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All views expressed and any remaining errors are those of the author alone.
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The World Bank's Dispute Resolution Service: Procedural Reforms to Ensure Meaningful Access to Remedies for Project-Affected People

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RÉSUMÉS

In 2020, the World Bank established the Dispute Resolution Service (DRS) to address complaints from people adversely affected by its projects. The DRS enables them to engage directly with borrower States responsible for project implementation, using mediation, fact-finding, and other methods. As outlined in Section I, this paper examines how the DRS strengthens affected people's access to remedies and how the DRS should further strengthen such access. Section II presents the standards that underpin the access to a remedy provided by the DRS. Legal standards derive from the Bank's founding treaty, customary international law, and potential immunities before national courts. Policy standards derive from the Bank's three remedial mechanisms. First, the 1993 Inspection Panel investigates the Bank's compliance with its policies, based on three principles: accessibility, effectiveness, and independence. Second, the 2015 Grievance Redress Service facilitates corporate-level dispute resolution. Third, the Bank created the DRS solely to enhance access to remedy through dispute resolution at the organization's highest level. Section III proposes improvements to the DRS for each principle. Regarding accessibility, the Bank should expand participation opportunities for affected people, including by

guaranteeing minimum access to project information. Regarding effectiveness, the Bank should require the “consistency” of dispute resolution agreements with its policies, the default publication of agreements, and mandatory verification of agreement implementation. Regarding independence, the Bank should ensure greater options in sequencing compliance review and dispute resolution processes and introduce concrete measures to mitigate the DRS’ institutional interest in outcomes. Section IV concludes that the DRS’ procedural shortcomings raise doubts about its ability to meaningfully enhance access to remedies, aligning instead with the contemporary trend in international law toward flexible dispute resolution. More broadly, the DRS illustrates the relevance of refining *global* administrative law theory through a *transnational* perspective that considers the distinct political, institutional, and economic forces that shape enforcement mechanisms.

En 2020, la Banque mondiale a créé le Service de règlement des différends (DRS) pour traiter les plaintes des personnes affectées par ses projets. Il leur permet d’échanger avec les États emprunteurs mettant en œuvre ces projets, à travers la médiation, l’établissement des faits et d’autres méthodes. Comme l’explique la Section I, cet article analyse comment le DRS renforce leur accès aux recours et comment il devrait le renforcer davantage. La Section II présente les normes applicables au DRS. Celles juridiques proviennent du traité de la Banque, du droit international coutumier et des immunités. Celles politiques proviennent des trois mécanismes de la Banque. Premièrement, le Panel d’inspection (1993) vérifie la conformité avec ses politiques, suivant trois principes: l’accessibilité, l’effectivité et l’indépendance. Deuxièmement, le Service des griefs (2015) résout les différends avec la Direction. Troisièmement, le DRS devait uniquement renforcer l’accès aux recours par le règlement amiable des différends au plus haut niveau de l’organisation. La Section III propose plusieurs améliorations au DRS. Concernant l’accessibilité, la Banque devrait renforcer les possibilités de participation

des personnes affectées, notamment en garantissant un accès minimal aux informations sur les projets. Concernant l'effectivité, elle devrait imposer la «cohérence» des accords de règlement aux politiques, leur publication par défaut et une vérification obligatoire de leur mise en œuvre. Concernant l'indépendance, elle devrait permettre une articulation fluide des mécanismes et introduire des mesures limitant l'intérêt du DRS dans les accords. La Section IV conclut que les lacunes procédurales du DRS suscitent des interrogations quant à sa capacité à renforcer l'accès aux recours, s'inscrivant plutôt dans la tendance du droit international à privilégier une résolution flexible des différends. Plus généralement, le DRS illustre l'intérêt d'affiner la théorie du droit administratif *global* par une perspective *transnationale* intégrant les dynamiques politiques, institutionnelles et économiques façonnant les mécanismes de contrôle.



I. Introduction: Does the Dispute Resolution Service Provide Meaningful Access to Remedies for Project-Affected People?

In 2020, the World Bank established the Dispute Resolution Service (DRS) to address complaints from people adversely affected by its development-funded projects. The DRS enables them to engage in problem-solving directly with borrower States responsible for project implementation, using mediation, fact-finding, and other alternative dispute resolution methods.

As outlined in this Section I, this paper examines how the DRS currently enhances project-affected people's access to remedies for harm to which the Bank has contributed, as well as how it should further strengthen such access. Subsection A provides an overview of the DRS, including the rationale for and methodology of its evaluation. Subsection B presents the paper's main finding: while the DRS has the potential to improve access to remedies by offering affected people a dispute resolution mechanism, its current design

requires additional procedural protections to ensure that access to remedies is not compromised.

A. The DRS Illustrates Both Achievements and Challenges in a New Era of “Transnational” Administrative Law

Members of the Kawaala community in Kampala, Uganda, report that Ugandan government-affiliated Kampala Capital City Authority and armed guards woke them in the early hours of 4 December 2020 and began destroying their homes and farmlands.¹ Community members allege that their eviction and the ensuing destruction paved the way for the Lubigi Drainage Channel development project funded by the World Bank (hereafter, the Bank, or International Bank for Reconstruction and Development). They claim that the project began without proper consultation or plans for compensation and resettlement, and compromised their livelihoods and well-being, in violation of the World Bank’s *Environmental and Social Framework* policies (*Framework*).² In turn, World Bank Management claimed that the project-level grievance mechanism should handle most of the Kawaala community’s concerns about resettlement, and that it was working with Kampala Capital City Authority to strengthen the resettlement plan related to the channel project.³

Dissatisfied with the World Bank’s solution to their concerns, Kawaala community members filed a complaint to the Inspection Panel (Panel) in June 2021 with the support of local and international civil society organizations.⁴ The Panel subsequently recommended to the Bank’s Executive

1 Witness Radio Uganda, “Request for Inspection by the World Bank Inspection Panel in Kampala Institutional and Infrastructure Development Project” (17 June 2021), online (pdf): <[inspectionpanel.org](https://inspectionpanel.org/perma.cc/6T2R-FJSM)> [perma.cc/6T2R-FJSM].

2 World Bank, “The World Bank Environmental and Social Framework” (4 August 2016), online (pdf): <[worldbank.org](https://worldbank.org/perma.cc/BL3Z-3TSK)> [perma.cc/BL3Z-3TSK] [*Framework*].

3 World Bank, Bank Management, “Response: Second Kampala Institutional and Infrastructure Development Project (P133590)” (24 August 2021), online (pdf): <[inspectionpanel.org](https://inspectionpanel.org/perma.cc/2DME-MMRT)> [perma.cc/2DME-MMRT].

4 The Panel has jurisdiction to evaluate projects funded by the International Bank for Reconstruction and Development (IBRD) and the International Development Association (IDA) within the World Bank Group.

Directors to investigate the complaint.⁵ Upon the Executive Directors' approval of inspection,⁶ the Kawaala community and the Uganda government were offered the opportunity to pursue dispute resolution rather than to go forward with the compliance review conducted by the Panel, a first in the Bank's history. Executive Directors had only recently approved the updated *Inspection Panel Resolution*⁷ and the *Accountability Mechanism Resolution*,⁸ which established the new Dispute Resolution Service, or DRS, in September 2020.

Under the DRS, those affected by Bank-funded projects (affected people, also referred to as requesters once they submit a request for inspection to the Panel) and the borrower State can now resolve a complaint brought before the Inspection Panel through joint fact-finding, mediation, and other similar alternative dispute resolution methods, provided both parties agree, as was the case with the Kawaala community and Uganda.⁹ According to a civil society organization supporting the Kawaala community, the dispute resolution process would provide an "appropriate forum" for the community to present their demands, which include "a new, proper land survey and identification of project affected people, provision of adequate compensation, and adequate time to resettle."¹⁰

5 World Bank, Inspection Panel, *Report and Recommendation on a request for Inspection: Second Kampala Institutional and Infrastructure Development Project (P133590)* (4 October 2021), online (pdf): <inspectionpanel.org> [perma.cc/4B8Q-CEZ8].

6 World Bank, *Parties in Uganda Infrastructure Case Agree to Pursue Dispute Resolution* (7 December 2021), online (brief): <worldbank.org> [perma.cc/8K69-BSCG].

7 World Bank, Inspection Panel, *Resolution No. IBRD 2020-0004 and Resolution No. IDA 2020-0003* (September 8 2020), online (pdf): <inspectionpanel.org> [perma.cc/4SJT-MBT2] [2020 *Inspection Panel Resolution*].

8 World Bank, *Resolution No. IBRD 2020-0005 Resolution No. IDA 2020-0004* (8 September 2020), online (pdf): <inspectionpanel.org> [perma.cc/4SJT-MBT2] [*Accountability Mechanism Resolution*]. See also World Bank, *Accountability Mechanism Operating Procedures* (5 December 2022), reissued with procedural clarification (6 March 2023), online (pdf): <worldbank.org> [perma.cc/4758-238E] [2022 *Accountability Mechanism Operating Procedures*].

9 Accountability Mechanism Secretary, *Notice of Agreement to Pursue Dispute Resolution: Second Kampala Institutional and Infrastructure Development Project (KIIDP-2) (P133590)* (2 December 2021), online (pdf): <inspectionpanel.org> [perma.cc/AZW7-UT4A].

10 Robi Chacha Mosenda & Caitlin Daniel, "World Bank Board Approves Investigation into Community Concerns of Forced Eviction by the Lubigi Drainage Channel" (27 October 2021),

While scholarship has examined various aspects of the Inspection Panel at the World Bank¹¹ and dispute resolution mechanisms at other multilateral development banks (also known as “international financial institutions”),¹² this paper offers the first scholarly legal analysis of the DRS, including the initial complaints handled by the mechanism in its first few years of operation. Specifically, it considers how the dispute resolution process offered by the Bank should benefit affected people and borrower States (together, the parties). The paper also critically evaluates the dispute resolution process in light of international law requirements, the mandates of remedial mechanisms within the Bank, as well as best practices concerning access to remedies. In particular, it considers the strengths and weaknesses of the current dispute resolution process and suggests how the Bank should improve this process when it revises the *Accountability Mechanism Resolution* or the *Accountability Mechanism Operating Procedures* in the future.

A critical evaluation of the DRS within the Bank’s accountability system is essential for several reasons. First, it will provide the disputing parties with greater clarity on whether the DRS is truly the “appropriate forum” for resolving a given complaint. It will also help them anticipate procedural challenges that may arise, allowing them to navigate the process better and avoid pitfalls that could hinder access to remedies. Furthermore, the Bank,

online (blog): <accountabilitycounsel.org> [perma.cc/8JUP-HMU4].

- 11 Among this vast literature, see, notably, Daniel D Bradlow, “International Organizations and Private Complaints: The Case of the World Bank Inspection Panel” (1993) 34:3 *Virginia Journal of International Law* 553; Ibrahim F I Shihata, *The World Bank Inspection Panel: In Practice* (2d ed, Oxford: Oxford University Press, 2000); Gudmundur Alfredsson & Rolf Ring, eds, *The Inspection Panel of the World Bank: A Different Complaints Procedure* (The Hague: Martinus Nijhoff, 2001); Dana Clark, Jonathan Fox & Kay Treacle, eds, *Demanding Accountability: Civil Society Claims and the World Bank Inspection Panel* (Lanham: Rowman & Littlefield, 2003); David Hunter, “Using the World Bank Inspection Panel to Defend the Interests of Project-Affected People Perspectives” (2003) 4:1 *Chicago J of Int L* 201. See, more recently, World Bank, Inspection Panel, *The Inspection Panel at 25 Years* (Washington, DC: World Bank, 2018).
- 12 See e.g. Office of the High Commissioner for Human Rights, *Remedy in Development Finance: Guidance and Practices*, OHCHR, 2022, HR/PUB/22/1, online (pdf): <ohchr.org> [perma.cc/JF5U-DLMP]. See also Mariette van Huijstee et al, “Glass Half Full? The State of Accountability in Development Finance” (2016), online (pdf): <ciel.org> [perma.cc/R2S7-327M]; Owen McIntyre & Suresh Nanwani, eds, *The Practice of Independent Accountability Mechanisms: Towards Good Governance in Development Finance* (Leiden: Brill Nijhoff, 2019).

its Executive Directors, and its Accountability Mechanism could take this evaluation into account when revising the DRS. The nearly twenty other multilateral development banks, which have historically been influenced by the World Bank's accountability practices,¹³ could also draw relevant insights from this analysis when developing or refining their own dispute resolution processes.

This paper engages with and contributes to global administrative law theory in its critical evaluation of the DRS. It draws on this theory in three key ways: through its (1) object, (2) methodology, and (3) goal.¹⁴ First, the paper examines the DRS, which falls within one of the five types of global administration: "administration by formal international organizations."¹⁵ Second, it adopts an interdisciplinary methodology, combining the interpretation of positive international law with comparative legal analysis. This approach situates the DRS within the broader landscape of dispute resolution mechanisms at the other twenty multilateral development banks and international dispute resolution bodies. The analysis is further enriched by insights from sociology and international relations, drawing on approximately a dozen confidential semi-formal interviews with stakeholders who have relevant expertise and direct experience with the DRS' initial cases. Third, consistent with the theory's critical approach, the paper identifies the DRS' procedural shortcomings and proposes reforms to enhance its process.

Moreover, this paper advances the global administrative law theory by positioning the DRS as a case study that illustrates both the achievements and challenges of contemporary governance. Through an analysis of the World Bank, it traces the evolution of the Inspection Panel—a frequently cited example in the scholarship¹⁶—into the broader Accountability Mechanism,

13 Ibrahim FI Shihata, *The World Bank Inspection Panel: In Practice*, 2nd ed (Oxford: Oxford University Press, 2000) at 264; Ruth Mackenzie et al, "The Inspection Panel of the World Bank" in Ruth Mackenzie et al, eds, *The Manual on International Courts and Tribunals*, 2nd ed (Oxford: Oxford University Press, 2010) at para 17.29.

14 Benedict Kingsbury, Nico Krisch & Richard B Stewart, "The Emergence of Global Administrative Law" (2005) 68:3 *Law & Contemporary Problems* 15. See also Benedict Kingsbury, "The Concept of 'Law' in Global Administrative Law" (2009) 20:1 *European Journal of International Law* 23.

15 *Ibid* at 21.

16 *Ibid* at 34–35.

which now integrates both the Panel and the newly established DRS. This detailed examination provides concrete evidence of how key administrative law principles have been adapted and operationalized in recent years.

Relatedly, the paper critically evaluates due process requirements in contemporary international dispute resolution, showing how institutional design can be adjusted to balance accountability with the need for efficiency and flexibility. This analysis contributes to the debate on appropriate normative standards and essential procedural protections that should govern dispute resolution mechanisms at multilateral development banks today.

However, unlike much of traditional global administrative law scholarship, which primarily examines institutional operations, this paper focuses on the specific political, institutional, and economic forces underlying the processes that led to the establishment of the Inspection Panel, Grievance Redress Service, and DRS. Given the scarcity of public sources, interviews are particularly valuable in shedding light on these processes. The paper suggests that a “transnational” approach provides a more nuanced understanding of enforcement mechanisms’ complex mandates and dynamics, enabling a clearer anticipation of their future trajectory and the strategic design of their reform.

B. The DRS Falls Short of the Legal and Policy Standards for Guaranteeing Meaningful Access to Remedies for Affected People

Overall, the paper argues that the DRS, in its current design, has the potential to enhance access to remedies for affected people. By prioritizing party-led dispute resolution, the mechanism offers affected people the assistance of an independent neutral third party, the opportunity to participate actively in determining remedial measures, and access to effective remedies that may exceed those required by Bank policies. The DRS’ heavy reliance on mutual consent from both parties can also help maintain a significant role for the Inspection Panel, as either party retains the option to request compliance review.

However, the DRS’ reliance on consent also poses a risk: it currently allows affected people to consent to remedies that may fall short of the standards

outlined in Bank policies. This risk is particularly acute when affected people, who are often vulnerable populations with limited resources and expertise relating to Bank projects, continue to suffer from the material effects of alleged policy violations while the dispute resolution process is ongoing. Moreover, since Bank Management participates in the dispute resolution process only as a technical observer and solely with both parties' consent, it is unable to effectively contribute to ensuring meaningful remedies for affected people.

These limitations raise concerns about whether the DRS will actually enhance access to remedies for affected people or whether it might instead undermine the Inspection Panel's mandate to ensure such access. Given these concerns, the Bank should consider revising the dispute resolution process to more directly address the power imbalance between affected people and borrower States. For instance, introducing minimum procedural protections for affected people could help ensure they are better equipped to make informed decisions regarding remedies.

The rest of the paper is structured in three sections. Section II sets out the legal and policy standards that underpin the DRS' access to remedies. Legal standards derive primarily from the World Bank's founding international treaty, applicable customary international law, and the Bank's potential immunities before national courts. Policy standards, in turn, arise primarily from the mandates of the Bank's three remedial mechanisms. First, the 1993 Inspection Panel provides a compliance review to assess whether the Bank has adhered to its policies, based on three guiding principles: accessibility, effectiveness, and independence. Second, the 2015 Grievance Redress Service facilitates corporate-level dispute resolution with Management. Third, the Bank established the DRS, asserting that its sole objective is to strengthen the Panel's access to remedies through dispute resolution at the highest level of the organization.

Section III proposes specific improvements to the DRS for each of the three principles. To enhance accessibility, the Bank should strengthen procedural protections and expand participation opportunities for affected people, including guaranteeing a minimum standard of access to project-related materials. To enhance effectiveness, the Bank should mandate the

“consistency” of dispute resolution agreements with its policies, require the default publication of agreements unless both parties agree to a summary only, and require mandatory verification of agreement implementation. To enhance independence, the Bank should offer greater flexibility in sequencing compliance review and dispute resolution processes and introduce concrete measures to reduce the influence of the DRS’ institutional interest in dispute resolution outcomes.

Section IV concludes that the Bank’s stated objective of strengthening its accountability framework may be achieved when affected people secure more substantial remedies than those required under Bank policies. However, the DRS’ procedural shortcomings cast doubt on how frequently this will occur. In its current form, the DRS aligns more with the broader shift in international law toward flexible dispute resolution. Finally, the DRS illustrates the relevance of refining global administrative law theory through a transnational approach that accounts for the distinct political, institutional, and economic forces shaping each enforcement mechanism operating across borders.

II. The DRS’ Legal and Policy Standards Stem from International Law and the Mandates of the Bank’s Remedial Mechanisms

Aligned with global administrative law theory’s emphasis on identifying the normative standards applicable to each enforcement mechanism under review,¹⁷ this Section II sets out the legal and policy standards against which the DRS should be assessed. It begins by highlighting the Bank’s legal and moral imperatives to ensure that affected people have meaningful access to remedies for harm that would not have occurred but for its financing of projects. These imperatives arise, first, as a necessary implication from

17 Kingsbury, Krisch & Stewart, *supra* note 14 at 29, opining that the four general procedural principles of enforcement mechanisms are (1) transparency, (2) participation, (3) reasoned decision-making, and (4) assurance of legality.

the *Articles of Agreement* that established the World Bank, an international treaty.¹⁸ In the *Effects of Awards of Compensation Advisory Opinion*, the International Court of Justice held that it would “hardly be consistent with the expressed aim of the Charter to promote freedom and justice for individuals [...] that [the United Nations] should afford no judicial or arbitral remedy to its own staff for the settlement of any disputes which may arise between it and them.”¹⁹

Similarly, as a specialized agency of the United Nations, it would be “hardly consistent” with the World Bank’s mission, which the Bank has progressively interpreted as ending extreme poverty and boosting shared prosperity,²⁰ to deny meaningful remedies to individuals adversely affected by its funded projects. While contractual obligations govern the legal relationship between an international organization and its staff, no such contracts exist between the Bank and affected people. However, principles of justice and institutional integrity are even more compelling when vulnerable third parties in developing countries endure significant harm from Bank-funded projects without access to effective remedies. Furthermore, the World Bank actively promotes good governance among its borrower States implementing projects, including the development of (1) “accessible,” (2) “efficient,” and (3) “fair” judicial institutions.²¹ It would also be inconsistent for the Bank

18 *Articles of Agreement of the International Bank for Reconstruction and Development*, 27 December 1945, 2 UNTS 134 (entered into force 27 December 1945), as amended 16 December 1965, 16 UST 1942, TIAS N° 5929, art VII at para 3 [*Articles of Agreement*].

19 *Effect of Awards of Compensation Made by the United Nations Administrative Tribunal — Advisory opinion*, [1954] ICJ Rep 47 at 57.

20 This statement is consistently featured throughout the World Bank’s website. See e.g. Maria Eugenia Genoni & Christoph Lakner, *Poverty, Prosperity, and Planet Report 2024: Pathways Out of the Polycrisis* (Washington, DC: World Bank, 2024), online (pdf): <worldbank.org> [perma.cc/YVM9-VKU4]. On the evolving mandate of the Bank, see Daniel D Bradlow, *The Law of International Financial Institutions* (Oxford: Oxford University Press, 2023) at 94–120 [*International Financial Institutions*].

21 World Bank, “Global Program on Justice and Rule of Law”, online: <worldbank.org> [perma.cc/979Y-Q8U6]. See also World Bank, Framework, *supra* note 2 at ix, which aims to “enhance nondiscrimination, transparency, participation, accountability and governance.” Previously, the World Bank required certain developing countries to adhere to “good governance” standards as a prerequisite for receiving financial aid: Kingsbury, Krisch & Stewart, *supra* note 14 at 21.

to advocate such principles externally while failing to ensure comparable access to remedies for those harmed by its own financing activities.

Another critical imperative for the World Bank to ensure access to remedies stems from internationally recognized human rights and environmental safeguards, despite the Bank's enduring reluctance to explicitly acknowledge that it is directly bound by human rights obligations. Virtually all the Bank's Member States have ratified international treaties—such as the 1976 *International Covenant on Civil and Political Rights*²² and the 1976 *International Covenant on Economic, Social and Cultural Rights*²³—which enshrine the obligation to uphold and protect individual rights, including from the adverse impacts of development finance projects. These rights are not regionally contingent or ideologically driven but universal in scope and binding in nature. Building on this foundation, Professor Daniel Bradlow persuasively argues that the right to access remedies is firmly established under customary international law. He contends that the World Bank, whether directly bound by customary international law or indirectly so as a representative of its Member States, has an obligation to facilitate the realization of this right.²⁴

Relatedly, general international law imposes a procedural obligation on entities, including the Bank, that breach or contribute to the breach of peremptory norms of general international law (*jus cogens*), such as the prohibition of torture.²⁵ Article 42 of the *Draft Articles on the Responsibility of*

22 See especially *International Covenant on Civil and Political Rights*, 16 December 1966, 999 UNTS 171, Can TS 1976 N° 47, art 2(3) (entered into force 23 March 1976) (requiring States to ensure effective remedies for violations of the rights recognized in the Covenant, including access to judicial, administrative or legislative authorities).

23 See especially *International Covenant on Economic, Social and Cultural Rights*, 16 December 1966, 993 UNTS 3, Can TS 1976 N° 46, art 12 (entered into force 3 January 1976).

24 Daniel D Bradlow, *International Financial Institutions*, *supra* note 20 at 192–98. See also *Jam et al v International Finance Corp*, 172 F Supp (3d) 104 (DC Cir 2016) “Brief of Amicus Curiae Professor Daniel Bradlow in Support of Plaintiffs-Appellants”, online (pdf): <earthrights.org> [perma.cc/S2LC-P7JF].

25 At its seventy-third session in 2022, the International Law Commission adopted the *Draft Conclusions on the Identification and Legal Consequences of Peremptory Norms of General International Law (jus cogens)*, accompanied by an annex and detailed commentaries. The annex includes a non-exhaustive list of norms previously recognized by the International Law Commission as having *jus cogens* status:

International Organizations, which may reflect customary international law, mandates that both States and international organizations cooperate through lawful means to bring an end to serious breaches of *jus cogens* norms. This provision further prohibits international organizations, such as the Bank, from “render[ing] aid or assistance in maintaining” such breaches.²⁶

Furthermore, the Bank’s potential immunity before national courts underscores the imperative to ensure access to remedies. Critics argue that multilateral development banks have historically operated with a “sense of impunity”, reinforced by national case law affording them broad immunity.²⁷ However, they maintain that international organizations must now embrace greater accountability, as courts have increasingly curtailed their immunity—either by narrowing its scope or recognizing exceptions.²⁸ For instance, the European Court of Human Rights has ruled that national courts may limit

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- (a) the prohibition of aggression;
 - (b) the prohibition of genocide;
 - (c) the prohibition of crimes against humanity;
 - (d) the basic rules of international humanitarian law;
 - (e) the prohibition of racial discrimination and apartheid;
 - (f) the prohibition of slavery;
 - (g) the prohibition of torture;
 - (h) the right to self-determination.

See International Law Commission, *Draft Conclusions on the Identification and Legal Consequences of Peremptory Norms of General International Law (Jus Cogens)*, with Commentaries, Yearbook of the International Law Commission, 2022, vol II, Part Two, UN Doc A/77/10 at 16, 89, and Annex I at 353–261. In its resolution 77/103, the General Assembly welcomed the work and took note of the draft conclusions. See *Identification and Legal Consequences of Peremptory Norms of General International Law (Jus Cogens)*, UNGA, 77th Sess UN Doc A/RES/77/103 (2022). Notably, the draft took the form of “conclusions” rather than “articles,” partly due to the continued controversy surrounding the right to self-determination.

26 International Law Commission, *Draft Articles on the Responsibility of International Organizations*, with Commentaries, Yearbook of the International Law Commission, 2011, vol II, Part Two, UN Doc A/CN.4/L.778, art 42, para 2.

27 Joe Athialy, “The World Bank, the Inspection Panel & Immunity” (2023) *Accountability Perspectives*, at 1, online (pdf): <digitalcommons.wcl.american.edu> [perma.cc/LYC5-JKDP]. For a more scholarly assessment, see August Reinisch, “To What Extent Can and Should National Courts ‘Fill the Accountability Gap?’” (2014) 10:2 *International Organizations Law Review* 572.

28 *Ibid.*

the immunity of international organizations where no alternative remedies exist to effectively safeguard individuals' right of access to remedies.²⁹

A former General Legal Counsel of the World Bank, D^r Ibrahim Shihata, has argued that the organization, as a specialized agency of the United Nations, enjoys general immunity under the 1947 *Convention on the Privileges and Immunities of the Specialized Agencies of the United Nations*.³⁰ Nevertheless, the Bank's *Articles of Agreement* contain a provision that must be interpreted as either allowing lawsuits against the Bank under certain conditions or providing a broad waiver of any immunity. The provision, titled "Position of the Bank with Regard to Judicial Process", states that "[a]ctions may be brought against the Bank only in a court of competent jurisdiction in the territories of a member where the Bank operates."³¹

By failing to provide effective access to remedies, the World Bank creates a situation in which affected people may resort to national courts to pursue reparation. These courts may subsequently interpret the provision expansively, permitting civil claims against the Bank based on their interpretation of international law and respective national legal frameworks governing the immunity of international organizations, including the pertinent provisions of any existing headquarters agreements. Therefore, the judicial approach of balancing the right of affected people to access remedies with the immunity claims of multilateral development banks exerts legal pressure on these banks to establish effective alternative mechanisms for accessing remedies.³²

For instance, in its 2019 judgment in *Jam v IFC*, the U.S. Supreme Court dismissed the claim of absolute immunity made by the International Finance

29 See *Waite and Kennedy v Germany*, [GC], N° 26083/94, [1999] I ECHR 393 at paras 68–74; *Prince Hans-Adam II of Liechtenstein v Germany*, [GC], N° 42527/98, [2001] VIII ECHR 1 at para 48; *Chapman v Belgium* (dec), N° 39619/06, [2013] ECHR 11 at paras 51–56; *Klausecker v Germany* (dec), N° 415/07, [2015] ECHR 14 at paras 69–77. However, the lack of an alternative remedy does not necessarily mean that granting immunity to an international organization constitutes a breach of the right to access a court. See *Stichting Mothers of Srebrenica and Others v the Netherlands* (dec), N° 65542/12, [2013] ECHR 867 at para 164.

30 Shihata, *supra* note 13 at 243; *Convention on the Privileges and Immunities of the United Nations*, 13 February 1946, 33 UNTS 261 at 302, art 3, s 4.

31 See *Articles of Agreement*, *supra* note 18 at art VII, s 3.

32 Kingsbury, Krisch & Stewart, *supra* note 14 at 41. See also *ibid* at 31–34.

Corporation (IFC), the private sector arm of the World Bank Group.³³ The case arose from significant environmental and social harm caused by the Tata Mundra power plant in India, which the IFC financed. The IFC's accountability mechanism, the Compliance Advisor Ombudsman (CAO), determined that the project violated the organization's performance standards. Despite clear findings of violations, the IFC failed to take corrective action, prompting affected people to seek justice in U.S. federal courts with support from civil society organizations engaged in public interest litigation.³⁴ The IFC, in turn, invoked its alleged immunity to avoid liability.³⁵ However, the U.S. Supreme Court held that, under the U.S. *International Organizations Immunities Act*,³⁶ international organizations' immunity is the "same" as the immunity granted to foreign States, including the exceptions to such immunity for commercial activities.³⁷ The Court also observed that, while international organizations' headquarters agreements may provide for absolute immunity, the IFC's agreement—containing a "judicial process" provision nearly identical to that in the World Bank's *Articles of Agreement* discussed above—did not confer such immunity.³⁸

Nevertheless, a year later, a U.S. District Court ultimately dismissed the civil claim on the facts, reasoning that the commercial activity exception to immunity requires that the core conduct causing harm be "based upon" activities within the United States. While the Court acknowledged that certain actions, such as loan approvals, were made by the IFC at its U.S. headquarters, it found that the alleged harmful activities concerning the Tata Mundra Power Plant were carried out in India by a third-party private entity.³⁹ Although affected people ultimately did not obtain remedies in this case, the U.S. Supreme Court decision has opened the door to legal

33 At the International Finance Corporation/Multilateral Investment Guarantee Agency, see *Jam v International Finance Corp*, 586 US__ (2019) (US Supreme Court) [*Jam v IFC*].

34 See generally Harold Hongju Koh, "Transnational Public Law Litigation" (1990) 100:8 Yale Law Journal 2347.

35 Athialy, *supra* note 27 at 5.

36 *International Organizations Immunities Act*, 22 USC at para 288 (1945) (US).

37 *Jam v IFC*, *supra* note 33 at 6–15.

38 *Ibid* at 14.

39 *Budha Ismail Jam et al v International Finance Corporation*, 442 F Supp 3d 162, 171–77 (DDC 2020); 481 F Supp 3d 1 (DDC 2020).

actions in the United States against international organizations when their commercial activities result in harm to third parties, reinforcing the need for these organizations to strengthen their internal accountability frameworks to effectively address complaints and provide access to remedies.⁴⁰

The next three subsections examine how the World Bank has facilitated access to remedies for harm caused by its financing activities. As Justice Breyer aptly observed in his dissenting opinion in *Jam*, international organizations, “fully aware of their moral (if not legal) obligations to prevent harm to others and to compensate individuals when they do cause harm, have sought to fulfill those obligations without compromising their ability to operate effectively.”⁴¹ The World Bank’s three remedial mechanisms are: (A) the Inspection Panel, (B) the Grievance Redress Service, and (C) the Dispute Resolution Service. The following analysis identifies the specific legal and policy standards against which the DRS should be evaluated in practice.⁴²

A. The Inspection Panel Offers *Panel*-Led Compliance Review

Subsection A analyzes the compliance review process led by the Inspection Panel. Part 1 discusses the Panel’s creation, tasked with evaluating compliance with World Bank policies and ensuring affected people have access to remedies. It also examines the Panel’s quasi-judicial function, and key principles of accessibility, effectiveness, and independence. Part 2 addresses challenges in accessing remedies via the Panel, and underscores evolving international best practices advocating for dispute resolution processes.

40 Athialy, *supra* note 27.

41 *Jam v IFC*, *supra* note 33 at 14 (Breyer J, dissenting).

42 The resolution establishing the Inspection Panel in 1993 created legal standards applicable to the World Bank concerning the provision of access to remedies. Although multilateral development banks may resist characterizing their constitutive instruments and resolutions as legal standards—preferring instead to frame them as administrative standards—such instruments and resolutions constitute the internal law of multilateral development banks, whereas domestic and international law form their external legal framework. See Philippe Sands & Pierre Klein, *Bowett’s Law of International Institutions*, 6th ed (London, UK: Sweet & Maxwell, 2009) at 448.

1. The Panel's Mandate Has Evolved from Strict Policy Compliance Review to Providing Access to Remedies, Grounded in Accessibility, Effectiveness, and Independence

Established in 1993, the Inspection Panel was the first independent accountability mechanism within a multilateral development bank, enabling third-party non-state actors in developing countries to hold the institution accountable for its actions and decisions. Its creation was driven by external political and social pressures, particularly following widespread criticism of the Narmada dam project in India, which highlighted the Bank's failure to address environmental and social harm.⁴³ Activists and civil society organizations advocated for a mechanism to provide remedies for populations adversely impacted by Bank-funded projects.⁴⁴ Leveraging its power and influence, the U.S. Congress linked Bank funding to the creation of such a mechanism.⁴⁵ Only following these pressures did D^r Shihata, the Bank's then-General Legal Counsel, begin drafting the proposal that would pave the way for the Panel.⁴⁶

Consisting of three members appointed for a five-year non-renewable term, the Panel has the mandate to determine whether the Bank complies with its operational policies and procedures—today, the 2016 *Environmental and Social Framework* policies—in any particular Bank-funded project. While the Panel has a compliance function and adopts a fault-finding approach, it has also been understood over time as providing affected people with basic access to remedies. As a quasi-judicial body, the Bank's Executive Directors cannot change the Panel's findings but retain the power to decide on the outcome of requests at critical stages of the process. For example, the Panel cannot issue binding orders, whether interim or final, as courts typically can.

43 Susan Park, *The Good Hegemon: US Power, Accountability as Justice, and the Multilateral Development Banks* (Oxford: Oxford University Press, 2022) at 61.

44 *Ibid* at 63.

45 *Ibid* at 64–65.

46 *Ibid* at 67. See also David Hunter, "Contextual Accountability, the World Bank Inspection Panel, and the Transformation of International Law in Edith Brown Weiss's Kaleidoscopic World" (2020) 32:3 *Georgetown Environmental Law Review* 439 at 444.

The access to remedies provided by the Inspection Panel can be distilled into three key guiding principles, which are at once procedural and substantive.⁴⁷ The first principle is accessibility. The Panel has broad admissibility and eligibility criteria, according to which any two or more affected people may submit a request on a Bank-funded project.⁴⁸ The opportunity for procedural participation afforded to affected people is also relatively broad, as they can provide information about the facts underlying the complaints during the Panel's investigation.⁴⁹ They are also "consulted" on the remedial measures plan agreed upon between the Bank and the borrower State but do not have any decision-making power.⁵⁰

The second principle is effectiveness. Once it receives a complaint, the Panel first issues its recommendation to the Executive Directors on whether the eligibility criteria are met and whether an investigation should be carried out. With the directors' approval, the Panel conducts such an investigation, submitting its findings of facts regarding the Bank's compliance with its operational policies and making any related findings of harm.⁵¹ Although these findings are non-binding, they enable Bank Management to propose remedial actions to prevent any non-compliance and harm from continuing. The Panel itself does not expressly recommend remedial actions.

47 These three principles derive from the key themes of the Inspection Panel's mandate, as set out in its 1993 *Resolution*. Other scholars have identified similar themes, though some have subdivided them into a greater number of principles. See, for example, Virginie Richard, "Independent Accountability Mechanisms as Guardians of a Kaleidoscopic Legal Accountability" in McIntyre & Nanwani, eds, *supra* note 12 at 330–37 (proposing ten criteria for assessing international accountability mechanisms generally). Similarly, Principle 31 of the *United Nations Guiding Principles on Business and Human Rights* provides that non-judicial grievance mechanisms should adhere to and be evaluated based on eight criteria: (a) legitimacy, (b) accessibility, (c) predictability, (d) equitability, (e) transparency, (f) rights-compatibility, (g) capacity for continuous learning, and (h) foundation in engagement and dialogue. See Office of the United Nations High Commissioner for Human Rights (OHCHR), *Guiding Principles on Business and Human Rights*, 2011, UN Doc HR/PUB/11/04 [*UN Guiding Principles*].

48 World Bank, Inspection Panel, *Operating Procedures* (1994) at paras 16, 52, and 54, online: <inspectionpanel.org> [perma.cc/KSV2-FR2N] [*1994 Inspection Panel Operating Procedures*].

49 *Ibid* at paras 47–49.

50 World Bank, Inspection Panel, *Updated Operating Procedures* (April 2014) at paras 68, 70, online (pdf): <inspectionpanel.org> [perma.cc/DS5X-GVCD] [*2014 Panel Operating Procedures*].

51 *1994 Inspection Panel Operating Procedures*, *supra* note 48 at paras 16, 52, and 54.

The third principle is independence and impartiality.⁵² Reporting directly to the Bank's Executive Directors, the Panel must be independent not only from them and Bank Management, but also from the borrower States and requesters. The Panel must also be impartial to the merits of the complaints, meaning it should deal thoroughly and fairly with them. On this basis, the Panel must give reasons supporting its recommendations and findings, grounded in the evidence and facts.⁵³

Based on these principles, a debate has persisted throughout the Panel's existence regarding whether its mandate directly includes remedying harm to which the Bank contributed. Ibrahim Shihata reported that "Bank staff felt at times that the Panel was more concerned with the issue of harm, regardless of its cause, than with material harm resulting from the Bank's serious violation of its operational policies and procedures as required by the [Inspection Panel] Resolution."⁵⁴ His own view is that remedying harm is "certainly a noble function, but it is not the function of the Panel."⁵⁵

Nevertheless, evolutions in the Panel's procedures and practices have confirmed that, in addition to its compliance functions, the Panel also serves as a forum for remedying actual harm suffered by affected people. The 2014 and 2022 *Inspection Panel Operating Procedures* describe the Panel's "two important accountability functions" as: (1) assessing compliance with Bank policies; and (2) "provid[ing] a forum for people [...] to seek recourse for harm which they believe result[s] from Bank-supported operations."⁵⁶ In practice, quantitative and qualitative data show that the Panel's recommendations have enabled a consistently expanding scope of reparative measures to address harm suffered.⁵⁷

52 World Bank, *Resolution No IBRD 93-10 & Resolution No IDA 93-6*, "The World Bank Inspection Panel", 22 September 1993 at para 4, online (pdf): <inspectionpanel.org> [perma.cc/Q7BW-5UCH][1993 *Inspection Panel Resolution*]. See also LT Preston, "The World Bank Inspection Panel" (World Bank, 24 September 1993).

53 *Ibid* at para 22; 1994 *Inspection Panel Operating Procedures*, *supra* note 48 at para 37.

54 Shihata, *supra* note 13 at 259–60.

55 See Dimitri van den Meerssche, *The World Bank's Lawyers: The Life of International Law as Institutional Practice* (Oxford: Oxford University Press, 2022) at 56, footnote 100.

56 2014 *Panel Operating Procedures*, *supra* note 50 at para 2(a).

57 Notre Dame Reparations Lab, "Reparations Research" (2025) University of Notre Dame, online: (university website) <kellogg.nd.edu> [perma.cc/2HLT-E9ZS].

These evolutions are informed by developing standards within international accountability practices. For example, the 2011 *United Nations Guiding Principles on Business and Human Rights* (*UN Guiding Principles*, also known as the “*Ruggie Principles*”) state that, “[i]n order to meet their responsibility to respect human rights, business enterprises should have in place [...] [p]rocesses to enable the remediation of any adverse human rights impacts they cause or to which they contribute.”⁵⁸

2. The Panel Faced Structural and Procedural Constraints in Ensuring Remedies, Lacking Dispute Resolution Functions

In practice, the Inspection Panel has relatively successfully exercised its compliance review function. The Bank receives complaints annually on about three percent of its 250 ongoing projects, and of that three percent of projects, the Inspection Panel investigates about a third.⁵⁹ Most complaints concern environmental assessment, investment project financing, consultation/disclosure, and involuntary resettlement.⁶⁰ Despite suspected attempts to erode its authority and independence,⁶¹ the Panel has largely retained its original mandate.

Regarding its fault-finding approach, the Panel has been highly effective in holding the Bank accountable and fostering institutional learning. It has also been moderately successful in preventing future harm. For instance, regarding the *Uganda Transport Development Project*⁶² of the mid-2010s,

58 *UN Guiding Principles*, *supra* note 47 at Principle 15 (c) [emphasis added]. While most relevant for States, they also set, by analogy, a benchmark to assess how multilateral development banks should provide access to remedies. See, similarly, van Huijstee *supra* note 12 at 14, using the *UN Guiding Principles* as an assessment framework to evaluate international accountability mechanisms.

59 World Bank, Inspection Panel, *Annual Report* (2021) at 26, online (pdf): <worldbank.org> [perma.cc/29AC-UFKC].

60 *Ibid* at 27.

61 Dustin Schäfer, “Between Disruption and Legitimation of Development: A Critical Perspective on the Inspection Panel and a Call for More Radical Thinking Within the Accountability Community”, *Perspectives* (Washington: American University Washington College of Law, 2023), online (pdf): <digitalcommons.wcl.american.edu> [perma.cc/ZGN4-45P2].

62 *Uganda-Transport Sector Development Project*, Uganda, 24 August 2009, WBO (entered into force on 10 December 2010).

then-World Bank Group President Jim Yong Kim noted that the Inspection Panel's investigation uncovered multiple failures, including instances of gender-based violence, which played "an important role in the Bank cancelling the project."⁶³

Furthermore, concrete evidence indicates that the Panel's existence has led to "precautionary compliance" within the World Bank.⁶⁴ This phenomenon, often referred to as "Panel proofing", describes the heightened diligence exercised by the Bank and borrower States to ensure that project activities adhere to the World Bank's policies and procedures in anticipation of potential review by an independent oversight mechanism. Multilateral development banks such as the World Bank should consider this effect when assessing whether the scrutiny and perceived benefits of accountability mechanisms like the Panel justify the associated financial and operational costs.

However, the Panel has been less effective in remedying the harm already suffered by affected people.⁶⁵ While the result of the Panel's investigation is to bring the project back into compliance, it does not guarantee remedies for affected people concerning the harm that already occurred.⁶⁶ Moreover, according to one study, compliance investigations at the Bank take an average of fifteen months.⁶⁷ Such a delay is significant for many affected people, especially when investigations concern allegations of serious harm. Affected people also have no decision-making power on the remedial measures agreed upon between the Bank and the borrower State. The Bank Management and Executive Directors may also ignore—and in some cases have indeed ignored—the findings of non-compliance by accountability mechanisms

63 *The Inspection Panel at 25 Years*, *supra* note 11 at 70.

64 Daniel D Bradlow, "Private Complainants and International Organizations: A Comparative Study of the Independent Inspection Mechanisms in International Financial Institutions" (2005) 36:2 *Geo J Int L* 403 at 463 [Bradlow, "Private Complainants"].

65 See e.g. Lynn MG Ta & Benjamin AT Graham, "Can Quasi-Judicial Bodies at the World Bank Provide Justice in Human Rights Cases" (2018–2019) 50 *Georgetown Journal of International Law* 113 at 124–25, Figure 2, reporting that over 15 per cent of eligible complaints at the Inspection Panel and Compliance Advisor Ombudsman result in compensation, but even then they "often simply enforce[d] the payment of sums which had been promised, but not delivered, to displaced communities."

66 van Huijstee *supra* note 12.

67 *Ibid* at 43.

like the Panel.⁶⁸ In short, the Panel does not offer affected people the same access to remedies to make affected people whole through a problem-solving approach as a dispute resolution process would.

Best practices over the three decades since the Inspection Panel's creation indicate that access to remedies for harm involving multilateral development banks should extend beyond compliance review processes to include dispute resolution mechanisms as well. Crucially, two types of dispute resolution mechanisms recommended by the *UN Guiding Principles* are particularly relevant to the World Bank. The first is “operational-level” grievance mechanisms, which should remedy complaints early and directly.⁶⁹ The second is “non-judicial” grievance mechanisms, which must be part of a comprehensive accountability framework to address complaints.⁷⁰ These two types of mechanisms complement but do not substitute each other.⁷¹ Both mechanisms must ensure that “outcomes and remedies accord with internationally recognized human rights.”⁷² This very requirement has been endorsed by a World Bank publication on the evaluation of grievance mechanisms.⁷³ Although the distinction between the two mechanisms may appear academic, it may hold substantial practical implications, as multilateral development banks' donors and shareholders may tie millions in funding to the presence of both.⁷⁴

In response, in part, to the development of best practices concerning access to remedies, twenty multilateral development banks have established accountability mechanisms similar to the Inspection Panel to provide access to remedies through a compliance review process. Many of these banks have also included dispute resolution processes to increase the effectiveness of access.⁷⁵

68 See e.g. *Jam v IFC*, *supra* note 33 at 5–6.

69 *UN Guiding Principles*, *supra* note 47 at Principle 29 [emphasis added].

70 *Ibid*, Principle 27 [emphasis added].

71 *Ibid*, Commentary to Principle 29.

72 *Ibid*, Principle 31(f).

73 World Bank, *Evaluating a Grievance Redress Mechanism* (2014), online (pdf): <documents.world-bank.org> [perma.cc/7HQ8-9428].

74 During a confidential interview, it was reported that this issue had arisen in at least one real-life situation.

75 Mackenzie et al, *supra* note 13 at para 17.29.

Significantly, all multilateral development banks of comparable size and function to the World Bank now provide access to dispute resolution processes.⁷⁶

B. The Grievance Redress Service Offers *Management*-Led Solution

Subsection B examines the dispute resolution options the World Bank has implemented to align its accountability framework with best practices.⁷⁷ Part 1 reviews the corporate-level dispute resolution process led by Bank Management: the Grievance Redress Service. Part 2 sets out the two informal dispute resolution mechanisms related to the Inspection Panel.

1. The Grievance Redress Service Bridges the Accountability Gap Between Project-Level Grievance Mechanisms and the Panel's Compliance Review

Launched in 2015, the Grievance Redress Service is a complaint-handling mechanism that helps project teams broker solutions relating to social and environmental concerns. The mechanism operates at the corporate level and reports to senior Bank Management. Its mandate is to address complaints directly and effectively with the project teams to “[close] the gap” between project-level grievance redress mechanisms and the Inspection Panel in the Bank's accountability framework.⁷⁸ As one of the eligibility criteria for submitting a complaint to the Inspection Panel is that affected people must have previously voiced their concerns to Management, engagement with the Service is more than sufficient but not in itself mandatory.⁷⁹

76 Daniel D Bradlow, “External Review of the Inspection Panel's Toolkit” (2018) at paras 64, 67, online (pdf): <documents1.worldbank.org> [perma.cc/C7JD-2RNM] [“Initial External Review”].

77 Historically, affected people seeking to resolve complaints through the Bank's dispute resolution process had access only to project-level grievance mechanisms—and only when such mechanisms were established by borrower States themselves, which was not always the case: see Framework, *supra* note 2 at paras 60–61.

78 World Bank, “Grievance Redress Service: Finding Solutions Together” (2021), online (pdf): <thedocs.worldbank.org> [perma.cc/7FB9-BSDD].

79 2020 *Inspection Panel Resolution*, *supra* note 7 at para 14. However, affected people who submitted a complaint to the Inspection Panel could subsequently resort to the Grievance Redress Service, as there is no sequential relationship between the two.

The Bank’s primary motivation for establishing the Grievance Redress Service was to address issues before they garnered significant negative media attention or automatically escalated to the Inspection Panel. Civil society organizations, for their part, welcomed the mechanism but advocated for greater transparency and independence from Management while opposing any proposals that would restrict or unduly delay access to the Inspection Panel.⁸⁰

The growing number of cases the Grievance Redress Service receives each year shows that it has effectively provided affected people with access to certain remedies.⁸¹ In 2023, the mechanism received over 500 complaints, marking a 40% increase from 2022 and bringing the cumulative total to nearly 2,000.⁸² It has also regularly implemented changes to perform its mandate better. For instance, the relatively recent addition of an “escalation clause” in its *Directives* allows the Service to bring quickly high-risk complaints to senior Management’s attention.⁸³

Given its features, the Grievance Redress Service, similarly to project-level grievance mechanisms, fulfils the function of “operational-level” grievance mechanisms envisaged by the *UN Guiding Principles*.⁸⁴ It has strengthened the Bank’s accountability framework by complementing the Inspection Panel’s mandate. Despite its advancements, a full assessment of its effectiveness at a granular level is challenging due to its opacity, particularly the absence of comprehensive publicly available data.

While the Grievance Redress Service has been successful at resolving relatively simple operational issues, like minor construction impacts, it has been less successful at resolving complex issues, like infrastructural changes affecting livelihoods. This is in part because the Service does not report to the top level of the Bank and has a junior status in the Bank hierarchy,

80 These points were reported in multiple confidential interviews.

81 Bradlow, “Initial External Review”, *supra* note 76 at 14, para 56.

82 World Bank, *Grievance Redress Service: Annual Report Financial Year 2023 — Finding Solutions Together* (2024), online (pdf): <documents1.worldbank.org> [perma.cc/RSF4-4YFS].

83 World Bank, *Bank Directive: Grievance Redress Service* (5 May 2021), online (website): <worldbank.org> [perma.cc/ZKC3-WJBS].

84 *UN Guiding Principles*, *supra* note 47 at Principle 29 [emphasis added].

which hampers its operation for complex issues.⁸⁵ Its ability to resolve them is also limited by its (real or perceived) lack of independence from Bank Management.⁸⁶

The limitations of the Grievance Redress Service have questioned whether the Bank was meeting best practices on access to remedies, given that it was the only dispute resolution mechanism offered by the Bank itself for a long time. This gap has had implications for the credibility and reputation of the World Bank since all other multilateral development banks have been offering dispute resolution at the top level of the organization.⁸⁷

2. The Panel's Informal Dispute Resolution Mechanisms Potentially Undermined Its Mandate

Two informal dispute resolution mechanisms related to but formally outside of the Inspection Panel's process were also introduced in the mid-2010s to handle the complaints of affected people. The first mechanism was a 2013 pilot project in which the Inspection Panel was empowered to postpone its decision on registration of a request, delaying the triggering of the twenty-one-business-day period for Bank Management to provide its response.⁸⁸ The second mechanism was based on the Inspection Panel's 2014 *Operating Procedures*, which entailed the Panel delaying making a recommendation on investigation for a stipulated period.⁸⁹ Both mechanisms aimed to provide affected people and Management with more time to develop early solutions to complaints without a formal investigation by the Inspection Panel, improving the "effectiveness" of affected people's access to remedies.⁹⁰

85 Bradlow, "Initial External Review", *supra* note 76 at 14–15, para 57.

86 Accountability Counsel, "Civil Society Statement on the October 31 Decision of the World Bank's Board of Directors on the Review of the Inspection Panel's Toolkit" (14 January 2019), online (blog): <accountabilitycounsel.org> [perma.cc/K62T-PZSL].

87 Bradlow, "Initial External Review", *supra* note 76 at 18, para 68.

88 World Bank, *Piloting a New Approach to Support Early Solutions in the Inspection Panel Process* (November 2013), online (pdf): <accountabilitycounsel.org> [perma.cc/W8BY-P7BC] [*Piloting a New Approach*].

89 2014 *Panel Operating Procedures*, *supra* note 50 at para 44, footnote 7.

90 World Bank, *Piloting a New Approach*, *supra* note 88 at 3; Inspection Panel, "Inspection Panel Adopts Updated Operating Procedures" (7 April 2014), online (press release): <inspectionpanel.org> [perma.cc/6QTA-BAA4].

Despite the objective of these dispute resolution mechanisms, their success in practice remained uncertain. The mechanisms were only employed in a few cases, which meant neither was subject to a systematic review of its actual effectiveness. First-hand accounts of the only two cases handled through the first mechanism—the postponement of registration—suggest that one was reasonably successful while the other was not.⁹¹

Significantly, concerns arose about whether the mechanisms complied with the Inspection Panel’s mandate, let alone with best practices on access to remedies. By seeking to improve the first principle of the Panel (i.e., effectiveness), the mechanisms may well have compromised the other two (i.e., accessibility as well as independence and impartiality). As to accessibility, the mechanisms did not offer affected people a meaningful opportunity to participate in the design and implementation of measures to address their complaints and lacked procedural protections to counteract the inherent power imbalance between them and Bank Management.⁹² As to independence, “[t]hese mechanisms blur[red] the clear distinction between the [Inspection Panel]’s responsibilities as an independent and objective fact finder and management’s role in the [Inspection Panel] process.”⁹³ For instance, the mechanisms lacked a neutral mediator to oversee the problem-solving process.⁹⁴

In short, the Bank’s introduction of the Grievance Redress Service and two dispute resolution mechanisms underscored the dispute resolution gap in the Bank’s accountability framework. Because neither mechanism adequately filled this gap by providing an independent dispute resolution process, the Bank introduced a third avenue for accessing remedies: the Dispute Resolution Service.

91 Bradlow, “Initial External Review”, *supra* note 76 at 15, para 58, footnote 40.

92 Richard, *supra* note 47; van Huijstee *supra* note 12 at 67–68.

93 *Ibid.*, at iii, para 12; Katelyn Gallagher, “Tools for Activists: An Information and Advocacy Guide to the World Bank Group” (1 March 2020) Module 5 at 9, online (website): Bank Information Center <bankinformationcenter.org> [perma.cc/X78Z-UGBB].

94 van Huijstee, *supra* note 12 at 67–68.

C. The Dispute Resolution Service Offers *Party-Led* Dispute Resolution

Subsection C examines the party-led dispute resolution process facilitated by the DRS. Part 1 reviews the DRS' mandate to expand access to remedies through dispute resolution. Part 2 analyzes the procedural challenges revealed in the DRS initial cases.

1. The Bank Established the DRS to Expand Access to Remedies Through Party-Led Dispute Resolution, Complementing but Not Compromising the Panel's Compliance Review

The DRS was established in 2020 to increase access to remedies for affected people through dispute resolution processes in addition to, but not as a substitute for, the compliance review process overseen by the Panel. This development was precipitated by the approval of the World Bank's revised operational policies and procedures, the 2016 *Environmental and Social Framework* policies. The *Framework*, among other things, aligned with the concept of due diligence promoted by the *UN Guiding Principles*,⁹⁵ and included the novel requirement that every Bank-funded project has a project-level grievance redress mechanism overseen by borrower States.⁹⁶

While all relevant stakeholders agreed on the need for a dispute resolution mechanism at the highest level of the World Bank, there was no consensus on its structure—particularly regarding the extent to which it would affect the Panel's mandate and independence.⁹⁷ The mechanism had to meet the expectations of the Bank's Board of Executive Directors—comprising 25 members representing Member States with divergent political priorities—while also engaging with Bank Management, the Inspection Panel, civil society organizations, other international accountability mechanisms, and a handful of academics. As Inspection Panel Chair Ramanie

95 Compare *UN Guiding Principles*, *supra* note 47 at Principles 17–21, with *Framework*, *supra* note 2 at Bank Requirement C (“Environmental and Social Due Diligence”).

96 *Framework*, *supra* note 2 at Bank Requirement I (“Grievance Mechanism and Accountability”) at 11, paras 60–61.

97 This point generally came out of the confidential interviews.

Kunanayagam later observed, “[the] process [was] challenging, as everyone had strong views not only on what tools should be added, but also on the structure to accommodate these additional tools.”⁹⁸

Following an *Initial External Review*⁹⁹ and the recommendation of Bank Management, the Executive Directors agreed to establish the DRS along the following lines. First, the requesters must meet the eligibility criteria for submission of complaints to the Inspection Panel, and the Executive Directors must approve an Inspection Panel recommendation to investigate the complaint. Subsequently, should both the requesters and the borrower State voluntarily agree, they would have the opportunity to resolve the complaint through dialogue, information sharing, joint fact-finding, mediation, conciliation, and similar alternative dispute resolution methods. In this case, the Panel will hold its compliance process in abeyance until the dispute resolution process concludes.

While the Accountability Mechanism Secretary and DRS staff will “administer” the proceedings, an external neutral third party will assist the parties in reaching an agreement. With the consent of both parties, Bank Management may be an observer in the dispute resolution process, although its role remains solely technical.¹⁰⁰ At the end of the dispute resolution process, the DRS will issue a report to the Executive Directors through the Accountability Mechanism Secretary, informing them of the outcome of the process. If the parties cannot arrive at a settlement within a year and a half at most, then the complaint is brought back before the Inspection Panel. Like the Panel, the DRS, which facilitates the dispute resolution process, honours requests

98 World Bank, Accountability Mechanism, “World Bank Accountability Mechanism Secretary and Inspection Panel Releases New and Updated Operating Procedures” (12 December 2022), online (press release): <accountability.worldbank.org> [perma.cc/PU9Y-3HKM] (commenting on the reform of the 2022 *Accountability Mechanism Operating Procedures*).

99 Bradlow, “Initial External Review”, *supra* note 76.

100 In contrast, the International Finance Corporation & Multilateral Investment Guarantee Agency, “Independent Accountability Mechanism Compliance Advisor Ombudsman Policy” (1 July 2021) at para 75, online (pdf): <ifc.org> [perma.cc/HEL8-Z39Q] (providing that “[w]here appropriate and agreed by the Parties, IFC/MIGA may be invited to participate in a Compliance Advisor Ombudsman dispute resolution process. IFC/MIGA will consider its participation on a case-by-case basis.”).

for confidentiality from the parties, including the complete confidentiality of the content of dispute resolution agreements.

Given its features, the DRS offers a proper problem-solving approach to the parties. It provides affected people a more significant opportunity to have alleged harm remedied than the Bank's Inspection Panel process. Affected people also benefit from having an additional avenue of remedy through which their concerns can be heard and addressed by borrower States. The DRS therefore fulfils the function of the “non-judicial” grievance mechanism envisaged by the *UN Guiding Principles*.¹⁰¹

Meanwhile, the DRS should not restrict affected people's access to remedies through the Inspection Panel, nor should it serve as a substitute for the compliance review process. Indeed, the Executive Directors have affirmed that the DRS' mandate is to “enhance the effectiveness of the World Bank's accountability system” while remaining both accessible and independent, akin to the Panel.¹⁰² Accordingly, the *Accountability Mechanism Resolution* and the *Accountability Mechanism Operating Procedures* must ensure that the outcomes of problem-solving are at least as protective of requesters as those provided via the Inspection Panel's process.

2. The DRS' Initial Cases Revealed Procedural Challenges in Protecting Affected People's Rights

In the first two and a half years of DRS operation, from October 2021 to April 2024, parties were presented with the opportunity for dispute resolution regarding seven complaints.¹⁰³ In three complaints, the requesters declined participation, resulting in the complaints advancing to compliance

¹⁰¹ *UN Guiding Principles*, *supra* note 47 at Principle 27 [emphasis added].

¹⁰² World Bank, *Report and Recommendations on the Inspection Panel's Toolkit Review* (5 March 2020) at 4, para 23, and at 6, para 38, online (pdf): <documents.worldbank.org> [perma.cc/W389-KWQN] [*Recommendations on Toolkit Review*].

¹⁰³ Eighteen complaints have been submitted to the Bank's Accountability Mechanism and could potentially have gone through the dispute resolution phase. However, 11 complaints did not reach the dispute resolution phase due to non-registration of the request for inspection or other related issues.

review by the Panel.¹⁰⁴ As of this writing in April 2024, the dispute resolution process remains active for two complaints involving projects in Vietnam and Cameroon. The latter complaint is complicated by the involvement of an accountability mechanism at another bank.¹⁰⁵ Finally, fully confidential dispute resolution agreements were reached in two complaints involving projects in Nepal and Uganda.¹⁰⁶

In Uganda’s Lubigi Drainage Channel complaint, discussed in Section I, the parties began dispute resolution in December 2021 under the DRS’ Interim Operating Procedures. As the 18-month deadline for dispute resolution approached, the Accountability Mechanism Secretary decided that the parties had either to resolve all issues through dispute resolution or refer them all to compliance review, despite the final *Accountability Mechanism Operating Procedures* allowing for partial agreements through dispute resolution.¹⁰⁷ Advisors to the Kawaala community, Accountability Counsel, as well as 16 civil society organizations, issued a *Joint Statement* criticizing this decision.¹⁰⁸ They argued that it contradicted the operating procedures’ express text, deviated from best practices observed at other accountability mechanisms, and unfairly pressured affected people into an agreement that might not fully address all project concerns.¹⁰⁹

In May 2023, the DRS announced that the Kawaala community and the government-affiliated Kampala Capital City Authority reached an amicable

¹⁰⁴ See World Bank, *Tanzania: Resilient Natural Resource Management for Tourism and Growth* (6 June 2018) (P150523); World Bank, *Togo: West Africa Coastal Areas Resilience Investment Project* (2018) (P162337); World Bank, *Bolivia: Santa Cruz Road Corridor Connector Project (San Ignacio—San Jose)* (2017) (P152281).

¹⁰⁵ See World Bank, *Viet Nam: Coastal Cities Sustainable Environment Project* (2017) (P156143); World Bank, *Cameroon: Nachtigal Hydropower Project* (2018) (P157734); World Bank, *Hydropower Development on the Sanaga River Technical Assistance Project* (2016) (P157733).

¹⁰⁶ World Bank, “World Bank’s First Dispute Resolution Service Outcome: Parties Settle in Nepal Electricity Transmission Line Project Case” (27 April 2023), online (press release): <accountability.worldbank.org> [perma.cc/J7B3-YR8A].

¹⁰⁷ See 2022 *Accountability Mechanism Operating Procedures*, *supra* note 8.

¹⁰⁸ Accountability Counsel et al, “Joint Statement on World Bank Accountability Mechanism’s Decision to Limit Application of Operating Procedures” (30 March 2023), online (blog): <accountabilitycounsel.org> [perma.cc/F7U7-3842].

¹⁰⁹ *Ibid.*

settlement, concluded on the last mediation day before the deadline. The announcement stated that the parties had reached a “full and final settlement” addressing issues such as involuntary resettlement and land acquisition, while agreeing to maintain full confidentiality regarding its details.¹¹⁰ The DRS included a few statements from two community members and a government representative praising the dispute resolution process.¹¹¹

In response, advisor Accountability Counsel commended the Kawaala community for its commitment to securing its right to safety and just compensation, culminating in the signing of the dispute resolution agreement.¹¹² However, it observed that, despite the termination of the complaint, the Kawaala community has yet to achieve justice and even to receive a copy of the agreement reached weeks later.¹¹³ Accountability Counsel also critiqued the DRS' handling of the Kawaala community's right to representation, specifically condemning its “lack of transparency” in the final days of negotiation, and the DRS' subsequent refusal to share the dispute resolution agreement with it despite serving as an advisor to the community.

III. The Bank Should Strengthen the DRS' Access to Remedies Through Reforms Relating to Its Three Guiding Principles

The previous section established the legal and policy standards by which the DRS should be assessed. Building on this foundation, Section III proposes improvements based on three guiding principles, each addressed in a dedicated subsection: (A) accessibility, (B) effectiveness, and (C) independence and impartiality.

110 Orsolya Szekely, “Notice of Dispute Resolution Agreement – Uganda: Second Kampala Institutional and Infrastructure Development Project (KIIDP-2) (P133590)” (31 May 2023), Case N° 21/01-DRS, online (pdf): <inspectionpanel.org>.

111 World Bank, “Mediation Paves Way for Agreement Between Parties in World Bank-financed Uganda Infrastructure Project” (1 June 2023), online (press release): <accountability.worldbank.org> [perma.cc/Q3ED-FZSB].

112 Robi Chacha Mosenda, “For Ugandan Communities, There Is Resolution, But Not Yet Justice” (18 June 2023), online (press release): <accountabilitycounsel.org> [perma.cc/E6A8-SVD5].

113 *Ibid.*

A. The DRS Should Enhance Its Accessibility by Reforming Its Eligibility Criteria, Representation Rights, and Access to Information

The first area for improvement relates to the accessibility of remedies for affected people. Part 1 analyzes how one eligibility criterion unnecessarily restricts access to the DRS. Part 2 underscores the necessity of allowing parties to freely select their representatives and advisors with minimal intervention from the DRS. Part 3 emphasizes the importance of broader access to project-related information to enable the meaningful participation of affected people in the dispute resolution process.

1. Eligibility Should Reflect the Purpose of Dispute Resolution, Not Compliance

To access the DRS, requesters must satisfy all the eligibility criteria of the Inspection Panel.¹¹⁴ Certain criteria, such as the requirement that a request concerns a Bank-funded project, should logically apply to both the Panel and the DRS. However, other criteria, such as the requirement that harm must result from the Bank’s violation rather than the borrower State’s actions, are less relevant in the dispute resolution context. This restriction reduces access to remedies, particularly in comparison to the Inspection Panel’s 1993 mandate.

The challenge arises because one of the Inspection Panel’s eligibility criteria—demonstrating that the alleged harm and potential non-compliance by the Bank with its operational policies and procedures may be serious¹¹⁵—is now more difficult to meet under the Bank’s revised *2016 Environmental and Social Framework*. This is due to the framework’s narrower scope of the Bank’s responsibilities compared to previous policies.¹¹⁶

114 *2020 Inspection Panel Resolution*, *supra* note 7 at paras 13–15.

115 World Bank, Inspection Panel, *Operating Procedures* (December 2022) at para 48(b), online (pdf): <inspectionpanel.org> [perma.cc/PT7Z-C9TH].

116 The shift from prescriptive standards to a “risk management approach” makes it more difficult for the Panel to assess project compliance with the *Framework*: Bradlow, “Initial External Review”, *supra* note 75 at 16–17 at para 63; World Bank, Inspection Panel, *Comments on the Second Draft*

The eligibility criterion of establishing harm caused by the World Bank is particularly problematic in projects where the Bank allows borrower States to apply their own safeguards—commonly referred to as “country systems” or “borrower frameworks”¹¹⁷—instead of the Bank’s own international safeguards. This practice shifts many of the Bank’s traditional responsibilities onto the borrowers, making it harder for requesters to demonstrate harm directly caused by the Bank.¹¹⁸

Furthermore, the difficulty in meeting the criterion is exacerbated by a new procedural limitation: during the eligibility determination phase, Bank Management may submit evidence of actual compliance or intent to comply, yet requesters are neither granted access to this evidence nor allowed to respond.¹¹⁹ This lack of procedural participation further restricts affected people’s access to remedies.¹²⁰

Within the Inspection Panel’s compliance review process, requiring requesters to prove that harm stems from a Bank violation is logical, as the investigation focuses precisely on this issue. In contrast, in dispute resolution, this criterion is far less relevant and therefore appears unjustified. The primary goal of the Bank’s current dispute resolution process is problem-solving with borrower States, rather than assessing whether harm resulted from a violation of Bank policies. In other words, the DRS should be

of the Proposed Environmental and Social Framework (17 June 2015) at paras 10–11, online (pdf): <inspectionpanel.org> [perma.cc/32N2-JHFY].

117 World Bank, *Framework*, *supra* note 2 at 6–7, paras 23–29. This approach was preceded by a pilot: see World Bank, *Operational Manual – Piloting the Use of Borrower Systems to Address Environmental and Social Safeguard Issues in Bank-Supported Projects*, OP/BP 4.00 (March 2005), online (pdf): <thedocs.worldbank.org> [perma.cc/QNN8-KZ8A].

118 While some multilateral development banks impose relatively stringent “functional equivalence” tests, the World Bank’s recourse to borrower States’ systems or frameworks applies “looser and more aspirational” test: see OHCHR, *supra* note 12 at 78. It requires only that a borrower State’s system “enable[s] the project to achieve objectives materially consistent” with the World Bank safeguards: World Bank, *Framework*, *supra* note 2 at 6–7, para 23. Although banks have characterized the reliance on borrower States’ systems as an upgrade, notably due to its flexibility, civil society organizations argue it represents a downgrading of international standards.

119 2020 *Inspection Panel Resolution*, *supra* note 7 at para 19.

120 Diane Desierto et al, “The ‘New’ World Bank Accountability Mechanism: Observations from the ND Reparations Design and Compliance Lab” (11 November 2020) *EJIL:Talk!*, online (blog): <ejiltalk.org> [perma.cc/4ZC7-6HG7].

designed to address harm more directly, rather than requiring a preliminary showing of non-compliance. This approach aligns with the problem-solving function of other accountability mechanisms, such as the European Bank for Reconstruction and Development’s Independent *Project Accountability Mechanism*, which explicitly states its dispute resolution process supports dialogue “without attributing blame or fault.”¹²¹

Although the Bank’s eligibility criteria for DRS complaints are consistent with those of most—but not all—multilateral development banks,¹²² it remains questionable whether they align with the Bank’s commitment to expanding access to remedies through the DRS.¹²³ A more accessible approach would allow parties to engage in dispute resolution upon mutual agreement, without requiring requesters to meet all of the Inspection Panel’s eligibility criteria.¹²⁴ Following this approach, borrower States’ consent would serve as a sufficient safeguard against an excessive number of complaints while preserving the Inspection Panel’s central role in the Bank’s accountability framework.¹²⁵ For these reasons, the Bank should consider abolishing the eligibility criterion that requires harm to result from the Bank’s failure to comply with its policies.

2. Each Party Should Be Empowered to Freely Engage with Its Advisors

Another proposed improvement to accessibility concerns the parties’ choice of advisors and representatives. Paragraph 21.2 of the *Accountability*

121 European Bank for Reconstruction and Development, *Project Accountability Policy* (April 2019) at para 1.1(a), online (pdf): <ebrd.com> [perma.cc/4VNN-F6EK].

122 OHCHR, *supra* note 12 at 117.

123 Peter Woicke et al, “External Review of IFC/MIGA E&S Accountability, Including Compliance Advisor Ombudsman’s Role and Effectiveness: Report and Recommendations” (12 August 2020) at para 209, online (brief): <worldbank.org> [perma.cc/M4V5-8VL8].

124 World Bank, Inspection Panel, “World Bank Accountability Mechanism and Inspection Panel Reforms: Virtual Discussion” (22 October 2020), online (video): <youtube.com> [perma.cc/M5GZ-ZS27].

125 For instance, initial concerns in the 1990s that creating the Panel would lead to numerous unfounded complaints ultimately proved unfounded. The record shows that only a limited number of requests have been submitted, and even fewer have required further inspection. See Shihata, *supra* note 13 at 260.

Mechanism Operating Procedures allows parties to engage additional advisors freely, removing the requirement—present in the first two versions of the DRS procedures—that such appointments be “subject to no objection of the other Party.”¹²⁶ By initially requiring mutual agreement on additional advisors, the DRS risked exacerbating existing power imbalances between the parties. For instance, borrower States might have objected to requesters retaining certain civil society organizations if those organizations had previously criticized the States’ human rights records. This could have pressured requesters to comply with borrower States’ preferences when selecting advisors to proceed with dispute resolution.¹²⁷

A study on the Compliance Advisor Ombudsman, the accountability mechanism of the International Finance Corporation and Multilateral Investment Guarantee Agency, found that complaints were more likely to result in a remedy or proceed to compliance review when civil society organizations assisted complainants in dispute resolution processes.¹²⁸ The study also reported that the Compliance Advisor Ombudsman’s decision to restrict the involvement of civil society organizations and legal representatives in

126 World Bank Accountability Mechanism, *Draft Accountability Mechanism Operating Procedures: Open Consultation* (18 July 2022 – 12 September 2022) [on file with author], online: <accountability.worldbank.org> [perma.cc/EYS3-PJAZ]; World Bank, *Accountability Mechanism Operating Procedures* (5 December 2022, re-issued with procedural clarification 6 March 2023) at para 21.1, online: <thedocs.worldbank.org> [perma.cc/A74B-A738] [*Accountability Mechanism Operating Procedures*]; World Bank Accountability Mechanism, Dispute Resolution Service, *Interim Operating Procedures* (13 October 2021) at para 14.3 online (pdf): <thedocs.worldbank.org> [perma.cc/H2KB-YQ74];

127 See van Huijstee *supra* note 12 at 114. An earlier version of this paper, which advanced this very argument, was shared with the DRS during the revision of its procedures.

128 Roxanna Altholz & Chris Sullivan, *Accountability & International Financial Institutions: Community Perspectives on the World Bank's Office of the Compliance Advisor Ombudsman* (Berkeley: International Human Rights Law Clinic, University of California, 2017) at 3, online (pdf): <law.berkeley.edu> [perma.cc/WU3J-BUFV]. See also Ta & Graham, *supra* note 65 at 127–29. Recently, Accountability Counsel’s Research program launched a comprehensive project analyzing the outcomes of all accountability mechanisms to determine whether they provided remedies directly benefiting communities. Although the full findings are pending, preliminary empirical results confirm the Berkeley Law Clinic’s conclusion that remedies are more accessible when supported by international civil society organizations. See the Accountability Console, an interactive database documenting every community complaint filed with accountability mechanisms: Accountability Counsel, “Research”, online (website): <accountabilitycounsel.org> [perma.cc/9CS4-VLLM].

negotiations and mediations “engendered distrust among complainants” and, in some cases, “prompted their decision to withdraw from the dispute resolution process.”¹²⁹ This is unsurprising, as dispute resolution may not produce fair outcomes when there is a significant imbalance of power and resources between the parties—often, on one side, local communities in developing countries and, on the other, large State entities.¹³⁰ Removing from the final *Accountability Mechanism Operating Procedures* the requirement for the other party’s consent to engage additional advisors strengthens protections for requesters and better aligns with the DRS’ mandate.

Additionally, paragraph 21.2 of the *Accountability Mechanism Operating Procedures* stipulates that parties may appoint or change representatives only after “consulting” with the DRS. The Bank should consider revising this provision to clarify the scope of advice that DRS staff may provide regarding the selection of representatives. Such clarification is essential to ensure that DRS guidance remains neutral and does not unduly influence party representation, while also providing transparency regarding the nature and limits of the DRS’ advisory role. It would further help prevent perceived conflicts of interest that may arise if DRS staff inadvertently favour certain representatives over others.

Finally, the Bank should explicitly state that either party may request that their representatives and advisors be copied on all communications and be present in any discussions concerning the complaint. This would reinforce procedural fairness by ensuring that parties receive all relevant information through their chosen representatives and enhance trust in the dispute resolution process by guaranteeing continuous and informed participation. It would also help prevent potential misunderstandings or misinterpretations by ensuring that legal and procedural advice is consistently relayed to the parties through their designated representatives and advisors.

¹²⁹ Altholz & Sullivan, *supra* note 128 at 5.

¹³⁰ Desierto et al, *supra* note 120.

3. Affected People Should Be Granted Access to Relevant Project Information

The final accessibility improvement concerns access to project information. Paragraph 12 of the *Accountability Mechanism Operating Procedures* does not specify the extent of a neutral third party's powers regarding access to materials, documents, and testimonies related to the project, leaving such access entirely subject to the parties' consent. Additionally, paragraph 16 provides that only the Accountability Mechanism has full access to project-related information in carrying out its functions. By contrast, the Inspection Panel automatically receives all relevant project documentation from Bank Management.¹³¹ As a result, parties in the dispute resolution process could agree to restrict the requesters' access to information, potentially leaving them with significantly less access than that granted to the Panel.

Requesters' lack of access to information is not merely a hypothetical concern; it is a real issue, as many complaints arise precisely due to prior breakdowns in information-sharing and inadequate consultation by borrower States. Yet, under the current design of the DRS, requesters can access only limited project information through the *World Bank Policy on Access to Information*¹³² to assert their rights and interests,¹³³ while most relevant documentation remains under the hand of borrower States. A Compliance Advisor Ombudsman publication, drawing on practical experience, rightly emphasizes that addressing power imbalances between the disputing parties requires a dispute resolution process that guarantees "equal access" to relevant information.¹³⁴ Without such procedural protections, negotiations

¹³¹ 1994 *Inspection Panel Operating Procedures*, *supra* note 48 at para 61; 2014 *Panel Operating Procedures*, *supra* note 50 at para 54(a).

¹³² World Bank, *The World Bank Policy on Access to Information* (Report 54973) (1 July 2010), online (pdf): <documents.worldbank.org> [perma.cc/3UGE-PAUE]. See also 2022 *Accountability Mechanism Operating Procedures*, *supra* note 8 at para 8.

¹³³ Maeve McDonagh, "Evaluating the Access to Information Policies of the Multilateral Development Banks" in Owen McIntyre & Suresh Nanwani, eds, *The Practice of Independent Accountability Mechanisms (IAMS)* (Leiden/Boston: Brill Nijhoff, 2020) at 135–36; Altholz & Sullivan, *supra* note 128 at 82.

¹³⁴ Compliance Advisor Ombudsman, *Reflections from Practice: Getting Started with Dispute Resolution* (2021) at 12, online (pdf): <cao-ombudsman.org> [perma.cc/3W9V-BRN8][*Reflections from Practice*].

cannot take place on an equal footing—requesters effectively enter the process blindfolded.

Restricted access to project-related materials undermines requesters' ability to obtain meaningful remedies, particularly in the early stages of the dispute resolution process when they must assess their position.¹³⁵ For instance, project-affected people cannot properly evaluate a borrower State's land distribution proposal if they have never been provided with the initial land distribution plan that guided the project's development.¹³⁶ Without access to this foundational document, they cannot fully grasp what was originally proposed, how it will impact them, or whether alternative measures should be considered. This lack of information weakens their ability to articulate concerns, propose viable alternatives, and assess the fairness and adequacy of any compensation or mitigation measures offered by the borrower State.

To address this issue, the Bank should revise the *Accountability Mechanism Operating Procedures* to mandate a minimum standard of information disclosure to requesters. At a minimum, borrower States should be required to disclose, in good faith, the information necessary for an orderly and fair dispute resolution process. Another option would be for Bank Management to share with requesters most of the project documentation it relied upon when authorizing financing, withholding only commercially sensitive information belonging to private entities. Alternatively, a system of joint selection of experts with shared oversight of their work could help determine what specific information is essential to inform the dialogue process.¹³⁷

These reforms would enhance transparency and foster trust between parties—both essential to a fair, collaborative, and constructive dispute resolution process. They also align with best practices, which recognize that “[m]ember States have a legal duty to cooperate with [the] duly established [accountability] mechanisms.”¹³⁸ At the same time, these measures would

135 See also Desierto et al, *supra* note 120.

136 See generally World Bank, *Framework*, *supra* note 2, Standard 5 on “Land Acquisition, Restrictions on Land Use and Involuntary Resettlement”.

137 Compliance Advisor Ombudsman, *Reflections from Practice*, *supra* note 134 at 12.

138 Malcolm Shaw & Karel Wellens, “International Law Association Berlin Conference (2004): Accountability of International Organisations” (2004) 1: 221–293 *Intl Org L Rev* at 45 [emphasis added].

balance the need for affected people's meaningful access to remedies with the legitimate sovereignty concerns of borrower States with sharing sensitive information.

In conclusion, the DRS has the potential to improve access to remedies by offering affected people an alternative to the Inspection Panel—one that empowers them to actively shape solutions addressing harm caused by Bank-financed projects. However, strengthening procedural protections regarding eligibility, representation, and access to information is essential for the Bank to fully realize this goal.

B. The DRS Should Enhance Its Effectiveness by Reforming Its Complaint Criteria, Content and Disclosure of Agreements, and Verification of Implementation

The second area of improvement relates to the effectiveness of access to remedies for project-affected people. Part 1 explains that complaints involving severe human rights violations should be excluded from dispute resolution. Part 2 argues that dispute resolution agreements should be required to maintain consistency with Bank policies to prevent agreements that undermine the Bank's accountability obligations and affected people's rights. Part 3 underscores the need for dispute resolution agreements to be publicly available by default and for a robust mechanism to monitor their implementation.

1. Complaints Alleging Severe Harm Should Be Excluded from Dispute Resolution

Under the Accountability Mechanism *Resolution and Operating Procedures*, complaints concerning serious human rights violations, including those related to torture, can be submitted to the dispute resolution process. However, certain human rights violations—such as the prohibition of torture—hold *jus cogens* status.¹³⁹ This means they constitute peremptory

139 Dire Tladi, Special Rapporteur, *Fourth Report on Peremptory Norms of General International Law (Jus Cogens)*, UNGA, 71st Sess, UN Doc A/CN.4/727 (2019) at 31–35, 63.

norms of international law that are universally binding and permit no derogation under any circumstances. International organizations, including the Bank, are bound by these prohibitions, as they acknowledge.¹⁴⁰

Under international law, the Bank has an obligation to take immediate steps to end any *jus cogens* violation to which it may contribute or that it may facilitate. Accordingly, when complaints before the Bank involve *jus cogens* violations, it is questionable whether continuing a Bank project in accordance with its original terms, scope, and specifications for up to a year and a half while the dispute resolution process remains ongoing is consistent with internationally recognized human rights obligations.

Unlike the DRS, the Compliance Advisor Ombudsman allows cases to be transferred to compliance appraisal in response to an internal request from the Compliance Advisor Ombudsman Director General—the equivalent of the Bank’s Accountability Mechanism Secretary—and from the President, the Board, or management.¹⁴¹ Such a request may be made when “concerns exist regarding particularly severe harm.”¹⁴² At present, at least five independent accountability mechanisms have the authority to initiate compliance investigations.¹⁴³

However, the Bank lacks an internal request mechanism.¹⁴⁴ In fact, the DRS severs the dialogic function between the dispute resolution process and Bank Management, as well as the Executive Directors. Under paragraph 22.1 of the *Accountability Mechanism Operating Procedures*, Management may participate only in the dispute resolution process as an observer with the parties’ agreement and is confined to a technical role.¹⁴⁵ Yet, in practice,

140 Kristina Daugirdas, “How and Why International Law Binds International Organizations” (2016) 2:57 Harv Intl LJ 325 at 377–80.

141 *Compliance Advisor Ombudsman Policy*, *supra* note 100 at para 81.

142 *Ibid* at 82 [emphasis added].

143 Gregory Berry & Leo Lou, “Why Every IAM Should Have the Power to Self-Initiate Investigations” (1 October 2024), online (blog): <accountabilitycounsel.org> [perma.cc/4VKK-EWZB].

144 Only an executive director “may in special cases of serious alleged violations of [Bank] policies and procedures ask the Panel for an investigation,” subject to the Panel’s eligibility requirements: 1993 *Inspection Panel Resolution*, *supra* note 52 at para 12; 2020 *Inspection Panel Resolution*, *supra* note 7 at para 13.

145 See also *Recommendations on Toolkit Review*, *supra* note 102 at para 34.

Management engagement has proven critical to the effective resolution of disputes.¹⁴⁶

Given the Bank's obligation to uphold *jus cogens* norms, the Accountability Mechanism *Resolution and Operating Procedures* should be revised to require the Panel to promptly investigate allegations of *jus cogens* violations rather than permitting them to proceed through dispute resolution.

2. Dispute Resolution Agreements Should Be “Consistent” With Bank Policies

Another area for improvement concerns the restrictions on the content of dispute resolution agreements—specifically, the minimum threshold for acceptable remedies to which affected people may consent. Paragraph 16 of the initial version of the *Procedures* stated that “Dispute Resolution Agreements should be consistent with World Bank policies and relevant domestic and international law.”¹⁴⁷ However, in the final version, paragraph 23 of the *Accountability Mechanism Operating Procedures* provides:

23. Limitations on Dispute Resolution Agreements

23.1. If the DRS has reason to believe that the Parties intend to include anything in a Dispute Resolution Agreement that is inconsistent with relevant domestic or international law, the AM Secretary will request the Parties to make appropriate modifications.

23.2. If the AM Secretary has reason to believe that a Dispute Resolution Agreement may bring into issue the Bank's rights and obligations, advice on that point shall be requested from the Bank's Legal Vice Presidency¹⁴⁸ [emphasis added]

¹⁴⁶ World Bank Accountability Mechanism and Inspection Panel, “RE: Comments on the 2022 Draft Operating Procedures for the Accountability Mechanism and the Inspection Panel” (9 September 2022) at 18, online (email): <accountability-counsel.org> [perma.cc/DZJ7-M3Y7] (describing how Management involvement brought positive results in a case at Inter-American Development Bank involving the Haitian government).

¹⁴⁷ World Bank Accountability Mechanism Secretary, *Interim Operating Procedures* (13 October 2021) at para 16, online (pdf): <thedocs.worldbank.org> [perma.cc/8LY4-5K7N].

¹⁴⁸ *Accountability Mechanism Operating Procedures*, *supra* note 126.

A comparison of the different versions of the provision shows that paragraph 23 introduced three significant changes. The first change is removing the requirement for consistency in dispute resolution agreements with Bank policies. The second change is the shift from an objective requirement of consistency of dispute resolution agreements with domestic and international law, to a subjective requirement that the DRS doubts such consistency, and requests the parties to revise the agreement accordingly. Therefore, the provision waters down an obligation of result into an obligation of means, without imposing any burden of investigation on the DRS to absolve itself of its obligation. The third change is that the provision gives substantial power and discretion to the Accountability Mechanism Secretary, and some residual power to the Bank's Legal Vice Presidency.

Paragraph 23, however, fails to meet the legal and policy standards applicable to the DRS in three key respects. First, the Executive Directors bear institutional responsibilities to ensure that the Bank adheres to its operational policies and procedures, including through the dispute resolution process it provides to affected people. Typical alternative dispute resolution, which involves a tripartite relationship between two commercial parties and their chosen neutral third party, is a voluntary procedure where the disputing parties fully control both the process and the agreement reached. Conversely, the Bank's dispute resolution process is characterized by a quadrilateral relationship between the requesters, the borrower State, their chosen neutral third party—and the Bank, through the DRS.¹⁴⁹ In this process, the Bank itself has vested interests in the outcome of dispute resolutions. For example, these interests are illustrated in paragraph 23.1 of the *Accountability Mechanism Operating Procedures*, which explicitly states that the Bank will not allow the parties to reach a dispute resolution agreement that is inconsistent with domestic or international law.

Moreover, the Bank's Executive Directors bear “institutional responsibilities” for ensuring compliance with the Bank's policies and procedures, as

¹⁴⁹ One could even say that Bank Management acts as a fifth party, making this a quintuple relationship.

recognized in all versions of the *Inspection Panel Resolution* since 1993.¹⁵⁰ These responsibilities, derived from the *Articles of Agreement*, create an international legal obligation that the directors cannot unilaterally alter or relinquish through resolutions.¹⁵¹ The World Bank itself implicitly acknowledges that its dispute resolution mechanism is centred on potential violations of its policies rather than broader project-related grievances. This is evident from the eligibility criterion, which requires that affected people must allege a serious departure from Bank policies that have materially adverse effects on them.¹⁵² Once this criterion is met, the Panel must propose, and the Executive Directors must recommend, an inspection. Accordingly, it is highly questionable whether the Bank would fulfill its international obligations if any agreement reached through its dispute resolution process entailed a serious departure from Bank policies that materially harmed the requesters.

While it could be argued that paragraph 23 does not explicitly prohibit the DRS (or the neutral third party) from promoting adherence to Bank policies, principles of interpretation suggest the opposite.¹⁵³ Unlike previous versions, the current text has been stripped of any reference to consistency with Bank policies, indicating a deliberate exclusion of this requirement. In practice, however, the DRS, the third-party neutral, and the representatives of both requesters and borrower States may remain fully aware of and committed to ensuring agreements comply with Bank policies. Nevertheless, under

¹⁵⁰ 1993 *Inspection Panel Resolution*, *supra* note 52 at para 12 (noting, “the institutional responsibilities of Executive Directors in the observance by the Bank of its operational policies and procedures”); 2020 *Inspection Panel Resolution*, *supra* note 7 at para 13 (employing the same wording). For the sake of clarity, Bank management must conduct operations in accordance with Bank policies and procedures, whereas the Executive Directors have institutional responsibilities to ensure that such operations remain consistent with the policies and procedures. While the obligations of both management and directors may continue regardless of the outcomes of complaints at the DRS, in practice, a dispute resolution agreement could preclude the possibility of filing another complaint at the Accountability Mechanism to investigate compliance with such obligations or to engage in further dispute resolution regarding alleged non-compliance.

¹⁵¹ On these responsibilities, see *Articles of Agreement*, *supra* note 18 at art V, s 4, (a). On modification of *Articles of Agreement*, see *ibid.*, art VIII. See *Vienna Convention on the Law of Treaties*, 23 May 1969, 1155 UNTS 331, art 39 (entered into force 27 January 1980). See also Bradlow, *International Financial Institutions*, *supra* note 20 at 64–65.

¹⁵² 2020 *Inspection Panel Resolution*, *supra* note 7 at para 29(b).

¹⁵³ See, by analogy, *Vienna Convention on the Law of Treaties*, *supra* note 151.

the present text, this commitment is discretionary for the Bank, despite compelling legal arguments that it should be mandatory.

Second, ensuring the broad consistency of dispute resolution agreements with Bank policies is both feasible and aligned with best practices at other international accountability mechanisms.¹⁵⁴ For instance, the *Compliance Advisor Ombudsman Policy* requires that “CAO will not knowingly support [dispute resolution] agreements that would [...] be contrary to IFC/MIGA policies.”¹⁵⁵ Such provisions do not require strict “compliance” but rather a determination of whether agreements are “consistent” or “aligned” with Bank policies. This avoids the need for a parallel compliance review while allowing parties flexibility for some deviations from policies where appropriate. As Professor Daniel Bradlow noted in his *Initial External Review*:

[t]his could happen, for example, if the complainants decide to accept less compensation than they may be entitled to under the policies because they believe that it is more useful to obtain certain compensation now rather than the possibility of more compensation in the future or they could agree to accept less compensation than the policies stipulate in return for access to other project benefits.¹⁵⁶

In concrete terms, the Accountability Mechanism Secretary should be required to request modifications to any agreement that appears inconsistent with Bank policies, just as she is currently obligated to do when agreements seem inconsistent with domestic or international law under paragraph 21.1. This assessment should be conducted by the DRS staff through a legal and factual review akin to the one they already perform for domestic and international law issues. Since this obligation pertains to the means rather

154 See African Development Bank’s Independent Recourse Mechanism, *Operating Rules and Procedures* (2015) at para 49 (requiring that “[t]he IRM will only support Problem-Solving resolutions or agreements that [...] align with [African Development Bank] policies”) [emphasis added], online (pdf): <afdb.org> [perma.cc/VBH9-DATE].

155 See also the provision applicable to the Compliance Advisor Ombudsman, which was revised in July 2021—after the judgment of the US Supreme Court in *Jam v IFC*—to add that the Compliance Advisor Ombudsman will not “knowingly” support agreements contrary to the bank’s policies: *Compliance Advisor Ombudsman Policy*, *supra* note 100 at para 67.

156 Bradlow, “Initial External Review”, *supra* note 76 at 13, para 51.

than the results, the provision should specify the type and scope of analysis required to guide parties toward appropriate modifications. Additionally, the neutral third party should be mandated to encourage the parties to ensure their agreements broadly adhere to Bank policies.

Third, several policy considerations strongly militate against retaining the current language of paragraph 23. For one, the provision's wording serves a crucial signalling function. As currently drafted, it may inadvertently suggest to borrower States that dispute resolution offers a means to circumvent Bank policies. Moreover, the shift in paragraph 23 from safeguarding requesters' rights under Bank policies to safeguarding the Bank's own rights and obligations risks conveying to requesters that the provision prioritizes the Bank's interests over theirs.

Furthermore, given the power and resource imbalances between the parties, the procedural protections afforded to requesters—or rather, the lack thereof—are all the more critical.¹⁵⁷ As discussed in the preceding subsection, these protections are necessary to ensure that requesters do not feel pressured into accepting remedies that fall significantly short of those they are entitled to under Bank policies—remedies that the Inspection Panel would otherwise scrutinize. A United Nations report has observed that “in many situations, complainants may legitimately feel that partial redress is their only feasible option.”¹⁵⁸ According to best practices, dispute resolution mechanisms must ensure that their outcomes and remedies align with internationally recognized human rights. More fundamentally, there are also concerns about whether the current provision aligns with the Bank's mandate to end extreme poverty and promote shared prosperity.

For these reasons, the current version of paragraph 23 presents significant shortcomings in upholding the legal and policy standards applicable to the DRS, as identified in Section II. Given the World Bank's role as a standard-setter among multilateral development banks, this provision sets a troubling precedent. To address these issues, the Bank should consider revising paragraph 23 to restore the original requirement of consistency with Bank policies,

¹⁵⁷ Compliance Advisor Ombudsman, *Reflections from Practice*, *supra* note 134 at 5, 13.

¹⁵⁸ OHCHR, *supra* note 12 at 60 [emphasis added].

similar to the provision in the *Compliance Advisor Ombudsman Policy*. Finally, an improved version of this provision should clearly articulate the “obligation of means” the Bank undertakes in assessing consistency with its policies, domestic law, and international law, while outlining actionable measures.

3. Dispute Resolution Agreements Should Be Published by Default, and Subsequent Implementation Verified

Another improvement related to effectiveness concerns the public disclosure of dispute resolution agreements. Under paragraph 20.3 of the *Accountability Mechanism Operating Procedures*, parties may keep their agreements entirely confidential. By contrast, most other accountability mechanisms adopt a transparency-first approach, allowing confidentiality only if all signatories unanimously agree and requiring the publication of a summary even in such cases.¹⁵⁹ This approach ensures a balance between transparency and privacy: it withholds sensitive details, such as compensation amounts, and conceals individual identities to prevent retaliation. However, the approach still allows disclosing non-sensitive aspects of the agreement, such as commitments to improve livelihoods.

Unlike the DRS, which allows full confidentiality, a transparency-first approach offers several advantages. First, it ensures that non-signatories who may be indirectly affected by a dispute resolution agreement can remain informed about its outcome while safeguarding privacy. More broadly, it strengthens institutional learning and public accountability by allowing World Bank staff, civil society organizations, and other accountability mechanisms to analyze past cases. Increased transparency improves the fairness and effectiveness of dispute resolution and fosters trust in the Bank’s accountability framework.

The last improvement regarding effectiveness concerns the verification of agreement implementation. While the *Accountability Mechanism Resolution* requires parties to establish a “time-bound implementation schedule for

¹⁵⁹ See e.g. Independent Consultation and Investigation Mechanism (MICI), *Policy of the Independent Consultation and Investigation Mechanism of the Inter-American Development Bank* (14 April 2021) MI-47-8 at para 34, online (pdf): <mici.iadb.org> [perma.cc/R6FK-65EZ].

agreed actions,”¹⁶⁰ it does not specify how compliance with this implementation should be monitored. Paragraph 24.1 of the *Accountability Mechanism Operating Procedures* states that the DRS will monitor implementation only if the parties agree to such oversight. This means that parties may negotiate an agreement without a clear mechanism to ensure that remedial actions are actually implemented. This provision aligns with the 1993 mandate of the Inspection Panel, which was not initially granted monitoring powers. In the three decades since the Panel's creation, intense public scrutiny was often helpful for the actual implementation of an agreement.¹⁶¹

However, best practices now widely recognize that an effective dispute resolution process requires monitoring of the implementation of agreed remedial actions.¹⁶² Monitoring has proven to be a crucial factor in ensuring that affected people actually receive the remedies they were promised. For example, in a case before the Inter-American Development Bank's accountability mechanism, monitoring of a dispute resolution agreement between the Haitian government and local farmers revealed that implementation remained incomplete, prompting additional measures to fulfill the commitment to restore the livelihoods of displaced farmers.¹⁶³ Similarly, in recent years, the Bank's Executive Directors have allowed the Inspection Panel to monitor compliance case-by-case.¹⁶⁴ The 2020 *Inspection Panel Resolution* took this further by requiring Management—and, in specific cases, the

160 2020 *Accountability Mechanism Resolution*, *supra* note 8 at para 13(b).

161 Gallagher, *supra* note 93 at Module 5, 9.

162 Mara Tignino, “Human Rights Standards in International Finance and Development: The Challenges Ahead” in McIntyre & Nanwani, *supra* note 12; van Huijstee *supra* note 12 at 114; Gina Barbieri, “The Promise of Collaborative Problem Solving in Enhancing IAM Effectiveness” (2023) *Perspectives* at 4 (Washington: American University Washington College of Law, 2023), online (pdf): <digitalcommons.wcl.american.edu> [perma.cc/2W8L-73NY].

163 Accountability Counsel, *The Strength of a Community: Haitian Farmers Request Final Push to Receive Full Compensation* (28 January 2022, last updated 14 March 2023), online: <accountabilitycounsel.org> [perma.cc/PYM7-M44U].

164 Inspection Panel, *Overview of Status of Implementation of Management Action Plans Prepared in Response to Inspection Panel Investigation Reports* (2017), online (pdf): <documentos.bancomundial.org> [perma.cc/U2WK-7E44].

Inspection Panel and the Bank Audit Unit—to verify the implementation of remedial action plans.¹⁶⁵

Given that the Inspection Panel is mandated to provide affected people with basic access to remedies, while the DRS serves as an additional remedial mechanism, it is unclear why Management and the Panel have monitoring authority over compliance reviews while the DRS lacks a similar mandate for dispute resolution. In fact, all other international accountability mechanisms currently have monitoring authority over dispute resolution agreements, except for the DRS.¹⁶⁶ For example, the Compliance Advisor Ombudsman monitors the implementation of the parties' agreement, and, if the parties fail to implement this agreement, a complaint is transferred to the compliance review process.¹⁶⁷ As noted in the *Initial External Review*, failing to ensure that agreements are implemented may have “adverse reputational consequences” for the Bank.¹⁶⁸ The Bank should therefore consider revising the DRS to require systematic monitoring of implementation.

In summary, whether the DRS strengthens or weakens the effectiveness of the right to access a remedy largely depends on whether the parties agree to a resolution that is superior, equal, or inferior to what is mandated by Bank policies. In some cases, affected people and borrower States may reach a “win-win” agreement that aligns with their interests, requiring no compromise. However, it is unlikely that in all cases, the borrower States will agree to remedies that more substantially benefit affected people¹⁶⁹—especially given that complaints are only brought before the Inspection

165 2020 *Inspection Panel Resolution*, *supra* note 7 at paras 47–53.

166 Bradlow, “Initial External Review”, *supra* note 76 at iii—iv.

167 Compliance Advisor Ombudsman Policy, *supra* note 100 at paras 68, 70. See also European Investment Bank Group, *Complaints Mechanism Policy* (November 2018) at para 5.3.1, online (pdf): <eib.org> [perma.cc/DVE3-ERAF].

168 Bradlow, “Initial External Review”, *supra* note 76 at iv, para 20.

169 Since the DRS is currently assisting with its first complaints, there has yet to be comprehensive data on the percentage of complaints resolved through it. But as a comparison, an independent review in 2020 of nearly 400 complaints across all accountability mechanisms found that just over half of claims that made it to the “facilitating settlement” phase ended up with an agreement between the parties: Susan Park, *Environmental Recourse at the Multilateral Development Banks* (Cambridge: Cambridge University Press, 2020) at 53. However, that affected people consented to an agreement as part of a dispute resolution process does not indicate that they

Panel after prior efforts to resolve them with the borrower State and Bank Management have already failed.¹⁷⁰

Moreover, for the borrower State, the worst outcome of a failed dispute resolution process is that the complaint proceeds to a compliance review, where remedies provided should be no more and no less than what is required under Bank policies. The only disadvantage for the borrower State in such a scenario is that it will have to undergo a lengthy and public investigation with reputational costs. Affected people, on the other hand, continue to suffer the harm caused by the Bank project while the dispute resolution and compliance review processes are ongoing. This creates an incentive for them to accept a remedy quickly, even if it is significantly weaker than the remedies guaranteed under Bank policies.

In this context, it is all the more crucial to establish strong procedural protections to ensure that affected people are not pressured into accepting inadequate remedies. Enhancing transparency, requiring systematic monitoring, and reinforcing procedural protections are essential for ensuring that the DRS functions as a mechanism for meaningful access to remedies.

C. The DRS Should Enhance Its Independence and Impartiality by Reforming Its Interaction with Panel Mandate, Staff Involvement, and Party Funding

The third area for improvement focuses on enhancing the independence and impartiality of the DRS. Part 1 examines the need for greater flexibility in sequencing between compliance and dispute resolution to preserve the independence of both mechanisms. Part 2 addresses DRS staff involvement, highlighting risks of perceived conflicts of interest and bias. Part 3 explores how dedicated funding for affected people can enhance their participation in dispute resolution while safeguarding the neutrality of the Bank's accountability system.

have received a remedy equal or superior to the one envisaged by the banks' policies: *ibid* at 54–57.
170 See the eligibility criterion of the Panel: *2020 Inspection Panel Resolution*, *supra* note 7 at para 13.

1. The Bank Should Offer Flexible Sequencing Between Compliance and Dispute Resolution

The DRS operates independently of both Bank Management and the Inspection Panel. The Panel “will not opine on policy compliance in dispute resolution or the outcome of the dispute resolution process.”¹⁷¹ This structural separation between the two mechanisms is essential to preventing conflicts of interest in handling complaints before the Accountability Mechanism. It also enables parties to engage in dispute resolution without fear that information disclosed during the process will be used in a compliance review.

The dispute resolution process is designed to complement rather than replace the compliance review process. In the Inspection Panel Resolution, the Executive Directors “reaffirm[ed] the importance of the Panel’s function, its independence and integrity.”¹⁷² However, integrating the DRS and the Inspection Panel within a unified structure—the Accountability Mechanism—under the leadership of the Accountability Mechanism Secretary, who performs administrative and other functions affecting the Panel, has compromised the Panel’s independence. This concern was a central factor in prompting the *2024 External Review*.¹⁷³

More broadly, there is a concern that the DRS mandate may encroach upon the Inspection Panel’s mandate. Commentators have highlighted that if a party reaches an agreement through dispute resolution, it would “forestall any Inspection Panel review or investigation of the matter and prevent any members of the affected community, who otherwise feel that their concerns were not addressed in the process [...] to request a new investigation.”¹⁷⁴

171 *2020 Accountability Mechanism Resolution*, *supra* note 8 at para 6; *2022 Accountability Mechanism Operating Procedures*, *supra* note 8 at para 11.6.

172 *2020 Inspection Panel Resolution*, *supra* note 7 at para 2.

173 World Bank, *Draft Terms of Reference for the External Review of the Board Approved Reforms to the Inspection Panel Toolkit and Creation of the World Bank Accountability Mechanism* (30 January 2024), online (brief): <worldbank.org> [perma.cc/CHP9-C7LB] [*2024 TOR External Review*]. See also Arntraud Hartmann, Eduardo Abbott & Cindy Pettit, *External Review of the Board Approved Reforms to the Inspection Panel Toolkit and Creation of the World Bank Accountability Mechanism*, World Bank (28 August 2024). Although this issue is significant, and is the subject of much of the *2024 external review* and subsequent discussion, it pertains more to the functioning of the Panel than to the DRS and is therefore not thoroughly analyzed here.

174 Desierto et al, *supra* note 120.

This is because the complaint concerning that project will be deemed closed unless new evidence or circumstances emerge that were not known when the request was filed.¹⁷⁵ Consequently, the outcome of the dispute resolution process may prevent the Inspection Panel from assessing compliance with Bank policies.

For similar reasons, the decision to engage in dispute resolution—and whether any agreement satisfactorily resolves the issues raised¹⁷⁶—should rest with the individual requesters rather than being determined by the broader community to which they belong. Otherwise, the requesters' right to compliance review would not be adequately safeguarded. Consider a scenario in which the broader community favours dispute resolution, but the requesters do not. If the complaint proceeds to dispute resolution, the requesters' right to a timely compliance review may be delayed by up to eighteen months. Conversely, allowing requesters to opt for compliance review independently would not preclude the broader community from submitting a separate complaint based on different evidence or circumstances.

Furthermore, disregarding the requesters' choice would also conflict with a rights-based approach. It is untenable to sideline those who have invested a significant time, effort, and risk in filing a complaint, only to favour those who have not. Such a practice would have various adverse consequences, including diminished trust in accountability mechanisms, disempowerment and marginalization of complainants, and reduced effectiveness of remedies. It would also significantly heighten the risk of retaliation, as requesters who decline dispute resolution may be perceived as troublemakers. Critically, the broader community should not have the authority to negotiate with the borrower State in a way that effectively waives the requesters' right to escalate unresolved issues under the dispute resolution agreement to compliance review.

¹⁷⁵ 2020 *Inspection Panel Resolution*, *supra* note 7 at para 15(d).

¹⁷⁶ For example, when a small group of requesters submits a complaint and the DRS expands the process to involve the broader community, it is crucial that, by the conclusion of the dispute resolution process, the concerns of the requesters are thoroughly addressed and appropriately resolved. In the early days of dispute resolution at various multilateral development banks, requesters frequently experienced a loss of agency over their complaints, as these were subsumed into broader dialogues.

More generally, to mitigate the risk of conflicting mandates between dispute resolution and compliance review, scholars and civil society organizations have advocated for multilateral development banks to provide greater flexibility in sequencing these processes. At most banks today, requesters typically have two options: (1) engage in dispute resolution first and, if dissatisfied, proceed to compliance review, or (2) refuse dispute resolution and proceed directly to compliance review, thereby relinquishing the opportunity to pursue dispute resolution later.¹⁷⁷ Some have argued that affected people should have the ability to choose which process to undertake first and, if necessary, switch to the other once, or even pursue both processes simultaneously.¹⁷⁸

Advocates contend that compliance review can provide affected people with information and analysis that they might not otherwise access in dispute resolution due to their power imbalance vis-à-vis borrower States. Conversely, dispute resolution can highlight systemic issues relevant to compliance review that might not have surfaced without dialogue between the parties.¹⁷⁹ The United Nations Development Programme already allows affected people to pursue compliance review¹⁸⁰ and dispute resolution¹⁸¹ simultaneously. This suggests that concerns about allowing compliance review irrespective of the dispute resolution outcome—specifically, that it

177 Bradlow, “Initial External Review”, *supra* note 76 at 17.

178 Accountability Counsel et al, *Good Policy Paper: Guiding Practice from the Policies of Independent Accountability Mechanisms* (2021) at 51, online (pdf): <ciel.org> [perma.cc/7GWU-9TKS] [*Good Policy Paper*]. See also OHCHR, *supra* note 12 at 79: “Allow [...] fluidity between compliance reviews and dispute resolution, in order to provide the flexibility needed to enable remedy in practice.” See also Barbieri, *supra* note 162 (writing, “[t]here is currently much discussion regarding the sequencing of dispute resolution and compliance processes. [...] While the discussion of which tool to use, and when to use it is important, it is equally important to start considering whether a more hybrid approach to addressing complaints would be valuable in strengthening IAM effectiveness in a context where this is becoming more and more difficult to secure.”).

179 van Huijstee *supra* note 12 at 68; Richard, *supra* note 47 at 338.

180 United Nations Development Programme, *Social and Environmental Compliance Unit: Investigation Guidelines* (4 August 2017) at para 33, online (pdf): <undp.org> [perma.cc/W9CY-Z8M8].

181 United Nations Development Programme, *Stakeholder Response Mechanism: Overview and Guidance* (2014) at para 18, online (pdf): <undp.org> [perma.cc/PWP7-W7J4].

would discourage borrower States from fully participating in the dispute resolution process¹⁸²—may be overstated.

2. DRS Staff Involvement Should Be Clarified to Prevent Perceived Conflicts of Interest

Another improvement regarding independence and impartiality concerns the relationship between DRS staff and the parties. Paragraph 14.1 of the *Accountability Mechanism Operating Procedures* affirms that “[t]he DRS is impartial as between Parties and as to the merits of the dispute.” However, the Accountability Mechanism Secretary and DRS staff play a significant role in the dispute resolution process, raising concerns about potential perceptions of bias or conflicts of interest.

As noted above, paragraph 21.2 requires parties to “consult” with DRS staff in selecting their representatives, a choice that must remain voluntary. This provision suggests that DRS staff must assess whether the selection is genuinely voluntary. Yet, the Accountability Mechanism Resolution and Operating Procedures fail to delineate the precise scope of this role, leaving key questions unanswered: Can DRS staff offer opinions to requesters regarding the quality of representation provided by different civil society organizations? Can DRS staff advise on the relationship between requesters and their representatives in handling the complaint? Whose voluntary consent must be ascertained—that of the requesters alone or of the broader community? The lack of explicit guidance in the Resolution and Operating Procedures on these matters creates ambiguity about the extent of the DRS staff’s influence over the parties’ decisions.

DRS staff are also directly involved in the parties’ decision to pursue dispute resolution. Paragraph 11.3 of the Operating Procedures states that “[i]f either of the Parties indicate, or the DRS assesses, a need for capacity building to allow them to make a better-informed decision on whether to participate in a dispute resolution process, this may be offered by dispute resolution within the resources and time frame available.” Given that paragraph 21.4

¹⁸² Bradlow, “Private Complainants”, *supra* note 64 at 483.

requires parties to bear the costs of their representation and advice during the dispute resolution process, requesters—who typically have fewer resources than borrower States—are more likely to seek, or be assessed as needing, such capacity-building support. While this assistance could be beneficial, it raises concerns about whether the DRS might be perceived as lacking independence by treating requesters differently from borrower States.¹⁸³

Furthermore, the DRS may inadvertently face a structural conflict of interest due to its operational incentives, which could affect its impartiality. Although its staff consists of highly qualified and independent professionals, the DRS may have a structural tendency to demonstrate its value and justify its operational expenses. This could lead to a preference for channelling complaints into the dispute resolution process and achieving final settlement agreements. Such pressures may risk compromising the voluntary nature of dispute resolution and could unintentionally influence outcomes beyond the appropriate scope for a neutral administrator—or at the very least, create the perception of undue influence. These concerns are reflected in the Terms of Reference for the *2024 External Review* of the DRS, which require an assessment of whether the existing structure ensures a truly “voluntary and independent” dispute resolution process for requesters and borrower States.¹⁸⁴

To address these concerns, the World Bank must implement rigorous protections to uphold the DRS’ independence and impartiality. The *Accountability Mechanism Operating Procedures* should establish clear, enforceable guidelines to prevent biases from affecting the handling of complaints. Moreover, the Executive Directors should evaluate the DRS’ effectiveness not merely by the number of complaints undergoing dispute resolution or resolved amicably, but by the fairness of the process and the genuinely voluntary participation of the disputing parties. A reduced number of complaints entering dispute resolution should not be seen as a failure; rather, DRS staff could contribute to the Bank’s accountability practices by

183 For clarity, the paper acknowledges that the DRS may treat the parties differently, to the extent this is done based on fairness and substantive equality.

184 World Bank, *2024 TOR External Review*, *supra* note 173; Hartmann, Abbott & Pettitt, *supra* note 173.

producing research to refine and improve its dispute resolution framework. Such structural reforms would reinforce the DRS' neutrality and foster greater trust among disputing parties.

3. The Bank Should Provide Funding to Affected People for Effective Representation

The Bank should consider institutional reforms to reconcile the inherent tension between accessibility and independence at the DRS. The World Trade Organization (WTO) provides a useful example of how an international organization has successfully managed this tension. The WTO Secretariat, as the administering body, “assist[s] panels, especially on the legal, historical and procedural aspects of the matters dealt with, and [...] provide[s] secretarial and technical support.”¹⁸⁵ However, to maintain its neutrality, the Secretariat does not provide legal or procedural advice to member States. Instead, the WTO established the Advisory Centre on WTO Law as a separate and independent institution that offers free legal assistance and training on WTO dispute settlement proceedings to developing countries.¹⁸⁶ By maintaining this separation, the WTO ensures that support for less-resourced States does not compromise the neutrality of its Secretariat.¹⁸⁷

In contrast, the DRS assumes both administrative and advisory functions, which may compromise its neutrality. This dual function may jeopardize its perceived independence. Moreover, in verifying that the choice of representatives is voluntary or offering guidance on disagreements regarding the scope of the dispute resolution process,¹⁸⁸ the DRS staff may engage in functions typically reserved for third-party neutrals.

¹⁸⁵ World Trade Organization, *Understanding on Rules and Procedures Governing the Settlement of Disputes – Annex 2 of the WTO Agreement* (1994), art 27(1).

¹⁸⁶ Advisory Centre on WTO Law, “Services of the ACWL”, online: <acwl.ch> [perma.cc/NP6F-TD7S].

¹⁸⁷ World Trade Organization, “Lamy Lauds Role of Advisory Centre on WTO Law” (4 October 2011), online: <wto.org> [perma.cc/NPC2-U7QZ].

¹⁸⁸ 2022 *Accountability Mechanism Operating Procedures*, *supra* note 8 at para 13(3).

To address these concerns and improve access to remedies, a pragmatic solution would be for the Bank to provide financial support to affected people to secure professional assistance during dispute resolution proceedings. A recent United Nations report has proposed several funding mechanisms that international accountability mechanisms could adopt, such as stand-alone remedy funds, escrow accounts, trust funds, insurance schemes, guarantees, and letters of credit.¹⁸⁹ Scholars and civil society organizations have long advocated for such funding at the World Bank and other multilateral development banks. Currently, civil society organizations that assist requesters in dispute resolution sometimes do so free of charge but have the capacity to support only a fraction of those in need.¹⁹⁰

As part of their development mandate, multilateral development banks should allocate a portion of project budgets to support affected people—particularly vulnerable populations—in accessing dispute resolution mechanisms. For example, Canada allocates a small percentage of the total budget for large infrastructure projects to support minority groups in affected areas in expressing their concerns about such projects.¹⁹¹

In sum, while the DRS is designed to provide affected people with access to a neutral third party, its structure may compromise the Inspection Panel's mandate. Additionally, the involvement of DRS staff in dispute resolution raises concerns about its appearance of independence and impartiality. A dedicated funding mechanism for affected people would enhance the legitimacy of the dispute resolution process while safeguarding the DRS' neutrality by guaranteeing requesters access to independent representation.

189 OHCHR, *supra* note 12 at 88–89. See also Daniel D Bradlow, “Multilateral Development Banks, Their Member States and Public Accountability: A Proposal” (2019) 11 *Indian J of Intl Econ L* 21 at 34–36 (calling for stakeholders of multilateral development banks to establish an independent fund to support communities and people harmed by non-compliant bank-funded projects, as identified by a super International Accountability Mechanism).

190 van Huijstee *supra* note 12; Ta & Graham, *supra* note 65 at 118.

191 Impact Assessment Agency of Canada, “Participant Funding Program” (23 April 2021), online: <canada.ca> [perma.cc/3WRN-PV5W].

IV. Conclusion: The DRS Fits Within Shifting Trends and Responsibilities in Transnational Administrative Law

Section IV concludes by evaluating whether the DRS meaningfully enhances access to remedies and situates its role within broader trends in international dispute resolution and administrative law. Subsection A examines the uncertainty surrounding the DRS' effectiveness in improving access to remedies. Subsection B highlights how many multilateral development banks increasingly transfer responsibility onto borrower States and private corporations within the broader trend toward flexible dispute resolution in international law. Subsection C argues that global administrative law theory should adopt a transnational approach to reflect the specific political, institutional, and economic forces shaping international accountability mechanisms.

A. Substantial Doubt Remains Over Whether the DRS Enhances Access to Remedies

Although the Bank introduced dispute resolution to enhance access to remedies for project-affected people, after three years of operation, uncertainty remains as to whether the DRS has achieved this goal or inadvertently undermined the Inspection Panel's mandate. The absence of publicly available information on the content of dispute resolution agreements, including those from the first two complaints settled by the disputing parties, exacerbates this uncertainty. Transparency is crucial for ensuring long-term accountability and preserving the Bank's credibility.

Nevertheless, an analysis of the DRS mandate, procedures, and early operation reveals both benefits and drawbacks. The DRS' structure, shaped by political compromise among decision-making stakeholders, exemplifies the adage: "A camel is a horse designed by committee." Possible benefits include expedited complaint resolution, improved benefit-sharing arrangements related to projects, and more innovative measures to address post-resettlement impacts, making it an attractive option for affected people in certain circumstances. The benefits may be particularly attractive, for instance, to community leaders and those only moderately affected by projects, as opposed to individuals who have suffered severe bodily harm. These

potential benefits are especially significant given that, for affected people, the only viable alternative—amid concerns about the DRS’ accessibility, effectiveness, and independence—is to revoke consent to dispute resolution and pursue compliance review.

However, affected people may feel pressured to make concessions for the sake of a faster resolution rather than endure the prolonged consequences of flawed projects throughout the Panel process, especially if their representatives’ ability to fully advise them on these implications is limited. Addressing power imbalances between affected people and borrower States requires the implementation of concrete and robust procedural protections within DRS procedures, rather than mere assurances that the DRS staff or a third-party neutral will recognize these imbalances.

Despite its promise, the DRS must implement procedural reforms in the three key areas identified above to fulfil its potential. At present, it appears weaker in dispute resolution than the process provided by the Compliance Advisor Ombudsman. A recent settlement it facilitated with AngloGold Ashanti in Guinea resulted in financial compensation for affected people, a trust fund for community-led development, and commitments to human rights safeguards.¹⁹² This outcome highlights the Compliance Advisor Ombudsman’s effectiveness in securing tangible remedies and reinforces the imperative for the DRS to enhance its procedural protections to achieve comparable outcomes.

B. Concerns Exist Over Multilateral Development Banks Shouldering Their Responsibility Amid a Shift to Flexibility in International Dispute Resolution

At a systemic level, the decision-making, rule-making, and enforcement mechanisms of multilateral development banks have become increasingly complex, blending national and international law. The availability of multiple forums for affected people to raise concerns about World Bank-funded

¹⁹² Inclusive Development International, “AngloGold Ashanti Agrees to Financial Settlement with ‘Area One’ Community Displaced by Its Guinea Mine” (9 October 2024), online (blog): <inclusivedevelopment.net> [perma.cc/WE7Z-GWVH].

projects is valuable. These include internal Bank mechanisms—such as project-level grievance mechanisms, the Grievance Redress Service, the Inspection Panel, and the DRS—and external mechanisms through borrower States' national administrative and judicial processes.

However, a significant gap in both scholarly and applied research concerns the ability of affected people to effectively obtain remedies through borrower States' national legal systems for harm caused by these States in connection with Bank-funded projects. A comprehensive comparative analysis is needed to evaluate the availability and effectiveness of these avenues for remedies. At present, if borrower States believe that international organizations should not intervene between them and their citizens in addressing project-related harm,¹⁹³ they must provide clear evidence of how they remediate such harm independently.¹⁹⁴

Moreover, the financial oversight exercised by multilateral development banks and the implementation responsibilities borne by borrower States create a complex challenge in determining the appropriate allocation of substantive responsibility among them, alongside their procedural obligations to ensure that affected people have access to remedies. Part of this task is currently undertaken by the International Law Commission in its ongoing work on the “Settlement of disputes to which international organizations are parties”.¹⁹⁵

Unlike commercial banks—which primarily extend credit without direct involvement in project execution and typically face limited lender liability under national law—multilateral development banks actively engage in project design, supervision, and oversight.¹⁹⁶ For instance, they may suspend or withdraw financial support when projects fail to comply with their policies

193 This point was reiterated across confidential interviews.

194 Relatedly, as Professor Bradlow explain, international law has seen little evolution in governing international financial transactions, which remain largely governed by national laws. See Bradlow, *International Financial Institutions*, *supra* note 20 at 174.

195 August Reinisch, Special Rapporteur, *Second Report on the Settlement of Disputes to Which International Organizations are Parties*, UNGA, 75th Sess, UN Doc A/CN.4/766 (1 March 2024) at 85.

196 Athialy, *supra* note 27 at 7 (writing that “[l]egally speaking the Bank is not liable to pay anything to the fisher-people and farmers who are badly impacted. But, morally it is. Without its lending the project might not have come up.”).

and procedures, even though the professional advancement structures within banks may disincentivize the cessation of projects.

At the World Bank, the Wapenhans Report identified a decline in portfolio quality in the 1990s, prompting institutional reforms aimed at strengthening risk management and accountability.¹⁹⁷ In the decades since, scholars and practitioners have increasingly argued that multilateral development banks bear a “duty of vigilance”—an obligation to exercise due diligence to prevent their financing from contributing to harmful outcomes.¹⁹⁸

However, multilateral development banks’ institutional commitment to development objectives may lead them to prioritize loan approvals—justified as serving the “common good”—over stringent risk management and project supervision, particularly for the limited subset of adversely affected people. This tension is further heightened by contemporary pressures to accelerate fund disbursement, particularly in response to the climate crisis and post-conflict reconstruction efforts. An even more sustainable approach would be to embed stronger safeguards directly within the project development model rather than rely on remedial mechanisms after harm has occurred.

The *Jam v IFC* case underscores both the potential and the limitations of national courts in enforcing accountability within multilateral development banks. On the positive side, following *Jam*, the International Finance Corporation restructured the Compliance Advisor Ombudsman’s reporting line, transferring it from management to the Board.¹⁹⁹ However, the International Finance Corporation has also modified the Compliance Advisor Ombudsman procedures to state that it will only refrain from “knowingly” supporting dispute resolution agreements that contravene its policies, thereby narrowing its commitment to accountability.²⁰⁰

The question of multilateral development banks’ responsibility is unfolding amid shifting trends. In the European Union, corporate responsibility is

197 World Bank, *Effective Implementation: Key to Development Impact* (Washington, DC: World Bank, 1992).

198 See Mac Darrow, *Between Light and Shadow: The World Bank, The International Monetary Fund and International Human Rights Law* (Portland: Bloomsbury, 2003) at 295–300.

199 Athialy, *supra* note 27 at 6.

200 See *supra* footnote 154.

increasingly enforced through robust mechanisms. Regulations such as the *French Duty of Vigilance Law*, the *European Union Corporate Sustainability Due Diligence Directive (CSDDD)*, and the *European Union Corporate Sustainability Reporting Directive (CSRD)* impose binding due diligence obligations, backed by sanctions and liability.²⁰¹ The European Bank for Reconstruction and Development has also integrated similar principles into its 2019 *Environmental and Social Policy*, reinforcing human rights standards for responsible business conduct in development finance.²⁰² Although sometimes portrayed as global,²⁰³ these developments remain largely European, with few comparable counterparts elsewhere, including within multilateral development banks.

Conversely, States increasingly favour flexible international dispute resolution, shifting away from binding adjudication towards consensus-driven approaches and alternative dispute resolution methods. This trend is evident in their growing reliance on non-compliance mechanisms, which prioritize facilitative implementation over compulsory enforcement.²⁰⁴ However, their effectiveness ultimately hinges on the willingness of powerful States or State-like actors to engage and comply. Moreover, as Malgosia Fitzmaurice aptly argues, the legitimacy of this new generation of non-compliance mechanisms

201 *Loi n° 2017-399 du 27 mars 2017 relative au devoir de vigilance des sociétés mères et des entreprises donneuses d'ordre*, JO, 28 March 2017, texte n° 1; EU, *Directive 2024/1760 of the European Parliament and of the Council of 13 June 2024 on corporate sustainability due diligence and amending Directive (EU) 2019/1937 and Regulation (EU) 2023/2859*, [2024] OJ L 1760/1; EU, *Directive 2022/2464 of the European Parliament and of the Council of 14 December 2022 amending Regulation (EU) N° 537/2014, Directive 2004/109/EC, Directive 2006/43/EC and Directive 2013/34/EU, as regards corporate sustainability reporting*, [2022] OJ L 322.

202 The European Bank for Reconstruction and Development, *Environmental and Social Policy 2019* (25 April 2019), online (pdf): <ebrd.com> [perma.cc/89NC-2LA8].

203 See e.g. Owen McIntyre, "The Critical Contribution of Independent Accountability Mechanisms (IAMS) to the Global Governance Paradigm" *Perspectives* (Washington: American University Washington College of Law, 2023), online (pdf): <digitalcommons.wcl.american.edu> [perma.cc/QL6N-MXXX].

204 See generally Christina Voigt & Caroline Foster, eds, *International Courts versus Non-Compliance Mechanisms: Comparative Advantages in Strengthening Treaty Implementation* (Cambridge: Cambridge University Press, 2024).

in international law depends on robust procedural protections that ensure transparency, inclusive participation, and adherence to due process.²⁰⁵

A discernible shift toward “flexibility” and “agility” is emerging, as some multilateral development banks scale back direct accountability and transfer responsibility to borrower States and private corporations. While the World Bank claims that the DRS enhances its accountability, its dispute resolution process aligns more closely with the broader trend of flexible rule-making and dispute settlement. The Bank largely defers complaint resolution to borrower States, with its Management acting only as a technical observer. This shift is further reflected in the adoption of “borrower frameworks”²⁰⁶ and similar approaches under consideration by other multilateral development banks.²⁰⁷ It is also evident in the allowance for performance standards to be met at any point during project implementation. The shift is driven by a belief in putting greater trust in corporate social responsibility, particularly in the United States, and is likely reinforced by competition from alternative financing sources, such as Chinese-backed initiatives, which impose less stringent environmental and social safeguards.²⁰⁸

C. The *Global Administrative Law Theory* Should Become *Transnational*

In the 1990s and early 2000s, multilateral development banks increasingly integrated robust accountability practices into their operations and assumed greater responsibility themselves for project-related harm. This trend, also observed in other international institutions and organizations, contributed to the emergence of global administrative law scholarship in the 2000s,

205 Malgosia Fitzmaurice, “The New Generation of Environmental Non-Compliance Procedures and the Question of Legitimacy” in Voigt & Foster, *supra* note 204 at 70.

206 See *supra* notes 117–118.

207 Asian Development Bank, *Environmental and Social Framework* (2023), Working Paper, online (pdf): <adb.org> [perma.cc/ZHN9-NK4P].

208 See Anna Gelper et al, “How China Lends: A Rare Look into 100 Debt Contracts with Foreign Governments” (2021) Peterson Institute for International Economics, Working Paper N° 21–7. On the new role of BRICS (Brazil, Russia, India, China, and South Africa) countries in global economic governance, see Bradlow, *International Financial Institutions*, *supra* note 20 at 176–77.

which identified a developing “field” of administrative bodies that adhered to—and should adhere to—similar administrative law principles.²⁰⁹

Since then, global administrative law theory has generated substantial scholarship, frequently citing its foundational work,²¹⁰ though its momentum appears to have faded in recent years. As noted in the preceding subsection, the global trend toward stringent accountability practices in multilateral development banks has partially reversed. In this context, global administrative law theory arguably overstated the “de facto independence and discretion”²¹¹ of global bodies, overlooking their deep entanglement with State power—whether through inter-State relations governed by international law or through national legislative and enforcement mechanisms.²¹²

While global administrative law scholarship identified transparency as a defining feature of global governance, paradoxically, the opacity surrounding the creation processes of “global” bodies has kept scholars from fully appreciating the implications of such processes. However, as shown in this paper, the enforcement mechanisms of many international institutions, including the World Bank’s remedial mechanisms—the Inspection Panel, Grievance Redress Service, and Dispute Resolution Service—have emerged from intense political negotiations shaped by competing State interests, intra-institutional tensions, and broader geopolitical power dynamics. Global administrative law scholarship has largely overlooked their creation processes, leaving it relatively ill-equipped to anticipate the evolution of global bodies.

Against this backdrop, *global* administrative law theory should evolve into a *transnational* administrative law theory. As Philip Jessup first articulated in *Transnational Law* (1956), legal processes increasingly transcend the national-international divide, encompassing a continuum of interactions between State and non-State actors.²¹³ Harold Koh’s transnational legal process theory (1996) further explained how contemporary cross-border

209 See *supra* notes 14–17.

210 Lorenzo Casini, “Global Administrative Law Scholarship” in Sabino Cassese, ed, *Research Handbook on Global Administrative Law* (Cheltenham, UK: Edward Elgar, 2016) at 548.

211 Kingsbury, Krisch & Stewart, *supra* note 14 at 26.

212 *Ibid* at 34.

213 Philip C Jessup, *Transnational Law* (New Haven: Yale University Press, 1956).

events emerge through iterative interactions among global, regional, and national institutions.²¹⁴ A transnational administrative law theory would more directly recognize the contingent nature of cross-border governance, which is continuously reshaped by geopolitical pressures, including shifting power balances between developed and emerging economies. It would also offer a more precise analysis of why specific accountability mechanisms emerge, examining the specific political, institutional, and financial constraints that define their structure and effectiveness.²¹⁵ This transnational theory would enable a clearer anticipation of these mechanisms' future trajectory and the strategic design of their reform.

A challenge in development finance remains ensuring that affected people do not bear the burden of flawed multilateral development bank practices and unmet accountability commitments. The true clients of development finance should not be the borrowing States or their finance ministers but the individuals within these States. Although multilateral development banks, borrower States, and private entities share responsibility for mitigating and remedying harm, the shift toward flexible dispute resolution risks obscuring clear lines of accountability. The DRS exemplifies this trend, offering an alternative to compliance review but lacking sufficient procedural protections to counterbalance power asymmetries between the parties. Strengthening this mechanism demands not only strategic advocacy before the World Bank's Executive Directors but also the adaptation of transnational administrative law principles to address the nuanced challenges that arise in resolving disputes related to Bank-funded projects. This paper advanced these principles to ensure that flexibility in dispute resolution does not come at the expense of justice, and that communities like Kawaala have access to remedies when, as history sadly suggests is bound to happen again, armed guards knock on their doors one day and order them to leave their homes behind.

214 Harold Hongju Koh, "Transnational Legal Process" (1996) 75:1 Neb L R 181.

215 See generally Karl-Heinz Ladeur, "Global Administrative Law: A Transnational Perspective" in Peer Zumbansen, ed, *The Oxford Handbook of Transnational Law* (Oxford: Oxford University Press, 2021) 157; Stephan W Schill, "Transnational Legal Approaches to Administrative Law: Conceptualizing Public Contracts in Globalization" (2014) 1 Riv Trim Dir Pubblico 1; Eyal Benvenisti, *The Law of Global Governance*, The Hague Academy Collected Courses, vol 368 (Leiden: Brill Nijhoff, 2014).