

CSO Comments on Operationalizing Reforms to the Inspection Panel, including the creation of a new Accountability Mechanism

The process of implementing any reforms to the World Bank Inspection Panel, particularly changes to its structure, should honor the fact that the Panel was created for and exists to serve project-affected people. Any resolutions or procedures resulting from this process should be easily understood and navigated by the communities who will use them. We therefore recommend that those drafting the resolutions resolve each decision point with this question: *Which option gives requesters more agency and is consistent with the development mandate of the Bank?*

Further, the independence of the Inspection Panel as well as the whole Accountability Mechanism (AM) is paramount. The Board should entrust the professionals they hire to lead the mechanism with the discretion and autonomy required to do the job appropriately. Accountability Mechanism staff should not be put into positions where their independence from management is compromised, and any reforms to the current system should protect and enhance this independence.

With these principles in mind, we recommend the following.

RECOMMENDATION 1: Maintain in full the Inspection Panel resolution and subsequent clarifications, except where explicit updates are required by the Board paper.

The Board paper is explicit that the Panel shall maintain its independence and existing mandate. This should guide multiple decisions of how to operationalize the Board paper's recommendations into resolution language. The following are ways to protect the Panel's independence:

- The Panel should continue to exercise its existing investigation mandate.¹ This mandate is the same whether compliance investigation occurs before dispute resolution or after.²
- Resolution language related to the interaction between the AM and Panel should be written to protect the Panel's existing mandate and independence. The Panel should retain its control over its budget, communications, and distribution of information.

¹ Board paper ¶ 27 ("The IPN will continue to be constituted and operate as established in the IPN Resolution").

² Board Paper ¶ 32 (When the dispute resolution process does not result in agreement on all material issues, then "[t]he AM Secretary will refer the case to the IPN which will start the compliance investigation").

- Consistent with the Panel’s existing obligation to publicize “information relating to the results of the investigation and the Board’s decision,”³ and practice of other accountability mechanisms,⁴ it too should publish verification reports.

RECOMMENDATION 2: Clarify the scope of the Inspection Panel’s verification tool.

The resolution should clarify that the Inspection Panel is equipped to track the implementation of Management Action Plans (MAPs) in response to findings of noncompliance. The Board agreed that verification should be “risk-based” and “proportionate,” criteria that should be left to the Panel to interpret on a case-by-case basis. The Panel should be expected to verify any commitments in MAPs that meet the proportionality criteria.

Rather than dictating every contour of the Panel’s verification mandate, we recommend that the resolution simply state:

As a follow-up to findings of non-compliance, the Inspection Panel may verify the status of implementation of commitments made by the Bank in Management Action Plans. The Panel may verify adherence to such commitments after reporting to the Board on (1) the reason for verification, and (2) the scope and modalities of verification. The Panel shall apply proportionality criteria to craft the scope and modalities of verification. Verification shall commence absent an objection from the Board.

This provides the Panel with an appropriate level of discretion, while maintaining a role for the Board to confirm the criteria has been met. As the Panel updates its Operating Procedures, it can articulate the specific procedures for verification.

RECOMMENDATION 3: Clarify that the new Accountability Mechanism has the power to monitor outcomes of dispute resolution.

Every accountability mechanism with the power to engage in dispute resolution has the power to monitor its outcomes,⁵ and it should be no different for the World Bank’s new Accountability

³ The Inspection Panel’s 2014 Operating Procedures, ¶ 72.

⁴ See, e.g., IFC’s CAO Operational Guidelines § 3.2.3; Policy of the Independent Complaints Mechanism of DEG § 3.5.2, Proparco § 3.5.2, and FMO § 3.5.2; Policy of the IDB’s Independent Consultation and Investigation Mechanism ¶¶ H.35, I.49; Rules of Procedures of the EBRD’s Project Complaints Mechanism (now Independent Project Accountability Mechanism) ¶¶ 39, 47; GCF’s Independent Redress Mechanism Procedures and Guidelines ¶ 76; UNDP’s Social and Environmental Compliance Unit Investigation Guidelines, § 12.52; UNDP’s Stakeholder Response Mechanism Overview and Guidance, Annex A, ¶ 8; ADB’s Accountability Mechanism Policy ¶ 194, Appendix 9.

⁵ See, e.g., IFC’s CAO Operational Guidelines § 3.2.3; Policy of the AFD’s Environmental and Social Complaints Mechanism ¶ 8; Policy of the Independent Complaints Mechanism of DEG § 3.2.11, and FMO § 3.2.11; AfDB’s Independent Review Mechanism Rules and Procedures § VI.b.46; Policy of the IDB’s Independent Consultation and Investigation Mechanism ¶ H.35; GCF’s Independent Redress Mechanism Procedures and Guidelines ¶ 73; Rules of Procedures of the EBRD’s Project Complaints Mechanism

Mechanism. Indeed, the Board paper is silent on this, which should be read to understand this practice. A resolution should simply state that this mandate exists, and then the AM can clarify its monitoring role further in its Operating Procedures.

Recommended language:

If an agreement is reached, the Accountability Mechanism will monitor the implementation of the commitments made by the Parties.

RECOMMENDATION 4: Clarify that Requestors have agency to choose the functions of the AM they wish to use, as well as their advisors and representatives.

To honor the rights of project-affected communities, they must have the option to seek dispute resolution and compliance review in the sequence of their choosing. While every effort should be made to simplify and clarify the complaint process for Requestors, in many cases the circumstances for communities and the impacts they face can evolve over the course of the complaint process. Currently, if issues are not resolved through the compliance process, Requestors have no choice but to file an entirely new complaint. This inefficient process has significant cost implications for both Requestors, and the Bank. With the addition of a dispute resolution function, the process could become even more inefficient and less effective if Requestors are not permitted to choose which function to begin the process with, or if there are barriers to transferring functions between the two.

There is nothing in the Board paper that prohibits Requestors from potentially utilizing both functions. If dispute resolution does not result in agreement on all issues, then Requestors should have the option to pursue compliance review. Likewise, if a compliance review reveals issues that could be addressed or remedied through additional dialogue, then Requestors should have the option to seek dispute resolution.

Recommended language:

Requestors may select compliance review, dispute resolution, or both, in whichever order they prefer.

Relatedly, Requestors should be able to freely choose their representatives and advisors at any stage in the process. Paragraph 29 of the Board paper states that “[i]t is important to be clear as to who the parties’ representatives are, so that their participation in meetings is not questioned and determines how the information goes back to the community or Borrower or Management to ensure that the decision making is viewed as legitimate and final.” So long as the choice to do so is clearly communicated and transparent, Requestors should retain control of decisions related to representing their interests throughout the AM and Panel processes. Protecting Requestors’ agency in this regard helps ensure more durable and final accountability

(now Independent Project Accountability Mechanism) ¶ 39; UNDP’s Stakeholder Response Mechanism Overview and Guidance, [Annex A, ¶ 8](#); ADB’s Accountability Mechanism Policy ¶ 174.

process outcomes. We recommend that both the Panel's and the AM's resolutions include the following:

Requestors shall have the right to decide their representatives and advisors.

The details of how the two accountability functions document the parties' representatives and advisers can be included in their respective Operating Procedures.

RECOMMENDATION 5: Articulate subsequent steps to operationalizing the Board Paper and include opportunities for public consultation.

Much of the guidance in the Board paper can be incorporated into the Operating Procedures of the Panel and Accountability Mechanism rather than in a resolution. The Board Paper provides sufficient guidance for an updated Panel resolution and a new AM resolution to enshrine the mandate of both functions and then instruct the Panel and AM to operationalize details within their own Operating Procedures.

Participation and inclusion are essential not only to protect the legitimacy of the AM framework, but also to develop the most effective and accessible policies for delivering accountability. Designing an accountability mechanism should be done with input from the very people who will use it. In fact, the entirely new accountability structure was developed under the pretense of moderate changes to the Inspection Panel's "toolkit" and, thus, its creation came as a complete surprise to many practitioners and communities that have significant experience with the mechanism. We therefore recommend the following:

1. CODE should publish draft resolutions for the Panel and AM for public comment for at least 45 days before the Board takes a decision.
2. The Panel should hold public consultations on its updated, draft Operating Procedures.
3. The AM Secretary and DRS staff should hold public consultations on their draft Operating Procedures.

During the discussion on July 30th, it was mentioned that the Deliberative Information exception of the Bank's disclosure policy might be interpreted to preclude publicly releasing draft resolutions to be considered by the Board. We stress that the exception does not foreclose a process for publicly releasing drafts for comment prior to Board consideration. Every other development finance institution that has carried out a similar policy review in recent years shares drafts of accountability mechanism policies to the public for comment before finalization without any violation of the deliberative exceptions under their respective disclosure policies, which closely track that of the World Bank.⁶ Further, even if the exception applied, the Board

⁶ Draft policies were shared for public comments during review of the following institutions' accountability office policies: African Development Bank; Asian Development Bank; Asian Infrastructure Investment Bank; European Bank for Reconstruction and Development; European Investment Bank; Green Climate Fund; International Finance Corporation; United Nations Development Programme; and U.S. Overseas

can determine that the benefit of disclosure outweighs potential harm.⁷ Here, the benefits of protecting the legitimacy of the public-facing accountability mechanism and making the AM as accessible and navigable as possible for end users, outweigh any potential harm in soliciting comment on the draft documents. In fact, we are hard pressed to think of a single harm to the deliberative process that would result from disclosure of a final draft.

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Private Investment Corporation (2013-2014). The deliberative exceptions in the disclosure policies of the [African Development Bank](#), [Asian Development Bank](#), [European Bank for Reconstruction and Development](#), and [Green Climate Fund](#), track closely to that of the World Bank.

⁷ See, e.g., AIC decision on appeal #62, Case #AI5009, available at <http://pubdocs.worldbank.org/en/358961501166014526/AIC-Appeal-62-Case-AI5009.pdf>.