



Deutsches Institut
für Menschenrechte

Position Paper

The World Bank Inspection Panel and its leading role as an independent accountability mechanism for project- affected people and communities

Comments on the specific potential additional roles
for the Inspection Panel and how it compares to
other mechanisms

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Table of contents

1.	Overall remarks on the consultation process	2
2.	Offering advisory services	3
3.	Monitoring action plans	3
4.	Problem solving/dispute resolution	3
5.	Cutoff date for filing complaints	4
6.	Communication with requesters	4

We thank you for the opportunity to input on the reform discussions for potential additional roles of the World Bank's (WB) Inspection Panel (IP). Please find in the following our overall and specific remarks.

1. Overall remarks on the consultation process

Equality – information base

The Committee of Development Effectiveness (CODE) oversees the reform discussions for the IP within the WB's Board of Executive Directors. To our knowledge, in preparation for these reforms, Daniel Bradlow prepared for the Board a study titled „External Review of the Inspection Panel's Toolkit" dated May 2018. The study is based on Terms of References issued by the Board late 2017. This study has not been released by the Board and it thus not available for stakeholders. By providing stakeholders with the study, stakeholders could respond more adequately to ongoing considerations and discussions.

>>> Release the study and publish it on the website

Accessibility - timeframe of the consultation

The time between information about the consultation and submission date has been very short, a bit more than week. While we appreciate the opportunity as such, in our view, it could be productive to expand the timeframe to enable more comments, particularly from affected communities. In doing so, the WB's Board would also adhere to standard participation requirements corresponding to its envisaged lead role and avoid ritualised, but meaningless consultations.

>>> Open the consultation for project-affected people and communities through adequate timeframes

Scope of issues

Next to the 7 issues listed for consultation, we recommend to include the introduction of investigations suo motu by the IP as an additional issue.

>>> When the IP has knowledge about serious impacts in projects, it should have powers to take suo motu investigations.

2. Offering advisory services

All other complaint mechanisms have this mandate, most pronouncedly the WB Group's own Compliance Adviser Ombudsman (CAO). The IP has no formalised advisory mandate. It does provide advice through its lessons learned series.

>>> As a minimum, the IP should publish recommendations in its annual report and in other publications. The IP could receive a formal mandate to enshrine this competence officially. It seems also helpful to provide the IP with the possibility to include recommendations in its investigation reports: based on the findings of their investigation, the IP is probably best positioned to recommend actions.

3. Monitoring action plans

The IP is the only complaint mechanism which does not have a monitoring function of Board approved remedial action plans. Para 15 of the 1999 Clarification to the Resolution creating the IP states that review of the action plans are outside the „purview“ of the IP.

WB management and legal department are known to argue that there could be a conflict of interest for the IP if a subsequent complaint is launched on the project for which the IP has been involved in monitoring. This argument are more theoretical than real, as the criteria for filing a subsequent complaint on a project which was previously investigated by the IP are very tough as the rules for new evidences are very strict. Moreover, the same concern on conflict of interest applies to all MDB complaint mechanisms which monitor and a conflict situation has never arisen. So, in our view there is no conflict of interest which should prevent the IP from monitoring remedial action plans.

Also, a system of checks for the implementation of the remedial action plans needs to be established which is independent from management. Giving the IP a monitoring mandate would make monitoring of the remedial action independent from management – where the violation occurred which made the remedial action necessary. Also, Board must regularly check implementation of the remedial action plan itself.

>>> The IP needs an automatic monitoring mandate which enables the IP to choose in each case, whether and in which detail it wishes to monitor – without seeking board approval. Asking instead the Board at each investigation report approval for monitoring submits this decision to political bargaining at each occasion.

4. Problem solving/dispute resolution

The WB IP as the oldest MDB complaint mechanism does not have a dispute resolution function – unlike all other MDB complaint mechanisms. Their dispute resolution function works either as a separate parallel institutional mechanism (for example ADB), or as an integral part of the complaint mechanism (for example IFC/CAO or AfDB or EBRD). Dispute resolution (or problem solving/ADB), is important for complainants, since it is directed toward giving remedy to the harmed people. Cases presented for dispute resolution outnumber compliance cases.

The WB has so far adopted two approaches to address the missing dispute resolution function of the Inspection Panel. It created (1) a Grievance Redress Service (GRS) within the Operational Complex of the World Bank (located within the Operations Policy Vice Presidency), and (2) it introduced some limited early resolution approaches within the compliance review function of the IP.

Ad (1) The WB GRS has two functions: (a) to monitor whether complaints received by the operations departments are followed up by the respective operations groups, and, (2) to help solve problems presented in the complaints if the operations department itself cannot solve the issue.

The first function, monitoring of complaints, is a very useful function to assure that operations department give appropriate attention to complaints.

The second function needs to be independent from the operational departments – as in most other dispute resolution functions. A trusted dispute resolution cannot be easily achieved by a unit which is located within an Operational Department of an MDB. The GRS is not independent from operations and is not placed in a senior position. It is thus not a unit which operates independently from World Bank management.

Ad (2) As for the limited early resolution approaches, the IP has so far adopted a kind of delaying practice in processing complaints to give management and the complainants time to find a consensual solution before asking the Board to authorize an investigation. This approach is supposedly anchored in footnote 7 para. 44 of the IP operating procedures. To our knowledge it has been adopted by the IP during the last two years in about half of the cases. This delaying approach is not consistent with the compliance review function of the IP. If the IP is expected to pursue a dispute resolution function, it should be based on clear, transparent policies.

>>> In our view, the IFC/CAO office could be requested to conduct dispute resolution also for WB projects. The CAO has a vast experience in dispute resolution and is an established – and independent - structure. The CAO office can easily also acquire the expertise to conduct dispute resolution with sovereign funded loans. Another option would be to authorize the IP to conduct dispute resolution, but based on clear transparent policies. The GRS would need to be transformed and made independent from management to be able to be considered for the role of dispute resolution.

5. Cutoff date for filing complaints

Filing a complaint to the IP is possible until a project has been 95 % disbursed or the project has been closed. On the other hand, a complainant needs to demonstrate non-compliance with Board approved policies which cause harm or likely harm. However, the period while a project is constructed and disbursements up until 95% take place, is often very short and harm often does not materialize or becomes evident. It only materializes much later when the project becomes operational (for example, a power plant pollutes the air or warm water kills the fish etc). There is no need to link filing of complaints to disbursements, as the World Bank has continuous leverage over sovereign borrowers who have ongoing lending relationships with the World Bank. Other complaint mechanisms have longer time periods for filing complaints, ranging from 12 months after project closure until no time limitation (IFC/CAO and EIB).

>>> The time period should be eliminated and instead the admissibility should be decided on other factors, similarly to the CAO approach. As a minimum, it should be extended beyond project closure for a certain time period. In the case of a guarantee (eg Bujagali case), and particularly if there are certain conditions imposed on the guarantee agreement (typically environmental and social obligations) a complaint should be allowed as long as these conditions are in effect as part of the guarantee agreement.

6. Communication with requesters

One principle of non-judicial grievance mechanisms is equality of arms. The current IP procedure however doesn't give complainants equal standing in the process. Complainant(s) are interviewed by the IP during the investigation process. The next interaction only comes once the Board considered the investigation report and approves the remedial action program (on which management is supposed to have consulted the complainants). This process is highly inequitable as management receives the report at the same time when the IP sends the investigation report to the Board to prepare the remedial action plan. This gives

management ample time to interact with the Board of Executive Directors, while the complainant is 'out of the loop'. And while IP policies state, that management needs to consult with affected people (including the complainants), on the proposed remedial action plan, the complainants have never received the investigation report on which the action plan is based. Recognizing this, the IP is now allowed to give the complainant a list of main findings, but not the report. Complainants rightly consider this process highly inequitable.

Other MDB complaint mechanisms have more inclusive processes: the ADB sends a draft report to management, the complainant and the borrower. Once comments have been received (after 21 days), the ADB panel decides whether to accept any of the comments. A matrix is prepared listing all comments and responses by the panel. This matrix is sent to the Board as a complement to the investigation report. The matrix with comments provides Board members information on what the three parties (complainants, management, borrowers) think of the report. The AfDB, EBRD, EIB, IDB all have similar systems.

>>> Complainants should receive the investigation report and they need to receive it at the same time as management.

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