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Holding new forms of development finance to account: an action plan for multilateral development banks

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New forms of development financing pose a challenge to the accountability of Multilateral Development Banks[1] (MDBs). Multilateral organisations comprise 41 percent of official development assistance and the MDBs are essential vehicles for states to channel development finance. They are recognised for their expertise in mobilising resources, specialised knowledge in infrastructure and financial services, as a means for collective action in development matters, and in delivering of global public goods (OECD 2018). Combined, the African, Asian, Inter-American Development Bank, the World Bank Group and the European Bank for Reconstruction and Development committed USD$102 billion for development in 2017[2]. Given their resources and expertise it is imperative that the banks' finance development is environmentally and socially sustainable, including for project beneficiaries in and around the project site. It is therefore critical that they have strong accountability mechanisms that can be used to hold the banks to global environmental and social standards, which are embodied in their operational policies and procedures.

The need for accountability mechanisms is well recognised by the MDBs. The banks have all established accountability mechanisms that provide recourse for people affected by bank financed development projects. Indeed, they have come a long way in improving their accountability mechanisms to make them more effective over the last two decades. The similar operations of the accountability mechanisms represent a new consensus for how to hold the banks to account including being: transparent, independent, and responsive to affected people through consultation (mediation) and monitoring to ensure bank compliance when found to contribute to environmental and social harm. The outlier is the original World Bank Inspection Panel, which is currently reviewing its 'toolkit' in light of this convergence.

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1 This policy brief is based on an extensive research project titled 'Multilateral Development Bank Accountability: Who Benefits' funded by the Australian Research Council (ARC DP140100868). Find out more about the project: https://sydney.edu.au/arts/government_international_relations/staff/profiles/susan.park.php. My database on all of the known claims submitted to the MDB mechanisms and their outcomes from 1994-2016 is available on my personal website: www.susanmpark.com. The websites are frequently updated to inform you about upcoming publications, which include my book, which is currently under review, titled: *The Good Hegemon: US Power, Accountability as Justice, and the Multilateral Development Banks.*

2 Author calculations based on annual reports.

However, new forms of financing pose problems for accountability. The increase in MDB lending to financial intermediaries limits the ability of the accountability mechanisms to trace environmental and social policy compliance (Faubert et al 2010). In order to optimise the value of having accountability mechanisms the banks need to double down on internalising the results of accountability mechanism investigations. They can do so through the provision of robust monitoring of bank efforts to bring projects back into compliance, and through establishing internal incentives to staff to take on the lessons learned from twenty-five years of investigations. This adds value to the MDBs as a governance function that upholds the integrity of bank lending. The accountability mechanisms help ameliorate the negative impacts of multilateral development finance thus making it more sustainable. It is questionable as to how the current trend towards MDB lending to financial intermediaries can be held responsible in this way. Yet the convergence by the accountability mechanisms provides lessons for grievance mechanisms for all project financiers. Private sector development financing could be answerable for its actions by harnessing the community of practice of a cadre of skilled accountability officers generated by the accountability mechanisms of the MDBs[3].

In order to ensure accountability in this new context, the MDBs should undertake the following actions:

- Continue to ensure the accountability mechanisms are independent, transparent, and responsive to project affected people.
- Ensure accountability mechanisms have robust monitoring provisions.
- Introduce staff incentives for project performance outcomes.
- Work with accountability mechanism officers inside the MDBs to design accountability mechanisms for the financial intermediaries that play an increasing role in development finance.

3 This policy brief summarizes the findings of a four-year research project on the accountability mechanisms of the Multilateral Development Banks at the University of Sydney, with funding from the Australian Research Council (2014-2018). It examines the emergence, function, and impact of the accountability mechanisms of the World Bank, World Bank Group, African, Asian, Inter-American Development Bank, and European Bank for Reconstruction and Development.

THE ORIGINAL WORLD BANK INSPECTION PANEL: LIMITED EFFECTIVENESS

For twenty-five years the World Bank Inspection Panel has existed to independently investigate whether World Bank acts or omissions contribute to environmental and social harm. A claim to the Inspection Panel can come from two or more people that may be, or are, directly and materially affected by a Bank financed project. The claim must be in relation to a World Bank financed project during its design, appraisal, or implementation phase. The accountability mechanisms are a last resort for communities to have their grievances addressed. Submitting a claim to an accountability mechanism does not stop the project from continuing. Accountability mechanisms like the Inspection Panel form an important pillar of governance for the MDBs. They seek to make the banks answerable for meeting their own environmental and social operational policies and procedures, while seeking to address people's grievances and improve project effectiveness.

Once submitted, the Panel determines whether the claim is eligible for investigation. If it is, the Panel undertakes an investigation including reviewing the Bank's actions through examining internal documents, interviews with staff, visits to the project site, and interviews with claimants and the executing agency. The Panellists are independent from the World Bank operations department. They are hired for five year non-renewable terms and cannot work for the World Bank afterwards. They report their findings to the World Bank's Board of Executive Directors. Bank Management have the right of reply to the claims, including how they have or will address the grievance. From the very beginning, the Panel has been transparent in providing a public registry of the claims submitted to the Panel, the status of the investigation, and their outcome. In reviewing the Panel's findings of compliance or non-compliance with their own policies leading to harm, the Board may determine that the Panel should monitor the Bank's implementation of a remedial action plan to address the harm and bring the project into compliance with the operational policies and procedures. Many of the subsequent accountability mechanisms for the other MDBs would go further than the Panel by including robust monitoring provisions that give the accountability mechanisms teeth for enforcing compliance. All of the banks must uphold the ability of the accountability mechanisms to monitor compliance.

The Panel has long been recognised as only indirectly helping people negatively affected by identifying whether it was Bank acts or omissions that contributed to harm. Specifically, the Inspection Panel does not have the automatic power to monitor the Bank's remedial action plans to improve the situation at the project site, although the Board frequently requests the Panel do so. To date the Board has requested 24 of the 39 investigations undertaken by the Inspection

Panel be monitored by the Panel, including in response to the controversial Mumbai Urban Transport Project in India that violated the World Bank's involuntary resettlement policy and led to six follow-up monitoring reports to bring it into compliance. Since 2016, the Board has required World Bank Management to submit biannual updates of its actions in response to Inspection Panel investigation findings.

The Panel was also not given the capacity to provide recommendations for *how* to correct Bank non-compliance although it does produce findings that are suggestive. The Panel produces lessons learned publications from its experience but these could be better integrated into Bank lending practices through adding incentives for operational staff that consider project performance. This would avoid repeating the same mistakes that lead to Panel claims.

SUBSEQUENT ACCOUNTABILITY MECHANISMS HAVE IMPROVED

All of the other MDBs, the Asian, African and Inter-American Development Banks and the European Bank for Reconstruction and Development, followed the Inspection Panel but later mechanisms were structured differently. Variations included not giving the accountability mechanism the right to independently determine whether a claim is eligible for investigation or the ability to decide to undertake an investigation. The mechanisms of the Inter-American Development Bank, the Asian Development Bank, and the European Bank for Reconstruction and Development were also comprised of a roster of experts from which a panel would be selected to undertake an investigation rather than the Inspection Panel's standing three-member panel, with provisions that those experts could work for the banks after their term. The lack of independence of most of the Panels to undertake investigations led to demands by member states to overhaul the mechanisms to improve their capacity to investigate MDB compliance.

Having accountability mechanisms that are independent from interference in their decision-making gives them greater credibility, which enhances their legitimacy. Credible and legitimate accountability mechanisms are necessary because they rely on the willingness of people to come forward, often at their own personal expense, to detail how they have been harmed. After subsequent reformulations all of the accountability mechanisms, whether they report to the Board of Executive Directors or the bank's Presidents, now have the right to determine whether a claim is bona fide and whether an investigation should take place. Credible and legitimate accountability mechanisms can help improve the effectiveness of the bank's operations.

Member states on the Board of Executive Directors built into the accountability mechanisms rules of procedure the need for periodic reviews to ensure their effectiveness. The reviews have led to ongoing improvements in their practices and have contributed to the new consensus we see now. Reviews of the accountability mechanisms are not as frequent as they once were because the mechanisms have converged on agreed practices.

In addition to being independent in their deliberations, the accountability mechanisms have also become more transparent. Over time, all of the mechanisms have begun to release information over the claims they receive and status updates of where in the process a claim might be, and investigation outcomes. All of the accountability mechanisms have publicly available case registries that provide such information unless claimants request anonymity. Transparency is a vital ingredient for holding the banks responsible for their actions by the Board and by stakeholders including civil society. It also enables an analysis of the trends across the accountability mechanisms in terms of the policies triggered and the outcomes of the cases.

TABLE 1: PROGRESS OF CLAIMS SUBMITTED TO THE MDB ACCOUNTABILITY MECHANISMS UP TO 31 DECEMBER 2016.

MDB	Claims submitted	Registered	Viable for problem solving	Monitoring of successful agreement between the parties	Claims investigated for compliance	Non-compliance led to monitoring
World Bank (IBRD/ IDA)	116	89	-	-	36	21
IDB	130	56	16	6	12	2
ADB	155	70	17	7	9	4
World Bank Group	258	164	77	25	36	17
EBRD	138	29	5	2	21	10
AfDB	24	14	9	3	4	2

THE NEW CONSENSUS

The similar operations of the accountability mechanisms represent a new consensus for how to make the banks answerable for their actions. The accountability mechanisms are more independent, transparent, and have the ability to undertake monitoring of bank compliance. They have also improved their responsiveness to affected people, although they can do more (Huijstee et al 2016). In 1999 the World Bank Group established the Compliance Advisor Ombudsman (CAO), whose primary focus was addressing grievances by project affected people through its Ombudsman role. When the Asian Development Bank's (ADB) Inspection Function failed to adequately address the claims coming to it, it was replaced with the Accountability Mechanism in 2003. The Accountability Mechanism, like the CAO, created dual functions: a problem-solving mechanism to directly seek to resolve the issue with claimants, the executing agency and the bank, and the compliance function that sought to investigate bank acts or omissions contributing to harm. Moreover, the Accountability Mechanism covers sovereign and non-sovereign lending. This has enabled a successful mediation for example of a 2009 claim to the ADB's Accountability Mechanism in relation to the CAREC Transport Corridor I Investment Program in Kazakhstan, where the roadway threatened farmer's access to grazing land.

All of the accountability mechanisms bar the Inspection Panel now have these dual functions. Moreover, subsequent tweaking through the periodic reviews, now enable complainants the right to determine which function they want to access: either problem-solving or compliance investigation. This responsiveness to project affected people is vital for ensuring their use. This is important because there are instances where relations between the parties are no longer amenable to mediation. In other cases, it is clear that technical standards for environmental assessment, for example, do not need problem solving but should be investigated and rectified.

The outlier lacking dual functions is the original World Bank Inspection Panel. The Inspection Panel can be viewed as a blunt and unwieldy tool that is unable to address some of the more easily rectifiable grievances in an expedient way. It is currently having its 'toolkit' reviewed in light of this convergence. Two issues at stake are the Panel's inflexibility with responding to claims that could be easily amenable to mediation, and giving the Panel the power to monitor Bank actions which the Board of Executive Directors frequently requests the Panel to do so. Giving the Panel robust monitoring powers makes sense when this is already being done at the behest of the Board. The World Bank, as with the other MDBs, do need to be independently monitored to ensure policy compliance after investigation findings of non-compliance contributing to harm.

Although the World Bank created its internal Grievance Redress Service (GRS) in 2012 to address grievances by people in project areas, it works with the project teams to address complaints rather than as an independent facilitator. The establishment of the GRS has not been able to stem the criticism of the Panel's weaknesses. In 2014 the Inspection Panel's the Resolution was amended to approve an early solution 'pilot process.' The pilot gave the Panel the opportunity to negotiate between the parties prior to registering a claim for investigation. It could do so if the claim raises issues that are "clearly defined, focused, limited in scope, and appear to be amenable to early resolution in the interests of the Requestors." Any possible pilot case would also need to be within the ability of Management to address and be acceptable to requestors (World Bank 2014: Annex 1, p. 24). Yet the pilot process, used for two cases, complicated the independence and integrity of the Panel. The Panel would be complicit in any outcome from a pilot process that went wrong, and would then have to determine whether or not a claim arising from a pilot intervention could be investigated (and whether the Panel could investigate itself). The addition of a separate office for problem solving would bring the World Bank into line with the new consensus while retaining the integrity of the Panel.

HOW TO HARNESS THE NEW CONSENSUS IN LIGHT OF CURRENT FINANCING TRENDS

Within the context of broader encouragement to align public and private sector lending to advance the United Nation's Sustainable Development Goals and Agenda 2030, over the last decade the MDBs have increasingly lent to Financial Intermediaries (FIs) to on-lend for development projects. This means that the MDBs lend to financial intermediaries, including private banks and equity and trust funds, who then on-lend to the recipient to undertake the development project. Recipients are often small and medium size companies and organisations that would not be otherwise able to access funding from the MDBs. In this form of lending, the onus is on the FI, not the MDB, to ensure that environmental and social standards are met. However, there are difficulties in ensuring that FIs meet environmental and social standards (Faubert et al 2010). Non-government organisations have begun documenting cases where FIs have not met minimum environmental and social standards (Inclusive Development 2016). In 2012 in response to the surge in lending to financial intermediaries by the World Bank Group, the Compliance Advisor/Ombudsman investigated whether lending could be tracked to ensure harm was not occurring. It found that the World Bank Group did not have a method for ensuring its environmental and social management system is implemented and that lending to and by FIs 'does no harm' (CAO 2012). The Boards of the banks need to therefore ensure accountability mechanisms have robust monitoring provisions to investigate whether the banks are meeting their environmental and social standards.

How does the MDB shift towards working with the private sector by providing loans to financial intermediaries affect the activities of the accountability mechanisms? On one level this is not problematic: the Asian Development Bank's Accountability Mechanism has undertaken compliance investigations of sovereign and non-sovereign lending. The CAO has successfully mediated large-scale complex grievance claims against private sector investments and has learnt how to navigate when to mediate and when to trigger a compliance investigation. Successfully doing so relies on accountability mechanisms that are independent, transparent, and responsive to project affected people.

The accountability mechanisms are only effective instruments for holding the banks to account for the time it takes to design, appraise, and implement a project. There are tools available to improve the performance of the bank in relation to its environmental and social record, including for example introducing staff incentives for project performance outcomes. This stems the focus of staff incentive systems that remain focused on project lending rather than performance.

For lending that involved the private sector, the accountability mechanisms may be more circumscribed. For example, when a loan has been disbursed or when a company chooses to repay a loan or divest equity from an MDB project then there is no capacity for recourse for people affected by the project. All development projects should have grievance mechanisms at the project level to allow people the right to have their grievances heard irrespective of whether the funder is public or private. While these may exist on paper, they need to be verified. The shift to MDB lending to financial intermediaries must come with the provision that all project financiers provide accountability mechanisms. In keeping with the International Finance Corporations draft of nine guiding principles for impact management, accountability mechanisms established by all project financiers should be verified. There are a range of ways that this could be enacted to ensure not only that the MDBs can be made answerable, but that all lenders can be. Accountability mechanism officers inside the MDBs could design accountability mechanisms for the financial intermediaries that play an increasing role in development finance. While there is a need to investigate how this could be done, there is a growing cadre of experienced accountability mechanism officers with the knowledge and capacity to provide these services to the private sector.

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