Monitoring the moneylenders: institutional accountability and environmental governance at the World Bank's inspection panel

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Abstract: This article discusses how Independent Accountability Mechanisms (IAMs) such as an Inspection Panel have the potential to improve both the legitimacy and environmental governance of multilateral financial institutions such as the World Bank. The World Bank provides loans and credit to developing countries to stimulate social and economic development in an attempt to alleviate poverty, often investing in infrastructure projects such as pipelines, power plants, and oil and gas fields. With billions in annual lending, the World Bank is the largest international financial institution in the world. Between 1994, when it started operations, and June 2015, the World Bank Inspection Panel received 103 requests for inspection across more than 50 countries that resulted in 34 approved investigations. Based on a qualitative case study methodology, the study finds that institutional accountability has inherent value in improving the internal governance of an institution—in this case the World Bank—and its ability to achieve development and sustainability goals. Yet to be effective, collaborative governance needs steered by committed and independent leaders on all sides, and there are limits to what IAMs such as the IP can accomplish. Understanding the internal dynamics, processes, and accountability mechanisms of the World Bank offers a rare chance to test the efficacy of institutional accountability in practice. Moreover, this study shows how attributes reflecting independence, impartiality, transparency, professionalism, accessibility, and responsiveness are crucial to improving governance outcomes and more equitable decision-making processes—themes highly relevant to public policy and development studies as well as environmental governance and the extractive industries.

1. Introduction

In the more than quarter-century since they were first proposed in the 1970s and 1980s, Independent Accountability Mechanisms (IAMs) have become a prominent fixture on the international stage. IAMs have been hailed for enhancing the transparency and efficacy of intergovernmental and multilateral financial institutions such as the World Bank or the European Investment Bank (Lewis 2012). Indeed, as of 2012, more than a dozen IAMs were in operation globally and they had collectively handled a total of 260 complaints spanning 72 countries (CAO 2012). This may come as no surprise given that accountability and transparency mechanisms have long been held to promote improvements in governance, empowerment, responsibility, and democracy (Schillemans and Busuioc 2015; MacDonald and Miller-Dawkins 2015; Dobel 1992).

Inspection Panels (IPs) are one of the more prevalent types of IAMs. IPs make it possible for citizens and communities to "challenge decisions of international bodies through a clear and independently administered accountability and recourse process" (World Bank 2009). But do they work? This study qualitatively examines the World Bank's IP, the world's first (Shihata 2000) and also largest and longest running IP to date (World Bank Inspection Panel 2016). This paper asks: what types of accountability does the IP promote? What are some of the tangible benefits that result from the IP? What challenges continue to hamper its effectiveness? And, critically, what lessons does it offer scholars and practitioners of environmental governance and energy policy, core themes in this journal?

Answer these questions yields multiple contributions. First, and most obviously, the paper focuses on the performance of the World Bank Group (WBG), a major source of financing for energy and infrastructure projects (including pipelines, oil and gas fields, and power plants). International financial institutions such as the WBG are, in the words of Keohane (2002), "organized anarchies" founded and maintained to reduce transaction costs, offer information, and enable agents to orchestrate complicated actions. The WBG in particular is a multilateral institution that provides loans and credit to developing countries to stimulate social and economic development in an attempt to alleviate poverty (Clark 1999). The WBG's annual average lending ranges $60 to $70 billion in loans, grants, equity investments, and loan guarantees (World Bank 2015), making it the largest international development bank in the world. Though it operates independently, the WBG's major shareholders are France, Germany, Japan, the United States, and the United Kingdom, and its major borrowers are Brazil, China, India, Indonesia, Mexico, and Russia. Understanding the internal dynamics, processes, and accountability mechanisms of the WBG is therefore of importance for both scholars of environmental governance and energy policy and practitioners of multilateral financial aid.

Second, this study examines a particular type of accountability—institutional accountability—infrequently investigated in the environmental governance literature. Much governance literature has broadly assessed personal accountability or professional accountability, usually meant to describe the relationships between a public servant or agency and an elected or appointed official (Bundt 2000; Hays et al. 2006; Romzek and Dubnick 1998). Others have analyzed the implementation of performance management and performance based contracting systems to see the extent to which they improve accountability or effectiveness (Moynihan et al. 2001; Radin 2006). Little research in environmental governance has yet explored institutional accountability—where an institution is held accountable by an independent, impartial, transparent, professional, accessible, and responsive panel—where options for due recourse, for redress, for increased participation and representation exist. Institutional accountability is therefore meant to encompass not only accountability "for what" but also "to whom" (Bardach and Lesser 1996)—in this particular instance "for" harms such as the erosion of indigenous culture or the despoliation of the environment, and "to" an independent, external panel. In this way IPs seek to enhance performance through better independent monitoring, oversight, and control. They attempt to "guard the guardians" and operate sort of like an internal affairs division of a police department (Cabral and Lazzarini 2015)—meaning they occupy a unique, and rarely studied, brand of accountability.

Third, the WBG's IP is structured in a way that it is generally polycentric, participatory, and inclusive. It coordinates multiple actors at multiple scales, making it a new mode of "polycentrism" (Ostrom 2010) or "collaborative governance" (Johnston et al. 2010) since it necessitates, to a degree, consensus-oriented, deliberative processes that stitch together government stakeholders, affected communities, private sector actors, management at the World Bank, and other institutions. In other words, the IP reflects the principle of decentralized, citizen-driven accountability attempting to increase visibility and create more responsive systems of redress for people harmed by intergovernmental processes or projects (Lewis 2012). Examining the World Bank's IP offers a rare chance to test the efficacy of this form of collaborative structure.

2. Research Design, Case Selection, and Conceptual Focus

To demonstrate the salience of accountability and IPs, the paper provides a historical, qualitative case study of the World Bank's IP. The paper relies on a case study methodology because this is well suited for rich, qualitative and processual studies of phenomena in real-world contexts (Yin, 1994). This particular method offers effective tools for specifically analyzing the contextual dynamics of institutions and controversy (Mjøset, 2009). The World Bank's IP was chosen because it was the first and therefore has the most operational experience. In addition, the WBG offers a unique place to test the efficacy of institutional accountability because its membership includes almost every country in the world (Woods 2000). Moreover, as Bugalski

(2016: 3) writes, the WBG's template for an IP has come to be modelled by many other international actors:

> *The Bank's accountability system, encompassing its safeguard policies and the Inspection Panel, has been emulated in some form and to varying extents by all other traditional multilateral development finance institutions and some bilateral aid agencies. The system has also spread, somewhat tentatively, into the world of private finance.*

The author conducted primary research at the archives of both the World Bank and the World Bank's IP (which has a separate secretariat, website, and institutional repository). Both archives are open to the public. The paper also synthesizes, inductively, historical data from textual academic sources when relevant, most of them from the legal studies and jurisprudence literature. Admittedly, this review of the literature was not completely systematic and was done more to supplement or triangulate the archival results.

To provide a bit more justification and background for case study selection, the WBG is actually comprised of five separate organizations. The International Bank for Reconstruction and Development (IBRD) was created in 1944 at the Bretton Woods Conference, as a special agency of the United Nations. Its purpose was to allocate money from wealthy nations to those that needed help financing reconstruction efforts after World War II. According to the IBRD website, its role has now shifted:

> *The IBRD works with its members to achieve equitable and sustainable economic growth in their national economies and to find solutions to pressing regional and global problems in economic development and in other important areas, such as environmental sustainability. It pursues its overriding goal—to overcome poverty and improve standards of living—primarily by providing loans, risk management products, and expertise on development-related disciplines and by coordinating responses to regional and global challenges.*[1]

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[1] See http://www.worldbank.org/ibrd.

The IBRD remains the Bank's second largest lender with $18.6 billion invested in 93 operations in fiscal year 2015 involving 188 member countries, offering money and guarantees to middle income governments for development projects.

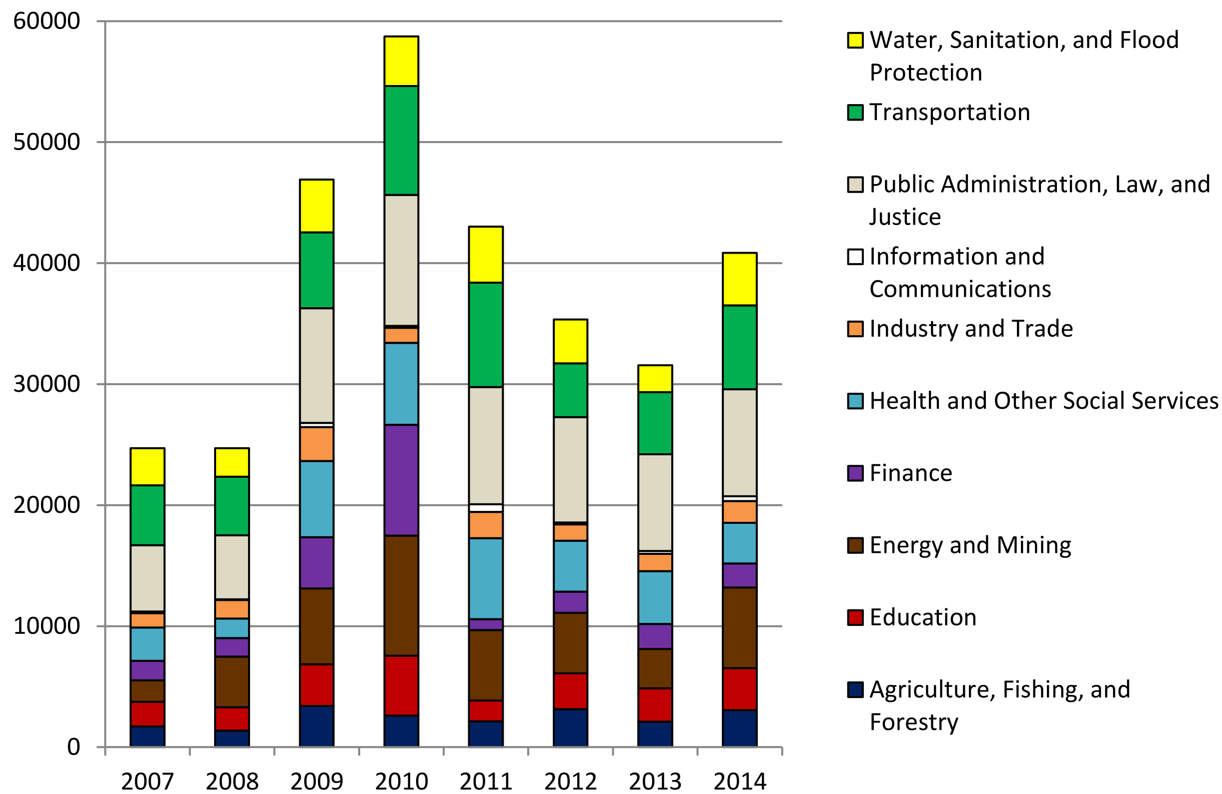
The next largest part of the Bank is the International Development Association, or IDA, established in 1960 to fund projects in developing countries unable to borrow money on IBRD's terms. Bankers sometimes call these loans "soft" since they have extended grace periods and minimal finance charges. As the WBG (2012) described it, the IDA "supports countries' efforts to boost economic growth, reduce poverty, and improve the living conditions of the poor." In 2015, 81 countries received IDA assistance worth roughly $22.3 billion in total, the largest of any part of the WBG.

The third branch of the WBG is the International Finance Corporation (IFC), created in 1956 and owned by 176 member countries. In 2015, it invested $17.2 billion across 100 countries. Unlike the previous two branches, the IFC lends to the private sector rather than governments, and its mandate is to "promote productive and profitable private enterprises in developing nations" and to allow "financial institutions in emerging markets to create jobs, generate tax revenues, improve corporate governance and environmental performance, and contribute to their local communities" (World Bank 2012). The IFC generally offers technical assistance to companies including privatizing government linked monopolies, protecting securities, and creating stock exchanges.

The fourth and fifth arms of the WBG are the Multilateral Investment Guarantee Agency (MIGA), created in 1988 with about $3.1 billion of investments and guarantees in 2014, and the International Centre for Settlement of Investment Disputes (ICSID), created in 1966 to resolve disputes between foreign investors and governments.

Due to its size and scale, the WBG is a major financier of infrastructure and mining projects around the world. Although precise numbers differ year-to-year, as Figure 1 shows lending for energy/mining and transport are among its largest sectors, although the WBG is also involved in supporting agriculture, health care, education, and trade.

Figure 1: World Bank Lending by Theme and Sector for the IBRD and IDA, 2007 to 2014 (millions of dollars)



Source: Compiled by the author using World Bank data.

A core concept utilized throughout the paper to assess the efficacy or impact of the WBG is that of "accountability." Most generally, accountability can be defined as the process by which "actors record and disclose their behavior, in the broadest sense of the word, to an external audience (forum or principal)" (Schillemans and Busuioc 2015). Some scholars have classified variants of accountability with different origins of authority, including bureaucratic accountability (how officials and organizations shape expectations about what is acceptable within an institution), legal accountability (control through laws and regulations), professional accountability (control through professionalism and norms), and political accountability (control through elections and participatory democracy) (Brandsma and Schillemans 2012; Henrich et al. 2009)

This paper in particular focuses on institutional accountability, a type of accountability operationalized through having a clear, independent administrative entity that can handle grievances. More specifically, institutional accountability revolves around the theoretical principles of independence, impartiality, transparency, integrity and professionalism, accessibility, and responsiveness (Lewis 2012). Independence means that an IP must operate separately from the institution it is supposed to govern—it cannot be influenced or constrained by reporting requirements, restrictions on budget, or interference with its aims and scope. As Lewis (2012) suggests, IPs must be impartial, entering into disputes and complaints without a predisposition toward any given position and without conflict of interest. Lewis (2012) also argues that the IP process must be transparent—with full public disclosure of information as well as the features of the decision-making process. Integrity and professionalism mean that IP principals and their supporting staff are credible, competent, and qualified to undertake their duties (Lewis 2012). Lewis (2012) lastly suggests that IPs must be accessible, meaning people are aware of its existence, and few barriers to entry or prevent people from engaging with it; and that IPs must also be responsive, meaning that they pursue their efforts in a timely manner and also are duly diligent at reaching a decision and implementing recommendations.

The next three sections present the qualitative data gleaned from the archival research and literature review. It attempts to structure this data inductively and coherently into a narrative, since narratives and storylines are an elemental part of understanding human (and institutional) behavior (Czarniawska 2004). When laying out its analysis, the paper cycles back and forth from our data collected and narrative to provide opportunity for the material to fit itself around the research questions in an iterative process (Strauss 1990). Those questions are: how does the IP function? What type of accountability does it promote? And, what challenges exist to its operation? The sections to come answer these questions in order.

3. The Dynamics of the World Bank's Inspection Panel

How does the WBG's IP work? In colloquial terms, the Inspection Panel (hereafter "IP") was created to ensure that the WBG meets its own social and environmental safeguards and, responds to complaints from communities affected by sponsored projects. The germination for the IP in particular began in the 1980s when nongovernmental organizations began criticizing the WBG for violating its own policies concerning involuntary resettlement (established in 1982), tribal peoples (created in 1982), and environmental impact assessment (formed in 1988) (Bignami 2016). The Sardar Sarovar Dam and Canal projects on the Narmada River in India served as a flashpoint for these concerns, as they involved the forced relocation and resettlement of more than 120,000 people and induced significant environmental damages. Initial project plans involved, among other things, the construction of 30 large dams, 135 medium-scale dams, and 3,000 smaller dams on the Narmada River. The largest of these, the Sardar Sarovar Dam, submerged 37,000 hectares of land and required the evacuation and resettlement of 245 villages, almost all of them home to indigenous peoples, across the states of Gujarat, Maharashtra, and Madhya Pradesh. The Canal network, similarly, necessitated the clearing of 80,000 hectares of land for construction (Clark 2003). The WBG approved funding for these projects throughout the 1980s but continued to make disbursements even after civil society groups raised social and environmental concerns. By the early 1990s, the WBG was "under attack" for violating its safeguards for these projects (World Bank 2003), making it what one study called "a lightning rod for transnational protest" (Fox 2003).

As a response to the ensuing outcry, then WBG President Barber Conable created an independent commission to review the Indian projects in 1991 to be headed by Branford Morse, a retired senior administrator from the United Nations Development Program, and Thomas Berger, a former Supreme Court Justice from British Columbia, Canada. The commission released a report, informally known as the "Morse Commission Report," in 1992 and identified "serious compliance failures" by the WBG as well as "devastating human and environmental consequences of those violations" (World Bank 2009). Follow-up investigations across the WBG's entire portfolio implied that managers habitually failed to carry out the organization's goals of poverty alleviation and environmental protection (Werlin 2003). Even the WBG's own 1992 internal review of its lending practices, known as the Wapenhans Report, concluded that the WBG was "suffering from a performance crisis" with almost 40 percent of projects scoring "unsatisfactory" ratings, widespread defaults on loans, and an overall "culture of approval" that prioritized making loans at the expense of local communities and preserving ecosystems (Clark 2003). Part of the explanation was that managers were rewarded for moving as many projects as possible forward but were not penalized if those projects suffered from poor design or shortcomings in accommodating local peoples. The implication was that the WBG's violations of its procedures symbolized a systematic failure on the part of bank management (World Bank 2009).

To address these concerns, the Executive Board established the IP in September 1993 as an "Independent Accountability Mechanism" to commence operations on August 1, 1994. The stated goal of the IP was to provide a forum "for people who believe that they may be adversely affected by Bank-financed operations to bring their concerns to the highest decision-making levels of the World Bank" (World Bank 2009). The role of the IP was to operate "as an independent forum to provide accountability and recourse for communities affected by Bank-financed projects, to address harms resulting from policy noncompliance, and to help improve development effectiveness of the Bank's operations" (World Bank Inspection Panel 2011). In the words of James D. Wolfensohn, a former President of the WBG:

> *When the Board of Directors of the World Bank created the [IP, it was] an unprecedented means for increasing the transparency and accountability of the Bank's operations. This was a first of its kind for an international organization—the creation of an independent mechanism to respond to claims by those whom we are most intent on helping that they have been adversely affected by the projects we finance. By giving private citizens—and especially the poor—a new means of access to the Bank, it has empowered and given voice to those we most need to hear. At the same time, it has served the Bank itself through ensuring that we really are fulfilling our mandate of improving conditions for the world's poorest people. The Inspection Panel tells us whether we are following our own policies and procedures, which are intended to protect the interests of those affected by our projects as well as the environment.*

The IP was to decide whether the Bank complied with its own policies and procedures, especially its social and environmental impact assessments, and ensure that its projects avoid harm to people and the natural environment.

To accomplish these tasks, the IP operates according to four key practices: independent fact-finding, problem-solving, checks and balances, and transparency and participation. To respond to complaints from communities affected by WBG projects, the Panel conducts independent investigations and compiles facts to establish whether the WBG followed operational policies and procedures. It plays a role in helping affected communities document problems with projects and then considers solutions to them. The IP provides a check and balance on the WBG Board and the actions of Bank managers. It lastly promotes transparency in Bank operations through the publication of reports and findings.

To assuage its member countries and borrowing governments, the WBG created its IP to consist of three separate "circles." The first, and central circle, are the three individual Members of the IP, each from a different country, chosen for a period of five years that cannot be renewed. Members are selected and appointed for their "ability to deal thoroughly and fairly with the requests brought to them, their integrity and their independence from Bank Management" (World Bank 2009). The second circle consists of an Executive Secretariat and a small number of support staff created to help advise and assist the Members in executing their duties. The third circle consists of internationally recognized experts who assist the IP with specific investigations, providing Members with reliable information in fields as diverse as anthropology, forestry, and hydrology.

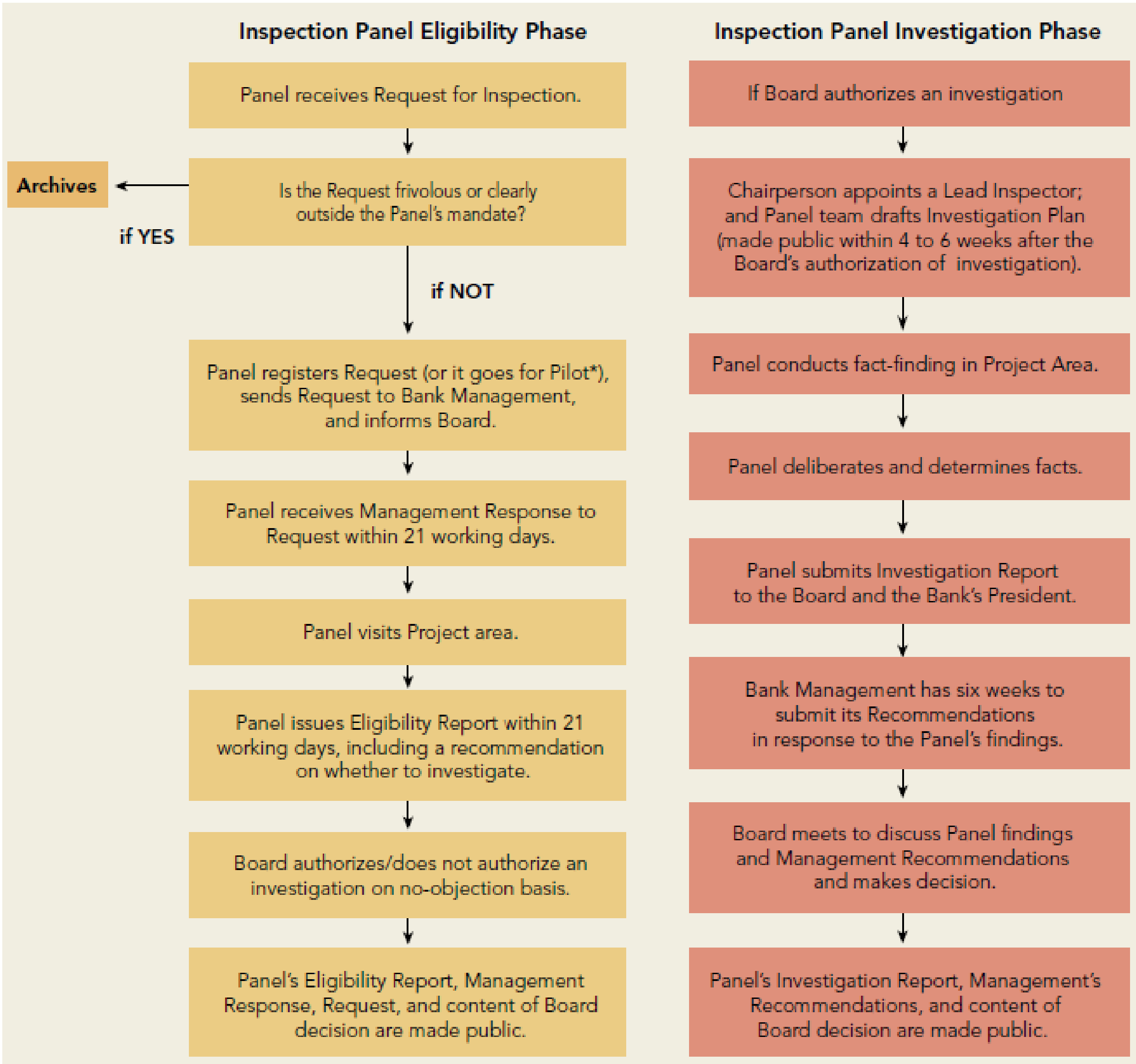
The IP itself was given three explicit investigatory, advisory, and rulemaking powers. The IP has the authority to investigate complaints about the failure of WBG projects as they relate to its operational policies and procedures in the design, appraisal, implementation, or evaluation of a project. It has the authority to advise the Executive Directors of the WBG about which complaints to pursue. It has the authority to determine which rules apply to a particular case and to resolve any issues that may arise as complaints go forward.

In carrying out these tasks, each complaint brought before the IP passes through four phases: eligibility, investigation, report writing, and board discussion. Any two or more individuals affected by any WBG project can bring a complaint before the panel by writing a short letter, formally called a "Request for Inspection." These requests need not be long—some are only one page—they can be in any language, they can be hand written, they can be extensively or sparsely detailed, and they can be submitted confidentially. Once a Request for Inspection is submitted, the Panel must determine whether it meets the following criteria for eligibility, last updated in 2011:

- The affected party must consist of any two or more persons with common interests or concerns and who are in the borrower's territory;
- The request must assert in substance that a serious violation by the Bank of its operational policies and procedures has or is likely to have a material adverse effect on the requester;
- The request must assert that its subject matter has been brought to Management's attention and that, in the requester's view, Management has failed to respond adequately demonstrating that it has followed or is taking steps to follow the Bank's policies and procedures;
- The matter cannot be related to procurement;
- The related loan must not be closed or substantially disbursed;
- The Panel must not have previously made a finding on the subject matter or, if it has, the request must state that there is new evidence or circumstances not known at the time of the prior request.

Complaints meeting these criteria generally enter a field investigation phase where the IP retains outside experts and collects facts relating to the case, including visits to the project and meetings with the Requesters—the author says "generally" because in rare circumstances the Executive Board has failed to approve IP recommended investigations. All data collected during the investigation is synthesized into a report submitted to the Bank's Board, made available to the public upon their approval. The final phase consists of the Board asking relevant project managers to provide recommendations in response to the Panel's report and, when necessary, creating an "Action Plan" to remedy harm and bring the project into compliance. Figure 2 graphically depicts the IP process during the first two phases.

Figure 2: The Eligibility and Investigation Phases of the World Bank's Inspection Panel

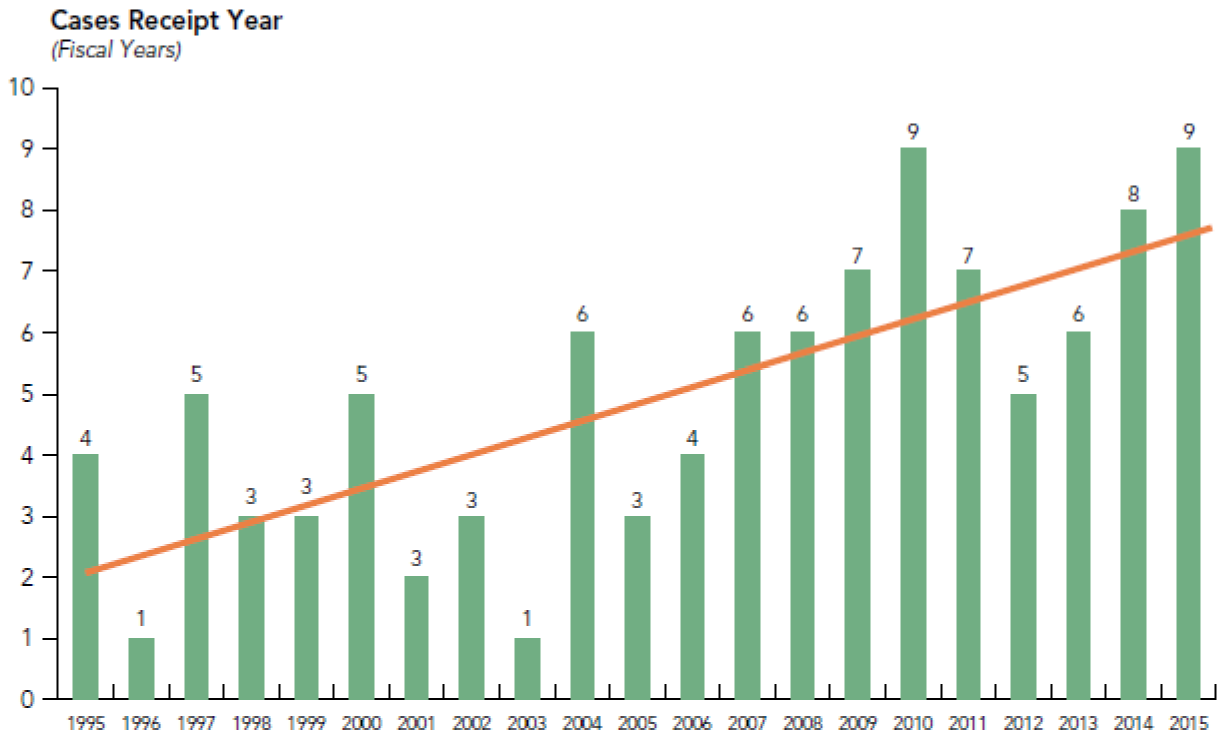


Source: World Bank Inspection Panel. * The pilot allows Requesters to seek opportunities for early solutions for complaints when certain criteria are met.

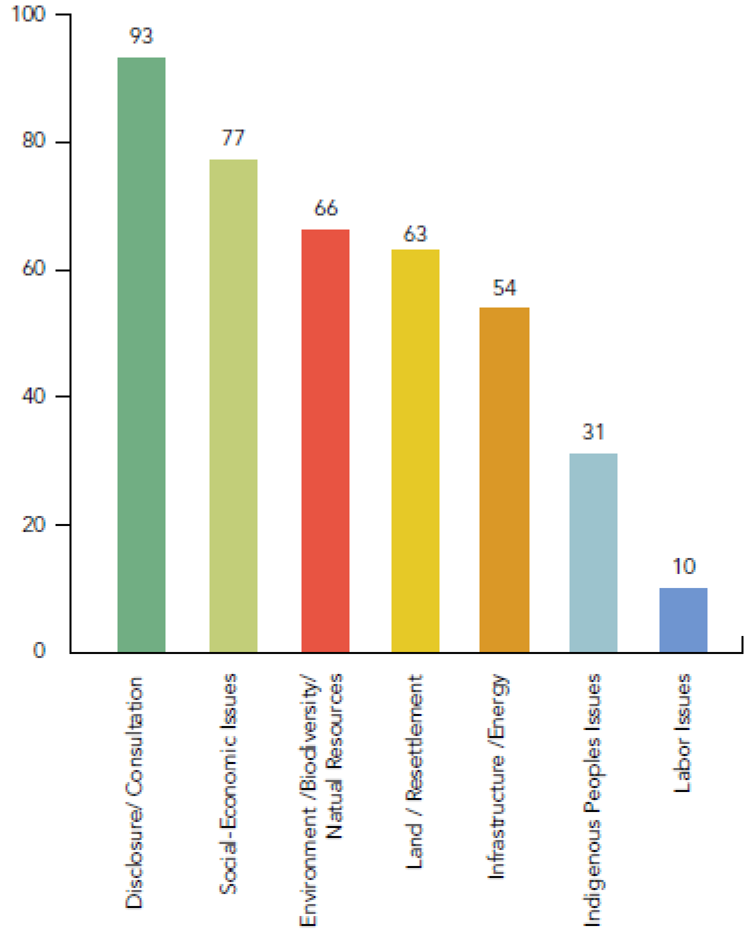
Between 1994, when it started operations, and June 2015, its most recent evaluation, the IP had received 103 requests for inspection from more than 50 countries that resulted in 34 approved investigations. These have dealt with IBRD and IDA loans as well as the Global Environment Facility and Trust Funds, with Figure 3 showing the most common complaints involving supervision and environmental impact assessments (World Bank Inspection Panel 2011, 2014, 2015), although land, resettlement, and infrastructure issues were also frequently investigated. Geographically, while countries located in Sub-Saharan Africa or Latin America and the Caribbean represented almost two-thirds (61%) of received requests, South Asia and Europe and Central Asia were also subject to frequent investigations.

Figure 3: Profile of Inspection Panel Requests by Institution, Policy-Related Issues, and Received Requests (as of June, 2015)

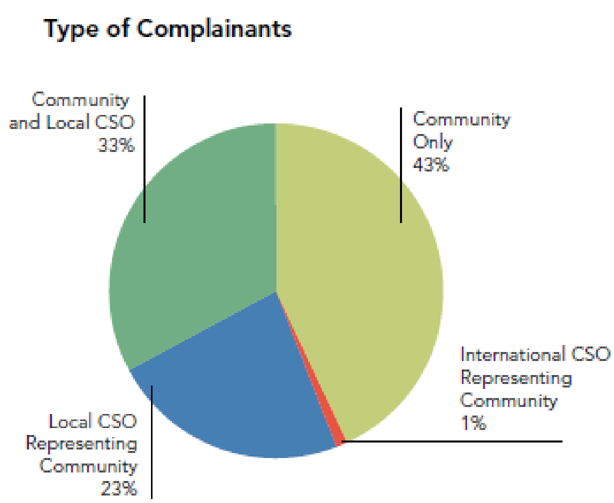
a. Top panel: Requests received

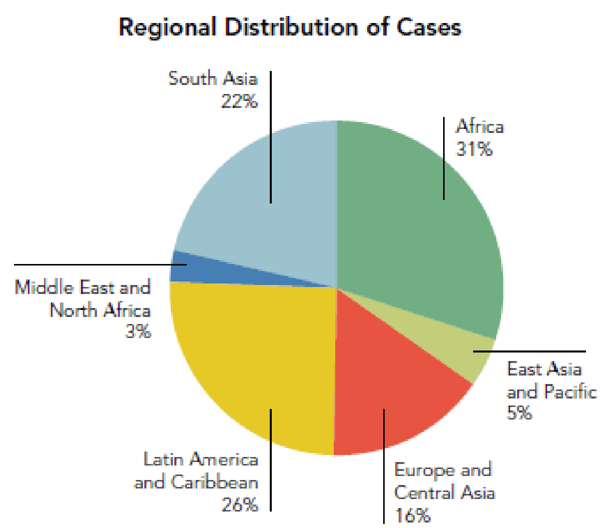


b. Middle panel: Issues most often raised in requests



c. Bottom panel: Requests received by region and type of requestor





Source: World Bank Inspection Panel 2015.

4. Examining the Benefits of the World Bank's Inspection Panel

What types of accountability does the IP promote—and what benefits have accrued so far? To date, drawing inferentially from the case study data, this section of the study argues that four of the IP's benefits are discussed most frequently: it has (1) improved the governance of WBG operations, (2) resulted in the cancelation of harmful WBG projects, (3) empowered communities with the knowledge they need to seek meaningful redress and compensation, and (4) enhanced the protection of human rights by starting a hopeful trend in international law and public administration.

4.1 Improved Efficacy of World Bank Operations

In theory, the IP has great potential to improve internal WBG governance by spotlighting missing information, uncovering flaws in assessments, acknowledging noncompliance, and enlightening management. As previously mentioned, it does this by expanding check-and-balance mechanisms so that concerns can be brought directly before the Executive Board of the Bank, and by creating a public record of how well the institution is complying with its own safeguards. Bradlow (1993-1994) states that the IP generates authoritative, high quality, timely, objective information about projects that can be used by Bank managers wishing to mitigate problems, as well as by member countries concerned about the legitimacy of the Bank and by governments considering whether they want WBG assistance. The public record created by IP investigations and findings can also enable members of civil society to better assist marginalized groups and learn about Bank practices and procedures (Bradlow 1993-1994).

In practice, examples abound confirming that the IP has improved the performance of some WBG managers and the efficiency of some programs in meeting their intended goals. In their investigation of the West Africa Gas Pipeline Project, for example, the IP documented that the WBG did not meet its own requirements of livelihood restoration and resettlement, and that there had been an embarrassing factor of ten mistake in undercompensating indigenous peoples for the value of their land. It also found that project documents overestimated the amount of natural gas flaring the project could reduce—mistakes that were promptly corrected (World Bank 2009). In their investigation of the Chad-Cameroon oil pipeline, the IP spotlighted how the project did not incorporate a proper regional health plan into its assessments, failed to develop sound water and sanitation facilities around the project area, and lacked an appropriate weighing of how oil and gas projects impacted local communities—mistakes that were also corrected (Utzinger et al. 2005).

In other cases, complaints led to the sanctioning or firing of WBG staff. In their investigation of the Lake Victoria Environmental Management Project in Kenya, the IP discovered that project managers had failed to meet the public consultation components of the bank's environmental impact assessment policy (Clark 2003). In their investigation of the Albania Integrated Coastal Zone Management and Clean-Up Project, the IP discovered that managers had intentionally misrepresented facts concerning the demolition of homes in project appraisal documents and board meetings, findings that convinced the Board to "clean house" and terminate the employment of some senior managers (World Bank 2009).

4.2 Suspension and Cancellation of Harmful Projects

Although rare, IP investigations have successfully suspended and cancelled socially and environmentally harmful WBG projects. Strikingly, the best example here is the first investigation ever conducted of the proposed Arun III Hydroelectric Project in Nepal in 1994. The IP's investigation of the $800 million project revealed that the Bank had failed to observe proper requirements for relocation and resettlement, and that the project had tenuous economic justification given the fragile state of Nepal's economy. After receiving the IP's report, Bank President James Wolfensohn completely terminated the Bank's support (World Bank 2009). Analogously, after the IP revealed that the Bank had "extensively violated" its policies concerning project design and the participation of vulnerable ethnic groups in consultations related to the China Western Poverty Reduction Project in Qinghai, the Board cancelled the Bank's involvement. More than a decade later, in 2005, the IP's report had a similar effect on the Mumbai Urban Transport Project in India, a scheme involving the relocation of more than 120,000 people. Their report documented "significant compliance failures in resettlement activities" ultimately convincing the Bank to suspend disbursements until employment options were expanded for local shopkeepers, and until databases for redressing grievances were improved (World Bank 2009). More recently, in 2015 an IP report revealed that the WBG failed to make sure that families displaced by a $75 million high-voltage power transmission line project in Nepal were properly counted and compensated, given that they relied on outdated census data. Consequently, the Khimti-Dhalkebar Transmission Line was suspended (Chavkin 2015). That same year, the mere threat of an IP investigation into a World Bank project in Uzbekistan concerning child and forced labor in the cotton industry convinced the government to comply with third-party monitoring from the International Labor Organization international to ensure global human rights standards were met (Taylor 2015).

The severity of cancelling or suspending projects is credited with creating a prophylactic effect on bank management. The threat of an IP investigation has contributed to "allergic reactions" among bank staff to risky or controversial projects, offering an antidote to the "culture of approval" so widespread throughout the Bank in the 1980s and 1990s. One senior managing director of the WBG has stated that due to the IP, "risk aversion is widespread, among front line managers especially … It comes out in the choice of projects. It looks like staff are avoiding certain types of projects" (quoted in Treakle et al. 2003). Bradlow (1993-1994) found that "the possibility that Bank staff could be held personally accountable for the manner in which they make and implement decisions" has encouraged them to be "more responsive to and respectful of those who are affected by their decisions," essentially deterring bad behavior. The IFC and MIGA have adopted environmental and social policies and created the Compliance Advisor and Ombudsman Office in 1998 and 1999, respectively, to proactively ensure that their projects better meet WBG guidelines.

4.3 Broader community empowerment

The IP has empowered communities by giving affected persons stronger voices, respecting their account of events, and redressing implementation problems. As Clark (1999) explains:

> *The indirect effects of the Panel process can be very valuable for local citizens affected by Bank projects, as several past cases have demonstrated. First, the Panel process provides a forum where they can raise concerns that have in many cases been ignored for years. Regardless of the ultimate outcome of the Panel process, this raises awareness of the problems at the highest levels in the Bank and in the borrowing country. It can also be empowering for the claimants. Another indirect effect is increased media attention and support from international NGOs interested in Bank activities. International attention has so far played a critical role in pressuring the Board to take action. In addition, the time and effort involved in launching an Inspection Panel claim has increased solidarity among the claimants, empowered them to have a dialogue with government officials and project authorities, increased awareness within the country, and strengthened the networks of support at the local, national and international levels*.

Indeed, one assessment evaluated 28 claims submitted to the IP between 1994 and 2002 and found that in 10 of those cases—Arun, Planafloro, Jamuna, Yacyretá, Jute Sector, Itaparica, Singrauli, Land Reform, China/Tibet, and Structural Adjustment Argentina—had positive impacts on local communities. It concluded that "the Inspection Panel has given increased legitimacy to the claims of local people affected by the World Bank, and it serves as a forum through which their voices have been amplified within the institution" (Treakle et al. 2003).

In Africa, the IP's investigation of the Democratic Republic of Congo Forest-Related Operations project raised media attention to the plight of the Pygmy peoples and led to recognition of the non-economic value they placed on Congolese forests. That recognition convinced the federal government to place nationwide restrictions on logging (World Bank 2009). In India, IP investigations of coal mining in Singrauli resulted in increased compensation for affected people; in the case of the $1.7 billion 3,100 MW Yacyretá Dam, IP findings resulted in changes in design for smaller reservoirs that preserved the hunting and fishing grounds of some local communities (Udall 2000). In Bangladesh, the IP-prompted controversy over the Jamuna Bridge precipitated in the national government recognizing, for the first time, the right of the *Char* people to compensation (Fox and Treakle 2003). The mere act of filing a complaint in the Romania Mine Closure and Social Mitigation Project was enough to motivate the government to cancel it, without the IP needing to conduct an investigation (World Bank 2009). IP actions have also resulted in legal protections for the Yorongar people in Chad, the virtual elimination of prostitution along the Chad-Cameroon oil pipeline, and greater protections against deforestation in Cambodia (Kim 2008-2009).

4.4 Enhanced protection of human rights

The IP has motivated other agencies and institutions to create their own accountability mechanisms and enhanced the global protection of human rights. Bradlow (1993-1994) opines that "the creation of the Panel is an important legal development" since it is "the first forum in which private actors can hold an international organization directly accountable for the consequences of its failure." This prompted the Inter-American Development Bank to create its own inspection panel in 1994 and the Asian Development Bank to create its own inspection mechanisms in 1995. The European Union established the International Right to Know Day on September 28, 2000, and created its own accountability mechanisms similar to the IP known as the European Ombudsman Office (EOO). Each year, the EOO receives a sobering 2,500 to 3,000 complaints addressed to institutions of the EU, of which 600 or so are investigated (Guarascio 2012). Similarly, the European Investment Bank (2012) established its "Complaints Mechanisms Principles" in 2010 to hold that Bank more accountable to its stakeholders; the EIB's mechanism investigates roughly 40 cases every year.

As such, Boisson de Chazournes argues that "the measures taken by the Bank to strengthen information disclosure have contributed to the promotion of transparency and access to information," and that as a result, "the Inspection Panel is a progressive step in the development of both the law of international organizations and the law of human rights." Confirming these points, an independent evaluation from the Center for International Environmental Law, Bank Information Center, and the International Accountability Project acknowledged that the IP process was useful for protecting human rights and that it the Panel's cases "opened the door" for groups to incorporate human rights concerns into their complaints (Herz and Perrault 2009).

5. Revealing the Limits to the World Bank's Inspection Panel

What limitations and barriers must the IP confront? Though the World Bank's IP has culminated in some meaningful benefits, this section of the paper argues, inductively from the case study material, that it also faces challenges related to (1) transaction costs, (2) a limited mandate, (3) lack of independence and resistance from the WBG, (4) retaliation against complainants, and (5) the overall momentum of Bank culture.

5.1 Transaction costs with bringing a complaint

Though the criteria for filing a complaint with the IP are relatively simple, and complaints can theoretically be only one page long, in practice filing a successful complaint is a technical process that requires the assistance of experts including lawyers and development specialists. As one study noted, this process "requires a fair amount of technical knowledge and work on the part of the claimants … the requirements have made access to the panel difficult for those very people it was established to serve" (Treakle et al. 2003).

For instance, the only formal point of contact after complainants have contacted the IP is to meet with the panel if it decides to conduct a field investigation, though if that does happen, the Panel nearly always visits the country to meet with the requesters, verify signatures, and get their input before writing its report as to whether to recommend an investigation. The requesters can also provide information to the Panel throughout the complaint process, yet there is no opportunity for complainants to comment on how the Executive Board or bank managers respond, nor are claimants given access to information before decisions are made about their claim, nor do they have a right to comment on whatever remedial measures are to be taken. There is also no right for claimants to appeal panel findings or the Board's decision about how to proceed with claims and Action Plans.

Consequently, claimants can go through the arduous process of documenting and filing a complaint, only to have nothing done, even if they have demonstrated harm. For instance, in a claim concerning the Lesotho Highlands Water Project, a scheme involving at the time the construction of Africa's largest dam, the project substantially increased water prices for local people and disproportionately impacted poor townships—but the IP decided not to pursue an investigation since "the claimants had not made a link between the conditions they complained of and specific bank policy violations" (Treakle et al. 2003). Similarly, in a complaint filed concerning the $167 million Rondonia Agricultural, Livestock, and Forestry (*Planafloro*) project, a collection of 25 organizations representing indigenous peoples, small farmers, unions, and environmental groups exhaustively documented how the scheme compromised the integrity of local rainforests. The IP found that the Bank "failed to implement the project as planned" and had in their poor oversight facilitated illegal logging which was destroying up to 400,000 hectares of rainforest each year. The Executive Board, however, denied an investigation (Dunkerton 1995). (In the IP's defense, this particular case came before the 1999 revisions which changed the Board approval procedure for an investigation to approval on a non-objection basis, rather than requiring affirmative Board approval).

5.2 Limited mandate

Though the IP can bring attention to problematic projects and has authority to make findings to the Bank's Executive Board, it remains constrained by a limited mandate. Most significantly, the IP does not have the ability to provide any relief to complainants, even successful ones. The IP panel cannot make recommendations in a legal or binding sense, either, it can only make "findings" which may or may include substantive and important observations. The IP cannot directly offer compensation, it cannot by itself issue an injunction against further work on a project, it does not oversee the generation of Action Plans, and it cannot rule that a project should be cancelled, or provide redress. It cannot even prevent governments or other institutions from retaliating against complainants, something discussed in greater detail below. The IP merely advises the Executive Board, which then determines how to proceed. And then we have a veritable list of other weaknesses: it cannot focus on non-project loans, it cannot select its own members, it can only investigate the bank rather than the borrower, and so on (Fourie 2012; Zalcberg 2012; Fauchald 2013). As Udall (2000) explained decades ago, "the Panel is—by the nature of its powers—a limited creature. It is not an enforcement or judicial mechanism."

This inability to provide relief has proven to be a substantial barrier. In the case of the 3,100 MW Yacyreta Hydroelectric Project in Argentina and Paraguay, although the IP found that the Bank "had violated numerous policies and procedures," bank management never fully followed through to ensure the complete implementation of Action Plans, though management did report back to the Board on at least two occasions (Carrascott and Guernsey 2008). In the case of the Cartagena Water Supply, Sewerage, and Environmental Management Project in Colombia, the IP found "numerous problems" with how the project would discharge waste into the Caribbean Sea. Yet it took Bank management three years to implement an action plan—by which point most of the damage to coastal villages had already been done (Carrascott and Guernsey 2008). And in the case of the Mumbai Urban Transport Project, Bank management failed to meet their deadline for submitting an action plan and delayed for more than a year, meaning almost none of the targets recommended by the Executive Board were met (Carrascott and Guernsey 2008).

Moreover, the IP is constrained by the criterion that that it cannot investigate projects where "the loan financing the project has been substantially disbursed." This is problematic for two reasons. First, many problems with Bank projects do not manifest themselves until years after disbursement. Second, bank managers who know or suspect a complaint is coming can strategically disburse large amounts of it in order to make it "non-redressable," manipulating the process to their advantage. Even when IP investigations do accomplish empowerment and media attention, their impact can be short lived. As Hunter (2003) noted, "The short-term benefits that come from the added attention brought by filing a Panel claim do not necessarily translate into long-term sustainable benefits. Too often, the Panel's recommendations and the subsequent Board decision provide momentum for change-momentum that is lost once the Panel's and civil society's attention turns."

These limitations have certainly blunted the efficacy of the IP, especially concerning serious matters such as displacement and involuntary resettlement (World Bank Inspection Panel 2016). A recent internal review of the Panel's database suggests that of the 32 cases investigated between 1994 and 2016, 21 (two-thirds) involved involuntary resettlement. However, in *half* of those cases, such resettlement was not mentioned as a risk within project assessment documents, and the report concluded that "the Bank's ultimate policy goal of conceiving and executing resettlements as sustainable development programs has not been achieved in many of the cases investigated by the Panel."

5.3 Lack of independence and internal resistance

The independence of the IP, and its acceptance within both the Executive Board and the Bank as a whole, has ebbed and flowed. At least two distinct phases are discernible: a period of fierce resistance after the IP's first case involving the Arun Dam in Nepal, and a period of almost universal support.

The first six years of the IP were tumultuous, and witnessed intense and protracted resistance to the IP within the Executive Board. Between the Arun Dam investigation in 1994 and 1995, and the China Western Poverty Reduction Project in 1999 and 2000, five years lapsed and extensive reforms were made before the Executive Board would yet again authorize the IP to conduct full investigations. During those five years, in every case where the IP recommended an investigation, the Board, upon advice from a combination of senior managers, borrowing country governments, and some donors, either rejected the IP's authority to investigate (in cases such as *Planafloro*, Itaparica, and EcoDevelopment) or limited the terms of reference for the investigation (in Yacyretá and Singrauli). During this phase, Clark (2003) notes that:

> *Bank management resented the panel's scrutiny and strongly resisted being held accountable. Management responses to the Inspection Panel claims tended to deny policy violations and deny responsibility for problems identified in the claim (usually blaming the borrowing government for the problems instead). Management responses also tended to challenge the eligibility of claimants and propose "action plans" as alternatives to panel investigations.*

Throughout this rough period of adjustment, Dunkerton criticized the IP as nothing more than a "public relations tool for the Bank and a political liability for borrowing nations" (Dunkerton 1995). Admittedly, the Executive Board of the Bank was in a precarious position: they had to balance their attempts at impartiality and support for the nascent IP with the wishes of managers and donors with whom it had to work.

Things started to change 1998 when the IP entered a second phase of seemingly earnest acceptance. Most Board members were "frustrated that a mechanism that had been designed to help reduce their problems in dealing with difficult projects was instead generating more conflict at the Board" (Clark 2003). Consequently, in March of 1998 the Board began a formal review of the panel process, establishing a working group consisting of three borrowing country executive directors and three donor country executive directors. The review's conclusions, released in April of 1999, called on the Board to make a number of reforms, which they did. The Board released an internal memorandum to all staff affirming the "importance," "independence," and "integrity" of the IP. It instructed project managers and staff to base their recommendations on the findings of the panel, rather than to try and preempt panel investigations. It, most meaningfully, reached a compromise concerning the issue of the Board rejecting IP findings for investigation by clarifying that "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," except with respect to technical criteria for eligibility. The Panel's recommendation on whether to conduct an investigation was also sent to the Executive Board on a non-objection basis. In exchange, the IP's assessment period was reduced to simplify the evaluation process.

Testing these changes, the complaint over the China Western Poverty Reduction Project showcased the Board fully respecting the IP's recommendation for a full investigation, and for the next decade or so, the board "universally authorized" the panel to investigate when it so recommended (Clark 2003). During the 2010 to 2014 fiscal years, even though more than a dozen of the IP's reports on eligibility required full discussion by the Board instead of their usual approval on a "non-objection" basis, the Board has respected the IP's autonomy.

Most recently, the IP has shifted again to controversial times. Bugalski (2016) argues that over the past few years, the WBG has undertaken a far more "discretionary" and "cautious" approach towards managing social and environmental impacts, with more emphasis placed on moving projects forward even when somewhat significant concerns are raised. This is because the WBG is now forced to compete with other multilateral donors and development banks (many which have more relaxed standards) and must fight to remain competitive. Bugalski (2016) warns that "as the Bank strives to recast itself as an attractive lender to governments and public-private partnerships, there are emerging signs that it will sacrifice its system of accountability to project-affected people that it has built - albeit on wobbly foundations, and imperfectly - over the past three decades." This new logic behind WBG operations suggests that social safeguards should help guide, but should not prescribe or limit the design and implement of projects. Other commentators have noted similar difficulties and tensions between accountability and efficacy approving projects with new "pilots" being launched under the IP (Fields and Mohr 2016; Tyson 2015).

5.4 Retaliation against complainants

Perhaps the most serious challenge faced by the IP is retaliation against those that file complaints, in some cases involving imprisonment and even death. In the case of the Mumbai Urban Transport Project, one of the lead requesters was imprisoned shortly after the IP sent its report to the board (though he was released a few months later). In the case of the Chad Cameroon pipeline, security forces from the government repeatedly threatened requestors in an attempt to persuade them to drop the complaint (World Bank 2009).

In the case of the coal mines in the Singrauli region of central India, retaliation was more severe. The WBG had loaned $150 million to the National Thermal Power Corporation (NPTC) in India to enable it to build the Singrauli Super Thermal Power Plant, but environmental and social assessments found that 90 percent of those having to be relocated had already been displaced once. An independent report warned that that resettlement "appears to have failed in practically all cases" and highlighted "the inadequacy of facilities and equipment necessary for water supply, sewage treatment, schools and education, and medical care" (NTPC 1991). In 1993, still more loans came into India, with $400 million in financing for the expansion and upgrading of the Rihand and Vindhyachal coal-fired power plants, making the NPTC the single largest borrower in the history of the WBG at that time. Facing threats of abuse and eviction, a group of families banded together and filed a complaint to the IP in 1997. The act of filing the claim, however, prompted a "retaliatory backlash from NTPC, which moved into the project area with police force and heavy machinery," and "in the area around the Vindhyachal power plant, people were beaten and physically restrained while their homes were bulldozed in the presence of and at the behest of NTPC" (Clark 2003b). In sum, accessing the IP in this instance led literally to the eradication of an entire set of communities and villages.

5.5 The momentum of bank culture

Though the IP has improved the aspects of efficiency, efficacy, and accountability of WBG operations to some extent, it has not addressed some of the deeper underlying problems at the institution. Countervailing institutional pressures, such as incentives that reward staff for lending large amounts of money and meeting annual lending targets, remain. There is evidence that most managers remain focused on "dollars lent" rather than "poverty reduced," and staff are still incentivized to move projects through the approval process faster both to raise revenue and to avoid offending borrowing governments (Werlin 2003).

There is also evidence that the WBG is a culturally and intellectually homogenous organization that may be incapable of understanding, let alone protecting, indigenous people of different cultures. For instance, eight out of every ten employees at the WBG are trained in economics and finance institutions in the United States and United Kingdom, rather than in sociology or anthropology, or at leading institutions in the developing world. As Woods (2000) critiqued, "this homogeneity in staffing poses some difficulties for institutions trying to open themselves up to higher levels of participation, involvement and ownership by those most affected by their programs."

Goldman (2004, 2005) has gone so far as to attack the WBG's "imperialist" approach to development, arguing that for every $1 invested by the WBG in developing countries, somewhere between $10 and $13 go back to its Members. A greater amount of capital therefore flows *out* of borrowing countries rather than *in*. And since the WBG always has more capital than it can lend, to survive Goldman argues that it must continually grow its investment portfolio and create demand for its services. Put in this light, the WBG's primary task is not to be held accountable for its projects, or to help poor people, but to make money as a business. Others have attacked the WBG for contributing to the erosion of local cultures around the world (Martello and Jasanoff 2004).

As an advisory body with limited focus on compliance with WB policies and loan documents and limited time period before full disbursement, the IP cannot address these fundamental concerns. As Carrascott and Guernsey (2008) criticized:

> *As an interior body of the Bank itself, [the IP's] ideas cannot be completely independent of the ideology of that institution. Because the Panel is an arm of the Bank, it is by definition an institution with a de facto World Bank bias and consequently acts with the interests of the institution in mind and not necessarily with the interests of the affected communities*.

Similarly, Navin Rai, a former World Bank official in charge of protection for indigenous people from 2000 to 2012, commented that for much of the duration of the IP:

> *There was often no intent on the part of the governments to comply, and there was often no intent on the part of the bank's management to enforce. That was how the game was played.* (Quoted in Chavkin and Anderson 2015)

Put another way, even if the IP makes the WBG more accountable, it does not significantly reform the Bank's need to finance loans so that it can operate a budget and return investments to its Member Countries.

<u>6. Conclusion: Lessons and Implications</u>

At least three conclusions emerge from this assessment of the WBG's Inspection Panel related to transparency and institutional accountability, environmental governance, and energy policy.

First, institutional accountability has demonstrated some inherent value in improving the internal governance of an institution—in this case the World Bank—and its ability to achieve development and sustainability goals (Nelson 2011). The IP has seen some WBG managers self-monitor their own behavior; it has seen peers, other donors, and governments monitor WBG actions to ensure it is meeting its standards; it has seen communities and civil society groups monitor WBG actions on the ground. Although the evidence is more anecdotal than systematic, the IP has reduced errors and at times corruption within Bank management, and made it harder to conduct shoddy analysis or rush projects to meet deadlines and lending targets. Transparency from the IP has facilitated the involvement of displaced and indigenous communities in WBG policymaking through formal Action Plans.

In this way, the IP affirms the weight of accountability as a worthwhile public good or salient public concern for extractive industry infrastructure and energy projects. The fairness and transparency of WBG decisions, the adequacy of legal protections, and the legitimacy and inclusivity of agents involved in decision-making can matter as much as the substantive nature of WBG projects. Institutional accountability intersects with recognition (who is recognized), participation (who gets to participate), and power (how is power distributed in decision-making forums). Fair procedures matter because even when flawed, they can at times promote better—more equitable but also more efficient and effective—outcomes.

Second, although the environmental governance engendered by the IP (and perhaps other IAMs) has elements of devolved control and participatory modes of inclusion, it needs strongly coordinated. In other words, to be effective environmental governance mechanisms need steered by committed and independent leaders on all sides. The "watchers" need "watched," the "guardians" need "guarded," the "moneylenders" need "monitored," so to speak. In the case of the IP, numerous presidents of the Bank and members of the Board had to persevere with the mere idea of creating an IP. Members of the IP had to demonstrate the fortitude to stand up to the Board and senior management when they resisted such accountability. Communities and their leaders exhibited the strength and dedication to file complaints, even in the face of potential and actual retaliation and, at times, violence. Such communities benefitted from remarkably brave social activists (Hunter 2003). Put another way, accountability and institutional transparency can be transformative processes but only if matched with institutions and champions devoted to it succeeding. Institutional accountability may be insufficient as an ideal to lead to lasting positive improvements in performance without this level of personal commitment from individuals.

Third, for those interested in energy and extractive industries policy more generally, there are limits to what IPs can accomplish. Even with the perseverance and commitment from dedicated stakeholders within and associated with the WBG, the IP has only investigated about one-third of its requests. It had to struggle against both the inertia of WBG operating practices and, for almost six years after it was created and perhaps most recently post-2014, hostile managers and changing priorities. Severe retaliation and backlash against communities and individuals filing complaints has occurred, with some facing imprisonment and others confronting death or the complete destruction of their homes or ways of life. The IP has a limited mandate and lacks more authoritative, legally binding power to enforce its decisions. The IP, for instance, does not have the final say for complaints, the Executive Board does; it cannot offer compensation for redress; nor can it cancel projects by itself. It also involves transaction costs that are coming to make the act of filing a complaint, and engaging with the IP, a technical process dominated by experts rather than a more open forum easily accessible to indigenous people, the extreme poor, or the illiterate. These factors suggest that an IP that may have stronger normative rather than empirical value.

Moreover, the IP signifies that "effective" instructional accountability is itself a subjective and a contested concept. The IP must remain effective at ensuring its own existence, promoting its agenda of holding the WB accountable, protecting communities and, now, assisting the WB in its mission of competiveness and profit maximization. The process of financing multilateral infrastructure is not only about competing priorities but competing interpretations of effectiveness and competing systems of accountability – to communities to shareholders, to Executive Board, to society as a whole. Effectiveness becomes about managing such competing interests and expectations as much as it is about building infrastructure or lending resources for projects.

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