



EUROPA-UNIVERSITÄT
VIADRINA
FRANKFURT (ODER)

Band 52

Viadrina-Schriftenreihe zu Mediation und Konfliktmanagement

Jenny Laube

The Independent Accountability Mechanisms of Multilateral Development Banks as Sources for Continuous Learning

 Wolfgang Metzner Verlag

– Leseprobe –

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**The Independent Accountability Mechanisms
of Multilateral Development Banks as
Sources for Continuous Learning**



Wolfgang Metzner Verlag

Master-Studiengang Mediation
und Konfliktmanagement
Masterarbeit
Studiengang 2021/2023



**EUROPA-UNIVERSITÄT
VIADRINA
FRANKFURT (ODER)**

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ISBN 978-3-96117-172-9

ISSN 2365-4155

Bibliografische Information der Deutschen Nationalbibliothek

Die Deutsche Nationalbibliothek verzeichnet diese Publikation in der Deutschen Nationalbibliografie; detaillierte bibliografische Daten sind im Internet über <http://dnb.d-nb.de> abrufbar.

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Preface

In a world that is ever-changing and increasingly complex, the need for continuous learning and adaptation is more vital than ever. Multilateral Development Banks (MDBs), as key players in financing and guiding development projects, face immense challenges in ensuring that their operations remain effective, inclusive, and responsive to the needs of those they serve. This thesis, *The Independent Accountability Mechanisms of Multilateral Development Banks as Sources for Continuous Learning*, explores a crucial avenue through which MDBs can not only meet these challenges but thrive in a rapidly evolving environment: through independent accountability mechanisms (IAMs).

The core motivation behind this work lies in the recognition that accountability is not a static concept but a dynamic process. In this process, learning plays a central role. IAMs are not only tools for addressing grievances or ensuring transparency; they are powerful catalysts for reflection, institutional growth, and long-term learning. In this thesis, I argue that these mechanisms provide MDBs with unique opportunities to critically assess their operations, learn from both successes and shortcomings, and continuously evolve in response to new challenges and emerging global trends.

By investigating how IAMs generate valuable insights, this work highlights the importance of institutional learning as a means to improve development outcomes. In an increasingly interconnected and volatile global landscape, MDBs must embrace learning as a continuous and iterative process. It is through this lens of learning and adaptation that IAMs become more than reactive measures; they are proactive instruments for shaping a future in which development is more sustainable, inclusive, and effective.

This publication is based on my master's thesis, completed as part of the 12th cohort of the Master's program in Mediation and Conflict Management (2021–2023) at the European University Viadrina in Frankfurt (Oder). The work has been slightly revised on the basis of the assessments received. The sources reflect the state of research as of June 2024.

I would like to extend my heartfelt thanks to those who have supported me in this endeavor. My academic supervisor, *Prof. Dr. Ulla Gläsel*, provided invaluable insights and guidance throughout this jour-

ney, and I am deeply grateful to the practitioners and experts who shared their experiences with me. Their contributions have been fundamental to the development of this thesis.

I am grateful to the editors of this series and the publisher, the *Wolfgang Metzner Verlag*, for including my thesis in this publication series – it is a great honor for me. Last, but not least, I want to thank my partner and family, whose unwavering love and support have allowed me to pursue this project.

In closing, I hope that this work sheds light on the critical role that accountability mechanisms can play in fostering a culture of learning within MDBs, and that it will inspire further exploration into how institutions can adapt and grow in an ever-changing world.

Jenny Laube, October 2024

Abstract

This master's thesis investigates the role of Independent Accountability Mechanisms (IAMs) in multilateral development banks (MDBs) as sources for continuous learning within the realm of international development. The research addresses the need for accountability mechanisms in international development and explores the requirements for an accountability mechanism to function as a catalyst for continuous learning. Additionally, the study examines how existing mechanisms are currently structured to promote continuous learning and suggests potential enhancements to increase their capacity to facilitate learning.

The research employs a methodology encompassing document analysis, literature review, and qualitative interviews.

Key findings highlight the vital role of IAMs in providing redress for communities affected by MDB-funded projects, emphasizing their commitment to promote learning and incite change within associated institutions. IAMs contribute to institutional learning by channeling insights from complaints into the design, planning, and implementation of development projects, while informing MDB policies safeguarding communities and the environment. However, their full potential as sources of continuous learning remains untapped.

In conclusion, the study underscores the potential for significant improvements through systematic evaluations of IAM effectiveness. Additionally, the formalization of a transparent and continuous monitoring and reporting system is proposed to enhance the mechanisms' contribution to continuous learning.

The scope of this research is limited to the context of development finance, focusing on selected IAMs. While primarily document-based, the study incorporates qualitative interviews to provide practical insights. Further empirical investigations could complement these findings and enrich the understanding of IAMs as crucial contributors to institutional learning in international development.

1. Introduction

In an era of global interdependence and sustainable development, the role of multilateral development banks (MDBs) in shaping economies, societies, and environments cannot be understated. As catalysts for progress, MDBs channel substantial resources into projects that hold the promise of transformative change. However, with great potential also comes significant responsibility. The imperative to ensure accountability and address adverse impacts has given rise to a crucial facet of MDB operations – Independent Accountability Mechanisms (IAMs). These mechanisms, designed to receive, investigate, and remedy grievances arising from MDB-funded projects, serve not only as avenues for justice but as invaluable sources for continuous learning. The potential benefits these mechanisms hold for the field of international development finance can only be realized if structures, policies, and practices align to facilitate learning, and if people are willing to listen and act accordingly or as the great philosopher Jalāl al-Dīn Rūmī said, »If you are irritated by every rub, how will you become polished?«

This exploration delves into the synergy between IAMs of MDBs and the perpetually evolving quest for knowledge, shedding light on how these mechanisms stand not only as instruments of redress, but also as reservoirs of insights that drive progressive and sustainable development forward.

1.1. Background and context of the research

In the evolving landscape of international development, the imperative to provide remedy for rights violations has gained unprecedented prominence.¹ Within this context, International Financial Institutions (IFIs) have emerged as pivotal actors, positioned at the intersection of states, businesses, and communities. They wield substantial influence and operate on a large scale with development projects that reverberate across societies and landscapes, impacting lives and environments. Yet, the complex nature of development endeavors invariably gives rise to conflicts and grievances. Despite the challenges,

¹ Cf. OHCHR (2022).

local jurisprudence often falls short in delivering adequate redress to aggrieved parties. In response, MDBs, committed to the UN's Sustainable Development Goals and the principle of »do no harm«, have established paths to mitigate rights violations. Central to this effort is the establishment of Independent Accountability Mechanisms, non-judicial grievance mechanisms that empower individuals to address violations and seek remedy for inflicted harms caused by imperfectly designed or executed operation. MDBs recognize the urgency of rendering these IAMs effective in the sense that they help prevent harm, increase adherence to human rights standards, and foster sustainable development through the banks' operations. They shall also assist in identifying risks, optimizing safeguards, and driving improvements and thereby function as sources of continuous learning.

Alarmingly though, the frequency with which IAMs have found the same policy violations in their investigations implies that MDBs are not sufficiently and systematically learning lessons from IAMs' cases to improve the implementation of their policies.² This in turn raises the questions whether and how MDB's have set up their IAMs to incite learning and what needs to change, to promote continuous learning on all relevant levels.

The present thesis seeks to answer the following questions:

- 1) Why is there a need for accountability mechanisms in International Development?
- 2) What is required for an accountability mechanism to be a source for continuous learning?
- 3) How are existing mechanisms currently set up to be sources for continuous learning and what changes could be made, to increase their capacity to (promote) learning?

1.2. Outlook

The present thesis analyses to what extent IAMs are designed and operated to be sources of continuous learning, to what extent there is still room for improvement and how this could potentially be filled.

² Cf. CIEL (2016), Glass Half Full.

Starting with contextualization, a brief introduction is given to the field of International Development, the relevance of remedy and the function of MDBs within this field (B.). Thereafter, the concept of continuous learning is delineated and a structured framework is deduced (C.). This framework is then used to describe and assess in detail a selection of currently operating IAMs based on the institutional statutes governing them (D.). This is followed by a discussion on whether the existing setups effectively enable learning, which lessons have been learnt, which challenges remain, and where there is potential for improvement (E.). The thesis concludes with a summary of findings and impulses for future research (F.).

1.3. Methods

The methods employed in this master's thesis combine multiple approaches to address the research questions. They encompass:

- 1) **Document Analysis:** The study involves an examination of statutes, policies, guidelines, and (annual) reports of operating IAMs. This analysis delves into the formal framework and operational dynamics of these mechanisms, shedding light on their established principles, processes, and outcomes.
- 2) **Literature Review:** A literature review is conducted to synthesize existing scholarly works, theories, and perspectives relevant to the research question. This provides a comprehensive understanding of the broader context, challenges, and debates surrounding IAMs.
- 3) **Qualitative Interviews:** Six qualitative interviews were conducted with high-ranking officials directly involved in the operations of IAMs. The interviews were summarized by the author and released by the interviewees. The interviews are referenced to supplement findings from document review. They also inform some of the recommendations. These interviews offer valuable insights into the practical challenges faced by IAMs in applying guidelines, policies, and principles in real-world scenarios. The perspectives of the interviewees offer valuable and nuanced insights into critical aspects such as decision-making procedures, intricate operational dynamics, and the strategic mea-

asures employed to navigate challenges. Nevertheless, it is important to note that these accounts could potentially carry a subjective bias and have yet to undergo independent validation. Their inclusion in this study serves not to assert definitive truths, but rather to enrich the analysis with supplementary viewpoints that extend beyond the boundaries of official institutional reports.

By integrating these methods, the research seeks to triangulate findings from various sources, ensuring a holistic exploration of the challenges encountered in the practical application of IAM guidelines. This approach enhances the depth and validity of the study's conclusions and recommendations, contributing to a comprehensive understanding of the dynamics surrounding IAMs and their efforts to provide remedy and foster continuous learning.

2. International Development, the Right to Remedy and the Relevance of Multilateral Development Banks

This chapter provides an overview of the realm of (I.) International Development (I.), followed by an introduction on the Right to Remedy (II.) and a broader portrayal of Multilateral Development Banks (III.).

2.1. International Development

International development pertains to the systematic efforts and processes aimed at enhancing the quality of life, socio-economic conditions, and overall well-being of populations in certain regions of the world. These multifaceted initiatives, conducted by governments, international organizations, non-governmental entities, and other stakeholders, address challenges such as poverty, inequality, health-care disparities, educational deficiencies, and inadequate infrastructure.³ The overarching goal of international development is to foster sustainable economic growth, social advancement, and the realization of human rights.⁴

Within the sphere of the international legal order, the Charter of the United Nations (UNC) of 1945 laid the foundation for what is known today as international development. It enshrines principles of international cooperation and encourages member states to collaborate to promote economic and social development worldwide.⁵ The Charter underscores the significance of respecting human rights, achieving social progress, and elevating living standards.⁶ In 2000, the United Nations adopted the Millennium Development Goals (MDGs), which delineate specific international development targets. The MDGs aim to address critical issues such as poverty, gender equality, health, education, and environmental sustainability.⁷ Subsequently, the Sustainable Development Goals (SDGs), agreed upon in 2015, build upon

³ Cf. Sachs (2015), pp. 181–182.

⁴ Cf. Mbengue & de Moerloose (2017), pp. 391 et seq.

⁵ Cf. Articles 55 et seq. UNC.

⁶ Id.

⁷ UNGA, Millennium Declaration (2000).

the MDGs by encompassing a broader spectrum of objectives.⁸ These goals include eradicating poverty, ensuring quality education, attaining gender parity, enabling access to clean water, promoting affordable energy, taking climate action, and more.⁹ Moreover, various international agreements and treaties address specific facets of international development. For instance, the Paris Agreement focuses on global efforts to combat climate change, a pressing concern intertwined with development goals.¹⁰

Human rights treaties like the International Covenant on Economic, Social, and Cultural Rights (ICESCR) acknowledge the right to development as a fundamental human entitlement.¹¹ These treaties establish legal obligations for states to actively pursue adequate living conditions, education, healthcare, and social welfare for their citizenry. Collectively, these legal instruments provide a framework for the international development landscape. The effective implementation of development projects and initiatives involves a dynamic interplay of policies, financial mechanisms, international partnerships, and localized contexts.

In cooperation with state actors, IFIs like MDBs or international investment agencies play a crucial role in enabling development by providing the financial resources and technical expertise needed for initiatives and projects. Their lending practices influence the kind of projects implemented, their planning and the aspects included in the feasibility and impact analyses, and they have been urged to include human rights criteria in their work.¹²

2.2. The Right to Remedy

The right to remedy in international development refers to the entitlement of individuals (or groups of individuals) to seek redress or compensation for violations of their rights within the context of development initiatives. While the concept of access to justice and the right

⁸ Cf. Mbengue & de Moerloose (2017), pp. 391 et seq.

⁹ UN, *Transforming our World* (2015).

¹⁰ UN, *Paris Agreement* (2015).

¹¹ Arts. 1 and 6 ICESCR.

¹² Cf. Secretary-General (1995), para. 248.

to a remedy is not explicitly mentioned in all international human rights instruments, it has gained recognition and prominence in the international human rights and sustainable development agendas.¹³ The 2005 UN Basic Principles and Guidelines on the Right to a Remedy and Reparation play a significant role in codifying and unifying the provisions on the right to a remedy and reparation in various international treaties. These principles provide a framework for ensuring that victims of human rights abuses, including those caused by development projects, have access to effective remedies and reparations.¹⁴ They emphasize the responsibility of states in providing remedies and reparations for violations of human rights.¹⁵ In the context of international development, the right to remedy is particularly relevant in addressing human rights violations caused by development projects, such as forced displacement, environmental degradation, and loss of livelihoods.¹⁶ It is essential to ensure that affected individuals and communities have access to justice and can seek redress for the harm they have suffered.¹⁷ This includes both access to legal mechanisms and substantive redress, such as compensation, restitution, and rehabilitation.¹⁸

However, there are challenges in realizing the right to remedy in international development: Limited access to justice, lack of awareness of rights, and power imbalances can hinder the ability of affected individuals and communities to seek redress.¹⁹ To prevent existing human rights and environmental standards from becoming ineffective due to difficulties of enforcement, the implementation of non-judicial grievance mechanisms has been gaining significance. With non-judicial grievance mechanisms representing one building block in a so-called »remedy ecosystem«, comprised of national courts, state-based non-judicial grievance mechanism and non-state-based grievance mechanism.²⁰ Grievance mechanisms are formal or infor-

¹³ Cf. Bradlow 2017, p. 47.

¹⁴ Cf. Id.

¹⁵ Cf. Crippa (2010), p. 552.

¹⁶ Cf. OHCHR (2022), p. 14.

¹⁷ Cf. Id.

¹⁸ Cf. Id.

¹⁹ Wewerinke-Singh (2019), p. 226.

²⁰ Cf. OHCHR (2022), p. 11.

mal processes established by organizations to address complaints, disputes, or concerns raised by individuals, employees, or stakeholders. They provide a structured way to resolve conflicts and improve accountability.

Two main aspects can be addressed through non-judicial grievance mechanisms: first, the appropriate handling of incurred damages can be negotiated; second, inadequacies in statutes, guidelines, or their implementation by relevant actors can be identified, possibly leading to necessary alterations aimed at reducing risks and hazardous situations.

In addition to enhancing individual access to justice for the affected parties, effective non-judicial grievance mechanisms can serve as prevention-oriented »early warning systems,«²¹ complementing and refining the human rights and environmentally-related risk analysis conducted by IFIs. By highlighting particularly risk-prone sectors, regions, project designs, or borrowers, these mechanisms allow development financiers to detect and mitigate risks, breaches of obligations, and damage potential in a timely manner, or even prevent them proactively.

2.3. Multilateral Development Banks

2.3.1. Overview

Multilateral development banks are international financial institutions typically established by more than two States for the purpose of encouraging economic development.²² The banks provide low-interest loans, grants or guarantees to member nations – or in some cases private actors to facilitate social or economic development. Many of the projects funded by MDBs pertain to infrastructure, energy, education, and environmental sustainability.²³ In contrast to private sector or commercial banks, the goal of MDBs is not to generate profits for shareholders but to improve the economic conditions of nations and people through the provision of funding. Currently, numerous

²¹ Cf. Gläßer et al. (2021), p. 7.

²² Bissel & Nanwani (2009), pp. 4–5.

²³ Erdem Türkelli, (2020), p. 253.

MDBs operate around the world and control trillions of US-dollars in assets making them powerful actors in the global economy and international development.²⁴ Because the projects funded by MDBs have regularly had unintended side effects on people and the environment, most banks have adopted a variety of safeguarding policies to reduce and prevent harm through their operations and lending. As part of their efforts to enforce these policies and to provide remedy to affected people, most MDBs have established accountability mechanisms, hosting a variety of departments and functions pertaining to complaints of individuals, communities, or civil society organizations (CSOs).²⁵ While their mandates and capacities vary, most mechanisms currently provide a dispute resolution function designed to provide a revenue for claims of affected people as well as a compliance review function aimed at identifying grievances and potentially preventing negative impacts and conflicts in future activities.

2.3.2. History and Missions

MDBs originated as International Organizations (IOs) in the aftermath of World War II as a means to stabilize the global financial system and to rebuild the European nations after the devastations of the war. The International Bank for Reconstruction and Development (IBRD), part of the World Bank Group (WBG), was established through the Bretton Woods Agreement in 1944 as the first MDB by the United States of America (USA) and its allies as one element of a new international monetary system, allowing for international cooperation.²⁶ The forty-four signatory states of the Bretton Woods Agreement (not all of whom later ratified the agreement) established the Bank as an international financial institution providing loans globally. It became operational in 1945. However, from its early days and especially during the period of decolonization – between the mid-1950s to the mid-1970s – the World Bank was perceived by critics as being dominated by the USA which in consequence led to the establishment of several other regional MDBs.²⁷ Among these were the Inter-American Devel-

²⁴ Marodon (2020), p. 7.

²⁵ Crippa (2010), p. 533.

²⁶ Cf. Pratt, (2021), p. 95.

²⁷ Cf. Id.

opment Bank (IADB) in 1959, the African Development Bank (AfDB) in 1964, the Asian Development Bank (ADB) in 1966, the Caribbean Development Bank (CDB) in 1969, the Development Bank of Latin America/Corporación Andina de Fomento (CAF) in 1970²⁸, and the Islamic Development Bank (IsDB) in 1975.²⁹

Following the collapse of the Berlin Wall and the end of the Cold War, forty European nations and two European organizations established the European Bank of Reconstruction and Development (EBRD) in 1991 to assist post-communist countries in their transformation to more market-oriented economies.³⁰ They also extended the lending activities of the European Investment Bank (EIB), to countries outside the European Union (EU) – especially candidates for EU-accession³¹ in order to promote European integration.³²

The most recent MDBs are the New Development Bank (NDB), established in 2014, and the Asian Infrastructure Investment Bank (AIIB), established in 2015. The NDB was created by the BRICS nations (Brazil, Russia, India, China, and South Africa) to support developing countries with infrastructure and sustainable development projects. The AIIB was initiated by the People's Republic of China and jointly founded by 57 member states (MS) to mobilize resources to invest in infrastructure in Asia.

The list of MDBs mentioned here is not exhaustive. There are multiple other MDBs, however the ones listed here are the most relevant in terms of either number of member states or funding represented.

2.3.3. Legal Status

Multilateral Development Banks are international organizations (IOs) and as such subjects of international law with their own international legal personality. They are established through treaties between at least three subjects of international law, such as states or other sub-

²⁸ The Bank changed its name to Development Bank of Latin America and the Caribbean in 2023.

²⁹ Cf. Suzuki & Nanwani (2005), pp. 184 et seq.

³⁰ Cf. Weber (1994), pp. 1 et seq.

³¹ The bank's activities were previously restricted to lending to EU-member states.

³² Cf. Pratt (2021), p. 96.

jects of international law.³³ A broad definition describes international organizations as »intergovernmental organizations, created by states, usually by means of a treaty, in order to exercise a task or function that states themselves are unable or unwilling to perform.«³⁴ As subjects of international law, they are subjected to the regulations stipulated by their member states, by international treaties they have entered, and by *jus cogens*^{35, 36}

Because IOs are subjects of international law, their activities do not typically fall under national jurisdiction, and they enjoy certain immunities.³⁷ Consequentially, the legal accountability within IOs is designed to be upheld through internal legal mechanisms and the availability of administrative tribunals.³⁸ Over time, it has become evident, through various court cases where private parties attempted to bring claims against IOs before local courts,³⁹ that alternative dispute resolution methods were necessary because a failure to enforce accountability could potentially lead to challenges to the organizations' immunities in both national and international courts.⁴⁰

2.3.4. Independent Accountability Mechanisms

After several decades of activities, it became apparent, that the lending practice of MDBs and development project implementation on the ground did not always comply with the banks' policies and (environmental) guidelines.⁴¹ Infrastructure projects in particular had a multitude of negative impacts on people and communities, e. g. air, water or soil pollution, (forced) resettlement, or destruction of livelihoods. In consequence, questions of accountability, transparency, and demo-

³³ Cf. Klabbers (2017), p. 90.

³⁴ Klabbers (2017), p. 90.

³⁵ *Jus cogens* refers to those fundamental principles of international law which are accepted by the international community of states as norms from which no derogation is permitted.

³⁶ Cf. ICJ Advisory Opinion on Difference relating to Immunity from Legal Process of a Special Rapporteur of the Commission on Human Rights, 1999 ICJ 61, 88–89; Suzuki & Nanwani (2005), p. 190 et seq.

³⁷ Cf. Erdem Türkelli (2020), p. 254; Suzuki & Nanwani (2005), pp. 182, 206.

³⁸ Cf. Amerasinghe (1996), pp. 329 et seq.

³⁹ Cf. Erdem Türkelli (2020), pp. 258 et seq.

⁴⁰ Cf. Suzuki & Nanwani (2005), p. 20; Gaillard & Pingel-Lenuzza (2002), pp. 1 et seq.

⁴¹ Cf. Bissel & Nanwani (2009), p. 5; IAM Network (2012), p. 4.