

CAN QUASI-JUDICIAL BODIES AT THE WORLD BANK PROVIDE JUSTICE IN HUMAN RIGHTS CASES?

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ABSTRACT

The Inspection Panel and Compliance Advisor/Ombudsman (CAO) are quasi-judicial bodies that hear human rights complaints related to World Bank projects. The Inspection Panel and CAO have adjudicated nearly 250 complaints, and at least seventeen other development finance institutions have created similar bodies in their likeness. Unfortunately, we still lack a systematic understanding of their effectiveness. This Article will evaluate the full universe of cases brought before the Inspection Panel and CAO and evaluate their ability to provide justice in human rights cases.

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I. INTRODUCTION

Redress for human rights violations has traditionally been sought in domestic and international courts.¹ Unfortunately, in many countries, domestic courts are unsympathetic to claims against the government, and the jurisdiction of international courts is limited. Accountability mechanisms created by international financial institutions (IFIs) such as the World Bank provide a frequently overlooked—but increasingly popular—venue for bringing human rights claims. These accountability mechanisms are intended to ensure that projects that receive the institution’s funding comply with internal social and environmental standards. Communities that have been harmed by development projects can lodge complaints with the relevant accountability mechanism, which then investigates the allegations and, if a violation is found, makes recommendations to remedy the violation. Remedies vary and can include halting the project, revising the project, or even providing monetary payouts to the victims.

The best-known of these accountability mechanisms, the World Bank’s Inspection Panel and the Compliance Advisor/Ombudsman (CAO), were introduced in the 1990s in response to public demand for greater accountability. This public demand grew over the previous two decades when several World Bank projects devastated communities across the globe, either through direct human rights violations or by causing harm to the local environment. Thus, the Inspection Panel and the CAO were created to investigate World Bank projects and monitor compliance with World Bank social and environmental standards.²

1. Here, human rights are understood as universal rights inherent to all human beings, without discrimination. These rights include the right to life and liberty; freedom of opinion and expression; and freedom from slavery and torture. Human rights as an ethical framework has been codified in international human rights law as a set of obligations that state governments must abide by, either to affirmatively act or refrain from acting in particular ways, so as to promote or protect human rights. *See* HUMAN RIGHTS, www.un.org/en/sections/issues-depth/human-rights. (last visited Jan. 17, 2018). Thus, our discussion of human rights violations as they relate to the World Bank’s accountability mechanisms refers to the rights that overlap with both the conceptual and codified meaning of human rights.

2. The complaints that are lodged with the Inspection Panel and CAO frequently allege human rights violations, and some of the World Bank’s social and environmental standards track international human rights law. For example, the World Bank’s Operational Policy 4.10 provides protections for indigenous peoples that are also found in the U.N. Declaration on the Rights of Indigenous Peoples, and the World Bank’s broad environment assessment provisions in Operational Policy 4.01 for human health and safety encompass rights enshrined in the Universal Declaration of Human Rights. However, many plaintiffs and civil society organizations are critical of the World Bank standards for being inadequate in fully integrating human rights standards into its mandate and policies. *See* Roxanna Altholz & Chris Sullivan, Berkeley INT’L HUM. RTS. L.

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The Inspection Panel covers development projects where funding is provided directly to governments, while the CAO covers projects where funding is given to private corporations to invest in developing countries.³ At the time of their introduction, the Inspection Panel and CAO were the first venues in which individuals could directly seek redress for harms inflicted by international organizations. Prior to the Inspection Panel and CAO, individuals could only challenge the actions of international organizations if their governments chose to do so on their behalf.

Therefore, the Inspection Panel and CAO stand out as promising new venues in a legal space where victims may otherwise lack viable venues for seeking justice. Domestic courts can be limited in their ability to provide justice, particularly when the purported victims are from politically marginalized groups or when the government is complicit in the alleged violations.⁴ At the international level, victims seeking redress from regional human rights courts, like the European Court of Human Rights, are often thwarted by jurisdictional limitations,⁵ and the International Criminal Court only accepts cases where the alleged violations are extreme, such as genocide and war crimes. Against this backdrop of limited options, quasi-judicial bodies like the Inspection Panel and CAO represent options that may be more accessible, and more capable of providing justice, than other extant venues.⁶

The quasi-judicial model introduced by the Inspection Panel and CAO has proved to be remarkably popular.⁷ Since the founding of the

CLINIC, *Accountability & International Financial Institutions: Community Perspectives on the World Bank's Office of the Compliance Advisor Ombudsman* 4 (2017).

3. See *Operating Procedures: April 2014, THE INSPECTION PANEL AT THE WORLD BANK*, <https://inspectionpanel.org/sites/ip-ms8.extcc.com/files/documents/2014%20Updated%20Operating%20Procedures.pdf> (last visited November 20, 2018); *Compliance Advisor Ombudsman, CAO OPERATIONAL GUIDELINES*, http://www.cao-ombudsman.org/howwework/documents/CAOOperationalGuidelines2013_ENGLISH.pdf (last visited November 20, 2018).

4. See, e.g., WBG, *Uses and Users of Justice in Africa: The Case of Ethiopia's Federal Courts* (Jul. 10, 2010), <https://openknowledge.worldbank.org/handle/10986/2937>.

5. Most notably, governments can only be sued in these venues if they have accepted the jurisdiction of the court, and individuals, corporations, and other non-government entities cannot be sued at all.

6. For discussion of other types of quasi-judicial bodies and the types of justice they provide, see Kelebogile Zvobgo, *Designing Truth: Facilitating Perpetrator Testimony at Truth Commissions*, J. HUM. RTS. (forthcoming 2019), https://www.researchgate.net/publication/322835945_Designing_Truth_Facilitating_Perpetrator_Testimony_at_Truth_Commissions.

7. We describe these bodies as quasi-judicial, because they are adjudicatory in nature: they review evidence in relation to a complaint and issue decisions. However, they lack the full authority of a formal judicial body, including limited jurisdiction (can only investigate World Bank projects) and enforcement powers.

Inspection Panel and CAO, similar bodies have been launched by at least seventeen other finance organizations, including the United Nations Development Program and the European International Development Bank. Unfortunately, these accountability mechanisms are being replicated in the absence of any thorough analysis of how well the originals are working. It is entirely possible that IFIs are racing to adopt new mechanisms that completely fail to address the problems that motivated their creation. Most importantly, it could be that the bodies IFIs create to monitor their own projects may be too toothless to constrain the behavior of the IFI or to provide relief to plaintiffs who have been harmed by IFI-funded projects.⁸

This Article undertakes a rigorous analysis of the effectiveness of the Inspection Panel and CAO, driven both by theory and new data. Our data are the first to provide a comprehensive answer to fundamental questions, including what types of issues are raised in complaints, how frequently different types of remedies are provided to plaintiffs, and what factors influence complaint success. In our analysis, we first evaluate the effectiveness of the Inspection Panel and CAO in providing justice to victims of human rights abuses. We then explore the possible impact on international human rights as these accountability mechanisms become more widespread.

Our analysis of Inspection Panel and CAO performance reveals that the human rights complaints adjudicated in these bodies are frequently serious, involving physical integrity rights violations such as torture and imprisonment, as well as environmental damage and loss of livelihood. The remedies provided are also non-trivial, with compensation to victims mandated and development projects halted or changed to prevent future harm. However, the bodies also have shortcomings—most notably, we observe no completed cases, and only one ongoing case, in which the bodies punish the alleged perpetrators.⁹

We find that the Inspection Panel and CAO are effective at providing some types of justice, but not others. These bodies are ineffective at providing retributive, or punitive, justice—in only one of the cases in their history do the bodies punish the alleged perpetrators—but they do provide important elements of procedural, restorative, and

8. Given that the Inspection Panel and CAO are quasi-judicial bodies, individuals who bring complaints in these venues could be more precisely labeled as “complainants.” However, for ease of identification, we use the terms “plaintiff” and “defendant” to refer to the parties, fully recognizing that the Inspection Panel and CAO are not formal judicial tribunals.

9. The lone exception is the Uganda Transport Sector Development Project, which was still pending when data collection was completed. See *infra* pp. 16-17 for a full discussion.

distributive justice.¹⁰ Procedurally, these bodies provide plaintiffs a formal venue in which to present evidence, confront the alleged perpetrators, and, in many cases, provide plaintiffs with a formal acknowledgement of the harm they have suffered. By halting or changing projects to prevent future harm, accountability mechanisms contribute to the restoration of harmed communities, and by mandating the payment of monetary compensation, they address important distributive justice concerns that arise when the negative impacts of development projects fall disproportionately on some individuals or communities.

Thus, accountability mechanisms can provide some types of justice in human rights cases, but this justice is not always complete nor proportional. Inasmuch as there is a spectrum of remedies, there is also a spectrum of harm, and in the most egregious of cases, even the harshest remedy does not appear to be proportional to the harm committed. The data make this evident, revealing that the Inspection Panel and CAO decisions almost never result in punitive remedies. And even when punitive measures are imposed—most commonly lending freezes—they do not deliver the level of justice that violations such as rape, child labor, and killings would warrant.¹¹

Based on our analysis of the performance of the Inspection Panel and CAO, we develop theoretically and empirically grounded expectations for the effects of accountability mechanisms on both victims and perpetrators of human rights abuses. We expect that, in addition to the demonstrable direct effects on victims such as prevention of future harm and the mandate of compensation, there are also indirect effects with respect to community empowerment and increased expectations by individuals that their human rights be respected by governments and quasi-governmental institutions. Similarly, we expect that the effects on perpetrators extend beyond the direct repercussions related to the ending or altering of specific projects.

We provide brief descriptions of the Inspection Panel and CAO before proceeding to introduce our new data and evaluate the effectiveness of these bodies. We then explore the impact of accountability mechanisms on global respect for human rights, analyzing their potential for direct and indirect effects on both victims and perpetrators.

10. See James L. Gibson, Truth, Justice, and Reconciliation: Judging the Fairness of Amnesty in South Africa, 46 AM. J. POL. SCI. 540, 540-56 (2002).

11. See, e.g., *infra* pp. 16-17 regarding the Uganda Transport Sector Development Project, where punitive remedies were levied. This project, however, remained open at the end of our data collection cut-off and thus was not included.

II. THE EFFECTIVENESS OF ACCOUNTABILITY MECHANISMS

A. *The World Bank's Accountability Mechanisms*

1. The Inspection Panel

Established in 1993, the Inspection Panel broke new ground as the first venue ever to allow individuals to directly challenge the actions of an international organization.¹² Prior to the Inspection Panel, individuals could only challenge an international organization if represented by their government.¹³ However, the mandate of the Inspection Panel is to evaluate the World Bank's compliance with its own standards, and thus the harms for which it can provide remedy are limited to those harms that occur when the World Bank violates its own rules.¹⁴ Any person or community that suffers harm due to a breach of the World Bank's standards has standing to bring a complaint before the panel.¹⁵

The standards themselves are based only on the World Bank's Bank Procedures (BP) and Operational Policies (OP).¹⁶ Because many affected communities bring claims for violations of social and environmental standards, there are a handful of key provisions that are frequently relevant to these types of complaints, including those relating to environmental assessment (OP 4.01), which "takes into account the natural environment (air, water, and land); human health and safety; social aspects (involuntary resettlement, indigenous peoples, and physical cultural resources); and transboundary and global environmental aspects;"¹⁷ involuntary resettlement (OP 4.12), which "should be avoided where feasible, or minimized, exploring all viable alternative project designs;"¹⁸ and gender and development (OP 4.20), which is meant "to assist member countries to reduce poverty and enhance economic growth, human well-being, and development effectiveness by

12. For more detail on how the Inspection Panel operates, see Accountability Counsel, *Accountability Resource Guide: Tools for Redressing Human Rights & Environmental Abuses in International Finance and Development* (8th ed. 2015), <https://www.accountabilitycounsel.org/wp-content/uploads/2017/08/ARG-V8.pdf> (last visited May 7, 2018).

13. *Id.*

14. *Id.*

15. *Id.*

16. See Operating Procedures, *supra* note 3.

17. WBG, OPERATIONAL MANUAL: OP 4.01 – ENVIRONMENTAL ASSESSMENT (2013), <https://policies.worldbank.org/sites/ppf3/PPFDocuments/Forms/DispPage.aspx?docid=1565&ver=current>.

18. See WBG, OPERATIONAL MANUAL: OP 4.12 – INVOLUNTARY RESETTLEMENT (2013), <https://policies.worldbank.org/sites/ppf3/PPFDocuments/090224b0822f89db.pdf>.

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addressing the gender disparities and inequalities that are barriers to development.”¹⁹

The Inspection Panel itself consists of three members who each serve five-year terms.²⁰ The Inspection Panel’s jurisdiction covers all projects that are financed in whole or in part by the public sector branches of the World Bank, i.e., the International Bank for Reconstruction and Development (IBRD), the International Development Association (IDA), and the Global Environment Facility (GEF).²¹ These institutions provide funding in the form of low-interest loans to state governments for development projects.²²

The Inspection Panel serves to both investigate claims and make recommendations to the World Bank Board of Directors regarding appropriate remedies.²³ When the Inspection Panel receives a Request for Investigation, it sends a copy to the World Bank Management, which has twenty-one days to respond to the allegations contained in the Request.²⁴ After Management’s response, the Inspection Panel determines eligibility by visiting the project site and then submits an eligibility report to the World Bank Board of Directors.²⁵ The report includes the Inspection Panel’s independent assessment of the merits of the Request, an analysis of Management’s response to the request, and a recommendation to the Board about whether or not the Request should be investigated.²⁶

If the Board approves an Inspection Panel investigation, the panel conducts a full investigation, which includes talking to affected individuals, reviewing all relevant documents, and interviewing people who participated in the project. The Inspection Panel may visit the project site again and hire experts to conduct independent analyses of the issues raised in the Request.²⁷

After the Inspection Panel completes its investigation, it submits its final report to the Board and Management.²⁸ The final report states whether or not the Bank is in compliance with its own policies and

19. See WBG, OPERATIONAL MANUAL: OP 4.20 – GENDER AND DEVELOPMENT (2013), <https://policies.worldbank.org/sites/ppf3/PPFDocuments/1680090224b08231c012.pdf>.

20. See Operating Procedures, *supra* note 3.

21. See Operating Procedures, *supra* note 3.

22. *Id.*

23. *Id.*

24. *Id.*

25. *Id.*

26. *Id.*

27. *Id.*

28. See Operating Procedures, *supra* note 3.

procedures. Management is then given six weeks to submit recommendations to the Board as to what actions the Bank should take in response to the Inspection Panel's findings. Taking both the Inspection Panel's final report and the Management's recommendations, the Board decides what to do next. There is no right to appeal the Board's decision.²⁹

2. The Compliance Advisor/Ombudsman

The Compliance Advisor/Ombudsman (CAO) serves a similar purpose as the Inspection Panel, but it covers projects sponsored by the World Bank's private sector arm and follows a slightly different process, which is more focused on mediation.³⁰ The CAO's jurisdiction covers projects funded by the International Finance Corporation (IFC) and Multilateral Insurance Guarantee Association (MIGA).³¹ The IFC provides loans to private corporations (also known as the private sector client or project sponsor) that invest in developing countries, while MIGA offers insurance to these companies.³²

When the CAO receives a complaint, it first determines whether the complaint meets three eligibility criteria before proceeding with further assessment.³³ The three criteria are: (1) that the complaint relates to an IFC or MIGA project; (2) the complaint relates to a social and/or environmental issue associated with an IFC or MIGA project; and (3) the plaintiff believes she is, or may be, affected by the social and/or environmental issue raised.³⁴

The social and/or environmental issue criterion does not require a particular IFC or MIGA policy to be specified in the complaint, but violations of the following policies may apply: IFC Performance Standards on Social & Environmental Sustainability (PS); IFC Policy on Environmental & Social Sustainability; IFC Environment & Social Review Procedure; IFC General and Sectoral Environmental, Health, and Safety Guidelines; and MIGA's Environmental Assessment Policy.³⁵ For example, PS 2 details the IFC's policies on labor and working conditions, with the objectives:

29. *Id.*

30. For more detail on how the CAO operates, see Accountability Counsel, *supra* note 13.

31. See CAO Operational Guidelines, *supra* note 3.

32. See Operating Procedures, *supra* note 3.

33. *Id.*

34. *Id.*

35. See CAO Operational Guidelines, *supra* note 3.

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To promote the fair treatment, non-discrimination, and equal opportunity of workers; [t]o establish, maintain, and improve the worker-management relationship; [t]o promote compliance with national employment and labor laws; [t]o protect workers, including vulnerable categories of workers such as children, migrant workers, workers engaged by third parties, and workers in the client's supply chain; [t]o promote safe and healthy working conditions, and the health of workers; [t]o avoid the use of forced labor.³⁶

If the three criteria are met, the Ombudsman works with the parties to try to resolve the complaint.³⁷ The Ombudsman does not adjudicate the complaint, but instead works to find alternative ways to address the issues, which may include joint fact-finding, facilitating discussions and mediating disputes between the parties, or establishing a dialogue table or joint monitoring program.³⁸

If the complaint cannot be resolved through the Ombudsman, the plaintiff has the option of pursuing the Dispute Resolution process to resolve the problems raised in the complaint.³⁹ This is a voluntary option meant to facilitate discussion and mediate disputes, and all parties must agree to participate.⁴⁰ Otherwise, the CAO Compliance assumes responsibility for the case. CAO Compliance conducts an appraisal, and if it decides that an audit is necessary, an independent panel is convened to conduct an investigation into the issues. The findings are made public, and the CAO monitors implementation of the recommendations until the project is back in compliance.⁴¹ Because the CAO involves an Ombudsman stage before moving to Compliance, the CAO is more mediation-focused than the Inspection Panel.⁴²

B. *Evaluating Effectiveness*

To assess the effectiveness of the Inspection Panel and the CAO, we draw on new data that cover all 239 cases that have been brought before

36. See WBG, INT'L FIN. CORP., PERFORMANCE STANDARDS ON ENVIRONMENTAL AND SOCIAL SUSTAINABILITY 16-17 (2012), https://www.ifc.org/wps/wcm/connect/c8f524004a73daeca09afdf998895a12/IFC_Performance_Standards.pdf?MOD=AJPERES.

37. See Operating Procedures, *supra* note 3.

38. See CAO Operational Guidelines, *supra* note 3.

39. See Operating Procedures, *supra* note 3.

40. See CAO Operational Guidelines, *supra* note 3.

41. *Id.*

42. *Id.*

the Inspection Panel and CAO since their inception.⁴³ Our data provide a comprehensive picture of the issues raised by complaints, the remedies provided to project-affected communities, and the determinants of complaint success. We find that the harms alleged are often severe, that complaint success is quite common (more than half of all complaints generate some form of favorable outcome), and that the relief offered by the Inspection Panel and CAO is often substantial, including mandates for the compensation of victims and the modification or termination of World Bank projects. Critically, we also show that favorable outcomes for plaintiffs are substantially more common when complaints are supported by non-governmental organizations (NGOs).

1. The Nature of Alleged Harms

Since their inception in the early 1990s, the Inspection Panel and CAO have heard cases from sixty-four countries that cover a wide range of alleged abuses, including torture, imprisonment, and other grievous harms. [Figure 1](#) shows the percentage of complaints, in both the Inspection Panel and CAO, that allege harm in each category.⁴⁴ Many complaints allege harms across multiple issue areas. Environmental damage, economic damage, and involuntary resettlement are the most common allegations, reflecting the types of harm common to large infrastructure projects like dams and roads for which the World Bank is best known.

2. Remedies for Project-Affected Communities

Given that the Inspection Panel and CAO were created by the World Bank to monitor its own projects, many human rights activists feared that these bodies would be too biased toward the bank to provide a meaningful check on its behavior.⁴⁵ While the neutrality of a quasi-judicial body

43. We cover all cases resolved by May 2017. These data cover the full universe of complaints filed with the Inspection Panel and CAO. However, because not all human rights violations associated with World Bank projects result in complaints, these data do not necessarily represent the full universe of human-rights-related harms to which World Bank projects have given rise during the period. For additional details on, and analysis of, this data, see Kelebogile Zvobgo & Benjamin A.T. Graham, *The World Bank as an Enforcer of Human Rights* (January 19, 2018) (unpublished manuscript), http://wp.peio.me/wp-content/uploads/2018/01/PEIO11_paper_52-1.pdf.

44. We code the top three issue areas for each complaint.

45. See, e.g., Daniel D. Bradlow, *International Organizations and Private Complaints: The Case of the World Bank Inspection Panel*, 34 VA. J. INT'L L. 553 (1994); IBRAHIM F.I. SHIHATA, *THE WORLD BANK INSPECTION PANEL* (1994); Enrique R. Carrasco & Alison K. Guernsey, *The World Bank's Inspection Panel: Promoting True Accountability Through Arbitration*, 41 CORNELL INT'L L. J. 577 (2008).

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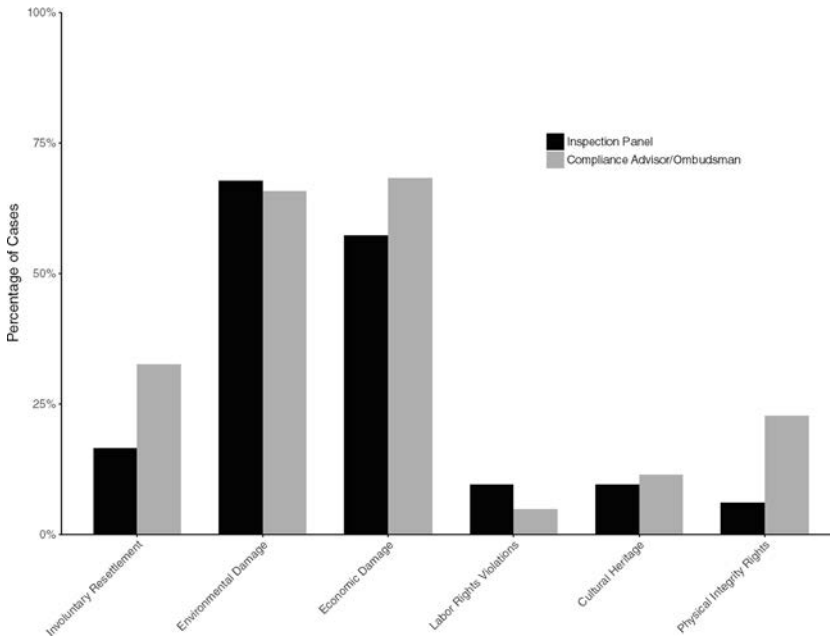


FIGURE 1: *Areas of Alleged Harm*

is difficult to assess, our data allow us to describe the frequency with which plaintiffs prevail and the type of remedies they are provided.

We assess five categories of remedies that project-affected communities may obtain: (1) acknowledgement of harm, (2) changes to a development project, (3) halting of a development project, (4) mandated compensation to victims, and (5) punishment of perpetrators. [Figure 2](#) shows the frequency of each remedy for both the Inspection Panel and CAO. Notably, some form of remedy is obtained by plaintiffs in almost half of Inspection Panel cases and roughly two-thirds of CAO cases. In 40% of cases, compensation of plaintiffs, project change, or project termination were mandated.

The frequency with which the Inspection Panel and CAO mandate different types of remedies illuminates the types of justice they can provide effectively and the types of justice they cannot. The remedies most frequently mandated are formal acknowledgement of harm and prevention of future harm (i.e., forcing the World Bank to change its projects).

The different remedies that have been levied loosely map over different types of justice. Acknowledgement of past harm is the most limited of the outcomes we consider, but one that remains important in its own

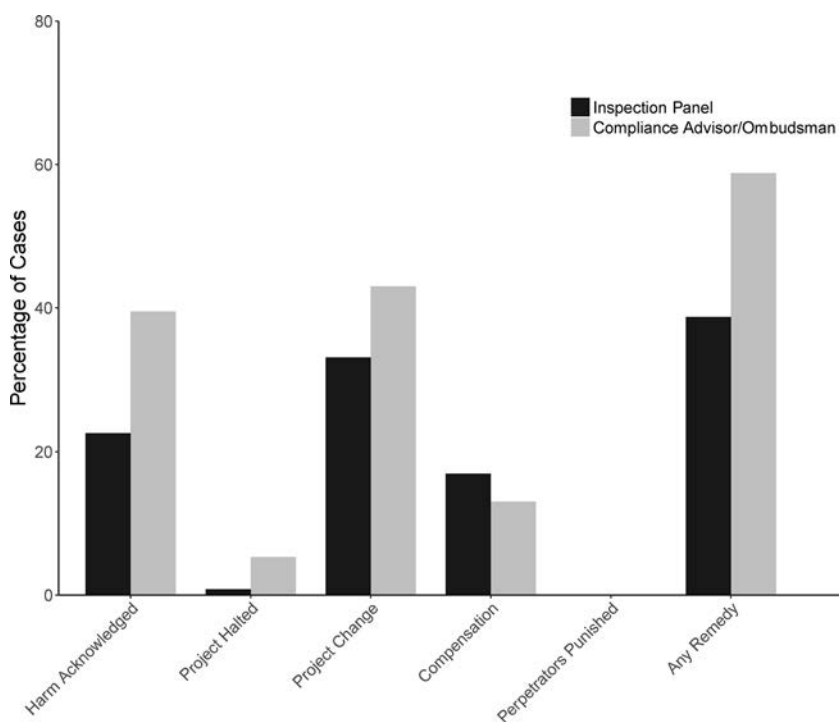


FIGURE 2: *Remedies Mandated*

right. A formal acknowledgement of harm is central to restorative justice, which focuses on the restoration of well-being to victims and communities without a focus on harsh punishments for perpetrators.⁴⁶ Within this framework, a formal acknowledgement of harm is viewed as central to the ability of victims to recover from the harm they have suffered.

Prevention of future harm is similarly important within the restorative justice framework. It is notable that complaints can be brought before these bodies when the harm is entirely prospective. When the Inspection Panel and CAO force projects to be changed or halted, this serves an important preventative justice end. Often the changes that are mandated can prevent environmental and economic damage and put additional safeguards in place to protect vulnerable populations. If

46. See Kieran McEvoy, Harry Mika & Barbara Hudson, Introduction: Practice, Performance and Prospects for Restorative Justice, 42(3) BRIT. J. CRIMINOLOGY 469, 469-75 (2002); Kent Roach, Changing Punishment at the Turn of the Century: Restorative Justice on the Rise, 42 CAN. J. CRIMINOLOGY 249, 249-80 (2000).

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the Inspection Panel or CAO deems that project change is insufficient to prevent (further) harm, projects are sometimes terminated outright.

In a significant number of cases (15% of complaints), the Inspection Panel and CAO also mandated compensation for victims. Compensation has restorative value, but it most directly addresses distributive justice concerns.⁴⁷ Even when development finance projects succeed in reducing poverty in the recipient country overall, distributive justice may require that those individuals harmed by the projects be compensated in some way. A project that helps many at the expense of a few may be justifiable on utilitarian grounds, but compensation of those harmed can produce a more equitable, and arguably more just, outcome.

In the case of the Inspection Panel and CAO, mandates for compensation are most common in, but not limited to, cases in which involuntary resettlement is alleged. This reflects the fact that compensation for persons displaced by World Bank projects is mandated in the World Bank's own guidelines,⁴⁸ and thus the Inspection Panel and CAO often simply enforce the payment of sums which had been promised, but not delivered, to displaced communities.

Our data also highlight a type of justice that the Inspection Panel and CAO categorically fail to provide—retributive justice. While other bodies at the World Bank, such as the Integrity Vice Presidency,⁴⁹ have occasionally punished companies for violation of Bank policies, across 239 completed cases handled by the Inspection Panel and CAO, we observe no completed cases in which punishment is meted out. The exception that proves the rule comes from an ongoing Inspection Panel case in Uganda related to a transportation project, which is excluded from our data because the Inspection Panel's work was not completed by May 2017.⁵⁰

47. JOHN E. ROEMER, THEORIES OF DISTRIBUTIVE JUSTICE (1998).

48. OP 4.12 states that displaced persons should be restored "in real terms, to pre-displacement levels or to levels prevailing prior to the beginning of project implementation, whichever is higher." See WBG, *supra* note 16.

49. The Integrity Vice Presidency is an independent unit of the World Bank, tasked with investigating and pursuing sanctions related to alleged fraud and corruption in World Bank-financed projects. See *Integrity Vice Presidency*, WBG, <http://www.worldbank.org/en/about/unit/integrity-vice-presidency> (last visited Jan. 21, 2018).

50. On September 28, 2015, the Inspection Panel registered the Request in the case involving the Uganda Transport Sector Development Project (Additional Financing). See *Panel Cases Uganda: Transport Sector Development Project - Additional Financing*, WBG (Dec. 19, 2014), <https://inspectionpanel.org/panel-cases/transport-sector-development-project-additional-financing>. We analyzed cases that were resolved by March 2017, and this case is not included in the data we introduce because it was still open at the conclusion of our data gathering endeavor.

The Ugandan case was particularly egregious, with allegations that included sex with minors and teenage pregnancy by road workers, increased sex work, the spread of HIV/AIDS, sexual harassment of female employees, child labor, school dropouts, lack of compensation and inadequate compensation, fear of retaliation, lack of participation, poor labor practices, and lack of adequate road and workplace health and safety measures.⁵¹ Following the complaint, the government of Uganda provided compensation to survivors of sexual assault perpetrated by road workers contracted by the Ugandan National Road Authority (UNRA) and prosecuted those responsible.⁵² In turn, the World Bank withheld new lending to Uganda from 2016 onwards and “conduct[ed] a review of the country portfolio and work[ed] with the Ugandan authorities to address the outstanding performance issues in the portfolio.”⁵³ We consider the funding freeze imposed by the World Bank to constitute direct punishment achieved via the Inspection Panel mechanism. The fact that the first such punishment was not implemented until a quarter century after the Inspection Panel’s founding is informative.

There are a few possible reasons why the Inspection Panel and CAO have not historically offered punitive remedies. For one, the Inspection Panel and CAO are not courts. The role of issuing punishment-as-remedy is almost always associated with a government-run or treaty-founded judiciary. While the Inspection Panel and CAO are adjudicatory in nature, they are not government-backed judicial bodies that enforce “hard” law. However, the Inspection Panel and CAO are no less judicial than the Integrity Vice Presidency at the bank, which, in 2009, banned Siemens from bidding on any World Bank projects for two years due to a corruption violation.⁵⁴ Indeed, punitive measures at the World Bank can include withholding future contracts or determining that a government is not in good standing and thus not recommending it to other IFIs such as the International Monetary Fund. For example, countries often lose their good standing with the World Bank and IMF

51. See *Panel Cases Uganda: Transport Sector Development Project - Additional Financing*, WBG (Dec. 19, 2014), <https://inspectionpanel.org/panel-cases/transport-sector-development-project-additional-financing>.

52. See *id.*

53. Press Release, WBG, World Bank Statement on Withholding New Lending to Uganda (Sept. 13, 2016), <http://www.worldbank.org/en/news/press-release/2016/09/13/world-bank-statement-on-withholding-new-lending-to-uganda>.

54. Press Release, WBG, Siemens to Pay \$100 Million to Fight Fraud and Corruption as Part of World Bank Group Settlement (July 2, 2009), <http://www.worldbank.org/en/news/press-release/2009/07/02/siemens-pay-million-fight-fraud-corruption-part-world-bank-group-settlement>.

as a consequence for failing to re-pay a World Bank loan. Although the World Bank can punish bad actors in other contexts, it has chosen either to not empower the Inspection Panel and CAO with the authority to do so, or to discourage them from doling out this type of remedy.

Moreover, in the Western legal tradition, punitive remedies, and particularly monetary damages, are often used as additional deterrence in civil cases where compensatory damages may be insufficient to discourage future repeat behavior. Punitive remedies can also serve an expressive function, conveying social outrage at particularly egregious conduct.⁵⁵ Against this backdrop, it is possible that the Inspection Panel and CAO believe the compensation paid out to affected communities is sufficient to deter future behavior. Or, both bodies may find the violations to not be particularly egregious in the cases they have adjudicated to date.⁵⁶ Finally, it is also possible that punishment *does* occur, it just happens on an informal, *de facto* basis. Where a firm or government is found to be in violation of World Bank standards, the reputational harm that results may prevent future contracts or delay recommendation to other IFIs even if no formal punishment is levied.

3. The Importance of NGOs

Individuals and communities harmed by World Bank projects are allowed to file complaints with the Inspection Panel and CAO without the involvement of an attorney or any formal organization. However, in practice, NGOs often play an important role both in making communities aware of their rights with respect to these bodies and assisting them with the complaint-filing process. Many NGOs support Inspection Panel and CAO complaints related to their issue area of focus, such as water quality, while others, like the well-known Accountability Counsel, support complaints across a wide-range of issue areas.

Figure 3 shows that, across all the types of remedies that we examine, complaints that are supported by NGOs have a higher probability of obtaining the remedy.

55. See Cass R. Sunstein, Daniel Kahneman & David Schkade, *Assessing Punitive Damages* (U. Chi. L. Sch. Coase-Sandor Working Paper Series in Law and Economics, No. 50, 1997), https://chicagounbound.uchicago.edu/law_and_economics/65/.

56. Child rape in the Uganda Transport Sector Development Project aside, it is difficult to comprehend what the Inspection Panel and CAO deem egregious, as bulldozing homes in Lagos, Nigeria, or contaminating a community-sustaining river with crude oil in the Peruvian Amazon seem ripe for such categorization.

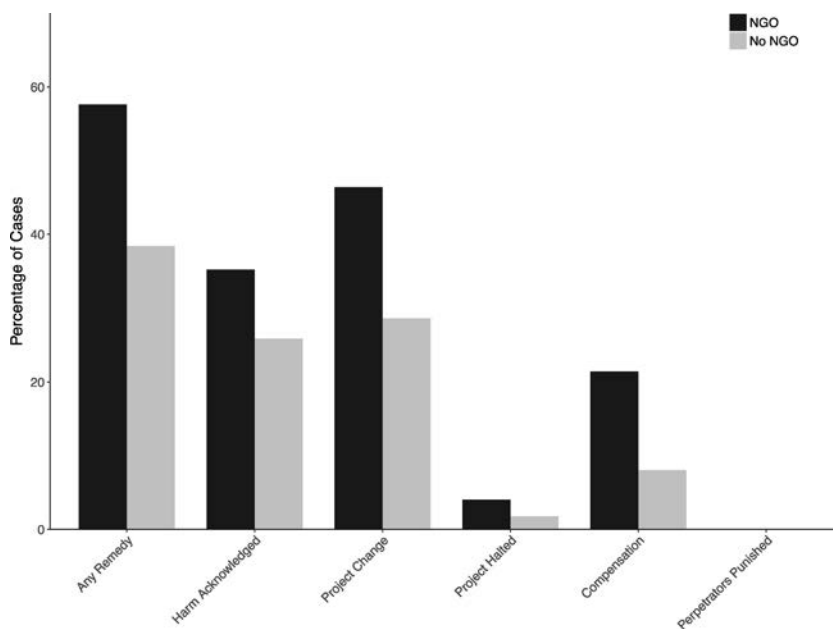


FIGURE 3: *Outcomes by NGO Involvement*

The strong relationship we observe between NGO support and complaint success is consistent with the claim made by the NGOs that provide this assistance: that their support is often necessary to allow project-affected communities to access the remedies that the Inspection Panel and CAO can potentially provide. It is also possible that this positive relationship is driven by screening—i.e., by the fact that NGOs choose cases for support on the basis of perceived merit and likelihood of success. While such screening does occur, NGO involvement is also associated with higher complaint quality. Additionally, NGOs are often involved proactively in organizing communities to bring complaints—it is not only that some complaints would fail in the absence of NGO involvement, many would not be brought at all.⁵⁷

Our data suggest that NGO involvement is critical to the ability of the Inspection Panel and CAO to fulfill their mission and provide appropriate remedies to project-affected communities. This has implications for both the behavior of donors and NGOs and the design of accountability mechanisms themselves. It suggests that funding of NGOs that

57. For additional statistical analysis of the relationship between NGO support and complaint success, see Zvobgo & Graham, *supra* note 43.

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support complaints is critical to preventing and remedying human rights abuses, and it suggests that cooperation with NGOs as community advocates should be considered as a useful design principle when constructing accountability mechanisms. NGOs serve effectively as pro-bono legal counsel to project-affected communities. Without their involvement, communities face many of the same challenges as a civil plaintiff pursuing a *pro se* complaint on their own behalf. In quasi-judicial bodies, just as in domestic courts, effective counsel is often necessary for plaintiffs to achieve the remedies they deserve.

III. LIMITATIONS OF THE INSPECTION PANEL AND CAO

The Inspection Panel and CAO have also received significant criticism for their system of accountability. For one, the World Bank's social and environmental standards have been criticized for being inadequate in protecting human rights by failing to fully integrate human rights standards.⁵⁸ To the extent that the Inspection Panel and CAO police compliance with internal World Bank standards, the mechanisms' ability to protect human rights is only as effective as their mandate allows them to be. To that effect, civil society organizations have identified several insufficiencies in the standards. For example, current World Bank safeguard policies on Involuntary Resettlement and Indigenous People identify children as a "vulnerable group," but "stop short of mandating that programs and projects take any particular measures to prevent harm to children and protect their rights," including prohibiting the use of child labor in World Bank-funded projects.⁵⁹ The World Bank has also been criticized for failing to address the rights and needs of people with disabilities,⁶⁰ as well as gender, gender identity, and sexual orientation concerns.⁶¹

58. See Altholz & Sullivan, *supra* note 3, at 4.

59. *Child Rights and the World Bank Safeguards Campaign*, The Bank Info. Ctr., <http://www.bankinformationcenter.org/our-work/safeguards/childrights/> (last visited May 7, 2018). The Bank Information Center has recognized, however, that the IFC performance standards have been more explicit about the rights of the child, prohibiting the employment of "children in any manner that is economically exploitative, or is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral, or social development," and prohibiting the employment of children under the age of eighteen in hazardous work. *Id.*

60. On August 4, 2016, however, the World Bank approved a new Environmental and Social Framework that specifically addresses the impact of projects on persons with disabilities. The Framework entered into effect in October, 2018. *Environmental and Social Framework*, WORLD BANK, <https://www.worldbank.org/en/projects-operations/environmental-and-social-framework> (last visited February 27, 2019).

61. *Gender and SOGIE*, The Bank Information Center, <http://www.bankinformationcenter.org/our-work/safeguards/gender-and-sogi/> (last visited May 7, 2018).

The Inspection Panel and the CAO have also been criticized for being relatively toothless, concentrating too much on mediation or lacking any real power to implement decisions or deliver effective remedies. Critics have pointed out that both mechanisms have limited authority, confined only to compliance review, and in the case of the CAO, dedicate much of the complaint process to mediation. Indeed, the CAO has been criticized for sidestepping potential human rights violations and focusing instead on issues on which agreement between the parties was likely.⁶² This shortcoming in particular was attributed to the critique that the CAO was far too focused on alternative dispute resolution at the expense of actually holding violators accountable.⁶³ Additionally, even when the CAO releases findings that reveal that a project resulted in grave human rights abuses, its report is not binding on the IFC to make significant changes to the project or halt it altogether.⁶⁴ Such was the case in the IFC-funded project involving Corporation Dinant in Honduras. After a CAO audit in 2014 condemned the IFC and revealed that Dinant handled land disputes by engaging in killings and violent evictions of peasant farmers, the IFC issued a lukewarm response that failed to address many of the CAO's findings.⁶⁵ It was only after a public outcry from over seventy civil society organizations and criticism from the World Bank Group Board that the IFC admitted its failures and created a more robust action plan that addressed the problems that the CAO identified.⁶⁶ And as our data bears out, complaints lodged with both the Inspection Panel and the CAO almost never result in punitive remedies, even for egregious violations. When the remedies are not proportional to the harm, it is difficult to claim that justice has been meted out.

Furthermore, the CAO process has been criticized for being procedurally unjust, with plaintiffs unable to review the CAO's draft investigation report until after the President of the World Bank approves it, while the IFC and MIGA are given the opportunity to review it immediately.⁶⁷ There are also significant power imbalances between the

62. See Altholz & Sullivan, *supra* note 3, at 4.

63. *Id.*

64. *Id.*

65. Nina Lakhahi, *World Bank Lending Arm Forced Into U-turn After Honduras Loan Row*, THE GUARDIAN (Jan. 23, 2014), <https://www.theguardian.com/global-development/2014/jan/23/world-bank-ifc-forced-uturn-honduras-dinant>.

66. *Id.* The Dinant case does not appear in our data, because the case had not formally closed as of May 2017 when data collection was completed.

67. Centre for Research on Multinational Corporations, *Glass Half Full? The State of Accountability in Development Finance Annex 12*, <https://www.grievancemechanisms.org/>

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parties. Oftentimes, affected communities do not have the level of power, influence, and resources that multinational corporations do. The Inspection Panel has been criticized for its complicated rules of procedure that often require external assistance from organizations versed in the process.⁶⁸ And among the individuals and communities who lodge complaints with these mechanisms, the ones that are represented by NGOs frequently receive more attention from the Inspection Panel and/or CAO, and are more likely to reach the compliance stage.⁶⁹

IV. IMPACT ON THE INTERNATIONAL HUMAN RIGHTS LANDSCAPE

While there is significant improvement to be made in the Inspection Panel's and CAO's systems of compliance, the accountability mechanisms of IFIs stand to impact the protection of international human rights in substantial ways. Notably, accountability mechanisms have the potential to fill part of the so-called "enforcement gap" in holding private actors in foreign jurisdictions accountable for human rights violations.⁷⁰ In filling these pockets of accountability, these mechanisms offer another avenue for affected communities to redress harm and force multinational corporations into some level of accountability.

A. *Impact on Plaintiffs*

In the context of venues for seeking recourse for human rights violations, the most obvious impact that accountability mechanisms have on plaintiffs is increased access to justice. Accountability mechanisms provide an additional instrument for redress in the human rights toolkit. While their scope is limited, within the domain of human rights violations related to World Bank projects, these bodies may be considerably more effective in providing remedies to victims than existing international and domestic courts.

attachments/annex-12-the-compliance-advisor-ombudsman-of-the-international-finance-corporation-and-multilateral-investment-guarantee-agency/at_download/file (last visited May 7, 2018).

68. Daniel Bradlow, *Private Complainants and International Organizations: A Comparative Study of the Independent Inspection Mechanisms in International Financial Institutions*, 36 GEO. J. INT'L L. 403, 466 (2005).

69. See Altholz & Sullivan, *supra* note 3, at 75.

70. See Natalie L. Bridgeman and David B. Hunter, *Narrowing the Accountability Gap: Toward a New Foreign Investor Accountability Mechanism*, 20 GEO. INT'L ENVTL. L. REV. 187, 194-207 (2008). Bridgeman and Hunter discuss the enforcement gap as a combination of the shortcomings of host country laws, home country laws, and international laws to fully address the conduct of multinational enterprises operating extraterritorially.

Our data show that there are some types of remedies, such as a formal acknowledgement of harm, the prevention of future harm (via the halting or altering of World Bank projects), and the mandating of compensation, that the Inspection Panel and CAO are quite effective at delivering. The justice that the Inspection Panel and CAO provide is also relatively swift: most cases conclude within three years of the initial complaint and some much faster. However, our data also show that there are types of remedies these bodies almost never provide, most notably punishment of perpetrators. This raises the question of how the ability of the Inspection Panel and CAO to provide remedies to plaintiffs compares to other judicial venues, particularly those that have greater power to punish perpetrators.

Under the current human rights regime, there are a limited number of judicial venues where victims of human rights abuses can take their claims. Internationally, the most popular among these are the regional human rights courts. Several hurdles, however, exist in these venues, notably jurisdictional requirements. For example, individuals who want their cases to be adjudicated in the Inter-American Court of Human Rights (IACHR) must first submit a petition to the Inter-American Commission on Human Rights, which then decides whether it will refer the case to the IACHR.⁷¹ In the African Court on Human and Peoples' Rights (ACHPR), complaints by individuals and NGOs can be filed directly, but only if the relevant state has formally agreed to ACHPR's jurisdiction over direct complaints.⁷² The standards are less constrained in the European Court of Human Rights (ECHR), where an individual, group, or NGO can submit a complaint directly.⁷³ However, in all three examples, the complaints must allege claims against states that have

71. The IACHR receives about 1,500 petitions every year. The IACHR currently has jurisdiction over twenty Organization of American States (OAS) member states: Argentina, Barbados, Bolivia, Brazil, Chile, Colombia, Costa Rica, Dominican Republic, Ecuador, El Salvador, Guatemala, Haiti, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, Suriname, and Uruguay. See *Inter-American Human Rights System*, Int'l Just. Resource Ctr., http://www.ijrcenter.org/regional/inter-american-system/#Inter-American_Court_of_Human_Rights (last visited May 7, 2018).

72. As of this writing, eight states have accepted the ACHPR's jurisdiction to receive complaints referred by individuals and non-governmental organizations: Benin, Burkina Faso, Cote d'Ivoire, Ghana, Malawi, Mali, Rwanda, and Tanzania. In February 2016, Rwanda announced that it would withdraw its acceptance of ACHPR's jurisdiction over individual and group complaints. See *African Court on Human and Peoples' Rights*, Int'l Just. Resource Ctr., http://www.ijrcenter.org/regional/african/#African_Court_on_Human_and_Peoples8217_Rights (last visited May 7, 2018).

73. They also do not have to be a citizen of a state that is party to the European Convention on Human Rights, but must allege violations that concern a state that is party to the convention. See

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accepted the jurisdiction of the respective court.⁷⁴ In other words, claims against individuals, corporations, or non-government entities cannot be adjudicated in these regional courts.⁷⁵ It is also noteworthy that when international courts have delivered verdicts against perpetrators of human rights violations, these judgements often come decades after the abuses occurred.⁷⁶

Thus, for individuals who have been harmed by IFI projects, the option to seek redress in international courts is limited.⁷⁷ Where projects are financed by the private sector arm of the World Bank, this option tends to be wholly foreclosed because these courts do not have jurisdiction over private corporations.⁷⁸ For public sector projects,

European Court of Human Rights, Int'l Just. Resource Ctr., <http://www.ijrcenter.org/european-court-of-human-rights/#Jurisdiction> (last visited May 7, 2018).

74. See *International Criminal Court*, Int'l Just. Resource Ctr., <http://www.ijrcenter.org/international-criminal-law/international-criminal-court/> (last visited May 7, 2018).

75. Human rights cases against individuals can be adjudicated in international criminal tribunals such as the International Criminal Court (ICC), as well as domestic courts. However, for criminal culpability to attach in the ICC, the alleged crime must rise to the level of genocide, crimes against humanity, or war crimes. See *International Criminal Court*, Int'l Just. Resource Ctr., <http://www.ijrcenter.org/international-criminal-law/international-criminal-court/> (last visited May 7, 2018). As for domestic courts, the cases can succeed if the relevant country has an adequately robust legal system for tort liability and/or criminal prosecution of well-connected individuals, which often is not the case in developing countries.

76. See, e.g., *Poma Poma v. Peru*, U.N. Hum. Rts. Comm., U.N. Doc. CCPR/C/95/D/1457/2006 (2009), <https://undocs.org/CCPR/C/95/D/1457/2006>. In the 1950s, the Peruvian government had diverted water away from local farmers who relied on this water source exclusively. After spending several years exhausting domestic remedies as required by the First Optional Protocol, the complainant filed a complaint with the U.N. Human Rights Committee. The Committee issued a decision against Peru in 2009, over forty years after the original abuse.

77. The International Court of Justice (ICJ) only allows for claims between states (governments and government actors). While the ICJ has addressed human rights issues in several of its decisions, diplomatic considerations would make it unlikely for a state to pursue a claim against another state for violations stemming from an IFI project. See *International Court of Justice*, Int'l Just. Resource Ctr., <http://www.ijrcenter.org/international-criminal-law/international-criminal-court/> (last visited May 7, 2018).

78. In recent years, the IACHR has considered developing jurisprudence that would hold a corporation's home country liable for corporate conduct abroad. See Benjamin Hoffman, *Inter-American Commission on Human Rights to Consider "Home Country Liability" for the Extraterritorial Actions of Transnational Corporations*, Earth Rts. Int'l (Nov. 7, 2013), <https://earthrights.org/blog/inter-american-commission-on-human-rights-to-consider-home-country-liability-for-the-extraterritorial-actions-of-transnational-corporations/>. Article 36 of the OAS Charter states, "Transnational enterprises and foreign private investment shall be subject to the legislation of the host countries and to the jurisdiction of their competent courts and to the international treaties and agreements to which said countries are parties, and should conform to the development policies of the recipient countries." Thus, while the Charter establishes a host country's liability for the conduct of private enterprises within its jurisdiction, neither the Commission nor the IACHR to date have

individuals can bring claims in these regional venues against the state where the violations occurred, assuming they can surmount the jurisdictional barriers.⁷⁹ To date, no World Bank project-related cases have been brought in the IACHR, the ECHR, or the ACHPR.

Outside of accountability mechanisms, plaintiffs also have the option of bringing cases in domestic courts. Some international human rights courts, such as the IACHR, even require plaintiffs to exhaust domestic remedies first. However, the effectiveness of this route depends largely on how robust the courts are in any given country and the strength of its enforcement. World Bank projects take place in developing countries whose court systems are often underfunded, lack administrative capacity, or are vulnerable to corruption.⁸⁰ These countries also often lack sufficient laws to hold corporations accountable, or laws that create some level of tort liability for governments.⁸¹ Indeed, in the interest of

outlined guidelines for holding a corporation's home country liable for private conduct outside of the home country's jurisdiction. See Daniel Cerqueira, *The Attribution of Extraterritorial Liability for the Acts of Private Parties in the Inter-American System: Contributions to the debate on corporations and human rights*, Justicia en las Americas (Oct. 14, 2015), <https://dplfblog.com/2015/10/14/the-attribution-of-extraterritorial-liability-for-the-acts-of-private-parties-in-the-inter-american-system-contributions-to-the-debate-on-corporations-and-human-right/>.

79. In 2011, three civil society organizations took a more novel approach and filed a petition before the IACHR directly against the World Bank and the Inter-American Development Bank (IDB) for human rights violations that occurred during the construction of the Chixoy hydroelectric dam in Guatemala in the late 1970s and early 1980s. In a supplemental brief filed in May 2012, the petitioners addressed the admissibility issues by arguing that the Commission had jurisdiction over the World Bank and IDB, because these bodies are made up of states that have human rights obligations. The brief argued that these states cannot evade their human rights obligations by reorganizing themselves into IFIs. The brief further addressed another gap in enforcement, explicitly noting the limits of the Inspection Panel: "The World Bank Inspection Panel and IDB Independent Inspection Mechanism provide recourse to individuals affected by current bank projects. These recourse mechanisms, however, were not created until 1994 and cannot review claims retroactively, thereby excluding the communities [harmed by the construction of the Chixoy Dam]. The petitioners here therefore are left in a legal black hole, unable to bring their claims domestically, because of the immunity granted these organizations by domestic legislation, and shut out of the review mechanism currently available to all others through the organizations themselves." See Brief in Support of the Appeal Petition filed on December 7, 2011, Guatemala Sobrevivientes de la Comunidad de Río Negro y otras comunidades similares en Guatemala (The Chixoy Dam Case), Inter-Am. Comm'n H.R., ¶ 55, <http://globalinitiative-es.cr/wp-content/uploads/2012/05/Chixoy-Brief-Final-May-8.pdf>. In January 2014, Congress passed the U.S. Consolidated Appropriations Bill, which instructed the U.S. members of the World Bank and IDB to report on the steps being taken to implement the 2010 reparation plan to compensate the communities impacted by the Chixoy Dam. See *Chixoy Dam*, Int'l Rivers, <https://www.internationalrivers.org/campaigns/chixoy-dam> (last visited May 7, 2018).

80. See, e.g., WBG, *supra* note 5.

81. The U.S. analog would be the Federal Tort Claims Act.

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economic growth and encouraging foreign investment, governments in developing countries may lack the political will to pass laws that would allow for a cause of action against a corporation, or enforce remedies even if a judgment was obtained.⁸² These hurdles make it substantially difficult for plaintiffs to seek justice in domestic courts.⁸³

Thus, while domestic courts and regional human rights courts offer the possibility of punishing the perpetrators of human rights abuses, such justice is often prohibitively difficult to obtain. The jurisdictional barriers to obtaining justice through regional human rights courts are high, and domestic courts are often plagued by both low capacity and a fundamental conflict of interest.⁸⁴ In autocratic contexts in particular, the government is frequently unwilling to police itself.⁸⁵ In light of the shortcomings of the other venues' availability, accountability mechanisms embedded in international organizations need not be perfect in order to constitute an important step forward in the availability of redress for victims of human rights abuses.

The rise of accountability mechanisms can also have indirect effects on plaintiffs. Plaintiffs' experiences in taking formal action to hold an international organization accountable can have the spillover effect of encouraging a push for human rights in other areas, either locally or nationally. More substantively, engaging in the ideas, language, and process of rights assertion, particularly in partnership with an international NGO, can result in the transfer of global norms about human rights.⁸⁶ This rippling can impact state sovereignty, with increased pressure from citizenry to conform to international standards of human rights, either through domestic law or ratification of treaties.⁸⁷

A number of documented standards, guidelines, norms, and best practices exist to address the environmental and social impacts of multinational corporations. Examples include the Organization for Economic Co-operation and Development's (OECD) Guidelines on Multinational Enterprises, the U.N. Global Compact, the U.N. Guiding

82. See Terry Collingsworth, *The Key Human Rights Challenge: Developing Enforcement Mechanisms*, 15 *Harv. Hum. Rts. J.* 183, 183-203 (2002).

83. See *id.*

84. See Christopher Fariss et al., *Secure From What? Theorizing and Measuring Property Rights Security* (Working Paper, 2017), https://dornsifecms.usc.edu/assets/sites/298/docs/Fariss_Graham_Kenwick_Property-Rights-Security_v4.pdf.

85. See *id.*

86. These norms are decidedly rooted in Western norms, and whether this is desirable is perhaps a topic for a different scholarly endeavor.

87. See generally Kathryn Sikkink, *The Justice Cascade: How Human Rights Prosecutions Are Changing World Politics* (2011).

Principles on Business and Human Rights, and the Equator Principles. While these standards are not “hard” law, they constitute a set of norms that at times overlaps with global conceptions of human rights. By purportedly holding itself out to be accountable to these standards, the World Bank has created, via the Inspection Panel and CAO, a process through which citizens of developing countries can be exposed to, and engage in, these standards and norms.

One such example of this spillover effect is the case of Bimbo Omowole Osobe in Lagos, Nigeria. In 2013, Osobe was the owner of a soft drink business in the Lagos slum of Badia East when her neighborhood was bulldozed as part of a World Bank urban renewal project, the Lagos Metropolitan Development and Governance Project.⁸⁸ Within a matter of hours, without warning, consultation, or compensation, the local police cleared the residents out of Badia East as excavators flattened all buildings in the area.⁸⁹ When Osobe returned to her cement block house several hours later, she saw that it—and her two small shops—had been completely destroyed.⁹⁰ Displaced, the evictees of Badia East became homeless and grew more destitute.⁹¹ Some died of malnutrition, and some of the women turned to prostitution to survive.⁹² Osobe initially slept on cartons on top of the rubble, but then moved from one shelter to another.⁹³ Osobe’s experience with homelessness transformed her into an outspoken activist for her community, and along with other evictees, she filed a complaint with the Inspection Panel.⁹⁴ In April 2016, she spoke out at the World Bank’s headquarters against her community’s displacement.⁹⁵ But Osobe’s activism was not

88. For more information about the project, see *Nigeria - Lagos Metropolitan Development and Governance Project*, WBG, <http://documents.worldbank.org/curated/en/142611468096552955/Nigeria-Lagos-Metropolitan-Development-and-Governance-Project> (last visited May 7, 2018) (hereinafter “Nigeria – Lagos”).

89. See Sasha Chavkin et al., *How the World Bank Broke Its Promise to Protect the Poor*, Int’l Consortium of Investigative Journalists, Apr. 16, 2015, <https://www.icij.org/project/world-bank/how-world-bank-broke-its-promise-protect-poor>.

90. See *id.*

91. See Nigeria – Lagos, *supra* note 88.

92. See Nigeria – Lagos, *supra* note 88.

93. Elaine Zuckerman & Betty Abah, *When the World Bank Bulldozed Her Community, She Fought Back*, MS. MAGAZINE (Oct. 3, 2016), <http://msmagazine.com/blog/2016/10/03/world-bank-project-evictee-becomes-womens-rights-activist/>.

94. See Memorandum to the Executive Directors of the International Development Association (July 16, 2014), <http://documents.worldbank.org/curated/en/396051468144271647/pdf/896130INSP0P0700Box0385286B00OUO090.pdf>.

95. See Nigeria – Lagos, *supra* note 88.

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limited to the World Bank.⁹⁶ Working with the non-profit Justice & Empowerment Initiatives, Osobe became a paralegal and provided assistance to those living in poverty, including guiding rape victims to receive treatment at the Mirabel Centre in Lagos.⁹⁷ As Osobe told the World Bank, women and girls who live on the streets, including the female evictees from Badia East, were extremely vulnerable and more susceptible to rape.⁹⁸ Thus, Osobe's work helping poor Nigerian women arose derivatively from her activism in protesting the Lagos Metropolitan Development and Governance Project in her community.⁹⁹ As Osobe stated, "I sensitize communities about their human rights If nobody talks, the government will continue to trample on our heads, like they have done to so many marginalized communities across Lagos, Rivers State, the Federal Capital Territory, Kaduna and others."¹⁰⁰ Osobe's activism is a compelling example of how participation in an Inspection Panel complaint can lead to other forms of rights assertion.

96. Zuckerman and Abah, *supra* note 93.

97. Zuckerman and Abah, *supra* note 93.

98. Annabel Perreras, *In Badia East, Lagos, A Story of Devastating "Development,"* MEDIUM (June 7, 2016), <https://medium.com/@accountability/in-badia-east-lagos-a-story-of-devastating-development-127f5fb36186>.

99. In July 2014, the Inspection Panel decided to not register the complaint and instead submitted the case to a pilot program whereby plaintiffs, affected community members, and bank management attempted to arrive at a solution before initiating a formal investigation. The pilot program was ostensibly created for circumstances where early solutions were possible. The Inspection Panel's decision to not formally investigate the allegations stemmed from a May 2014 trip to Lagos, where the Inspection Panel met with plaintiffs and affected individuals. According to the Inspection Panel's 2015 annual report, they found that a majority of the 9,000 people displaced by the Lagos Metropolitan Development and Governance Project received compensation through Nigeria's Resettlement Action Plan. The report also indicated that a majority of eight community representatives agreed with the Resettlement Action Plan. An NGO supporting the complaint, the Social and Economic Rights Action Center (SERAC), also notified the Inspection Panel that the Badia East community was satisfied with the Resettlement Action Plan, as well as the pilot program. See *Nigeria – Lagos*, *supra* note 88.

Other civil society organizations, however, have been critical of the pilot program. In August 2014, twenty-one organizations submitted a letter to the Inspection Panel that called for an immediate suspension of the pilot program, claiming that the compensation to the displaced community members was insufficient and that the program denied individuals full access to the Inspection Panel. The letter also stated that the program was created without approval of the board. See the full letter at: <https://www.accountabilitycounsel.org/wp-content/uploads/2017/08/8.27.14-Letter-to-President-and-Panel-re-Pilot.pdf> (last visited March 3, 2019).

Because the pilot program was not initiated until 2014, very few pilot cases were completed by March 2017, leading the pilot to have little effect on the data we present.

100. Zuckerman and Abah, *supra* note 93.

B. *Impact on Defendants*

Perhaps the greatest impact that accountability mechanisms have on defendants is an increase in corporate accountability. While governments may be held accountable for human rights violations through the regional human rights courts discussed above, corporations, particularly multinational enterprises, can frequently evade liability for human rights violations or environmental harm, because their tendency to operate across multiple borders renders them jurisdictionally slippery. A company may be incorporated in one country, maintain its primary place of business in another, and carry out a World Bank project in yet a different country. If a domestic suit is filed against a corporation, the country in which the complaint is filed may not have a long-arm jurisdictional statute available to individual plaintiffs. And because international human rights conventions are agreements between states, private actors cannot be held accountable under those treaties.

In the U.S. context, non-U.S. nationals in the last thirty years have sought recourse against corporations for human rights violations occurring overseas through the Alien Tort Statute (ATS).¹⁰¹ The Supreme Court's 2013 ruling in *Kiobel v. Royal Dutch Petroleum Co.*, however, significantly limited the reach of the ATS by finding that the presumption against the extraterritorial application of U.S. law applied to ATS cases, and in order to displace this presumption, the matter must "touch and concern" the United States with "sufficient force."¹⁰² The question the Court sidestepped in *Kiobel* was whether corporations could be held liable under the ATS. This question was taken up by the Supreme Court in *Jesner v. Arab Bank*.¹⁰³ In April 2018, the Court issued its decision on *Jesner*, ruling that foreign corporations may not be sued under the ATS, and thus further limiting the number of tools available to hold corporations accountable for human rights abuses.¹⁰⁴

Through the CAO, however, the private sector sponsor may be forced to halt its operations if the project does not comply with World Bank standards. Although a CAO investigation focuses on the actions of the IFC and MIGA, the company that implements the operation will no doubt have to make adjustments to ensure that the project falls in compliance and proceeds according to plan. Ultimately, however, this increase in corporate accountability is still limited by the fact that the

101. See, e.g., *Kiobel v. Royal Dutch Petroleum Co.*, 569 U.S. 108 (2013); *Jesner v. Arab Bank*, 138 S. Ct. 1386 (2018).

102. *Kiobel*, 569 U.S. at 124-25.

103. *Jesner*, 138 S. Ct. at 1394.

104. See *id.*

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CAO's jurisdiction extends only to projects financed by the World Bank. In other contexts where corporations commit human rights violations, corporate accountability continues to be constrained by the enforcement gap.

Nevertheless, there still remains the potential for spillover effects on defendants. In the same way that accountability mechanisms can expand plaintiffs' human rights advocacy beyond World Bank projects, defendants may become more open to other human rights regulation since they have already created the administrative capacity to respond to IFI accountability. For both governments and corporations, this could mean the creation of entire agencies or departments tasked with monitoring and ensuring compliance.

For example, the U.S. Department of Labor's Bureau of International Labor Affairs (ILAB) has encouraged private companies to implement their own social compliance systems as a way to eradicate child and forced labor and address human rights concerns in their supply chains.¹⁰⁵ Stating that corporate social compliance programs can help "fill critical gaps where governments have not yet developed full capacity," ILAB notes several reasons why corporations should develop a social compliance system.¹⁰⁶ Among these reasons is loan conditionality from IFIs such as the World Bank.¹⁰⁷ ILAB asserts that meeting and adhering to the IFIs' social and environmental standards can be accomplished through a strong social compliance system.¹⁰⁸ Inversely, if a company has already developed an organizational structure for complying with IFI standards, this structure can be readily expanded to meet the growing and evolving laws, regulations, and norms for corporate compliance with human rights standards. In other words, this expansion can be a spillover effect of complying with IFI standards.

But the impact on defendants is not only a matter of developing institutional capacity for compliance. Defendants stand to gain from acquiring fluency in the language and practice of human rights accountability. For private firms in particular, being a responsible corporation means that

[T]he firm can have access to financial resources provided by the private sector arms of the [IFI], which in turn may lead to

105. Zuckerman and Abah, *supra* note 93.

106. *Why Develop a Social Compliance System?*, Bureau of Int'l Labor Aff., U.S. Dep't of Labor, <https://www.dol.gov/ilab/complychain/> (last visited May 7, 2018).

107. Zuckerman and Abah, *supra* note 93.

108. *See* Bureau of Int'l Labor Aff, *supra* note 106.

access to financial resources provided by other financial institutions or markets that may otherwise not be willing to finance their projects. The due diligence and oversight of [IFI] can provide the reassurance that can make this happen. This participation . . . has the *potential for improved credibility/reputation*, which may enhance the value of the firm and lead to better access to markets.¹⁰⁹

Because IFI projects require compliance with particular social and environmental standards, a firm's responsibility can translate into business opportunities, and continued adherence can promote a firm's reputation, which in turn creates a snowballing of more business opportunities. The possibility of new markets and increased revenues may be the best incentives for complying with social and environmental standards, because they track the profit-driven logic of private firms.

Indeed, many have argued that IFIs play a unique role in mediating the relationship between corporations and what has come to be known as corporate social responsibility (CSR).¹¹⁰ While varying definitions of CSR abound, the working definition employed here is:

[T]he practices of the corporation that, as part of their corporate strategy, complementary and in support of the main business activities, explicitly seek to avoid damage and promote the well-being of stakeholders (clients, suppliers, employees, financial resource providers, community, government and the environment) by complying with current rules and regulations and voluntarily going beyond those requirements.¹¹¹

By such a definition, compliance with World Bank standards would be part of the CSR rubric.

Scholars have argued, however, that CSR has been frequently characterized as philanthropy, which is heavily normative and embedded in moral discourse.¹¹² This framing prevents CSR from becoming a strategic corporate activity, because it does not mainstream more instrumental corporate endeavors, such as increasing profit or corporate

109. Antonio Vives, *The Role of Multilateral Development Institutions in Fostering Corporate Social Responsibility*, 47 *DEVELOPMENT* 45, 49 (2004) (emphasis in original).

110. See, e.g., Kenneth Amaeshi, *International Financial Institutions and Discursive Institutional Change: Implications for Corporate Social Responsibility in Developing Economies*, 11(1) *J. OF CHANGE MANAGEMENT* 111, 111-28 (2011).

111. Vives, *supra* note 109, at 45.

112. See, e.g., Amaeshi, *supra* note 110; Vives, *supra* note 109.

reputation.¹¹³ In place of CSR, scholars have advanced the language of sustainable finance, which “mainly emphasizes the inclusion of environmental, social and governance issues in investment decisions—especially with regards to project financing.”¹¹⁴ In this regard, some contend that the World Bank’s IFC has been a “norm champion”: as a provider of financial resources and services, the IFC has diffused sustainable finance as both a practice and a principle to private firms by aligning compliance with business goals.¹¹⁵ Thus, rather than framing social responsibility as a philanthropic endeavor, IFIs are well-positioned as “honest brokers” to present compliance as a strategic corporate maneuver,¹¹⁶ and accountability mechanisms such as the Inspection Panel and CAO subsequently play a crucial role in the enforcement of this compliance. Whether this is the desired business expression is another matter. Stressing the corporate gains of complying with social, environmental, and human rights compliance can have the effect of commodifying these values. But if the outcome is increased compliance with human rights standards, perhaps this may be a satisfactory trade-off. In sum, accountability mechanisms stand to have the indirect impact of making human rights in particular, and CSR in general, more palatable to corporations.

V. CONCLUSION

The World Bank’s Inspection Panel and CAO represent something of a new frontier in human rights accountability. These bodies are imperfect, but the data we present show that they can provide significant remedy to many of the communities that bring complaints before them. Indeed, the remedies these two bodies have provided are sufficient to show that quasi-judicial accountability mechanisms of this type can be an effective mechanism by which human rights can be enforced and represent an important complement to domestic and international courts.

To date, the Inspection Panel and CAO have adjudicated nearly 250 complaints from more than sixty countries. Complaints have revolved primarily around environmental damage, economic damage, and involuntary resettlement, but these bodies have also heard allegations of extreme physical integrity rights violations, including rape, torture, and imprisonment. More than a third of cases result in orders to alter or

113. Amaeshi, *supra* note 110; Vives, *supra* note 109.

114. Amaeshi, *supra* note 110, at 113.

115. *Id.* at 119.

116. Vives, *supra* note 109, at 46.

terminate the World Bank project that gave rise to the complaint, and roughly 15% of complaints result in orders for compensation to project-affected communities or individuals.

However, we also identify significant shortcomings in these bodies. Most dramatically, we show that these bodies almost never levy punishment against alleged perpetrators. Thus, their ability to provide justice is limited—the process and remedies they provide can contribute significantly to procedural, distributive, and restorative justice, but retributive justice is not forthcoming. By taking more punitive measures, the World Bank can address the criticism that the Inspection Panel and CAO are toothless and lack any real enforcement authority. We also note the procedural concerns about ways in which power imbalances exist, with the playing field often tipped against the plaintiffs. Additionally, the World Bank's social and environmental standards may themselves be insufficient to address the full range of human rights standards and may need to be reevaluated.

The balance of strengths and limitations in the Inspection Panel and CAO is of urgent concern at present, because these bodies are being replicated at an astounding rate as other development finance institutions adopt similar accountability mechanisms to monitor their projects. We applaud this move to introduce accountability mechanisms more broadly, but it is critical that the founders of these new bodies take seriously the shortcomings of the institutions they are replicating.