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Thirty Years of Community-Centered Accountability in International Development Key Developments at the World Bank Inspection Panel

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Perspectives: Thirty Years of Community-Centered Accountability in International Development

Key Developments at the World Bank Inspection Panel

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Established 30 years ago, the World Bank Inspection Panel (WBIP) was the first independent complaints mechanism for environmental and social accountability in international development. The Inspection Panel aims to promote accountability at the International Bank for Reconstruction and Development and the International Development Association (Collectively known as "the World Bank" or "the Bank"), to give affected people a greater voice in activities supported by the Bank that affect their rights and interests, and to foster remedy when warranted. The Panel is widely viewed as the leading accountability mechanism for investigating the compliance of Bank management with the institution's policies and procedures, and harm related to these.

Through the lens of important cases, this essay reflects on major developments that occurred at the Panel during my tenure and shows how the Panel has evolved to improve accessibility, has influenced overall development policies, and has become a catalyst for institutional change. The Panel's success has largely been due to its structural and operational independence, reporting as it does directly to the Bank's Board of Executive Directors. The essay also includes challenges facing the Panel on some of these issues, including most importantly its independence, as a result of the 2020 review. Any future changes to the Panel's structure must consider and support the factors that ensured its past success.

Ensuring Safe and Secure Access to the Panel

Accessibility has been one of the core principles and strengths of the Panel since its creation. The Panel has recognized that it cannot be effective as a complaint mechanism if affected people either do not know about its existence or are unable or unwilling to access it.

Enlisting Bank management to help inform project-affected people of the Panel's existence has been a constant challenge, although some progress has been made. Working with Bank management, the Panel has introduced measures to make its existence better known to project-affected people. The Panel was included on the World Bank website, in project appraisal documents, and in the Environmental and Social Framework ("ESF"). Outreach activities, either online or face to face, are an integral part of the Panel's work program. However, the main project safeguard documents disclosed to the affected people[1] still lack information regarding the availability of the Panel.

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[1] Examples of main documents include environmental and social assessment reports, resettlement action plans and indigenous peoples' plans.

The lack of knowledge about the Panel is particularly acute in the case of the Bank's policy lending supported through development policy financing or program-for-results. Policy lending is usually not visible to project affected people and understanding the link between actual or potential harm and the policies and activities supported by these operations is often less clear. The growing use of financial intermediaries in investment project financing creates similar challenges for project-affected people due to the difficulty of understanding the ultimate source of financing for these operations.

The Panel has taken considerable steps to provide easy access to affected people. The process for lodging a complaint with the Panel is simple and user-friendly: a minimum of two individuals or their representative can file complaints by simply sending a letter to the Panel in any language, as long as it contains their name, a description of the harm or potential harm and a description of attempts to resolve the issue with Bank management. The complaint does not have to reference specific Bank policies in describing the complaint. The Panel secretariat staff works with the complainants to clarify any issues and assist them, if needed, to meet these simple requirements. The Panel independently updated its operating procedures to clarify these measures to provide easy access to affected people.

When requested, the identities of the complainants are kept confidential and not shared outside of the Panel, but the Panel recognizes that confidentiality alone has not been enough in some environments to protect the complainants and the people helping them. Early on in its operation, the Panel learned about intimidation and retaliation of complainants in some of its cases. The Panel has put in place measures to ensure the protection of its internal and external communications and visits to project areas are independently and carefully planned so as not to compromise the identity of the complainants.

An example of the dangers was the imprisonment of a facilitator hired by the Panel after its investigation in the 2012 Ethiopia Promoting Basic Services case, in which the Anuak indigenous peoples from the Gambella region submitted a complaint alleging serious human rights violations arising from block grants financed by the Bank to improve basic services in the region. The complaint claimed that thegrants were contributing directly to the government's villagization program under which the Anuak indigenous people were being forced to leave their ancestral land to relocation sites where their livelihoods deteriorated due to less fertile land, lack of other income-generating opportunities, and lack of public services. After the Panel investigation, the facilitator was first detained without charges for six months, and then charged with terrorism.

Once the Panel learned of the arrest, it immediately informed Bank management, although the Panel no longer employed the facilitator. The regional team, the Bank President, and relevant Executive Directors then reached out to government authorities, and the Panel issued two press releases expressing its concern. It was almost three years after the arrest before all charges were dropped, and the facilitator was released. As a result of this case, the Panel became the first international accountability mechanism to adopt anti-retaliation guidelines.

Bank management maintains a strong commitment against reprisals. Although Bank management and other financial organizations' decisive actions influence the situation, once reprisal occurs the relevant government authorities ultimately decide how to address the issue. While the Panel guidelines introduced measures to identify and prevent the risk of intimidation, reprisal, and retaliation in its cases, bringing a complaint to an international forum like the Panel requires courage by the project affected people despite the protections offered.. The risk of intimidation, reprisal and retaliation remains a significant deterring factor for project-affected people in accessing the Panel, and requires the continued attention of the Panel, Bank management, civil society organizations, and the development community at large.

Influencing International Development and Policies

Compliance investigations are the core activities of the Panel. The Panel consists of three members of different nationalities and backgrounds and a permanent professional secretariat staff that assists and advises the Panel. The Panel independently hires expert consultants who provide technical expertise for its cases. Panel investigations have led to strong institutional accountability, and significantly improved the compliance of the Bank with its own environmental and social safeguards policies; although all operational policies and procedures are under its purview, environmental and social safeguard policies are often the main policies raised in Panel cases.[2] Numerous lessons have emerged from Inspection Panel cases that have improved the application of policies on environmental assessment, resettlement, indigenous peoples, and consultation and disclosure of information. The Panel's publication series on "emerging lessons" captures and documents many of these examples.[3]

Through the Panel's independent, impartial, and comprehensive fact-finding, it has been able to expose important development issues, giving a strong voice to people affected by these issues to the extent that the Bank has taken steps to address them. As a result, important contributions have been made to the World Bank's overall development agenda: while the Panel does not have policy-making authority, these cases have influenced the adoption of new polices on the issues.

The Uzbekistan Second Rural Enterprise Support and the Uganda Transport Sector Development cases provide powerfulexamples of how the Panel advances development by paving the way to a response to its potentially severe and widespread consequences. The Uzbekistan case highlighted child and forced labor issues, and the Uganda case involved gender-based violence ("GBV"). Even without an explicit policy of the Bank on these issues at the time of the complaints -through the Panel's eligibility process in the case of Uzbekistan, and through its investigation in the case of Uganda - important policy and institutional changes took place not only at the World Bank but also in other international development organizations.

(a) Addressing Forced Labor in the Uzbekistan Cotton Sector

A complaint from Uzbekistan in 2013 on the Bank-financed project that included support to the country's cotton sector reforms, noted that the project neither identified nor safeguarded against the child and forced labor prevalent in the cotton sector, thus contributing to harm. While there was then no Bank policy on labor issues, child and forced labor was prohibited under the national

[2] The Environment and Social Framework is only applicable to the World Bank's investment project financing, and the environmental and social provisions that apply to development policy lending are much more limited in scope.

[3] For the Panel's Emerging Lessons series *see* World Bank Inspection Panel, *Publications*, INSPECTION PANEL, https://www.inspectionpanel.org/publications (last visited Oct. 16, 2023).

legislation together with the International Labour Organization ("ILO") Conventions ratified by Uzbekistan. In its initial response, Bank management expressed disagreement that the project was contributing to child and forced labor, but later acknowledged the seriousness of the issues and the project's shortcomings in dealing with them. Bank management committed to pursuing a range of measures to combat these practices; on this basis, the Panel postponed its decision on whether a full investigation was warranted for a year to provide Bank management with time to report on the implementation of its initiatives.

During this period the Bank took important steps to support the modernization of the cotton sector, including mechanizing harvesting, to eliminate child and forced labor in the sector. The Bank included labor issues as an integral part of its dialogue with the government of Uzbekistan on agricultural sector reforms. Most importantly, the Bank signed a memorandum of understanding with the ILO to undertake third party monitoring of Bank-financed projects for the use of child and forced-labor during the 2015 and 2016 cotton harvesting seasons. Following these developments, the Panel decided not to conduct an investigation. The Bank adopted its ESF in 2016, including its policy on labor and working conditions; prevention of the use of all forms of forced labor and child labor is one of the objectives of this policy.

(b) Addressing Gender Based Violence in Uganda's Transport Sector

Another groundbreaking complaint received by the Panel in 2014 stemming from a road rehabilitation project in Uganda raised the issue of gender-based violence in a Bank-financed project for the first time . The complainants alleged that the project had caused serious harms, including many cases of child sexual abuse and teenage pregnancies by road workers, an increased presence of sex workers, the spread of HIV/AIDS, sexual harassment of female employee, inadequate resettlement practices, lack of road safety, and negative construction impacts. The Panel's investigation confirmed these allegations. The Panel found the environmental and social Impact assessment neither adequately estimated the risks from the influx of workers into the project area nor proposed sufficient mitigation measures. The Panel also found that Bank management's oversight was insufficient, and that supervision missions did not effectively address these problems.

Bank management acknowledged the Panel's findings and, after the investigation report was submitted, it undertook several initiatives to address issues raised in the Panel's investigation at both the community and institutional levels. Bank management canceled the project due to the borrower's failure to implement appropriate social standards and practices. Notwithstanding these steps, the government and Bank management continued to address and supervise outstanding issues, and to support several remedial actions, including assisting victims of abuse and strengthening child protection in project communities. A program was implemented to offer sexually abused girls psychosocial counseling, help with school reintegration, provide additional training, assist with pre- and post-natal care, and offer a monthly stipend to help meet basic needs.

The institutional initiatives by the Bank included the establishment of a Global Gender-Based Violence Task Force to provide recommendations for preventing and addressing gender-based violence in Bank operations, a guidance note for staff on how to handle labor influx and related issues in Bank projects, and a report on lessons learned and actions to address internal systemic issues. The Bank became the first international financial institution to disqualify contractors for failing to comply with GBV-related obligations. A requirement was included for Bank staff to conduct due diligence on the risks to individuals and groups who might be adversely affected or excluded from project benefits due to gender, sexual orientation, or gender identity.

Challenges in Providing Project Remedies

Institutional accountability, including improvements in the application of Bank policies and procedures, is an important role of the Panel, but the Panel recognizes that project-affected people who bring their claims to the Panel seek remedy for their harms. The Panel, following its independent investigation, reports its findings to the Bank's Board of Executive Directors, and Bank management must prepare a response, including actions to address Panel findings of policy non-compliance and related harm. While Bank management, on its own, can propose actions to address institutional issues to improve policy application, Bank management's proposed remedial actions to address harm need to be agreed upon with the borrower.

Project-affected people have been able to secure remedies on many cases that they have brought to the Panel. However, there have been some cases where that was not possible. When borrowing governments do not agree on remedial actions, the impact of the Panel process is dependent on the effective use of the Bank's leverage to compel the borrower to agree and implement these measures. Sometimes this is not enough. In two cases - the Albania Integrated Coastal Zone and Cambodia Land Management investigations - the Panel showed serious non-compliance in the application and implementation of Bank policies. As a result, affected communities were harmed and needed remedies. However, the governments in both cases refused to agree on remedial actions. These investigations were important for internal accountability within the Bank, contributing to a culture of accountability, but this was little or no consolation to the affected people.

(a) Albania Integrated Coastal Zone Project

The complaint about the Albania Integrated Coastal Zone Management and Cleanup Project was brought by families living in the small community of Jale, following the demolition of their houses by the local construction police because the residents lacked building permits. Bank management initially denied any link between the demolitions and the Bank-supported project. Bank management stated that the government had agreed to a demolition moratorium in the coastal area covered by the project until safeguards for affected people were in place.

The Panel investigation established direct links between the Bank-financed project and demolitions. The Panel also uncovered that the Board approved the project based on the premise that there was a moratorium on future demolitions—and Bank Management failed to inform the Board that the government had not agreed to such a moratorium. After the Panel's report was issued, the Bank took important steps to improve safeguards in the context of land-use planning projects. A Bank-wide review identified and examined safeguards aspects of more than 1,500 projects either under preparation or supervision, and an accountability review of staff was undertaken. The Bank introduced measures to strengthen the oversight of quality assurance measures. Policy clarifications were issued on how to apply safeguard policies to land-use planning projects together with a guidance note on social risks involved in these operations.

As a remedial measure, Bank management proposed the compensation of the families for damages to their structures. However, the government maintained that the demolitions were in line with its laws and that it never agreed to a project design that included a moratorium to its ongoing demolition program. Thus, the government did not agree to compensate the affected families. The only support agreed by the government was Bank financing for legal services for the families to bring their cases before the Albanian courts and an independent observer to report to the Bank on the review process. Of the nine cases pursued by the families, only two were successful and resulted in compensation.

(b) Cambodia Land Management and Administration Project

In a complaint about the Cambodia land management project,more than 4,000 families living around Boeung Kak Lake in Phnom Penh claimed they had been forcefully evicted and denied the right to have their property claims considered under the project. The Panel investigation found serious non-compliance with the Bank's involuntary resettlement and supervision policies, and confirmed harm suffered by the community. While Bank management accepted the Panel's findings and tried to put in place remedial measures to address the issues raised, the government rejected the proposed actions. Due to the government's position, the Bank eventually suspended all lending to Cambodia for five years. After the investigation, that was claimed to be independent of the Panel case, the government issued a sub-decree granting title to around 700 project-affected families from the Boeung Kak Lake.

(c) Expanding Pathways to Remedy

As noted above, the Panel, being the first accountability mechanism, only has the compliance function; the majority of international accountability mechanisms ("IAMs") established after the Panel also include a dispute resolution function to facilitate or mediate a resolution between the parties. In light of this emerging practice at other IAMS, the Panel began to explore ways in less contentious and more focused cases to facilitate the early resolution of issues. When Bank management proposed substantial time-bound actions to address the issues raised in a complaint, the Panel, with the Board's approval, deferred its decision on whether to recommend an investigation to create additional opportunities for Bank management, implementing agencies, and complainants for early resolution of the case during its eligibility phase.

Later, the Panel amended its operating procedures to introduce a pilot to delay registration when Bank management initiates measures to address alleged harms, and complainants support this approach. Although these approaches to supporting early resolution either during the registration or eligibility phase led to some successful outcomes, they were roundly criticized by the civil society organizations and others in the accountability field, led as they were by Bank management, and arguably outside the Panel's procedures. According to the critics, the inherent power imbalance between Bank management and implementing agencies on the one hand and the usually vulnerable complainants on the other present the threat of skewed outcomes if dispute resolution is continued without a clearer mandate and procedures.

The first independent dispute resolution case for the Bank followed a Panel investigation related to the Kenya Electricity Expansion Project. The project was co-financed with the European Investment Bank ("EIB"), and the Panel and the EIB's Complaint Mechanism cooperated during their separate investigations. Following the Panel investigation, the Board approved for the first time that Bank management cooperate with the EIB Complaints Mechanism's mediation process between the complainants and the implementing agency to agree on remedial actions. The Board asked Bank management to return to the Board within one year to present the results of the mediation, and an action plan for its approval. The dispute resolution process resulted in a detailed plan with remedial actions.

Implications of the 2020 Review

The Bank approved its new Environmental and Social Framework ("ESF") in 2016, with its application to projects to start in 2018. During the same period, the lack of an independent dispute resolution service and other gaps in the Panel's mandate repeatedly came up during different Panel cases. These include the lack of a monitoring function to follow up on remedial actions, the lack of a formal advisory service, unavailability of Panel's investigation reports to the complainants before action plan consultation, and a time limit to submit complaints. A comparative study reviewing the functions and trends in other accountability mechanisms, mainly focusing on dispute resolution, monitoring and advisory functions, underscored the availability of these functions in other IAMs.

Consequently, the Board of Executive Directors embarked on a review of the Panel to ensure that the Panel has adequate tools compared to other IAMs, and to operate effectively under the new ESF. As the interlocutor of the Panel, the Board's Committee on Development Effectiveness spearheaded the process of the Panel's review in 2017.

All the stakeholders agreed not to open the Panel Resolution[4] for a general review but to select the most important issues to improve accountability and focus only on those. The understanding was that the Panel as an independent accountability mechanism has been instrumental in providing access to project-affected people, ensuring accountability, and improving compliance with the World Bank's policies and procedures, and should continue to operate as such. In order to indicate the limited scope of the review, it was named the "Review of the Panel's Toolkit". The Board decided to limit the scope of the review to seven areas: (i) advisory services; (ii) monitoring action plans; (iii) dispute resolution; (iv) the cut-off date for filing complaints; (v) communication with complainants after investigations; (vi) assessing the extension of Panel case eligibility to Bank-Executed Trust Funds ("BETFs"); and (vii) determining whether accountability gaps may exist in the context of Bank co-financing operations as a result of differences between the respective institutions' accountability mechanisms.

[4] Rather than a Bank policy, the Panel was established through a Board Resolution and went through two Board-governed reviews in 1996 and 1999, prior to the 2020 review. Although approved by the Board, Bank policies are initiated, drafted and their amendments prepared by Bank management. In order to keep the Board's full authority on the Panel, including initiating and preparing amendments to its main legal document, the Panel Resolution was not converted to a Bank policy. It was kept separate from the Bank's policy and procedure framework which retrofitted the existing policies and procedures in 2014.

Due to the Board's interest in the Inspection Panel, the working group established for the review included representatives from the offices of all Board members. The review started with an external qualitative assessment of these seven focus areas and continued with working group deliberations of issues. The Panel, Bank management and the Bank's Legal Vice Presidency provided support to the Board.

Updates on the Panel's mandate

Following constructive engagements, four of the seven issues were quickly resolved between the Panel and Bank management, and in 2018 the Board approved measures to (i) formally recognize the Panel's advisory role in its mandate; (ii) have Bank management issue clarifications on the use of BEFTs; (iii) formalize the Panel's current practice to coordinate with the accountability mechanism of cofinancier(s) to process the complaints in the most efficient and effective way possible; and (iv) update the procedures for sharing the Panel investigation report with complainants before it is considered by the Board.

The deliberations on the remaining areas continued for another two years and in 2020 the Board approved was obtained for: (i) allowing independent and proportionate risk-based verification of the implementation of Bank management action plans developed in response to Panel investigation reports by the Panel and Group independent Audit, when approved by the Board, (ii) extending the time limit under which complainants can submit a complaint to the Panel by fifteen months beyond project closure, to be applied to new projects approved after the revised Panel Resolution goes into effect; and (iii) establishing an accountability mechanism ("AM") housing both the Panel and a dispute resolution function independent of Bank management. The dispute resolution function was to be conducted by the Dispute Resolution Service and offered to the complainants and borrowers following the approval by the Board of eligibility determination and investigation recommendation of the Panel.

A New Structure Impacting the Panel's Independence

All of these measures were important advancements to the Panel's mandate and the Bank's overall accountability framework. However, the structure created with the new Accountability Mechanism ("AM") significantly limited the Panel's authority over its budget and staff. Despite the initial intention to preserve the Panel as is, the new AM has limited the Panel's operational independence.

According to the new AM structure, the mechanism houses both the Panel and the Dispute Resolution Service, and the newly established AM Executive Secretary is the head and manager of the mechanism. Similar to the Panel members, the AM Executive Secretary is independent, appointed by, and reporting directly to the Board with a five-year term limit. The staff of the AM, both those responsible for the Panel's compliance review and its dispute resolution service report to the AM Executive Secretary. The AM Executive Secretary is also responsible for managing the budget of the AM, including that of the Panel.

The new structure limited the powers of the AM secretary vis a vis the Inspection Panel. The Inspection Panel members continue to be independent and report directly to the Board. The compliance staff report to the AM Executive Secretary on administrative matters, but to Inspection Panel members on technical matters related to compliance. The AM Executive Secretary "consults" with the Panel Chairperson on the appointment and performance reviews of technical and administrative staff of the Panel. Finally, the AM Secretary "works" with the Inspection Panel Chairperson on the allocation and oversight of the Panel budget.

There were several considerations in the creation of this unusual structure. The need to avoid any conflict of interest between the dispute resolution and compliance functions was one of them. Therefore, it was agreed to have the dispute resolution function organizationally separate from the Panel. However, establishing a separate independent oversight and accountability mechanism for dispute resolution was not favored. As a result, the Panel and Dispute Resolution Service were put under the accountability mechanism umbrella. The Panel members do not have administrative responsibility; the Panel's administrative functions were the responsibility of the Panel Chairperson and its executive secretary reporting to the Panel. Therefore, it was decided to have an executive secretary to head the mechanism, the newly created Dispute Resolution Service, and to provide administrative support to the Panel. Since the administrative functions of the Panel's own executive secretary were largely transferred to the AM Executive Secretary, this position reporting to the Panel was declared redundant.

The structure created with the new AM is different from several other accountability mechanisms, including the International Finance Corporation's Compliance, Advisor/Ombudsman ("CAO"). The CAO has a Vice President who heads both compliance and dispute resolution functions. The AM Executive Secretary heads the dispute resolution function but the Panel with its compliance function is envisaged to continue independently.

Although the review was about possibly adding new tools to the Panel without altering its independence or functioning, the new structure significantly changed the operational independence of the Panel. As a result of the new structure, the Panel has lost its independence over its staff and budget, and has to negotiate these issues with the AM Executive Secretary who is not reporting to the Panel. Namely, the independence of the Panel over its staff and its budget are left to the good faith of the AM secretary. It is well known that functional independence cannot be achieved without administrative autonomy. Keeping only the Panel members' independence is not enough to ensure the functional independence of the Panel, which is fundamental to its credibility and legitimacy.

Conclusion

The Panel has and will continue to evolve to adapt to new development challenges. However, the Panel's evolution should not jeopardize fulfilling its accountability function and bringing remedy to project-affected people. Independence has been its core strength in gaining the trust of project-affected people, assisting the Board in its oversight function over projects and contributing to the overall development agenda. Ensuring the Panel's independent authority over its staff and budget were hard-won battles in its early years. It is important that these attributes of the Panel are protected and enhanced.

The latest changes introduced to the Panel structure are expected to be reviewed three years after their implementation. This upcoming review would provide an excellent opportunity to revert to the operational and administrative independence of the Panel.