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## **Thirty Years of Accountability in International Development: Insights from the General Counsel of the World Bank Group**

**Christopher H. Stephens<sup>1\*</sup>**

In September 1993, the World Bank (the Bank) Board of Executive Directors (the Board) adopted a Resolution<sup>2</sup> to establish the World Bank Inspection Panel (the Panel). The Panel was the first accountability mechanism of its kind among Multilateral Development Banks (MDBs). Established by the world's leading development institution, the Panel receives complaints from communities and individuals alleging harm arising from a failure by Bank Management to comply with its own policies and procedures. James Wolfensohn, the Bank President from 1995 to 2005, remarked in the early years of the Panel that it was a “bold experiment in transparency and accountability that has worked to the benefit of all concerned.”<sup>3</sup>

Thirty years down the road, many MDBs and International Financial Institutions (IFIs) have followed the Bank's lead, setting up accountability mechanisms for affected communities and individuals to seek redress for alleged harm related to the projects they finance. The compliance functions performed by such mechanisms have, over time, been complemented by dispute resolution mechanisms (sometimes called problem-solving) created both as optional and independent functions, such as the Bank's Dispute Resolution Service (DRS).<sup>4</sup> These accountability functions typically operate alongside the oversight and dispute resolution mechanisms established by the Management of MDBs and IFIs to strengthen accountability, such as the Bank's Grievance Redress Service (GRS). With these initiatives, the Bank and other MDBs

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<sup>2</sup> Resolution No. IBRD 93-10 and Resolution No. IDA 93-6, The World Bank Inspection Panel (22 September 1993), reinstated, amended and consolidated through Resolution No. IBRD 2020-0004 and Resolution No. IDA 2020-0003, The World Bank Inspection Panel (September 8, 2020) (hereinafter “2020 Panel Resolution”) <https://www.inspectionpanel.org/sites/default/files/documents/InspectionPanelResolution.pdf>.

<sup>3</sup> Alvaro Umaña (Ed), *The World Bank Inspection Panel: The First Four Years (1994-1998)* (The World Bank, 1998) 3.

<sup>4</sup> On September 8, 2020, the World Bank's Board adopted a Resolution establishing the World Bank's Accountability Mechanism, of which the Panel is now a part, and creating the Dispute Resolution Service (DRS). See Resolution No. IBRD 2020-0005 and Resolution No. IDA 2020-0004: The World Bank Accountability Mechanism (September 8, 2020) (hereinafter “2020 AM Resolution”).

<https://www.inspectionpanel.org/sites/default/files/documents/AccountabilityMechanismResolution.pdf>.

and IFIs have reinforced the avenues available for affected persons to lodge their complaints, and have modernized their accountability functions.

Such changes are occurring at a time of rapid evolution in the international development landscape. While global accountability has gained in strength, acceptance, and effectiveness over the past thirty years, the world faces a period of great upheaval and uncertainty, with multiple crises – or *polycrises* – ranging from wars, civil unrest, and the COVID-19 pandemic, to climate change and biodiversity loss, and their spillover effects—including inflation, spiraling debt burdens, supply chain disruptions, food insecurity, as well as fragility, conflict, and violence (FCV) situations. These challenges have tested progress on the sustainable development agenda considerably as well as the commitment to ‘leaving no one behind’, which requires enhanced social inclusion and participation and greater institutional transparency and accountability.

This essay offers some of my views regarding the Panel’s role, and some of the key challenges facing the World Bank’s Accountability Mechanism (which houses the Panel and the DRS) and similar independent accountability mechanisms established by other MDBs and IFIs. In particular, the essay focuses on the importance of the independence, integrity, and objectivity of accountability mechanisms; the need to enable greater access for communities and individuals to these mechanisms, while safeguarding their confidentiality in an environment of growing technological disruption; opportunities to explore common approaches<sup>5</sup> amongst multilateral development institutions and their accountability mechanisms; cooperation amongst accountability mechanisms to avoid the duplication of efforts, investment disincentives and inconsistent outcomes; how to best integrate or coordinate dispute resolution and compliance functions; and consideration on what greater technological innovation will mean for fact-finding, evidence gathering, and for the accountability process as a whole.

Ultimately, I argue that independent accountability mechanisms remain a vital cornerstone of effective, transparent, and responsible sustainable development, but one that should continue to evolve to meet the needs of the times and to learn from historical experiences, in an ongoing effort to deliver development assistance fairly and effectively.

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<sup>5</sup> See *infra* notes 29 and 30 and accompanying text.

## *The Mandate, Objectives, and Evolution of the Panel*

### a) The Mandate of the Panel

The Panel is mandated by the Board to independently review Bank Management's compliance with applicable Bank policies and procedures in the context of the projects financed by the Bank.<sup>6</sup> In this sense, the creation of the Panel was a departure from the past, where allegations of non-compliance were addressed only by Bank Management through internal and administrative systems. This does not mean that the Bank's internal systems were replaced by the Panel, but rather that the Bank opened itself up for an independent review that would complement its internal systems for monitoring compliance with its policies.

As Ibrahim Shihata, General Counsel of the World Bank (1983-1998), argued:

*The creation of the Inspection Panel... complemented this internal system of accountability by giving a direct access to affected parties before the Panel (which is a facility of the Bank) and by requiring Management to present to the Board recommendations for corrective action in case the Panel finds a serious violation of Bank policies and procedures resulting in harm to such affected parties in the situations described above. The Board's decision on the actions to be taken by the Bank demonstrates the Bank's accountability for its actions or omissions.<sup>7</sup>*

The Panel's powers to hold the Bank accountable are, however, not open-ended. They are circumscribed by the terms set out in the Inspection Panel Resolution.

### b) The Objectives of the Panel

The Panel is available to communities and individuals who believe that they have been, or are likely to be, harmed by a Bank-funded project as a result of a failure of the Bank to comply with its own operational policies.<sup>8</sup> As of June 30, 2023, the Panel had received 165 Requests for

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<sup>6</sup> Notably, the Panel does not investigate or assess compliance by the Bank's borrowers (*i.e.*, the country or relevant implementing agency), but focuses on the Bank's compliance with its policies and procedures.

<sup>7</sup> Ibrahim Shihata, *Issues Related to the Inspection Panel*, in *THE WORLD BANK LEGAL PAPERS* (Brill, 2001) 611.

<sup>8</sup> 2020 Panel Resolution, *supra* note 2, at para 13.

inspection and registered 120 Requests concerning more than 25 policy issues.<sup>9</sup> The achievements of the Panel, in this context, have increasingly reflected the Bank's continued commitment and efforts to ensure accountability and transparency through compliance with its policies and standards.<sup>10</sup> This commitment is demonstrated in the Bank's comprehensive and specific responses to the Panel's investigation reports. Beyond the Bank, the success of the Panel has also inspired multiple MDBs and IFIs to establish and strengthen their independent accountability mechanisms.

### c) Evolution of the Panel

As external demands for accountability in international development finance and the Bank's internal policies and procedures have evolved, so have the mechanisms put in place to monitor the Bank's compliance. Most recently, in August 2017, the Board commissioned an External Review of the Panel's Toolkit to determine the improvements, reforms, and measures needed for the Panel to continue to operate effectively in the face of new Bank policies, such as the Environmental and Social Framework (ESF).<sup>11</sup> This was followed by the establishment of a Working Group of the Board of Executive Directors' Committee on Development Effectiveness (CODE) in July 2018. CODE was mandated to consider the findings of the 2017 review of the Panel's Toolkit, and based on the lessons and experiences of the Panel, develop proposals for enhancing its effectiveness and value to the World Bank.<sup>12</sup>

In October 2018, the Board approved measures to formally recognize the Panel's advisory role, and the need for coordination between the Panel and accountability mechanisms of other MDBs and IFIs to more efficiently and effectively resolve complaints relating to projects financed by more than one IFI.<sup>13</sup> To further increase transparency in accountability processes, the Board approved an update to procedures for sharing the Panel's Investigation Report with requesters ahead of consideration by the Board. The Board also considered the importance of increasing accountability through dispute resolution, including by maintaining and strengthening the Bank's

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<sup>9</sup> See Inspection Panel, *Panel Cases Data*, <https://www.inspectionpanel.org/panel-cases/data>.

<sup>10</sup> World Bank Group, *Report and Recommendations on the Inspection Panel's Toolkit Review* (March 5, 2020), <https://documents.worldbank.org/en/publication/documents-reports/documentdetail/972351583772786218/report-and-recommendations-on-the-inspection-panel-s-toolkit-review>.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*, at para. 5.

GRS and creating an independent dispute resolution function available at the option of the parties. This function would supplement the Panel’s work by minimizing costs and attempting to resolve grievances without the need for a full-fledged investigation.

Following the culmination of the review of the Panel’s Toolkit, the Board adopted the revised Panel Resolution<sup>14</sup> and the World Bank Accountability Mechanism Resolution<sup>15</sup> in September 2020. The revised Panel Resolution reaffirms the importance of the Panel’s compliance function, as well as its independence and integrity. The Resolution further restates and consolidates the 1993 Panel Resolution, the 1996 Review of the Resolution,<sup>16</sup> and the 1999 Clarification,<sup>17</sup> and amends the 1993 Panel Resolution to reflect the subsequent decisions of the Board.

Through the Accountability Mechanism Resolution, the Board created the DRS which now together with the Panel constitutes the World Bank Accountability Mechanism (AM).<sup>18</sup> The AM is headed by an independent Accountability Mechanism Secretary (the AM Secretary) who is supported by the Accountability Mechanism Secretariat. While the Panel now forms part of the AM, Panel Members are not subject to the supervision of the AM Secretary. The Panel continues to report directly to the Board on its compliance review functions.

### *Key Challenges and Opportunities Going Forward*

- a) The independence, integrity, and objectivity of the accountability function.

Independence, integrity, and objectivity are fundamental for the credibility of accountability mechanisms. From the negotiations of the Resolution establishing the Panel, Board discussions focused deeply on questions of the independence, integrity, and objectivity of the Panel. Ultimately, the Board mandated the Panel to remain fully independent from Bank staff and Management—this was reflected in the original 1993 Panel Resolution, and is maintained in the

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<sup>14</sup> 2020 Panel Resolution, *supra* note 2.

<sup>15</sup> 2020 AM Resolution, *supra* note 4, <https://www.inspectionpanel.org/sites/default/files/documents/AccountabilityMechanismResolution.pdf>.

<sup>16</sup> Inspection Panel, *Review of the Resolution Establishing the Inspection Panel: 1996 Clarification of Certain Aspects of the Resolution*, <https://www.inspectionpanel.org/sites/default/files/documents/ReviewResolution1966.pdf>.

<sup>17</sup> *The 1999 Clarification of the Board's Second Review of the Inspection Panel*, <https://www.inspectionpanel.org/sites/default/files/documents/ClarificationSecondReview.pdf>.

<sup>18</sup> 2020 AM Resolution, *supra* note 4, at para. 2.

2020 Resolution. This means that the Panel is independent and distinct from Bank Management and the decision-making process regarding Bank operations.

Independence is often misunderstood to mean complete separation from the institution and all its organs. The concept of independence in this context requires that the Panel be independent from the Management and staff whose efforts to ensure compliance with the relevant policies and procedures the Panel is tasked with assessing. It means that the Panel must be free from undue influence and interference from staff and Management in the conduct of its functions. The concept of independence can have consequences in the institution's organizational structure (i.e., reporting lines), work-planning, budgeting and workforce processes, and the policies and procedures relating to the fulfillment of its responsibilities and functions. Like all units in the Bank, however, the Panel is not independent from – and must remain accountable to – the Board of Executive Directors, whose oversight authority and responsibility also applies to the Panel. Ultimately, the Board is responsible for the adoption of environmental and social sustainability policies and for overseeing their full and faithful implementation by Management. As a creation of the Board, the Panel plays a vital role in the process of ensuring that Management complies with Board-approved operational policies and procedures.

The commitment to independence and impartiality is also evidenced across the World Bank Group. For instance, the IFC/MIGA Independent Accountability Mechanism (Compliance Advisor Ombudsman (CAO)) Policy emphasizes that 'independence and impartiality are prerequisites to encourage stakeholders' trust and confidence in the CAO.'<sup>19</sup> Several MDBs and IFIs have also modeled the effectiveness of their AMs independence and on the commitment to enhanced independence and impartiality on those of the Panel.

The independence of the Panel is also manifest in the process for appointing Panel members. While the President nominates the Panel members in consultation with the Board, their appointment rests with the Board itself. Similarly, when a Request for inspection is received, the Chairperson of the Panel notifies the President and the Board. While Management has the opportunity to respond to the Request for inspection and the Panel may recommend an investigation, only the Board can authorize an investigation. If an investigation does go forward directly, or after an opportunity for

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<sup>19</sup> World Bank Group, *IFC/MIGA Independent Accountability Mechanism (CAO) Policy* (June 28, 2021), <https://www.ifc.org/content/dam/ifc/doc/2023/ifc-miga-independent-accountability-mechanism-cao-policy.pdf>.

dispute resolution as currently provided for, the Panel’s investigation report is limited to its findings on the Bank’s compliance or non-compliance with the relevant operational policies and procedures of the institution. The 2020 Resolutions ensure a separation between the Panel’s compliance role and the DRS. They clarify that the Panel has no role or opinion in the dispute resolution functions of the DRS, and that the Panel independently performs its compliance functions. To further ensure the independence of the Panel, the role of the AM Secretary with respect to the Panel is limited to coordination with Panel members and the Chairperson. AM staff assigned to the Panel report to the AM Secretary only on administrative matters, and to Panel members on technical matters.<sup>20</sup>

The Bank’s General Counsel, and the Bank’s Legal Vice Presidency more broadly, plays a key role in supporting the Bank’s compliance with a wide range of policies, rules and procedures across a wide range of operational and non-operational matters. The General Counsel has a multi-faceted advisory role that covers the institution as a whole, and is thus exercised independently.

Lawyers regularly interface with teams across the institution to champion and strengthen the institution’s environmental and social policy framework. They draft, review, and negotiate financing agreements for compliance with applicable environmental and social policies. They work with project teams and Bank Management to ensure borrower compliance with applicable requirements during project implementation. The lawyers also support task teams when seeking to address grievances as they arise from project-affected people, consistent with the Bank’s environmental and social policies. In these respects, although the Legal Vice Presidency and the Panel have different roles, they share a common objective - to contribute to the Bank’s compliance with its environmental and social policies and procedures.

The Legal Vice Presidency advises the Panel and the AM Secretary “on matters related to the Bank’s rights and obligations with respect to any Request whether it is addressed through Dispute Resolution or compliance review carried out by the Inspection Panel.”<sup>21</sup> When the General Counsel advises the Panel or the Board on the Bank’s rights and obligations, the General Counsel’s

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<sup>20</sup> 2020 AM Resolution, *supra* note 4, at Part II, para 8.

<sup>21</sup> *Id.*, at Part IV, para 17; *see also* 2020 Panel Resolution, *supra* note 2, at para. 16.



advice is offered as needed “but sometimes with appropriate firewalls depending on the issue.”<sup>22</sup> The “firewall” arrangement allows the General Counsel to advise the Panel with utmost impartiality and integrity, avoiding any perceived conflict of interest. As my predecessor, Anne-Marie Leroy argued:

*Although the fact that the General Counsel is the legal advisor to both Management and the independent accountability and oversight entities does not ordinarily present a conflict of interest, there are situations in which other senior members of the Legal Vice Presidency are called upon to render legal advice in connection with such entities. For instance, a ‘fire-wall’ arrangement is usually observed in requests for advice on Inspection Panel matters. The General Counsel provides legal advice to the Inspection Panel and the Board on the Inspection Panel’s scope, jurisdiction, and mandate. Another senior colleague in the Legal Vice Presidency assists Management in responding to requests for investigation by people claiming to have been harmed by Bank projects and addressing any legal or policy issues raised in them.*<sup>23</sup>

b) Greater access while safeguarding confidentiality in the age of technological disruption.

The Resolution establishing the Panel sets out a relatively low threshold to submit a Request. It may be submitted by two or more individuals or “a community of persons such as an organization, association, society or other groupings of individuals,” or by the local representative of such party or by another representative in the exceptional cases where the party submitting the Request contends that appropriate representation is not locally available, and the Executive Directors so agree at the time they consider the request for inspection.<sup>24</sup>

However, even with this low eligibility threshold, indigenous communities and other vulnerable communities in places that lack access to technology may still face a challenge in accessing the

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<sup>22</sup> Anne-Marie Leroy, *The Institutional and Intellectual Role of the General Counsel: Perspectives from the World Bank*, in ASIF H. QURESHI AND XUAN GAO, INTERNATIONAL ECONOMIC ORGANIZATIONS AND LAW: THE PERSPECTIVE AND ROLE OF THE LEGAL COUNSEL (Kluwer Law International, 2012) 51.

<sup>23</sup> *Id.*, at 58.

<sup>24</sup> 2020 Panel Resolution, *supra* note 2, at para. 13.

Panel. In this context, such communities receive important support from accountability stakeholders such as NGOs that have historically paid close attention to the Bank’s work.

Effective use of information and communication technologies can play a vital role in the accountability process. Access to information, internet technologies, mobile phones, emailing, and teleconference services have strengthened the communication of requests, fact-finding, evidence-gathering, and other aspects of the accountability process. Today, the world is on the verge of a technological revolution with the advent of generative artificial intelligence (AI), which holds the potential to transform and accelerate development impact and organizational efficiency.

While the disruptive impacts of AI technology are increasingly reshaping the digital world, and while its benefits are potentially enormous, it also poses risks that may not be understood fully. AI-generated opportunities such as building awareness and enabling greater access for communities and individuals to accountability mechanisms also have underlying risks, such as compromising confidentiality and amplifying inequalities. Digital and technological advancement should therefore be approached as a new transparency and accountability challenge for the Panel and the Bank. Perhaps the question to ask for the future is to what extent technological measures and interventions will undermine accountability processes enhance their efficiency.<sup>25</sup> It is worth remembering that “technology use can only amplify existing human [and institutional] capacity and intent: it cannot act as a substitute where human [and institutional] capacity and intent do not exist.”<sup>26</sup>

The 2016 World Development Report (WDR), *Digital Dividends*, notes that while technology promises to make the world more inclusive, technological opportunities and benefits remain “unavailable, inaccessible and unaffordable to a majority of the world’s population”.<sup>27</sup> It is therefore essential to ask how the Bank and the Panel can best maximize technological opportunities to reduce information inequality and empower the communities we work with,

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<sup>25</sup> Francesco Galdi and Antonio Cordella, *Artificial Intelligence and Decision-Making: The Question of Accountability*, Proceedings of the 54<sup>th</sup> Hawaii International Conference on System Sciences (2021), <http://eprints.lse.ac.uk/110995/1/0226.pdf>.

<sup>26</sup> Kevin Hernandez and Tony Roberts, *Leaving No One Behind in a Digital World*, Emerging Issues Report, Institute of Development Studies (November 2018), 6, [https://opendocs.ids.ac.uk/opendocs/bitstream/handle/20.500.12413/14147/Emerging%20Issues\\_LNOBDW\\_final.pdf?sequence=1&isAllowed=y](https://opendocs.ids.ac.uk/opendocs/bitstream/handle/20.500.12413/14147/Emerging%20Issues_LNOBDW_final.pdf?sequence=1&isAllowed=y).

<sup>27</sup> The World Bank, *World Development Report 2016: Digital Dividends*, (2016) 6-8, <https://elibrary.worldbank.org/doi/pdf/10.1596/978-1-4648-0671-1>.

especially those facing the greatest geographical or social marginalization. The objective should always be to help such communities in accessing information on Bank operations that have the potential to impact them. Information on the preparation, appraisal, and implementation of Bank operations is *sine qua non* to the effectiveness of the accountability mechanisms and for overall transparency and accountability in development.

c) Harmonization and Cooperative Approaches among MDBs and IFIs AMs to Improve Development Outcomes and Address Harm

MDBs and IFIs have differing institutional mandates and purposes. This means that while they share a common goal of financing development, their approaches to development financing and institutional accountability vary in scope, mandate, and operational procedures. However, over the past few years, MDBs and IFIs have pursued opportunities for harmonization to bridge gaps, enhance credibility, and improve the effectiveness and efficiency of international development financing.

The Paris Declaration on Aid Effectiveness (Paris Declaration) was adopted in 2005 and endorsed by the 2008 Accra Agenda for Action (Accra Agenda) by countries and other key stakeholders in international development cooperation, including the World Bank, as a partnership commitment to the harmonization of development procedures, reducing duplication, and enhancing mutual accountability and transparency in development cooperation.<sup>28</sup> While the Paris Declaration and the Accra Agenda do not specifically address the role of accountability mechanisms, harmonization is needed across development work generally, including the handling of project-related grievances.

When MDBs and/or IFIs co-finance a project, they should actively explore the “common approaches” discussed below to environmental and social risk management as already envisioned – but not realized – in the ESF. Beyond that, MDBs and IFIs should continue to pursue harmonization of environmental and social standards, including those related to accountability.<sup>29</sup>

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<sup>28</sup> OECD (2005), *Paris Declaration on Aid Effectiveness*, (OECD Publishing), [https://read.oecd-ilibrary.org/development/paris-declaration-on-aid-effectiveness\\_9789264098084-en#page10](https://read.oecd-ilibrary.org/development/paris-declaration-on-aid-effectiveness_9789264098084-en#page10) [hereinafter “Paris Declaration”].

<sup>29</sup> See *World Bank Environmental and Social Policy for Investment*

Too often, borrowers – particularly borrowers in the poorest countries and in FCV situations or otherwise lacking capacity – struggle to understand, implement and comply with environmental and social standards that vary between different MDBs or IFIs co-financing a project. This also presents challenges for local communities in seeking access to the accountability mechanisms of these financiers. Harmonized standards, requirements and processes would facilitate borrowers’ understanding and therefore enhance compliance and the access of communities to grievance redress services, ultimately producing greater efficiency and better results for the lenders, borrowers, communities, civil society and boards of directors.

Multilateral efforts to harmonize standards across a wide range of IFIs have yielded some progress over the past decade, but more work is needed. Under the ESF, for example, the borrower may apply a common set of environmental and social requirements agreeable to the government and the joint project lenders—known as a “common approach”— provided that this approach enables the project to achieve objectives materially consistent with the Bank’s environmental and social standards.<sup>30</sup> Other mechanisms that have often allowed for even simpler approaches include trust fund, co-financing, or other agreements or accreditation mechanisms that allow channeling multiple sources of donor financing through a single MDB or IFI, and the application of the institution’s single set of environmental and social standards to the entire co-financed project. More generally, as MDBs have updated their respective environmental and social policies, they have drawn inspiration from each other and organically coalesced around a common core of good international practice.

Still, greater efforts and faster harmonization are needed, but are difficult to achieve, because to a degree different environmental and social requirements partially find their roots in each institution’s specific structure and mandate, which can sometimes be difficult to align with those of other institutions. Short of a truly global and common set of standards, more pragmatic but meaningful reforms can be pursued. MDBs should sharpen their focus and renew their resolve to cooperative approaches in order to meet the challenges of the *polycrises* and the need for more urgent and effective delivery with better compliance and accountability. This might take the form

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*Project Financing* in THE WORLD BANK, WORLD BANK ENVIRONMENTAL AND SOCIAL FRAMEWORK (ESF) (World Bank, 2017) 5,

<https://thedocs.worldbank.org/en/doc/837721522762050108-0290022018/original/ESFFramework.pdf>.

<sup>30</sup>*Id*; see also Paris Declaration, *supra* note 27, at para. 9.

of strategic agreements to realize the promise of a “common approach” that has been relatively elusive to date—in the form of institutional agreements between two or three MDBs generally, or in one or two countries or sectors, or on projects with lower environmental and social risks.

Collaboration between the Bank’s AM and the Accountability Mechanisms (AMs) of other IFIs is another area for enhancing accountability through cooperation and harmonization. Currently, there are approximately 23 AMs linked to different MDBs and IFIs, and together they are part of the Independent Accountability Mechanisms Network (IAMnet), a partnership dedicated to building institutional capacity on accountability and transparency;<sup>31</sup> since 2016, its Secretariat has been hosted by the World Bank.

Collaboration between AMs is an added-value for accountability, especially when a Request for inspection relating to a co-financed project is simultaneously submitted to the Panel and the AMs of other MDBs and IFIs. In such circumstances, the Panel has in its Operating Procedures emphasized that it “will make its best efforts to coordinate with the accountability mechanism(s) of co-financier(s) to process the complaints in the most efficient and effective way possible.”<sup>32</sup> The Procedures recognize that this can only be realized if the activities in this area are based on principles of collaboration and cooperation, and take place within the requirements and constraints of the Panel’s purpose and mandate as set out in its Resolutions, rules, and procedures, and without affecting its independent and impartial compliance functions or the requirements of confidentiality and disclosure of information.

#### d) Dispute resolution and compliance functions.

While the Bank’s focus on independent accountability through compliance dates back to 1993, its approach to accountability through dispute resolution is relatively new. In 2015, the Bank created and operationalized the GRS, a Management-led process to enhance the Bank’s commitment to transparency and accountability by providing “a clear entry point, process and platform for

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<sup>31</sup> *Independent Accountability Mechanisms Network (IAMnet)*, <https://www.worldbank.org/en/programs/accountability/iamnet>.

<sup>32</sup> The Inspection Panel, *Inspection Panel Operating Procedures*, (December 2022), para 72, <https://www.inspectionpanel.org/sites/default/files/documents/IPN%20Operating%20Procedures-1%20December%202022.pdf>.

individuals and communities to raise concerns directly to Management on environmental and social issues related to Bank-financed Operations.”<sup>33</sup> The GRS rests on the Bank’s increasing recognition that genuine resolution of complaints is key to increasing accountability and credibility.<sup>34</sup> This broadly refers to the resolution of disputes in a timely, efficient, and effective manner, including by encouraging the speedy handling of complaints at all levels—including through project-level grievance mechanisms and through corporate mechanisms such as the GRS.<sup>35</sup> This is meant to complement the Panel’s work and to add value to accountability within the Bank by promptly responding to concerns that arise in the course of project implementation.<sup>36</sup>

While it is Management-led, the GRS is functionally separate from the units that oversee Bank operations. This allows the GRS to provide dispute resolution support to Bank teams and a degree of independence and accountability to communities bringing their grievances to the attention of the Bank. The objective of the GRS is to facilitate communication between all parties involved in a complaint, including all relevant Bank units, Bank task teams, borrower implementing agencies, and complainants, “to determine the most adequate problem-solving approach (mediation, conciliation, fact-finding, etc.) to effectively and efficiently address the issues raised.”<sup>37</sup> As of June 30, 2022, the GRS had received a total of 1441 admissible and inadmissible complaints.<sup>38</sup> While this huge number of cases can be considered alarming, it is also an indication of the GRS’s potential to receive and resolve issues—large and small—that arise in Bank-supported operations. It has also allowed Bank Management to garner lessons and experiences from these grievances and to enhance Bank operations and accountability.

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<sup>33</sup> Bank Directive, Grievance Redress Service (GRS), 5 May 2021 (setting out the mandate and functions of the GRS).

<sup>34</sup> World Bank Group, *Safeguards and Sustainability Policies in a Changing World: An Independent Evaluation of World Bank Group Experience* (IEG Study Series, 2010) xviii,

<https://openknowledge.worldbank.org/server/api/core/bitstreams/41469446-7971-5499-b068-1c0334cb2e37/content>.

<sup>35</sup> The GRS is housed in the World Bank’s Operations Policy and Country Services (OPCS) Vice Presidency. See GRS Overview, <https://worldbankgroup.sharepoint.com/sites/OPCS/SitePages/PublishingPages/About-GRS-08062018-151851.aspx>.

<sup>36</sup> *Id.*; see also IEG study, *supra* note 34, at page xxix.

<sup>37</sup> IEG study, *supra* note 34.

<sup>38</sup> A GRS complaint is admissible when it 1) relates to a World Bank-financed project that is under preparation, active, or has been closed for less than 15 months; 2) it is submitted by individuals or communities affected by a World Bank-supported project, or by their authorized representative, and; 3) the complainant(s) alleges that the project has caused or is likely to cause harm. The GRS considers the complaint inadmissible if the complaint 1) is procurement-related; 2) alleges fraud and/or corruption; 3) pertains to IFC, MIGA, or other IFI-supported projects; 4) concerns employment or the pursuit of employment with the World Bank; and 5) is frivolous or anonymous.

e) Non-Compliance, Risk and Harm.

Another challenge underscoring the AM processes is the misconception that an MDB will refrain from meaningful corrective action with respect to harm or the risk of harm in a community unless and until an inspection process produces a report that finds (1) a serious non-compliance by the MDB with its policies and procedures and (2) that such non-compliance resulted in harm to affected parties. Experience has shown that MDBs generally take any allegations of harm seriously and take action, with or without the shadow of an independent accountability process looming.

At the World Bank, Management makes considerable efforts through various mechanisms to minimize risks, prevent harm and take corrective action where needed, including through regular project supervision, third party monitoring arrangements, requirements for borrowers to operate grievance mechanisms, and the aforementioned availability of the GRS. The recent creation of the DRS, as part of the World Bank's AM, introduced an additional independent avenue through which harm can be addressed without a finding of serious non-compliance.<sup>39</sup> Moreover, Management carefully considers necessary measures to mitigate the risk of harm or to identify corrective measures in relation to requests for inspection, even where the Panel does not end up making a formal finding of non-compliance. These "no-fault" mechanisms are utilized by the World Bank to respond to risks and harm that arise in its supported operations on a regular basis.

The assumption that a finding of non-compliance that is linked to harm is required for an MDB to take remedial action puts pressures on the MDB, the AM inspection function and complainants that casts the compliance review process in an accusatory and unnecessarily contentious footing. This assumption can also give the compliance review function the appearance of a police and prosecution process and can drive MDBs' staff to assume a defensive mindset and posture – all of which can be exacerbated by legal concerns that a public finding by an institution's AM to the effect that the MDB's violations of policies caused harm is fraught with legal risk. The non-compliance/harm assumption also raises the bar for affected people and civil society, and may pressure an institution's AM to find links between non-compliance and harm that are not always obvious. This in turn may raise MDB shareholder concerns that an AM is pushing the boundaries of its mandate to meet a non-compliance/harm threshold. Worse, the adversarial atmosphere that

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<sup>39</sup> 2020 AM Resolution, *supra* note 4, at para. 11.

sometimes surrounds the inspection process and the concerns regarding legal risks impede optimal levels of cooperation between MDB staff, the AM and the affected communities.

In some situations, MDBs and IFIs may lack the means or mandate to enable redress of all harms that may occur in projects, especially those that arise from no fault or contribution by the MDB or IFI. However, in some cases of this nature, mechanisms similar to the Bank Management-led GRS or the recently created independent DRS may prove especially fruitful to go beyond such limitations and enable the parties in conflict to find avenues to redress harm.

In sum, MDBs and IFIs can and should establish multi-prong, multi-tool and multi-institutional approaches to address harm and the risk of harm in order to deliver vitally and urgently needed projects in an environmentally and socially responsible way. Other MDBs that do not already have avenues like the World Bank's GRS and DRS, should continue to consider ways of addressing allegations of harm through "no-fault" approaches. A certain level of tension in the accountability processes is inevitable and can be healthy. But there may be an equilibrium between tension and contention that produces better results more efficiently.

### *Final thoughts*

Accountability in development is more important than ever, especially as calls are growing for the World Bank to evolve to tackle some of the world's toughest global challenges. On-going overlapping crises such as climate change, fragility, debt, pandemics, and other threats warrant action by both the public and private sectors and coordination across WBG institutions and other MDBs.<sup>40</sup> This challenging landscape underscores the need for independent and effective AMs. As the Bank evolves its Vision and Mission to strengthen development financing and development impact, the Evolution Roadmap will need to prioritize accountability.<sup>41</sup> What we have learned from the last 30 years can guide the evolution of the Bank and its AM. As we aim for the next 30 years of effective development financing and improved accountability, there is no doubt that independent accountability mechanisms remain a vital cornerstone of effective, transparent, and

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<sup>40</sup> The World Bank Group, *Evolving the World Bank Group's Mission, Operations, and Resources: A Roadmap* (Dec. 18, 2022) <https://documents1.worldbank.org/curated/en/099845101112322078/pdf/SECBOS0f51975e0e809b7605d7b690ebd20.pdf>.

<sup>41</sup> *Id.*



responsible sustainable development, but must continue to strive for greater effectiveness and efficiency to meet the challenges of an increasingly urgent development agenda.