and verification role of the Bank also help to lessen the concern that by empowering existing State institutions, it could entrench existing bad behavior.

The Bank's support role will be supplemented by the hiring (by the borrower) of external consultants, with an emphasis on long term capacity building for the bridge projects, regional directorates and divisional offices, and the various institutions responsible for audits and oversight of the Program (including fiduciary, social and environment, planning, implementation, monitoring and managing maintenance/new construction activities. These consultancy services are intended to be structured to give particular weight to activities that support in meeting the DLIs and the various elements of the Program's Action Plan.[88]

The Program's latest Interim Status Report (ISR), from November 2013,[89] regrettably indicates that the Program has made very little progress and only few achievements, has fallen considerably behind in almost all key areas and is on a "downward trajectory."[90] While the Program appears to be on track to hit first year DLI targets (fiscal 2012), the Nepalese Ministry of Physical Infrastructure and Transport (MoPIT) still has not finalized dossiers for bridges that will go for DLI verification in the second year (fiscal 2013). Some progress has been ascribed to DLI-5 and DLI-6; however, there has been no progress in DLI-4.[91] Further, the Program has not made any significant progress with regard to environmental, social and fiduciary systems. The MoPIT has agreed with the Bank to improve the Program performance before the next implementation review (January 2014) in specific areas, including delivery of overdue reports and improved coordination with the DOR unit that is responsible for social and environmental issues. The DOR was also yet to have engaged program support consultants and capacity building consultants. Clearly the Program is a work-in-progress, but the emphasis on capacity building is clear. What the ISR does not indicate, however, is how the Bank is supporting the Nepalese officials to meet the DLIs and otherwise advance the project. The January 2014 review by the Bank task team was to also involve a decision on whether restructuring of the current operation might be beneficial to achieving the PDO.[92]

86 *Id.*

87 See *K. Davis and B. Kingsbury*, Obligation Overload: Adjusting the Obligations of Fragile or Failed States, NYU Law Hauser Colloquium (Fall 2010), http://www.iilj.org/courses/documents/HC2010Dec01.DavisKingsbury.pdf (last accessed on 16 April 2014).

88 Project Appraisal Document,note 62, p. 69.

89 The next implementation review was to be conducted in January 2014, but no new ISR has been released, to date.

90 See, the World Bank, Nepal – Bridges Improvement and Maintenance Program Project: Implementation Status Results Report: Sequence 02 (Nov. 25, 2013), http://documents.worldbank.org/curated/en/2013/11/18555178/nepal-bridges-improvement-maintenance-program-p125495-implementation-status-results-report-sequence-02 (last accessed on 16 April 2014).

91 *Id.*

92 *Id.*

V. Balancing Safeguards

A striking feature of capacity development in PforR is the tension that exists between (i) ensuring adequate baseline institutional standards for program eligibility and implementation from the Bank's risk allocation perspective, and (ii) achieving capacity development through greater reliance on country systems and program implementation support. PforR has brought about a radical change in the applications of environmental and social safeguards, changing the prescriptive safeguard requirements of investment lending to one of acceptability of the environmental and social safeguard systems of the borrower.[93]

This tension also can be seen as relating to short term versus long term goals. In the short term, Nepalis needs bridges and other basic infrastructure toward national and economic recovery. In this light, the Bank might be more effective using its own expertise and personnel/contractors to construct and maintain bridges as quickly and efficiently as possible. On the other hand, Nepal's recovery will be better sustained if its government enhances its capacity to develop, implement and monitor responsible infrastructure and other development projects.

If the Bank were to only select PforR projects that feature relatively strong underlying institutional capacity, the countries that most need capacity development support might be ineligible. Conversely, approving and continuing projects with highly inadequate safeguards would be extremely risky for the Bank and the borrower and its citizens, and could undermine the Bank's fiduciary, environmental and social safeguards work. Thus, while PforR has the potential to achieve even greater development impact than the traditional transactions-based approach, it also runs the risk of being perceived as lowering the Bank's safeguard standards. To address this risk, the Bank has loosely indicated that the assessments will be carried out rigorously, consistently and transparently, the measures to improve existing systems will be meaningful and realistic and the agreed risk mitigation measures will be appropriate to the circumstances.[94]

It is apparent that the Bank does not expect PforR country systems to achieve procedural equivalency to the Bank's policies and procedures for investment lending operations.[95] The Bank must therefore undertake a balancing exercise in the selection and approval processes for PforR projects between the need for capacity development and risk allocation. Moreover, this balancing exercise is certainly highly subjective, depending on the specific circumstances of the particular case. In the Nepal project, the ISN indicates that the Department of Roads is becoming one of Nepal's institutional success stories. The ISN indicates that the Department of Roads has demonstrated efficient procurement management and has been a pioneer in the introduction of procurement *e-bidding*, with the consequence that competition for contracts

93 *M. Molares de Halberg*, Results-Based Lending and Tthe Evolving Fiduciary and Safeguard Policy Requirements of the World Bank's Lending Operations, 36 Suffolk Transnational Law Review(2013), p. 289.

94 PforR Concept Note, note 37, p. 25.

95 *Id.*, p. 11.

has significantly improved.[96] Nevertheless, safeguard assessments may leave difficult cases subject to the judgment of Bank management, operation by operation, with some jurisdictional internal disagreements as to where the bar should be set as to the acceptability of borrowers' systems or how high the risks taken.[97]

Dann argues that the capacity element of PforR is based on the idea that the Bank should focus on offering its assistance in achieving certain standards rather than making them primarily an *ex ante* assessment.[98] Dann's concern, however, is that this could blur the line between what are the appropriate institutional standards that must be met to be eligible and what standards can be achieved through the program.[99] I am less concerned by this blurring – by developing a clear picture of existing institutional strengths and weaknesses at the assessment stage, the Bank, borrower and other relevant actors are better able to establish a tailored blueprint for capacity development that requires cooperation and coordination to achieve the desired results. The ability to require pre-implementation capacity strengthening also blurs this line, but the practical benefits might outweigh the perceived lack of clarity. Moreover, the regular assessment process of each program allows the Bank to work with the borrower to restructure the program if it would be beneficial to achieving the development objectives. What need to be clearly identified, however, are the respective obligations of the various actors in this regard. PforR and the DLI mechanism put the onus primarily on the borrower with a supplementary role for the Bank. The DLI mechanism obligates the Bank to continuously monitor and assess capacity development, also avoiding the temptation to *front-load* capacity assessments.

What is not clear, however, is how well this will play out in practice. The Nepal Program's discouraging progress to date, particularly with regards to fiduciary, social and environmental safeguards, exemplifies how, in the short term, putting greater responsibility on national institutions for project implementation might delay achievement of the specific development objectives (i.e., bridge-building). Thus, PforR is likely not the appropriate instrument where the specific development need is more sensitive and/or urgent and the Bank's resources are better used in direct application. This appears to be acknowledged as PforR policy excludes financing for activities "likely to have significant adverse impacts that are sensitive, diverse, or unprecedented on the environment and /or affected people," and activities which involve "high value contracts," defined as those that require prior review at higher levels of Bank management."[100]

96 Interim Strategy Note, note 63, p. 7.

97 *Molares de Halberg*, note 93, pp. 330-331.

98 *Dann*, note 7, p. 438.

99 *Id.*

100 BP 9.00, note 55, referring to review of Procurement Review committee according to thresholds that apply.

VI. Conclusion

Capacity development is clearly an important element of PforR financing and manifests itself most explicitly in the design and verification of the particular project's DLIs. Justifiably, the applicable internal law of the Bank does not provide overly-rigid specificity on the capacity assessments to be undertaken by the Bank, as each project will necessarily require some discretion for Bank staff to tailor appropriate capacity targets based on the particular circumstances of the country and project at hand. The Nepal Bridges program evidences how borrower-developed DLIs and initial assessments of institutional capacity are transformed into specific capacity targets.

Two years into its operation, the Bank has commenced a review of PforR, the results of which will be discussed with the Bank's board of directors in July 2014.[101] A concept note released in November 2013 discloses some initial findings, including that borrowers and Bank task teams are still figuring out how to use the PforR instrument appropriately to support institution building, using a combination of Bank implementation support, DLIs, actions under the Program's Action Plan, and, as necessary, legal covenants.[102] In particular, the broad scope for Bank involvement in investigations of fraud and corruption allegations (as outlined in the PforR Anticorruption Guidelines[103]) has proved to be a contentious point for borrowers in the preparation of PforR operations, even deterring clients from using the PforR or pushing them to ring-fence the Bank's contribution to their programs.[104]

It is important to keep in mind, however, that PforR only represents a very small fraction of the Bank's budget and operations (PforR is capped at 5% of the Bank's financing for the first two years[105]) and thus, at least at this stage, expectations for its practical and normative impact should be tempered. Nevertheless, this model of results-focused investment lending

101 The review aims to (i) assess the early experience with the design and implementation of PforR operations and the challenges faced by borrowers, development partners, and Bank staff, and (ii) identify emerging early lessons and recommend any proposed changes to the PforR framework that would strengthen the instrument. See PforR Concept Note 37.

102 World Bank, Program for results two year review: concept note (Nov. 2013) (hereinafter Review Concept Note), http://documents.worldbank.org/curated/en/2013/11/18662374/program-results-two-year-review-concept-note (last accessed on 16 April 2014). Bank staff have expressed a concern that achievement of the PforR's capacity-building and institution-strengthening objective may be constrained by lack of access to traditional Bank financing for technical assistance and insufficient Bank resources. The Review Concept Note (*id.*) also indicates that the review will also examine the different models for providing and financing capacity building support as part of a PforR operation or through a separate technical assistance operation and the level and nature of implementation support required from the Bank itself.

103 *Id.*

104 *Id.*

105 The Bank proposes to roll-out the PforR instrument cautiously in the early years, including a limit on overall lending during that period. Bank management may propose to the Bank's Board to lift the lending limit following an initial review expected after approximately after two years of implementation (i.e., 2014). See PforR Concept Note, note 37, p. 102.

is likely to be followed by other DFIs and could also lead to other practical applications of capacity strengthening in development finance.[106]

Capacity development certainly will not address all issues of aid effectiveness and it should only be a component of comprehensive development strategies of both donors and recipients which incorporate relevant legal, economic, social, environmental, cultural and other considerations. As the World Bank develops its experience with the PforR instrument, this results-based method of development financing certainly has the potential to contribute to improved capacity and governance in program countries.

106 The Bank notes that the Asian Development Bank has recently approved an instrument that is very similar to PforR; the African Development Bank has expressed interest in learning about the instrument; the Inter-American Development Bank is conducting a review of experience with its Performance Driven Loans, a results-focused type of investment loan. The Bank also notes that feedback from member countries, for example, Germany and the United Kingdom, has also been supportive, and the European Community has expressed interest in co-financing a number of PforR operations. See Review Concept Note, note 102.