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“Use and Improve” is My Accountability Mantra, Despite 30 Years of Eye-opening Disappointments

Natalie Bridgeman Fields¹

Standing on the banks of the Biobío River high in the Andes one morning in the late 1990s, I stood five feet away as Chilean military police aggressively tear gassed and arrested Indigenous Mapuche women who were blocking bulldozers from driving up the road to destroy their ancestral homes. They were being forced off their land for a dam project supported by the International Finance Corporation (IFC). That day changed my life when one of the protesters called to me, as the only foreigner there, saying “It’s your government funding this project!” It was a literal call to action – not to act as a white savior, but to take responsibility for a mess I had a part in creating as a United States citizen, with my government’s outsized vote at the IFC’s World Bank Group. Only a year before, accountability for harm caused by international development finance had already absorbed my intellectual world. I had discovered that a burgeoning system had the potential to enable aggrieved people to be heard in their demands for accountability.

This case in Chile that inspired my career led to the establishment of the IFC’s accountability office, the Compliance Advisor Ombudsman (CAO), one of the first of a handful of mechanisms that existed after the very first, the World Bank Inspection Panel, was established in 1993. These mechanisms were not created because the World Bank Group was in a reflective moment; they were forced on the bank because the US Congress threatened to withhold funding for the bank until they created the Inspection Panel after a series of public disasters. And the CAO was created to avoid that threat of withholding funding from happening again. Whereas the Panel was Board-reporting, the President of the bank at the time made the CAO report to him, forestalling a more independent option. It’s been a rocky 30 years; with several dozen independent accountability mechanisms (IAMs)² now up and running that have delivered communities more disappointments than accountability.³ But it’s worth understanding the context of why, despite beginnings that foreshadowed the institutional failures we see now, that still does not deter me, and a growing group of colleagues, from promoting the use and improvement of accountability mechanisms. As the multilateral financial institutions now seek to control an increasing amount of climate-related finance, the accountability mechanisms have never been more important.

¹ Natalie Bridgeman Fields founded the non-profit, legal organization Accountability Counsel, which she led for 14 years. Previously, she was a litigator involved in human rights, environmental, and business law cases in U.S. federal and state courts, and a consultant for international institutions on accountability issues.

² See Accountability Console, *Independent Accountability Mechanisms*, ACCOUNTABILITY CONSOLE, <https://accountabilityconsole.com/iams/> (last visited Oct.16, 2023).

³ See Accountability Console, *Complaints*, ACCOUNTABILITY CONSOLE, <https://accountabilityconsole.com/complaints/visualize/> (last visited Oct.16, 2023) (for complaint outcome data).

I. *Racism, Privilege, and Access at Development Banks Shapes Accountability*

Since the creation of the multilateral development banks after WWII, projects like the one on the Biobío in Chile were — and still are — outrageously commonplace in terms of the type of harm they produce. Those who are most vulnerable — the poor, Indigenous People, women, girls, LGBTQIA+ people — are the first to suffer in the name of ‘progress’ from which they rarely benefit. The banks are able to act with impunity because those harmed have the least power. Their interests are nominally represented by their governments. But many countries have a poor track record of advocating for the voices of their own marginalized populations. Further, borrowing countries at development banks are marginalized by design. Rich countries dominate a vote allocated according to shares owned in the bank, leaving the poor countries with a muted voice.

People harmed often can’t ask local or national governments for help, as they are the project proponents. Speaking out can put people at risk of retaliation. They can’t realistically sue implementing companies, agencies, or their own governments for abuses due to legal restrictions, nor can they easily sue the development banks that invoke arguments that they are immune from suit. Media exposure that shames the banks, political action to influence the banks’ boards of directors, and community-organized civil disobedience are often the strongest tools that harmed communities have. Time after time during the World Bank Group’s first 50 years, however, those tools were *not* enough to prevent repeated cases of harm and abuse.

At the same time, up through the 1990s, there were startlingly few people with the privilege⁴ and access to influence the harmful behavior of the banks from the outside. Two of those people working to bring the voices of those harmed to the attention of the World Bank’s board were my mentors — Dana Clark and David Hunter at the Center for International Environmental Law. I worked for them in 1998 as they were supporting communities to use the new accountability mechanism at the World Bank that they and others like Lori Udall had urged the Bank (and Congress) to create, the Inspection Panel. They supported complaints that allowed people harmed in Paraguay, for example, to engage directly, in a new way, that bridged the yawning divide between Bank decision-makers and those impacted by their decisions. While this was a novel development in international law, I saw a pattern where the bank silenced and ignored Black and Brown people in bank-impacted communities, while allowing white, educated, American and European professional activists in donor countries to push open the doors of the bank and jolt the institution to respond.

This dynamic was a predictable consequence of racism and institutional biases that made my own audience with the powerful possible. As Americans, we could draw on our government’s voting

⁴ By privilege, I acknowledge that multilateral institutions are rife with racism, class bias, national origin bias, language and literacy bias, educational bias, gender bias, and a host of other intensified reflections of the world in which we live. As a white, educated, American citizen, my access is a reflection of the intentionally racist power dynamics of these institutions. Those with most at stake, the most to lose when international finance and development goes wrong, are officially (through voting power) and implicitly (through bias), denied a powerful role in their own destiny.

power at the Bank as a tool of influence.⁵ I began my professional life's work by seeing how outrageously unfair this system was, but seeing my own access, I became part of it.

Privileged by my race, nationality, and education level, I learned to uncomfortably exploit my privileges in a very Washington, D.C. way, for the purpose of opening doors for my colleagues around the world who deserved their own direct access. In the 1990s, I jumped in with two feet as I saw how urgent it was to bolster community tools for accountability at each of the world's dozen or so finance and development institutions — no matter how weak or completely absent they were at that time. The promise was too great when just one project could displace and harm the lives of millions of people, for generations to come. There was so much work to do — not just to get accountability mechanisms to hear the grievances of those harmed, but to get them to listen *directly* to affected people and prompt them to respond with appropriate remedy.

All these years later, the racist and biased systems of access to powerful institutions persist. While I've worked for decades to deeply listen to communities and bring their own voices to the accountability mechanisms, instead of speaking for those communities, the racism and other biases of these institutions still limit what the banks hear and how they respond.

II. *The Limits of Power and Independence at Accountability Mechanisms*

In the year 2000, I worked as a consultant to the World Bank Inspection Panel when the field was just starting to expand, and a dispute resolution feature was being added to newer mechanisms, including the CAO and the InterAmerican Development Bank's mechanism. But the Inspection Panel remained a compliance-only mechanism at that time, and for many years to come.

One summer day in a windowless room, I sifted through rows and rows of document boxes taller than I am, reading every word and developing a shortlist of investigation questions for an Inspection Panel member's interview of the person in bank management responsible for decisions that violated bank policy regarding a project site I had just visited in South America. But during the interview, I sat next to the Panel Member as they skipped the most crucial questions. While the Panel Member may have believed that accountability mechanisms should have enough independence to make unpopular decisions that uphold bank policy, they believed *even more* that the mechanism should not have so much independence that they alienate the institution's board of directors and staff.

Here was the quandary of the Panel's original compromise at its creation; both the bank's board and management's cooperation, despite their conflicts of interest, are perversely required to *voluntarily* cooperate for success at the final stages of the otherwise-independent Panel process. While the United States and some Europeans extracted as much independence as they could from the Bank's board to lessen its impunity back in 1993, the Panel represents the *least* that the Board was willing to give up in order to keep the donor money flowing through replenishment processes. The result was a quasi-independent process where the Panel was independent in developing their findings, until it mattered, when a political body (the Board) took control and decided what to do with the Panel's findings and bank management's proposed response. At the time, the Panel was

⁵ See The World Bank, *Voting Power*, THE WORLD BANK, <https://www.worldbank.org/en/about/leadership/votingpowers> (last visited Oct. 16, 2023).

revolutionary. But 30 years later, the initial obvious flaws born of this anachronistic compromise have become untenable.

A. *When the IAM Process Works, But Insufficient Power Robs Communities of Outcomes*

While United States power was influential in brokering this deal, major borrowing country clients of the banks (*e.g.* China and India) have, since the beginning, demanded impunity for their abuses of their own people at project sites supported by the banks. Time and again in my own direct work with communities, I've experienced borrowing countries simply refusing to pay attention to those harmed after the Inspection Panel or similar compliance mechanisms had done a fair and impartial job. Quasi-independence is not enough when independence is needed. And powerlessness is not enough when confronted with absolute power.

There are examples throughout IAM history of powerful borrower countries simply ignoring accountability mechanisms – to the borrowing country's perceived ultimate advantage, and at the detriment of local people who suffer. This is, of course, a foreseeable response to IAMs that lack power to implement their findings independently.

In India, for example, the World Bank Group has a long history of lending to projects and companies that harm people and the environment (*e.g.* the Narmada Dam (World Bank), Jharkhand Water Project (World Bank), Assam Tea (IFC), and Tata Mundra Coal Power Plant (IFC)). There is an equally long history of public verification of that harm by official bank inquiries, and compliance reviews at accountability mechanisms.⁶ The Indian Government's response to criticism of projects of national importance, or the IFC's response in concert with its corporate clients, is to stonewall, delay, or simply ignore the violations of social and environmental policy, and international law.

A case to the World Bank Inspection Panel from Tibet in the year 2000 is an extreme example of a compliance investigation that found non-compliance with multiple social and environmental policies and implicated, indirectly, Chinese abuses, but the Chinese evaded accountability. As a consultant to the Panel at the time, I witnessed the Chinese government simply withdraw the controversial project from World Bank support just hours before the board would have canceled the China Western Poverty Reduction project due to the non-compliance, thus removing the Bank's power over the borrower. China decided to go it alone and implement the project of forced relocation of ethnic Han into Tibet without Bank support, without standards or accountability, and

⁶ For Narmada Dam, see *India - Narmada river development - Gujarat : Sardar Sarovar Dam and Power Project (English)*, Washington, D.C. : World Bank Group, <http://documents.worldbank.org/curated/en/918961468044374790/Sardar-Sarovar-Dam-and-Power-Project>; For Jharkhand Water Project, see *India: Rural Water Supply and Sanitation Project for Low Income States (P132173)-First Request*, Case 128, Request 18/06, (received Sep. 21, 2018), <https://www.inspectionpanel.org/panel-cases/rural-water-supply-and-sanitation-project-low-income-states-p132173-first-request>; For Assam Tea Project, see *India: Tata Tea-02/Assam*, Case No. Tata Tea 25074, (filed Feb. 2, 2013), <https://www.cao-ombudsman.org/cases/india-tata-tea-02assam>; For Tata Mundra Coal Power Plant, see *India: Tata Ultra Mega-01/Mundra and Anjar*, Case No. Tata Ultra Mega 25797, (filed Jun. 14, 2011), <https://www.cao-ombudsman.org/cases/india-tata-ultra-mega-01mundra-and-anjar>.

to the great detriment of the Tibetan people.⁷ “You have to crack a few eggs to make an omelet,” the Chinese office at the World Bank was accustomed to saying in the 1990s.

After my time at the Inspection Panel, I spent a decade as a corporate, human rights, and environmental litigator in the United States. I then returned to accountability mechanism work with a deeper understanding of what suing perpetrators of abuses in courts requires of those harmed. Remedy is extraordinarily rare. I took a consulting job at the European Bank for Reconstruction and Development (EBRD), redesigning their accountability mechanism based on consultations with the public, complainants, civil society, bank staff, and the Bank’s board. This deep dive into the EBRD’s workings taught me how intentionally constructed some of the barriers are to community-facing accountability. Accountability mechanisms are viewed as an annoyance to many development bank staff and leaders, and the barriers to entry for communities are in many cases *decisions*, not mistakes. The same bank management who made these accessibility decisions had a role in approving responses to the EBRD accountability mechanism’s compliance findings.

Almost 20 years after the Tibetan people lost their struggle with forced relocation, the World Bank President at the time, Jim Kim, pointed his finger at me on stage at a public conference in Oxford and said that the forcibly displaced communities in Nepal I was trying to discuss with him were just like people in the United States subject to eminent domain (*i.e.*, they were just cracked eggs).⁸ Never mind the evidence my team had provided the bank for years about the lack of compensation, threats, detention and beatings these communities were enduring as part of violations of the bank’s own policies. Impunity is not just a borrowing country value.

The European Investment Bank (EIB) had a similar failure in Nepal, where instead of adhering to an EIB Ombudsman set of recommendations to address non-compliance in a transmission line case, the Nepalese government simply refused to cooperate and evaded accountability, without EIB using its leverage as it could have.⁹ The EIB’s response was too little, too late, to matter to the Nepalese communities who filed the complaint.

These are examples of accountability mechanisms *doing their jobs as designed*,¹⁰ but failing to result in accountability. Even in these cases of “successful outcomes” of the accountability offices, accountability is not the result, neither for communities nor the banks, if the banks then fail to respond with remedy because of limited leverage (or failure to use the leverage it has) over the borrower, or because they fail to change their own practice.

⁷ See Jarrett Murphy, *World Bank Project Drops Plans for Tibet*, CBSNEWS, July 5, 2000, <https://www.cbsnews.com/news/world-bank-drops-plan-for-tibet/>.

⁸ See Marc Gunther, *Natalie Bridgeman Fields; Holding the powerful accountable*, NONPROFIT CHRONICLES, May 2, 2017, reproduced at <https://www.accountabilitycounsel.org/2017/05/natalie-bridgeman-fields-holding-the-powerful-accountable/>.

⁹ See Accountability Counsel, *Nepal: 220 kV Marsyangdi Corridor Transmission Line*, <https://www.accountabilitycounsel.org/client-case/nepal-220-kv-marsyangdi-corridor-transmission-line/#overview>.

¹⁰ See VIOLET BENNEKER ET AL., GLASS HALF FULL? THE STATE OF ACCOUNTABILITY IN DEVELOPMENT FINANCE 34 (Caitlin Daniel et al. eds., 2016), <https://www.ciel.org/wp-content/uploads/2021/06/Glass-half-full.pdf>.

B. When IAMs Independence Is Undermined, the Pendulum Begins to Swing

For the past 14 years, up until 2023, I ran Accountability Counsel, an organization I founded to support communities in understanding and effectively using accountability mechanisms as a tool for justice. By the time I started the organization, a field of IAM practice was just beginning, and dispute resolution tools had developed throughout the world, but there were still just a handful of advocates helping communities to use the mechanisms.

By 2009, the pendulum that swings through the accountability mechanism world was obvious. In the 1990s, the Panel had to fight tooth and nail to even exist and for even a semblance of quasi-independence. Civil society pushed hard on that pendulum from the outside to defend the founding Panel members and secretariat's brave work to hold up the Panel's limited powers.

But then the Panel started issuing strong compliance reports that validated community experiences of forced displacement and abuse. Even though, as discussed above, so many of these reports were ignored, the bad publicity from the bank's own accountability mechanism was too much, and the bank's embarrassment led to backlash.

The Panel secretariat changed, beginning a dispute resolution "pilot" program without transparent procedures that ended up preventing public compliance findings in some circumstances, including cases I worked on firsthand.¹¹ At the same time, the bank started "Panel-proofing" conflicts by referring them not to the independent Inspection Panel, but to a new management-run Grievance Redress Service,¹² an entity without a clear mission (I saw three different and conflicting descriptions of its goals at one point within a one-month period). Through my work at Accountability Counsel, we worked with communities frustrated by the GRS as well. While the Panel did need dispute resolution tools, instead of asking the board to create them with transparency of procedure and operations, the bank buried a dispute resolution function deep within a conflicted arm of bank management. The pendulum was coming back fast.

Knowing from the start how much weight is coming down on accountability systems, the second pillar of Accountability Counsel's work is to conduct advocacy to push on that pendulum and urge IAM improvements, to call out biases and failures, and lift up good practice and policy. The third element is action-oriented research to show what's happening in the system and allow advocacy for use of that data to improve it – to chart the pendulum's swing.

¹¹ See Natalie Bridgeman Fields & Kindra Mohr, *The World Bank's failed accountability experiment: Why the Inspection Panel's 'Pilot' should dead end* (The Bretton Woods Project, August 4, 2016), online at <https://www.brettonwoodsproject.org/2016/08/world-banks-failed-accountability-experiment-inspection-panels-pilot-dead-end/#:~:text=The%20Panel%20is%20right%20to,be%20put%20to%20an%20end>.

¹² See, e.g., Chair Summary, Report and Recommendations to the Board on the Review of Inspection Panel's Toolkit (October 31 2018), available at <https://documents1.worldbank.org/curated/en/768191541646040975/pdf/10-31-18-IPN-toolkit-FINAL-with-change-requested-from-US-11022018-636772248345759387.pdf>.

At the beginning, I performed all three of the program roles. I worked as a lawyer and partner with communities for cases in Papúa New Guinea¹³ (World Bank), Peru¹⁴ (IFC), Mexico¹⁵ (Overseas Private Investment Corporation (OPIC)), and as a supporting advocate on dozens of other cases. I worked on policy at every accountability mechanism, advocated that new ones be created, and initiated work on the Accountability Console — a database to track and visualize complaint and institution data and to compare mechanisms. A few years in, I began to hire what is now an exceptional team of diverse, talented people who are changing the field in positive ways.

All these years later, the organization has delivered a host of policy improvements at every mechanism, has worked with communities on a group of rare cases where communities have directly benefited from remedial action (mostly from dispute resolution), and has delivered research laying the system and its impacts bare. I also worked for decades with colleagues around the world to create a team of advocates, who in turn support a brave group of local and regional organizations to do this work in borrowing countries, upending the makeup of who has access to the banks. I'm so proud of the field-building we've done that has created a robust civil society community. But even with Accountability Counsel's efforts that continue today, there remains so much work to do for the next generation taking on these issues.

At the World Bank Group, the pendulum has been swinging faster lately and is taking aim at what little independence the accountability mechanisms have. The need for accountability mechanisms to have the independent power to direct outcomes that benefit communities could not have been made more clear than in 2023, looking at the IFC's recent collusion with its client, Bridge International Academies (*aka* NewGlobe), to cover up cases of child sexual abuse and labor rights violations at private, for-profit schools in Kenya. The IFC general counsel went so far as to negotiate a non-disclosure agreement with its client Bridge to prevent harmful information from reaching the market – and the CAO – as the company worked on raising a funding round. The World Bank Group's President further undermined the CAO's independence and accountability efforts by swapping out the leader of the CAO for one who would improperly place the lead CAO compliance investigator of Bridge on leave before the investigation report into Bridge could come out. The CAO's investigator remains on administrative leave today.¹⁶

¹³ For Complaint details, *see Papua New Guinea: Smallholder Agricultural Development Project*, Case No. 62, Request No. 9/10, The World Bank Inspection Panel, (Received Dec. 8, 2009), <https://www.inspectionpanel.org/panel-cases/smallholder-agriculture-development-project>.

¹⁴ For Complaint details, *see Peru: Maple Energy-01/Nuevo Sucre and Canaan*, Complaint No. Maple Energy 26110, Compliance Advisor Ombudsman, (Filed Apr. 6, 2010), <https://www.cao-ombudsman.org/cases/peru-maple-energy-01nuevo-sucre-and-canaan>.

¹⁵ For Complaint details, *see Mexico Cerro de Oro Hydroelectric*, U.S. International Finance Development Corporation, (Request Received Nov. 30, 2010), <https://www.dfc.gov/who-we-are-office-accountability-public-registry-cases/mexico-cerro-de-oro-hydroelectric>.

¹⁶ *See* Sophie Edwards, IFC slammed by its own watchdog for ignoring child sex abuse allegations, Devex, October 26, 2023, <https://www.devex.com/news/ifc-slammed-by-its-own-watchdog-for-ignoring-child-sex-abuse-allegations-106439>.

III. What Political Bodies Can Do to Modernize Accountability

In all of these years of working on nearly every aspect of accountability mechanism policy and practice, I've observed that without appropriate bank staff incentive structures and remedy frameworks that actually deliver remedy to communities, the whole field is navel-gazing, and often causing more harm in the process. These learnings sketch out a roadmap of reforms needed in international finance and development. As climate finance increases using public institutions as a tool, the reforms need to account for the next 50 years of impacts.

A. Poor Incentive Structures Can Prevent Good Community Outcomes

While compliance and dispute resolution functions have wide differences in mandate and operation, they are all influenced in significant ways by the personalities of the people in the relevant accountability mechanisms, government units, companies, and bank offices involved in the case, and by the strength of their commitment - or lack thereof - to seeing that communities are treated fairly.

Where a mechanism has to depend most on relationships for progress is a good guide to where the policy framework governing the mechanism is weakest. For IAMs, it's at the very last stage, where implementation depends on good will instead of sound policy. Personalities and relationships can determine whether or not remedy follows when accountability mechanisms find noncompliance, or broker agreements through dispute resolution. Former Dutch World Bank Board Member, Koen Davidse, comes to mind as a long-standing accountability champion protecting the Panel process and working to deliver outcomes for communities.

When there are relationships of respect between accountability office staff and those among bank staff and board who are committed to accountability and treating communities with dignity, the mechanisms can be at their most effective. Strong community advocates and international allies are almost always *additionally* required for accountability mechanisms to function in a way that benefits communities and holds institutions to account.

Sometimes, however, despite good intentions and the potential for good institutional and community outcomes, personal circumstances can get in the way. The multilateral development banks are staffed by people from all over the world, and they work in places like Washington, D.C., London, Manila, Abidjan, Seoul – places often far from employees' homes and countries of origin, where they require visas from their employer bank if they and their families want to stay. Jobs at these banks are often lucrative, and golden handcuffs can bind the decisions of bank employees who are loyal to their employer more than to their employer's ultimate mission.

I have seen this play out at places like the World Bank Inspection Panel, where staff of the mechanism's secretariat have come from the bank's internal units and seek to stay at the bank after their tenure at the mechanism ends, resulting in the conflicts of interest that have harmed communities as they placate bank management and powerful board members. Pre- and post-employment bans that prevent a revolving door (as is required for the Panel Members) can go a long way to addressing this problem.

Finally, staff incentive structures at development banks are a problem that leads to repeated harm from the same types of projects, over and over again. Where career advancement depends in part on quickly completing projects and disbursing money,¹⁷ these incentives can be at odds with careful consideration of the impacts of projects and close consultation with affected communities; essentially, good safeguard compliance.

Bank staff should be rewarded not on loan volume, but based on the *benefits* that the projects bring to local affected communities (not just intended project beneficiaries), and through constructive responses to grievances.¹⁸ Project-affected people, and the ecosystems they depend on, must be seen as rights holders with commensurate bank duties to those rights holders that are reflected in loan agreements.

I've heard from bank staff and board members over and over that 'we won't be competitive if our projects are too slow out the door' – meaning if we take too long on safeguards – but that's the point and value-add of public development banks. Safeguards and capacity building around them are what differentiates development from commercial banks. They *can* bank projects that don't cause conflict and harm and that *benefit* the poorest of the poor at project sites. They can incentivize safeguard compliance and harm prevention at every stage of the project cycle, and take climate impacts into account throughout.

B. Without Better Harm Prevention and Remedy Frameworks that Deliver, We're Navel-Gazing and Causing Harm

Over the past 30 years, even in the cases where accountability mechanism compliance findings demonstrated that bank policy non-compliance harmed a community, remedy at the community level has been rare. It is usually only after communities and their allies have then mounted political campaigns at the level of the banks' boards to get action that a small number of these cases have resulted in positive changes. Thus began the last decade of civil society campaigning for development banks to establish remedy frameworks so that communities are not just holding meaningless paper after years of effort, or having to swim upstream to get results. To date, the remedy campaign has little to show.

The IFC and MIGA recently had a chance to develop an approach to remedy after extensive documentation of these institutions' failure to respond appropriately to findings of noncompliance.¹⁹ Instead, they pointed to their current practice, and refused to evolve from the system that is failing communities.²⁰

¹⁷ See Bretton Woods Project, *World Bank Staff Incentive*, BRETTON WOODS PROJECT (Apr. 8, 2013), <https://www.brettonwoodsproject.org/2013/04/art-572265/> (re "volume targets").

¹⁸ This is not to say they should be rewarded if there are no complaints, but rather, they should be rewarded for working through a grievance process in a constructive, compliant way.

¹⁹ See The Office of the Compliance Advisor Ombudsman [CAO], *Insights on Remedy; The Remedy Gap: Lessons from CAO, Compliance and Beyond*, (Apr. 2023), https://www.cao-ombudsman.org/sites/default/files/2023-04/CAO%20Advisory%20Note_Remedy%20Gap_April%2013%202023_updated.pdf; See also Accountability Console, *Complaints*, ACCOUNTABILITY CONSOLE, <https://accountabilityconsole.com/complaints/visualize/>? (last visited Oct. 16, 2023).

²⁰ See Accountability Counsel et al., *Joint CSO Statement Calls on IFC and MIGA to Strengthen its New Approach to Remedial Action Policy*, ACCOUNTABILITY COUNSEL (Feb. 22, 2023),

Without robust remedy frameworks, accountability mechanisms can and do cause harm. They excuse the banks from more robust legal liability as an accountability fig leaf.

Further, it is not a neutral act to find non-compliance and then have the bank fail to act on remedying that non-compliance. In the case of the transmission line project in Nepal mentioned above, villagers spent countless hours in meetings (under threat and surveillance), first understanding the accountability mechanism process, then gathering their experience into written format to submit a complaint, then spending time meeting around all the required follow-up to ensure the complaint was eligible, all while resisting major Nepalese military police retaliation in the form of arrests and illegal detention.²¹ These villagers are farmers, parents, shopkeepers – people whose livelihoods depend on the time they spend tending to their duties. Some live a several days’ walk from the meeting places. This level of community time and investment is similar for complainants across all accountability offices. They are not paid to spend time on an accountability process, and their livelihoods can and do suffer as a result. When all of their investment leads to nothing from the mechanism’s process, and they have lost income and have been hurt in retaliation, as happened in Nepal, the process causes harm. Even a policy ‘win’ out of a complaint process – such as a change in policy that will purportedly avoid the same harm in the future – is not a community-facing remedy.

Without robust remedy frameworks, it is becoming irresponsible to promote the use of certain IAMs when a community seeks guidance. While communities may make the hard choice to use an IAM even with poor odds, reform is urgent.

The banks’ shareholders should require the banks to more frequently withhold final payments until borrowers cooperate with accountability mechanism outcomes (either through working with the bank to implement management action plans, or upholding negotiated agreements). Initial remedy funds should be set aside at the start of projects (public and private) so that the accountability mechanisms can direct remedial funds straight to communities who need them. Reforms must include blacklisting companies or governments that fail to uphold their end of accountability process outcomes, a measure entirely possible, as it is already taken in response to corruption investigations.

IV. Exceptions Are Worth It And Can Be Spectacular

I started this work in the early days of the now well-established independent accountability mechanism (IAM) field. But I’ve *continued* in this field, as a consultant to accountability mechanisms, as a lawyer advocating alongside communities, as a policy advocate and consultant

<https://www.accountabilitycounsel.org/2023/02/joint-cso-statement-calls-on-ifc-and-miga-to-strengthen-its-new-approach-to-remedial-action-policy/>; For IFC/MIGA’s remedy framework proposal, see The Office of the U.N. High Commissioner on Human Rights, IFC/MIGA Draft Approach to Remedial Action: Comments and Recommendations of the UN Human Rights Office, (Apr. 13, 2023), https://www.ohchr.org/sites/default/files/documents/issues/development/dfi/OHCHR-comments-IFC-MIGA-Approach-to-Remedial-Actions_13-April-2023.pdf.

²¹ See Accountability Console, *Power Development Project*, ACCOUNTABILITY CONSOLE, <https://accountabilityconsole.com/complaints/power-development-project/> (last visited Oct.16, 2023).

working to design and revise accountability policies, because *these mechanisms and the institutions that house them can be improved, and communities can and do benefit*. Indeed, communities come to accountability mechanisms when they have been seriously wronged and have *no better options*. I've been alongside communities many times as they've made the hard decision to commit to an accountability mechanism process despite bad odds, because their odds without an IAM process are even worse.

Despite the gloomy assessment that dominates this chapter, I am still deeply committed to the success of corporate and institutional accountability mechanisms. While policy wins that promote transparency and accountability are worth celebrating, communities who achieve fair treatment and remedy for harm –or harm prevention– are the point. I've been part of enough community victories to see the deep value of this flawed system.

In Oaxaca, Mexico, I had the privilege of standing alongside Indigenous Chinanteco communities demanding a halt to the construction of a hydroelectric facility that would remove their access to clean water at a culturally important spring.²² They succeeded in using OPIC's dispute resolution process (now part of the US Development Finance Corporation) to reach an agreement with the project sponsor to halt the project. Now, over a decade later, the spring is still a community focal point and critical water resource, and a celebrated source of community pride. The organizing done as part of that complaint process brought the communities surrounding the spring closer together, benefitting their civic institutions in the long run. This victory was worth the years I spent on advocating for reforms at the OPIC Office of Accountability, which then supported the platform for this win. This victory was worth years of effort that community members put into the complaint process. The accountability mechanism forum – even in this case not without major flaws – ultimately worked.

Similarly, in Haiti, I was present at the signing of an agreement between Haitian farmers and their families, representing years of work by the communities, local advocates, and Accountability Counsel advocates Lani Inverarity, Megumi Tsutsui, and Samer Araabi, as well as efforts by Inter-American Development Bank accountability office staff and IDB teams. The agreement pledged to remedy some of the unimaginable harm that the IDB's financing of a sweatshop on their farmland caused when it was suddenly taken without consultation or proper compensation. Today, a large part of that agreement has been implemented: some farmers have new land, some have agricultural inputs to improve their ability to farm, and some have microfinance for new small businesses. Here too, it was worth years of my prior effort alongside many advocates to reform the IDB's accountability office to see this victory made possible. In this single case achievement, my life's commitment to accountability mechanisms feels vindicated, because for many in the Haitian communities, this victory has been a lifeline.²³ These results matter so much to so many.

²² See Accountability Console, *Mexico Cerro de Oro Hydroelectric*, ACCOUNTABILITY CONSOLE, <https://accountabilityconsole.com/complaints/mexico-cerro-de-oro-hydroelectric/>.

²³ See *Productive Infrastructure Program - Request II*, Project No. HA-L1055, (Received Jan. 12, 2017), <https://www.iadb.org/en/mici/complaint-detail?ID=MICI-BID-HA-2017-0114&nid=21822>.

V. *Conclusion: Work to Use and Improve Accountability Mechanisms is Still Critically Important*

So yes, I am an accountability mechanism cynic, but also a leading champion of the existence, use, and improvement of these mechanisms. As climate finance leans on public development and multilateral institutions to use their infrastructure to address climate action, mitigation, and loss and damage funds, accountability for these uses must improve.

One of the advances I've seen in this field over the past 30 years is the sheer number of people who are now aware of accountability offices as a tool, and are capable of supporting communities through the complaint process. There are now hundreds. These advocates' time and effort alongside communities in the complaint process must, however, be well balanced with their investments in the advocacy required to improve mechanisms and the institutions that house them in all of the ways I've described, including through working to build political power for accountability at the level of the boards of directors. I believe the pendulum will swing toward withholding funding for the development banks to ensure better functioning on accountability issues before the decade is out.

I remain hopeful because there is no other choice. I have the privilege and responsibility to keep working toward a more just system of development finance because millions of people harmed each year still need a working system to support their demands for respect.