

THE WORLD BANK INSPECTION PANEL’S ‘REPARATIVE’ SPECTRUM: CASE STUDIES AND DATA TRENDS ON REPARATION DESIGN¹

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Abstract: Reparation, as a formal matter of victim redress and legal responsibility of the party responsible for victim harm (especially through violations of human rights, environmental and labor laws, among others), can also take place outside the formal processes of adjudication characteristic of international, regional, or national courts. The World Bank Inspection Panel is one such non-judicial entity that has nevertheless played a central role in communities' pursuit of redress against any harms experienced from World Bank-funded development projects around the world. As an entity created by the World Bank Group in 1994 under a mandate of impartiality and independence from Bank Management, the World Bank Inspection Panel has discharged its institutional functions as a redress mechanism that devises recommendations to redress any project harms to Requesters (e.g. local communities that file complaints with the Panel), which operate reparatively by serving as the basis for Bank Management's adjustments of project design or implementation to address such harms. In this paper, we qualitatively examine six World Bank Inspection Panel cases, illustrating the evolution of the Panel's thinking on reparation design to provide redress for project harms, and also present quantitative analyses of trends in the expansion of the Panel's progressive actions to provide redress for project harms to Requesters. The steady evolution of reparation design as contained in the World Bank Inspection Panel's reports since 1994 lends purchase to the World Bank's Accountability Mechanism which now incorporates the World Bank Inspection Panel and provides other dispute settlement mechanisms.

Keywords: *Reparations, World Bank Inspection Panel, redress mechanisms, international development projects, human rights, environmental violations, labor violations, World Bank Management policies*

I. INTRODUCTION: A UNIQUE MODALITY TOWARDS 'REPARATIONS'-LIKE RESULTS

Reparations for human rights violations are often conceptualized as either the decided outcome of political negotiations⁷ that are usually influenced by wider currents of social mobilization⁸ (the most famous example of which are Holocaust reparations awarded from

7. STEPHANIE WOLFE, THE POLITICS OF REPARATIONS AND APOLOGIES 51 (2014).

8. See, e.g., Jose Atilio-Osoria, *Colonial State Crimes and the CARICOM Mobilization for Reparation and Justice*, 7 State Crime 349 (2018); Gabriel Ignacio Gomez, *Entre la Esperanza y la Frustración: Luchas Sociales*

the negotiations spearheaded by the Conference on Jewish Material Claims Against Germany or Claims Conference);⁹ or as the consequence of some form of binding adjudication of State or individual responsibility,¹⁰ whether ensuing from international courts (such as the International Court of Justice,¹¹ the International Criminal Court or other specialized international criminal tribunals,¹² the International Tribunal on the Law of the Sea,¹³ among others), regional courts (such as the Inter-American Court of Human Rights,¹⁴ the African Court on Human and Peoples' Rights,¹⁵ the European Court of Human Rights,¹⁶ among others), or national courts.¹⁷

Within the polar ends of this reparations spectrum stands a curious model of reparations-like recommendations issued by an autonomous and independent entity within an international organization, with the proven capacity to directly affect human rights outcomes

por un Marco Jurídico para la Reparación en Colombia 2004-2011, 70 ESTUDIOS DE DERECHO 129 (2013); RHODA E. HOWARD-HASSMANN, REPARATIONS TO AFRICA 42-59 (2008); Luke Moffett, *Reparations in Transitional Justice: Justice or Political Compromise*, 11 HUM. RTS. & INT'L LEGAL DISCOURSE 59 (2017).

9. See Gideon Taylor, *Holocaust-Era Reparations – Morality, History and Money*, in FOR THE SAKE OF HUMANITY, 315-24 (Alan Stephens and Ralph Walden eds., 2006); Menachem Z. Rosensaft & Joana D. Rosensaft, *The Early History of German-Jewish Reparations*, 25 FORDHAM INT'L L.J. 1 (2001).

10. See, e.g., CHRISTOPH SPERFELDT, PRACTICES OF REPARATIONS IN INTERNATIONAL CRIMINAL JUSTICE (2022); Timothy Webster, *Japan's Transnational War Reparations Litigation: An Empirical Analysis*, 63 HARV. INT'L L.J. 181 (2022); Dinah Shelton, *Righting Wrongs: Reparations in the Articles on State Responsibility*, 96 AM. J. INT'L L. 833 (2002).

11. Gentian Zyberi, *The International Court of Justice and applied forms of reparation for international human rights and humanitarian law violations*, 7 UTRECHT L. REV. 204 (2011); Diane A. Desierto, *The International Court of Justice's 2022 Reparations Judgment in DRC v. Uganda: 'Global Sums' as the New Device for Human Rights-Based Inter-State Disputes*, EJIL:TALK!, Feb. 14, 2022, <https://www.ejiltalk.org/the-international-court-of-justices-2022-reparations-judgment-in-drc-v-uganda-a-new-methodology-for-human-rights-in-inter-state-disputes/> (last accessed Jan. 1, 2023).

12. See Liesbeth Zegveld, *Victims' Reparations Claims and International Criminal Courts: Incompatible Values?*, 8 J. INT'L CRIM. JUST. 79 (2010); Juan Pablo Perez Leon Acevedo, *Victims and Reparations in International Criminal Justice: African Initiatives*, 88 NORDIC J. INT'L L. 525 (2019).

13. See Aldo Chircop, *Obligations of flag states in the exclusive economic zone*, in THE DEVELOPMENT OF THE LAW OF THE SEA CONVENTION 139, 158 (Øystein Jensen ed., 2020); *Request for an Advisory Opinion Submitted by the Sub-Regional Fisheries Commission*, Case No. 21, Advisory Opinion of Apr. 2, 2015, ITLOS Rep. 4, para. 144.

14. See Marina Aksenova, *Creative Potential of Reparations at the Inter-American Court of Human Rights and the International Criminal Court*, 43 SUFFOLK TRANSNAT'L L. REV. 1 (2020); Judith Schonsteiner, *Dissuasive Measures and the Society as a Whole: A Working Theory of Reparations in the Inter-American Court of Human Rights*, 23 AM. U. INT'L L. REV. 127 (2007); David L. Attanasio, *Extraordinary Reparations, Legitimacy, and the Inter-American Court*, 37 U. PA. J. INT'L L. 813 (2016).

15. Godfrey M. Musila, *A Promise Too Dear? The Right to Reparations for Victims of International Crimes Under the Malabo Protocol of the African Criminal Court*, in THE AFRICAN COURT OF JUSTICE AND HUMAN AND PEOPLES' RIGHTS IN CONTEXT: DEVELOPMENT AND CHALLENGES 947-62 (Charles C. Jalloh, Kamari M. Clark, & Vincent O. Nmeihelle eds., 2019).

16. See Felix E. Torres, *Reparations: To What End? Developing the State's Positive Duties to Address Socio-economic Harms in Post-Conflict Settings through the European Court of Human Rights*, 32 EUR. J. INT'L L. 807 (2021); Ingrid Nifosi-Sutton, *The Power of the European Court of Human Rights to Order Specific Non-Monetary Relief: A Critical Appraisal from a Right to Health Perspective*, 23 HARV. HUM. RTS. J. 51 (2010); Veronika Fikfak, *Changing State Behaviour: Damages before the European Court of Human Rights*, 29 EUR. J. INT'L L. 1091 (2018); Tom Allen, *Restitution and Transitional Justice in the European Court of Human Rights*, 13 COLUM. J. EUR. L. 1 (2007).

17. See Francesco Francioni, *Access to Justice and its Pitfalls: Reparation for War Crimes and the Italian Constitutional Court*, 14 J. INT'L CRIM. JUST. 629 (2016).

on the ground.¹⁸ The World Bank Inspection Panel was created by the Resolution¹⁹ of the World Bank's Board of Executive Directors in 1993 as an independent complaints mechanism for peoples and communities who believe that they have been or are likely to experience adverse impacts from World Bank-funded projects.²⁰ Such peoples and communities (otherwise known as Requesters seeking the Panel's inspection of World Bank-funded projects)²¹ "must demonstrate that its rights or interests have been or are likely to be directly affected by an action or omission of the Bank as a result of a failure of the Bank to follow its operational policies and procedures with respect to the design, appraisal, and/or implementation of a project financed by the Bank (including situations where the Bank is alleged to have failed in its follow-up on the borrower's obligations under loan agreements with respect to such policies and procedures), provided in all cases that such failure has had, or threatens to have, a material adverse effect."²²

This article examines the reparative imaginaries of the World Bank Inspection Panel within its own idiosyncratic process for issuing bespoke recommendations that adjust, suspend, amend, or otherwise cancel Bank-financed projects that are found, upon Panel investigation, to cause alleged harms to local communities, indigenous peoples, or any other groups that appropriately file Requests (also known as "Requesters") with the Panel for investigation. While this process does not yield a finding that internationally wrongful acts were committed as to ordinarily trigger a right to reparations for those harmed by internationally wrongful acts,²³ the World Bank Inspection Panel analogizes a similar process of reaching findings of noncompliance with the World Bank's policies and procedures that have caused harm to the Requesters, and which enables recommendations to be made that concretely and tangibly change the terms and implementation of existing or future Bank-financed projects, precisely to address such alleged harms.²⁴

As shown in the succeeding sections, our Notre Dame Reparations Lab's dataset of all World Bank Inspection Panel reports, specifically constructed using Anibal Perez-Liñan's model of compliance in time,²⁵ applying both the quantitative research of trends in the reparative design of the World Bank Inspection Panel's recommendations, and our qualitative, legal and interdisciplinary analysis involving five case studies from the Panel, together demonstrate that the World Bank Inspection Panel has crafted a distinctively wide scope of such possible recommendations to redress harm. The quantitative and qualitative data examined by our Notre Dame Reparations Lab indicates that there has been a steady trend of 'reparative' expansion, alongside a remarkable institutional evolution, in the World Bank Inspection Panel's interpretation of its own mandate to help redress harm to affected

18. See THE WORLD BANK INSPECTION PANEL, <https://www.inspectionpanel.org/about-us/about-inspection-panel> (last accessed Feb. 1, 2023).

19. International Bank for Reconstruction and Development & International Development Association [hereinafter IBRD/IDA], Resolution No. IBRD 93-10 and Resolution No. IDA 93-6, *The World Bank Inspection Panel*, Sept. 22, 1993.

20. See The World Bank Inspection Panel, *supra* note 18; Lewis Preston, *The World Bank Inspection Panel*, 24 ENV'T POL'Y & L. 201 (1994); Yvonne Wong & Benoit Mayer, *The World Bank's Inspection Panel: A Tool for Accountability*, 6 WORLD BANK LEGAL REV. 495 (2015).

21. IBRD/IDA, Resolution No. IBRD 2020-0004 and Resolution No. IDA 2020-0003, *The World Bank Inspection Panel*, Sept. 8, 2020.

22. *Id.* para. 13.

23. See Natalie Bugalski, *The Demise of Accountability at the World Bank?*, 31 AM. U. INT'L L. REV. 1 (2016).

24. Resolution No. IBRD 2020-0004 and Resolution No. IDA 2020-0003, *supra* note 21.

25. See Anibal Perez-Liñan, Luis Schenoni, & Kelly Morrison, *Compliance in Time: Lessons from the Inter-American Court of Human Rights*, 25 INT'L STUD. REV. 1 (2023).

communities in Bank-financed projects.²⁶ The World Bank Group's widening into an Accountability Mechanism²⁷ that incorporates the World Bank Inspection Panel while also expanding to include Dispute Resolution Services, in our view, consolidates and builds upon the relative success²⁸ of the Panel over the years in recommending concrete and actionable changes to Bank-financed projects to mitigate, address, as well as prevent, actual and future harm to affected Requesters and their respective groups and communities.²⁹ The World Bank Inspection Panel's progressive reparative imaginaries since 1994, coupled with the unfolding of the World Bank Accountability Mechanism in 2020, in our view, coincide with parallel significant developments in the international system: 1) the internal changes at the World Bank Group reflecting further alignments of its policies, procedures, operations, and programs, with human rights, such as the deepening of the Bank's environmental and social commitments under its 2017 Environmental and Social Framework,³⁰ the World Bank Group's 2020-2025 Strategy for Fragility, Conflict, and Violence,³¹ the Bank's own intensifying engagement with human rights³² and recent reports on grievance redress mechanisms using a human rights-based approach,³³ as well as 2) the heightened possibility of exposure of the World Bank to judicial litigation for torts based on environmental and health issues, after the United States Supreme Court's landmark 2019 decision in *Jam et al. v. International Finance Corporation*,³⁴ alongside the rising global demand for transnational business and international lender responsibility for human rights and environmental harms.³⁵

26. JEMIMAH KOLO & MEGAN FAHRNEY, *THE WORLD BANK INSPECTION PANEL: LITERATURE REVIEW* (2022).

27. See World Bank Group [hereinafter WBG], *The World Bank Accountability Mechanism: Where your concerns are heard* (Mar. 2022), <https://thedocs.worldbank.org/en/doc/7ea1157ffc1488572cc0037b3dae70bd-0490092022/original/am-brochure-english-march-2022.pdf> (last accessed Feb. 1, 2023); Diane Desierto, Anibal Perez-Liñan, Khawla Wakkaf, Rachel Gagnon, & Belen Carriedo, *The 'New' World Bank Accountability Mechanism: Observations from the ND Reparations Design and Compliance Lab*, EJIL:TALK!, Nov. 11, 2020, <https://www.ejiltalk.org/the-new-world-bank-accountability-mechanism/> (last accessed Feb. 1, 2023).

28. See Karin Lukas, *The Inspection Panel of the World Bank: An Effective Extrajudicial Complaint Mechanism*, 6 WORLD BANK LEGAL REV. 531 (2015).

29. See Ramanie Kunanayagam, WBG, *Reflecting on 30 years of the Inspection Panel* (Jun. 14, 2023), <https://accountability.worldbank.org/en/news/2023/reflecting-on-30-years-of-the-Inspection-Panel>.

30. IBRD/WBG, *World Bank Environmental and Social Framework* [hereinafter WB ESF] (2017), <https://thedocs.worldbank.org/en/doc/837721522762050108-0290022018/original/ESFFramework.pdf> (last accessed Feb. 1, 2023).

31. WBG, *Strategy for Fragility, Conflict, and Violence: 2020-2025* (2020), <https://thedocs.worldbank.org/en/doc/699521582773856417-0090022020/original/FCVStrategyDigital.pdf> (last accessed Feb. 1, 2023).

32. Rachel Ball, *Doing It Quietly: The World Bank's Engagement with Human Rights*, 34 MONASH U. L. REV. 331 (2008).

33. See, e.g., WBG, *Assessing Project-Level Grievance Redress Mechanisms Using a Human Rights-Based Approach: Tips and Tools* (2022), <https://documents1.worldbank.org/curated/en/099300106292299384/pdf/P17283303a21b201409f1b041f6bb40ae0b.pdf> (last accessed Feb. 1, 2023); WBG, *Human Rights-Based Assessment Tool for Country-Level Grievance Mechanisms* (2022), <https://documents1.worldbank.org/curated/en/09930030629222508/pdf/P172833059cd1806408b4d01f18e9929be1.pdf> (last accessed Feb. 1, 2023); WBG, *Fostering the Inclusion of Disadvantaged and Vulnerable Individuals or Groups in Project-Level Grievance Mechanisms* (2022), <https://documents1.worldbank.org/curated/en/09930030629222323/pdf/P1728330583b4b0460a09c075bad412fceb.pdf> (last accessed Feb. 1, 2023).

34. *Jam v. Int'l Fin. Corp.*, 139 S.Ct. 759 (2019); Diane A. Desierto, *SCOTUS decision in Jam et al. v. International Finance Corporation (IFC) Denies Absolute Immunity to IFC . . . With Caveats*, EJIL:TALK!, Feb. 28, 2019, <https://www.ejiltalk.org/scotus-decision-in-jam-et-al-v-international-finance-corporation-ifc-denies-absolute-immunity-to-ifc-with-caveats/> (last accessed Feb. 1, 2023).

35. See OHCHR, *Guiding Principles on Business and Human Rights*, U.N. Doc. HR/PUB/11/04 (2011),

Clearly, while the World Bank Group has been normatively and operationally committed to international human rights and environmental outcomes,³⁶ it has deliberately insulated itself from binding international human rights law-based accountability.³⁷ Thus far, the institutional example of the World Bank Inspection Panel and its track record of simulating (sometimes emulating) ‘reparative’ recommendations,³⁸ will also help provide useful insight on how durable that lingering tension is between the World Bank Group’s seeming escalation of normative commitments to human rights while still relying on an extrajudicial complaints mechanism as an internal and private process of redress for affected communities essentially alleging human rights and environmental harms.³⁹ Our Lab’s qualitative and quantitative data also help to provide evidence to critically and impartially examine the World Bank Inspection Panel’s ‘reparative’ insights in its recommendations, and whether these ‘reparative’ recommendations can eventually provide efficient and effective redress to affected communities as a matter of right, rather than as an institutional arrangement or ad hoc accommodation of the World Bank Group according to its internal procedures.

II. THE WORLD BANK INSPECTION PANEL’S IDIOSYNCRATIC PROCESS AND BESPOKE RECOMMENDATIONS: OBSERVATIONS FROM ND REPARATIONS LAB’S QUANTITATIVE DATA

The process for the Panel to reach its recommendations is idiosyncratic. The first phase of the proceedings is the World Bank Inspection Panel’s initial assessment of the Request for Inspection filed by the Requesters.⁴⁰ Before hearing any Request for Inspection, the World Bank Inspection Panel has to determine if: 1) the subject matter of the Request is being dealt with (or has been dealt with) by Bank Management; 2) Bank Management failed to demonstrate that it followed or took adequate steps to follow Bank policies and procedures; and 3) the alleged violation of Bank policies and procedures is of a serious character.⁴¹ The Panel does not accept Requests involving: 1) complaints that do not involve any action or omission on the part of the Bank; 2) Bank borrowers’ procurement decisions for supply of goods and services; 3) Requests that are filed after the Closing Date of the project’s loan financing or after the project loan financing was already substantially disbursed; 4) Requests relating to matters where the Panel already made a recommendation.⁴² The Panel’s initial review and verification of the admissibility of the Request for Inspection seeks to ensure that the Request: 1) is not frivolous, absurd, or anonymous; 2) involves a project or program that appears to be supported or is being considered for support (partial or total) by the Bank; 3) plausibly links at least one component of the project or program to the alleged harm(s); 4) involves a project or program where the Bank’s financing for such project or program has not

https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr_en.pdf (last accessed Feb. 1, 2023); Enrico Partiti, *Polycentricity and Polyphony in International Law: Interpreting the Corporate Responsibility to Respect Human Rights*, 70 INT’L & COMPAR. L.Q. 133 (2021); SANAE FUJITA, THE WORLD BANK, THE ASIAN DEVELOPMENT BANK, AND HUMAN RIGHTS: DEVELOPING STANDARDS OF TRANSPARENCY, PARTICIPATION, AND ACCOUNTABILITY (2013).

36. See generally WB ESF, *supra* note 30.

37. See Jessica Evans, *Abuse-Free Development: How the World Bank Should Safeguard Against Human Rights Violations*, 107 AM. SOC’Y INT’L L. PROC. 298 (2013).

38. Lukas, *supra* note 28, at 537.

39. Desierto et al., *supra* note 27.

40. Resolution No. IBRD 93-10 and Resolution No. IDA 93-6, *supra* note 19.

41. *Id.* para. 13.

42. *Id.* para. 14.

yet closed and the Bank's disbursement of any financing has not reached 95%; 5) does not involve procurement issues or acquisition of goods, works and services for projects; and 6) is not the same as any previous Request.⁴³ Within 15 days from receipt of the Request, the Panel thus makes its initial decision whether to ask for additional information from Requesters, or to officially issue a Notice of Registration of the Request, or to issue a finding that the Request is not admissible.⁴⁴

The second phase of the proceedings begins when the Panel has issued a Notice of Registration.⁴⁵ When the Request is officially registered through a Notice of Registration, Bank Management has to provide a response (the Management Response) to the Request within 21 days,⁴⁶ which provides the Bank Management's views on whether the Requesters' claims of harm are attributable (in whole or in part) to Bank Management actions or omissions in complying with relevant Bank policies and procedures, as well as any evidence of the Bank's compliance or intent to comply with such policies and procedures, including a description of measures to address the Requesters' concerns.⁴⁷ 21 days after receiving the Management Response, the Panel has to issue a decision on whether the Request meets the requirements of technical eligibility,⁴⁸ and whether to recommend an investigation to the World Bank's Board of Executive Directors.⁴⁹ During this 21 day period, the Panel conducts field visits to the project area, meets with the Requesters on any proposed remedial actions, seeks relevant information from Bank staff of the country office and implementing agency and the Borrower (the World Bank country member), and may also request any further clarification.⁵⁰ When the Panel reaches its decision to recommend an investigation, it cannot, at that juncture, make any definitive assessment of the existence of a serious failure by the Bank that has caused the alleged harm.⁵¹ This Panel Recommendation is then submitted to the World Bank's Board of Executive Directors for approval.⁵² The Board may then authorize an investigation without making a judgment on the merits of the Requesters' claims.⁵³

The Board decision approving the initiation of a Panel investigation is what initiates the third phase of the process, which is the Panel's investigation on the merits of the Requesters' claims.⁵⁴ The Panel will constitute its own Panel Investigation Team for fact-finding and analysis of the claims, which includes reviewing and researching Bank project documents and files (with Bank Management making all project documentation available); visiting the Borrower country and project sites and areas of impact; meeting with Requesters and receiving or requesting further information from Requesters, affected people, government officials, project authorities, and others with relevant information (e.g. UN organizations, NGOs, experts, other accountability mechanisms' findings); interviews with individual Bank

43. WORLD BANK INSPECTION PANEL, OPERATING PROCEDURES 12, para. 25 (Apr. 2014) (amended Feb. 2016), <https://www.inspectionpanel.org/sites/ip-ms8.extcc.com/files/documents/2014%20Updated%20Operating%20Procedures.pdf> (last accessed Feb. 1, 2023). See also Kolo & Fahrney, *supra* note 26.

44. World Bank Inspection Panel, *supra* note 43, para. 26.

45. *Id.* para. 28.

46. *Id.* para. 29.

47. *Id.* paras. 34–35.

48. *Id.* para. 39.

49. *Id.* para. 36.

50. *Id.* paras. 37–38.

51. *Id.* para. 44.

52. *Id.* para. 48.

53. *Id.* para. 49.

54. *Id.* para. 51.

staff; consulting existing publications on the issues of harm raised in the Request, and any other relevant methods.⁵⁵ The Panel Investigation Team's Investigation Report, which is submitted to the World Bank's Board of Executive Directors and also conveyed to Bank Management,⁵⁶ will contain: 1) an overview and/or executive summary of the Request for Inspection and the Panel's main findings; 2) a table of findings presenting the claims in the Request, Management Response to such claims, and the corresponding Panel findings; 3) the analysis of relevant facts and information, and findings on issues of harm and compliance; and 4) relevant chapters addressing each alleged issue of harm.⁵⁷

The fourth phase of the process begins after the transmission of the Panel Investigation Report. 6 weeks after receiving the Panel Investigation Report, World Bank Management must submit to the Board of Executive Directors their MRR (Management Report and Recommendation in Response to the Inspection Panel Investigation Report", which normally includes proposed actions in response to the Panel's findings, which distinguishes between remedial efforts that Bank Management can take on its own to address Bank failure, as well as the plan of action agreed between the Borrower and the Bank, in consultation with the Requesters, to improve project implementation.⁵⁸ The World Bank Board of Executive Directors then meets to consider both the World Bank Inspection Panel's Investigation Report and the MRR, and the Board decides whether to approve the plans of action in the MRR. The Board then issues its decision on actions approved, and the Panel makes available on its website the: 1) Panel Investigation Report; 2) the MRR; 3) Information on the results of the investigation and the World Bank Board of Executive Director's decision; and 4) a Joint Press Release between the Panel and Bank Management.⁵⁹ Bank Management can then keep submitting progress reports to the Board on the implementation of actions approved by the Board following the Panel Investigation Report.⁶⁰

The recommendations of the World Bank Inspection Panel to World Bank management thus do not, strictly speaking, constitute 'reparations' as understood under the law of international responsibility of States and international organizations. Under the law of international responsibility, States or international organizations that are responsible for internationally wrongful acts are obligated to make full reparation for injury caused by such acts,⁶¹ whether in the form of restitution, compensation, and/or satisfaction (singly or in combination).⁶² The possibility of customized or bespoke forms of reparation depends on whether there any primary sources of international law (e.g. treaties, customary international law, general principles of law) that enable forms of reparation outside of restitution, compensation, and/or satisfaction. This is rare in international law practice, which dominantly adheres to these established forms of reparation (e.g. restitution, compensation, satisfaction) under the International Law Commission's codifications of the law of international responsibility. In 2005, the United Nations General Assembly passed a resolution affirming

55. *Id.* para. 54.

56. *Id.* para. 65.

57. *Id.* para. 63.

58. *Id.* paras. 67–68.

59. *Id.* para. 72.

60. *Id.* para. 74.

61. *Draft Articles on the Responsibility of States for Internationally Wrongful Acts*, [2001] 2 Y.B. INT'L L. COMM'N 26, 28 at art. 31, U.N. Doc. A/CN.4/SER.A/2001/Add.1 (Part 2); *Draft Articles on the Responsibility of International Organizations*, [2011] 2 Y.B. Int'l L. Comm'n 40, 42 at art. 31, U.N. Doc. A/CN.4/SER.A/2011/Add.1 (Part 2).

62. *Draft Articles on the Responsibility of States for Internationally Wrongful Acts*, *supra* note 62, at 28, art. 34; *Draft Articles on the Responsibility of International Organizations*, *supra* note 62, at 43, art. 34.

Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, which elaborated forms of reparation beyond restitution, compensation, and satisfaction, to specifically include *rehabilitation* and *guarantees of non-repetition*, as well as any other appropriate forms of “adequate, effective, and prompt reparation . . . intended to promote justice by redressing gross violations of international human rights law or serious violations of international humanitarian law.”⁶³ This latter formulation, which provides for greater flexibility in the design of reparations, is closer to the original conceptualization of reparation that the Permanent Court of International Justice first articulated in the *Chorzów Factory* case:

”The essential principle contained in the actual notion of an illegal act—a principle which seems to be established by international practice and in particular by the decisions of arbitral tribunals—is that reparation must, as far as possible, wipe out all the consequences of the illegal act and re-establish the situation which would, in all probability, have existed if that act had not been committed. Restitution in kind, or, if this is not possible, payment of a sum corresponding to the value which a restitution in kind would bear; the award, if need be, of damages for loss sustained which would not be covered by restitution in kind or payment in place of it—such are the principles which should serve to determine the amount of compensation due for an act contrary to international law.”⁶⁴

The World Bank Inspection Panel’s recommendations for adjustment, suspension, modification, or possible cancellation of Bank-funded projects thus do not fall squarely within the forms of reparation under the law of international responsibility.⁶⁵ In the first place, the World Bank Inspection Panel’s reports do not make any finding of the Bank’s international responsibility,⁶⁶ focusing instead on issuing specific findings of Bank Management’s non-compliance *with Bank internal policies and procedures*, not any of the sources of international law that give rise to international responsibility (e.g. such as international human rights treaties, multilateral and bilateral environmental treaties, customary environmental law, international humanitarian law treaties and custom, etc.).⁶⁷ The World Bank itself is categorical in maintaining that it is not a direct party to international human rights, humanitarian, or environmental treaties or any related customary international law in these areas,⁶⁸ and often invokes its own Articles of Agreement’s specific prohibition against

63. G.A. Res. 60/147, para. 15, Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and for Violations of International Humanitarian Law (Dec. 16, 2005).

64. The Factory at Chorzów (Germany v. Poland), merits, para. 47 (Sept. 13, 1928); *see also* Felix E. Torres, *Revisiting the Chorzów Factory Standard of Reparation – Its Relevance in Contemporary International Law and Practice*, 90 NORDIC J. INT’L L. 190 (2021).

65. *See* Torres, *supra* note 64.

66. *See id.*

67. *See id.*

68. Ibrahim F. I. Shihata, *The World Bank and Human Rights: An Analysis of the Legal Issues and the Record of Achievements*, 17 DENV. J. INT’L L. & POL’Y 39 (1988).

interference with the political affairs of its Members,⁶⁹ to justify why it cannot be bound to any of these treaties or other sources of international law.⁷⁰

Precisely because the World Bank Inspection Panel anchors its recommendations on an assessment of compliance or non-compliance by Bank Management with the Bank's own internal policies and procedures,⁷¹ this particular mode of internal Bank accountability does not accept that the Bank is bound by international human rights, environmental, or labor treaties and asserts that these treaties are separately and externally concluded by States.⁷² In 2016, the World Bank Group issued its *World Bank Environmental and Social Framework*,⁷³ which contains the World Bank Group's Vision for Sustainable Development, the mandatory requirements applicable to the Bank under its Environmental and Social Policy for Investment Project Financing, and the mandatory Environmental and Social Standards (with Annexes) that apply to country borrowers of the Bank and projects to which the lending facilities will be applied.⁷⁴ The World Bank Group's Environmental and Social Framework nonetheless emphasizes that it is member countries that bear human rights commitments,⁷⁵ but "the World Bank's activities support the realization of human rights expressed in the Universal Declaration of Human Rights."⁷⁶ Through the projects it finances, and in a manner consistent with its Articles of Agreement, the World Bank seeks to avoid adverse impacts and will continue to support its member countries as they strive to progressively achieve their human rights commitments.⁷⁷ Various special rapporteurs at the United Nations as well as scholars have long challenged this bifurcation between the World Bank Group's alleged alignments of its policies towards human rights, without binding itself to legal implementation or accountability measures within human rights and environmental law.⁷⁸ Scholars continue to push the World Bank Inspection Panel to revisit the interpretation of its own mandate to voluntarily intermediate the substance (even without the nomenclature) of the content of international human rights and environmental law in its fact-finding and investigation reports.⁷⁹ But even these exhortations, well-meant they may be, towards covertly expanding

69. IBRD/WBG, Articles of Agreement, art. IV, § 10 ("The Bank and its officers shall not interfere in the political affairs of any member; nor shall they be influenced in their decisions by the political character of the member or members concerned. Only economic considerations shall be relevant to their decisions, and these considerations shall be weighed impartially in order to achieve the purposes stated in Article I.").

70. See also Roberto Dañino, *The Legal Aspects of the World Bank's Work on Human Rights: Some Preliminary Thoughts*, in HUMAN RIGHTS AND DEVELOPMENT: TOWARDS MUTUAL REINFORCEMENT 509-24 (Philip Alston & Mary Robinson eds., 2005).

71. *Policy and Procedure Framework*, WORLD BANK, <https://policies.worldbank.org/en/policies> (last accessed Feb. 1, 2023).

72. See U.N. Secretary-General, *Report of the Independent Expert on the Promotion of a Democratic and Equitable International Order*, U.N. Doc. A/HRC/36/40 (Jul. 20, 2017).

73. WB ESF, *supra* note 30.

74. See also Diane A. Desierto, *Due Diligence in World Bank Project Financing*, in DUE DILIGENCE IN THE INTERNATIONAL LEGAL ORDER 329-47 (Heike Krieger, Anne Peters, & Leonhard Kreuzer eds., 2020).

75. WB ESF, *supra* note 30, at 2.

76. *Id.* at 1-2.

77. *Id.*

78. See Maria Victoria Cabrera Ormaza & Franz Christian Ebert, *The World Bank, human rights, and organizational legitimacy strategies: The case of the 2016 Environmental and Social Framework*, 32 LEIDEN J. INT'L L. 483, 499 (2019); *World Bank safeguards 'go out of their way' to avoid references to human rights – UN expert*, UN NEWS, Dec. 17, 2014, <https://news.un.org/en/story/2014/12/486532> (last accessed Feb. 1, 2023).

79. See Christina Passoni, Ariel Rosenbaum, & Eleanor Vermunt, *Empowering the Inspection Panel: The Impact of the World Bank's New Environmental and Social Safeguards*, 49 N.Y.U. J. INT'L L. & POL. 921, 924 (2017).

the applicable norms to World Bank Inspection Panel investigations ultimately would tend towards a non-transparent, and increasingly more arbitrary and less legitimate process.⁸⁰

Regardless of contestations about the direct applicability of international, regional, or national human rights laws, environmental laws, and labor laws to the World Bank Group,⁸¹ it should nonetheless still be recognized that the World Bank Inspection Panel's recommendations have been directly instrumental in providing some kind of redress mechanism for peoples and communities requesting the Panel to investigate and recommend changes to existing Bank-funded projects when the latter are shown to be causing environmental, labor, and/or human rights harms.⁸² As the World Bank noted at the 25th anniversary of the World Bank Inspection Panel:

" . . . the mere existence of the Panel, which investigates claims of harm caused by Bank-financed development projects, helped change the culture of the World Bank. Through the Panel's work, adversely affected people have been helped, and Bank projects have been restructured and improved . . . Its fundamental mission became its most enduring accomplishment—giving a voice to the voiceless. Through the Inspection Panel, people unintentionally harmed by the Bank's work now could raise their issues at the institution's highest levels, the Board of Executive Directors and senior Management, right up to the president . . .

. . . the Bank [had] faced fierce internal criticism over a power dam project on the Narmada River in India that was the source of significant protests by local and international organizations. The Sardar Sarovar Dam and Canal projects, which the Bank funded in the mid-1980s, involved the resettlement of more than 120,000 people and prompted environmental concerns. In response to the growing protests, World Bank President Barber Conable ordered an independent review in 1991 led by retired U.N. Development Programme administrator Bradford Morse. The Morse Commission report the following year identified serious compliance failures by the Bank, such as the lack of a required environmental assessment, as well as 'devastating human and environmental consequences'. It set in motion reforms in World Bank practices, along with the process that resulted in the creation of the Inspection Panel . . . In response to the Morse Commission findings, new Bank President Lewis Preston ordered a task force to examine Bank operations – and that body issued its own damning review . . . the task force report described how an 'approval culture' at the Bank rewarded staff for pushing through as many projects as possible without paying sufficient attention to the Bank's ability to implement them, or to their potential environmental and social impacts."⁸³

80. See *id.* at 956–57.

81. See Nicholas H. Moller, *The World Bank: Human Rights, Democracy and Governance*, 15 NETH. Q. 21 (1997); Thomas Buergenthal, *The World Bank and Human Rights*, 31 STUD. TRANSNAT'L LEGAL POL'Y 95 (1999); Daniel D. Bradlow, *The World Bank, the IMF, and Human Rights*, 6 TRANSNAT'L L. & CONTEMP. PROBS. 47 (1996); Meghan Natenson, *The World Bank Group's Human Rights Obligations under the United Nations Guiding Principles on Business and Human Rights*, 33 BERKELEY J. INT'L L. 489 (2015).

82. See Laurence Boisson de Chazournes, *Public Participation in Decision-Making: The World Bank Inspection Panel*, 31 STUD. TRANSNAT'L LEGAL POL'Y 84, 90-92 (1999).

83. WBG, *The Inspection Panel at 25: Accountability at the World Bank* (2018) at 11, 14, & 17, <https://www.inspectionpanel.org/sites/www.inspectionpanel.org/files/publications/25th%20Anniversary%20Book-PDF%20Version.pdf> (last accessed Feb. 1, 2023).

What is equally undeniable as well is that the World Bank Inspection Panel issues significant recommendations to provide some form of ‘reparation’ for a wrong, e.g. the non-compliance by a Bank-funded project with the World Bank’s policies and procedures.⁸⁴ While this in itself appears to make the process more internal to the Bank than international, this is nevertheless still a relevant (albeit quite narrow) space of accountability since it is confined to the issue of compliance and adjustment of Bank-financed projects within the parameters of Bank policies and procedures.⁸⁵ Many studies have thus already anecdotally narrated various cases that have come before the World Bank Inspection Panel and the limits of accountability in this mechanism,⁸⁶ most prominently in providing complete redress or full reparation for Requests involving complaints about the Bank Management’s project supervision, the quality and/or presence of reliable environmental evaluation, instances of forced or involuntary resettlement of indigenous peoples and/or local communities, lack of proper consultations with or consideration for the welfare of indigenous peoples affected by Bank projects, insufficient information disclosures, issues about poverty reduction, the protection of natural habitats and the environment,⁸⁷ the unsoundness of economic evaluations for Bank-financed projects, the lack of protection for cultural resources, the inadequacy or inaccuracy of project appraisal, forest and water management issues, financial management, policy lending, suspension of disbursement, among others.⁸⁸

Significantly, the World Bank Group’s policies and procedures are increasingly evolving towards some degree of alignment with international human rights, environmental, and social standards,⁸⁹ even if they are always explicit about maintaining the uneasy balance with ensuring consistency with the Bank’s Articles of Agreement.⁹⁰ For example, Bank Policy 4.10 on Indigenous Peoples (revised as of April 2013) recognizes the centrality of free, prior, and informed consultation for Indigenous Peoples⁹¹ (a phrase repeatedly used in the United Nations Declaration on Indigenous Peoples⁹²), making it mandatory as part of Bank policies that “when a project affects Indigenous Peoples, the [Bank’s task team] assists the borrower in carrying out free, prior and informed consultation with affected communities about the proposed project throughout the project cycle, taking into consideration . . . [that]

84. See *id.* at 20.

85. Other researchers have pointed out that the World Bank’s social accountability prong in its development strategies ultimately privileges the World Bank’s financial hegemony instead of the potentially emancipatory accountabilities of local governments to their own populations. See Chandawana Alawattage & John De-Clerk Azure, *Behind the World Bank’s ringing declarations of ‘social accountability’: Ghana’s public financial management reform*, 78 CRITICAL PERSP. ON ACCT. (2021); Galit A. Sarfaty, *Why Culture Matters in International Institutions: The Marginality of Human Rights*, 103 AM. J. INT’L L. 647 (2009). Another researcher argued that civil society monitoring and the oversight of powerful States spell the difference in World Bank Inspection panel cases. See Mark T. Buntaine, *Accountability in Global Governance: Civil Society Claims for Environmental Performance at the World Bank*, 59 INT’L STUD. Q. 99 (2015).

86. See, e.g., Benjamin K. Sovacool, *Monitoring the moneylenders: Institutional accountability and environmental governance at the World Bank’s Inspection Panel*, 4 THE EXTRACTIVE INDUS. & SOC’Y 893 (2017); Jonathan A. Fox, *Reinventing the World Bank*, in THE WORLD BANK INSPECTION PANEL AND THE LIMITS OF ACCOUNTABILITY 131 (Jonathan R. Pincus & Jeffrey A. Winters eds., 2002).

87. See Erin K. MacDonald, *Playing By the Rules: The World Bank’s Failure to Adhere to Policy in the Funding of Large-Scale Hydropower Projects*, 31 ENV’T L. 1011 (2001).

88. Mithilesh Kumar, *The World Bank and Human Rights: A Study of the Bank’s Inspection Panel*, 20 WORLD AFFS. J. INT’L ISSUES 110, 121 (2016).

89. *Id.* at 118.

90. *Id.* at 120.

91. WORLD BANK, *Operational Manual BP 4.10 – Indigenous Peoples* (Jul. 2005) (rev. Apr. 2013), para. 2.

92. United Nations Declaration on the Rights of Indigenous Peoples, arts. 10, 11(2), 19, 28, 29(2), 32(2), U.N. Doc. A/RES/61/295 (Sept. 13, 2007).

‘free, prior and informed consultation’ is consultation that occurs freely and voluntarily, without any external manipulation, interference, or coercion, for which the parties consulted have prior access to information on the intent and scope of the proposed project in a culturally appropriate manner, form, and language.”⁹³ To a certain extent, this is indeed some kind of selective internalization⁹⁴ of indigenous rights norms, without the counterpart guarantees of legal protection for these rights.⁹⁵ This kind of obvious dissonance between binding norms and deficits in institutional protective mandates appears to be the norm for the life, and work, of the World Bank Inspection Panel.⁹⁶

Finally, it should also be acknowledged that the World Bank Inspection Panel—as an institution and the forerunner for many of the independent accountability mechanisms (IAMs) now found in development banks around the world—is rarely insulated from internal and external pressures, communications, and influences that affect its impartiality mandate, which, in turn, could very well also (subtly or significantly) affect the nature of its recommendations for the kind of redress that could be given to Requesters when it comes to adjusting, suspending, changing, or canceling terms of Bank-financed projects due to harmful impacts.⁹⁷ As aptly noted by other scholars,⁹⁸ “the Inspection Panel evolves according to internal and external pressures. In seeking to achieve equilibrium, and protect its authority and independence, the Panel has gone through several distinct phases: negotiation, emergence, protracted resistance, assertion of independence and authority, renewed tension, and contestation”⁹⁹ . . . accountability in development finance is about competing interests as well as competing conceptions and expectations of accountability.¹⁰⁰ In such a complex and multi-scalar system, the Panel is not only concerned with delivering well-researched investigation reports; it is also an entity seeking to ensure its own survival, as well as an arbiter of its own brand of legitimacy and accountability.”¹⁰¹ Other researchers have found that, as it navigated the evolving limits of its resources, capacities, and mandate, the World Bank Inspection Panel also relied on civil society actors to push for significant reforms at the World Bank’s Board of Executive Directors.¹⁰² Other scholars also pointed out the subtle strategic innovations introduced by the World Bank Inspection Panel over the years as part of its quasi-jurisprudential practices, such as, among others: 1) when it itself considers the country Borrower’s own multilateral environmental treaty commitments as part of the World Bank Inspection Panel’s description of its fact-finding context for the Investigation Report,¹⁰³ even if the investigation ultimately should just be confined to determining whether there was

93. Operational Manual BP 4.10 – Indigenous Peoples, *supra* note 94.

94. Galit A. Sarfaty, *The World Bank and the Internalization of Indigenous Rights Norms*, 114 YALE L.J. 1791 (2005).

95. *Id.* at 1794–95.

96. *Id.* at 1814–15.

97. Benjamin K. Sovacool, Andria Naudé Fourie, & May Tan-Mullins, *Disequilibrium in Development Finance: The Contested Politics of Institutional Accountability and Transparency at the World Bank Inspection Panel*, 50 DEV. & CHANGE 867, 888 (2019).

98. *Id.* at 867.

99. *Id.*

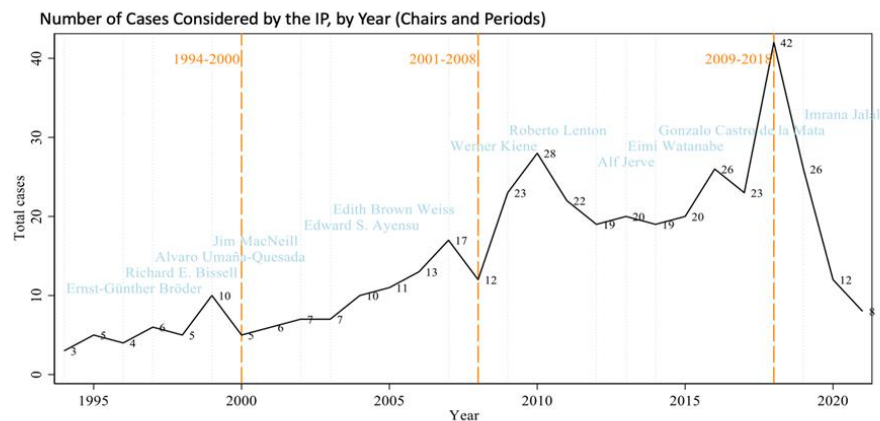
100. *Id.*

101. *Id.*

102. Alessandro Eugenio Pereira, Rodrigo Rossi Horochovski, Mariana Mattos de Almeida Cruz, & Noeli Rodrigues, *Accountability in International Organizations: the case of the World Bank Inspection Panel (1993–2015)*, 11 BRAZ. POL. SCI. REV. 1 (2017).

103. See Wei-Chung Lin, *Implementing Environmental Treaty Obligations in Project Finance Activities through an Accountability Mechanism: An Analysis of the World Bank Inspection Panel*, 5 CAMBRIDGE INT’L L.J. 238 (2016).

non-compliance with the Bank's policies and procedures¹⁰⁴; or 2) when it assists in the development of normative standards in compliance review processes, and the realization of international human rights and participation in decision-making, as some kind of 'quasi-judicial oversight system'.¹⁰⁵ Our own data at the Notre Dame Reparations Lab tracks the variable surge of cases considered by the World Bank Inspection Panel according to Panel chairs in specific periods:



One can very well ask why the highest peak number of cases surged during the chairmanship of Dr. Gonzalo Castro de la Mata (who chaired the World Bank Inspection Panel from 2013 to 2018, himself a biodiversity, climate change, and ecosystem expert from Peru and the United States, who previously chaired an independent panel for the U.S. Export-Import Bank for the Camisea project in Peru, and as a member of a UN review panel of the Barro Blanco Dam in Panama),¹⁰⁶ while the lowest number of cases were considered by the Panel during the first chairmanship of Ernst-Günther Bröder (the first chair of the World Bank Inspection Panel, former President of the European Investment Bank, and German economist focused on financial systems).¹⁰⁷ The obvious differences between the disciplinary (ecological scientist vis-à-vis financial economist) and geographic (Global South vis-à-vis Global North) backgrounds of these two chairs might lend some correlative insight into the significance of Panel leadership and perspectives taken on the technical eligibility, adequacy, as well as acceptability of Requests for Inspection.

It is also equally interesting to note from the graph above that every surge of cases considered by the World Bank Inspection Panel happened during the chairmanships of those with political economy and environment (Richard E. Bissell, Jim MacNeill, Alvaro Umaña-Quesada, Alf Jerve, Edward S. Ayensu), environmental and/or development law (Edith Brown Weiss and Imrana Jalal), sociology (Eimi Watanabe), water resources (Roberto Lenton) and sustainable development (Werner Kiene) expertise. All other chairs after the first

104. See *id.* at 246–51.

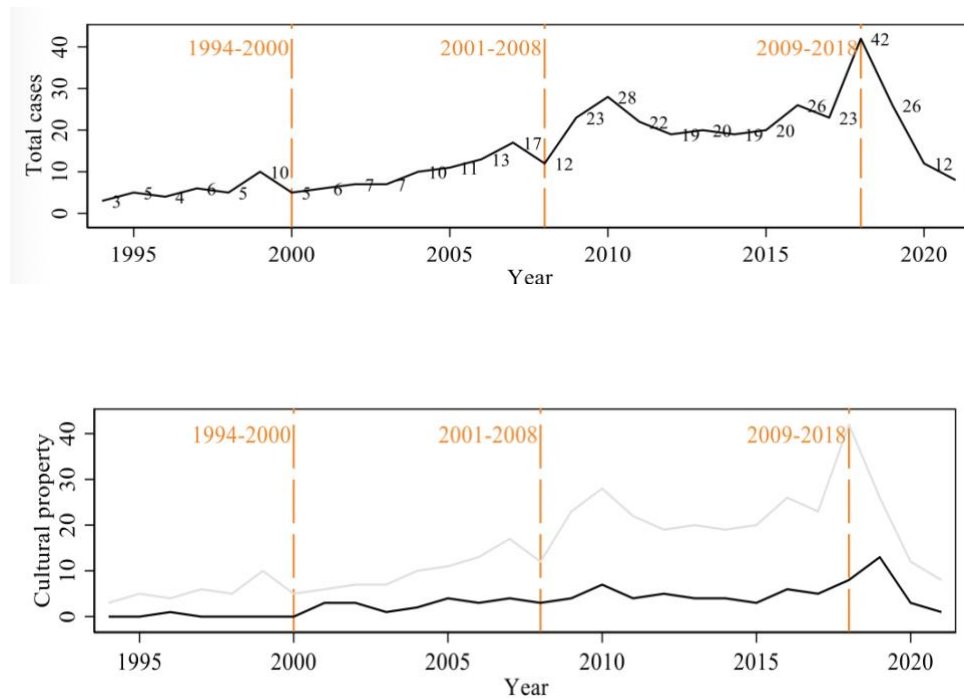
105. Andria Naudé Fourie, *The World Bank Inspection Panel's Normative Potential: A Critical Assessment, and a Restatement*, 59 NETH. INT'L L. REV. 199 (2012).

106. About Us – Dr. Gonzalo Castro de la Mata, WORLD BANK INSPECTION PANEL, <https://www.inspectionpanel.org/about-us/dr-gonzalo-castro-de-la-mata> (last accessed Nov. 4, 2023).

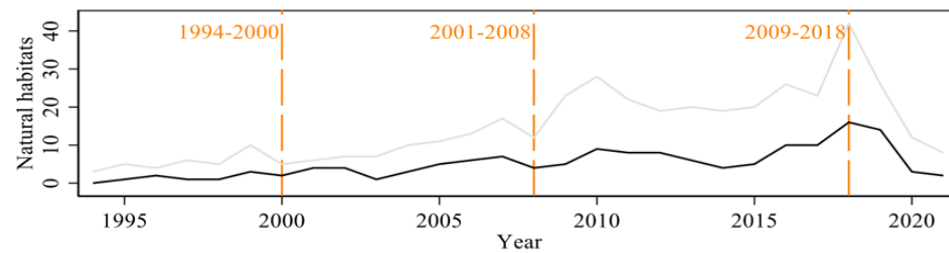
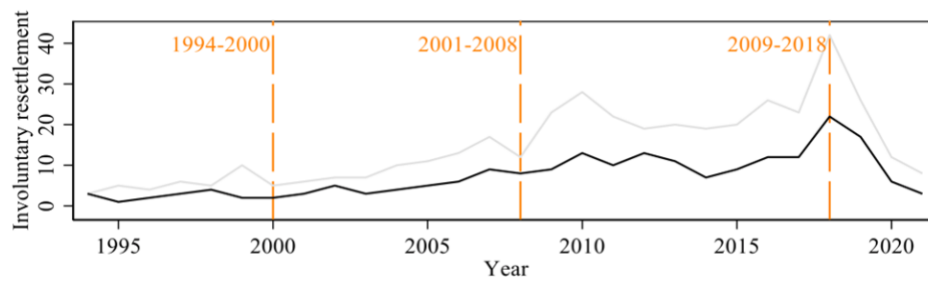
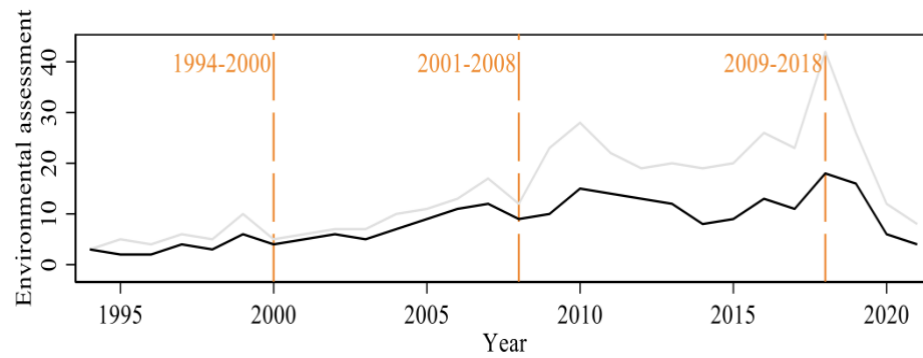
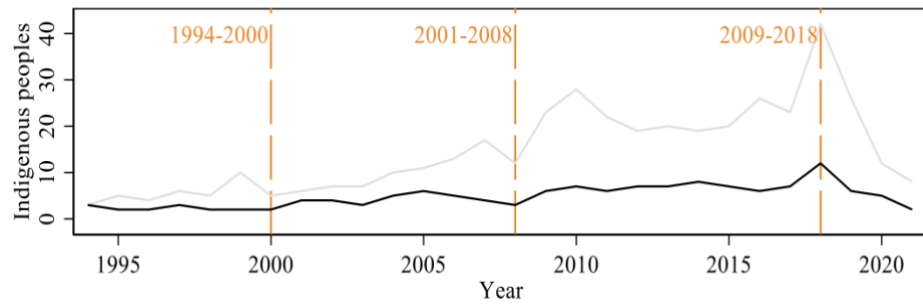
107. About Us – Mr. Ernst-Günther Bröder, WORLD BANK INSPECTION PANEL, <https://www.inspectionpanel.org/about-us/mr-ernst-gunther-broder> (last accessed Nov. 4, 2023).

World Bank Inspection Panel chair certainly were not economists focused on financial and investment systems, which perhaps might lend correlative significance to the lowest number of cases being considered by the Panel during its first chairmanship. (Of course, other factors may have operated to generate this low result for cases considered during the first chairmanship of the World Bank Inspection Panel, such as some institutional reticence or inexperience due to the newness of the Panel's mandate, the lack of full resources to conduct investigations, or the cultural shift required to change mindsets to investigate human rights and environmental and labor impacts in Bank-financed projects, among others.¹⁰⁸)

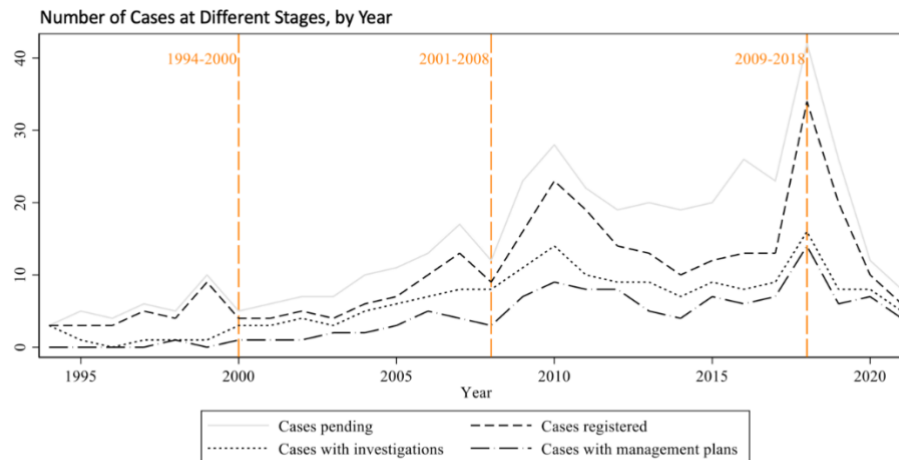
Our data also shows us that the incidence of Requests is also correlated with subject-matter and time. The frequency of Requests spikes within the period of 2009-2018, which is also around the time that there were corresponding surges in cases that were brought alleging specific subject-matter of harms (e.g. harm to indigenous peoples, cultural property, natural habitats, environmental assessments, and involuntary resettlement of communities affected by Bank-financed projects):



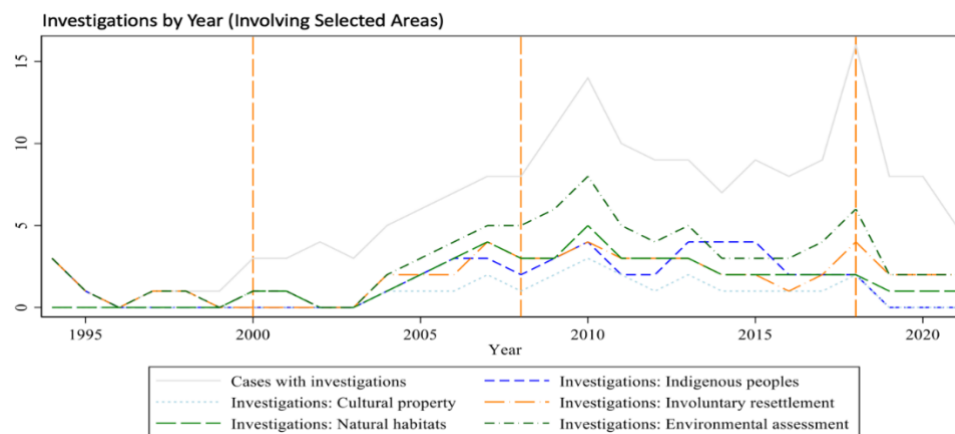
108. See Jonathan A. Fox, *The World Bank Inspection Panel: Lessons from the First Five Years*, 6 GLOB. GOVERNANCE 279 (2000).



The stage of the cases before the World Bank Inspection Panel also observed similar trend lines, showing sharp surges in the period 2009-2018.



However, the actual threshold of investigations conducted by the World Bank Inspection Panel also shows distinct variations on subject-matter. Investigations on natural habitats and investigations on environmental assessments both peaked around 2010, while investigations on impacts to Indigenous Peoples tapered off after 2015. Investigations on involuntary resettlements hovered around the same range from 2010 to 2018.



Each of the previous graphs remarkably show similar trends in the World Bank Inspection Panel's consideration of cases, closely tracking the trend lines for the overall total of Requests considered by the World Bank Inspection Panel, which saw its lowest numbers from 1994-2000, and its highest numbers of cases considered from 2009-2018. 2009-2018 was also a significant period of normativity for the World Bank Group, when the World Bank's Board of Executive Directors gave its approval in 2016 to the *Environmental and Social Framework* for all Bank-financed projects, which explicitly set out ten Environmental and Social Standards (ESS):

- ESS1: *Assessment and Management of Environmental and Social Risks and Impacts*,¹⁰⁹ which sets out the Borrower country's responsibilities for assessing, managing, and monitoring environmental and social risks and impacts associated with each stage of any project that the Bank supports through investment project financing.
- ESS2: *Labor and Working Conditions*,¹¹⁰ which again emphasizes the duties of Borrower countries to promote sound worker-management relationships and treating project workers fairly with safe and healthy working conditions.
- ESS3: *Resource Efficiency and Pollution Prevention and Management*,¹¹¹ which focuses on pollution prevention and management for the life-cycle of the project.
- ESS4: *Community Health and Safety*,¹¹² which focuses on health, safety, security risks and impacts on project-affected communities and the explicit responsibility of the Borrower country to avoid or minimize those risks and impacts to the most vulnerable.
- ESS5: *Land Acquisition, Restrictions on Land Use and Involuntary Resettlement*,¹¹³ which acknowledges that involuntary resettlement should be avoided in Bank-financed projects, but if proved to be unavoidable, ought to be minimized with appropriate mitigation measures for the displaced communities.
- ESS6: *Biodiversity Conservation and Sustainable Management of Living Natural Resources*,¹¹⁴ which again emphasizes the Borrower country's duties on biodiversity, sustainable management, and affected Indigenous Peoples' living natural resources.
- ESS7: *Indigenous Peoples/Sub-Saharan African Historically Underserved Traditional Local Communities*,¹¹⁵ meant to emphasize full respect for the human rights of these peoples, but still emphasizing the exclusive responsibility of the Borrower to "assess the nature and degree of the expected direct and indirect economic, social, cultural, and environmental impacts"¹¹⁶ on such communities.
- ESS8: *Cultural Heritage*,¹¹⁷ noting legal protections for cultural heritage areas that the Borrower country is obligated to observe and protect.¹¹⁸

109. WB ESF, *supra* note 30, at 15.

110. *Id.* at 31.

111. *Id.* at 39.

112. *Id.* at 45.

113. *Id.* at 53.

114. *Id.* at 67.

115. *Id.* at 75.

116. *Id.* at 77.

117. *Id.* at 85.

118. *Id.* at 87.

- ESS9: *Financial Intermediaries*,¹¹⁹ who receive financial support from the Bank (such as regional development banks, national banks), which the Bank ironically requires to “monitor and manage the environmental and social risks and impacts of their portfolio and financial intermediaries subprojects”¹²⁰, without assuming the same direct obligation for the World Bank Group.
- ESS10: *Stakeholder Engagement and Information Disclosure*,¹²¹ which requires open and transparent engagement between the Borrower country and project stakeholders.

As clearly seen from the above Environmental and Social Standards, the Bank imposes requirements on the Borrower, but does not impose any direct requirements on itself with respect to ensuring the Borrower’s compliance with these standards. In 2018, the World Bank Group tapped Professor Daniel Bradlow to conduct an External Review Toolkit of the World Bank Inspection Panel, which provided significant observations about the limits of the Panel as a compliance review mechanism, and not a dispute resolution process:

“48. In the [Independent Accountability Mechanism or IAM] context, dispute resolution means that the IAM will help resolve a dispute between the individuals or communities who they allege have been harmed by a [multilateral development bank or MDB] funded project and those actors – primarily the MDB’s client or borrower and MDB management-- that they contend are responsible for the harm. While the IAM will make an effort to establish that there is a bona fide dispute between the parties and that it can contribute to its resolution, it makes no effort to determine who is to blame for the dispute. The IAM’s role is to help the parties resolve their differences in a way that is mutually acceptable to them rather than to actively guide the parties to a particular outcome. It will also seek to ensure that the process is fair to all parties to the dispute. It is important to stress that dispute resolution is a voluntary process. It cannot succeed if either party is unwilling to engage in the dispute resolution process or does not accept any of the outcomes proposed by the other side.

49. The primary objectives of a compliance review and of a dispute resolution process are not identical. *The primary goal of a compliance review is to determine if the bank staff and management are acting in compliance with bank operating policies and procedures. If there are findings of non-compliance the bank should learn from these examples and should take steps to address their adverse consequences. This means that solving problems is a possible outcome of the compliance review but not its primary objective.* On the other hand, the primary purpose of dispute resolution is to try and resolve the problems that the requesters are facing. The dispute resolution process may or may not identify instances of non-compliance in the course of resolving the dispute. In other words, findings on compliance can result from the dispute resolution process but it is not a primary objective.”¹²² (Italics added.)

119. *Id.* at 91.

120. *Id.*

121. *Id.* at 97.

122. Daniel D. Bradlow, *External Review of the Inspection Panel’s Toolkit* (May 14, 2018), <https://documents1.worldbank.org/curated/en/562131583764988998/pdf/External-Review-of-the-Inspection-Panel-s-Toolkit.pdf> (last accessed Feb. 1, 2023).

This External Review made clear that, since the ultimate goal of a compliance review through the World Bank Inspection Panel was the determination of the Bank Management's compliance or non-compliance with Bank policies and procedures, it would ultimately not resolve problems faced by the Requesters themselves. Because the focus was on compliance review, whatever recommendations (e.g. project adjustment/suspension/cancellation/change of terms) that the World Bank Inspection Panel made would not fully address injuries or harms experienced by the Requesters in their entirety. This is ultimately what spurred the Bank to include a time-bound dispute resolution process, which it ushered through the World Bank Accountability Mechanism in 2020 that also ultimately incorporated the World Bank Inspection Panel as the compliance review mechanism, and a Dispute Resolution Services arm to function as the hub for dispute resolution processes. As of this writing, there is no substantial data yet on how Requesters have accessed or availed of the procedural innovations and additional services at the World Bank Accountability Mechanism. While the World Bank Inspection Panel has historically afforded some degree of redress as a complaints mechanism for Requesters, the 'reparative' nature of its recommendations has been, at best, variable. In the next section, we highlight five case studies that demonstrate this variability.

III. SIX CASE STUDIES OF REPARATIVE VARIABILITY IN WORLD BANK INSPECTION PANEL RECOMMENDATIONS

As of this writing, the World Bank Inspection Panel (IP) has reviewed 157 cases, dating back to 1994.¹²³ Bank Management, the group responsible for responding to the findings of the IP, has historically provided standard responses to align with Bank policies and procedures, without taking into account the experiences of collective damage as well as individual harms.¹²⁴ The first two cases below, however, stand out for Bank Management that appear to have acknowledged the unique needs of the individuals who experienced harm and the project's failings that allowed the violence to occur. In contrast to these two cases, however, the Notre Dame Reparations Lab's dataset also reveals that the range of responses of the World Bank Management in a significant number of other cases, have also tended to entail a bare minimum of reparative redress as sought by vulnerable Requesters. The extent to which Requesters ultimately gain the redress that they seek is almost never indicated in the World Bank Inspection Panel Recommendations. While Requesters may have voice in this process, they do not have ownership over the design of the 'reparative' measure put forward by either the Bank Management in its initial or subsequent Responses, or the World Bank Inspection Panel in its Report and Recommendations.¹²⁵ The cases below may highlight 'reparative' innovations or stagnation from the Bank's institutional standpoint, but they do not give a clear benchmark of the effectiveness of the measures vis-à-vis the experience of harm and its consequences upon the Requesters involved.

A. *Albania: Integrated Coastal Zone Management and Clean-Up Project (IDA*

123. *Panel Cases*, WORLD BANK INSPECTION PANEL, <https://www.inspectionpanel.org/panel-cases> (last accessed Nov. 4, 2023).

124. *See generally, id.*

125. *See* Ibrahim F. I. Shihata, *The World Bank Inspection Panel: In Practice*, 28–98 (2nd ed. 2000).

Credit No. 4083-ALB)¹²⁶

The first case, Integrated Coastal Zone Management, was a response to Albania's general instability.¹²⁷ Albania's communist period ended in the early 1990s, leaving it as "one of Europe's poorest countries with few resources to promote economic and social development."¹²⁸ However, its southern coastline is the most pristine and well preserved coastline in all of Europe.¹²⁹ As a result of the rapid change from a communist system, much of this coastline is unregulated and lacks proper infrastructure.¹³⁰ The area is largely unplanned and many illegal settlements and constructions were built along the coastline because builders could not obtain the necessary documentation.¹³¹ The Albanian government attempted to correct this with a series of property laws that were contradictory and not well enforced.¹³² The World Bank project with the Albanian government offered a 7-year, 2 -phase development plan for the coastline, especially the south, to preserve it, improve the livelihoods of those living there and to attract tourism into the area.¹³³ The first phase involved strengthening institutions, building infrastructure, cleaning up a polluting chemical plant and general monitoring and preparation.¹³⁴ The second phase involved continuing the work of the first phase as well as supporting local tourism initiatives and encouraging public and private partnerships.¹³⁵

On July 25, 2007, the bank received a Request for Inspection from residents of a village called Jali, who claimed their permanent homes were demolished in connection to the project.¹³⁶ The justification for this action was that they did not have building permits, however, the Requesters said about 100% of coastal construction was completed without a permit and other homes and a government owned resort that also did not have permits were not demolished.¹³⁷ The Albanian government had passed a law to legalize construction like theirs and the requesters had obtained that documentation.¹³⁸ Nevertheless, they were given 5 days' notice to file a complaint before their homes were destroyed well before any were given court dates.¹³⁹

126. See IBRD/IDA, *Management Report and Recommendation in Response to the Inspection Panel Investigation Report of the Albania: Integrated Coastal Zone Management and Clean-Up Project* (IDA Credit No. 4083-ALB) [hereinafter MRR] (Feb. 18, 2009), <https://www.inspectionpanel.org/sites/www.inspectionpanel.org/files/ip/PanelCases/47-Management%20Report%20and%20Recommendation%20%28English%29.pdf> (last accessed Feb. 1, 2023); IBRD/IDA, *Bank Management Response to the Request for Inspection Panel Review of the Albania: Integrated Coastal Zone Management and Clean-Up Project* (IDA Credit No. 4083-ALB) [hereinafter BMRR] (Sept. 17, 2007), <https://www.inspectionpanel.org/sites/www.inspectionpanel.org/files/ip/PanelCases/47-Management%20Response%20%28English%29.pdf> (last accessed Feb. 1, 2023); World Bank Inspection Panel, *First Request for Inspection* [hereinafter RI] (Jul. 30, 2007), <https://www.inspectionpanel.org/sites/www.inspectionpanel.org/files/ip/PanelCases/47-First%20Request%20for%20Inspection%20%28English%29.pdf> (last accessed Feb. 1, 2023).

127. See MRR, *supra* note 126.

128. *Id.* at 1.

129. *Id.* at 4.

130. *Id.* at 2-3.

131. *Id.* at 2.

132. *Id.* at 9.

133. BMRR, *supra* note 126, at 4.

134. *Id.* at 5.

135. *Id.* at 6.

136. RI, *supra* note 126, at 1.

137. *Id.*

138. *Id.* at 3.

139. *Id.*

Upon first inspection, the Panel found that the Government of Albania had been carrying out these types of demolitions as a policy since 2001. The Jali site was not connected to any current or future plan related to the World Bank project, so the Bank was not at fault for this demolition.¹⁴⁰ Regardless, the Panel carried out an investigation of this Albanian policy and found that removal of this kind will not be necessary for bank projects and this policy will likely continue whether or not the bank project continued.¹⁴¹ The Panel gave the Albanian government recommendations to improve the policy and suggested using some project funds to assist affected people.¹⁴²

A later inspection by the Panel found many issues with the first management report and with the implementation of the project. They found that the project implementers should have insisted on a moratorium on demolitions after a full and complete assessment.¹⁴³ Instead, they found that under qualified employees were appointed to the project task team and there was severe miscommunication between and among teams.¹⁴⁴ Communication was so poor that many members of different task teams were unaware that there was not a moratorium.¹⁴⁵ In being slow to respond to these problems, the bank suffered harm to its reputation as well.¹⁴⁶

Acknowledging harm, the Bank Management found that 35 structures in 6 communities in addition to the 15 in Jali were destroyed.¹⁴⁷ When Albania refused to agree to a moratorium on demolitions, the Bank Management ultimately suspended the project, also adding the positions of Senior Social Scientist to work with the Jali residents and oversee social impact, a Senior Legal Counsel and Head Environmental Specialist.¹⁴⁸ Bank Management also increased the supervision budget from 80,000 USD to 190,000 USD and reviewed all 302 projects.¹⁴⁹ The Albanian government agreed to implement Bank Management's recommendations, including assistance for indigent poor among the Requesters.¹⁵⁰ Second, Albania also agreed to review each individual claim within the Albanian judiciary rapidly and with full due process.¹⁵¹ Finally, the Bank Management agreed to finance the legal assistance required of the affected individuals dealing with the demolition of their homes and seeking compensation.¹⁵²

B. Democratic Republic of the Congo: High Priority Roads Reopening and Maintenance (Project ID P153836)

This second case, High Priority Roads Reopening and Maintenance, aimed to establish greater connectivity to help build domestic economic growth.¹⁵³ According to World Bank measurements, the Democratic Republic of Congo (DRC) is the second-largest country in

140. MRR, *supra* note 126, at 12.

141. BMRR, *supra* note 126, at 10.

142. *Id.* at 10.

143. *Id.* at 21.

144. MRR, *supra* note 126, at 13.

145. *Id.* at 15.

146. *Id.* at 14.

147. *Id.* at 21.

148. *Id.* at 22.

149. *Id.* at 22-23.

150. *Id.* at 2.

151. *Id.*

152. *Id.* at 20.

153. See IBRD/IDA, *Management Report and Recommendation in Response to the Inspection Panel Investigation Report of the Democratic Republic of Congo Second Additional Financing for the High-Priority Roads Reopening and Maintenance Project (P153836)* [hereinafter DRC MMR] (Aug. 10, 2018), <https://www.inspectionpanel.org/sites/default/files/cases/documents/120-Management%20Report%20and%20Recommendation%28English%29-10%20August%202018.pdf>.

Africa.¹⁵⁴ Even so, according to the UN Human Development Index, it ranks among the poorest countries in the world.¹⁵⁵ Given the nation's militia activity and poor conditions, the World Bank set out to improve the nation's domestic state; it decided to further connectivity within the government to allow for economic growth.¹⁵⁶ As a result, in 2008 it began constructing high-priority roads reopening and maintenance projects in the DRC to increase access to and reduce travel time on major roads.¹⁵⁷

The DRC, being a conflict-ridden state, has a weak in-country capacity for safeguards.¹⁵⁸ Aware of this, the Bank assessed the regions its staff would be working in before beginning operations.¹⁵⁹ It did so by conducting the following safeguard assessments: Site-specific environmental Social Impact Assessments (ESIAs), Indigenous Peoples Plans (IPPs), and Resettlement Action Plans (RAPs).¹⁶⁰

When the project commenced, the Bank intended to have an international nongovernmental organization (NGO) overlook the implementation of the environmental and social elements of the Project.¹⁶¹ However, no international NGOs wanted to fulfill that need.¹⁶² Given the lack of interest from NGOs, a consulting firm (BEGES) assumed the role.¹⁶³ While this firm overlooked general impacts on the region, the Environmental and Social Advisory Panel did the only on-site evaluations.¹⁶⁴ These evaluations did not happen regularly but rather "periodically."¹⁶⁵ Such infrequent visits were likely a result of the region's instability, which created difficulties in getting experts to the sites.¹⁶⁶

While the lack of external personnel made accountability difficult, locals were provided with opportunities to speak up.¹⁶⁷ The Project also offered Project-level Grievance Redress Mechanisms (GRMs), which served to receive and address any complaints by citizens of the DRC.¹⁶⁸ Even so, locals had difficulties in getting an adequate response to their complaints.¹⁶⁹ As a result, on September 13, 2017, the Inspection Panel registered a request for inspection after two individuals living in and near Goma, North Kivu Province, requested for further action to be taken.¹⁷⁰

In their request to the Inspection Panel, the two men brought up allegations regarding the following: negative impacts on livelihoods, excessive use of military force, violence against the community, particularly gender-based violence (GBV), employment of young boys as laborers, and harm to indigenous communities' property.¹⁷¹

154. *Id.* at 10.

155. *Id.*

156. *Id.* at 11.

157. *Id.*

158. *Id.* at 13.

159. *Id.*

160. *Id.*

161. *Id.*

162. *Id.* at 13–14.

163. *Id.*

164. *Id.* at 14.

165. *Id.*

166. *Id.*

167. *Id.*

168. *Id.*

169. *Id.*

170. World Bank Inspection Panel, *Notice of Registration Re: Request for Information - Democratic Republic of Congo: Second Additional Financing for the High-Priority Roads Reopening and Maintenance Project (PI53836)* (Sept. 13, 2017), <https://www.inspectionpanel.org/sites/default/files/ip/PanelCases/120-Notice%20of%20Registration%20English%29-13%20September%202017.pdf>.

171. *Id.* at 2–3.

After conducting an assessment, the Panel Inspection Report listed issues in the following areas: project preparation, consultation and disclosure of information, grievances redress mechanisms, quarry exploitation, agricultural impacts, community and health safety, working conditions and occupational health and safety, GBV, and supervision.¹⁷²

After reviewing the Panel Inspection Report, Management responded with an action plan remarkable for its reparative imagination.¹⁷³ Unlike past cases where proceeding action did not account for the unique needs of the victim community, Management's response to the complaints filed concerning issues that came from the Bank's Project in the DRC not only recognized the individuals in need of reparations but took action to meet those unique needs.¹⁷⁴ Regarding the issue of GBV, Management expressed a commitment to ensure victims had access to comprehensive expert and caring support.¹⁷⁵

Such an approach reflected a multi-step plan. First, the level of SEA/GBV risk in the project area was assessed to ensure all areas were provided with adequate prevention, mitigation, and response measures.¹⁷⁶ Second, three measures were implemented to prevent SEA and GBV, consisting of the following: implementation of a communications outreach campaign in the project area, ensuring that all project staff and workers signed a Code of Conduct, and sensitization of all project staff and workers consistently regarding the issue of SEA and GBV.¹⁷⁷ Third, adopting a "survivor-centric" approach that placed the survivor's wishes at the forefront of all action. Anything these individuals needed to move forward was provided by Management.¹⁷⁸ Fourth, a variety of mechanisms allowing spaces for incident reporting were created.¹⁷⁹ Fifthly, a revamping of response units to ensure service providers and mechanisms could be identified and established as early as possible in the project's implementation.¹⁸⁰ This last step reflects forward-looking, showing that future preparation in the Bank's projects will be altered as a result of the problems that arose in this specific development initiative.¹⁸¹

In terms of addressing this very situation, management offered GBV-focused grievance redress mechanisms (GRMs), involvement of national and international NGOs with GBV expertise, and close collaboration with the United Nations mission in DRC (MONUSCO) in examining and training military personnel responsible for securing the work sites. This included lower-level training; by March 2018,¹⁸² GBV training had been implemented. An NGO group called Heal Africa was brought in to conduct a full-day GBV training of all 120 RN2 workers, focusing on the prevention of sexual exploitation, abuse, and harassment.¹⁸³

In addition to the Code of Conduct and training to further reduce the risk of sexual harassment of female employees in the workers' camps, the contractor established a strict

172. See World Bank Inspection Panel, *Investigation Report Democratic Republic of Congo Second Additional Financing for the High-Priority Roads Reopening and Maintenance Project (P153836)* (Apr. 27, 2018), <https://www.inspectionpanel.org/sites/default/files/cases/documents/120-Inspection%20Panel%20Investigation%20Report%28English%29-27%20April%202018.pdf>.

173. See DRC MMR, *supra* note 153.

174. See *id.*

175. DRC MMR, *supra* note 153, at 19.

176. *Id.* at 21.

177. *Id.*

178. *Id.*

179. *Id.*

180. *Id.*

181. *Id.*

182. *Id.* at 30.

183. *Id.* at 23.

early release policy for female employees so they could finish their workday and return home by 4:30 PM.¹⁸⁴ Additionally, the contractor built separate restroom facilities for all female employees.¹⁸⁵ Management also worked on strengthening the institutional capacity of all stakeholders with the aim of managing preventive and remedial actions.¹⁸⁶ In increasing the capacity of not only the Project Implementation Unit (PIU) and stakeholders but also other institutions in the region, the Bank worked to further stabilize the region, creating a safe space for workers and locals.¹⁸⁷

Together, the aforementioned actions taken by Bank Management reflect a commitment to safeguarding individuals in the borrower nation who experienced violence as a result of the Bank's project. Rather than offering a standard response, Bank Management took time to understand the depth of violence that their work caused and devised unique measures to address these causes of gender-based violence.

C. *Reform Project for the Water and Telecommunications Sectors, SEGBA V Power Distribution Project (Yacyretá)*

The Yacyretá project had been a cause of concern for the World Bank for many years and was the subject of two separate Inspection Panel Requests.¹⁸⁸ At the time of its institution in 2002, it was one of the most controversial and complex projects reviewed by the Panel to date.¹⁸⁹ The Project was more than 20 years under implementation, with thousands of people adversely affected, and fouled by allegations of corruption with no hope of completion in sight.¹⁹⁰ Both Requests involved the negative impact of the raising of the hydroelectric facility's reservoir on the people affected by the project.¹⁹¹ In the first Request, the Inspection Panel only obtained Board approval for a limited 'review' due to the abovementioned decision-making paralysis that existed on the Board at the time.¹⁹² With the second Yacyretá Request received in 2002, the Panel got the opportunity to tend to 'unfinished business' and thereby bolstering its reputation as an independent and effective accountability mechanism.¹⁹³

184. *Id.* at 37.

185. *Id.*

186. *Id.* at 39.

187. *Id.* at 39–40.

188. World Bank Inspection Panel, *Notice of Registration Re: Request for Inspection – Argentina/Paraguay: Yacyretá Hydroelectric Project* [hereinafter Request I] (Oct. 1, 1996), <https://www.inspectionpanel.org/sites/default/files/ip/PanelCases/7-Notice%20of%20Registration%20%28English%29.pdf>; World Bank Inspection Panel, *Notice of Registration Re: Request for Inspection Paraguay – Reform Project for the Water and Telecommunications Sectors (Loan No. 3842 –PA), Argentina – SEGBA V Power Distribution Project (Loan No. 2854 – AR)* [hereinafter Request II] (May 30, 2002), <https://www.inspectionpanel.org/sites/default/files/ip/PanelCases/26-Notice%20of%20Registration%20%28English%29.pdf>.

189. See Itzhak E. Kornfeld, *Adios to Paradise: The Yacyreta Dam and the Destruction of Environmental and Human Rights*, 7 FLA. A&M U. L. REV. 181 (2012).

190. Request II, *supra* note 188.

191. *Id.*; Request I, *supra* note 188.

192. See World Bank Inspection Panel, *Review of Problems and Assessment of Action Plans – Argentina/Paraguay: Yacyretá Hydroelectric Project* [hereinafter Review I] (Sept. 16, 1997), <https://www.inspectionpanel.org/sites/default/files/ip/PanelCases/7-Review%20and%20Assessment%20%28English%29.pdf> (“[A] long history of delays and non-compliance tolerated by the Bank does not allow the Panel to provide a realistic assessment of future project performance with any degree of confidence.”); IBRAHIM F. I. SHIHATA, *THE WORLD BANK INSPECTION PANEL: IN PRACTICE* 120–24 (2d ed. 2000) (asserting that the Panel was forced to do a limited ‘review’ and not a full ‘investigation’).

193. *Id.*

In many respects, the Panel's Yacyretá II Investigation Report bears testimony to the fact that the Inspection Panel can be fair and balanced towards the Bank, while simultaneously not hesitating to point out the Bank's compliance failures. For example, the Panel acknowledged that many Bank staff and other people concerned have put an inordinate amount of effort over the years 'to get the Project right' but with limited success.¹⁹⁴ The Panel's investigation was as thorough as possible.¹⁹⁵ The Panel had to be fair to the Requesters, to the Bank, and to all other project stakeholders and present to the Board of Executive Directors a succinct but comprehensive account of its findings.¹⁹⁶ The Panel also suggested that the Bank is expected to effectively monitor inclusion of local affected communities in EBY's social communication program of provisions for strengthening the dissemination of information to affected people on the procedures that EBY employs for resettlement, grievance redressal and property appraisals.¹⁹⁷ Moreover, the Bank was directed to set up a credible and transparent dispute resolution process.¹⁹⁸

Yacyretá I was a prime illustration of the Panel's early years when the Board could not agree on whether full Panel investigations should be authorized. For example, it took the Board two months to reply to the Panel's Emergency request, and it had to settle on a reduced Panel probe: the investigation had to be renamed a "review and assessment" because the word "investigation" had become connected with the sense of borrower malfeasance.¹⁹⁹ Furthermore, the review's investigative scope was limited to resettlement and the environment, as well as an assessment of the remedial action plan's appropriateness (which was agreed upon between the Bank and the borrowers).²⁰⁰ The Panel was also given only four months to complete this review by the Board.²⁰¹ "At the same time," as the Panel described it, "the Executive Directors decided that 'independent of the above decision', the Inspection Panel was to review the extent to which the Bank staff had followed Bank procedures" in the Yacyretá project.²⁰²

The implication was that 'procedures' referred only to the 'good practice' guidelines that were not binding on Bank staff, whereas 'policies' referred to the 'Operational Directives' which contained elements that were binding on staff.²⁰³ This last component of the Panel's 'review' mandate proved to be controversial because, during the actual review, the Panel did not limit itself to reviewing Bank compliance with 'procedures' only.²⁰⁴ The Panel justified this by arguing that "Bank procedures, in practice, flow only from Bank policies".²⁰⁵ The Panel also questioned the usefulness of distinguishing between 'policies' and 'procedures', arguing that the division was not nearly as clear-cut: [. . .] the policy statements in force at the time the different loans for this project were prepared and approved, and therefore, subject to the Panel's review do not distinguish between what is meant to be a policy and what should be regarded as a 'procedure' or just a guidance to staff (or 'good

194. World Bank Inspection Panel, *Investigation Report Paraguay – Reform Project for the Water and Telecommunications Sector (Loan No. 3842-PA)*; *Argentina – SEGBA V Power Distribution Project (Loan 2854-AR* [hereinafter IR II], at vii & xi (Feb. 24, 2004).

195. *Id.*

196. *Id.* at i–ii.

197. *Id.* at 79–80, 84.

198. *Id.* at xvii.

199. See Review I, *supra* note 192, at 1.

200. Review I, *supra* note 192, at 1, 55.

201. IR II, *supra* note 194, at 52.

202. *Id.*

203. Review I, *supra* note 192, at 56.

204. See *id.*

205. *Id.*

practice’).²⁰⁶ Also, in the words of the Bank’s General Counsel [Shihata], the ‘limits of flexibility’ in their application is ‘not always clear either’.²⁰⁷ For example, OP 4.01 on ‘Environmental Assessment’ defines it as a flexible procedure “whose breadth, depth, and type of analysis depend on the nature, scale, and potential environmental impact of the proposed project.”²⁰⁸

This flexible interpretation resulted in some controversy at the time of the Board’s discussion of the Panel’s Review report. According to Shihata, the controversy was not resolved at the Board meeting; but his own conclusion was that the “Panel’s review was certainly not limited to Bank ‘procedures’”.²⁰⁹ In conclusion, whatever its formal designation, (the words ‘inspection’ or ‘investigation’ were carefully avoided throughout), the ‘review’ in Yacyretá I amounted to a de facto investigation – in no small part due to the Panel’s activist approach.²¹⁰ But, overall it seems that the Bank Management missed the opportunity to take measures which would be something more than the standard set under the Bank’s policies.

D. Uzbekistan: Second Rural Enterprise Support Project

In a more recent project in Uzbekistan, financed by the World Bank Group, numerous human rights NGOs raised the issue that this project contributes to reinforcing the perpetuation of child and forced labor in cotton farms.²¹¹ The Requesters consider that the Project’s lack of adequate measures to prevent Bank funds from being used for agricultural lands where forced labor is practiced, contributes to the Government’s policy of organizing forced labor and harms the broader communities they represent.²¹² According to the Bank Information Center – a Washington DC based organization – and local NGOs, the World Bank’s “social impact assessment failed to list forced labor as a risk, and that child labor is not incidental.”²¹³

The panel recognized the significant positive trends have emerged with respect to the critical issue of child labor that include important steps on the part of Government and its partners,²¹⁴ and in discussions during the Panel’s eligibility visit with a wide range of stakeholders, to take additional actions, including the implementation of effective third-party monitoring on both child and forced labor, and to continue the constructive dialogue with the ILO and other development partners on these key issues and concerns.²¹⁵ As noted above, the Requesters have emphasized the importance of including civil society as a partner in such independent third-party monitoring going forward.²¹⁶ The Inspection Panel in its eligibility report subtly acknowledged that there is a link between the human rights violations indicated

206. Review I, *supra* note 192, at 56.

207. Shihata, *supra* note 192, at 42.

208. WORLD BANK, *Operational Manual OP 4.01 – Environmental Assessment* (Jan. 1999) (rev. Apr. 2013), para. 2.

209. Shihata, *supra* note 192, at 120.

210. *Id.* at 121.

211. *Uzbekistan Rural Enterprise Support Project*, BANK INFORMATION CENTER, <https://bankinformationcenter.org/en-us/project/uzbekistan-rural-enterprise-support-project/> (last visited Nov. 5, 2023).

212. World Bank Inspection Panel, *Notice of Registration Re: Request for Inspection Republic of Uzbekistan: Second Rural Enterprise Support Project (PI09126) and Additional Financing for Second Rural Enterprise Support Project (PI26962)* at 3 (Sept. 23, 2013).

213. Bank Information Center, *supra* note 217.

214. World Bank Inspection Panel, *Report and Recommendation Republic of Uzbekistan: Second Rural Enterprise Support Project (PI09126) and Additional Financing for Second Rural Enterprise Support Project (PI26962)* [hereinafter UZB Report] at 15 (Dec. 9, 2013).

215. *Id.* at 8.

216. *Id.*

above and the RESP II Agricultural Project but did little to remedy the situation.²¹⁷ It further chose to defer the World Bank's responsibility to remedy the situation to other state/non-state actors.²¹⁸ In a nutshell, this case displays the unwillingness on part of the Panel to deviate from the standard response and tackle the real issues and provide redress and reparation to those affected by the World Bank's projects.²¹⁹

E. Nigeria: Lagos Drainage and Sanitation Project

On June 25, 1998, the Inspection Panel registered a Request for Inspection dated June 16, 1998, from an organization called Social and Economic Rights Action Center (SERAC) for themselves and on behalf of individuals, families, and community development associations which they claim to have been directly affected by the IDA-financed Lagos Drainage and Sanitation Project in Nigeria.²²⁰ The grievances included the forcible evictions of two slum communities, Ijora Badia (hereinafter referred to as Badia) and Ijora Oloye, by state actors.²²¹ The Panel's judgment that the monetary payments were sufficient to address the complainants' grievances is problematic because in cases of forced displacement of poor households, compensation alone does not prevent impoverishment.²²² This is reflected in the Bank's involuntary resettlement policy, which mandates that displaced persons without legally recognized land rights be provided with resettlement and livelihood assistance, as well as other support, to ensure, at a minimum, the restoration of living standards and livelihoods.²²³ Human rights norms compel the state to take all reasonable steps to ensure that evictees have access to suitable accommodation and are not made homeless or susceptible to human rights violations.²²⁴ However, in the case of Badia evictees, their best bet would be compensation.²²⁵ In the Panel's notice to the Board that it would not register the complaint, the Panel notes that "without a proper baseline it is very difficult to assess whether or not the payments received are fair and sufficient to restore the livelihoods of affected people as mandated in Bank Policy."²²⁶ The Panel continues, "Many of the affected people interviewed by the Panel in Badia East complained that payments were totally insufficient for them to

217. *Id.* at 18–19. See also KRISTINE BECKERLE, ELIZABETH CHAN, ANNA DIAKUN, & ANDREW WALCHUK, ALLARD K. LOWENSTEIN INT'L HUM. RTS. CLINIC, DEFERRING ACCOUNTABILITY: DELAYS AT THE WORLD BANK'S INSPECTION PANEL 35 (2017).

218. UZB Report, *supra* note 214, at 23.

219. HUMAN RIGHTS WATCH & UZBEK-GERMAN FORUM FOR HUMAN RIGHTS, "WE CAN'T REFUSE TO PICK COTTON": FORCED AND CHILD LABOR LINKED TO WORLD BANK GROUP INVESTMENTS IN UZBEKISTAN 92-93 (2017), https://www.hrw.org/sites/default/files/report_pdf/uzbekistan0617_web_3.pdf (last accessed Nov. 5, 2023).

220. World Bank Inspection Panel, *Notice of Registration Re: Request for Inspection – Nigeria: Lagos Drainage and Sanitation Project (IDA Credit No. 2517-0)* (Jun. 25, 1998), <https://www.inspectionpanel.org/sites/default/files/ip/PanelCases/13-Notice%20of%20Registration%20%28English%29.pdf>.

221. World Bank Inspection Panel, *Report and Recommendation on Request for Inspection – Nigeria: Lagos Drainage and Sanitation Project (Credit No. 2517-UNI)* at 3 (Aug. 28, 2000), <https://www.inspectionpanel.org/sites/default/files/ip/PanelCases/13-Eligibility%20Report%20%28English%29.pdf>.

222. See *id.* at 31; see also Michael M. Cernea, *Compensation and benefit sharing: Why resettlement policies and practices must be reformed*, 1 WATER SCI. & ENG'G 89 (2008).

223. See WORLD BANK INSPECTION PANEL, IBRD/WBG, INVOLUNTARY RESETTLEMENT 15 (2016).

224. Leilani Farha (Special Rapporteur on Adequate Housing), *Guidelines for the Implementation of the Right to Adequate Housing*, para. 38, U.N. Doc. A/HRC/43/43 (Dec. 26, 2019).

225. See Memorandum from the Chairperson of the Inspection Panel to the Exec. Dirs. of the Int'l Dev. Ass'n, *Request for Inspection – Nigeria: Lagos Metropolitan Development and Governance Project (P071340) – Notice of Non-Registration and Panel's Observations of the First Pilot to Support Early Solutions* [hereinafter Notice of Non-Registration], para. 11 (Jul. 16, 2014) <https://www.inspectionpanel.org/sites/default/files/ip/PanelCases/91-Notice%20of%20Non-Registration%20%28English%29.pdf>.

226. *Id.* para. 27.

restore their previous livelihoods.”²²⁷ On the other hand, the Bank engaged two independent experts specifically to determine proper compensation amounts based on current market rates.²²⁸ However, it should not have been difficult for the Panel to assess whether the payments were sufficient to restore livelihoods.²²⁹ The resettlement action plan did not seek to provide compensation for lost livelihoods and therefore, the “independent experts” hired by the Bank could only have been assessing current market rates for lost assets and rental payments.

The Panel should have emphasized that compensation alone, even if it includes lost income, will not restore the livelihoods of impoverished displaced persons. Furthermore, it is unfortunate that the Panel appeared to disbelieve the impacted people’s testimonies concerning the inadequacy of the payments, especially because their descriptions of their experiences are consistent with actual data on displacement around the world. Many impacted people remained in a vulnerable condition without suitable accommodation and in danger of additional forced eviction after receiving the inadequate payments, according to a letter from the new legal counsel received by the Panel one week before it terminated the case.²³⁰ However, the Panel failed to mention that effective and efficient remedies in accordance with OP 4.12 were plainly not being supplied, even though they raised continuous human rights concerns and put the lives of thousands of displaced individuals in danger.²³¹ Instead, the Panel praised an “effective” process that allowed most homes in “urgent need of immediate help” to receive funds.²³² As a result, the case marks a potentially hazardous setback in terms of safeguard policy concepts and what the Inspection Panel is willing to accept as acceptable care of project-affected persons.

F. India: NTPC Power Generation Project (First Request)

The Inspection Panel (the ‘Panel’) received on May 1, 1997, a Request for Inspection (the ‘Request’) dated April 25, 1997, from residents of Singrauli, India, represented by Ms. Madhu Kohli, who live in the project area (the ‘Requesters’) and claimed that they have been directly, materially and adversely affected by acts and omissions of the International Bank for Reconstruction and Development.²³³ The Request claims that the people living in the project area have been, and may potentially be, directly and adversely affected because of the execution of the NTPC Power Generation Project, located in the Singrauli region of India about 1000 Km away from Delhi, and the Bank’s omissions and failures in the preparation and implementation of the project.²³⁴ In the instant case, the Requesters – supported by two international NGOs that conducted research in the region insisted that there were “tribal and ethnic groups” in the project area that should be considered as ‘indigenous peoples’ in the

227. *Id.*

228. *Id.*

229. See Amnesty Int’l, *World Bank: Investigate Inspection Panel’s Pilot Approach to Early Solutions and its application in Badia East, Lagos, Nigeria*, AI Index AFR 44/020/2014 (Sept. 2, 2014), <https://www.inspectionpanel.org/sites/default/files/ip/PanelCases/91%20-%20Amnesty%20International%20Statement%20on%20the%20first%20Pilot%20for%20Early%20Solutions.pdf>.

230. Letter from Kalu K. Obuba, Obuba & Obuba Legal Prac., to Eimi Watanabe, Chairperson, World Bank Inspection Panel (Jul. 11, 2014).

231. See Notice of Non Registration, *supra* note 225.

232. *Id.*

233. See World Bank Inspection Panel, *Report and Recommendation – India: NTPC Power Generation Project (Loan 3632-IN)* paras. 1 & 7, (Jul. 24, 1997), <https://www.inspectionpanel.org/sites/default/files/ip/PanelCases/10-Eligibility%20Report%20%28English%29.pdf>.

234. *Id.* para. 7.

World Bank project context.²³⁵ Management opposed this claim, arguing that additional “socio-economic surveys” were conducted to confirm the Bank’s initial conclusion that the groups in question did not qualify as ‘indigenous people.’²³⁶ Management added that the Requesters’ claims were based on a misunderstanding, namely: “a small portion of tribal people in a related, but non-Bank financed project” was classified as indigenous people; however, this fact did not mean the tribal people in the NTPC project would automatically be considered as indigenous people as well.²³⁷ As mentioned above, the Inspection Panel announced in its eligibility report that it had confirmed the accuracy of this information with the borrower. Hence, the Panel concluded: “since the Inspector received no contradictory information during his field visit, the Panel will therefore not further investigate this allegation.”²³⁸ In short, the Panel accepted the Bank Management’s claim not to classify the Requesters in question as ‘indigenous people.’²³⁹

G. The World Bank Inspection Panel’s ‘Reparative’ Restraint and Imagination

The Inspection Panel often makes it explicit that it is staying within the boundaries of its mandate. Although, in mentioning a particular issue, the Panel is arguably drawing attention to it, which might have been the Panel’s purpose in the first instance. For example, in *Brazil Land Reform & Poverty Alleviation (I)*, the Panel noted that the: “Requesters raise a number of political and pragmatic issues that do not relate directly to Bank policies and procedures. The role of expropriation and the legality of alternative methods to carry out the constitutionally mandated agrarian reform program, for example, are clearly outside the purview of the Panel although they provide a useful context to understand the concerns of the Requesters about the Bank’s role in the Project.”²⁴⁰ Similarly in *Tanzania Emergency Power*, the Panel affirmed that “[a]llegations concerning possible unauthorized staff actions in relation to political influences or considerations might amount to administrative misconduct” and, therefore, were “clearly outside the Panel’s mandate.”²⁴¹ And in *India NTPC Power Generation I*, the Panel explicitly stated that it would “not deal with some of the Requesters’ demands” because it fell outside the ambit of the Resolution.²⁴² For instance, the Panel affirmed that it would not “review actions of the borrower”; “give ‘advice’ on remedies” – as this was Management’s prerogative; and that it would not “pressurize” on the Bank to “take actions or decisions.”²⁴³ While in the *Cameroon Petroleum Development and Pipeline* case, the Panel reported that, “[d]uring the investigation nearly 60 workers associated with the Pipeline Project approached the Panel with a variety of concerns, including: compensation for work-related accidents, hiring and dismissal practices, disputes over the employers’ contribution to the local social security system, as well as claims that the “Project’s poor

235. *Id.* para. 19.

236. *Id.*

237. *Id.*

238. *Id.*

239. *Id.*

240. World Bank Inspection Panel, *Report and Recommendation on Request for Inspection – Brazil: Land Reform and Poverty Alleviation Pilot Project (Loan No. 4147BR)*, para. 18 (May 27, 1999), <https://www.inspectionpanel.org/sites/default/files/ip/PanelCases/14-Eligibility%20Report%20%28English%29.pdf>.

241. World Bank Inspection Panel, *Report and Recommendation on Request for Inspection – Tanzania: Power VI Project (Credit No. 2489-TA)*, para. 10 (Aug. 15, 1995), <https://www.inspectionpanel.org/sites/default/files/ip/PanelCases/3-Eligibility%20Report%20%28English%29.pdf>.

242. World Bank Inspection Panel, *supra* note 240, para. 11.

243. *Id.*

working conditions” were adversely impacting on the workers’ health and safety.”²⁴⁴ The Panel actively investigated these claims and concluded that, except for the claims concerning “occupational health and safety”, “the alleged violations [were] not covered by any Bank policy or procedure” and consequently the Panel was “precluded from reviewing them.”²⁴⁵

Thus, it seems that though in some cases the Inspection Panel and the Management responded in an extraordinary manner to provide relief to the victims of the Bank funded projects, in most of the cases, both the World Bank Inspection Panel and Bank Management have been staying within the defined parameters of Operational Policies. Reparative redress, if at all, could only be provided with reference to those policies. Where such policies do not mandatorily require the World Bank to directly solve felt problems on the ground from harms experienced by Requesters, the Bank Management responses have been muted and less responsive to the Requesters’ claims for adjustment of the terms, implementation, or scope of the Bank-financed project generating such harms.

IV. CONCLUSION: SHOEHORNING ‘REPARATIONS’ IN A COMPLAINTS AND COMPLIANCE REVIEW MECHANISM

The World Bank Inspection Panel has long been regarded as an unprecedented unicorn in international accountability mechanisms specific to the development financing sector: “an important institutional development both within the World Bank itself and as a precursor to the development of other mechanisms elsewhere, specifically within other international financial organisations.”²⁴⁶ As of this writing, the World Bank Inspection Panel already marks around 30 years since the World Bank’s Board of Executive Directors voted to approve the Resolution that created this Panel in 1993.²⁴⁷ One can certainly lionize its achievements in enabling ‘voice’ for Requesters, but one also has to temper the enthusiasm with hard realities on the ground. From our findings and datasets of the World Bank Inspection Panel reports at the Notre Dame Reparations Lab, we find that many of the Requests filed are often dismissed at the initial stage due to lack of technical eligibility of these Requests, suggesting that Requesters are in fact in need of competent legal assistance to be able to avail of this complaints procedure. Many of the Bank Management’s responses to claims of harm by Requesters are either tepid, formulaic, or standard responses of black-letter law compliance with the Bank’s operating procedures and policies. As seen from both our quantitative analysis of data and the qualitative examination of case studies, the Bank is largely reactive to what Requesters allege as harm.²⁴⁸ Very little, if at all, proactively seek to avoid causing harmful impacts to affected communities from Bank-financed projects. So much of the Bank’s commitments to environmental and social safeguards in its project-financed lending operations for development projects in Borrower countries *depends on the very same problematic rule of law, technical, environmental, social, economic, and developmental*

244. World Bank Inspection Panel, *Investigation Report – Cameroon: Petroleum Development and Pipeline Project (Loan No. 7020-CM) and Petroleum Environment Capacity Enhancement (CAPECE) Project (Credit No. 3372-CM)*, para. 133 (May 2, 2003), <https://www.inspectionpanel.org/sites/default/files/ip/PanelCases/27-Investigation%20Report%20%28English%29.pdf>.

245. *Id.*

246. Duncan French & Richard Kirkham, *Complaint and Grievance Mechanisms in International Dispute Settlement*, in *INTERNATIONAL LAW AND DISPUTE SETTLEMENT: NEW PROBLEMS AND TECHNIQUES* 57, 72 (Duncan French, Matthew Saul, & Nigel D. White eds., 2010).

247. *See* WBG, *supra* note 27.

248. Duncan French & Richard Kirkham, *Complaint and Grievance Mechanisms in International Dispute Settlement: One Piece of the Accountability Jigsaw Puzzle?*, 7 N. Z. Y.B. INT’L LAW 179, 191 (2009).

*infrastructure that the Bank seeks to improve.*²⁴⁹ It rings hollow when the World Bank publicly commits extensively to environmental and social safeguards, but simply passes the entirety of the responsibility to Borrower countries to ensure that projects are executed with perfect compliance with Bank policies and procedures (including environmental and social safeguards). In this, the World Bank is no different from sovereign lenders such as the People's Republic of China in its Belt and Road Initiative, where China claims that it is the exclusive responsibility of Borrower countries to ensure environmental and social compliance as well as debt sustainability for development projects.²⁵⁰

Most importantly, for all that the origins of the World Bank Inspection Panel lay with the Bank's institutional response to numerous protests in the 1980s and 1990s to its projects' vast human impacts (e.g. forced displacement, environmental harms, natural resource destruction, among others), it is telling that the 'reparative' potential of this redress mechanism is only belatedly surfacing in more recent cases when newer Panels are more willing to recommend measures that are closely tied to the experienced harms and vulnerabilities of Requesters themselves.²⁵¹ Under the chairmanship of World Bank Inspection Panel Chair Imrana Jalal, the Panel highlighted its work responding to gender-based violence (GBV) complaints in cases in Uganda and the Democratic Republic of the Congo, where it found that the Bank did not comply in identifying, preventing, and responding to GBV in these projects:

"Although the Panel played a decisive role in driving institutional change around the Uganda case, it was not the only factor. The Bank faced intense international media scrutiny over the harm caused by the project. The World Bank canceled the project, and the Board condemned the Bank's actions in this case and provided strong oversight of management's response, pushing it to do more and better at all stages . . . Since the investigations, the Bank has committed to preventing and addressing project-related [sexual exploitation and abuse or SEA/sexual harassment or SH] harms and risks by implementing several systemic and operational reforms."²⁵²

As a result of the World Bank Inspection Panel findings in these cases, the Bank launched its Global Gender-Based Violence Task Force to improve the Bank's response to sexual exploitation and abuse issues; reviewed the performance of all environmental and social safeguards in Uganda; undertook a portfolio-wide review of projects for risk management of project-induced labor influxes and addressing SEA/SH in investment project financing; and instituting a code of conduct for all large works contractors and disqualifying contractors that fail to comply with GBV-related obligations.²⁵³ And yet, none of these measures were ever outside the realm of 'reparative' possibility for either the World Bank Inspection Panel to recommend, for the Bank Management to propose in its responses, or for the World Bank's Board of Executive Directors to mandate and require for all Bank-financed projects, at the outset. Instead, by depending entirely on the Borrower country to implement environmental and social safeguards, the World Bank Inspection Panel's reports in these

249. *Id.* at 192.

250. See Johanna Coenen et.al., *Environmental Governance of China's Belt and Road Initiative*, 31 *Env't Pol'y and Governance* 3, 5-12 (2021).

251. French & Kirkham, *supra* note 248, at 192.

252. WORLD BANK INSPECTION PANEL, IBRD/WBG, INSIGHTS OF THE WORLD BANK INSPECTION PANEL: RESPONDING TO PROJECT GENDER-BASED VIOLENCE COMPLAINTS THROUGH AN INDEPENDENT ACCOUNTABILITY MECHANISM 37 (2020).

253. *Id.* at 39.

cases involving Uganda and the Democratic Republic of the Congo simply confirmed what international human rights lawyers already know from experience—States may be the parties to international human rights, environmental, and labor treaties, but often, by their own neglect or inaction, action or deliberation, States ultimately are the locus and agents of violations to international human rights, environmental laws, and labor protection guarantees.²⁵⁴ It is thus entirely counterproductive for the World Bank to still persist in the fictive myth that it can remain the detached or insulated international lender when it comes to the implementation of environmental and social safeguards in Bank-financed projects within Borrower countries, and yet be the active reformer when it comes to imposing Bank conditionalities such as structural adjustment programs on beleaguered debtor countries to the Bank.

Our dataset of World Bank Inspection reports, and our corresponding findings from the analyses of both coded data from these reports as well as the detailed memoranda we prepared for each of these projects, altogether affirms that the ‘reparative’ spectrum of the World Bank Inspection Panel remains vast and variable. While there is vast potential for the Panel to devise and recommend individualized or customized ‘reparative’ measures that can simultaneously restore the Bank Management to compliance with the Bank’s operational policies and procedures while addressing the harms alleged by Requesters from these Bank-financed projects that are attributable to such Bank Management failures, the first decades of the Panel’s work have largely left this potential to isolated recent instances (e.g. usually when the Panel Chair demonstrates considerable expertise or experience with such ‘reparative’ measures in other contexts, such as environmental, sociological, political economy, or related development and human rights work; or in the later 2010s to the present when the Bank has more detailed policies and procedures on environmental and social safeguards). The absorption of the World Bank Inspection Panel into the World Bank Accountability Mechanism which now gives Requesters the choice between the complaints and compliance review mechanism at the Panel, vis-a-vis a specific dispute resolution option at the Dispute Resolution Services of the World Bank Accountability Mechanism—is validation enough that the Bank is subtly shifting focus beyond shoehorning redress and reparation into a compliance review mechanism, to restoring that agency and ownership of any reparation process or remedial measure to Requesters—those vulnerable, disempowered, and directly affected themselves from the environmental, social, and human rights harms of Bank-financed projects.²⁵⁵ At some point, the World Bank Inspection Panel will have to choose where it wants to be on its own ‘reparative’ spectrum—between restraint and innovation. Variability on the scope and ambition of its ‘reparative’ recommendations cannot be endured for far too long, especially where the lived experiences of harms faced by Requesters are most concerned.

254. See *id.* at 17–21, 41.

255. See World Bank Inspection Panel, WBG, *Guidelines to Reduce Retaliation Risks and Respond to Retaliation During the Panel Process*, <https://www.inspectionpanel.org/sites/ip-ms8.extcc.com/files/documents/IPN%20Retaliation%20Guidelines2018.pdf>.