Access to justice: the World Bank Inspection Panel

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The establishment of the Inspection Panel in 1993 created a new complaint mechanism for individuals in the international legal order. As a pioneering endeavor in the international organizations field, individuals were granted the right to bring complaints in an international forum for alleged misconduct of an international organization: under the procedure put in place, private persons are given direct access to the World Bank (hereinafter the Bank) if they believe they are directly and adversely affected by a Bank-financed project. Not only is the Inspection Panel innovative from an institutional viewpoint, but it also provides a mechanism for increased scrutiny of the Bank's activities and as such contributes to the promotion of sustainable development. In particular, in accordance with Principle 10 of the Rio Declaration on Environment and Development, it encourages public awareness and participation and provides access to administrative proceedings, including remedies.

1 The author thanks Theresa Swinehart for her comments.
3 The mandate of the Inspection Panel covers projects financed by the International Bank for Reconstruction and Development (IBRD) and the International Development Association (IDA).
4 UN Doc. A/CONF.151/5.
The Procedure Entailing Access to Justice

One of the main objectives behind creation of the Inspection Panel was the improvement of quality control in project preparation and in the supervision of the implementation of projects financed by the Bank. In this context, the Inspection Panel was established as an independent and permanent organ within the Bank's structure. It is composed of three members of nationalities of Bank member countries who are nominated by the Bank's President and appointed by the Executive Directors (also referred to as the Board) on the basis of their knowledge and expertise in development, as well as their integrity and independence. The Panel was granted the competence to receive and, subject to the approval of the Bank's Board, to investigate complaints from groups of individuals whose rights or interests have been, or are likely to be, directly and adversely affected by the Bank's failure to follow its operational policies and procedures with respect to the design, appraisal and/or implementation of a project financed by the World Bank. An individual Executive Director in the Bank and the Bank's Board may also instruct the Panel to conduct an investigation.

Upon receiving a complaint, the Inspection Panel assesses whether the complaint meets the eligibility criteria described below relating to the person of the complainant, to the subject-matter of the complaint and to the timing of the complaint. However, as a preliminary condition for triggering the procedure, the Management of the Bank is asked to provide the Inspection Panel with evidence that it has already reviewed the allegations raised in the request. The Management is also asked to provide information on whether it complies with the Bank policies and procedures targeted by a complaint. The

5 The Resolution states as a principle that no requests will be declared eligible regarding a project after the project's loan closing date or after 95 percent or more of the loan proceeds have been disbursed. For an interpretation of this requirement, see "Time-Limits on the Eligibility of Complaints Submitted to the Inspection Panel", Legal Opinion of the Senior Vice President and General Counsel, July 28, 1997. More generally, on eligibility issues, see Memorandum of the Senior Vice President and General Counsel, Role of the Inspection Panel in the Preliminary Assessment of whether to Recommend Inspection (SeeM95-11), January 3, 1995, International Legal Materials, Vol. 34, 1995, p. 525.

6 Also, as a matter of principle, complaints brought for borrowing countries' misconducts do not fall within the mandate of the Inspection Panel. In addition, it should be noted that no procurement action is subject to inspection by the Panel, whether taken by the Bank or a borrower.
Panel may recommend to the Executive Directors that an investigation be carried out. If the Board authorizes an investigation, the Panel conducts the investigation and submits its report to the Board. The Management has the possibility to comment on the findings. The Bank then informs the affected parties of the results of the investigation and of the action taken, if any, by the Board.

In practice, however, the procedure as described in the Resolution establishing the Inspection Panel (hereinafter, the Resolution) has not always been followed to the letter. In fact the Clarifications issued by the Bank’s Executive Directors⁷ in 1996 state, the practice which has been followed by providing that:

“where the Inspection Panel believes that it would be appropriate to undertake a ‘preliminary assessment’ of the damages alleged by the requester (in particular when such preliminary assessment could lead to a resolution of the matter without the need for a full investigation), the Panel may undertake the preliminary assessment and indicate to the Board the date on which it would present its findings and recommendations as to the need, if any, for a full investigation”.

This has led the Management of the Bank to present remedial plans before the Board considers the recommendation of the Panel for investigation. The Board has generally endorsed this outcome, requesting in some cases the Inspection Panel to supervise the implementation of the action plan. The presentation of such action plans at this preliminary stage of the procedure has been seen by some as a pragmatic approach for addressing the issues at stake, while for others as impeding the good functioning of the procedure in creating obstacles for an authorization to conduct a full investigation in accordance with the Resolution. In 1999, a Second Board review put an end to this practice, reaffirming the Resolution and the importance of the Panel’s function.

⁷ Under the basis of paragraph 27 of the Resolution, a Board review of the Inspection was conducted and completed in July 1996. It resulted in the issuance by the Board on October 17, 1996 of Clarifications of Certain Aspects of the Resolution Establishing the Inspection Panel (R96-204). They should be seen as amendments of an interpretative nature to the Resolution.
ACCESS OF PRIVATE GROUPS OF INDIVIDUALS TO THE INSPECTION PANEL

Any affected group of people who share common concerns or interests in the country where the project is located may submit a request under the condition that it is possible to demonstrate that "its rights or interests have been or are likely to be directly affected by an action or an omission of the Bank". In defining a group of individuals which can bring a complaint, the Resolution provides in a non-restrictive manner, that the "Panel shall receive requests for inspection presented to it by an affected party in the territory of the borrower which is not a single individual (i.e., a community of persons such as an organization, association, society or other grouping of individuals)". However, the Clarifications have made clear that a group of individuals alleging to be affected should be understood as meaning "any two or more individuals with common interests or concerns".

Parties may present their requests directly or through local representatives acting as the agent of adversely affected people. Non governmental organizations (NGOs) based in the country can take on this representation role. International NGOs may play this role in exceptional cases where the party submitting the request contends that appropriate representation is not locally available. In those circumstances, the Executive Directors have to agree for such representation at the time they consider the request for inspection.

It should also be noted that during the investigation, any individual or group may provide the Panel with supplemental information if they believe it is relevant to their request. The Operating Procedures of the Inspection Panel allow for submission by representatives of the public at large of supplemental information that they believe is relevant to evaluating the request.\(^8\)

STANDARDS FOR REVIEW OF COMPLAINTS, WITH SPECIAL EMPHASIS ON SOCIAL AND ENVIRONMENTAL POLICIES AND PROCEDURES

The Resolution refers to the applicable standards for review of complaints under the notion of "operational policies and proce-

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dures”. These consist of instructions from the Bank Management to its staff. They are numerous, deal with a wide array of topics and are designed to assist the staff of the Bank. Some have been more particularly designed to avoid or mitigate detrimental impacts on certain groups of people and on the environment in the conduct of operational activities. As a matter of fact, the Bank’s operational policies and procedures integrate a number of social and environmental issues and considerations which range from the protection of specific vulnerable groups of people to water resources management issues. They provide for guidelines and requirements to be followed by Bank staff in Bank financed operations. They also indicate the borrower country’s responsibilities with respect to the environmental and social issues related to the project.

In practice, most of the requests so far made to the Inspection Panel allege that the Bank has not followed its environmental and social policies and procedures. Among the most quoted, are the environment assessment policy, the indigenous peoples policy and the involuntary resettlement policy, as well as the policies dealing with the involvement of nongovernmental organizations (NGOs) in Bank-supported activities and disclosure of operational information.

In addition to alleging a violation of operational policies and procedures, the complainants must demonstrate that the violation is due to an omission or action of the Bank with respect to the design, appraisal, and implementation phases of a project financed by the Bank. The Clarifications have made clear that “the word ‘project’ as used in the Resolution has the same meaning as in the Bank’s practice, and includes projects under consideration by Bank management as well as projects already approved by the Executive Directors”.

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9 It indicates that they “consist of the Bank’s Operational Policies, Bank Procedures and Operational Directives, and similar documents issued before these series were stated, and does not include Guidelines and Best Practices and similar documents or statements”.


11 The Resolution refers to the “[...] failure of the Bank to follow its operational policies and procedures with respect to the design, appraisal and/or implementation of a project financed by the Bank (including 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) [...].”
As defined, the notion of project is wide and encompasses all developmental activities eligible to be financed. As to the notions of design, appraisal and implementation, they should be understood in light of the concept of project cycle in Bank operations encompassing various phases, the Bank having a certain role, and therefore different responsibilities, in each of them.

The request for inspection may relate either to a project under consideration by Bank Management, i.e. a project in the design, preparation, pre-appraisal or appraisal stage, or to a project already approved by the Board and financed by the Bank. More particularly, with respect to the implementation phase, the Resolution specifies that 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 operational policies and procedures. The Panel has the mandate to investigate whether the Bank has properly followed up on the carrying out by the borrower of its obligations under a loan agreement. A number of legal techniques have been developed for ensuring that policy requirements are reflected in loan agreements. They pertain to what is generally known under the notion of “green conditionality”. Techniques, such as the attachment of an implementation program or plan of action as a schedule to the loan agreement, are used for specifying the actions to be taken by the borrower. Within the framework of its responsibilities, the Bank should exercise all due diligence required to make sure that the borrower’s obligations are fully complied with in a timely fashion, i.e. that the borrowing country does abide by all its contractual obligations.

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12 The notion of project is not limited to specific investments. It includes projects consisting of programs or activities other than specific physical works, see Decision No.2 of the Executive Directors: Scope of the Panel’s Mandate – Compensation for Expropriation and Extension of IDA Credits to Ethiopia under OMS 1.28, The Inspection Panel, Report, August 1, 1994 to July 31, 1996, p. 57. More generally, see “Project and Non-Project Financing under the IBRD Articles”, Legal Opinion of the Senior Vice-President and General Counsel, December 21, 1984.


ACCESS TO JUSTICE AS A MEANS TO ENSURE COMPLIANCE WITH SOCIAL AND ENVIRONMENTAL STANDARDS

One of the Bank's proclaimed preoccupations is quality improvement in its activities. In this context, compliance with environmental and social operational policies and procedures is undoubtedly an important tool. The establishment of the Inspection Panel has institutionalized this concern: it has provided for the possibility of remedial action taken by the Bank in the case of a violation of operational policies and procedures which has impaired the rights or interests of a group of people.

In a broader perspective, the establishment of the Inspection Panel has also encouraged a process which demonstrates its potentialities for increasing awareness of the necessity to comply with operational policies and procedures. The conclusions and recommendations of the Inspection Panel signal possible failures of the Bank in following operational policies and procedures and may increase the awareness of the Bank's staff in implementing these operational policies and procedures. Most of the requests brought so far to the attention of the Panel have dealt with environmental and social policies and procedures. The ensuing recommendations of the Inspection Panel have therefore indirectly highlighted the need to pay greater attention to compliance with these instruments.

Moreover, making public all documents regarding a request (i.e. the request itself, the Management's response to it, the Panel's recommendation on the eligibility of the request, the Board's decision to authorize or deny an investigation, the Panel's findings, the Management's comments and the final Board decision) reinforces awareness and contributes to "objectivizing" the issues at stake in making them known to the public at large and promoting fairness and accountability at all stages.

CONCLUDING REMARKS

As a means for promoting the right of access to justice, the establishment of the Inspection Panel is an important contribution to the human rights field as individuals are granted the right to bring complaints if they believe that their interests have been impaired. More generally, it demonstrates the growing importance of the individual as an emerging rights holder in areas of international concern,
such as environment and development. The Inspection Panel is, in fact, at the crossroads of these different fields, highlighting their close interrelationships for promoting sustainable development and providing a new venue for a dialogue between a lending institution and the direct beneficiaries of its development activities.