
THE WORLD BANK INSPECTION PANEL: A TOOL FOR ENSURING THE WORLD BANK'S COMPLIANCE WITH INTERNATIONAL LAW?

JACQUI ZALCBERG*

This article examines whether the World Bank Inspection Panel, an independent body aimed at assessing the Bank's compliance with its own policies, is an effective mechanism to ensure its compliance with international environmental law. Using the case study of a recent decision of the Inspection Panel which found that two Bank-financed operations in the Democratic Republic of Congo were in breach of the Bank's own operational policies, this article questions how effectively the standard themselves, and the compliance mechanism, operate. By providing the historical context of how environmental standards were initially incorporated into the Bank's operational framework, the article considers the Bank's overall compliance with those standards, and, whether those standards provide a meaningful standard of review with regards to general principles of international law. In light of a 2012 announcement by the Bank of a review of its operational policies, this question certainly warrants close scholarly attention. In particular, the article posits the argument that any new operational standards must ensure a minimum standard that respects environmental treaty obligations and customary international environmental law. It also then considers some of the inherent weaknesses of the current Inspection Panel mechanism, including its lack of ability to provide redress, and considers some possible solutions.

I INTRODUCTION

The Democratic Republic of Congo ('DRC'), home to more than 60 million people, contains the world's second largest rainforest and significant mineral resources. The World Bank ('WB' or 'the Bank') has committed over two billion dollars in loans to the DRC, with emphasis on developing the natural resource sectors such as mining and logging. In 2007, the World Bank's internal review mechanism, the World Bank Inspection Panel ('WBIP', 'the Panel' or 'the Inspection Panel'), responded to a complaint filed by Indigenous Pygmy Organisations and Pygmy Support Organisations in the DRC with regard to two Bank-financed operations in the region. According to the Inspection Panel, the Bank's activities failed to comply with some of its most basic environmental procedures by: failing to prepare an environmental impact assessment; failing to adequately consult with local people; ignoring evidence of the negative impact that concession logging would have on the livelihoods of forest-dependent groups; and critically overestimating the revenues from the timber

concessions and the poverty-alleviation benefits of industrial-scale logging to the communities.¹

The report of the Inspection Panel highlights one recent example of the many controversial projects funded by the World Bank that impact negatively upon the environment. Using this most recent decision as a case study, this paper will illustrate how, despite the fact that the Bank has evinced a growing awareness of environmental issues in recent years, having even formally endorsed a mandate of sustainable development,² indicators such as the recent Inspection Panel Report on the DRC demonstrate that the institution continues to finance a variety of projects that disregard environmental concerns.

Part I provides an overview of the World Bank and explains the historical developments that led it to situate itself within the environmental framework. Part II then considers the operation of the Inspection Panel itself, and outlines its basic mode of operation with regard to environmental issues. Part III then evaluates the Panel's decisions and, in identifying both mechanical and operational weaknesses, explores why it continues to fail to meet basic standards of environmental protection. In conclusion, the paper contends that, over and above any voluntary internal environmental policy adopted by the Bank, the World Bank as an Inter-Governmental Organisation ('IGO') has an affirmative responsibility to adhere to the basic standards of international environmental law and international human rights law. Bank-financed projects that fail to meet this minimum standard of environmental compliance must be re-evaluated to ensure that the institution can continue to operate as a legitimate and accountable international actor in today's world.

II PART I: THE WORLD BANK AND THE ENVIRONMENT — A BACKGROUND

Established at the Bretton Woods Conference of 1944, the World Bank was originally conceived of as an institution that would assist the reconstruction of a war-ravaged world and encourage the development of poorer countries. For the first thirty years of operation, the Bank operated in a fairly straightforward fashion, promoting infrastructural development and post-war reconstruction. Yet, despite these humble beginnings, the World Bank today bears little resemblance to the institution envisaged at Bretton Woods. By the late 1970s, due to soaring oil prices and the breakdown of the Bretton Woods exchange-rate system, developing countries started acquiring unmanageable foreign debt. With the end of the Cold War, coupled with structural adjustment lending policies and the lack of private finance for countries suffering debt

* B.A, LLB (Hons), (Monash);LLM (James Kent Scholar) (Bretzfelder Fellow in International Law) (Columbia Law School).

¹ The World Bank Inspection Panel, *Investigation Report: The Democratic Republic of Congo: Transitional Support for Economic Recovery Grant (TSERO) and Emergency Economic and Social Reunification Support Project (EESRSP)*, Report No 40764-ZR, August 31 2007 ('Inspection Panel DRC Report').

² See The World Bank, *Environment Overview* (2013) <<http://go.worldbank.org/YC6VI5PD30>>; Recognising that sustainable development, which balances economic development, social cohesion, and environmental protection, is fundamental to the World Bank's core objective of lasting poverty reduction.

burden, the Bank expanded its traditional mandate to incorporate a wide range of endeavours. No longer simply a funding institution, the Bank morphed into a development and aid agency, and even began to take on issues as diverse as post-conflict reconstruction,³ biodiversity,⁴ crime,⁵ and public participation in development planning.⁶ As the operations of the Bank continued to grow, the implications of Bank-financed projects and their increasing impact on national environments became more patent. Yet, despite this expansion of focus, the Bank has largely adhered to its mandate of economic reform in the context of its environmental engagement, providing loans based ‘only on economic factors.’⁷

As early as 1972, at the UN Conference on the Human Environment, Robert McNamara, President of the Bank, insisted on the Bank’s environmental credentials and lauded the Bank’s ‘formidable environmental record.’⁸ Yet despite such grand claims of environmentalism, ‘by the end of the 1970s the World Bank had become an institution where policy pronouncements and rhetoric were largely disassociated from reality.’⁹ Nowhere was this truer than in the area of the environment. Huge forests were being destroyed, gigantic river basins filled with dams, and vast agricultural expanses consolidated into larger holdings for export production at tremendous ecological cost, all with the financial support of the Bank.¹⁰ During the latter half of the twentieth century, the World Bank had funded many projects with devastating environmental consequences. Indeed, the 1970s and 1980s have been termed the ‘decade of debacles’ — referring to the sheer number of World Bank financed projects in which the international financial institution (‘IFI’) was a leading protagonist in unleashing ecological destruction on the planet.¹¹

³ Steven Holtzman, Ann Elwan and Colin Scott, *Post-Conflict Reconstruction: The Role of the World Bank* (The World Bank, 1998) <<http://elibrary.worldbank.org/content/book/9780821342152>>.

⁴ The World Bank, *Environment GEF Operations—Biodiversity* (2011) <<http://web.worldbank.org/WBSITE/EXTERNAL/TOPICS/ENVIRONMENT/EXTGLOBALE NVIRONMENTFACILITYGEFOPERATIONS/0,,contentMDK:20484794~menuPK:1223751~pagePK:148956~piPK:216618~theSitePK:286243,00.html>>.

⁵ Anne Marie Leroy, *Legal Note on Bank Involvement in the Criminal Justice Sector* (9 February 2012) The World Bank <<http://siteresources.worldbank.org/INTLAWJUSTINST/Resources/CriminalJusticeLegalNote.pdf>>.

⁶ Carmen Malena, Reiner Forster and Janmejaj Singh, *Social Accountability: An Introduction to the Concept and Emerging Practice* (The World Bank, 2004); Also see generally the Participation and Civic Engagement Group of the Social Development Department, The World Bank <www.worldbank.org/socialdevelopment>.

⁷ Jonathan Pincus, ‘The Post-Washington Consensus and World Bank Lending Operations: New Rhetoric and Old Operational Realities’ in Ben Fine, Costas Lapavitsas and Jonathan Pincus (eds), *Development Policy in the Twenty-First Century: Beyond the Post-Washington Consensus* (Routledge, 2001); Todd Roessler, ‘The World Bank’s Lending Policy and Environmental Standards’ (2000) 26 *North Carolina Journal of International Law and Commercial Regulation* 105, 110.

⁸ Robert McNamara, ‘Speech to the UN Conference on the Human Environment, 8 June 1972’ in Robert S McNamara, *The McNamara Years at the World Bank: Major Policy Addresses of Robert S McNamara 1968-1981* (John Hopkins University Press, 1981) 196.

⁹ Bruce Rich, *Mortgaging the Earth: The World Bank, Environmental* (Beacon Press, 1994) 102.

¹⁰ Ibid 25.

¹¹ Ian A Bowles and Cyril F Kormos, ‘The American Campaign for Environmental Reforms at

By the end of the 1980s, ‘the hot reflective glare of burning rain forests and dam-displaced villages’,¹² coupled with pressure from environmental advocates and even some states,¹³ piqued the Bank’s interest in becoming more environmentally responsible. During the 1980s and early 1990s, in an attempt to mitigate the negative environmental and social impacts of Bank-funded projects, the Bank developed a new environmental agenda, which included: the adoption of an environmental Operational Directive in 1984; the establishment a new environment department in 1987; and the creation of the Global Environment Facility (‘GEF’) in 1991.¹⁴

Yet, despite this apparent transformation, the Bank continued to fund environmentally questionable initiatives. Two huge World Bank infrastructure projects in Brazil, the Polonoreste and Carajás Projects, despite being touted as ecological models for World Bank development, emphasised this disjuncture. By opening up large areas of the Brazilian Amazon to roads and logging, the Polonoreste Project transformed Rondônia, a region of the Brazilian Amazon, into an area with the highest rate of forest destruction, from 1.7 per cent in 1978 to 16.1 per cent in 1991. The Carajás Project led to the deforestation of 150,000 square kilometres of Amazonian jungle. By the early 1990s, the high profile environmental disasters funded by the Bank indicated that the ‘words on paper and the fundamental objectives of the policies did not match the reality of implementation at the project level.’¹⁵ The Bank was under serious pressure to deal with its development disasters, with more and more voices calling for significant reform of the institution or even its abolition.¹⁶

The urgent need to reform the World Bank’s environmental policies became even more apparent with the fiasco over the India Narmada River Sardar Sarovar Project (‘SSP’), the single largest river development scheme in India and one of the biggest hydroelectric projects in the world.¹⁷ The Project, which was designed to irrigate 1.8 million hectares of land, would have displaced approximately 1.5 million people and impacted severely upon biodiversity by inundating thousands of acres of forest and agricultural land. The Project began in 1947 at the initiative of the Indian Government, but in 1985 the World Bank stepped in, authorising a credit and loan agreement with the government of India to fund a significant portion of the SSP.¹⁸

¹² the World Bank’ (1999) *Fletcher Forum of World Affairs* 211, 312.
Jonathan Fox, ‘Introduction: Framing the Inspection Panel’ in Dana Clark, Jonathan Fox and Kay Treakle (eds), *Demanding Accountability: Civil-Society Claims and the World Bank Inspection Panel* (Rowman & Littlefield Publishers, 2003) xii - xxxi, xii.

¹³ Bowles and Kormos, above n 11, 312; explaining US support for Environmental Reforms.

¹⁴ Robert Wade, ‘Greening the Bank: The Struggle Over the Environment 1970–1995’ in Devesh Kapur, John P Lewis and Richard Webb (eds), *The World Bank: Its First Half-Century* (Brookings, 1997).

¹⁵ Dana Clarke, ‘Understanding the World Bank Inspection Panel’ in Dana Clark, Jonathan Fox and Kay Treakle (eds), *Demanding Accountability: Civil-Society Claims and the World Bank Inspection Panel* (Rowman & Littlefield Publishers, 2003) 1, 2.

¹⁶ Ibid.

¹⁷ See, eg, Catherine Caulfield, *Masters of Illusion: The World Bank and the Poverty of Nations* (Henry Holt & Co, 1996); Lori Udall, ‘The International Narmada Campaign: A Case Study of Sustained Advocacy’ in William F Fisher (ed), *Toward Sustainable Development? Struggling Over India’s Narmada River* (Armonk, 1995) 201.

¹⁸ Thomas R Berger, ‘The World Bank’s Independent Review of India’s Sardar Sarovar Projects’ (1993) 9 *American University Journal of International Law and Policy* 33, 41–42.

The Project came under strong criticism and claims of serious human rights and environmental violations emerged. In light of massive protests over the abuses, and allegations that the dams could not deliver the projected water and energy outputs estimated by its planners,¹⁹ in 1991 the World Bank agreed to establish an Independent Review to assess the SSP. This was ground-breaking in that it was the first time that the Bank had agreed to submit itself to review by outside experts. After nine months of field research in India, the report ‘Sardar Sarovar: An Independent Review,’²⁰ shook the very foundations of the Bank. The highly critical report recommended that the World Bank step back from the project to assess the project’s ‘profound difficulties’,²¹ as the ‘problems besetting the [SSP] are more the rule than the exception.’²² In particular, the report denounced both the failure of the Indian government and the Bank to complete a comprehensive social and environmental impact study as well as the lack of community participation in the planning process.²³ The report concluded that ‘the environmental impacts of the project have not been properly considered or addressed.’²⁴ The Bank officially withdrew funding in 1993.²⁵

III PART II: THE WORLD BANK INSPECTION PANEL

A General Overview

Decades of lending within the paradigm of economic growth resulted in scant attention being paid to the environmental costs of Bank projects. Yet, in the wake of the Narmada controversy, and with increased global commitment to environmental concerns as a result of the 1992 Earth Summit in Rio de Janeiro,²⁶ the Bank realised it had to ‘green’ itself in a substantive way.²⁷ The environmental policies put in place in the 1980s had proved to be insufficient, not only in substance but also in terms of enforcement. The World Bank had, in fact, been operating as a ‘lawless institution’ insofar as it had been insulated from any legal responsibility for the environmental impact that had occurred as a direct result of the Bank breaching its own policies.²⁸ Coupled with growing recognition that the Bank’s mandate of poverty alleviation is compromised when its activities undermine respect for the environment, it had become clear that not only would the Bank’s environmental policies have to be strengthened, but also a mechanism would be need to be established to ensure the independent oversight and proper implementation of these improved policies.

¹⁹ Ibid 36.

²⁰ Thomas R Berger and Bradford Morse, *Sardar Sarovar: The Report of the Independent Review*, The World Bank (1992).

²¹ Berger, above n 18, 46.

²² Ibid.

²³ Bradford Morse and Thomas Berger, ‘Findings and Recommendations of the Independent Review’ in Dana Clark, Jonathan Fox and Kay Treakle (eds), *Demanding Accountability: Civil-Society Claims and the World Bank Inspection Panel* (Rowman & Littlefield Publishers, 2003) 371, 371.

²⁴ Berger and Morse, above n 20, 4.

²⁵ See Komala Ramachandra, ‘Sardar Sarovar: An Experience Retained?’ (2006) 19 *Harvard Human Rights Journal* 275.

²⁶ Brundtland Commission Report, *Our Common Future*, United Nations (1987).

²⁷ See R E Bissel, ‘An Environmental Inspection Mechanism for World Bank Projects’ (1997) Spring *Ecodecision* 47.

²⁸ David Hunter, ‘Using the World Bank Inspection Panel to Defend the Interests of Project-Affected People’ (2003) 4(1) *Chicago International Law Review* 201.

An NGO proposal called for the creation of a permanent independent mechanism that would respond to and investigate complaints from project-affected peoples.²⁹ Under pressure from donor nations, in particular the US who indicated their commitment to institutional reform,³⁰ the World Bank Inspection Panel was established in 1993 as the tool to encourage Bank compliance with its own policies.³¹ Established as an independent and permanent organ within the Bank's structure, the Panel was granted the competence to receive and, subject to the approval of the Bank's Board of Executive Directors ('the Board'), to investigate complaints. Reporting only to it, the Panel provides private citizens direct access to the Bank if they believe they are being directly and adversely affected by a Bank-financed project. Petitioners must demonstrate that the harm suffered is related to the Bank's failure to follow its own policies — it is not enough to show that national governments implementing Bank funded projects caused the damage. Finally, petitioners must show that the problem was brought to the attention of Bank authorities and they did not respond adequately. Panel procedures recognise the possibility of reprisals against claimants and allow petitioners to remain anonymous.³² The jurisdiction of the Panel is defined by the Bank's policy framework: The Panel evaluates the extent to which a project is in compliance with Bank policies and the harm suffered as a result of policy violations.³³ In January 1999, all official Bank procedures were revised to encompass three broad categories: mandatory Operational Policies ('OP'), Bank Procedures ('BPs'), and Good Practices ('GPs'), which are advisory. The Resolution establishing the Panel, however, clearly establishes that the only standard of review for complaints to the Panel are those that claim a breach of an OP. Excluded from review are complaints regarding Bank action taken in breach of Guidelines and Best Practices, and similar documents or statements.³⁴

When the Panel receives a claim, it sends a copy to the Bank Management, asking them to respond in 21 days, and it also notifies the Board. Management responds and the Panel weighs the evidence from both sides to determine whether to recommend an investigation. The Panel's decision is then relayed to the Board, which initially had the power to decide whether to authorise an investigation of the claim. This requirement initially allowed for a hijacking of the Panel process, and permitted Executive Directors representing project countries' governments to be able to band

²⁹ David Hunter and Lori Udall, *Proposal for an Independent Appeals Commission* (Environmental Defense Fund and CIEL, 1993); The idea for an independent commission had been explored at the academic level for several years. See also Chris Wold and Durwood Zaelke, 'Establishing an Independent Review Board at the European Bank for Reconstruction and Development' (1992) 58 *Duke Environmental Law and Policy Forum*.

³⁰ Bowles and Kormos, above n 11, 211.

³¹ See, eg, The World Bank, *Inspection Panel* (2011) <www.worldbank.org/inspectionpanel>; It should also be noted that in 1998 another form of accountability mechanism, a Compliance Advisor and Ombudsman (CAO), was created for the International Finance Cooperation and Multilateral Investment Guarantee Agency. See, eg, Compliance Advisory Ombudsman, *Our Mandate* (2009) <<http://www.cao-ombudsman.org/>>.

³² Resolutions of the International Bank for Reconstruction and Development (IBRD) and the International Development Agency (IDA) establishing the World Bank Inspection Panel, 22 September 1993 (Resolutions IBRD 93-10 and Resolution IDA 93-6). Reviewed by Clarifications in 1996 and 1999.

³³ Dana Clark, 'The World Bank and Human Rights: The Need for Greater Accountability' (2002) 15 *Harvard Human Rights Journal* 205, 218.

³⁴ World Bank, Resolution No. IBRD 93-10, Resolution No. IDA 93-6 'The World Bank Inspection Panel', [12].

together with other borrowing countries and some donors in order to oppose the Inspection Panel's recommendations for an investigation. This institutional limitation resulted in only one Board-authorized investigation following a Panel recommendation in its first five years of operation. A 1998-99 Review critiqued this procedural feature and acknowledged that the Board was not allowing the Panel to operate in the manner intended under its founding resolution.³⁵ The Review remedied this hurdle by specifying that when the Panel so recommends, the Board will authorize an investigation on a 'no-objection' basis, without making a judgment on the merits of the request.³⁶

When an investigation is authorized, the Panel sends its final report and findings to the Board and Bank Management. Management then has six weeks to prepare recommendations on what actions the Bank should take in response to the Panel's findings. If it chooses to do so, Management is able to make remedial recommendations in this report.³⁷ The Bank officially refers to these reports as 'compliance plans' — although they have also been referred to as 'action plans.'³⁸ The plans describe the measures that Management intends to adopt to address the problems of non-compliance expressed in the Panel's report.³⁹ The Board is then required to review the Panel report and Management's response plan to determine what remedial steps, if any, the Bank must take to rectify the problems identified by the Panel.⁴⁰ The Inspection Panel is thus designed to be able to present findings to the Board, not to prescribe or oversee the implementation of solutions. Thus, the Panel does not have the power to enforce or even to recommend solutions, nor can it issue an injunction, stop a project, or award financial compensation for harm suffered. It is up to the Board alone to announce whether remedial measures will be undertaken. The most that the Panel can do is produce a public report with the findings of its investigation. The claimants themselves, moreover, have no right to comment on the remedial measure they believe to be appropriate to rectify or remedy any policy breach.⁴¹ This structure 'points to a fundamental flaw in the panel's architecture'⁴² as

³⁵ Daniel D Bradlow, *Comments on the Report of the Inspection Panel Working Group Entitled 'Second Review of the Inspection Panel 1998 Clarification of Certain Aspects of the Resolution'* submitted to the World Bank Group (March 1999) 3.

³⁶ The World Bank, *Conclusions of the Boards Second Review*, [9].

³⁷ The World Bank Inspection Panel, *Accountability at the World Bank: The Inspection Panel 10 Years On* (The World Bank, 2003) 14–15 ('*The World Bank Inspection Panel*'); 'Consistent with normal operating procedures, Bank Management, when it responds to the Panel's Investigation Report, recommends, when relevant, remedial actions to the Board'.

³⁸ Ibrahim F I Shihata, *The World Bank Inspection Panel* (Oxford University Press, 1994) 189; Drawing a distinction between 'remedial "Action Plans," which are agreements between the Bank and the Borrower, and "Compliance Plans," which are solely related to the Bank'. While the term "remedial action plan" thus technically refers to an agreement by both the Bank and the borrower, the academic literature often also refers to compliance plans as "action plans." 9.

³⁹ Mariarita Circi, 'The World Bank Inspection Panel: Is it Really Effective?' (2006) 6 *Global Administrative Law and Global Governance*

⁴⁰ The World Bank Inspection Panel, *Operating Procedures*, [4] (1994) <<http://www.worldbank.org/inspectionpanel>>.

⁴¹ The World Bank, *Accountability at the World Bank: The Inspection Panel at 15 Years* (2009) <<http://siteresources.worldbank.org/EXTINSPECTIONPANEL/Resources/380793-1254158345788/InspectionPanel2009.pdf>>; This provides an overview of the work of the inspection panel during its first 15 years.

⁴² Clark, above n 33, 258.

project-affected peoples, though provided access to a forum to raise concerns about violations of Bank policies, are ‘frequently denied an effective remedy.’⁴³

B *The Inspection Panel and Environmental Considerations*

World Bank environmental policy was formally adopted in 1984 in the Operational Manual Statement 2.36 on Environmental Aspects of Bank Work (‘OMS’).⁴⁴ The manual established eight principles intended to influence Bank activities with respect to the environment, including principles prohibiting the Bank from financing projects that would cause severe and irreversible environmental degradation or would displace people without mitigation measures acceptable to the Bank.⁴⁵ In 1991, the OMS was replaced by an Operational Directive (‘OD’) 4.01 on Environmental Assessment (‘EA’). The OD was reissued as an Operational Policy (‘OP’) 4.01 in 1999.⁴⁶ The Bank intended the EA policy to ensure that proposed projects considered the potential for environmental and social impacts, thereby improving the quality of decision making.⁴⁷ Other environmental OPs of particular importance for the environment include: OP 4.04 on Natural Habitats and OP 4.36 on Forestry.

It is important to note that in 2010 the World Bank Group decided to undertake a wholesale evaluation of all of its safeguards and sustainability policies (including those of the International Finance Corporation (‘IFC’), and the Multi-lateral Investment Guarantee Agency (‘MIGA’)).⁴⁸ The evaluation, which was endorsed by the Committee on Development Effectiveness of the World Bank’s Board of Executive Directors on 10 October 2012, will involve a two-year three-phased process in order to review and update its current environmental and social safeguard policies, including OP 4.01 Environmental Assessment.⁴⁹ This is certainly a welcome development and it is hoped that this review will lead to a strengthening of the internal standards of operation. In light of this, this paper will focus on OP 4.01 and

⁴³ Ibid 218.

⁴⁴ The World Bank, *Operational Manual Statement: Environmental Aspects of Bank Work 2.36* (1984) (‘OMS 2.36’).

⁴⁵ OMS 2.36 [9]; lists eight principles that should guide Bank work: 1) ensure that each project affecting renewable resources does not exceed regenerative capacities of the environment; 2) do not finance projects that cause severe or irreversible environmental deterioration; 3) do not finance projects that unduly compromise the public’s health and safety; 4) do not finance projects that displace people or seriously disadvantage certain vulnerable groups without undertaking mitigatory measures acceptable to the Bank; 5) do not finance projects that contravene any international environmental agreement concerning the member country; 6) do not finance projects that could significantly affect the environment of a neighbouring country without consent; 7) do not finance projects that could significantly modify natural areas designated by international conventions or national legislation; 8) endeavour to ensure that projects with unavoidable consequences for the environment are sited in areas where the environmental damage is minimized, even at somewhat greater costs

⁴⁶ The World Bank, *Operational Manual: Environmental Assessment OP 4.01* (1999) [1] (‘OP 4.01’).

⁴⁷ Ibid [2].

⁴⁸ The World Bank, Independent Evaluation Group (IEG), *Safeguards and Sustainability Policies in a Changing World: An Independent Evaluation of World Bank Group Experience* (2010).

⁴⁹ The World Bank, *The World Bank’s Safeguard Policies Proposed Review and Update, Approach Paper*, (10 October 2012) <<http://siteresources.worldbank.org/EXTSAFEPOL/Resources/584434-1306431390058/SafeguardsReviewApproachPaper.pdf>>.

EAs as the key paradigm through which the current environmental commitment of the Bank will be assessed, and will also highlight points that should be considered for review.

OP 4.01, as it currently stands, requires EAs for all Bank-financed projects to help ensure that they are environmentally sound and sustainable. The Bank undertakes environmental screening of each proposed project to determine the appropriate extent and type of EA. The Bank classifies the proposed project into one of four categories, depending on the type, location, sensitivity, and scale of the project and the nature and magnitude of its potential environmental impacts. A project is classified as Category A if it is likely to have significant adverse environmental impacts that are sensitive, diverse or unprecedented. Category B projects are so classified where there are potential adverse environmental impacts on human populations or environmentally important areas — including wetlands, forests, grasslands, and other natural habitats — but less adverse than those of Category A projects. A proposed project is classified as Category C if it is likely to have minimal or no adverse environmental impacts. Beyond screening, no further EA action is required for a Category C project.

IV PART III: EVALUATION — THE PANEL'S ENVIRONMENTAL DECISIONS

The 1999 Review, which rejuvenated the operationalisation of the Panel by stopping the Board from blocking all investigations and which re-cast environmental objectives as Operational Policies, led to renewed hope that the WBIP could become a key mechanism for change within the institution and a tool for promoting environmentally sustainable development. One key parameter for measuring such success, then, is its tangible impact on the institution. In other words, has the creation of the Panel resulted in actual institutional changes in the Bank's behaviour towards funding environmentally questionable initiatives? In order to assess this, two key questions will be asked. Firstly, has the new framework led to better compliance with Bank environmental policies? Secondly, is compliance with those mandates sufficient? Stated differently: Do the World Bank environmental policies meet a sufficient standard of environmentalism that should be expected from this international organisation?

A *The Question of Compliance*

The Panel's very first report in 1994 on the Arun III hydropower project in Nepal found that, among other things, the Bank had failed to comply with its environmental policy requirements by not preparing an adequate EA.⁵⁰ The next time the Board did not block the Panel's Investigation, as explained above, was in 2000, with the China Western Poverty Reduction Project ('CWPRP').⁵¹ For that project, a principal claim by the affected parties was the failure of the Bank to perform an adequate EA. The

⁵⁰ The World Bank Inspection Panel, *Report and Recommendation, Nepal: Arun III Proposed Hydroelectric Project and Reconstruction of IDA Credit 2029-NP* (2009) [45] ('Report and Recommendation: Nepal').

⁵¹ See Dana Clark and Kay Treakle, 'The China Western Poverty Reduction Project' in Dana Clark, Jonathan Fox and Kay Treakle (eds), *Demanding Accountability: Civil-Society Claims and the World Bank Inspection Panel* (Rowman & Littlefield Publishers, 2003) 219.

Bank had classified the project as Category B, notwithstanding clear indicators that there were serious environmental consequences that merited its classification as Category A, including an internal assessment undertaken by the Bank in 1998.⁵² In April 2000, the Inspection Panel delivered its report, which determined that the Bank had violated its EA policy, among others. The report also indicated that the Bank viewed the environmental policies as flexible or discretionary guidelines, rather than as a binding set of policies.⁵³

In response, the Bank persisted in justifying its actions by downplaying the environmental impact of the project. Despite the clear admonishment from the Panel, Bank Management insisted on proceeding with the project, and argued that it could bring it into compliance with the policies after the fact. President Wolfensohn lamented that the Bank was being pushed ‘into a literal and mechanistic application of the OPs and ODs that was never intended ... at considerable cost to both China and the Bank.’⁵⁴ Despite the fact that the Panel had found egregious violations of the Bank’s social and environmental framework, the letter indicates that the Bank viewed policy compliance as too expensive. The US and Japan (the Bank’s two most powerful donor countries), remain unconvinced and opposed the project moving forward. A coalition was created with other donor countries and, on 7 July 2000, a majority of the Board rejected the proposal. This unprecedented outcome of the Board rejecting Management’s plan resulted in China’s withdrawal from the project and its cancellation. The aftermath of the CWPRP led to the implementation of further institutional changes to increase compliance with environmental policy, and a new environment strategy was even approved by the Board in July 2001 that emphasised a heightened commitment to policy compliance.⁵⁵

Although the Panel’s report on the CWPRP did promote internal restructuring and improvements in transparency, the result in this case stemmed from individual States exerting pressure, as opposed to internal Bank compliance with its own policies. Moreover, the policy review that followed the CWPRP does ‘not ensure that policy objectives are actually met.’⁵⁶ To the contrary, despite these new initiatives in the sphere of environmental protection, environmental policies continued to be the most often cited as having been violated.⁵⁷ Indeed, ‘most of the requests made [at the time] to the Inspection Panel allege that the Bank has not followed its environmental and social policies and procedures.’⁵⁸ Some have gone so far as to argue that the Bank’s experience with the CWPRP, while creating a more cautious approach to projects with questionable environmental components, means that such projects are now less

⁵² Ibid 218.

⁵³ The World Bank Inspection Panel, *Investigation Report, Executive Summary*, Washington DC (28 April 2000).

⁵⁴ James D Wolfensohn, President ‘Management Report and Recommendation in Response to the Inspection Panel Investigation Report,’ (21 June 2000), INSP/R2000-4/2.

⁵⁵ The World Bank, *Making Sustainable Commitments: An Environmental Strategy for the World Bank* (July 2001).

⁵⁶ Kay Treakle, Jonathan Fox and Dana Clark, ‘Lessons Learned’ in Dana Clark, Jonathan Fox and Kay Treakle (eds), *Demanding Accountability: Civil-Society Claims and the World Bank Inspection Panel* (Rowman & Littlefield Publishers, 2003) 270.

⁵⁷ Ibid 250; See also, The World Bank, *Inspection Panel Annual Report 2002* (The World Bank, 2002) 1; Table 11.2 places breach of EA as the highest in the table of claims in which violations have been alleged).

⁵⁸ See Bissel, above n 27, 48.

desirable to Bank Management ‘only because of the problems these projects can cause for the Bank’s image when there are inevitable instances of noncompliance, not because these projects are seen as inappropriate development choices.’⁵⁹

The recent Panel Report on the complaint regarding Bank-funded activities in the DRC in 2007 highlights the ongoing failure of the World Bank to comply with its EA policy.⁶⁰ In this case, a request was filed with the World Bank Inspection Panel on 19 November 2005.⁶¹ On 28 February 2006, the Board approved the Panel’s recommendation to conduct an investigation into the matters alleged.⁶² The request essentially related to two Bank-financed operations: the Emergency Economic and Social Reunification Support Project (‘EESRSP’), which involved implementing a new forest concession regime; and the Transitional Support for Economic Recovery Grant Operation (‘TSERO’) development policy loan, which focussed on improving governance in the natural resource sector. The requesters claimed that they were harmed and would continue to be harmed by the forest sector reform activities supported by the EESRSP and the TSERO. The complaint against the EESRSP focused on Component Two of the project, which had the objectives of restoring effective institutions in the forestry sector in the DRC provinces, improving local governance over natural resources, bringing the new DRC Forest Code into practice and addressing the problem of illegal logging.⁶³ This component aimed to prepare a forest-zoning plan and lay the groundwork for implementation of a new forest concession system with a focus on converting old forest contracts into the new concession regime. The TSERO, on the other hand, had as its key objective the improvement of governance in the natural resources sector.

The World Bank had classified the EESRSP as Category B under OP 4.01 on EA, which the requesters contested. Upon review, the Panel ultimately found that the Category B EA prepared at the time was so classified because it was alleged that no activity funded under the project was expected to have a significant negative environmental impact. Moreover, the Category B EA covered road construction aspects contained in Component 3 of the Project. Under the Project there was no EA ever completed of the pilot zoning and logic concession elements contained in Component 2. The Panel ultimately held, however, that forest land use should surely have been anticipated to have a potentially fundamental impact on land and environment, with potentially irreversible impacts and should thus have been classified as Category A.⁶⁴ The report was then sent to the Management, which elaborated an Action Plan that included recommendations that the Bank remain

⁵⁹ Natalie Laura Bridgeman, ‘World Bank Reform in the “Post-Policy” Era’ (2001) 13 *Georgetown International Environmental Law Review* 1013, 1023.

⁶⁰ The World Bank Inspection Panel, above n 1.

⁶¹ Indigenous Pygmy Organisations and Pygmy Support Organisations in the Democratic Republic of Congo, *Request Submitted to the World Bank Inspection Panel* (30 October 2005), DRC, Kinshasa <<http://siteresources.worldbank.org/EXTINSPECTIONPANEL/Resources/RequestforInspectionEnglish.pdf>>. (‘Request to WBIP’).

⁶² All public documents related to the case are available at the World Bank Case Website <<http://web.worldbank.org/WBSITE/EXTERNAL/EXTINSPECTIONPANEL/0,,contentMDK:20742493~menuPK:64129250~pagePK:64129751~piPK:64128378~theSitePK:380794,00.htm>>

⁶³ Request to WBIP, above n 61.

⁶⁴ The World Bank Inspection Panel, above n 1.

engaged in the DRC forest sector, continue to monitor a moratorium on future logging concessions, and strengthen forest law enforcement. The Plan further emphasised the importance of integrating forest-dependent communities, including Pygmies, more widely into the Bank's activities in the DRC, and support for critical activities such as capacity building, participatory zoning, customary rights, law enforcement and independent monitoring.⁶⁵ On 10 January 2008, the World Bank's Board of Directors discussed the Panel Report and the Management Response and Action Plan. In approving the Action Plan, the Board welcomed the report of the Inspection Panel and supported the steps outlined in the Bank's Action Plan as important contributions to promoting the improved management of Congolese forests and protecting the rights of forest-dependent people, including Pygmies.⁶⁶

The first Progress Report was submitted to the Inspection Panel and the Executive Directors in March 2009, and the second in March 2011. On 14 May 2012, Management submitted its third and final Progress Report to the Board, which indicated that all the components of the Action Plan were completed. The third Progress Report, which provided a summary regarding the status of implementation of safeguards, was strengthened by the recruitment and decentralisation of 20 environmental and 19 social staff to work on safeguards in headquarters and country offices. Management also conducted Regional Safeguards Portfolio Reviews (Environmental and Social Management Framework, Strategic Environmental Assessment) and one country-specific review. Moreover, it was noted that high-risk projects were being regularly reviewed on a quarterly basis. Finally, management noted that all infrastructure, forest, agriculture, and other relevant projects under preparation and supervision continue to integrate the Indigenous Peoples Policy and other safeguards as appropriate. Management further noted that in December 2009, a formal Economic and Sector Work, 'Strategic Framework for the Elaboration of a "Pygmy Development Plan"' was finalised and that a legal review of forest concessions was formally completed in January 2011, with 76 concessions cancelled and 80 legally converted. As a follow-up, 39 social responsibility contracts were signed between logging companies and local communities, and negotiations on 41 remain ongoing.⁶⁷

The DRC case study affirms that while the Panel itself is a functioning institution that can bring to light flaws in the design and implementation of Bank projects, it is evident that more oversight in the implementation and planning stage of the projects is required to ensure that projects do not fall short of the Bank's own environmental policies in the first place. It is also true that drawing wide-scale conclusions regarding the degree to which hundreds of ongoing Bank projects actually comply with the environmental policies is not an easy task. Only a very small number of projects are ever brought before the Panel in the first place, and 'few comprehensive field-based

⁶⁵ The World Bank, *Bank Management Response to Request for Inspection Panel Review of the Democratic Republic of Congo* (1 December 2005) <<http://siteresources.worldbank.org/EXTINSPECTIONPANEL/Resources/DRCfinalJan15.pdf>>.

⁶⁶ The World Bank Inspection Panel, *Inspection Panel Investigation of Forest Sector Operations in DRC* (2008) <<http://siteresources.worldbank.org/EXTINSPECTIONPANEL/Resources/PRESSRELEASEJAN2008.pdf>>.

⁶⁷ The World Bank Inspection Panel, *Annual Report* (1 July 2011– 30 June 2012) 34.

assessments of Bank and borrowing government compliance with the policies exist.⁶⁸ Yet public interest groups continue to charge that the practice of mis-categorising projects under the EA continues to be widespread, which permits the avoidance of EAs, consideration of alternative approaches and mitigation measures. Moreover, in its 2011-12 Annual Report, environmental policies continue to be the most often cited as having been violated.⁶⁹ Furthermore, it must be recalled that the Bank's environmental policies do not apply retroactively — so many earlier pre-reform projects are still ongoing.

In light of the breaches of environmental policy being found by the Panel, the question of whether the Panel has actually promoted better compliance with environmental standards remains a pertinent enquiry. At a minimum, the Bank must adhere consistently to its own environmental policies if it can ever genuinely hold itself to its mandate of promoting sustainable development. Yet if, as some authors contend, the developments within the Panel represent a 'remarkable example of multilateral-institutional innovation in response to transnational advocacy pressures,'⁷⁰ its impact in terms of environmental protection remains imperfect. As Todd Roessler notes, 'while the World Bank has taken significant steps to reform its lending policy related to environmental standards, the Bank has not consistently implemented these policies and instruments.'⁷¹ The experience of the World Bank Inspection Panel has demonstrated that policy improvements do not always guarantee the substantive outcomes that complainants seek, and 'the evidence ... shows that concrete results from the Panel have been limited and its impact ambiguous.'⁷²

B *Standards of Review*

Certainly the issue of whether or not the Bank now adheres more strictly to its own environmental policies as a result of the creation of the Panel is a threshold question. However, even with full policy compliance, the World Bank still operates with emphasis on national economic prioritisation over community and environment-based solutions to poverty. That is, if the Panel has only been created as a review mechanism for ensuring that the Bank adheres to its own policies, the question must be posed as to whether the environmental OPs are sufficient in themselves. As Fox notes:

By creating the Panel, the World Bank Board of Directors recognized the legitimacy of the normative principle that international organizations should be publicly accountable — defined as being in compliance with *their own promises* of social and environmental reform.⁷³

So, although 'one of the most important steps that the Bank can take towards environmental reform is to implement the policies and procedures already in place',⁷⁴

⁶⁸ Treacle, Fox and Clark, above n 56, 151.

⁶⁹ Ibid xxi.

⁷⁰ Ibid.

⁷¹ Roessler, above n 7, 106.

⁷² Jonathan A Fox, 'The World Bank Inspection Panel and the Limits of Accountability' in Jonathan R Pincus and Jeffrey A Winters (eds), *Reinventing the World Bank* (Cornell University Press, 2002) 131, 133.

⁷³ Ibid 132 (own emphasis).

⁷⁴ Ibid.

considering that the policies are the criteria against which we judge the Bank's performance, the adequacy of such policies must also be considered. Shortly after the Panel was created, the Bank embarked on a process to convert its various Bank and Operational Directives into standardised formats, consisting of Operational Policies, Bank Practice and Good Practices, the latter being considered mere guidance which is not actionable through the panel process.⁷⁵ Although the Bank actively sought NGO input on the 1999 Review of its environmental policies, it restricted comments to the singular issue of whether the substance of the former policy withstood revision into the new format.⁷⁶ This meant that NGOs could not comment on whether the Bank adequately respected the environment, but could only comment as to whether the Bank properly interpreted its former policy. Ostensibly, motivation for the Review was to make the policies clearer. However, the truth is often more insidious. As Treakle Fox and Clark observe: 'Bank Management's tendency has been to weaken the mandatory language or move important provisions into the Good Practice section to avoid being accountable to tough standards.'⁷⁷ Robert Goodland, a former senior environment advisor to the Bank laments:

In updating its policies, not one has been modernized and strengthened commensurate with the deteriorating global environment. Remarkably, several policies have stagnated and others have been gutted. ... In 2002 the Bank rescinded its decade long ban on financing logging in tropical forests.⁷⁸

For example, while the original OD 4.01 provided guidance to borrowers in preparing the EA and observing sustainable practices, these policy statements are absent from the revised edition.⁷⁹ The original OD 4.01 was very clear that the EA should be undertaken before the appraisal stage of the project, whereas the revised OP 4.01 is somewhat ambiguous on the question of timing, requiring it 'to be carried out as early as possible' with no stipulation that it occur before the appraisal of the project.⁸⁰ Thus, an EA is now 'much more likely to occur after the appraisal of the project, and environmental impacts may not be fully evaluated before decisions are made on the project.'⁸¹ Thus, while the Inspection Panel may be a significant step towards holding the Bank accountable to environmental standards and ensuring sustainable World Bank projects, ongoing dilution of such standards weakens the very tenet of the Panel process.

The current review that is underway may be an important opportunity to change this approach. It is hoped that a truly consultative and transparent review will take place in a timely manner, which takes an expansive approach to environmental harm, including explicitly providing for certain categories of harm such as climate change,

⁷⁵ See Bank Information Center, *World Bank Policy Conversion: An Overview* (14 April 1997) <www.bicusa.org/publications>.

⁷⁶ Melenna Andromecca Civic, 'Prospects for the Respect and Promotion of Internationally Recognized Development Practices: A Case Study of the World Bank Environmental Guidelines and Procedures' (1998) 9 *Fordham Environmental Law Journal* 231, 247.

⁷⁷ Kay Treakle, Jonathan Fox and Dana Clark, 'Lessons Learned' in Dana Clark, Jonathan Fox and Kay Treakle (eds), *Demanding Accountability: Civil-Society Claims and the World Bank Inspection Panel* (Rowman & Littlefield Publishers, 2003) 270, 272.

⁷⁸ *Ibid.*

⁷⁹ Civic, above n 76.

⁸⁰ *Ibid* 248.

⁸¹ Roessler, above n 7, 141.

and human rights impacts of environmental projects. There is the danger course that the review could in fact lead to a weakening of the safeguards. Civil Society organisations, for example, fear that the Bank may seek to weaken the safeguards through the upcoming review and update, potentially replacing them with vague principles and non-mandatory “flexible” implementation standards, in order to remain competitive with emerging private sector lenders that have no such similar policies⁸². It is thus important that any review consider actually expanding the OP: For example, while the current OP has focused on the Bank undertaking initial assessments of environmental harm at the project proposal stage, it will be thus be necessary to ensure that the impact of social and environmental risks are considered throughout the project cycle, to ensure ongoing review and monitoring capacity. Moreover, a more robust Environment and Social Assessment process should also be envisaged⁸³

V PART IV: RECOMMENDATIONS AND PRESCRIPTIONS

The accountability of international organisations represents a challenge to international law. Considering that funding from the World Bank and the IMF has become particularly important for the poorest countries of the world in the last few years,⁸⁴ the question of how to best ensure compliance with basic environmental standards is a pressing one that can no longer be ignored. The history and recent case studies of the WBIP have demonstrated that it is not, of itself, a sufficient instrument to ensure effective protection of the environment by the Bank. This can firstly be attributed to the inadequacy of the standards of environmentalism to which the Panel can hold the Bank. Secondly, it can be attributed to the Panel’s lack of remedial prescriptions in the event that a breach is found. In light of this, it seems that further accountability mechanisms are required for the Panel to be able to meaningfully operate as a mechanism for Bank accountability.

A *Standards of Review: Moving Beyond a Voluntary Approach*

The above analysis has demonstrated how the Bank’s internal environmental policies can be seen as deficient regarding the standards to which they hold the organisation accountable. Voluntarily adopted, intermittently reviewed and often weakened, such standards are manifestly inadequate. Although the current review process is promising, there is no guarantee of what the final standards will contain. Interestingly, OP 4.01 expressly conditions the support for projects on the non-violation of the country’s obligations stemming from international environmental treaties and agreements. Given that governments of developing countries can simply lower their commitment to international environmental regulations, the boundaries of OP 4.01 may not be sufficiently secure. Indeed, the core minimum that the Bank must adhere to, as a subject of international law, is a duty of vigilance to ensure that its policies and programs do not facilitate breaches of their member states’ environmental treaty obligations. There is no logical reason why this cannot extend to

⁸² Initial Comments by Civil Society Organizations on the World Bank Safeguards Review. December 3 2012, 4.
<www.hrw.org/sites/default/files/related_material/Initial%20Comments%20by%20Civil%20Society%20Organizations%20on%20the%20World%20Bank%20Safeguards%20Review.pdf>.

⁸³ Ibid 6.

⁸⁴ Sirun Skogly, *The Human Rights Obligations of the World Bank and the International Monetary Fund* (Cavendish Publishing 2001) 2.

principles of customary international environmental law. Just as states are bound to their treaty obligations, they are also bound by customary international law. Moreover, just as an IGO cannot ask a state to breach a treaty it has signed, similarly it cannot undertake projects that will result in the organisation's complicity in breaching international customary law.

A number of scholars have developed advanced theories as to why the World Bank must be held accountable to basic principles of human rights law.⁸⁵ The World Bank, as possessing international legal personality, must operate within the realm of public international law. For such scholars, it is clear that this encompasses a liability under principles of international customary law. The same approach must be taken with regard to international environmental legal standards. Under such an approach, the Panel could find violations, not only of internal policy, but also of international environmental law and treaties.

B *Capacity for Redress*

Secondly, if the Panel is to meaningfully fulfil its mandate of holding the Bank to a higher standard of environmentalism, it must have the capacity to provide remedies to affected persons that appeal to it. The existence of a right does not depend entirely on possibility of redress, but efficient implementation of rights and the ability to seek redress is of importance for the holders of those rights. The inability of the Panel to grant relief is one of the most oft-cited problems with the Inspection Panel.⁸⁶ The Panel will not be able to succeed in meaningfully improving Bank operations unless the Board and Management take the Panel's ultimate recommendations and findings seriously.

Since the Panel is unable to provide relief, both the Panel and affected communities often look to Management for aid. However, not only is the Panel unable to propose relief based on its investigatory findings, in addition, the Board has 'explicitly prohibited the panel from having an oversight role in [the] management-generated action plans'⁸⁷ that the Bank designs as remedial responses to the problems that the Inspection Panel uncovers. Unfortunately, at the same time that the Bank prevents Panel oversight of these remedial plans, the Board has itself failed to entirely fulfil its responsibility to follow up on the proposed plans.⁸⁸ For example, in the case of the Yacretá Hydroelectric Project in Argentina/Paraguay, six years after the Panel report first identified Bank violations of numerous policies and procedures, 'Bank

⁸⁵ See Skogly, above n 82; Mac Darrow, *Between Light and Shadow: The World Bank, The International Monetary Fund, and International Human Rights Law* (Oxford, 2003).

⁸⁶ Enrique R Carrasco and Alison Guernsey, 'The World Bank's Inspection Panel: Promoting True Accountability through Arbitration' (forthcoming) 41 *Cornell International Law Journal*.

⁸⁷ Kay Treakle, Jonathan Fox and Dana Clark, 'Lessons Learned' in Dana Clark, Jonathan Fox and Kay Treakle (eds), *Demanding Accountability: Civil-Society Claims and the World Bank Inspection Panel* (Rowman & Littlefield Publishers, 2003) 270, 266; 1999 Clarifications, above n 32, 15–16. Noting that action plans are 'outside the purview' of the founding Resolution, and the Board is unable to 'ask the Panel to monitor the implementation of the action plans'.

⁸⁸ Clark, above n 33, 219–20; attributing the lack of oversight to the fact that the 'Board is overwhelmed with information ... [and] does not have a standing committee to track the implementation of action plans or to evaluate the effectiveness of remedial measures.

Management had done little to follow up to ensure that the action plans were being implemented,' and the Board did not intervene.⁸⁹

Other examples of the Bank's lack of follow-up with regard to its action plans is the Cartagena Water Supply, Sewerage, and Environmental Management Project in Colombia,⁹⁰ and the Mumbai Urban Transport Project in India.⁹¹ In the former case, the Panel's investigation found numerous problems with the design and the implementation of the project,⁹² so Management prepared an action plan to address the Panel's report on 29 July 2005.⁹³ The Board addressed both the action plan and the Panel's findings in November 2005, approving the action plan 'with [a] caveat ... that Management would submit a progress report to the Board on the execution of the Project and Action Plan within six months.'⁹⁴ Management did not submit the progress report until 4 September 2006, almost a full year after the Board meeting.⁹⁵ In the Mumbai Transport Project, the Panel found numerous errors in Bank practices, including flaws in the EA and the determinations relating to the quality of the resettlement site.⁹⁶ The Bank conceded to the majority of the Panel's findings that it had violated Bank policy and presented an action plan to remedy the project's faults, which the Board approved.⁹⁷ Once again, the progress report was filed almost a year later on 1 March 2007.⁹⁸ In addition to being late, 'a number of issues [in the action plan] still needed to be resolved' and 'many of the target dates listed in Management's Action Plan had not been met.'⁹⁹

⁸⁹ Kay Treakle and Elias Díaz Pena, 'Accountability at the World Bank: What Does it Take? Lessons from the Yacretá Hydroelectric Project, Argentina/Paraguay' in Dana Clark, Jonathan Fox and Kay Treakle (eds), *Demanding Accountability: Civil-Society Claims and the World Bank Inspection Panel* (Rowman & Littlefield Publishers, 2003) 77, 84.

⁹⁰ The World Bank Inspection Panel, *Annual Report* (1 July 2005–30 June 2006) 44–49.

⁹¹ The World Bank Inspection Panel, *India: Mumbai Urban Transport Project* (2004) <http://siteresources.worldbank.org/EXTINSPECTIONPANEL/Resources/Third_Progress_Report.pdf>.

⁹² See, eg, The World Bank Inspection Panel, *Investigation Report No 32034-CO*, 'Colombia: Cartagena Water Supply, Sewerage and Environmental Management Project (Loan No 4507-CO) (24 June 2005) <<http://siteresources.worldbank.org/EXTINSPECTIONPANEL/Resources/PanelInvestigationReportFinal.pdf>>.

⁹³ Management Report and Recommendation in Response to the Inspection Panel Investigation Report: Colombia Cartagena Water Supply, Sewerage and Environmental Management Project (Loan No 4507-CO) (29 July 2005) <<http://siteresources.worldbank.org/EXTINSPECTIONPANEL/Resources/ManagementReportandRecommendations.pdf>>.

⁹⁴ The World Bank Inspection Panel, *Annual Report* (1 July 2005–30 June 2006) 48–49.

⁹⁵ Progress Report to the Board of Executive Directors on the Implementation of the Management's Action Plan in Response to the Inspection Panel Investigation Report on the Cartagena Water Supply, Sewerage and Environmental Management Project 2 (2006) <http://www.wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2006/12/13/000020953_20061213134653/Rendered/PDF/3812.pdf>.

⁹⁶ See, eg, The World Bank Inspection Panel, *Investigation Report No 34725, India: Mumbai Urban Transport Project (IBRD Loan No 4665-IN; IDA Credit No 3662-IN)* (21 December 2005) <<http://siteresources.worldbank.org/EXTINSPECTIONPANEL/Resources/IPNMUTPFINAL.pdf>>.

⁹⁷ The World Bank Inspection Panel, *Annual Report* (1 July 2005–30 June 2006) 44–49.

⁹⁸ The World Bank Inspection Panel, *Annual Report* (1 July 2006–30 June 2007) 77.

⁹⁹ *Ibid*; Describing the many ways in which the Bank has failed to comply with the terms of the remedial plan.

Proposals to remedy the limited capacity of the Panel to provide meaningful redress have come in many forms. The President of Iceland has gone so far as to envisage a far stronger role for the Panel, proposing its ‘elevation to a judicial institution delivering binding decisions.’¹⁰⁰ Dana Clark has proposed modifications to the present Panel to ensure that the Bank takes proper remedial measures following an investigation, essentially transforming the Panel from an entity solely concerned with compliance review to one that also focuses on problem-solving.¹⁰¹ Koen de Feyter has advocated for the use of tort remedies and international arbitration as a means of ensuring Bank accountability to affected parties.¹⁰² Daniel Bradlow has reviewed the complaint mechanisms of a number of international organisations, and detailed the need for a mechanism with the capacity to effect a more meaningful combination of problem-solving and compliance review.¹⁰³ Bradlow’s proposal is couched as belonging to the ‘third-generation’ of accountability mechanisms — those that provide both problem-solving and compliance-review capabilities independently.¹⁰⁴ He bases his proposal on examples including the Asian Development Bank’s Accountability Mechanism,¹⁰⁵ African Development Bank’s Independent Review Mechanism¹⁰⁶ and the European Bank for Reconstruction and Development’s Independent Recourse Mechanism.¹⁰⁷ Carrasco and Guernsey have, even more recently, proposed an arbitration-based accountability mechanism for the Bank that builds upon the third-generation mechanisms suggested by Bradlow.¹⁰⁸ For them, an arbitration model ‘would give claimant communities a true voice and remedy’¹⁰⁹ by ‘actively involv[ing] members of the claimant community in an independent claim

¹⁰⁰ H E Olafur Ragnar Grimsson, ‘Democracy and Human Rights: How We Learned the Hard Way’ in Gudmundur Alfredsson and Rolf Ring (eds), *The Inspection Panel of the World Bank: A Different Complaints Mechanism* (Martinus Nihhoff, 2001) 1, 5.

¹⁰¹ Clark, above n 33, 223–26; Eisuke Suzuki and Suresh Nanwani, ‘Responsibility of International Organizations: The Accountability Mechanisms of Multilateral Development Banks’ (2005) 27 *Michigan Journal of International Law* 177, 222–23.

¹⁰² See Carrasco and Guernsey, above n 82, citing Feyter.

¹⁰³ Daniel D Bradlow, ‘Private Complainants and International Organizations: A Comparative Study of the Independent Inspection Mechanisms in International Financial Institutions’ (2005) 36 *Georgetown Journal of International Law* 403; Conducting a comparison of existing independent inspection entities and suggesting a new mechanism based on the strengths of those surveyed.

¹⁰⁴ Ibid 484.

¹⁰⁵ See, eg, Asian Development Bank, ADB Accountability Mechanism <http://www.adb.org/Documents/Policies/ADB_Accountability_Mechanism/default.asp?p=policies>; Dorothy Guerrero (ed), *A Handbook on the Asian Development Bank: The ADB and Its Operations in Asia and the Pacific Region* (Asienhaus, 2003).

¹⁰⁶ See African Development Bank Group, Independent Review Mechanism (“IRM”), <http://www.afdb.org/portal/page?_pageid=473,5848220&_dad=portal&_schema=PORTAL>; Providing an outline of the mechanisms of the Compliance Review and Mediation Unit (‘CRMU’) and the Roster of Experts; See, eg, African Development Bank Group, *Compliance Review and Mediation Unit of the Independent Review Mechanism, Operating Rules and Procedures* (2006).

¹⁰⁷ See European Bank for Reconstruction and Development, Independent Recourse Mechanism (2003) <<http://www.ebrd.com/about/integrity/irm/about/irm.pdf>>; Providing background on the establishment of the EBRD’s review mechanism; See European Bank for Reconstruction and Development, *Independent Recourse Mechanism Rules of Procedure* (2004) iv <<http://www.ebrd.com/about/integrity/irm/about/procedur.pdf>>; Outlining the compliance and problem-solving foci of the IRM.

¹⁰⁸ Carrasco and Guernsey, above n 84.

¹⁰⁹ Ibid.

resolution mechanism that combines the compliance and problem-solving functions that currently are separately administrated.¹¹⁰

It is beyond the scope of this paper to fully analyse the benefits that any or all of these proposals would have in terms of ensuring improved Bank compliance with its own environmental policies and procedures during the design, appraisal and/or implementation of a Bank-financed project. It is noted, however, that the Inspection Panel is taking steps to actively evaluate itself, as can be seen by its recent 15 year review.¹¹¹ Even so, the range of suggestions and the repeated calls for reform make it clear that the Panel, as it currently operates with its restricted ability to provide redress, is not a sufficient instrument for ensuring accountability and the necessary redress for impacted individuals or groups.

VI CONCLUSION

The World Bank's Board of Directors met on 10 January 2008 to discuss the Inspection Panel Report on the DRC, as well as the Bank Management's Response,¹¹² and the approved Bank Management's action plan that resulted from the Panel's conclusions.¹¹³ The Board also requested a progress report on the implementation of Management's action plan in one year.¹¹⁴ While such indications of Board compliance are encouraging, it is important to be aware of other parallel developments. Alongside approving Management's plan, the Board also discussed the addition of three new forestry projects worth \$64 million in the DRC, and expressed its support for a large road rehabilitation project that may pose new risks to forests, the environment and forest-dependent peoples. Indeed, the so-called 'Pro-Routes Project,' which was approved by the board in 2008, aims at re-opening roads in three of the country's most heavily forested provinces. Even more discouraging is that just one day after the Board discussion, a new World Bank website link entitled 'Frequently Asked Questions on the DRC' stated that the primary threats to the DRC rainforest were poverty and artisanal logging.¹¹⁵ Such a response to the challenges facing the forest sector appears to on the one hand, undermine the very people who live in and depend on the forests of the DRC, and fails to acknowledge the role of multinational companies, other international actors and the Bank itself in financing or facilitating their activities.¹¹⁶

The reaction of the Bank to the DRC WBIP Report is illustrative of the complicated and ongoing negotiation between principles of environmentalism and the immunity of

¹¹⁰ Ibid.

¹¹¹ *Accountability at the World Bank: The Inspection Panel at 15 Years*, supra note 41.

¹¹² The World Bank, *Panel's Findings With Regard to Compliance With Bank Policies, and Management's Views* <http://siteresources.worldbank.org/EXTFORINAFR/Resources/DRC_IP_Mgmt_Response.pdf>.

¹¹³ The World Bank, *Democratic Republic of Congo: Economic Recovery Project, and Development Policy Operation*, 'Annex 2: Priority Reform Agenda' (September 2007) <http://siteresources.worldbank.org/EXTFORINAFR/Resources/IP_Management_report.pdf>

¹¹⁴ See Bank Information Centre, *Rebuked By Internal Investigation: World Bank Plans to do More in DRC Forest Sector, But Will it Do Better?* (16 January 2008) <<http://www.bicusa.org/en/Article.3645.aspx>>.

¹¹⁵ Ibid.

¹¹⁶ Ibid.

inter-governmental organisations from international accountability. Admittedly, the Inspection Panel has provided an important framework in which to overcome this most serious obstacle. The establishment of the Inspection Panel and the Bank's response to its reports on the environment, combined with increased use of the mechanism by claimants, indicates acceptance of the principles that the Bank has a duty to abide by its operational policies and that there should be a remedy for harm caused by its failure to abide by its policies. Integrating environmental principles has now come to be seen as an imperative rather than an aspiration.

Yet the Inspection Panel has its limitations regarding enforcing a coherent environmental approach for all World Bank projects. This paper has posed the general question of why, and to some extent how, the World Bank and its environmental standards and operating procedures should be recast in order to be more receptive to environmental concerns, particularly given the ever-increasing awareness and importance of the environment. While the questions raised require a great deal of further empirical research and theoretical exploration, here are offered a few suggestions that might assist in identifying some of the key gaps in this ever important field.