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Public Participation in Decision-Making:  
The World Bank Inspection Panel

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The prism of public participation sheds light on the changes that have occurred within the international legal order since the 1940s. The foundations of this order have remained unchanged. They are the principles of sovereignty and equality of states—also referred to in a combined format as sovereign equality¹—and codified in the United Nations Charter and other related instruments. States are the primary subjects of this order and each of them is under the obligation to respect the sovereignty of the others. Rules such as that prohibiting intervention are but corollaries of this core duty.²

Whereas state sovereignty remains the foundation of the international legal system, this is the case in a sociological environment which has evolved in the last fifty years.³ The international scene is more diverse. By ‘international scene’ is meant the actors—states, international organizations and non-state actors—and the rules and institutions which allow for their interactions. States retain a pre-eminent role, but they no longer have an absolute monopoly of interest and action. International organizations increase in number every day and are involved in an ever-larger number of activities. Non-state actors, as numerous and different as they are, have become holders of rights and obligations under

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¹ See U.N. CHARTER Art. 2, para 1, which reads, “The Organization is based on the principle of the sovereign equality of all its Members.”


international law. In many fields, non-state actors are important players in designing and implementing policies.

Another point of interest is that international norms touch upon virtually every aspect of human activity, implying by the same token that more and more actors are affected by their interplay. In addition, international law governs many issues that previously would have been considered as falling exclusively to the state’s domestic jurisdiction, such as human rights, environmental standards and the treatment of investments. Since these issues are subject to international legal regulation, state jurisdiction should be exercised in conformity with international law prescriptions. This ever-increasing expansion of international norms is accompanied by an increased sophistication in the means and processes put into place in order to ensure compliance with international law. Even if the inter-state format remains predominant, new conflict resolution and enforcement strategies are being elaborated whereby states, international organizations and non-state actors may settle their disputes. Judicial and non-judicial mechanisms and procedures are being created. These not only provide for remedies enabling reparation for damages caused, but also provide for preventive action.

It is against this background that the concept of public participation will be considered. In fact, the notion of public participation in the World Bank’s activities and the Bank’s establishment of the Inspection Panel reflect in many ways some of the emerging strands found within the international legal order. Ibrahim Shihata’s vision has helped the Bank to take them into account within the Bank’s mandate and structure.

I. Public Participation and Development Activities: An Emerging Relationship

The notion of public participation is a concept of an integrative nature, being at the crossroads of human rights, development and environmental protection. It reveals the growing importance of individuals and local groups in decision-making processes at the local, national and international levels. Resolutions of the UN Commission on

5 On these aspects, see Francisco Orrego-Vicuña, New Dispute Settlement Procedures, this volume.
6 The text of the Articles of Agreement, the Bank’s constituent instrument, is reproduced in 2 U.N.T.S. 134, as amended 606 U.N.T.S. 294.
Human Rights\(^7\) and of the UN General Assembly\(^8\) have highlighted the links between public participation and the right to development. The Rio Declaration on Environment and Development\(^9\) and the Programme of Action Agenda 21\(^10\) have placed public participation among the core principles for ensuring sustainable development.

The notion of public participation has several dimensions. These include practices permitting the participation of representatives of civil society in the decision-making process, and also the right of non-state actors to access both remedies and administrative procedures at the local, national and international level. As merely one expression of this notion, Principle 10 of the Rio Declaration on Environment and Development states that:

Environmental issues are best handled with the participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the hazardous materials and activities in their communities, and the opportunity to participate in the decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided.\(^11\)

The various dimensions of public participation are interrelated. They are, in fact, components of the same process that aims at ensuring the sustainability of developmental and environmental activities. Being the direct beneficiaries of these activities, non-state actors are offered ways

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\(^7\) For example, the Commission of Human Rights in its Resolution 1999/79 on the right to development affirms that “effective popular participation is an essential component of successful and lasting development.”

\(^8\) The Agenda for Development, adopted by the General Assembly in June 1997 proclaims that “Democracy, respect for all human rights and fundamental freedoms, including the right to development, transparent and accountable governance and administration in all sectors of society, and effective participation by civil society are also an essential part of the necessary foundations for the realization of social and people centred sustainable development.” A/RES/51/240, 20 June 1997, para 1.


and means to participate in the decision-making process and in the elaboration and implementation of policies and programs, and, indeed, even in the monitoring of their compliance.\textsuperscript{12} In some circumstances, public participation also finds a place through the resort to remedies, be they domestic or international, judicial or non-judicial, in nature.

The notion of public participation is still in an experimental phase. The World Bank has played and continues to play a major role in its promotion. The member states of the organization are key partners in this endeavor to identify how best to implement its requirements. The same is true for non-state actors such as non-governmental organizations (NGOs), indigenous peoples, minority groups or individuals.

A contribution of the Bank towards giving content to the notion of public participation consists in consultations at different stages with representatives of civil society in the preparation of policy documents and related standard-setting activities, such as those dealing with the preparation of operational policies and procedures. These instruments are quasi-administrative in nature and consist of instructions issued by the Bank’s management to assist staff in its operational work.\textsuperscript{13} Although an informal process, their elaboration involves consultations with external partners such as NGOs. Non-state actors also may participate in the elaboration and implementation of operational activities financed by the Bank. The calls are many for public participation in the operational policies and procedures of the Bank. They include consultation of concerned populations and local NGOs about a project’s environmental aspects within the context of an environmental assessment;\textsuperscript{14} community participation and consultations with people affected by a resettlement as a result of a project financed by the Bank;\textsuperscript{15} and informed participation of indigenous populations in projects in which they have interests at


\textsuperscript{14} See OP 4.01 on Environmental Assessment, para 15. All operational policies and procedures are available on the Bank’s website at <http://www.worldbank.org>.

\textsuperscript{15} See OD 4.30 on Involuntary Resettlement, para 7–10.
Public participation practices also involve local groups in the planning, designing and monitoring of projects related to the protection of natural habitats as well as in forestry and conservation management activities.

The rather experimental status of public participation requirements entails some difficulties with respect to their application. They may face resistance on the ground; there may be uncertainty as to how they might be implemented in a sound manner. There might be differences from one region of the world to another or from one country to another. It is one thing to establish the sequencing of actions to be undertaken and the timing for certain procedural requirements in terms of public participation, but quite another to put in place a real and meaningful participation process. Factors such as cultural traditions, the literacy rate, the notion of public space for debate or the existence of an adequate institutional framework, all play a significant role in implementing public participation requirements and should be taken into account. The Bank, the borrowing countries and non-state actors are involved at various stages in such a process. They are in fact members of a "trio." For the Bank to agree to finance an operation, the borrowing country has to undertake its best efforts to take the appropriate measures to implement the relevant policy requirements. This should be done in the light of the aim of meaningful public participation in order to ensure the protection of the environment and the affected people. For its part, the Bank in policy terms as well as in legal terms (as reflected in a loan, credit or grant agreement), should exercise due diligence during the preparation and the implementation of a project, in order to ensure that the borrower complies with the policy requirements dealing with public participation. As can be noted, both the Bank and the borrower are engaged in a dialogue on how best to implement public participation requirements. It

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16 See OD 4.20 on Indigenous Peoples, para 8.
17 See OP 4.04 on Natural Habitats, para 10.
18 See OP 4.36 on Forestry, para 1(c).
19 In interpreting the notion of best efforts, parallels can be drawn with other international law notions. A parallel can thus be drawn with the obligation to undertake to take steps with a view to achieving progressively the full realization of economic, social and cultural rights, as spelled out in Article 2, para 1 of the International Covenant on Economic, Social and Cultural Rights. On this matter, see the General Comment of the UN Committee on Economic, Social and Cultural Rights, Compilation of General Comments and General Recommendations adopted by Human Rights Treaty Bodies, HRI/GEN/1/Rev. 3, para 1–14.
is a process whereby both share responsibilities in shaping sound practices. Individuals, local groups, and NGOs are also part of this process, being the beneficiaries of such interaction. They also may place under scrutiny the Bank’s or the borrower’s compliance with policy prescriptions, by resorting to domestic or international fora.

Furthermore, the measures taken by the Bank to strengthen information disclosure have contributed to the promotion of transparency and access to information. The policy on disclosure of operational information\(^\text{20}\) whose adoption represented an important turning point in the Bank’s attitude towards external partners, sets out procedures for the accessing of documents relating to the Bank’s financial operations. In particular, it sets out the procedures for affected people and local NGOs in borrowing countries, to obtain copies of environmental assessments and environmental action plans. In doing so, non-state actors have been empowered by being given access to information at an early stage in the preparation of a project. They can then discuss core elements of projects in so far as they relate to social and environmental matters. Access to information and transparency are prerequisites for raising public awareness and engaging in a meaningful consultative process.

There is no doubt that the Bank’s operational policy prescriptions contribute to the development of international rules and standards in development assistance activities. Operational policies and procedures constitute significant benchmarks for the numerous actors involved in these activities. For example, this has been the case with the Environment Assessment policy which contains substantial public participation requirements. In many countries, the policy has served as a model in the elaboration of legislation. It also has served as a model for other multilateral development banks, as well as for bilateral donors and the private sector. On the other hand, the shaping of operational practices within the Bank is nurtured and complemented by developments taking place in state practice as well as in other international fora. The large number of conventions, soft law instruments and decisions rendered by international and domestic bodies in areas such as human rights, environment or social development, contribute to the forging of new practices and influence the processes of both elaboration and application of the Bank’s operational and policy procedures. It is interesting in this context to note the trend that is emerging within the international legal

\(^{20}\) See BP 17.50 on Disclosure of Operational Information.
system towards an entitlement to public participation for individuals, local groups and associations.  

II. The Establishment of the World Bank Inspection Panel as an Innovative Means of Promoting Public Participation

Another major step was the creation in 1993 of the Inspection Panel—an independent and permanent body within the Bank’s structure—whose mandate is to investigate the Bank’s operations. With the establishment of the Inspection Panel, the Bank created a new vehicle for public participation. The Panel allows individuals to file requests against the Bank if they believe that their rights and interests have been or are likely to be affected adversely by the Bank’s failure to comply with its own operational policies. Subject to approval by the Bank’s Board, the Panel may investigate such complaints and make recommendations to the Board, which will make decisions in light of these recommendations.

The creation of the Inspection Panel placed the promotion of public participation in an institutional context, that of an international organization. Among the motives for the establishment of this body was

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21 Such a development may be corroborated by developments towards the emergence of an entitlement to democratic governance, T. Franck, The Emerging Right to Democratic Governance, 86 AJIL 46 (1992).

22 The mandate of the Inspection Panel covers projects financed by the International Bank for Reconstruction and Development (IBRD) and the International Development Association (IDA). The grants provided by the Global Environmental Facility (GEF) and for which the Bank is an implementing agency also fall under the jurisdiction of the Inspection Panel, see India: Ecodevelopment project (pending), see <http://www.worldbank.org/html/ins-panel/overview> It is the first request related to a project with GEF co-financing.

the need to improve quality control of the Bank’s operations. Compliance with operational policies and procedures—including those dealing with public participation—was perceived as an important tool for reaching such an objective. The Panel would help in this endeavor in that an alleged violation of an operational policy is one of the criteria for a request to be eligible. The Panel also was expected to ensure transparency and to increase accountability of the Bank’s management and staff vis-à-vis the Board. The possibility of having requests brought by groups of persons living in borrowing countries who allege that they are affected by a project financed by the Bank, was seen as a means to achieve these objectives. Public participation was conceived as a new way of placing under scrutiny the organization’s compliance with its own operational policies. As such, public participation was seen as a tool for creating incentives within the institution to enhance the quality of the Bank’s activities.

Requests may be brought before the Inspection Panel by any group of persons who share common concerns or interests in the country where the project is located and can demonstrate that “its rights or interests have been or are likely to be directly affected by an action or omission of the Bank.” The Panel’s jurisdiction extends to any action or omission of the Bank with respect to the design and appraisal of a project financed by the Bank, as well as during its implementation, i.e., from the time of the project design until its substantial completion. Noteworthy is the fact that the procedure is not only remedial but also of a preventive nature, as it allows for complaints to be brought even though a project is still in the preparatory phase. When requests are brought before the implementation

24 Only violations of operational policies which are mandatory for the staff of the Bank are to be considered for assessing the jurisdiction of the Inspection Panel, see L. Boisson de Chazournes, supra note 13.
26 An Executive Director of the Bank or the Bank’s Board may also instruct the Inspection Panel to conduct an investigation, even though affected people have not introduced a request.
27 Other forms of public participation can take place during an investigation. Representatives of the public-at-large may provide the panel with information if they believe that it is relevant to a request. On this basis NGOs in Switzerland and in the United States submitted memoranda in the Indian NTPC Power Generation Project, see R.E. Bissell, Recent Practice of the Inspection Panel of the World Bank, 91 AJIL 741, at 743 (1997).
28 Para. 12 of the Resolution, supra note 23.
of a project, the complainants are alleging the likelihood of their rights or interests being affected by an action or omission of the Bank. At this stage, a request brought before the Panel might help prevent damage from being caused, thereby provoking a change of course of action. Requests also may allege the likelihood of an adverse material effect during a project's implementation phase, namely after project negotiation between the Bank and the borrower and disbursement of the proceeds has started. Such requests also may allege the occurrence of damage and call for remedial measures to be taken. A complaint can be lodged for "situations where the Bank is alleged to have failed in its follow-up on the borrower's obligations under loan agreements with respect to such policies and procedures." This means that the Panel has a mandate to investigate whether the Bank has followed up properly on the implementation by the borrower of its contractual obligations. As can be seen, the Panel's jurisdiction ratiocinatio materiae includes not only the internal operational rules of the organization, but also the loan and credit agreements to the extent that they reflect operational policy requirements. This is a characteristic of the Panel which, in fact, reveals its nature, both preventive and remedial. The Inspection Panel is not a judicial institution for the determination of the consequences of an alleged violation of the law. It is merely an independent investigatory body whose objective is to contribute to the improvement of the decision-making process within the Bank during the various stages of the preparation and implementation of a project. Respect for operational policies and procedures is an important tool in this respect, whether these operational instruments stand by themselves or are incorporated into a loan agreement. The policies and procedures constitute benchmarks for assessing the likelihood of damage as well as for planning remedial action. Public participation, independent evaluation and quality of operations are three critical pillars of the Panel's procedure.

The Inspection Panel procedure is important in many respects. It contributes to the strengthening of access to justice for individuals before
an international organization and provides for preventive and remedial action for their benefit. At the time of its adoption, the Panel procedure constituted a premier in providing a remedy against actions of an international organization. Similar types of procedures subsequently have been put into place by the Inter-American Development Bank and by the Asian Development Bank. The co-existence of these various procedures may be seen as a factor of emulation for cooperation and exchange of information. This would be true particularly in cases of projects co-financed by the World Bank and one of the regional banks.32

The Inspection Panel procedure also is innovative in that it provides a new venue for dialogue on compliance issues between the Bank and the beneficiaries of projects. It thereby complements other institutional and state-centered compliance procedures. Such procedures include “lessons-learned” exercises with publications of the Operations Evaluation Department of the Bank. They also can include measures of an enforcement nature, such as the suspension of the disbursement of a loan agreement.33 For their part, individuals participate in a compliance process by bringing claims, and in so doing they instigate scrutiny of the Bank’s actions. Although a means of last resort, in the few years of its existence, the operation of the Inspection Panel has increased both staff and management awareness of the need for the institution to comply with its operational policies so as to prevent requests from being brought before the Panel. Indeed, the recommendations and findings of the Inspection Panel have stressed the need to pay greater attention to compliance with operational policies. They have contributed to the establishment of various mechanisms, such as internal review processes during the preparation of a project and random audits, with the objective of ensuring that policy requirements find application in a sound and effective manner. It is hoped that more interest will be devoted to the Panel procedure in other institutional fora, as it allows various actors to

32 As an example, the Yacerita hydroelectric project gave rise to two complaints, one brought before the Inspection Panel of the Bank, the other one before the Independent Investigation Mechanism of the Inter-American Development Bank. This entailed informal cooperation between the two inspection mechanisms, which included sharing of information and experience, see the Inspection Panel, Annual Report, August 1, 1996, to July 31, 1997, at 12–13.

play a role in promoting respect for legal and policy requirements—in all their twilight shades from hard to soft.

By way of conclusion, the following may be highlighted: although states retain a pre-eminent role in the making and implementation of international law, international organizations such as the World Bank, as well as NGOs and individuals, play an increasingly prominent role in shaping new practices and ensuring their respect. When assessing the decision-making process, factors such as the plurality of actors engaged in developmental activities and the various interactions taking place at the local, national and international levels should be taken into consideration. In this context, a challenging question emerges, relating to the legitimacy of the decision-making process and the need for procedural and substantive safeguards. The establishment of the Inspection Panel is to be seen within this context. It is an institutional bridge between partners of different legal standing, whereby individuals are provided with a means of redress in an international forum for actions attributable to an international organization. Indeed, one of the most interesting features of the Inspection Panel is that participation by non-state actors is formalized and that the procedure has been agreed upon by the member states of the organization. It is also an innovative dispute resolution strategy that contributes towards the broadening of the accountability of an international organization. As was highlighted by Ibrahim Shihata, the Inspection Panel is a progressive step in the development of both the law of international organizations and the law of human rights.34