World Bank vs. World Bank: Assessing the successes and failures of the Inspection Panel in the protection of project-affected communities

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9, July 2012

Seminar Paper

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"Coming together is a beginning; keeping together is a progress; working together is a success"[1]

Abstract

Since the 1980s international organizations (IOs), particularly international economic institutions[2] such as the World Bank, the International Monetary Fund (IMF) and the World Trade Organization (WTO) have been accused of being unaccountable.[3] Calls for the accountability of such institutions have intensified in recent years as a result of pressure from civil society that argue for greater transparency and accountability of such institutions in their actions and decision-making processes.[4] It is essential to examine the issue of accountability more than ever today given that the World Bank, the IMF and the WTO function in ways which deeply intrude into the national policies of member states.[5] The debate raises key issues of international governance pertaining to *whom* and for *what* should such institutions be accountable. This has become increasingly important in light of the new challenges brought about by globalization.[6]

During a period of immense international pressure, the World Bank created the Inspection Panel in 1994 which set a precedent in allowing peoples affected by World Bank projects to seek redress. As the first working accountability mechanism for international financial institutions (IFIs), it was hailed as an unprecedented effort to increase the accountability of the World Bank.[7] Despite its novelty at the time which it was established, there are many criticisms that have been levelled at the Inspection Panel. In general, critics question whether the Inspection Panel truly increases the accountability of the World Bank as a whole.[8] It is often argued that the Inspection Panel has a limited substantive mandate and has no power to grant relief.[9] Against this background, this paper

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[1] Henry Ford, *American Industrialist and pioneer of the assembly-line production method* (1863-1947).
[2] Collectively these three international economic institutions are commonly known as 'International Financial Institutions' (IFI). The famous conference at Bretton Woods in July 1994 was the birthplace of the major IFIs.
[3] Ngaire Woods, 'Making the IMF and the World Bank more Accountable' (2001) 77 *International Affairs* 83, 87.
[4] *Ibid*
[5] Ngaire Woods and Amrita Narlikar, 'Governance and the Limits of accountability: the WTO, the IMF and the World Bank at 570.
[6] Ngaire Woods, 'Who Should Govern the World Economy: the Challenges of Globalization and Governance' (2001) 9 *Renewal* 73, 74.
[7] See: *Accountability at the World Bank: The Inspection Panel at 15 Years* (2009) at p.94 available at: <http://siteresources.worldbank.org/EXTINSPECTIONPANEL/Resources/380793-1254158345788/InspectionPanel2009.pdf> (accessed 06.06.2012) comment by Eduardo Abbott, Founding Executive Secretary of Inspection Panel and See generally: Enrique R. Carrasco and Alison K. Guernsey, 'The World Bank's Inspection Panel: Promoting True Accountability through Arbitration' (2008) 41 *Cornell International Law Journal* 3.
[8] *Ibid* Carrasco and Guernsey at 3.
[9] *Ibid.*

seeks to assess the successes and failures of the Inspection Panel since its creation in 1994 by analysing the various projects it has undertaken to date.

The paper seeks to explore in some detail the events that led to the establishment of the Inspection Panel, its functions, significance in the context of international law and its actual and perceived contributions to the operations and policy development of the World Bank. It first addresses the historical background and impetus behind the establishment of the Inspection Panel in order to set the scene for an extensive analysis into its operations. In so doing, the notion of accountability will be analysed and applied to the World Bank in light of its changing mandate and structure of governance.

The paper will then examine the two accountability mechanisms established by the World Bank Group[10] with the aim of becoming more accountable. Within the World Bank Group, the International Bank for Reconstruction and Development, the International Financial Corporation (IFC) and the Multilateral Investment Guarantee Agency (MIGA), established varying accountability mechanisms in response to global civil society and member state demands. This paper will focus primarily on the Inspection Panel of the World Bank which will be compared with the Compliance Advisor Ombudsman (CAO) by examining their organizational structures and functions before embarking on evaluating their success in improving accountability.

Attention will first be given to the role and structure of the Inspection Panel and in particular, it will explain the Panel procedure. Such an analysis will pave the way for an in-depth discussion on the successes and failures of the Inspection Panel in light of a number of recent projects that it has undertaken.

Having compared the two accountability mechanisms of the World Bank, the paper will explore the various proposals aimed at bolstering accountability and a conclusion will then be reached as to the effectiveness of the Inspection Panel against the CAO and the long-term viability of this particular accountability mechanism.

[10] The World Bank Group includes the International Bank for Reconstruction and Development (IBRD) established (1944) with the task of making long-term reconstruction loans to war-ravaged economies of Europe and Asia. However, countries had to be IMF members in order to qualify for membership in the IBRD; the International Finance Corporation established (1956) to promote private investment in developing countries; the International Development Association established (1960) to finance projects in very poor countries on high concessionary terms; the International Centre for the Settlement of Disputes established (1966) and the Multilateral Investment Guranatee Agency (1988).

1.0 The notion of 'Accountability'

Accountability[11] is an important element of the legitimacy of an institution.[12] The notion of 'accountability' has varying meanings across a wide spectrum of activities of international organizations. Given that international organizations such as the World Bank, the IMF and the regional development banks[13] have considerable power over loan conditions of developing countries has led to widespread calls for their accountability in their actions and decision-making procedures.

Demands for accountability are based on the adverse effects of international organization's operations on communities and ecosystems but also to improve the transparency of international organization decision-making.[14] It is strongly argued that the World Bank lacks accountability because it is not sufficiently democratic in its organizational voting structure resulting in a 'democratic deficit' viewed in the light of the democratic ideals of states.[15] Moravcsik argues that international organizations having a democratic deficit is to assume that international organizations should behave like national governments; specifically modern industrialized democracies. This is not enough however, because democracies may or may not be accountable to their citizens but how they are accountable depends on different models of accountability.[16]

According to Stiglitz[17], accountability requires that (i) people are given certain objectives; (ii) there is a reliable way of assessing whether they have met those objectives; and, (iii)consequences

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[11] The term 'accountability' stems from the late Latin *'accomptare'* (to account), a prefixed form of *'computare'* (to calculate), which in turn derived from *'putare'* (to reckon) from the Oxford English Dictionary, 2nd edn. While the term itself does not appear in English until its use in the 13th century Norman England; the concept of account-giving has ancient roots in record-keeping activities related to governance and money-lending systems that first developed in Ancient Israel, Babylon, Egypt, Greece and later, Rome. See: Melvin Dubnick, (1998). "Clarifying Accountability: An Ethical Theory Framework." In Charles Sampford, Noel Preston and C. A. Bois. *Public Sector Ethics: Finding And Implementing Values*. Leichhardt, NSW, Australia: The Federation Press/Routledge. pp. 68–8l.

[12] The Inspection Panel at 15 years, *supra* note 7 at p.109 Annex B Note on the Criteria for Evaluating Accountability mechanisms in MDBs: Address to 4th Meeting of Accountability Mechanisms, London, England, June 21 2007, Edith Brown Weiss.

[13] The regional MDBs are the Inter-American Development Bank set up by the Agreement Establishing the Inter-American Development Bank, *available at* http://www.idbdocs.iadb.org/wsdocs/getdocument.aspx?docnum=555080. (accessed 06.06.2012) [hereinafter IDB Charter]; the Asian Development Bank set up by the Agreement Establishing the Asian Development Bank, *available at* http://www.adb.org/Documents/Reports/Charter/charter.pdf (accessed 06.06.2012) [hereinafter ADB Charter]; the African Development Bank set up by the Agreement Establishing the African Development Bank, *available at* http://www.afdb.org/pls/portal/docs/PAGE/ADB_ADMIN_PG/DOCUMENTS/

[14] See generally: A Buira., (Ed.) *Challenges to the World Bank and IMF*, Antham Press, 2003.

[15] *Ibid*; Ngaire. Woods, 'The Challenge of Good Governance for the IMF and the World Bank Themselves,' (2000) 28 *World Development* 823, 825-828.

[16] A, Moravcsik, 'Is there a 'Democratic Deficit' in World Politics? A Framework for Analysis', (2004) 39 *Government and Opposition* 336, 363-363.

[17] Joseph E. Stiglitz, 'Democratizing the International Monetary Fund and the World Bank: Governance and Accountability' (2003) 16 *Governance: An International Journal of Policy, Administration and Institutions* 111, 111.

exist for both the case in which they have done what they were supposed to do and the case in which they have not done so.

In defining what is meant by the term accountability, Caporoso[18] is of the view that accountability is the means to be held responsible for a state of affairs: the way a department is run, a budget is spent and a transnational system is governed. In relation to the World Bank, Fox[19] states that accountability "refers to the process of holding actors responsible for their actions.[20]" One type of accountability is what is known as a top-down accountability, where managers hold staff accountable for their performance.[21] This is the customary internal accountability where member states are accountable to their agencies

Internal accountability applies in those situations where an agent is held to answer for performance that involves some delegation of authority to act. Internal accountability of international organizations can be explained in terms of the principal-agent theory whereby international organizations are accountable to their principals (member states) who created and continue to fund international organizations in order to undertake tasks that states are unable or unwilling to do carry out. In this way, international organizations are traditionally accountable to their member states via their organizational structure. For the World Bank, this includes a Board of Governors made up of member state's finance ministers who meet annually to discuss the overall direction of the organizations.

On the other hand, external accountability refers to making international organizations more accountable to persons affected by their operations rather than from electoral or hierarchical accountability.[22] In large part, the relationship between international organizations and affected communities, combined with the reputational accountability triggered the establishment of accountability mechanisms at the World Bank. With the profound impacts of globalization and the inter-related nature of the many functions of international organizations has meant that, in

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[18] J Caporoso., "Democracy, Accountability, and Rights in Supranational Governance," in M. Kahler and D.A Lake (eds), *Governance in a Global Economy: Political Authority in Transition*, Princeton and Oxford, Princeton University Press, 2003 at p.366.

[19] Jonathan Fox, "Introduction: Framing the Inspection Panel," in D. Clark, J. Fox and K. Treakle (eds), *Demanding Accountability: Civil Society Claims and the World Bank Inspection Panel*, Lanham, Boulder, Rowman and Littlefield (2003) at p.XII.

[20] In comparison to the World Bank and other international development lenders, the IMF and the WTO have resisted so-called *external accountability*, continuing to view accountability in terms of how states "respond to their authority" *Ibid* at p.XV.

[21] The Inspection Panel at 15 Years, *supra* note 7 p.109.

[22] Bowles, I., and Kormos, C, 'The American Campaign for Environmental Reforms at the World Bank,' (1999) 23 *The Fletcher Forum of World Affairs* 211, 220-225.

undertaking their agendas, they have often adversely impacted on people within borrower countries.[23] As Dahl points out, external accountability is based on direct participation between international organizations and citizens more akin to state-individual relations than the indirect accountability of international organizations to states, and states in turn to their citizens.[24]

The use of internal and external typologies will remain the underlying focus of the paper as it relates to the use and application of the types of accountability mechanisms created by the World Bank Group. Against this background, it attempts to highlight the inherent power dynamics both within and outside of international organizations where member states have considerably more power over the organization than non-state actors outside the organization, which in turn influences the structure of the accountability function.

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[23] B. Thirkell-White., 'The International Monetary Fund and Civil Society' (2004) 9 *New Political Economy* 251, 262.
[24] R, Dahl 1999, 'Can International Organizations be Democratic? A Skeptic's Views' in I.Shapiro and C. Hacker-Cordon (eds) *Democracy's Edges*, Cambridge, Cambridge University Press: at p.23.

2.0 Historical background- Creation of the Inspection Panel

The Inspection Panel was established by the World Bank in 1993 and become operational in 1994.[25] The impetus for the creation of the Inspection Panel followed from the 1980s during which the World Bank committed itself to certain operational policies and procedures, including policies on involuntary settlement[26] and tribal peoples.[27] A series of events collided to provide the momentum for such an auspicious venture.[28] Prior to the establishment of the Panel, the Bank had engaged in a number of projects that had devastated local populations and caused significant environmental damage.[29]

Thus, in the late 1980s and early 1990s, pressure and protest from transnational activists[30] and project affected communities questioned the social and environmental impact of Bank financed operations.[31] A central aspect of the critique against the World Bank was not complying with its policy commitments which it had adopted to prevent these very types of adverse social and environmental impacts.

One such highly visible project which prompted the establishment of an Inspection Panel arose from the impact of the construction of the Narmada Dam in India.[32] After an independent evaluation of the project commissioned by the World Bank, the Morse Report, which became known

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25 The Panel was officially created by two similar Resolutions of the International Bank for Reconstruction and Development (IBRD) and the International Development Agency (IDA) signed by the Board of Executive Directors on September 1, 1993 (Resolution IBRD 93-10) and (Resolution IDA-93-6). The Resolution specifies that the Panel has jurisdiction with respect to operations supported by IBRD and the IDA. In 1996 and 1999 Clarifications were added to the Resolution.

26 Inspection Panel, 2002, "2001-2002 Annual Report," Washington D.C, World Bank. International Finance Corporation 1999a, "IFC Annual Report 1999," Washington D.C., International Finance Corporation at p.48.

27 'Tribal Peoples in Bank-Financed Projects,' Operational Manual Statement 2.34, February 1982, at *para*. 4.

28 The Inspection Panel at 15 Years, *supra* note 7 at p.98

29 Enrique R. Carrasco and Alison K. Guernsey, 'The World Bank's Inspection Panel: Promoting True Accountability through Arbitration' (2008) 41 *Cornell International Law Journal* 3, 3.

30 Transnational activists were able to do so by influencing key components of the U.S. Congress to make the Bank more accountable by creating an independent Inspection Panel. It is argued by Fox that, "[t]ransnational campaigns put the issue on the agenda, but the Inspection Panel's creation was made possible by leverage politics based on conjunctural domestic-state society coalitions within the United States." See: Jonathan Fox, 'The World bank Inspection Panel: Lessons from the First Five Years' (2000) 6 *Global Governance* 279, 289.

31 Ibrahim Shihata, The World Bank Inspection Panel, (Washington D.C., World Bank and Oxford University Press, 1994), p.9-13; D Kapur, "The Changing Anatomy of Governance at the World Bank", in J.R. Pincus and J.A. Winters (eds.) *Reinventing the World Bank*, Ithaca and London, Cornell University Press (2002), p.72; J Fox, 'The World bank Inspection Panel: Lessons from the First Five Years' (2000) 6 *Global Governance* 279, 279; A Umana, *The World Bank's Inspection Panel*, 1994-1998, Washington D.C., The World Bank (1994), p.1; D Hunter, 'The World Bank's New Inspection Panel' (1994) 36 *Environment* 2, 2.

32 'Sardar Sarovar Dam'; The World Bank granted India a loan to build a dam that would supply water to thirty million people and irrigate crops to feed another twenty million; See: World: South Asia Narmada: A Fiftieth Anniversary of the World Bank and the IMF Prompts Criticisms History of Controversy, <http://news.bbc.co.uk/2/hi/south_asia/407326.stm> (accessed 04/06/2012) cited in Carrasco and Guernsey, *supra* note 29 at 3.

as the Morse Commission[33], The Morse Commission was charged with the function of evaluating the World Bank's role in the Sardar Sarovar Dam and Canal project on the Narmada River in India and was the body responsible for the first independent review of a Bank-supported project under implementation.[34] Following its investigation, the Commission published a report which revealed the Bank's major failures in the oversight of its own social and environmental policies in project lending during the project's execution.[35]

Furthermore, the Wapenhans Report[36], another internal review of the World Bank described a 'culture of approval'[37] of the World Bank, an attitude that focused on simply increasing the Bank's loan portfolio without sufficiently taking into consideration the social and environmental effects of its lending scheme.[38] This provided transnational activists and U.S. Congress with leverage to gain support for the establishment of an accountability mechanism to ensure the Bank's social and environmental sustainability. As Bowles and Kormos[39] point out, this was to the effect that U.S. Congress threatened to withhold International Development Assistance[40] (IDA) replenishment funds in the event that the World Bank does not establish such a mechanism. In fact, IDA replenishment became a central focus for environmental groups seeking to reduce the impact of World Bank loans

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[33] As Udall explains, the Morse Commission was an independent panel that investigated policy violations. Many of the Morse Commission features, such as independence and access to Bank staff and project documents provided the basis for the Inspection Panel design. See; Udall Inspection Panel at 15 years, *supra* note 7 at p.99

[34] See generally, Operations Evaluation Department, *Learning from Narmada*, O.E.D. May 1995 discussing the problems that the project caused for Western India.

[35] World Bank Inspection Panel, Accountability at the World Bank: 10 Years On 2 (2003). The Morse Commission recommended that the World Bank withdraw from the project. Nevertheless, Bank Management decided to continue and the President of the World Bank, Lewis Preston personally advocated action to remedy the project's shortfalls. With profound public outrage against the construction of the dam and the human rights violations committed against protesters and NGOs, the Indian government swiftly withdrew from the loan agreement in 1993. See: Susan Katz Miller & Sanjay Kumar, *Narmada Dam Fails World Bank's Final Test*, NEW SCIENTIST, Apr. 10, 2003, *available at* <http://www.newscientist.com/article/mg13818680.400-narmada-dam-fails-world-banks-finaltest-html> (accessed 04/06/2012).

[36] The Wapenhans Report revealed the lack of adherence to policies and the failure of a large number of projects. See; Panel at 15 years report at page 98. See generally, Ibrahim Shihata, *The World Bank Inspection Panel*, (Washington D.C., World Bank and Oxford University Press, 1994); Daniel D. Bradlow, 'International Organizations and Private Complaints: The Case of the World Bank Inspection Panel' (1994) 34 *Vancouver Journal of International Law* 553, 557-565.

[37] The 'approval culture' of the World Bank was said to be whereby the Bank disregarded the, 'commitment of borrowers and their implementing agencies' as well as the "degree of 'ownership' assumed by the borrowers " over such projects; See Ibrahim Shihata, I Shihata, *The World Bank Inspection Panel*, (Washington D.C., World Bank and Oxford University Press, (1994), p.7 as cited in Carrasco and Guernsey, *supra* note 29 at 7.

[38] *Ibid* at 4.

[39] I Bowles and C Kormos, 'The American Campaign for Environmental Reforms at the World Bank' (1999) 23 *The Fletcher Forum of World Affairs* 211, 220.

[40] The IDA is a separate fund with different terms and articles of agreement, although it is administered by World Bank staff in conjunction with Bank loans. To raise funds for IDA rather than request for an increase in Bank member's capital, states voluntarily became members of the IDA through an initial subscription, accompanied by periodic replenishments which occur every three to four years. See: Ibrahim Shihata, The World Bank Inspection Panel, (Washington D.C., World Bank and Oxford University Press, 1994), p.11 as cited in Carrasco and Guernsey, *supra* note 29 at 4.

by arguing that, IDA funds should not be offered until such time when the World Bank has endorsed measures ensuring its own accountability in addition to several other NGO demands.

The blueprint for the creation of the Inspection Panel was given some force following the 1992 United Nations Conference on Environment and Development in Rio de Janeiro which sought to chart a new cooperative approach to addressing interrelated issues of social development, economic development and environmental protection. The prospect of creating an independent inspection mechanism of accountability, participation and transparency became a reality with the efforts of transnational activists, governments and awareness amongst members of the World Bank's Board[41] to implement a permanent process for dealing independently with projects and policy violations.[42] Following several months of unrelenting pressure by transnational environmental and human rights groups, the World Bank established the Inspection Panel that would oversee World Bank projects comply with set objectives and become more transparent in relation to its project lending policies.[43] The Inspection Panel became operative in 1994 to investigate claims that the World Bank has not adhered to its environmental and social policies and finally gave a potential voice and forum to all of the invisible and marginalized communities adversely affected by Bank-financed problem projects.[44]

[41] As pointed out by Udall, until the Panel was created in 1993, NGOs and affected persons had for many years turned to the Board of Executive Directors as a last resort or attempting to effect change in Bank-funded problem projects with policy violations. As an example, Udall points out that, eight years prior to the establishment of the Panel's creation, grassroot activists from India travelled to Washington D.C. several times to meet the with India Country Department, the Regional Vice-President and Bank Executive Directors, with the result that they left with promises for project improvement that never materialized.
[42] The Panel at 15 years, *supra* note 7 at p.98.
[43] D Kapur, "The Changing Anatomy of Governance at the World Bank", in J.R. Pincus and J.A. Winters (eds.) *Reinventing the World Bank*, Ithaca and London, Cornell University Press (2002), p.72
[44] See comment by Lori Udall, Inspection Panel at 15 years, *supra* note 7 at p.99.

3.0 The Inspection Panel

Since its inception, the role of the Inspection Panel has centred on addressing the concerns of persons who are affected by Bank projects and to ensure that the Bank adheres to its operational policies and procedures in the design, preparation and implementation of such projects.[45] As Udall points out, the World Bank was one of the first international organizations to have a mechanism that made it directly accountable to private citizens affected by its operations.[46] Moreover, the Inspection Panel is itself "unique: combining the possibility of access of individuals and private groups to rights under international law, with the opportunity to question the activities of international organizations.[47]"

The Inspection Panel deals exclusively with claims relating to the International Bank of Reconstruction and Development (IBRD), which focuses on providing loans to "middle income and creditworthy poor countries" and the International Development Association (IDA) which "focuses on the poorest countries in the world.[48]" The jurisdiction of the Panel does not extend to risk-mitigation or private-sector investment arms of the World Bank.[49]

The Inspection Panel was charged with the power to investigate claims made by a group of people adversely affected or potentially affected by a World Bank funded project as its primary objective.[50] As such, the Panel may only investigate claims against its own actions, or inaction, rather than against borrower states, and claimants must be directly affected or potentially affected by the project in order for the claim to be considered legitimate. In this sense, accountability refers to the internal accountability of the World Bank that is instigated by an external stakeholder process in the attempt to obtain external accountability.

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[45] *Ibid*

[46] Lori. Udall, *The World Bank Inspection Panel: A Three Year Review*, Washington D.C., Bank Information Centre (1997) at p.1.

[47] R. Bissell, 'Recent Practice of the Inspection Panel of the World Bank,' (1997) 91 *American Journal of International Law* 741, 741. (Former Inspection Panel member).

[48] World Bank, International Bank for Reconstruction and Development, About Us, WEBSITE (accessed 06.06.2012).

[49] The Bank's private-sector investment arm is the International Finance Corporation (IFC); the risk mitigation department is the Multilateral Investment Guarantee Agency (MIGA). Instead of being subject to the mandate of the Inspection Panel, these institutions are reviewed by the Office of the Compliance Advisor Ombudsman (CAO). *See* Compliance Advisor Ombudsman, <http://www.cao-ombudsman.org/> (accessed 06.06.2012); *see also generally Compliance Advisor Ombudsman Operational Guidelines (2007)* [hereinafter 'CAO Guidelines'], *available at* <http://www.caoombudsman.org/htmlenglish/documents/WEBEnglishCAO06.08.07Web.pdf> (accessed 06.06.2012).

[50] The Inspection Panel's objective is therefore to: "provide independent judgement that would help resolve major differences in cases where it is asserted that rights and interests of the parties are adversely affected because the Ban has failed to follow its operating policies and procedures in the design, appraisal and/or implementation of Bank lending operations. (Bank President Memorandum as cited in: Ibrahim. Shihata., 1994, *The World Bank Inspection Panel*, Washington D.C., World Bank and Oxford University Press at p.36.

3.1 The Panel process

A brief summary will be given as to how the Panel process works and how it may be used by people and communities affected by World-bank financed projects. In order to bring a claim to the Inspection Panel, project-affected people and communities (the Requesters), must believe that actual or likely harm[51] will result from the Bank's failure to adhere to its policies and procedures. Requesters must also bring their concerns to the attention of the World Bank before filing a claim.[52] The Panel's functions and procedures are outlined in its Operating Procedures and its founding Resolution.

Under the Panel procedures, any two or more individuals affected by a World Bank financed-project can submit a letter to the Panel requesting it to investigate the project. This letter is formally known as a Request for Inspection, which can be in any language, is hand-written and signed in addition to a number of other requirements.[53] One important but often misunderstood point is that Panel procedures do not require the Request to cite specific Bank policies.[54] In this way, the Panel is aware that locally affected people and Requesters may not have access to information about Bank policies.[55]

It should be noted that Panel procedures also allow a request to be submitted by a local organization or other appointed representative of affected people or, in exceptional circumstances, an organization in another country if no local representative is available.[56] The ability to submit a Request through a representative provides another means to protect the confidentiality of

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[51] The Panel has the authority to investigate many different types of harm or potential harm to people or the environment that result from a failure of the World Bank to comply with its operational policies and procedures. These types of harm or potential harm can include harms arising from displacement and resettlement of project-affected people; impacts on indigenous people, their culture, traditions, land tenure and development rights; impacts on cultural property, including sacred places, natural habitats and the environment (for example, wetlands, forests, fisheries, protected areas); harm or poor decision-making resulting from a lack of participation and adequate information and others. See: The Inspection Panel at 15 years, *supra* note 7 at p.30.

[52] *Ibid.*

[53] Other information that must be contained in the Request for Inspection includes: (i) the names and addresses of the senders; (ii) a concise description of the project financed by the World Bank; (iii) a description of the harm, or the likelihood of the harm, that affects the people or the environment concerned by the project; (iv) if known, the World Bank policies relevant to this project; (v) the attempts made to bring the matter to the attention of the World Bank staff and the level of satisfaction with the response; and finally, (vi) a clear statement requesting the Inspection Panel to investigate the matters raised in the letter. Moreover, if requesters are not sure about the type of information needed, or if some information is missing, the Panel Secretariat is to provide assistance.

[54] The Inspection Panel at 15 years, *supra* note 7 at p.23.

[55] World Bank policies need only be mentioned if they are known. If they are not known, the Requesters should describe the types of actions or omissions that they believe the World Bank may be responsible for, and describe the harm in some detail so that the Panel itself may link the alleged failures and harm to specific World Bank policies. This is confirmed by the 1999 Clarification to the Panel Resolution, which states that a Request needs to assert 'in substance' that there is a serious violation of Bank policies and procedures (1999, 2 Clarification.

[56] The Inspection Panel at 15 Years, *supra* note 7 at p.24.

Requesters.[57] Furthermore, Requests for Inspection may also be initiated by an Executive Director of the World Bank in cases of "serious alleged violations" and also by the Executive Directors acting as a Board.[58]

Once the Panel has received the Request, the process can be divided into three stages: registration[59], eligibility and investigation.[60] The registration stage is where the Panel makes the Bank and the public aware that a requestor has filed a complaint and completes a swift review to ensure that the group has standing and that the Panel has jurisdiction over the claim.[61] It should be pointed out that the Panel's Operating procedures do not specify a time period within which this registration review must take place, but requires that the Panel "promptly register the Request or ask for additional information, or find the Request outside the Panel's mandate[62]." The Inspection Panel views this first step as an administrative one, and its primary purpose is to prevent "complaints that are obviously outside of its mandate, that are anonymous, or that are manifestly frivolous.[63]" The question of whether or not the Inspection Panel can register the Request is fairly clear. For instance, the Inspection Panel in 1995 refused to register a claim filed by a number of Chilean citizens and a Chilean NGO. The Requesters claimed that the International Finance Corporation (IFC), a part of the World Bank Group that provides loans to private companies had violated its relevant policies regarding indigenous peoples and environmental assessment and failed to properly supervise the implementation of the project.[64]

However, the Inspection Panel concluded that its mandate clearly limited its investigatory powers to projects under the IBRD and the IDA. Given that it did not have the power over IFC projects, it refused to investigate.

Once a claim has been registered, the eligibility phase begins, and the Panel forwards the complaint to the President of the World Bank. During this period, the Panel is required to determine whether

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[57] *Ibid*

[58] Chad: Petroleum Development and Pipeline Project, Management of the Petroleum Economy Project, and Petroleum Sector Management Capacity Building Project (2001); and Cambodia: Forest Concession Management and Control Pilot Project (2005) available at: <http://www.inspectionpanel.org> (accessed 06.06.2012).

[59] The registration stage is not a mandatory step. The Panel does not register requests that are obviously outside of its mandate, are anonymous, or are manifestly frivolous. See the Resolution at paragraphs 13 and 14. See:< http://inspectionpanel.org>

[60] Inspection Panel 10 years on at 8.

[61] *Ibid* at 9; World Bank, Inspection Panel, Operating Procedures, *supra* note , at III.

[62] World Bank, Inspection Panel, Operating Procedures, *supra* note , at III.A.16.

[63] Inspection Panel, *10 Years On* at 8.

[64] Centre for International Environmental Law, Proposed IFC/MIGA Inspection Panel, <http://www.ciel.org/Ifi/ifc.html> (accessed 06.06.2012).

the Request meets certain technical eligibility criteria established by the Panel Resolution and updated by the Clarification to the Panel Resolution adopted in 1999.

The eligibility phase is focused entirely on whether the Request qualifies for a full-scale investigation, and it is not designed to lead to a report as to whether the World Bank has complied with its policies and procedures.[65] The eligibility phase progresses according to a time-bound process. As a representative of the Bank's management, the President must respond to the Panel's inquiry within twenty-one business days[66] providing evidence that the Bank "has complied or intends to comply with the Bank's relevant policies and procedures"[67] The Inspection Panel notes that the initial World Bank Management Response to a Request is important to the process as it provides both the Inspection Panel and the Requesters with an explanation of how Management views its own actions, and what shortcomings it might itself detect in relation to the claims of the Requesters.[68] When the Inspection Panel receives Management's response, it has another twenty-one business days to evaluate whether Management has truly remedied or intends to remedy, the problem.[69]

According to the 1999 Clarification, the Panel may "independently agree or disagree totally or partially, with Management's position and will proceed accordingly[70]." In deciding whether to recommend an investigation, the Inspection Panel must determine that all eligibility criteria are met.[71] If it is found that the World Bank has followed its own policies and procedures will weigh in favour of recommending no further action. Where views between Management and the Requester with regard to the World Bank's compliance with its policies and the source of the alleged harm cannot be easily reconciled, however, the Panel may chose to recommend an investigation.[72] Additionally, it is expected that if Management admits that if Management admits that it failed to

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[65] The Inspection Panel at 15, *supra* note 7 at p.27
[66] World Bank, Inspection Panel, Operating Procedures, *supra* note, at IV.27.
[67] *Ibid*
[68] The Inspection Panel at 15 years, *supra* note 7 at p.27
[69] *Ibid.*; *see also* World Bank, Inspection Panel, Operating Procedures, *supra* note..., at IV.29. (noting that the Panel may request further information from Management "to make an informed recommendation" regarding whether to investigate"). In general, the Panel must "decide whether [the request] is based on an alleged failure by the Bank related to its own policies and procedures, and whether any alleged consequent harm complained of appears material enough to warrant investigation." Inspection Panel, 10 Years on *supra* note 63, at 9.
[70] Paragraph 3 of the 1999 Clarification, <http://www.inspectionpanel.org>
[71] World Bank, Inspection Panel, Operating Procedures, *supra* note 66, at V.33(a)–(b).
[72] *See, e.g.*, Inspection Panel, Report and Recommendation on Request for Inspection, Pakistan, National Drainage Program Project 24 , *available at* http://siteresourcesworldbank.org/EXTINSPECTIONPANEL/Resources/EligibilityReport.pdf (last accessed 06.06.20120) "[T]he differing views on the issues raised by the Request cannot be easily reconciled and . . . they involve conflicting assertions and interpretations about the issues, the facts, and compliance with Bank policies and procedures. The Panel believes that these important questions . . . as well as the proximate cause of the alleged harm . . . can only be addressed in the context of a Panel investigation.").

follow World Bank policies, in its response to the claim it should propose "remedial actions and a timetable for implementing them."[73]

The decision whether to recommend an investigation is not just based on the request and Management's response, however. The Panel also has the power to conduct a preliminary study which may entail a visit to the project site if it believes it necessary to examine on the ground the eligibility of the Request.[74] The idea behind such a visit is to ensure that the Inspection Panel makes "an informed recommendation about an investigation to the Board[75];" although this preliminary evaluation is not required.[76]

After reviewing the claimant's Request, the Response of Management, any additional information from third parties and any preliminary findings, the Inspection Panel will make a recommendation to the Board indicating "whether the matter will be investigated" in more detail, which is referred to as the Eligibility Report.[77] Under the Resolution, only the Board has the power to officially authorize the Panel to proceed with an investigation.[78] Following the 1999 Clarifications, the Board agreed to authorize investigations on a no-objection basis except for in limited circumstances.[79]

Following the approval by the Board of the Panel's investigation request, the Panel begins the investigation phase which is the main part of the process forming the central segment of the

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[73] Inspection Panel, *10 Years On*, *supra* note 63 at 10; *see also* World Bank, Inspection Panel, Operating Procedures, *supra* note , at V.33(c).
[74] *Ibidd.* at III.B.36.
[75] Inspection Panel, *10 Years On*, *supra* note 63 at 10, Box 1.3.
[76] 1999 Clarifications, at *para.*11
[77] The Inspection Panel at 15 Years, *supra* note 7at p.30.
[78] World Bank, Inspection Panel, Operating Procedures, *supra* note 66 at V.C.37
[79] 1999 Clarifications, at para.9 ("If the Panel so recommends, the Board will authorize an investigation without making a judgment on the merits of the claimants' request, and without discussion expect with respect to . . . technical eligibility criteria."); Treakle, et al., *supra* note 41, at 257 ("In every case since the second review, the board members have approved panel recommendations for investigations."). There were significant problems with the manner in which the Board authorized and, frequently, failed to authorize investigations prior to the establishment of the no-objection approval. First, "the Panel's preliminary assessment reports [upon which the Board based its decision about whether to authorize an investigation] . . . gave rise to lengthy Board discussions on the substance of the complaints, which was inappropriate before the results of an investigation." See: Inspection Panel, 10 Years On, *supra* note 63, at 13. Furthermore, because of the Board's tendency to engage in in-depth discussions about whether to authorize an investigation, Management often submitted action plans for Board consideration in its investigation decision. However, "a fundamental problem with having an Action Plan at this stage was that the plan could not be based on the findings of a full, independent investigation." *Ibid.* at 12. Because Management's proposals were often appealing in the absent of countervailing information that could only be obtained through an investigation, the Board approved these plans and required no further investigatory action by the Panel. *Ibid.* As a result, the Board failed to recommend investigations in cases where it was likely needed. *Ibid.* at 12–13 (discussing the context of the 1996 and 1999 Clarifications). The ability to ensure that the Panel has more control over what it investigates helps to secure the independence of that body.

Inspection Panel's entire work on a Request.[80] By its nature, content and methodology, the Inspection Panel's work during this phase can be best described as systematic research and comprehensive analysis. One should note that there are no specific time elements included in the operating procedures.[81] In the investigation phase, the Inspection Panel is focused on fact-finding and verification. It conducts country-visits to the project site, interviews with affected people or their representatives and conversations with government officials and the authorities in charge of the projects.[82] Throughout this time, the Inspection Panel also interviews Management and Bank Staff.[83] It should be noted that any such conversations are to remain confidential in nature and the 1999 Clarifications "stress the need for the Panel to keep the profile of its in-country activities low and to make it clear that the Panel is investigating the Bank and not the borrower.[84]

Once the field investigation and data gathering are completed, the Panel process enters into its third phase of writing the final report. Essentially, this is where the Inspection Panel submits its findings to the Bank's Management and Board.[85] The main emphasis during this phase is not on additional fact-finding but on the collective analysis and synthesis of all that was learned during the Inspection Panel's research.[86] The Panel ensures that the final report explicitly addresses every issue raised in the Request for Inspection.[87] However, the Panel is not limited to those issues and may lead the Panel to look at issues not previously raised in the Request, but that may nevertheless be crucial to the complaints formulated in the Request.[88]

The Panel does not propose remedial measures and it "does not have the power to issue an injunction, stop a project, or award financial compensation for harm suffered."[89] In so doing, the Bank Management reviews the findings of the Inspection Panel and must submit a response to the

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[80] The Inspection Panel at 15 years, *supra* note 7 at p.30

[81] World Bank, Inspection Panel, Operating Procedures, *supra* note 36, at VII.42 (a)–(b) (indicating that upon approval the Panel's Chair shall move "promptly" to start the investigatory procedures).

[82] World Bank, Inspection Panel, Operating Procedures, *supra* note 66, at VII; *see also* Inspection Panel, *10 Years On, supra* note 63at 14; The Inspection Panel at 15 Years, *supra* note 7 at p.30.

[83] Inspection Panel, 10 Years On, *supra* note 63 at 14.

[84] 1999 Clarifications, at *para*.12.

[85] *See* World Bank, Inspection Panel, Operating Procedures, *supra* note 66, at VIII (outlining the requirements for the Panel's report).

[86] The Inspection Panel at 15 years, *supra* note 7 at p.40

[87] *Ibid*

[88] *Ibid*

[89] Kay Treakle, et al. *Lessons Learned,* in *Demanding Accountability Civil Society Claims and the World Bank Inspection Panel* at 258.

Board within six weeks.[90] If it chooses to do so, Management is able to make remedial recommendations in its Report.[91]

Under the Panel's procedures, the Management's response must include recommendations in response to the findings of the Panel, and generally include a so-called 'Compliance Plan' which is also known as an Action Plan.[92] The plans describe the measures that Management intends to adopt to address the problems of non-compliance of the project expressed in the Report of the Inspection Panel.[93] This part of the Panel process is essential to its effectiveness, because it is the operational basis for the Bank to address and remedy findings of non-compliance and harm to the affected people.[94]

The Board reviews the Panel's findings in conjunction with Management's recommendations. Furthermore, Requesters have no opportunity to formally offer recommendations to the Board after the Panel has conducted its investigation.[95] While the Board is empowered "to ask the Panel to check whether Management has made appropriate consultations about remedial measures with affected people, independent research of investigations illustrates that, in the Panel's first decade, "a significant number of findings of non-compliance still go unanswered in action plans."[96]

The Board is then required to contact the initial Requester within two weeks of considering the Panel's report and Management's response, informing him or her of the investigation results and "the action decided by the Executive Directors, if any[97]." The Board of Executive Directors in the 1999 Clarifications explicitly asked Management to always consult with Requesters and other

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[90] Inspection Panel Resolution, *supra* note 25 at *para*.23; World Bank, Inspection Panel, Operating Procedures, *supra* note 66., at IX; I Shihata, *supra* note 31, at 85–86.
[91] Inspection Panel, *10 Years On* supra note 63, at 14–15 ("Consistent with normal operating procedures, Bank Management, when it responds to the Panel's Investigation Report, recommends, when relevant, remedial actions to the Board").
[92] I. Shihata, *supra* note 31, at 189 (drawing a distinction between "remedial 'Action Plans," which are agreements between the Bank and the Borrower, and "Compliance Plans," which are solely related to the Bank."). While the term "remedial action plan" thus technically refers to an agreement by both the Bank and the borrower, the academic literature often also refers to compliance plans as "action plans." Mariarita Circi, 'The World Bank Inspection Panel: Is it Really Effective?' (2006) 6 *Global Administrative Law and Global Governance* 9, 9 available at <http://www.bepress.com/cgi/viewcontent.cgi?article=1182&context=gj> (accessed 06/06.2012).
[93] Mariarita Circi, 'The World Bank Inspection Panel: Is it Really Effective?' (2006) 6 Global Administrative Law and Global Governance 9, 9 available at <http://www.bepress.com/cgi/viewcontent.cgi?article=1182&context=gj> (accessed 06/06.2012).
[94] The Inspection Panel at 15 years, *supra* note 7 at p.41
[95] The Inspection Panel at 15 years, *supra* note 7 at p.41
[96] However, the sample size was too small to allow generalizations, but the study by Bridgeman noted large discrepancies between findings of non-compliance and Management's proposed actions. Bridgeman concluded that, "the Bank may be wary of correcting its own policy violations when doing so would necessitate imposing requirements on borrowers over which the Bank has actual or perceived lack of leverage."Inspection Panel, 10 Years on, *supra* note 63 at 15;The Inspection Panel at 15 years p.41
[97] World Bank, Inspection Panel, Operating Procedures, *supra* note 66, at X.55

affected parties in developing an Action Plan, to be agreed upon by the Borrower, in response to the Panel's findings.[98] This requirement of consultation during the preparation of the Action Plan creates both the mandate and the platform for an important, and hopefully, constructive dialogue between Management and Requesters when it comes to the preparation of the Action Plan.[99]

However, this possibility for a constructive dialogue is somewhat hampered by the fact that the Panel's Resolution does not allow for the disclosure of its Investigation Report at this stage.[100] This prevents Requesters from knowing its contents, which limits their ability to engage meaningfully with Management in the preparation of remedial steps.[101]

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[98] The Inspection Panel at 15 Years, *supra* note 7 at p.41.
[99] *Ibid*
[100] *Ibid*
[101] *Ibid*

4.0 Successes of the Inspection Panel

4.1 Project and Policy changes at the World Bank

The Inspection Panel is argued to have not only fulfilled its mission as originally envisaged, but also increasingly doing so in a way that well serves the development of the World Bank's development objectives as an institution and addresses the concerns of its clients; namely, the population of its member borrowing countries who are ultimately to benefit from the Bank's development efforts.[102]

In evaluating the operation of the Inspection Panel, Clark, Fox and Treakle conclude that in whole, the Panel process has led to clear project and policy-changes at the Bank, which in turn, has positively influenced public accountability at other international financial institutions, and ultimately has "changed whose voices count, and who listens."[103] In addition to addressing concerns about specific projects, it is also claimed that the Panel has had a positive effect over the efficiency and governance of the Bank which has encouraged the Bank and its staff to be more responsive to the needs and concerns of those affected by Bank operations.[104] However, there have been concerns that the Inspection Panel has resulted in negative changes in the Bank's behaviour.[105] With this concern in mind, Clark, Fox and Treakle[106] suggest that the Panel process appears to have had contradictory impacts on the social and environmental policy of the World Bank. In particular, they note that the Bank's safeguard policies have not been strengthened commensurate with the deteriorating global environment and conclude that the World Bank has lost its social and environmental leadership that it had during the 1980s and 1990s.[107]

4.2 Justice for individuals

It is without a doubt that the Panel process has played a role in ensuring justice for individuals affected by Bank projects.[108] The work of the Panel has even more profoundly affected change for communities on the ground. Affected people have been compensated, people's

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[102] The Inspection Panel at 15 years, *supra* note 7 at p.98
[103] Dana Clark, Jonathan Fox and Kay Treakle, *Demanding Accountability: Civil-Society Claims and the World Bank Inspection Panel*, Lanham, MD: Rowman and Littlefield (2003) at xxii.
[104] Bradlow, *supra* note 36 at 556; See also: Orakhelashvili 2005 at 100 which calls the Panel "undoubtedly of essential importance for successful attainment of World Bank's development purposes".
[105] Inspection Panel at 15 Years, *supra* note 7 at p.108.
[106] Clark, Fox and Treakle, *supra* note 103 at 272-273
[107] *Ibid*
[108] Boisson de Chazournes 1999

livelihoods have improved, communities have been empowered, local policies have been reassessed, local and national governments' relationships with project beneficiaries have improved, and stake-holder ownership of projects has increased.

In a thought-provoking analysis, Hunter[109] predicted that conditions in Requester's communities would probably improve even in the absence of a full inspection, because preliminary investigations would be likely to encourage the Bank to take charge and remedy an issue. Similarly, Bissell[110] suggests that the Panel may have had a more positive effect on projects through indirect pressure than through formalised procedures set out by the executive directors." In much the same way, Clark, Fox and Treakle have concluded with reference to the cancellation of a dam project in Nepal and a positive restricting project in Brazil have resulted from Panel investigations.[111]

It is strongly argued by Udall [112]that the Panel has not only improved the World Bank's reputation, accountability and transparency but it has also saved the World Bank millions of dollars by preventing or correcting poor project design and costly mistakes, and by improving project quality, environmental assessments, and resettlement plans.

4.3. Setting of precedents

In assessing the effectiveness of the Inspection Panel, Clark, Fox and Treakle[113] provide specific examples of how the Panel has been able to set important precedents within the Bank, such as applying social and environmental standards to infrastructure projects and also to macroeconomic adjustment loans. One may cite the Bank-wide policy reform following the China Western Poverty Reduction Request and the resulting establishment of a commission to investigate IFC scandals and implement positive new safeguards.[114]

4.4. Influencing other International Financial Institutions

Given that the Inspection Panel is the first body of its kind to provide a forum for project-affected communities, it has also had the significant effect of influencing other international organizations-especially other IFIs- to adopt similar accountability mechanisms. With this in mind,

[109] Hunter 1996
[110] Bissell, *supra* note 47 at 743.
[111] Clark, Fox and Treakle, *supra* note 103.
[112] The Inspection Panel at 15 Years, *supra* note 7 at p.99
[113] *Ibid* at p.107.
[114] *Ibid*

Bissell calls the Panel a “complete innovation” that prompted the creation of other accountability mechanisms.[115]

The example set by the World Bank in establishing the Panel was hoped would in some way influence the development of the administrative law of international organizations.[116] In a more recent analysis, Freestone argues that the World Bank, through its safeguard policies and subsequent creation of the Inspection Panel, is providing important new benchmarks for the environmental and social performance of all IFIs.[117]

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[115] Bissell, *supra* note 47 at 741.
[116] Bradlow, *supra* note 36 at 557.
[117] David Freestone, ‘The Environmental and Social Safeguard Policies of the World Bank and the Evolving Role of the Inspection Panel.’ In *Economic Globalization and Compliance with International Environmental Agreements,* ed. Alexandre Kiss, Dinah Shelton, and Kanami Ishibashi, at p.139 The Hague, The Netherlands: Kluwer Law International (2003)

5.0 Criticisms of the Inspection Panel

Since the creation of the Inspection Panel, there has been an increase every year of the attention of the Panel with July 1, 2006 to June 30, 2007 being the busiest year to date.[118] Throughout that period, the Panel registered six new Requests for Inspection[119] and completed two investigations and worked on three other investigations[120], of which one is nearly complete.[121]

Despite the increasing use of the Panel process, there have been a number of criticisms made against the work and operations of the Panel, with legal scholars and practitioners often questioning whether the Inspection Panel is a true innovation that actually increases the accountability of the World Bank.[122] Such criticisms pertain to the criticisms that the Panel is not an adequate accountability mechanism because it has a limited mandate, a limited ability to grant relief, and generally lacks the independence from the Bank necessary to make it a wholly effective institution.[123]

5.1 Participation

Although the Inspection Panel was created to give voice to private citizens, some researchers argue that its process reflects "a lack of real commitment to the principle of participation."[124] Various literature and commentary has identified limitations on participation at several stages of the Panel process, from requesting an inspection to ensuring that the World Bank responds to complaints effectively. On the other hand however, the Panel holds public meetings and conducts site visits to talk with affected persons, creating additional avenues for participation.[125]

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[118] World Bank Inspection Panel, Annual Report: July 1, 2006 to June 30, 2007, at 13 (2007) [hereinafter referred to as 'Annual Report' 2006-2007].
[119] *Ibid*
[120] *Ibid*
[121] *Ibid*
[122] *See generally*, Treakle et al, supra note 103.
[123] *See generally* Daniel D. Bradlow, 'Private Complainants and International Organizations: A Comparative Study of the Independent Inspection Mechanisms in International Financial Institutions' (2005) 36 *Georgetown Journal of International Law* 403.
403 (2005)
[124] Richard E. Bissell, "Institutional and Procedural Aspects of the Inspection Panel." In *The Inspection Panel of the World Bank: A Different Complaints Procedure,* ed. G. Alfredsson and Rolf Ring, Leiden, the Netherlands: Kluwer Law International, 2001 at p.125.
[125] World Bank, Inspection Panel, Operating Procedures, *supra* note..., at para.45 in Annex VII D of "Accountability at the World Bank: The Inspection Panel 10 Years On" (World Bank 2003) available at: <http://www.inspectionpanel.org> (accessed on 06.06.2012).

5.2 Lack of awareness and access

It has been strongly argued that limitations on knowledge of and access to the Inspection Panel compromise the participatory nature of the Panel process from the outset.[126] While some note that many Bank-funded projects produce profound and irreversible changes in people's lives[127] these people are not always aware of the World Bank's role in funding such projects.[128] There is some force in the argument that even if some people are aware of the World Bank, they may not be familiar with the Inspection Panel. It is argued that access to the Panel is effectively restricted to those who have a sophisticated knowledge of the Bank and the Inspection Panel process.[129] In this connection, de Chazournes[130] argues that despite the efforts of the Inspection Panel to raise awareness about its process, such information is "not easily accessible for all interested people". Therefore Clark[131] argues affected people often must rely on the assistance of experts in preparing Requests for Inspection.

On the other hand however, de Chazournes[132] suggests that the Panel has both a preventative and curative impact, positively influencing the direction of the Bank and highlights two unique and unprecedented contributions the Panel makes to the Bank: increased clarification of Bank policies and increased public awareness of potential and actual instances of malpractice. In this connection, de Chazournes concludes that, these contributions and increased debates about the impact of Bank projects, enhances the overall quality of Bank operations.[133]

5.3. Safety threats

There are several additional reasons that may deter affected individuals from submitting a Request for Inspection. Clark observes that affected individuals may be unwilling to file a claim given threats to safety, time constraints and the inability to prove a direct link between policy and

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[126] The Inspection Panel at 15 Years, *supra* note at p.102.
[127] See generally: Daniel D. Bradlow, 'International Organizations and Private Complaints: The Case of the World Bank' (1994) 34 *Virginia Journal of International Law* 553.
[128] The Inspection Panel at 15 Years, *supra* note at p.102.
[129] The Inspection Panel at 15 Years, *supra* note 7 at p.103; See generally: Daniel D. Bradlow, 'Private Complaints and International Organizations: A Comparative Study of the Independent Inspection Mechanisms in International Financial Institutions' (2005) 36 *Georgetown Journal of International Law* 403.
[130] Boisson de Chazournes, 'Compliance with International Standards: the Contribution of the World Bank Inspection Panel' in *The Inspection Panel of the World Bank: A Different Complaints Procedure*, ed. G. Alfredsson, New York: Springer Publishing. Cited in Alfredsson, Gudmundur and Rolf Ring, eds. 2001. *The Inspection Panel of The World Bank: A Different Complaints Procedure.* The Hague; Boston: Martinus Nijhoff Publishers at p.83.
[131] The Inspection Panel at 15 Years, *supra* note 7 at p.103; See generally: Dana L. Clark, 'The World Bank and Human Rights: The Need for Greater Accountability' (2002) 15 *Harvard Human Rights Journal* 205, 207-209.
[132] Boisson de Chazournes, *supra* note 130 at p.84.
[133] *Ibid*

problems, potential frustration, the belief that the Panel is altogether an inappropriate tool, or a cost-benefit analysis weighing whether a community's organising energy is better channelled elsewhere.[134] Some claimants have been "detained, harassed, beaten, and tortured by local authorities for having requested an inspection."[135] Nevertheless, Clark, Fox and Treackle review trends in Panel cases and find that Southern civil society actors working independently have generated the most claims submitted to the Panel so far.[136]

5.4.Limited rights of inclusion of Requesters in the Panel process

There is certainly some force in the argument that, even people who successfully file a Request may not be able to participate meaningfully in later stages of the Panel process, which is heavily dominated by Bank Management.[137] This has led Carrassco and Guernsey[138] to assert that the Panel "fails to give affected people a true voice in the outcome of an investigation." Additionally, Bradlow[139] criticises the process for providing "too many opportunities for ex-parte communications between the Panel and the Bank's staff, the borrower and the Executive Director representing the borrower state. Bradlow suggests that Requesters should be allowed the right to be informed of all communications between the Panel and the Bank staff, the Executive Directors, and the borrower, and should be given the opportunity to respond.[140]

This stance has been widely supported by Clark, Fox and Treackle who note that because Requesters "have no right to comment on what remedial measures would be appropriate to bring the project into compliance or rectify the harm that they have suffered" the Bank Board, "tends to adopt Management-generated action plans, ignoring the experience, knowledge and preference of the people who triggered the process in the first place."[141]

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[134] Friends of the Earth International (FOEI) and International Accountability Project (IAP) 'Strategic Guide: Strategic Tips for Filing Complaints with International Financial Institutions' Friends of the Earth International and International Accountability Project, Berkeley, California (2004).
[135] Dana Clark, Jonathan Fox and Kay Treackle, *Demanding Accountability: Civil-Society Claims and the World Bank Inspection Panel*, Lanham, MD: Rowman and Littlefield at 257.
[136] *Ibid.*
[137] Richard E. Bissell, "Institutional and Procedural Aspects of the Inspection Panel." In *The Inspection Panel of the World Bank: A Different Complaints Procedure,* ed. G. Alfredsson and Rolf Ring, Leiden, the Netherlands: Kluwer Law International, 2001.
[138] Enrique Carrasco and Alison K. Guernsey, 'The World Bank's Inspection Panel: Promoting True Accountability Through Arbitration' (2008) 41 *Cornell International Law Journal* 577, 580.
[139] Daniel D. Bradlow, 'International Organizations and Private Complaints: The Case of the World Bank (1994) 34 *Virginia Journal of International Law* 553, 591.
[140] *Ibid*
[141] Dana Clark, Jonathan Fox and Kay Treackle, *Demanding Accountability: Civil-Society Claims and the World Bank Inspection Panel,* (Lanham, MD: Rowman and Littlefield, 2003) at 267.

5.5. Lack of representation of developing countries

In addition to limitations on meaningful participation by Requesters, Orakhelashvili[142] points out that the participatory goals of the Panel are also limited by the lack of representation of developing countries in Panel positions.

5.6 Limitations on the Panel's mandate

There have been widespread concerns about limitations on the Inspection Panel's mandate.[143] For example, the restriction of investigations to only those cases in which the World Bank has broken its safeguard policies theoretically "excludes people affected by projects where policies may not have been directly violated, but which have negative impacts nonetheless."[144] This has been identified as being a potent problem with respect to human rights.[145] Although the Panel has made considerable efforts to include human rights considerations in some cases; most notably the Chad-Cameroon Oil Platform project- the absence of human rights from the World Bank's full charter, and thus from the Resolution creating the Inspection Panel, significantly limits the Panel's mission.[146] There are cases in which operational policy violations are symptomatic of human rights violations, but many scholars see the lack of explicit references to human rights in the Panel's mandate as an unwarranted narrowing of the Panel's work.[147]

5.7 Criticism of technical criteria

There have been widespread concerns over the equity of access to Panel procedures and the resulting pro-Management bias. More specifically, it is argued by Carrasco that once the affected parties have filed a Request for Inspection, they are not given the opportunity thereto to address the findings of the Panel, the response by Management, or review any of the information about their claim prior to the Board's decision on how to proceed.[148] Put simply, while Management is in a position to have its recommendations considered by the Board, the original Requesters are sidelined

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[142] Alexander Orakhelashvili, 'The World Bank Inspection Panel in Context: Institutional Aspects of the Accountability of International Organizations' (2005) 2 *International Organizations Law Review* 51, 78-83.
[143] *Ibid*
[144] Clark, Fox and Treakle, supra note at 141 at 267.
[145] The Inspection Panel at 15 Years *supra* note 7 at p.103.
[146] See generally, Sigrun Skogly, *The Human Rights Obligations of the World Bank and the IMF*: London, Cavendish Publishing (2003).
[147] The Inspection Panel at 15 Years, *supra* note 7 at p.104.
[148] Treckle et al, *supra* note 141 at 267.

as the Board, "ignores the experience, knowledge, and preferences of people who triggered the process in the first place."[149]

In tandem with the inherent Management bias in the Bank's process, there are a number of technical and structural obstacles to filing complaints. Technical criteria used to determine the eligibility of a Request for Inspection has been criticised heavily and has culminated in two separate arguments.[150]

On the one hand, Woods[151] argues that, almost any project can be found to be out of compliance if one pushes hard enough, and since there is no limit on the cases that affected groups can bring the Bank is likely to be deluged with Inspection Panel investigations." Whereas others view the eligibility criteria as being overly specific with a number of structural obstacles to filing complaints so that parties may find that the Panel has excluded their claims on procedural grounds. For instance, Clark, Fox and Treackle note, "the Panel cannot investigate projects in which the loan has been more than 95 per cent disbursed; but many problems do not show up until years after the funds are disbursed." They continued, "for those people who learn about the Panel and chose to file a claim too late in the project cycle, there is simply no official recourse."[152]

While there is a need for a Statute of Limitations, one may argue that, even under the limited mandate of the Inspection Panel to investigate Bank compliance with its operational policies, many cases that warrant investigation fall outside of the jurisdiction of the Panel.[153] In addition, Bradlow suggests that the technical eligibility criteria for a Request for Inspection make it easy for Bank Directors to reject investigations that a country representative might oppose.[154] To many, the fact that the Board has oversight at all raises worries that the criteria for eligibility will be abused.[155]

[149] *Ibid.*
[150] The Inspection Panel at 15 Years, *supra* note 7 at p.104.
[151] Ngaire Woods, 'Making the IMF and the World Bank More Accountable' (2001) 77 *International Affairs* 83, 93.
[152] Dana Clark, Jonathan Fox and Kay Treackle, *Demanding Accountability: Civil-Society Claims and the World Bank Inspection Panel*, (Lanham, MD: Rowman and Littlefield, 2003) at 267. For example, in the Second Request associated with India's NTPC Power Generation Project, the Inspection Panel refused to register the complaint because the "Request was filed after the loan financing the project closed" See: India NTPC Power Generation Project, Second Request (1999), Summary of Decision Not to Register, http://siteresources.worldbank.org/EXTINSPECTIONPANEL/Resources/India-NTPC.pdf (accessed 08.06.2012)
[153] The Inspection Panel, *supra* note 7 at p.104.
[154] Daniel D. Bradlow, 'Lessons from the NGO Campaign against the Second Review of the World Bank Inspection Panel: A Participant's Perspective' (2001) 7 *Journal of International and Comparative Law* 248, 251-252.
[155] The Inspection Panel at 15 Years, *supra* note 7 at p.104.

However, this contention lacks force given that the Inspection Panel has had significantly more cases approved since revisions to the Resolution barred management from interfering with the Board's decision to investigate and created a "no-objection" approval system.[156]

5.8 Lack of oversight over management

It is widely claimed that the Panel's lack of oversight if Management plans and actions to address affected communities' concerns decreases the effectiveness of the Panel process. Quite markedly, a major flaw in the Panel process is that, those found in non-compliance, i.e. the Bank's Management) are the very same as those charged with implementing the recommendations of the Panel.[157] However, pressure can also mount to implement the recommendations because of the costs to the institution's credibility and legitimacy when high-profile recommendations are not implemented.[158]

Whilst some assert that Action Plans prepared by Bank Management in response to investigations immediately prevent most remedial measures[159], others worry that lack of oversight by the Panel means that Bank Management very rarely involves affected people in deciding how to address their concerns.[160]

In improving the situation, Bradlow[161] advocates that an inspection mechanism must have a clear 'learned lesson' function if it is to maximise its value to the organization. A function of this type would take advantage from the rare opportunity to have information on the actual impact of the organization from the affected communities' point of view, and helps build credibility with all stakeholders.[162]

In sum, Bradlow and others view restrictions on the Panel's role in implementation as a significant problem because such restrictions imply that no entity in the entire Bank can assess the implementation independently.[163]

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156 The Inspection Panel at 15 Years, *supra* note at p.104.
157 See generally: Natalie Bridgeman and David Hunter , 'Narrowing the Accountability Gap: Toward a New Foreign Investor Accountability Mechanism' [2008] *Georgetown International Environmental Law Review* 1, 210.
158 *Ibid.*
159 Clark, Fox and Treakle, *supra* note 103.
160 *Ibid*
161 Bradlow 1994
162 The Inspection Panel at 15 Years, *supra* note at p.104.
163 *Ibid* at p.105

5.9 Overlapping jurisdiction

There have been a number of concerns raised with respect to the concurrent or overlapping jurisdiction of the Inspection Panel with Bank Management in the task of creating an Action Plan. It is argued that the creation of an Action Plan forces the Inspection Panel to curb advice on compliance, and implicitly excludes complainants from process and dilutes the Inspection Panel's independence.[164] The Panel's inability to independently authorise the investigation process promotes dialogue with Management, but at the same time, it decreases the effectiveness of the Inspection Panel as an accountability mechanism.[165] This relates to the concern over the Panel's independence.

5.10 Lack of independence of the Panel

An additional criticism of the current system is that the Inspection Panel is not entirely independent from the Bank as a whole. In relation to the autonomy of the Inspection Panel, critics have claimed that, "as an interior body of the bank itself, its ideas cannot be completely independent of the ideology of that institution."[166] In this connection, it can be strongly argued that, because it is an arm of the World Bank, it is to some degree an institution with a *de facto* World Bank bias and consequently acts with promoting the interests of the institution in mind and not necessarily those of affected impoverished communities.

Other potential issues stemming from the close institutional tie between the World Bank and the Inspection Panel, it has been contended that the Bank's ability to interfere with the work of the Panel and the corresponding inability of the Panel to prevent such interference, also compromises its status as an independent and impartial body.[167] This lack of independence is said to be based on a

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[164] Richard E. Bissell, "Institutional and Procedural Aspects of the Inspection Panel." In *The Inspection Panel of the World Bank: A Different Complaints Procedure,* ed. G. Alfredsson and Rolf Ring, Leiden, the Netherlands: Kluwer Law International, 2001 at p.125-128.

[165] The Inspection Panel at 15 Years, *supra* note 7 at p.105.

[166] Jason Morgan-Foster, Note, 'The Relationship of IMF Structural Adjustment Programs to Economic, Social and Cultural Rights: The Argentine Case Revisited' (2003) 24 *Michigan Journal of International Law* 577, 641 at n.320 (outlining the World Bank's denial that the two institutions are too close to be independent and highlighting some of the safeguards that have been adopted to ensure institutional independence, such as the Panel's independent budget and the terms and selection of its members) *Ibid* at 641 at n.319 (highlighting the lack of independence of the Panel as a "lack of independence of ideas of the Panel from the ideology of the Bank").

[167] Eisuke Suzuki and Suresh Nanwani, 'Responsibility of International Organizations: The Accountability Mechanisms of Multilateral Development Banks' (2005) 27 *Michigan Journal of International Law* 177, 207. It should be noted that many concerns with the lack of independence were addressed in the two Clarifications to the Panel's Resolutions. For instance, with the institution of the no-objection approval for Panel investigations there was less fear that the Bank would fail to authorize an investigation because it feared a finding of non-compliance. The second Clarification held that the Bank was no longer able to authorize an Action Plan with the intention of pre-empting a Panel investigation.

lack of power to bind the Board, rather than be based on an autonomy-based argument.[168] In relation to the initiation of field visits and information gathering, it is asserted by Clark, Fox and Treakle[169] that the first land reform case, saw the Panel being accompanied by Bank and government officials which could repress free exchange.

On a more systematic level, the Board's oversight of the Panel is argued to further constrain its independence.[170] It should be pointed out that, although the Board has not actively prevented any investigations recommended by the Inspection Panel since 1999, its control theoretically erodes the independence of the Panel. In this connection, Carrasco and Guernsey[171] agree that "vesting ultimate authority with the Board undermines the independent nature of the Panel and thus it should not be authorized to make an eligibility determination under a system that is purportedly independent from the Bank."

Given that the Panel lacks any power to remedy the problems that it uncovers, any Resolution that it adopts must have also been within the desires of the Bank.[172] Thus, in those situations where the Bank acts in an overly defensive manner in response to the findings of the Panel[173], or manipulates information that has the effect of misleading the Board regarding compliance,[174] it is obvious to the Board that the Bank has not gone by the work of the Panel and that any action agreed by the Board thereto will not be happily received.[175]

If however the Panel were responsible for remedying the problems that it uncovered, it has been argued that such an adversarial exchange would not be an issue as the Panel would be able to proceed with a remedial plan without getting approval from the Bank.[176]

[168] Morgan-Foster, supra note 166 at, 641 at n.319; Sigrun Skogly, *Human Rights Obligations of the World Bank and the International Monetary Fund* (2001) at p.184-185.
[169] Clark, Fox and Treakle, *Demanding Accountability: Civil-Society Claims and the World Bank Inspection Panel*, (Lanham, MD: Rowman and Littlefield, 2003) at p.268.
[170] The Inspection Panel at 15 Years, *supra* note 7 at p.105.
[171] Carrasco and Guernsey, *supra* note 29 at 587.
[172] *Ibid*
[173] *Ibid* at 254 noting that in previous years the World Bank has had a tendency to respond defensively denying that it violated any policies, challenging the claimant's eligibility, and in some cases challenging the findings of the Panel.
[174] Clark, *supra* note 131 at 18 discussing the Lake Victoria Environmental Management Project in Kenya as one example of when Management disputed the Panel's findings. In that case, the Panel came to the conclusion that the Bank had violated its public-consultation requirements, but rather than proposing remedies to address the Panel's findings, Management disputed them by issuing a rebuttal document which gave the impression that consultations had taken place. Following this, the Panel issues a follow-up report, demonstrating that "Management had manipulated information in such ways as to deliberately mislead the Board."
[175] Carrasco and Guernsey, *supra* note 29 at p.33
[176] *Ibid*

For instance, one may note the case of the Yacyreta Hydroelectric Project in Argentina/Paraguay, where the claimants filed a Request for Inspection claiming that the Bank had violated its policies relating to the "environment, resettlement, wildlands, information disclosure, indigenous peoples, and project supervision, among others."[177] After a series of contentious investigations, the Inspection Panel found that the Bank had violated numerous policies and procedures.[178]

Other scholars explore broader questions of independence within the World Bank.[179] It is claimed that the ability of "northern" governments to participate in the decision-making process of the Bank without being held to account as individual governments reflects a somewhat alarming independence from direct responsibility.[180]

With this in mind, it has been stated that because developed countries are neither recipients of Bank funding, nor held responsible in any accountability mechanism, their independence is far-reaching.[181] In addition, there is a potential for conflict between states and non-state actors given that developing country governments are implicitly judged by the Panel's examination of Bank oversight, and northern NGOs are involved in the Request process.[182] This situation is explained further by Fox[183] who describes how the Panel process challenges key assumptions of national sovereignty because Bank safeguard policies are in theory more rigorous than the practices of many governments which contributes to what Fox calls a "national-transnational fiction." The Bank's power imbalances are said to deeply affect the Panel.[184] It is argued that moves to ensure the Bank's external accountability could potentially trigger a dispute between developed and developing principals over a Panel claim at the Board.[185]

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[177] Kay Treakle and Elías Díaz Pena, 'Accountability at the World Bank: What Does it Take? Lessons from the Yacyretá Hydroelectric Project, Argentina/Paraguay', in *Demanding Accountability: Civil Society Claims and the World Bank Inspection Panel* (D. Clark, J. Fox & K. Treakle eds., 2003) at p.74.
[178] *Ibid* at p.77.
[179] The Inspection Panel at 15 Years, *supra* note 7 at p.105.
[180] Daniel D. Bradlow, 'Lessons from the NGO Campaign against the Second Review of the World Bank Inspection Panel: A Participant's Perspective' (2001) 7 *Journal of International and Comparative Law* 248, 256-257 noting that: "[t]he work of the Bank has no direct impact on the citizens of the G-7 countries and therefore is unlikely ti influence the outcome of any elections in the G-7 countries. Furthermore, these governments can show that they are doing something to deal with the difficult social and environmental issues that affect all societies without actually having to engage in a full debate about the domestic implications of these issues. This means, in effect, that the G-7 countries are able to excercise power without responsibility in relation to the Bank and the IMF."
[181] The Inspection Panel at 15 Years, *supra* note 7 at p.105.
[182] *Ibid*
[183] Jonathan Fox, 'The World Bank Inspection Panel and the Limits of Accountability' in *Reinventing the World Bank*, ed. Jonathan R. Pincus, and Jeffrey Winters, Ithaca NY: Cornell University Press, at p.148-150.
[184] The Inspection Panel at 15 Years, *supra* note 7 at p.105.
[185] For example, the Greater Western China Poverty Project Claim in 2000 is a prime illustration of the divide between developed and developing principals' interests where transnational activists challenged a Chinese project on social and

5.11 Panel's inability to grant relief

One of the most cited problems with the Inspection Panel pertains to its inability to grant relief.[186] Foremost, the Panel is not by its nature, a problem-solving entity and it therefore has limited authority to recommend any type of remedial measure to the Bank.[187] Also, under its operating procedures, it is empowered to decide solely on whether it has complied with its own policies and procedures.[188] In this light, it becomes apparent that the Panel has no authority to provide compensation to affected communities.[189]

Since the Panel is unable to provide relief, both the Panel and the affected communities often turn to Management for aid and assistance.[190] It should be stressed that it is not the role of the Bank to provide compensation for harm identified by the Inspection Panel.[191] It is vehemently argued by Carrasco that if the Panel were charged with the ability to grant both injunctive and compensatory relief, to those who are affected by the failure of the Bank to adhere to its own policies and procedures would dramatically increase its effectiveness and responsiveness to affected communities.[192]

This related to the failure of Management in developing an Action Plan to consult with local communities and publication of the Action Plan in Spanish so that affected communities could understand the outcome of the investigations.[193] A further criticism relates to the fact that Bank Management had failed to conduct a follow-up to make certain that the Action Plans were being implemented and that the Board did not intervene.[194]

Another example of the failure of Management to follow-up with its remedial plans is the Cartagena Water Supply, Sewerage, and Environmental Management Project in Columbia.[195] This is

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environmental grounds. As a result, China (one of the Bank's largest borrower states), withdrew from Bank lending rather than capitulate to the Panel's findings. An irreparable split between the different interests of the member states, however, remains to be seen.

[186] Inspection Panel, 10 Years on, *supra* note 63 at 14-15

[187] Carrasco and Guerney, *supra* note 29 at p.27

[188] *Ibid*

[189] Inspection Panel Resolution, *supra* note 25 at *para.*22; Inspection Panel 10 Years On, *supra* note 63at 14; Treakle et al, *supra* at 258.

[190] Carrasco and Guerney, *supra* note 29 at p.27

[191] The Bank has the ability to provide injunctive relief, but its power to halt a project depends on the stage of the project in question. Shihata at 81.

[192] Carrasco and Guerney, *supra* note 29 at p.28.

[193] Kay Treakle and Elías Díaz Pena, 'Accountability at the World Bank: What Does it Take? Lessons from the Yacyretá Hydroelectric Project, Argentina/Paraguay', in *Demanding Accountability: Civil Society Claims and the World Bank Inspection Panel* (D. Clark, J. Fox & K. Treakle eds., 2003) at p.78-79.

[194] *Ibid* at p.84.

[195] Annual Report 2005–2006, *supra* note 26, at 44–49.

where the Bank had funded an expansion of Cartagena's water and sewage system. The expansive project extended to the construction of a pipeline that, "would carry the untreated wastewater from the city and discharge it into the Caribbean Sea" some two and a half kilometres from coastal fishing villages.[196]

The investigation of the Panel found several problems with the design and implementation of the project[197], which led Management to prepare an Action Plan to address the findings of the Panel.[198] The Board addressed both the Action Plan and the Panel's findings in 2005, approving the Action Plan on the basis that Management would submit a progress report to the Board on the execution of the Project and Action Plan within a period of six months.[199] Despite this condition, Management did not submit a progress report until a year later.[200]

5.12 Shift in accountability

It has been argued that the existence of the Panel may be causing the Bank to shift accountability to borrowers. In their analysis, Clark, Fox and Treakle posit that it is highly risky to delegate all responsibility for social and environmental issues to borrowers when they still lack the capacity and normative framework to address issues effectively.[201]

5.13 High costs of the Panel process

It has also been speculated that the mechanics of the Panel process may have the effect of deterring some managers from projects involving safeguard policies.[202] Woods notes that the time and financial cost of inspections coupled with the fear of an inquisitorial process means that Bank staff are now refusing to contemplate projects involving either voluntary resettlement or indigenous peoples, because they cannot compete with other sources which do not have to take into account

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[196] *Ibid* at 44.
[197] *See generally: Inspection Panel, Investigation Report No.32034-C.O, Columbia: Cartagena Water Supply, Sewerage and Environmental Management Project (Loan No. 4507-CO)* (June 24, 2005), *available at:* <http://siteresources.worldbank.org/EXTINSPECTIONPANEL/Resources/PanelInvestigationReportFinal.pdf.> (accessed 08.06.2012).
[198] Management Report and Recommendation in Response to the Inspection Panel Investigation Report, Columbia Cartagena Water Supply, Sewerage and Environmental Management Project, (Loan No. 4507-CO) (July 29, 2005), *available at:* <http://siteresources.worldbank.org/EXTINSPECTIONPANEL/Resources/ManagementReportandRecommendations.pdf> (accessed 08.06.2012).
[199] Annual Report, 2005–06, *supra* note 26 at 57
[200] *Ibid* at 77
[201] Clark, Fox and Treakle, *supra* note 33 at 273.
[202] *Ibid*

such additional high costs.[203] This has led some researchers such as Bradlow to question whether the effects of the Panel justify its costs.[204]

It has been powerfully argued by Udall that when those in Bank Management or the Board raise the issue of costs of the Inspection Panel resulting from project delays, one only has to look back at the days of the Narmada, Polonoreste, Transmigration, and the Brazil Power Sector loan to know that the Bank can never go back to the pre-Panel era. Furthermore, it should be pointed out that, some of those projects were in fact delayed for years because of local protests, inadequate public consultations, policy and human rights violations, flawed project design, and lack of environmental oversight, among a number of other issues.[205]

[203] Ngaire Woods 'Making the IMF and the World Bank More Accountable,' (2001) 77 *International Affairs* 83, 94.
[204] The Inspection Panel at 15 Years, *supra* note 7 at p,108 citing Bradlow 2005 at 473-475, he writes that the primary disadvantage of the Panel is that it is very expensive.
[205] Lori Udall comment, in Inspection Panel at 15 years, *supra* note 7 at p.99

6.0 The Compliance Advisor Ombudsman (CAO)

In much the same way as the establishment of the Inspection Panel, transnational activists were once again directly involved in the creation of a new accountability mechanism within the World Bank Group, specifically for IFC and MIGA.[206] Given that both the IFC and MIGA sharing a number of development goals as part of the wider World Bank Group, transnational activists were of the view that, both the IFC and MIGA should be held accountable via a mechanism such as the CAO regardless of their relatively small size in comparison to World Bank staff.[207]

In the establishment of an accountability mechanism, there were many proposals of which one favoured establishing a similar Panel, although it was later determined by the IFC and MIGA that a private sector accountability mechanism be more flexible than the Panel's quasi-judicial proceedings.[208] While the mechanism emerged differently from that proposed by NGOs, there was a positive reaction to the idea for the creation of a Compliance Officer/Ombudsman.[209]

6.1 CAO: structure and function

The CAO office was created in 1999 by President Wolfensohn who in turn, appointed a selection committee to appoint applicants for the position.[210] The CAO was established as an independent office to report directly to the President of the World Bank Group, independently from the IFC and MIGA Executive Director Boards. The aim of the CAO is to assist both IFC and MIGA to "enhance the social and environmental outcomes of the projects in which they play a role."[211] The CAO has tree principal functions: compliance, advisor, and ombudsman roles. In terms of its first role, the CAO evaluates both the IFCs and MIGA's compliance with social and environmental safeguards and their attempts to improve their policies.

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[206] The mandate of the IFC is to partially finance and facilitate financing for private enterprise in developing countries. It aims to invest in private sector development projects where capital is unavailable from private investors on reasonable terms. See: E.S. Mason and R.E. Asher, *The World Bank since Bretton Woods*, Washington D.C, The Brookings Institution, (1973) at p.351. In contrast, MIGA aims to promote direct foreign investment in developing countries by underwriting investor political risk insurance. See generally: IFC/MIGA 'Proposed Inspection Mechanism for Private Sector Projects: IFC and MIGA Inspection Panel,' Report to the Committee on Development Effectiveness for the World Bank, IFC and MIGA, June27, 1996.

[207] There are over 2,00 IFC staff and only 130 MIGA staff in comparison to approximately 10,000 World Bank Staff.

[208] Report from the Secretary, CODE, "Options to Enhance Environmental and Social Compliance and Accountability in IFC and MIGA," World Bank, IFC and MIGA, March 4, 1998, 7.

[209] *Ibid*

[210] International Finance Corporation 1999a, "IFC Annual Report 1999," Washington D.C., International Finance Corporation.

[211] IFC 1999a Appendix

With regards to the second role of the CAO it acts as an advisor to the IFC and MIGA staff, management, and President. This role is both formal in terms of regular reporting to the President and periodic reporting to the IFC/MIGA Boards, and informal in terms of responding to queries from staff. The final role of the CAO is the Ombudsman role, which was established to respond and mediate problems and issues relating to those persons adversely affected by IFC/MIGA financed projects.[212] It should be stressed that the Ombudsman role of the CAO is significantly different from the quasi-judicial Panel process established by the Bank, although both the Inspection Panel and the CAO were established to ensure accountability.[213]

One important point of comparison between the Inspection Panel and the CAO is that while the Inspection Panel investigates World Bank project operations and determines whether persons adversely affected as a result of non-compliance by the World Bank of its own policies and procedures, the CAO office in contrast, acts as an independent problem solving and mediating office.

In much the same way as the Inspection Panel, the CAO becomes activated in an IFC/MIGA related project when it receives a complaint from persons who are adversely affected by that project. Where there is a significant point of departure of comparison between the two relates to how both mechanisms deal with the dispute in issue. While the Inspection Panel investigates whether the Bank has met its own safeguard policies, the CAO undertakes an approach of direct involvement and conciliation.

The CAO office works by gathering information regarding the claim through documents from the IFC or MIGA and the affected community. It then attempts to mediate between the parties involved. It should be noted that although the CAO has the full confidence of the IFC, the office can only attempt to persuade parties to take some remedial form of action through conflict resolution and problem solving techniques. In this way, it can be argued that the CAO has less power than the Panel, which may find the World Bank in violation of its own guidelines, therefore requiring improvement on the World Bank's behalf.

In further distinguishing the Panel from the CAO, one may point out that the CAO attempts to directly influence IFC or MIGA project sponsors where safeguard policies have been breached, in distinction to the Inspection Panel which does so indirectly through investigating the cause of non-compliance. In this way, the CAO is only able to influence the resolution of problem projects

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[212] Of its three roles, the Ombudsman role is by far the most crucial in terms of external accountability, although both the compliance and advisor functions inform internal accountability.

[213] International Finance Corporation 1999a, *supra* note 210.

through direct mediation between the affected parties and attempts to limits the damage of the project.

In distinction, the Inspection Panel, seeks to "find fault" and apportions blame to Bank operation departments on discovering non-compliance. This is because the Inspectional Panel has been vested with investigatory rather than mediation powers. As a result of this, the World Bank is argued to be suffering from "risk aversion" as a dominant response to claims made to the Inspection Panel.[214] Even so, the CAO can only persuade project sponsors or other parties to negotiate an agreed settlement which still requires the cooperation of the IFC and MIGA.

6.2 Successes of the CAO

Despite the far-reaching aims of the CAO, the office strives to maintain a division of its operations.[215] Recent indications show that by 2005, the CAO had rejected 10 and assessed 12 complaints, while 19 remained in mediation.[216] There is evidence to suggest that the CAO is receiving an increasing number of complaints, although this can be said to be due to an increasing knowledge of its existence, rather than IFC involvement in risky projects. Overall, the CAO argues that it has had a positive impact on improving IFC/MIGA environmental and social capacity in 56 per cent of the complaints that it has been involved in, and that its positive social and environmental effects has been incremental and cumulative.[217] What is particularly noteworthy is the commission of an independent investigation of the CAO in 2003, which found that the CAO Office was committed t its ombudsman role and had been successful in this area, but found that the Office was overextended.[218]

6.3 CAO vs. Inspection Panel

The paper will review the notions of internal and external accountability in light of a number of case studies. It is argued that the Inspection Panel by its structure and functions focuses on the notion of internal accountability, in direct comparison to the CAO which plays both external and

[214] Jonathan Fox, 'The World Bank Inspection Panel: Lessons from the First Five Years,' (2000) 6 *Global Governance* 279, 280-282.
[215] Susan Park, 'Assessing the Accountability of the World Bank Group' Academic paper, Deakin University at p.27-34.
[216] CAO (2005) at 3.
[217] 2006: a 23, 30.
[218] Dysart, B., Murphy, T., and Chayes, A., 2003, 'Beyond Compliance? An External Review Team Report on the Compliance Advisor/Ombudsman Office of IFC/MIGA,' prepared for Meg Taylor, IFC/MIGA Compliance Advisor Ombudsman, July 24 2003, Washington D.C., The World Bank Group. (Dysart, Murphy and Chayes 2003) at p.1-14.

internal accountability roles.[219] This observation is made on the basis that the Panel process seems to focus on Bank compliance and non-compliance with its own policies and procedures, thus favouring internal rather than external accountability.[220] This is said to create a "blame game" which may lead to limited remedial measures instituted by the Bank and a continuation of problems "on the ground"[221]

On the other hand, the CAO arguably ensures external accountability by directing its attention towards its ombudsman role and attempting to meet the needs of all the parties involved in the development process.[222]

Despite these differences, both the Panel and the CAO were established to meet the needs of persons adversely affected by the World Bank group. As argued by Caufield[223], the existence of the Panel were established for reputational reasons, with a streamlined focus on upholding hierarchical accountability where industrialized principals such as the United States took measures to halt the Bank's negative environmental and social impacts.

Turning to the notion of accountability which is the recurring theme of this paper, one would hold that a holistic understanding or interpretation of accountability would include both internal and external characteristics. There is considerable logic in the argument that first and foremost, international organizations are accountable to the member states that created and fund them which would make international organizations accountable for their actions and for ensuring that they meet the needs of member states by adhering to their policies and guidelines.

Secondly, international organizations are externally accountable to those whom it affects in its operations. Yet, it is essential to stress that internal accountability should not be achieved at the expense of external accountability. This paper has argued that the Inspection Panel, by its very nature and structure, focuses exclusively on internal accountability, while not being able to adequately address the needs of persons and communities adversely affected by World Bank financed projects.

As previously discussed, the CAO in contradistinction supports both internal and external notions of accountability through its somewhat weak internal accountability mechanisms. In this way, the CAO goes some way to ensure that IFC and MIGA not only address issues on the ground, but also undertake an analysis as to how or why their policies failed.

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[219] Susan Park, 'Assessing the Accountability of the World Bank Group' Academic paper, Deakin University at p.27
[220] *Ibid*
[221] *Ibid* at p.28
[222] *Ibid*
[223] C, Caufield, *Masters of Illusion: The World Bank and the Poverty of Nations*, U.K., Macmillan (1999) at p.27-28.

Conclusion

This paper has sought to provide a thorough examination of how accountability has emerged as a key issue for international economic institutions as a result of pressure from transnational activists and member states alike. As a result of the establishment of the Inspection Panel as the accountability mechanism for the World Bank, the regional developments bank have followed suit in improving accountability. Yet, one should not forget that there are two quite distinct accountability mechanisms of the World Bank Group.

In assessing the effectiveness of the Inspection Panel, this paper outlined the differences between the structure and functions of the Inspection Panel with the CAO. There is certainly some force in the contention that the Inspection Panel has greatly improved the responsiveness of the World Bank to some of its member states, but that the CAO can be said to have a more realistic chance of attaining the external accountability for people and communities that are adversely affected by World Bank financed-projects. This is illustrated by the process through which claimants must appeal for a Panel investigation supported by the Bank's Board, in direct comparison to the problem-solving structure of the CAO.

In sum, it is true to say that the Inspection Panel has received praise amongst legal scholars and practitioners alike as an important development in citizen-based accountability for the World Bank and an example for other international financial institutions. While many problems may arise, some of which have been mentioned, the most important may be the constant need to maintain the trust of all constituencies.[224] The effectiveness of any accountability mechanism requires that people place their trust in its operation, especially the impoverished communities who submit the complaints, the member governments, Management and staff, and civil society actors.[225]

Trust depends on the impartiality, integrity, independence and competence of the people who are officials and staff in the mechanism, but also in having the necessary resources.[226] Equally, the mechanisms in question will have to ensure that the costs of ensuring accountability do not become burdensome so that recipients of financing and financial guarantees seek elsewhere, to those institutions in which there may be little accountability.[227] Truly sustainable development is not an easy achievement and it can only improve with independent voices, views and verification.[228] Thus,

[224] Inspection Panel at 15 Years , *supra* note 7 at p.112.
[225] *Ibid* at p.113
[226] *Ibid*
[227] *Ibid*
[228] *Ibid* at p.99

the long-term benefits of accountability to sustainable development must be apparent and widely appreciated to which impoverished people may turn to raise grievances and other concerns.[229]

[229] *Ibid* at p.113.

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