



## **Accountability at the World Bank**

### **The Inspection Panel 10 Years On**





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The Inspection Panel

10 Years On

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# Table of Contents

Foreword by the World Bank Group President James D. Wolfensohn	vii
Acknowledgments	ix
List of Short Forms and Requests	xi
List of Acronyms and Abbreviations	xiii
Preface by the Inspection Panel Chairman Edward S. Ayensu	xv
<b>PART I: THE INSPECTION PANEL AS AN ACCOUNTABILITY MECHANISM</b>	<b>2</b>
Chapter 1: The Inspection Panel and Its Process: An Overview	2
<i>Purpose and Scope of the Panel</i>	3
<i>Requests for Inspection</i>	5
<i>Panel Process after a Request Is Received</i>	8
Chapter 2: The Eligibility Phase of the Inspection Process	18
<i>The Panel's Jurisdictional Mandate and Scope of the Investigation</i>	18
<i>Assessment of Harm Allegedly Caused by a World Bank–</i>	25
<i>Financed Project or Program</i>	
<i>Bringing the Matter to Management's Attention before Filing a</i>	28
<i>Request</i>	
<i>The Panel's Relationship with Management and the Board</i>	29
<i>during the Initial Review Period</i>	
<i>Other Issues Arising during the Eligibility Phase</i>	32
<b>PART II: SELECTED INSPECTION PANEL CASES</b>	<b>40</b>
Chapter 3: Requests for Inspection Satisfied before Panel Investigation	40
<i>Bangladesh: Jamuna Multipurpose Bridge Project</i>	41
<i>India: NTPC Power Generation Project</i>	43
<i>Brazil: Land Reform Poverty Alleviation Project</i>	47
<i>Argentina: Special Structural Adjustment Loan</i>	49
Chapter 4: Requests for Inspection Subject to Panel Investigation	50
<i>On the Right Route?—Nepal: Arun III Proposed Hydroelectric</i>	51
<i>Project and Restructuring of IDA Credit</i>	
<i>The World's Number One?—Argentina/Paraguay:</i>	58
<i>Yacyretá Hydroelectric Project</i>	
<i>The Qinghai Project—China: A Component of the Proposed</i>	69
<i>China Western Poverty Reduction Project</i>	

	<i>The Power of the Bujagali Falls—Uganda: Third Power Project, Fourth Power Project, and Proposed Bujagali Hydropower Project</i>	80
	<i>Breaking New Grounds: The Pipeline of Hope?—Chad: Petroleum Development Project, Management of the Petroleum Economy Project, and Petroleum Sector Management Capacity Building Project</i>	89
	<b>ANNEXES</b>	102
Annex I:	The Inspection Panel Members	102
Annex II:	Panel Activities in Fiscal Year 2003	106
	A. Formal Requests Received	106
	B. Actions on Pending Requests	109
	C. Outreach and Disclosure Activities	116
Annex III:	Maps	118
	A. Map 1: Geographical Distribution of Requests Received	118
	B. Map 2: Chronology of Requests	120
Annex IV:	Figures	122
	A. Figure: Inspection Panel Request Record	122
	B. Figure: World Bank Safeguard Policies Addressed in Requests	123
	C. Figure: Regional Distribution of Requests Received	124
	D. Figure: Sources of Financing for Projects Subject to Request	125
Annex V:	Figure: The Inspection Panel Process	126
Annex VI:	Tables	127
	A. Table: Summary of Inspection Panel Cases	127
	B. Table: The World Bank's Safeguard Policies	129
	C. Table: Alleged Violations of World Bank Policies and Procedures per Request	131
Annex VII:	The Legal Framework	134
	A. The Resolution Establishing the Inspection Panel	135
	B. The 1996 Clarifications	140
	C. The 1999 Clarifications	142
	D. The Operating Procedures	146
	E. The Administrative Procedures	163
Annex VIII:	Guidance on How to Prepare a Request for Inspection	173
Annex IX:	Selected Bibliography of Publications Related to the Inspection Panel	176

## Foreword



Almost a decade ago, the World Bank Board of Executive Directors took a bold step to increase the transparency and accountability in Bank operations, by establishing an independent inspection mechanism—known as the Inspection Panel. The Panel is a three-member body created in 1993 to provide an independent forum to private citizens who believe that they or their interests have been or could be directly harmed by a project financed by the World Bank. The Panel is the first body of its kind to give voice to private citizens in an international development context.

The creation of the Inspection Panel provided, for the first time, a vehicle for private citizens, and especially poor people, to access directly the World Bank's highest governing body—the Board of Executive Directors—and to seek redress for what they may perceive to be harmful operational consequences of the World Bank. The process for addressing claims—that has been developed and is still being fine-tuned by the Panel—has empowered and given voice to the people who may have been adversely affected by World Bank-financed projects. The Panel has evolved as an independent, thorough, and thoughtful mechanism for addressing compliance, and it has enabled the World Bank to listen to complaints brought forward by people, consider the Panel's assessments of those claims, and adopt better policies and operational procedures to implement successfully the Bank's poverty reduction mission.

Since the Panel began operations in September 1994, 27 formal Requests for Inspection have been received. The texts of these Requests made to the Panel are publicly available at the Panel's Web site: <http://www.inspectionpanel.org>.

As we move into the 21st century, accountability and transparency in Bank operations are even more important than they were 10 years ago, and the Bank continues to be at the forefront of efforts to ensure that in this context development policies and procedures truly benefit poor people. More specifically, through the Inspection Panel, the Bank seeks to ensure that its operational policies and procedures, which are intended to protect the interests of those affected by its projects, are adhered to in project design, preparation, and implementation. It is a testament to the Panel's success that 10 years after its inception, even more of the Bank's projects meet its own high standards and objectives. Today, the Panel's success has provided other international financial institutions (IFIs) the example and value of an independent accountability mechanism upon which to model their own accountability mechanisms. Indeed, most IFIs regard the World Bank's mechanism as the standard of excellence to follow in their own efforts to improve transparency and accountability.

This publication traces the Panel's evolution and reviews its experience over the years, focusing primarily on the Panel's practice. Case studies highlight the Panel's impact on the ground, and range from the Bangladesh Jamuna Multipurpose Bridge Project to the Uganda Bujagali Hydropower Project to the Yacyretá Hydroelectric Project. Also discussed are eligibility issues and the Panel's effect on World Bank practice and policies. The publication underscores the Panel's value not only to the Bank but more importantly to the people the Panel serves—the world's poorest people. It also illuminates the Panel's fundamental contribution to the World Bank's efforts to enhance its effectiveness, accountability, and transparency. These achievements are due in no small measure to the Board of Executive Directors, to Bank staff, and especially to Panel members and members of the Panel Secretariat, who formulated and implemented the specific mechanisms of the Panel's operations and who reviewed and investigated cases over the years.

In all the cases discussed in this publication, the Bank seeks to ensure that our operations remain beneficial to the poor people of the world and that we do indeed make a better impact on their lives. We aim to reduce poverty with passion, and to address the concerns citizens express regarding our operations forms a major part of the contribution the Inspection Panel is making to development. That is what development is about, and it is why this publication by the Panel is an invaluable document that everybody must make an effort to read.

Five years ago, I wrote for the Panel's first publication—*The World Bank Inspection Panel: The First Four Years*—that “by giving private citizens—and especially the poor—a new means of access to the Bank, the Panel has given voice to those we most need to hear. At the same time it has served the Bank itself through ensuring that we really are fulfilling our mandate of improving conditions of the world's poorest people. . . . The Panel's value both to the Bank and the Bank's beneficiaries and stakeholders has proven itself repeatedly and cannot be overestimated.” This statement remains as true today as it was then.

James D. Wolfensohn  
*President*  
*The World Bank Group*  
*Washington, D.C.*



## Acknowledgments



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Edward S. Ayensu  
*Chairman*  
*The Inspection Panel*  
*Washington, D.C.*



## List of Short Forms and Requests

	SHORT FORM	REQUEST
1.	Nepal: Arun	Nepal: Arun III Proposed Hydroelectric Project and Restructuring of IDA Credit
2.	Ethiopia: Expropriation	Ethiopia: Compensation for Expropriation and Extension of IDA Credits to Ethiopia
3.	Tanzania: Power VI	Tanzania: Power VI Project
4.	Brazil: Rondônia	Brazil: Rondônia Natural Resources Management Project
5.	Chile: Bío-Bío River	Chile: Financing of Hydroelectric Dams in the Bío-Bío River
6.	Bangladesh: Jamuna	Bangladesh: Jamuna Multipurpose Bridge Project
7.	Argentina/Paraguay: Yacyretá (1996)	Argentina/Paraguay: Yacyretá Hydroelectric Project
8.	Bangladesh: Jute Sector	Bangladesh: Jute Sector Adjustment Credit
9.	Brazil: Itaparica	Brazil: Itaparica Resettlement and Irrigation Project
10.	India: NTPC	India: National Thermal Power Corporation (NTPC) Power Generation Project
11.	India: Ecodevelopment	India: Ecodevelopment Project
12.	Lesotho: Highlands Water (1998)	Lesotho/South Africa: Phase 1B of Lesotho Highlands Water Project
13.	Nigeria: Lagos Drainage	Nigeria: Lagos Drainage and Sanitation Project
14.	Brazil: Land Reform	Brazil: Land Reform Poverty Alleviation Project
15.	Lesotho: Highlands Water (1999)	Lesotho: Highlands Water Project
16.	China: Western Poverty Reduction	China: Western Poverty Reduction Project
17.	Argentina: Structural Adjustment	Argentina: Special Structural Adjustment Loan
18.	Brazil: Land Reform, Second Request	Brazil: Land Reform Poverty Alleviation Pilot Project, Second Request
19.	Kenya: Lake Victoria Environmental Management	Kenya: Lake Victoria Environmental Management Project
20.	Ecuador: Mining Development	Ecuador: Mining Development and Environmental Control Technical Assistance Project
21.	India: NTPC, Second Request	India: NTPC Power Generation Project, Second Request
22.	Chad: The Pipeline Project	Chad: Petroleum Development and Pipeline Project, Management of the Petroleum Economy Project, and Petroleum Sector Management Capacity Building Project
23.	India: Coal Sector	India: Coal Sector Environmental and Social Mitigation Project

	SHORT FORM	REQUEST
24.	Uganda: Bujagali Hydropower	Uganda: Third Power Project, Fourth Power Project, and proposed Bujagali Hydropower Project
25.	Papua New Guinea: Governance Promotion	Papua New Guinea: Governance Promotion Adjustment Loan
26.	Paraguay/Argentina: Yacyretá (2002)	Paraguay: Reform Project for the Water and Telecommunication Sectors; Argentina: SEGBA V Power Distribution Project
27.	Cameroon: The Pipeline Project	Cameroon: Petroleum Development and Pipeline Project and Petroleum Environment Capacity Enhancement Project

## List of Acronyms and Abbreviations

ACP	African, Caribbean, and Pacific—a group of 81 African, Caribbean, and Pacific countries that have a partnership with the European Union
ADB	Asian Development Bank
AESNP	AES Nile Power
BP	Bank Procedure
CAO	Compliance Advisor Ombudsman
CAPECE	Cameroon Petroleum Environment Capacity Enhancement
CASS	Chotanagpur Adivasi Sewa Samiti
CCL	Central Coalfield Ltd.
CED	Center for the Environment and Development
COTCO	Cameroon Oil Transportation Company
CSESMP	Coal Sector Environmental and Social Mitigation Project
CSRP	Coal Sector Rehabilitation Project
EA/EMP	Environmental Assessment/ Environmental Management Plan
EBY	Entidad Binacional Yacyretá (Yacyretá Binational Entity)
EIB	European Investment Bank
ELI	Environmental Law Institute
EU	European Union
FEDAYIM	Federación de Afectados por Yacyretá de Itapúa y Misiones—Federation of people affected by the Yacyretá Project in Itapúa and Misiones
GEF	Global Environment Facility
IBRD	International Bank for Reconstruction and Development
IAG	International Advisory Group
ICT	International Campaign for Tibet

IDA	International Development Association
IDB	Inter-American Development Bank
IFC	International Finance Corporation
IFI	International Financial Institution
INCAE	Instituto Centroamericano de Administración de Empresas
IUCN	International Union for the Conservation of Nature
MIGA	Multilateral Investment Guarantee Agency
NAPE	National Association of Professional Environmentalists of Kampala
NGO	Nongovernmental Organization
NTPC	National Thermal Power Corporation
OD	Operational Directive
OMS	Operational Manual Statement
OP	Operational Policy
OPN	Operational Policy Note
PDA	Programa de Desborde de Arroyos—Urban Creeks Flood Program
QAG	Quality Assurance Group
SBC	Uganda Save Bujagali Crusade
SEGBA	Servicios Electricidad del Gran Buenos Aires
STD	Sexually Transmitted Disease
TIN	Tibet Information Network
UNDP	United Nations Development Programme
USAID	U.S. Agency for International Development

## Preface



Since the latter part of the 20th century, the world has witnessed an exponential growth of activist nongovernmental organizations (NGOs). The missions of many of them, by and large, have been to call national governments and international organizations, especially the major international financial institutions, to be accountable for their actions and policies. The voices of the exceedingly vocal NGOs reached a crescendo when they focused their attention on the world's premier financial institution, the World Bank, to exhibit a high level of transparency and accountability. The decision in 1993 by the World Bank's Board of Executive Directors to create an Inspection Panel that, although an integral part of the Bank, would enjoy complete independence from Bank Management and staff members was indeed an imaginative, courageous, and pace-setting act. That 10 years after the Panel's creation the concept of an independent accountability mechanism within the Bank is being emulated by other international financial institutions attests to its efficacy and usefulness. Furthermore, the increasing number of publications that discuss the Panel's activities also points to the Panel's wide impact among civil society and academia.

The creation of the Panel, as narrated in this book, was the outcome of a felt need, as well as the result of civil society pressures, for greater transparency and accountability of Bank operations, with particular reference to people who are, or are most likely to be, affected by Bank-financed projects. This transparency, including the need for greater consultation, should have been assured by the Bank's own applicable policies and operational directives based on them. But the policy objectives were sometimes not being achieved, and this problem could only mean that the policies (a) were not being properly followed, (b) were being overlooked, or (c) possibly were being misinterpreted. Hence the decision was made to restrict the Panel's activities to investigations on whether the Bank's own policies were being followed in the design, appraisal, and execution of Bank-financed projects. One should note that the policies are being continually reviewed and revised as necessary in light of changing economic and social needs. As this book explains, the Panel undertakes an inspection only at the formal request of two or more people (in accordance with a prescribed procedure) who believe that a Bank-supported project may have adverse effects on them as a result of the Bank having violated its own operational policies and directives. The investigation itself invariably involves wide-ranging interviews supported by extensive fieldwork. Although a Panel investigation concentrates attention on the Bank itself, a searchlight is also indirectly thrown upon an entire gamut of effects of Bank-supported operations as well as on the

performance of private sector Bank partners. Even where the Bank's participation in a project is relatively small, the external (non-Bank) investors have often found it necessary to adjust to Bank policies and standards where their own are seen to be deficient. Similarly, although client governments are strictly not under investigation, the Panel's findings have often contributed significantly to their effectiveness in the execution of Bank-financed projects.

One should note that the projects investigated by the Panel in any one year constitute a small fraction of the projects supported by the Bank worldwide. There is good reason to believe that the ripples generated by one inspection reach far and wide, with noticeable multiplier effects. This occurrence is indirectly evidenced by the response and actions of Bank staff members and others who read the Panel's reports. However, one major criticism by civil society of the Panel process is the lack of an explicit mechanism whereby the Panel can review actions actually taken by Management and staff members on the Panel's findings and recommendations.

The purpose of this book is to provide the reader with an account of the work of the Inspection Panel. It is illustrated with examples from investigations conducted during the 10 years of the Panel's existence. The Panel has enjoyed close cooperation with Bank Management and staff members, especially in the promptness with which they provide needed documentary information and participate in interviews. The Panel also cherishes the assistance that it has received over the years from civil society and especially the NGOs that have demonstrated genuine concern for people affected by Bank projects in various parts of the world. In this context, I would like to record the unflinching professionalism that the Panel's Secretariat has exhibited in its dealings with civil society and the Bank on behalf of the Panel.

Finally, the Panel recognizes and appreciates the contribution and support of the Bank's President, James D. Wolfensohn, and the Board of Executive Directors, in all their work—most especially for their scrupulous adherence to the principle of independence for the Panel, without which its work would not have been possible.

Edward S. Ayensu  
*Chairman*  
*The Inspection Panel*  
*Washington, D.C.*





## PART I

# The Inspection Panel as an Accountability Mechanism

## CHAPTER 1

# The Inspection Panel and Its Process: An Overview



The World Bank Inspection Panel was created in September 1993 by the Board of Executive Directors of the World Bank in response to a number of concerns that came to a head during the early 1990s. The Panel was the result of conflict and controversy and of a combination of internal and external pressures.

During the late 1980s and early 1990s, the Bank was under attack by civil society and some key government agencies over a number of its projects. The spotlight was on the Sardar Sarovar Dam and Canal projects on the Narmada River in India. Those projects involved the resettlement of some 120,000 people. Following broad grassroots activism in India, as well as international civil society campaigns, the Bank's then-president, Lewis T. Preston, in March 1991 commissioned both Brad Morse, a retired administrator of the United Nations Development Programme (UNDP), and Thomas Berger, a former justice of the British Columbia Supreme Court (Canada), to undertake an independent review of the projects. This team, which was to become known as the Morse Commission, published its findings in June 1992. The Commission's report revealed serious failures by the Bank to comply with its own policies, and the report documented devastating human and environmental consequences of those violations. The Commission recommended that the Bank reconsider the projects.

Meanwhile, inside and outside the Bank, increasingly strong voices expressed concern about Bank operations. As with Sardar Sarovar, the focus was on the social and environmental aspects of policies and on the procedures for local consultations. International nongovernmental organizations (NGOs) called for measures to improve transparency and accountability. In response, the Bank's president established an internal task force to review Bank projects. The internal report of November 1992, produced by Bank Vice President Willie Wapenhans, criticized the Bank's "approval culture." The report stated that the promotion incentive structure encouraged staff members to be more concerned about getting as many projects as possible approved by the Board without paying adequate attention to social and environmental implications or to effectiveness of implementation. In practice, the relevant policies about such matters were largely ignored. Various World Bank member countries also pressured the Bank to develop a transparent system of accountability that would ensure that public funds were spent consistently with the objectives of the Bank's mandate for sustainable development and poverty alleviation.

In response to those developments, the Bank's Board of Executive Directors created the Inspection Panel on September 1, 1993, by Resolution IBRD 93-10 and Resolution IDA 93-6. Although these are legally two separate resolutions, they are referred to as

“the Resolution” because of their identical content. The Resolution applies to the International Bank for Reconstruction and Development (IBRD) and the International Development Association (IDA) but not to the International Finance Corporation (IFC) and the Multilateral Investment Guarantee Agency (MIGA). The Resolution defines the Panel’s composition, its mandate, and its operations. Almost at the same time as the creation of the Panel, the Board approved an improved policy on disclosure of information by the Bank, a policy designed to promote greater transparency of the Bank’s operations.

## Purpose and Scope of the Panel

The primary purpose of the Inspection Panel is to address the concerns of people who might be affected by Bank projects and to ensure that the Bank adheres to its operational policies and procedures in the design, preparation, and implementation of such projects. The approved procedure for the Panel embodies a fundamental innovation in the history of international financial institutions (IFIs). Before the creation of the Panel, people affected by Bank projects had no formal way of raising their concerns about those projects. Under the Resolution, an investigation by the Panel can be requested by any group of private individuals who believe they have been or might be harmed by a Bank-supported project, and who believe that the harm stems from Management’s failure to abide by Bank policies and procedures. The Panel represented the first time any IFI had provided a direct link between its governing body—in this case, the Board of Executive Directors—and the people whom its projects are intended to benefit. This was also the first time any IFI had provided a means of appeal—a safety net—in the event that its own standards might not have been met, thus possibly resulting in harm.



Nigeria: Lagos Drainage—  
Uncompleted drainage filled  
with household waste.

### *Independence of the Inspection Panel*

In establishing the Panel, the Bank's Board of Executive Directors clearly expected that this new mechanism would promote the Bank's compliance with its policies more adequately. Independent high-level inspections were expected to result in greater transparency and increased accountability of the Bank's Management and staff members, and in enhanced quality control of the design, appraisal, and implementation of Bank-supported projects. The Board of Executive Directors believed that those objectives could be met only if the Panel was completely independent of Bank Management. They accordingly made it clear in the Resolution establishing the Panel that, even though funded by the Bank, the Panel would be completely independent from Bank Management. Therefore, the Panel reports directly to the Bank's Board; its reports go directly to the Board without being reviewed by any other party, including Bank Management, or by those who submit a Request for Inspection. The reports are published exactly as written.

To enable this procedure to work satisfactorily, the Board must be satisfied with the integrity of the Panel itself. Thus, anyone who has worked for the Bank in any capacity cannot become a member of the Panel until at least 2 years have elapsed. Panel members cannot be removed from office except "for cause." The integrity of the Panel is further guaranteed by forbidding members from ever being employed by the Bank Group after the end of their 5-year term of service on the Panel. In addition, any Panel member is disqualified from participating in the hearing and in the investigation of any Request related to a matter in which that member has a personal interest or has significant involvement in any capacity. In this connection, members of the Panel must not be identified with, or be beholden to, any internal or external group or interest.

The Panel is supported by a small Secretariat that is functionally independent of Bank Management and is responsible solely to the Panel. The Panel can also call on its own external consultants to provide expert knowledge on any matters relevant to an investigation. In 1994, the Panel adopted its own administrative procedures, which are designed (among other things) to promote efficiency and integrity of the Secretariat (see box 1.1).

Nigeria: Lagos Drainage—  
Drainage through a housing  
settlement.



E.S. Ajayi



### BOX 1.1. Administrative Procedures of the Panel

The 1994 Administrative Procedures of the Panel, amended in 1998, not only declare the Panel to be an independent forum, but also provide that “any attempt to interfere with the functioning of the Panel for political or economic reasons or exert political or other influence on the Panel shall be made public.” The Secretariat is expected to report to the Panel “any attempt by Bank member countries, non-governmental and other organizations, the Executive Directors, or Bank staff to interfere with or influence staff of the Secretariat in the discharge of their functions” (see Annex VII-E).

### *Composition and Operating Procedures of the Inspection Panel*

The Resolution establishing the Panel provides for a group of three members of different nationalities who are selected on the basis of (a) their ability to deal thoroughly and fairly with the Requests brought to them, (b) their integrity and their independence from the Bank’s Management, (c) their exposure to developmental issues and to living conditions in developing countries, and (d) their knowledge of Bank operations (the latter is only a preference). The Bank’s president, after consultation with the executive directors, nominates Panel members, who are then appointed for a period of 5 years by the Bank’s Board.

The first Panel members were appointed by the Board in April 1994. There have been seven Panel members to date.<sup>1</sup> The chair of the Panel works full-time and the other members work part-time. Should the workload require it, the part-time members could be engaged full-time. The Resolution also provides that the Bank president “after consultation with the Executive Directors, shall assign a staff member to the Panel as Executive Secretary” and that “the Panel shall be given such budgetary resources as shall be sufficient to carry out its activities.” This language led to the establishment of an Executive Secretariat that has supported all Panel activities and has made a big difference in the operation and effectiveness of this mechanism when compared to the ones established by other IFIs.<sup>2</sup>

The 1993 Resolution broadly sets out how the Panel should operate. The Panel’s Operating Procedures (adopted in 1994) provide in detail how the Panel should proceed in its work (see Annex VII-D). Because the Inspection Panel was something entirely new and untried, the Resolution called for the Board to review the Panel’s function after 2 years. There have been two reviews (in 1996 and 1999), and both resulted in certain clarifications that altered aspects of the way the Panel functions.

### Requests for Inspection

An investigation can be launched in three ways. The most important trigger for an investigation is a complaint by local people who are or might be affected by a Bank-supported project. To date, 27 complaints, formally referred to as Requests for Inspection, have been presented by groups of affected people or by their representatives. The Resolution provides that a community or group of people can submit a Request for

Inspection, and the Panel's Operating Procedures define "group" as two or more individuals. The 1996 Clarifications (see Annex IV-B), while accepting the Panel's definition of group, explained further that members of the group must have common interests or concerns. With satisfactory evidence of authorization, a local representative, such as an NGO, can submit a Request on behalf of directly affected persons. Most Requests for Inspection are, in fact, presented by local representatives. Under certain circumstances, an international NGO may submit a Request. (This type of submission has happened only once.) In the submission of Requests, the Panel's Operating Procedures allow claimants and their representatives to ask that their identity be kept confidential. A request for confidentiality has happened in a number of cases for various legitimate reasons.

Apart from people directly affected by Bank-financed projects or their representatives, any of the Bank's 24 executive directors, who represent 184 countries, may request an investigation, which will be subject to the Board's approval. Finally, the executive directors—acting as the Board—may at anytime instruct the Panel to conduct an investigation. The Board exercised this authority once, in a Request regarding the China Western Poverty Reduction Project, although even in that instance, a Request was presented to the Panel by an international NGO acting on behalf of people affected by the project.

### *Form and Contents of a Request*

China: Western Poverty Reduction—  
Affected people in traditional dress  
on land they cultivate.

The Panel has always assumed that Requesters will not necessarily be highly educated people. The Operating Procedures explain that elaborate complaints dressed in legal



E.S. Myers

language are not necessary in a Request. A simple and straightforward suggested format is available in Annex VIII, in Panel publications or brochures, and on the Panel's Web site. To date, the Panel has received complaints ranging from simple letters to legal-style presentations that had been prepared with the help of sophisticated international NGOs.

A Request for Inspection must contain the following basic elements:

- Requesters must claim that they live in the area affected by a project or program financed by the IBRD or IDA, or that they represent people who do.
- Requesters must allege that they are or are likely to be harmed by IBRD- or IDA-financed activities, and they must describe the harmful effects.
- Requesters must allege in substance that the harm they fear or have experienced results from the Bank Management's acts or omissions that are in violation of Bank policies and procedures. Claimants do not need to have firsthand knowledge of Bank policies, which may be hard to get hold of in the project area. It is not necessary to cite specific policies. On the basis of the factual situation and elements of harm presented, the Panel will identify what policies, if any, apply or may apply.
- Requesters must show that they have attempted to raise their concerns with the Bank's Management and are not satisfied with the response. This element emphasizes the point that the Panel is a mechanism of last resort. It is useful, if possible, for Requesters to attach copies of any correspondence between affected people and the Bank to demonstrate that steps had been previously taken to try to get complaints resolved.

In practice, when a Request lacks an essential element, the Panel contacts the Requester and asks that person or group to provide the missing information.

### *The Bank's Policies and Procedures*

Not all harm can be the subject of a Request for Inspection. The alleged harm must result from an alleged violation of Bank policies or procedures. The Bank's policies and procedures provide the Bank's Management and staff members with guidance on how to prepare and supervise projects. Before submitting a project to the Executive Board for approval, Management has to confirm that Bank operational policies have been met. If the project is under implementation, Bank Management is required to supervise the discharge of the borrower's obligations under the loan agreement, including the borrower's obligation to ensure that specific aspects of Bank policies are adhered to.

The policies also provide certain rights for local affected people, such as the right to consultation and to disclosure of information. Most of the Requests so far submitted have concerned the Bank's safeguard policies, namely environment assessment, involuntary resettlement, indigenous people, cultural property, forestry, natural habitat, pest management, and safety of dams (see Annexes IV-B, VI-B). Other policies have also been invoked, especially policies on project supervision and disclosure of information. One should note that allegations on procurement are outside the mandate of the Panel because procurement is dealt with under other regulations of the Bank.



Nigeria: Lagos Drainage—  
Affected people meet with the  
Inspection Panel.

### Panel Process after a Request Is Received

After a Request is received, the Panel process begins. This process can be usefully divided into three stages: registration, eligibility, and investigation. Once the Requesters have filed their Request for Inspection, they have no formal role in the Panel process. In practice, the Panel involves the Requesters in its eligibility and investigation field visits. Whenever possible, the Panel invites the Requesters or their representatives to help organize visits by Panel members to the project site as well as to meetings with affected people. The Panel's Operating Procedures contain detailed instructions for keeping the Requesters informed during the eligibility and investigation stages.

#### *Eligibility Process*

The eligibility phase starts with the registration of the Request for Inspection. This phase is essentially an administrative step stipulated in the Panel's Operating Procedures. It provides a formal basis for informing the Board, Bank Management, and Requesters, as well as the public, that a complaint has been received. However, registration is not automatic. The Panel does not register complaints that are obviously outside its mandate, that are anonymous, or that are manifestly frivolous. In practice, the Panel has not registered several Requests for Inspection because they were outside its mandate: a number have



concerned procurement, one was inadmissible because it related to an IFC project, in one case the Requester had not exhausted competent local remedies, and in a further case the Bank loan had been closed. The Panel does its best to determine these facts at the registration stage to avoid asking Management to expend time and resources responding to an inadmissible complaint. Once a Request is registered, the Panel sends a copy of the Request to the president of the Bank, who represents Management. Because the complainants have alleged violations of Bank policies, Bank Management is given the opportunity to respond, within 21 business days, by providing evidence to the Panel that it has complied, or that it intends to comply, with the relevant applicable policies and procedures. A notice of registration is sent to the Requesters, the executive directors, and Management. The Panel also makes the notice public by posting the notice on its Web site.

When the Panel receives Management's Response, it has 21 business days to determine not only the eligibility of the Requesters but also the eligibility of the Request itself for an investigation. Under the Resolution, the Panel needs to establish whether the Requesters are who they say they are, live in the project area in the borrower's territory, and are a community of people sharing some common interests or concerns. The Panel also needs to establish whether a local representative is bona fide. The Panel needs to be reasonably satisfied that the complainants have suffered or are likely to suffer harm through a possible act or omission by the Bank, as alleged. As for eligibility of the Request or complaint, the Panel has to decide whether it is based on an alleged failure by the Bank related to its own policies and procedures, and whether any alleged consequent harm complained of appears material enough to warrant an investigation. At this time, the Panel also must confirm that the complaint is not barred because of any of the circumstances outlined in box 1.2. Finally, the Panel must examine the Management Response and make a judgment as to whether Management has addressed and remedied or intends to remedy any problems so that there is no need for an investigation (see box 1.3).

#### **BOX 1.2. Complaints That the Panel Is Prohibited from Accepting**

The Panel is prohibited from accepting the following types of complaints:

- Complaints about actions that are the responsibility of other parties (such as the borrowing government, the implementing agency, a corporation, the IFC, or the MIGA) and that do not involve any action of omission on the part of the IBRD or IDA, because the Panel can only investigate those two institutions' failure to follow their own policies and procedures.
- Claims by actual or potential suppliers of products or services. The 1996 Clarifications confirm that this type of claim includes Bank staff clearance of procurement decisions because the Bank has a separate internal office to deal with all such complaints.
- Complaints filed after the closing date of the loan. The loan must be still active with less than 95 percent disbursed.
- Claims into project matters that the Panel has already dealt with in a previous Request unless the complainants provide new evidence or circumstances not known earlier.

### BOX 1.3. Eligibility Process in the 1994 Operating Procedures

In its Operating Procedures, the Panel outlines detailed steps for determining eligibility. Information in the Request, information in the Management's Response, and any further information the Panel received or asked for was and still is used as the basis for the determination. The rest of the steps guided the Panel approach to eligibility in practice and formed the basis of the 1996 Clarifications on eligibility. First, the procedures envisage a situation in which Management admits a failure to follow its policies but proposes remedial actions and a timetable for implementing them, which the Panel might find adequate to correct the situation. Second, if the Panel is not satisfied that Management has demonstrated it followed procedures, or if its proposed remedial actions appear unsatisfactory, the procedures allow for a Preliminary Review to see if such failures warrant an investigation. Third, an Initial Study could be conducted if the Panel decides such a step is necessary to make an informed recommendation about an investigation to the Board. The last step allows for a visit to the project site. In practice, the Panel found it necessary, in all cases before 1999, to conduct an Initial Study. It should be noted that the 1999 Clarifications to the Resolution (see below) state that "the preliminary assessment" is no longer needed in view of the procedural reforms introduced by these Clarifications.

When the Panel recommends an investigation, only the Board can authorize the Panel to go ahead. Until 1999, when the Panel recommended an investigation, the Board met to make a decision.

### *The 1996 and 1999 Clarifications*

The Resolution establishing the Panel called for a review of the experience of the inspection function 2 years after the date of appointment of the first Panel members. The Board undertook its first review of the Panel in 1996. This review resulted in the Clarification of Certain Aspects of the Resolution (October 1996). Under this Clarification, the Panel was instructed that it could undertake a "preliminary assessment" of the damages alleged by the Request, if it believed that such assessment would be appropriate and, in particular, when the assessment could lead to a resolution of the matter without the need for a full investigation. The preliminary stage was not to be used to establish that a serious violation of the Bank's policy had actually resulted in damages suffered by the affected party, but rather to establish whether the complaint, on the surface, was justified and warranted a full investigation.

A second review undertaken by a working group, created by the Board of Executive Directors in 1998, resulted in the 1999 Clarifications.

The most important feature of the 1999 Clarifications was changing the nature of the eligibility phase by abolishing the preliminary assessment process. The 21-day time limit has to be strictly observed, except in circumstances outside the control of the Panel or Management. The time limit has not been applied twice for country internal political reasons. The Panel still has to deal with eligibility issues and visit the project area if necessary. However, the Clarifications instruct the Panel not to report on any findings at this stage on the Bank's failure to comply with its policies and procedures or any resulting

material harm. If the Panel recommends an investigation, the Board will authorize one without making a judgment on the merits of the Request and without discussion, except in relation to certain technical eligibility criteria (see box 1.4). As before, the Panel would examine the Management Response and satisfy itself about whether assertions of compliance or evidence of intention to comply is adequate and would reflect this assessment in its report to the Board. Bank Management is instructed to follow the Resolution and not to communicate



with the Board before its decision on an investigation. In its response, Bank Management is to limit any Action Plans to those activities that the Bank has already implemented or can implement by itself without involving the borrower. The type of Action Plans that Management had been presenting could be presented only after the Panel's investigation. The 1999 Clarifications also attribute to the Panel the mandate to submit to the executive directors for their consideration a report on the Panel's view about the adequacy of consultations with affected parties in the preparation of the Action Plans. However, the practice of asking the Panel to play a follow-up role in assisting the Board to ensure that any corrective Action Plans are implemented was discontinued.

For more information about the background of the 1996 and 1999 Clarifications, see box 1.5.

India: Coal Sector—Inspection Panel meeting with people affected by the project.

#### BOX 1.4. Technical Eligibility Criteria

Board discussion of a Panel recommendation is limited to the following technical eligibility criteria:

- Requesters must be two or more people with common interests or concerns who live in the borrowing country.
- Requesters must assert a serious violation of Bank policies resulting in harm.
- Requesters must assert that the subject matter has been brought to Management's attention and that, in their view, Management has failed to respond adequately.
- The matter in the Request must not be related to procurement.
- The loan must still be active, with less than 95 percent disbursed.
- If the Panel has previously made a recommendation on the subject matter, the Request must assert that there is new evidence or circumstances not known at the time of the previous Request.

### BOX 1.5. Background and Context of the 1996 and 1999 Clarifications

The Panel's first Eligibility Report recommending an investigation contained an extensive preliminary assessment of harm and Bank policy violations (Nepal: Arun). This report triggered a number of communications directly from Bank Management to the Board, which asked the Panel to summarize its recommendation. In view of this occurrence, the complexity of the case, and the 21-day time constraint, the next Eligibility Report recommending an investigation (Brazil: Rondônia) was very short, essentially stating that it had found sufficient evidence of harm and Bank failure to follow policies. The Board felt that it had not received enough factual information for a decision on whether it should authorize an investigation, so it asked the Panel to conduct an additional review to "further substantiate the materiality of the damages, and to establish whether such damages were caused by a deviation from Bank policies and procedures."

In response to the Panel's review, which still concluded by recommending an investigation, Management and the borrower prepared an Action Plan for the future. The Board considered both documents and decided there was no need for an investigation in light of the corrective Action Plan. But, significantly, the Board asked the Panel to follow up by helping it review implementation of the Action Plan when that time came. When the Panel was faced with the next case (Bangladesh: Jamuna), it concluded that it could not satisfy the Board's need for factual information within the 21-day period, so on October 10, 1996, it asked for, and the Board approved, a 30-day extension. At the same time, the first review of the Panel function was nearing conclusion.

Problems began to emerge. Before an investigation, Bank Management must convey its views in its Response addressed to the Panel only. As had happened in the first Panel case, Management continued to communicate its views or submit Action Plans, which it had agreed upon with the borrower, directly to the Board after examining the Panel's preliminary assessment and recommendation. Bank Management presented these remedial Action Plans to the Board shortly before the

Board's decision meeting on a Panel recommendation for an investigation or even at the Board meeting itself. In the next two cases (Argentina/Paraguay: Yacyretá [1996] and Brazil: Itaiparica), rather than authorize an investigation, the Board accepted the Action Plans. In the Argentina/Paraguay: Yacyretá (1996) case, the Board instructed the Panel to review the existing problems in the area and assess the adequacy of the Action Plan. In a third case (India: National Thermal Power Corporation [NTPC]), Management for the first time admitted to some policy violations. Even though Management presented an Action Plan, the Board authorized a limited desk study investigation. On the positive side, this occurrence was seen as getting early remedial action to redress harm. But a fundamental problem with having an Action Plan at this stage was that the plan could not be based on the findings of a full, independent investigation. Another practice that had emerged was the Board asking

Brazil: Rondônia—Deforestation.



E. Abbott



the Panel to help it review progress on implementation of such Action Plans (as happened in the Requests Brazil: Rondônia; Bangladesh: Jamuna; and Brazil: Itaparica).

The Panel's preliminary assessment reports also gave rise to lengthy Board discussions on the substance of the complaints, which was inappropriate before the results of an investigation. The Bank's Board reaches decisions by consensus, but it became clear that a consensus was impossible when the Board was faced with contentious issues in the Inspection Panel Eligibility Reports. This problem led to an extraordinary situation in September 1997, when the Board found it had to vote on whether there should be an investigation into the Brazil Itaparica Resettlement Project. Authorization of an investigation was narrowly defeated. Then, by consensus, the Board accepted the Action Plan and agreed that it should review implementation of the plan, with the assistance of the Panel over the next 12 months. Later in the meeting, the Board authorized the India: NTPC investigation but limited it to a desk study based in Washington, D.C. At this same meeting, it was agreed that a further review to clarify Panel operations was necessary.

Work on clarifying the Panel operations took more than 18 months. In the interim, out of the four Requests it received, the Panel recommended one investigation (India: Ecodevelopment). The Board concluded that no investigation was required at that point, given the Panel's comprehensive preliminary assessment, clarifications from the borrower, and Management's commitment to respond to the Panel's findings. The Panel agreed. But Management was to report back to the Board in 6 months, and the Board agreed that the Panel would comment on the Management report. In conclusion, it is clear that, between 1996 and 1999, the Board authorized only one of the four investigations the Panel had recommended. A case-by-case, tailor-made approach in response to Panel recommendations had emerged.

Since the 1999 Clarifications, the Board has authorized, without meeting, all eight investigations the Panel has recommended. Typically, a Panel Eligibility Report recommending an investigation is now brief. The report sets out the essential elements of the Request and Management's Response, states without analysis whether the technical eligibility criteria for the Requesters and the Request have been met, and informs the Board whether there are conflicts between the Request and Management's Response that warrant an investigation. In the three cases since 1999 in which the Panel has found the Request ineligible (Lesotho: Highlands Water [1999]; Brazil: Land Reform, Second Request [1999]; and Papua New Guinea: Governance Promotion [2001]) the Panel's reports have provided more information. The same applies in the one case in which the Panel found the Request eligible but decided that, because Management had corrected the situation, there was no need for an investigation (Argentina: Structural Adjustment). In practice, the emphasis has resulted in a focus on Bank observance of the policies. The questions of whether there is harm and how such harm can be corrected appear to have become less important. Finally, to determine eligibility, the Panel has visited the project area in all cases except for one, in which the Request was filed by an international NGO (China: Western Poverty Reduction).

Papua New Guinea: Governance Promotion—Panel Chairman interviewing representatives of the Requesters.





China: Western Poverty Reduction—  
Resident to be relocated.

### *Investigation Process*

An investigation commences immediately after Board approval. It is not time bound. The Panel's Operating Procedures provide general guidance on how the Panel should proceed. The Panel chair appoints a lead inspector to take primary responsibility for the investigation. The methods employed are entirely at the discretion of the Panel and are dictated by the demands of each case. In accordance with the Resolution, the Panel always interviews relevant Bank staff members and Management. To encourage staff members to speak freely, the Panel destroys any record of such interviews. The Panel also has complete access to and reviews all pertinent Bank records. Subject to the consent of the borrowing country, a Panel team always visits the project area (except in the one pre-1999 case in which the Board restricted the investigation to a desk study) and meets with the complainants, their representatives, other people affected by the project, NGOs, government officials, and project authorities. The 1999 Clarifications express the assumption that governments will grant consent for Panel field visits. As with staff interviews, the records of conversations are confidential to the Panel. To avoid the impression that the Panel might be investigating the borrower's performance, the 1999 Clarifications stress the need for the Panel to keep the profile of

its in-country activities low and to make it clear that the Panel is investigating the Bank (not the borrower) when media interaction is unavoidable. For similar reasons, in instances in which the Panel finds that material harm alleged in the Request is not totally or partially caused by a Bank failure, the 1999 Clarifications ask the Panel to merely state this finding and not to produce an analysis of the harm itself or the causes.

### *Recommendations and Follow-Up Action*

The Panel is a fact-finding body and does not make specific recommendations for correction of any failures it might uncover. Consistent with normal operating procedures, Bank Management, when it responds to the Panel's Investigation Report, recommends, when relevant, remedial actions to the Board. The Board usually meets to consider the

Panel Investigation Report together with Management's recommendations and then decides whether to approve the recommendations. The Board may, of course, ask the Panel to check whether Management has made appropriate consultations about these remedial measures with affected people, but the Board has not done so to date.

### *Disclosure of Information*

The Panel's Eligibility Reports and any Investigation Reports are made public. These reports are released to the public only after the Bank's Board has considered them. Within 3 days they are made available on the Panel's Web site. Similarly, the Request for Inspection, the Management Response to it, and the Management Response to any Panel Investigation Report and Recommendations are made public. All reports are posted on the Panel's Web site.

### *Other Inspection Mechanisms*

Although the World Bank was the first IFI to establish an independent inspection mechanism, it was not the only such institution subjected to internal and external pressures for greater transparency and accountability in its operations. Starting in the early 1990s, new policies on disclosure of operational information and independent compliance review mechanisms started to emerge. The Inter-American Development Bank (IDB) was the first to follow the World Bank's lead by establishing an Independent Investigation Mechanism on August 10, 1994. IDB then established a policy on information disclosure in October of the same year to reflect the agreement reached in the context of the negotiations for its Eighth General Increase of Resources. The IDB's Independent Investigation Mechanism has many similarities to the Inspection Panel in terms of its purposes and investigation procedures, but it differs from the Inspection Panel in several material ways. The IDB's Mechanism has a Roster of Investigators who participate in the process only after the IDB administration—through the Mechanism's coordinator (a staff member of the IDB's Secretariat) in consultation with the IDB Legal Department—has decided that an allegation made by Requesters warrants further consideration. Following that decision, the president of the IDB appoints an expert from the Roster to evaluate whether the Request for Inspection meets the applicable eligibility criteria and whether an investigation is warranted. After receiving a response to the Request from Management, the expert sends a recommendation to the IDB's Board of Directors. If an investigation is approved, the Board, upon recommendation of the president, appoints

India: Coal Sector—  
Parej East hamlet before  
mining.



three other experts from the Roster (the first expert is excluded) to conduct an investigation. The IDB's Mechanism does not have its own budget and secretariat and, therefore, must rely on the administrative support of its coordinator.

Similarly, in early 1993, the Asian Development Bank (ADB) appointed a Task Force on Improving Project Quality. The Task Force, which was chaired by one of ADB's vice presidents, called for more transparency and a greater degree of involvement of governments and intended beneficiaries in the development and execution of ADB-financed projects. ADB's Management reacted positively to these recommendations. In September 1994, ADB's Board of Directors approved a new policy on information disclosure. In the same month, Management submitted a working paper on the establishment of an Inspection Function, which, following several discussions and counterproposals from internal and external sources, led to the approval of ADB's inspection policy in December 1995. Under this policy, the structure and procedures of the Inspection Function are similar to those of the IDB, but with a key difference: the roles that the IDB assigned to its president and to the Independent Investigation Mechanism's coordinator were entrusted by ADB to an Inspection Committee formed by a group of Executive Directors.

As a result of a precedent-setting review entailing far-reaching internal and external consultation processes, the Board of Directors of the Asian Development Bank established a new accountability mechanism including a two-step approach of consultation and compliance review.

Since the World Bank's Inspection Panel jurisdiction is limited to the IBRD and IDA, external pressures for accountability and transparency in the operation of the IFC and MIGA—the World Bank Group institutions dealing exclusively with the private sector—continued to mount. Those pressures were precipitated by the Panel's receipt in 1995 of a Request for Inspection that related to an IFC-financed project—Chile: Prangué Ralco Complex of Hydroelectric Dams, Bío-Bío River—which the Panel could not accept because of its jurisdictional mandate, and by the highly controversial outcome of an independent investigation commissioned by the IFC's president. In response, the IFC and MIGA established the Office of the Compliance Advisor Ombudsman (CAO). The CAO has three discrete functions. First, as ombudsman, the CAO uses mediation and other conflict resolution approaches to assist the IFC and MIGA in resolving complaints raised by people who feel they have been or will be affected by IFC- and MIGA-supported projects. Second, as compliance auditor, the CAO carries out compliance and effectiveness audits of selected projects. Finally, as adviser, the CAO provides independent advice to Senior Management with respect to specific projects or, more generally, with respect to the overall application and effectiveness of IFC and MIGA policies. Although functionally independent of Management, the CAO reports to the president of the World Bank Group.

The IFIs' quest for transparency and accountability in their operations has continued. In April 2000, the International Monetary Fund established an Independent Evaluation Office. Moreover, the African Development Bank and the European Bank for Reconstruction and Development are currently discussing proposals for the establishment of independent recourse mechanisms. Leading bilateral export credit agencies are also taking important initiatives in this regard. Export Development Canada recently created a





India: Coal Sector—Parej East open-cast coal mine.

Compliance Officer position “to enhance existing transparency and accountability practices in areas such as public disclosure of information, environmental reviews, human rights and business ethics.”<sup>3</sup> Finally, the Japan Bank for International Cooperation and the Eastern and Southern African Trade and Development Bank (PTA Bank) have also announced their intentions to create mechanisms that respond to concerns about accountability similar to those that prompted the World Bank to establish the Inspection Panel.

## Notes

1. Ernst-Günther Bröder (1994–99), Alvaro Umaña-Quesada (1994–98), Richard E. Bissell (1994–97), Jim MacNeill (1997–2002), Edward S. Ayensu (1998–2003), Maartje van Putten (1999–2004), and Edith Brown Weiss (2002–07). For more detailed information, please see Annex I.
2. The Executive Secretary of the Panel was also appointed on April 4, 1994. He is Eduardo G. Abbott, a Chilean national who, at the time, was the principal counsel, Operational Policy, in the Bank’s legal department. Later on, the Secretariat was further strengthened by Antonia M. Macedo, a New Zealand national, and Alberto Ninio, a Brazilian national. At the time of these appointments, Ms. Macedo was a legal analyst and Mr. Ninio was a senior counsel in the Bank’s legal department.
3. See Export Development Canada, Resolution Respecting the Establishment of a Compliance Officer Position for Export Development Canada, available at <[http://www.edc.ca/corpinfo/csr/compliance\\_officer/board\\_resolution\\_e.pdf](http://www.edc.ca/corpinfo/csr/compliance_officer/board_resolution_e.pdf)>.

## CHAPTER 2

# The Eligibility Phase of the Inspection Process



hen the Panel receives a Request for Inspection, it must determine that the Request falls within its jurisdictional mandate and that the Request meets certain other criteria before issuing its recommendation to the Board of Executive Directors that an investigation should be authorized. This preliminary phase of the inspection process is called the eligibility phase, because it is during this period that the Panel establishes whether the Request fulfills the preconditions set forth in the Resolution to warrant substantive evaluation. This chapter examines how the Panel and the Board have dealt with and interpreted the eligibility criteria.<sup>1</sup>

The overview of the Inspection Panel process (see Annex V) outlines the sequence of steps to be taken during the eligibility phase. In particular, the Panel must determine that the subject matter of the Request is within the Panel's mandate, that the Requesters are eligible to file the Request, and that the Request has been made in a timely fashion. The Panel must consider whether the harm the Requesters claim to have suffered could have been caused or may be caused by violations of Bank policies (whether the harm is in fact caused by the alleged violations is a matter to be determined in the course of the substantive investigation itself). The Panel must also be satisfied that the Requesters have brought their claims to Management's attention before bringing their Request before the Panel. These threshold issues are discussed in the following sections.

Later in this chapter, the Panel's relationships with Management and the Board during the initial review process are discussed. Also covered are the various decisions of the Board in response to the Panel's recommendations, including decisions that limited the Panel's ability to conduct a full investigation, a practice that eventually was curtailed under the 1999 Clarifications. Finally, this chapter discusses other technical and procedural issues arising during the eligibility phase of the inspection process.

### The Panel's Jurisdictional Mandate and Scope of the Investigation

One of the first things the Panel must do when it receives a Request is to determine whether the claims it is being asked to investigate fall within the scope of the Panel's authority. In particular, the Panel must evaluate whether the Request relates to a project financed by the Bank, whether in substance the Request alleges a failure of the Bank to follow its own operational policies or procedures in connection with the project, whether the Requesters have standing to file the Request, and whether the Request has

been filed before the closing date of the relevant loan or before the loan proceeds have been substantially disbursed. Each of these factors is dealt with here.

### *Eligibility of the Requesters—Standing to File a Request*

In order for a Request to be eligible for consideration, the Requesters themselves must meet certain criteria. Paragraph 12 of the Resolution provides that a Requester must be an “affected party” who lives in the territory of the borrower and is a “community of persons, such as an organization, association, society or other grouping of individuals . . . .”

A single individual cannot qualify as a Requester, but the 1996 Clarifications state that two or more individuals “with common interests or concerns” can qualify. In most cases, the Requester has been an NGO representing a group of individuals who claim to be adversely affected by the design or implementation of a project. However, the Requester does not need to have legal status to be eligible.<sup>2</sup> (In this book, the term “Requester” includes an aggregate of individuals as well as an organized group.)

In addition to constituting a “group” of two or more people, the Requester must also be an “affected party” who lives in the territory of the borrower. The Requester must live in the area affected by the project and must believe that he or she has been or may be affected in a materially adverse way. With regard to Argentina/Paraguay: Yacyretá (1996), in September 1996, the Requesters alleged environmental and other damage as a result of the construction of a dam and reservoir on the Argentina/Paraguay border. The borrower was Argentina, and the Requesters lived in Paraguay. In its response to the Request, Management raised a number of objections to the eligibility of the Requesters. In particular, Management stated that the Requesters were ineligible under paragraph 12 of the Resolution because they did not live in the territory of the borrower.<sup>3</sup> The Panel noted, however, that Paraguay had accepted certain obligations with respect to the project under the so-called Owners Agreement and that, although the borrower of record was Argentina, the processing of the loan was transferred to a binational entity owned by both countries. The Panel added that Paraguay was benefiting from the loans. Most of the environmental and social adverse effects of the project were occurring in Paraguay, and furthermore, a related loan had been made to Paraguay with respect to the resettlement of people displaced by the reservoir and living in the same area as the Requesters.<sup>4</sup> When the case was presented to the Board, the Board did not dispute the eligibility of the Requesters, and it authorized a review of the project.<sup>5</sup>

With regard to Ecuador: Mining Development, in December 1999, the Requesters were concerned about a Bank-financed thematic mapping project in their area. They asserted that the release of maps with mineral data would inevitably increase mining development and have a destructive impact on protected areas and their buffer zones. They also claimed that the Bank had not properly taken such dangers into account in accordance with Bank policies. Although the area the Requesters lived in was not scheduled to be mapped, the Panel nonetheless considered the Requesters eligible because they lived in adjacent areas that would also be affected if mining activities were to take place and they were therefore in the “territory of the borrower,” as required by the Resolution. Similarly, in the Request, Lesotho: Highlands Water (1998), the Requesters, who lived in South Africa, were deemed to be eligible to bring a claim with respect to a



E. Abbott

Bangladesh: Jamuna—Affected people looking at the erosion of their island.

water management project that originated in Lesotho. The Panel noted that the project could have significant effects in the area where the Requesters lived and that the government of South Africa was acting as guarantor on the loan. Therefore, the Requesters were deemed to be in the territory of the borrower.

In determining whether Requesters are eligible to bring a claim, the Panel does not require that they be specifically identified in project documentation as affected people. Regarding Bangladesh: Jamuna, in August 1996, the Requesters were a group of indigenous people living on islands in the middle of the Jamuna River. The Requesters alleged that their islands were in danger of being flooded or destroyed as a result of the project's work to control the course of the Jamuna River to construct a bridge across it. The Requesters alleged violations of Bank policies on environment, indigenous people, and involuntary resettlement because the Requesters' interests had not been considered at all in the design of the project.

The Panel concluded in its initial review that the Requesters had made a prima facie case that the Bank had violated its policies. The Panel did not recommend an investigation, because Management produced a plan for corrective action in the interim that would address the Requesters' concerns. It is nonetheless clear that the Requesters were regarded as eligible by the Board, the Panel, and Bank Management.

### *Subject Matter Jurisdiction—Different Lending Operations*

A fundamental aspect of the Panel's mandate relates to the type of Bank activity that may be the subject of an investigation. Paragraph 12 of the Resolution grants the Panel the power to investigate claims from Requesters alleging that they have suffered or are likely to suffer harm as a result of the Bank's failure to follow its own policies and

procedures “with respect to the design, appraisal and/or implementation of a project financed by the Bank . . . ” (emphasis added).

The term “project” is not defined in the Resolution, but its meaning has been spelled out in practice. One of the early cases to come before the Panel was Ethiopia: Expropriation (April 1995). This Request was filed by two Greek citizens who complained that the IDA had violated the policies by continuing to lend to the government of Ethiopia despite the failure of Ethiopia to compensate the Requesters for the expropriation some 20 years earlier of certain assets belonging to their family. One of the reasons this Request was rejected was that it did not allege a failure of the Bank’s policies and procedures with respect to a specific lending project; the Request merely identified a number of loans to the borrower without identifying any particular project as the cause of the harm.

The Ethiopia case demonstrates that a complaint that does not raise issues related to the design, appraisal, or implementation of a specific project is not eligible for investigation by the Panel even if Bank policies are otherwise alleged to have been violated. However, the Board also took this occasion to affirm that the term “project,” as used in the Resolution, had the same meaning as in Bank practice.<sup>6</sup> This interpretation was also specifically set forth in the 1996 Clarifications.

Under the interpretation, the term “project” is not limited by the type of loan instrument used by the Bank but is much broader in scope. According to a legal memorandum issued in 1984, the term means “the allocation of resources for specific productive purposes (including such ancillary components as may be required for such purposes).”<sup>7</sup> The term includes not only investment loans, but also sector adjustment loans and structural adjustment loans. In Bangladesh: Jute Sector, in November 1996, the Panel considered a claim that the IDA had failed to follow the policies and procedures with respect to a program designed to restructure the local jute industry by reducing excess capacity, increasing privatization, and otherwise attempting to make the industry more competitive. Although the Panel ultimately decided not to recommend an investigation,<sup>8</sup> this case stands for the proposition that the term “project” can encompass more than a single infrastructure project.<sup>9</sup>

Additionally, the Panel’s mandate clearly extends to projects in which the Bank serves as guarantor rather than direct lender. In the Request Uganda: Bujagali Hydropower, in August 2001, the IDA’s involvement was limited to a partial risk guarantee on behalf of a private sector borrower. The Panel found both the Request and the Requesters eligible, and it recommended an investigation. Management initially contested the jurisdiction of the Panel to investigate the Request, but the Board approved the Panel’s recommendation, and the investigation went ahead. Significantly, one should note that, although the role of the IDA as guarantor in this instance was limited to disbursing funds to cover the eventual risk of debt service default because of sovereign or political actions, all of the IDA’s policies and procedures applied.<sup>10</sup> In other words, the IDA was required to review compliance of the project with its policies and procedures in the same manner as if the IDA had been the direct lender.

By contrast, another Request, Chile: Bío-Bío River, was rejected because the project was being financed by the IFC, and the Bank was not involved as either lender or guarantor. The Request was forwarded to Management, and the Board and IFC’s president appointed an ad hoc group to review the Requesters’ claims.



Uganda: Bujagali Hydropower—  
Inspection Panel Team meeting with  
the Requesters at the headquarters  
of NAPE in Kampala.



### *Subject Matter of the Request—Operational Policies Relevant to the Design, Appraisal, and Implementation of Projects*

Paragraph 12 of the Resolution requires a Requester to demonstrate that it has been harmed “as a result of a failure of the Bank to follow its *operational policies and procedures* with respect to the design, appraisal and/or implementation of a project . . .”<sup>11</sup> (emphasis added). The alleged violation must also be “of a serious nature.”<sup>12</sup> As noted in chapter 1, some of the policies most frequently alleged by Requesters as having been violated are the safeguard policies—especially environmental assessment, involuntary resettlement, indigenous peoples, and cultural property. In addition, the Panel has investigated claims that allege a failure of the Bank to supervise a project in accordance with the broad policies that govern the Bank’s overall mandate.

The first case to be examined by the Panel, Nepal: Arun, in October 1994, presents a fairly typical example of the range of Bank policies cited by Requesters. This Request came from a group of citizens in Kathmandu and the Arun Valley claiming to be adversely affected by a proposed project to change the route of an access road that would run through the Arun Valley to a hydroelectric dam site. The Panel noted some problems with the financial and economic analysis of the project but recommended—and the Board approved—an investigation only with respect to the Bank’s policies on environmental assessment, indigenous peoples, and involuntary resettlement. Of particular concern was the fact that an environmental impact assessment had not been completed with respect to the proposed alternate route of the access road.

The Panel’s final report concluded that the three operational directives examined had been violated, but the report also noted that specific remedial measures proposed by Management during the course of the investigation appeared to be adequate, provided that appropriate follow-up mechanisms were introduced. Management expressed agreement with the Panel’s finding and conclusions; ultimately, however, the president



Brazil: Rondônia—  
Illegal logging.

of the Bank decided not to proceed with financing the project after an independent review of its economic justification.

With regard to Brazil: Rondônia, in June 1995, the Panel was asked to assess allegations that a project designed to benefit local communities and indigenous peoples and the fragile natural environments they depended on for their livelihood had not been adequately implemented. The Requesters alleged that the Bank had failed to live up to its commitment to prevent further damage to their land, incomes, and health. In particular, the Requesters stated that roads built with project funds had resulted in increased traffic and degradation of the natural environment. The handling of this Request is discussed later in this chapter. Significant to note here are the alleged failures related to the overall project objectives as a result of the Bank's failure to properly supervise actions by the borrower. This situation is consistent with paragraph 12 of the Resolution, which notes that it is within the Panel's mandate to investigate a failure of the Bank to follow up "on the borrowers' obligations under loan agreements with respect to [the Bank's] policies and procedures."

The Request Chad: The Pipeline Project,<sup>13</sup> is significant because the Requesters, in addition to alleging violations of various Bank policies, alleged the Bank's failure to apply its policies on proper governance and human rights. Specifically, the Requesters alleged that the government of Chad had indulged in political repression, coercion, and torture, which had stifled free and open debate and inhibited the Requesters and other elements of civil society from participating in the design and implementation of the projects under consideration.

Although there is no specific Operational Directive (OD) or Operational Policy (OP) on human rights, the Bank has in recent years increasingly demonstrated its support for the promotion of social and economic rights. The Panel considers basic respect for human rights to be embedded in various policies of the Bank, such as its safeguard policies on indigenous peoples and local consultation. The Panel stated

that, although assessing the status of human rights in general was not in the Panel's mandate, the Panel felt it was appropriate to examine whether human rights violations in Chad were such as to impede the implementation of the project in accordance with the Bank's policies. The Panel disagreed with Management's view that violations of human rights within the territory of a borrower should become a matter of concern to the Bank only if the violations had a "significant direct economic effect" on a Bank-financed project. The Board approved the Panel's recommendation for an investigation in October 2001 with respect to policy directives on environmental assessment, involuntary resettlement, consultation, cultural property, disclosure of information, and others. The investigation was completed in July 2002. In its Investigation Report dated July 23, 2002, the Panel concluded that human rights violations in Chad were so severe as to call into question compliance with Bank policies on informed and open consultations. It also concluded that the situation warranted renewed monitoring by the Bank.

#### *Time Period within Which a Request Must Be Filed*

When the Panel was formed, the decision was made not to grant it the authority to investigate claims arising after a project loan had closed. The reason for this decision was apparently that the Bank has in place other facilities for reviewing the conduct of completed programs.<sup>14</sup> Accordingly, the Resolution provides that the Panel does not have jurisdiction over Requests filed with respect to loans that have closed (that is, loans for which the borrower is no longer eligible to withdraw funds from the loan account) or loans of which 95 percent or more of the funds have been disbursed.<sup>15</sup>

The Panel's mandate clearly includes reviewing projects that are under consideration but not yet financed by the Bank. The Requests Nepal: Arun, and China: Western Poverty Reduction, both involved claims with respect to loans that had been proposed but not yet funded. In the Request Nepal: Arun, the Bank eventually decided not to fund the project for reasons related to the Request for the most part. In the Request China: Western Poverty Reduction, the Board directed that part of the project subject to the Request not be funded until the Panel had completed its report.<sup>16</sup> In the 1996 Clarifications, the Board confirmed that the Panel had the power to review projects under consideration.

A more complicated question arises when the project in question is being financed by a series of loans or tranches, some of which have been fully disbursed by the time the Request is filed. The Request Brazil: Itaparica, in March 1997, involved the financing of new housing, technical assistance, and construction of irrigation works for farmers who had been displaced and resettled in connection with a hydroelectric facility. The Requesters claimed that cost overruns and delays in project completion had caused their standard of living, health, and economic well-being to deteriorate. The Bank had approved two different loans for the project: one in 1987, which had closed, and a smaller loan in 1990, which had not closed at the time the Request was filed. The two loans had been treated in Bank documentation as a single loan. When taken together, 96 percent of the combined loan proceeds had been disbursed, but only 92 percent of the second loan had been disbursed.<sup>17</sup>



A legal opinion was sought as to whether the Request had been timely filed. The Bank's then general counsel was of the view that, although the Bank had treated both components of this financing as a single loan, the second component by itself was properly treated as a "loan financing the project" within the meaning of eligibility requirements, and, accordingly, the Request would be ineligible only if the alleged harm related to actions financed exclusively by the original (now closed) loan not included under the second loan.<sup>18</sup> Accordingly, the Request was deemed to be timely filed.<sup>19</sup>

### *Other Jurisdictional Limitations*

Paragraph 14b of the Resolution provides that the Panel is prohibited from reviewing complaints against "procurement decisions by Bank borrowers from suppliers of goods and services financed or expected to be financed by the Bank under a loan agreement, or from losing tenderers for the supply of any such goods and services."<sup>20</sup> In February 1995, the Panel received a letter from a firm in Bangladesh (not contained in a formal Request) asking whether that prohibition extended also to procurement decisions by Bank staff members. The Panel's chairman wrote a memorandum to the Board that referenced certain writings of the Bank's general counsel. In effect, the memorandum stated that the Board's intention in paragraph 14b was to exclude procurement matters whether the complaint was against action by the borrower or by the Bank.<sup>21</sup> Accordingly, the chairman stated that he intended to so inform the firm in Bangladesh unless the Board disagreed with the interpretation. The Board approved that interpretation of paragraph 14b at its meeting on April 11, 1995, and confirmed its views in the 1996 Clarifications.

Another limitation on the Panel's jurisdiction is set forth in paragraph 14d of the Resolution, which provides that the Panel will not consider matters as to which it has made a recommendation on the basis of a prior Request "unless justified by new evidence or circumstances not known at the time of the prior request." In fact, the Panel has received Requests relating to projects that were the subject of an earlier Request, which are addressed later in this chapter.

### **Assessment of Harm Allegedly Caused by a World Bank–Financed Project or Program**

When determining the eligibility of a Request, the Panel must be satisfied that a causal link may exist between the Bank policies alleged to have been violated by Bank actions or omissions and the resulting actual or potential harm alleged by the Requester. Paragraph 12 of the Resolution provides that a Requester must demonstrate that "its rights or interests have been or are likely to be directly" affected "as a result of a failure of the Bank to follow its operational policies and procedures . . . [and] that such failure has had, or threatens to have, a material adverse effect." In addition, paragraph 14a of the Resolution provides that the Panel shall not hear complaints with respect to "actions which are the responsibility of other parties, such as a borrower, or potential borrower, and which do not involve any action or omission on the part of the Bank."<sup>22</sup>

It is insufficient, therefore, for Requesters merely to demonstrate that they have suffered harm, or even that they have suffered harm in connection with a Bank-financed

project. The harm must have been caused by a failure of the Bank to follow its policies and procedures. Furthermore, paragraph 14 of the 1999 Clarifications makes clear that when assessing whether there has been a material adverse effect, the Panel should use as its baseline what the situation of the Requesters would have been if the project had not taken place: “Non-accomplishments and unfulfilled expectations that do not generate a material deterioration compared to the without-project situation will not be considered as a material adverse effect for this purpose.” At the same time, the 1999 Clarifications provide in paragraph 7 that “any definite assessment of serious failure of the Bank that has caused material adverse effect will be done after the Panel has completed its investigation.”

In the Request Bangladesh: Jamuna, for example, the Requesters made a strong showing of causal link. That project involved the construction of a bridge across the widely ranging Jamuna River. The Requesters lived on islands in the project area, and they alleged violations of policies on involuntary resettlement, environmental assessment, and NGO participation. In particular, they alleged that the construction of a series of “training works” designed to restrict the course of the river was likely to result in destruction or permanent flooding of the islands on which they made their homes.

The Panel visited the project site as part of its preliminary assessment and found that the Requesters were eligible to bring their claims. The Requesters clearly stood to be harmed by the construction of the training works, but the resettlement plan had failed to take their interests into account as required by Bank policies.<sup>23</sup> The Panel concluded that the Requesters had made a satisfactory *prima facie* case showing that the alleged failure by the Bank to follow its policies with respect to the project was likely to cause them to suffer material harm.

Even when a Requester has been shown to have suffered harm, the fact that a program or project financed by the Bank has caused or may cause the harm remains to be proven. The Request Papua New Guinea: Governance Promotion, in December 2001,



E.S. Ayres

Papua New Guinea: Governance Promotion—Inspection Panel meeting with affected people.

illustrates this point. The loan had a conditionality related to the forestry sector that was part of a broader lending program to assist the country in strengthening economic management and improving governance. Logging in rainforest areas had reached alarming levels, and bringing the logging under control was one of the program objectives.

The Requesters claimed that logging on their lands had caused them great harm and that this action was related to the release by the Bank of the second tranche of its loan, even though the borrower had not complied with the disbursement conditions. For its part, Management claimed that, although there may have been certain irregularities, the harm alleged by the Requesters was not caused by the Bank-financed program and that, in any event, their problems would be better addressed by continuing the loan facility.

Although the Panel found that certain conditions of the loan had not been met, it concluded that the harm to the Requesters was not the result of the Bank not properly supervising the loan conditions. Rather, the harm was caused by private companies that had no relationship with the Bank's assistance program. The Panel further noted that harmful logging practices had clearly predated the loan program. Accordingly, no investigation was recommended.

A similar conclusion with respect to causal link was reached in the Request Lesotho: Highland Waters (April 1999). The Requesters were mining companies that alleged that the government had unlawfully expropriated their property without compensation. They alleged violations of policies that require the Bank, when considering a loan program, to assess whether the borrower is making reasonable efforts to settle expropriation disputes. The Panel's eligibility investigation found that the Bank had failed to fully comply with its policies on expropriation and disclosure of information, but that there was no direct link between those violations and the unlawful expropriations claimed by the Requesters. Therefore, the Panel did not recommend an investigation.

With regard to Brazil: Rondônia, the Requesters alleged that a project designed to protect the local ecosystem was in fact having the opposite effect—in particular, that the



A. Maseko

Lesotho: Highlands Water (1998)—  
Alexandra, township of  
Johannesburg.





Brazil: Land Reform—New housing in a project resettlement area.

construction of roads was facilitating deforestation and environmental degradation. Management, citing paragraph 14a of the Resolution, asserted that the alleged harm was not caused by any failure on the part of the Bank but was the fault of the borrower, and, accordingly, was outside the Panel's mandate.

Although the Panel recommended an investigation, the Board felt that the degree of harm alleged was unclear. The Board directed the Panel instead to conduct a special factual review of the issue. The Panel's second report confirmed that extensive environmental harm had been caused in the project area and noted that Management's failure to properly supervise the project "had undoubtedly contributed" to the damage.<sup>24</sup>

### Bringing the Matter to Management's Attention before Filing a Request

Paragraph 13 of the Resolution, as confirmed by paragraph 9c of the 1999 Clarifications, provides that a Request must assert that its subject matter has been brought to Management's attention and that Management has failed to demonstrate that it is taking adequate steps to follow policies and procedures. This requirement ensures that aggrieved parties attempt to resolve their disputes first with the Bank personnel responsible for the project, who are usually in the best position to take corrective action.

The Request Brazil: Land Reform, Second Request, in September 1999, involved a project that was designed to alleviate poverty through, among other things, financing the

purchase of small tracts of land by poor rural farmers in northeast Brazil. The Requesters, making their second Request, alleged that the terms of the program had not improved as indicated by the Panel in its report in response to the prior Request. The Requesters alleged that the project continued to pay inflated prices for land to be allocated to project beneficiaries. They further claimed that the land was of poor quality and supported by inadequate lines of credit; hence, it could not be cultivated successfully and enable the farmers to repay their loans.

In reviewing the eligibility of the Request, the Panel decided that the Requesters had not satisfied their obligation to discuss their claims with Management. The Panel noted that the Requesters had declined numerous opportunities to meet with Management to discuss the project. The Requesters cited only one attempt on their part to meet with Management, by inviting Management to a meeting arranged by members of the Brazilian Congress. Management declined the invitation, arguing that the Bank's Articles of Agreement prohibited its attendance at political meetings. As a result of its eligibility assessment, the Panel found that the Requesters had not made attempts to bring their claims to Management's attention. Accordingly, the Panel did not recommend an investigation.

### **The Panel's Relationship with Management and the Board during the Initial Review Period**

When the Panel receives a Request, it first determines whether the Request contains sufficient information to be formally registered. If the Request is obviously outside of the Panel's mandate, the Panel will not register the Request, and the Requester will be so notified.<sup>25</sup> Following registration, which usually takes place a day or two after the Request has been received, the Panel notifies the Requester and the executive directors and forwards a copy of the Request to the Bank's president, who in turn forwards the Request to Management. The following section discusses the sequence of steps in the initial review process leading to a determination by the Board on whether an inspection should be conducted.

#### ***Management's Response to the Request***

Paragraph 18 of the Resolution provides that Management must respond to a Request within 21 business days after notification and must provide the Panel with evidence that it has complied or intends to comply with the relevant Bank policies and procedures. In practice, Management has often taken longer than 21 days to respond. In the Request, Lesotho: Highland Waters (April 1999), for example, the Panel asked Management for additional information after receiving Management's Response, and this second exchange of documents took longer than 21 days. In the 1999 Clarifications, the Board insisted that the time limits set forth in the Resolution should be strictly adhered to except for reasons that are clearly beyond the control of Management or the Panel. The Panel has no means of enforcing the 21-day limit, however, and receiving a timely response from Management could constitute a problem.

In a few of the early cases before the Panel, Management presented certain information in response to the Request directly to the Board of Executive Directors instead of

submitting the information to the Panel. Examples of this occurrence were in the Requests Nepal: Arun and Ethiopia: Expropriation. The 1999 Clarifications now prohibit Management from making these sorts of ex parte communications with the Board. Management's initial response to the Request, therefore, is to be directed solely to the Panel, which, in turn, incorporates the Response into the Panel's recommendation to the Board.

In addition to addressing compliance with Bank policies and procedures, Management's Response has often included opinions and analysis of other aspects of the Request. In some of its Responses, for example, Management contested the eligibility of the Requesters on various grounds. The Requests Argentina/Paraguay: Yacyretá and Ecuador: Mining Development are examples. (Requesters did not live in the project area.) The 1999 Clarifications, however, make clear that determination of eligibility is the Panel's prerogative, subject to approval by the Board.

In some instances, when Management was presented with a Request, it took the opportunity to prepare a plan for corrective action in an attempt to forestall an investigation. Examples of this occurrence were in the Requests Brazil: Rondônia, Bangladesh: Jamuna, Brazil: Itaparica, and India: NTPC.<sup>26</sup> This practice was forbidden in the 1999 Clarifications.

### *Time Period for the Panel's Initial Review*

According to paragraph 19 of the Resolution, the Panel has 21 business days after receiving Management's Response to complete its initial investigation of the eligibility of the Request. The Panel may decide to visit the project country if it believes such a visit is necessary to establish eligibility, but it must do so within the 21-day time frame.

Although the time periods for the eligibility phase are to be strictly adhered to, they can be extended in cases of force majeure or circumstances beyond the control of Management or the Panel. In the case of the Request Chad: The Pipeline Project, for example, the Board approved an extension of the initial review period for 90 days because Chad was in the process of holding elections, which caused civil unrest and interfered with the Panel's ability to interview the Requesters and visit the project area.<sup>27</sup>

### *Submission of the Panel's Recommendation to the Board*

After the Panel completes its eligibility review, it submits its recommendation to the Board. Paragraph 19 of the Resolution, as confirmed by paragraph 7 of the 1999 Clarifications, provides that when making a recommendation, the Panel must satisfy itself that all the eligibility criteria set forth in the Resolution have been met. The Panel is permitted to consider documentary evidence gathered in its initial assessment of the Request and information obtained from visits to the project site in addition to the information contained in the Request and in Management's Response.

Paragraph 6 of the 1999 Clarifications provides that the Panel will make its determination independently of any views that may be expressed by Management. Clearly, though, the Panel is free to agree with Management as to the eligibility of a Request. For example, in Lesotho: Highlands Water (1998) and Brazil: Land Reform

(December 1998), the Panel agreed with Management that an investigation was not justified. On other occasions, the Panel has decided that Management's Response was inconsistent with the facts alleged in the Request or was otherwise unpersuasive; therefore, it has found that a full inspection should be conducted. The Panel has consistently affirmed that Management has no right to raise eligibility issues. The determination of the eligibility of a Request is up to the Panel, subject only to Board approval.

### *The Decision to Authorize an Investigation*

Ultimately, it is the Board that decides whether an inspection should be authorized. This decision is based on the evidence presented by the Panel and Management. The Resolution envisioned that the Board would either deny the Request or authorize an investigation after considering the Panel's recommendation. (The Resolution also provides that the Board may authorize an investigation on its own initiative, and the Board did so in the Request China: Western Poverty Reduction.)

Inspections have been denied for a number of reasons, not all of which had to do with an assessment of the merits of the Request. In the Request Bangladesh: Jute Sector, for example, the project had not been a success and was allowed to close. It was acknowledged that there was no point in conducting an inspection, because the only remedy available to the Requesters under the inspection process would have been to initiate procedural reforms designed to ensure Management's future compliance with Bank policies in connection with the project. In the case of the Request Bangladesh: Jamuna, the Board agreed with the Panel's conclusion that remedial policies, which had been adopted after the Request was filed, would be adequate to address the Requesters' concerns and therefore an investigation was unnecessary. The Board made a similar determination (against the Panel's recommendation) in Brazil: Itaparica and in Argentina: Structural Adjustment.

On a number of occasions, however, the Board neither denied the Request nor



A. Mercado

Lesotho: Highlands Water (1998)—People lining up with plastic containers for water.





India: NTPC—A farmer who was to be displaced.

known as authorizing an investigation on a “no-objection” basis. Accordingly, the “mini-review” practices of earlier cases appear likely to remain a thing of the past.

authorized a full investigation, but instead directed the Panel to conduct further reviews or authorized an investigation that was smaller in scope than what the Panel had recommended. Examples of this occurrence are Brazil: Rondônia and Argentina/Paraguay: Yacyretá (1996). In the Request India: NTPC, the Board approved an investigation but limited it to a desk study in Washington, D.C. In addition, the 1996 Clarifications specifically authorized a process whereby the Panel could take up to 8 weeks to conduct a preliminary assessment of the damages alleged by the Requester (the Board could also permit a longer time frame) on the theory that this process might lead to a resolution of the matter without the need for a full investigation.

These practices caused widespread concern, particularly within the NGO community, that the Board was undermining the independence and authority of the Panel. After much debate, the 1999 Clarifications terminated the preliminary assessment process and instead provided that, if the Panel so recommended following its initial review, the Board would authorize a full investigation without discussion and without making a judgment on the merits of the Request except as to certain “technical eligibility criteria.” This practice is

## Other Issues Arising during the Eligibility Phase

### *Revising the Initial Request during the Eligibility Phase*

The Panel has been receptive to permitting a Request to be revised if new information comes to light during the eligibility phase. A good example is the Request Argentina/Paraguay: Yacyretá (1996), which was initiated by Requesters in Paraguay. During a field visit in conjunction with a limited review authorized by the Board, the Panel was asked to evaluate certain aspects of project execution that were alleged to be detrimental to communities on the Argentina side of the reservoir. In consultation with



the Board, and after providing Management an opportunity to reply, the Panel incorporated the new requests into its ongoing assessment.

### *Second Requests and Previous Recommendations*

On a number of occasions, the Panel has received a Request that relates to a project that was the subject of a previous Request. Paragraph 14d of the Resolution prohibits the Panel from hearing a claim relating to a matter on which the Panel has already made a recommendation based on a prior Request “unless justified by new evidence or circumstances not known at the time of the prior request.”

The Request in Paraguay/Argentina: Yacyretá (2002) related to a project that had been the subject of another Request, Argentina/Paraguay Yacyretá (1996), and during its initial review the Panel therefore examined whether paragraph 14d applied. The Panel concluded that the claims raised in the new Request, while of a similar nature to the first Request, were based on new facts and circumstances. In particular, the Panel was persuaded that allegations of harm resulting from project developments that had not occurred at the time of the first Request justified investigation.

In the Request Brazil: Land Reform, Second Request, which is discussed earlier, Management complained that the material presented by the Requesters had been the subject of a previous Request (Brazil: Land Reform) and that no new evidence was being presented. The Panel found the Request to be ineligible on other grounds. Similarly, India: NTPC, Second Request, dealt with the project that was the subject of an earlier Request. However, the second Request was rejected because the project loan had closed, and not on the basis of paragraph 14d.

The Request Lesotho: Highlands Water (1999) involved a water management project that was being developed jointly by the governments of Lesotho and South Africa. The project had been the subject of an earlier Request, Lesotho: Highlands Water (1998), but it was clear that both the Requesters and the subject matter of the Request were different in the two cases. The Panel did not view paragraph 14d as applicable and ultimately decided that the Request did not meet the eligibility requirements for other reasons discussed earlier in this chapter.

### *Correcting Defects in Requests*

As noted earlier in this chapter, a Request must imply that Bank policies or procedures have been violated. In a couple of cases in which Requesters have failed to so identify the specific policies or procedures that could have been violated, the Panel deemed that the Request made sufficiently detailed allegations which allowed the Panel to identify certain policies that may have been violated if the facts alleged by the Requesters were accurate. Examples are Brazil: Land Reform, Second Request, and Kenya: Lake Victoria Environmental Management. One should note, however, that these cases involved minor deficiencies that were easily corrected. The Panel cannot correct defects in Requests that fail to allege facts sufficient to meet all the eligibility criteria.

### *Confidentiality of Requesters' Names*

A number of Requesters have, for well-grounded reasons, asked the Panel to maintain confidentiality of their identities. This situation occurred in the Requests Nepal: Arun, Argentina/Paraguay: Yacyretá, and Chad: The Pipeline Project. The Panel has endeavored to honor such requests.<sup>28</sup> Management has occasionally complained that it cannot fully respond to the Request without knowing the identities of the Requesters, but it has not formally challenged the Panel's authority on this point.

### *Permission to Visit the Project Site*

The 1999 Clarifications provide that the Panel may visit the project site during the eligibility phase if it feels that a visit is necessary to establish the eligibility of the Request. Bank practice has been to treat these visits as part of the normal project management process. During the substantive phase of an investigation, the borrower has to give its consent before the Panel can make any field visits to conduct investigation activities, but the Panel has generally secured this permission by consulting with the executive director representing the borrower. Activities by the Panel that are not investigative do not require this authorization.<sup>29</sup>

E.S. Ayensu



Kenya: Lake Victoria Environmental Management—Water hyacinth infestation at Lake Victoria.

In the Request India: NTPC, the Panel visited the project site during its initial review, but the executive director representing the country suggested at the Board meeting that his government might not welcome a return visit if a full investigation was authorized. Accordingly, the Panel was restricted to conducting a desk study in its investigation. Although policies do not require the borrower to grant permission for project site visits during investigations, the 1999 Clarifications assume that borrowers will consent to field visits.

### *Issues of Interpretation*

According to the 1996 Clarifications, the Panel will apply the Resolution as it understands it subject to the Board's review. This concept remained unchanged in the 1999 Clarifications.<sup>30</sup> For example, in the Request Uganda: Bujagali: Hydropower, the Panel stated, and the Board affirmed, that the Panel's mandate extended to a review of a project in which the involvement of the Bank was limited to a partial risk guarantee. When evaluating the rights and obligations of the Bank with respect to a Request, the Panel is directed to seek the advice of the Bank's legal department.<sup>31</sup> The Panel does not have its own independent counsel.

Kenya: Lake Victoria Environmental Management—Panel consultant and local specialists examine conditions of the water hyacinth.





## Conclusion

Once eligibility has been established and the Board has approved an investigation, the next step is the substantive phase of the inspection process when the Panel evaluates the merits of the Request. Some of the substantive investigations undertaken by the Panel are covered in chapter 4.

## Notes

1. The Panel wishes to express its special thanks to Ms. Elizabeth Warner for her assistance with this chapter.
2. Legal opinion by the Bank's senior vice president and general counsel, dated January 3, 1995.
3. Management's other objections to the Requesters' eligibility were as follows: (a) only one loan related to the project remained open or less than 95 percent disbursed, thereby restricting the scope of the Panel's investigation to that loan; (b) the NGO Requester had not alleged damage specific to itself; and (c) the individual Requesters had requested anonymity. The Panel dealt with those issues in its Response to the Board and the Board did not consider any of the objections to be grounds for invalidating the Request.
4. A detailed description of this case is included in chapter 4.
5. Although the Inspection Panel recommended to the Board that an investigation of all the claims be conducted, the Board instead authorized a review of the two Action Plans developed by Management to deal with the issues alleged in the Request.
6. A meeting of the Board of Executive Directors of the World Bank held on July 14, 1995, approved, among other things, a memorandum dated June 16, 1995, from the Bank's vice president and secretary. The memorandum referred to and attacked certain memoranda exchanged between the Panel and Senior Management. One of these memoranda reiterated the understanding that "the Panel has jurisdiction over all projects whenever design, appraisal and implementation were involved and that Structural Adjustment Loans, Sector Adjustment Loans, and other sector operations were clearly included" (Ernst-Günther Bröder to Ibrahim F. I. Shihata, June 9, 1995). The agreements contained in the memoranda were subsequently approved by the Board on a no-objection basis.
7. Ibrahim F. I. Shihata, *The World Bank Inspection Panel: In Practice*, 2nd ed. (New York: Oxford University Press, 2000), 37.
8. The Requesters complained that delays in the project's implementation had cost them financially and that the Bank had failed to properly supervise the borrower's actions. Bank management responded that it is the borrower and not the Bank that is responsible for delays in the implementation of adjustment (as opposed to investment) credits under a program such as this one and, accordingly, that an investigation would be outside the scope of the Panel's mandate. The Panel conducted a preliminary investigation and disagreed with Management, in part on the basis of a general counsel opinion that the Bank had a number of remedies available to it when a borrower failed to take the actions needed for implementing such a program.

In fact, the program was 3 years behind schedule, and enthusiasm for continuing it had waned within the Bank. The Panel determined that, although the Requesters had made a prima facie case of eligibility, there would be little point in conducting an investigation if the Bank was not going to continue to support the program. On that basis, the Panel did not recommend to the Board that an investigation be conducted. The Board agreed with this assessment on a no-objection basis at its meeting on April 4, 1997. In June 1997, Management allowed the loan to close.

9. For additional information, see Ibrahim F. I. Shihata, *The World Bank Inspection Panel: In Practice*, 2nd ed. (New York: Oxford University Press, 2000), 36–41.
10. The Requesters in this case alleged violation of the Bank's operational directives (ODs) or operational policies (OPs) on environmental assessment (OD/OP 4.01) and economic evaluation of investment operations (OD 10.04).
11. See also paragraph 9b of the 1999 Clarifications.
12. See paragraph 13 of the Resolution.
13. This Request related to three different loan projects. Its full name is Chad—Petroleum Development and Pipeline Project (Loan No. 4558-CD), Management of the Petroleum Economy Project (Credit No. 33156-CD), and Petroleum Sector Management Capacity Building Project (Credit No. 3373-CD) (March 2001).
14. Reviews of completed projects are the responsibility of the Bank's Operations Evaluation Department. Interesting to note is that an early draft of the Resolution would have permitted Requests to be filed up to 2 years after the relevant loan had closed, but that draft was rejected because it would have caused the Panel's jurisdiction to overlap with that of the Operations Evaluation Department.
15. See, for example, India: NTPC, Second Request (November 1999), which was rejected because the loan for the project had closed in March 1999.
16. The borrower ultimately informed the Bank that it would proceed without Bank financing.
17. A similar situation existed in Argentina/Paraguay: Yacyretá (September 1996). Management was of the opinion that the Panel's jurisdiction would be limited to issues arising under the one loan with respect to the project that remained open at the time the Request was filed. The Board did not accept Management's views, however, and authorized a full investigation of the project.
18. See "Time-Limits on the Eligibility of Complaints Submitted to the Inspection Panel, Legal Opinion of the Senior Vice President and General Counsel," July 28, 1997. The opinion made a distinction between the design and appraisal of a project, which would be the same for both loan components if the terms of the project remained unchanged, and the implementation measures, which would be different for each component.
19. Normally, the Panel advises the executive directors and the president when it receives a Request for Inspection that it cannot process (as it did in the Requests regarding Chile: Bío-Bío River and India: NTPC, Second Request). The Inspection Panel received a letter, dated August 27, 1999, also addressed to the president and the executive directors of the World Bank, requesting for the second time the "installation of an Inspection Panel" to investigate the Itaparica Resettlement and Irrigation Project in Brazil. Since the Bank's loans for this project were then long closed, the Panel was precluded from processing this Request. Furthermore, as the Request had been already addressed to the president and executive, no action on the part of the Panel was necessary. However, some regard this extemporaneous request as a formal Request for Inspection that should be added to the Panel's records.
20. As with the restriction on the Panel's jurisdiction with respect to loans that had closed or were 95 percent disbursed, the reason for this prohibition is that other Bank mechanisms already address the review of procurement decisions.
21. The memorandum is summarized in Annex 4 of the Panel's first Annual Report, covering the period from August 1, 1994, to July 31, 1996.
22. These standards are reiterated in paragraph 9b of the 1999 Clarifications: "The request [must] assert in substance that a serious violation by the Bank of its operational policies and procedures has or is likely to have a material adverse effect on the requester."
23. In the end, although the Panel was not satisfied that Management had properly followed Bank policies governing the project, the Panel decided not to recommend an investigation, on the basis that an erosion and flood Action Plan, drafted after the Request had been filed, could adequately

address the Requesters' concerns, provided that it was satisfactorily implemented. This case is discussed more fully in chapter 3.

24. See Request for Inspection—Brazil: Rondônia Natural Resources Management Project (Loan 3444-BR)—Report on Additional Review (December 8, 1995), paragraph 54. The Board determined not to authorize a full investigation but invited the Panel to review the progress of the project in accordance with an implementation status report submitted by Management. The Panel therefore submitted its third report to the Board a few months later. The report concluded that, although there had been significant progress in the supervision and administration of the project, the harmful activities alleged by the Requesters were continuing. No further action on the part of the Panel was authorized.
25. For example, Ethiopia: Expropriation and Chile: Bío-Bío were not formally registered because the Requests contained obvious deficiencies, as noted earlier.
26. The Requests Bangladesh: Jamuna and India: NTPC are discussed further in chapter 3.
27. In particular, the lead Requester was arrested by national authorities during this period and was allegedly tortured while in captivity.
28. See paragraph 18b of the Panel's Operating Procedures.
29. Ibrahim F. I. Shihata, *The World Bank Inspection Panel: In Practice*, 2nd ed. (New York: Oxford University Press, 2000), 84.
30. The 1996 Clarifications provide that, "[I]n applying the Resolution to specific cases, the Panel will apply it as it understands it, subject to the Board's review." See also paragraph 10 of the 1999 Clarifications.
31. See paragraph 15 of the Resolution.





## PART II

# Selected Inspection Panel Cases

## CHAPTER 3

# Requests for Inspection Satisfied before Panel Investigation



As of May 1, 2003, the Panel has, since it was formed in 1993, received 27 formal Requests. Of those Requests, 9 were rejected because they did not meet the eligibility criteria, and 10 were the subject of a full investigation authorized by the Board. The remaining Requests were disposed of before a full investigation. In some cases, the Board disagreed with the Panel's recommendation that an inspection be conducted. But in a number of other cases, it turned out that an inspection was not necessary because corrective changes were made as a result of the Panel's initial involvement and Management's desire to ward off a full formal inspection. Thus, the Panel can have an important influence on how the Bank responds to allegations that it has failed to follow its policies and procedures with respect to a project, even when a full inspection is not recommended or authorized. This chapter discusses some of the cases. Each one should be considered a success story.

## Bangladesh: Jamuna Multipurpose Bridge Project

One of the early cases brought before the Panel involved a project for the construction of a 4.8-kilometer bridge over the Jamuna River. This wide, meandering watercourse, which empties into the Ganges River on its way to the Indian Ocean, divides the country in two. The river is constantly shifting its path because of silt accretion and other factors, and thus the efforts to tame it sufficiently to construct a permanent overpass were a major undertaking. The resulting bridge was to be the longest in South Asia and would carry motorized, pedestrian, and railway traffic as well as utility cables. The bridge's construction was eagerly anticipated as a milestone in the integration of a pipeline and the Bangladesh economy on both sides of the river, particularly by facilitating market access to the less-developed regions in the northwest portion of the country.

In August 1996, the Panel received a Request from a group of individuals who lived on a series of islands (known locally as "chars") in the middle of the river channel. The Requesters were concerned that the engineering works designed to manage the course of the river would result in increased flooding and erosion of the islands and perhaps even wash away some of their homes entirely. The Requesters claimed that they had been overlooked in the design of the project despite Bank policies that required borrowers to properly assess the environmental impact of a project and its effect on local and indigenous peoples.

As with all the Requests the Panel receives, after first determining that this Request did not contain any obvious grounds for ineligibility, the Panel forwarded it to Bank Management and asked for a prepared Response. The standard procedure is for the Panel to wait for Management's Response before conducting a preliminary investigation to determine the eligibility of the Requesters and their claims, after which the Panel will



E-G-Breder

Bangladesh: Jamuna—The Multipurpose Bridge opens to the public.

prepare a recommendation to the Board as to whether a formal investigation should be authorized. In this case, however, before the Response had even been delivered to the Panel, Management and the borrower worked together to produce a series of guidelines designed to compensate the char dwellers for any harm they stood to suffer as a result of flooding or erosion caused by the project or indeed because of any other factor. This policy was the first ever adopted in Bangladesh designed to compensate people for such types of losses, and the speed with which the policy was produced, together with its specificity, indicated how concerned Management and the borrower were with the prospect of the Panel's involvement.

As part of the eligibility assessment, a Panel team went to Bangladesh to meet with the char dwellers and evaluate the eligibility of their claims. The Panel found substantial evidence that the Bank had failed to comply with policies designed to protect parties such as the char dwellers and concluded that the char dwellers had made a strong *prima facie* case justifying inspection. However, the Panel also acknowledged the erosion and flood policy that Management and the borrower had developed after the Request was filed. The Panel took the view that this set of policies provided a workable response to the Requesters' claims. Accordingly, the Panel decided that a full investigation would not be necessary at the time, provided that the policies were implemented promptly and that appropriate monitoring was instituted.

The Board agreed with the Panel's assessment and invited the Panel to participate in the monitoring process by visiting the project site at a later date and meeting with the char dwellers and other interested parties. The Panel did so in the spring of 1998 and reported that, despite some minor difficulties, the policy was being implemented successfully. Char dwellers were being identified and their claims for resettlement and compensation were being heard. The Jamuna bridge project continued to proceed well, and the bridge was opened to traffic with great fanfare in June of that year.



Bangladesh: Jamuna—Local residents in the project area.

E. Abbott



## India: NTPC Power Generation Project

The India NTPC project provides another example of how the Panel's presence resulted in the creation of extensive mechanisms for positive change even though the Panel was not allowed to conduct a full inspection. The project area was in the Singrauli region of Central India (Uttar Pradesh and Madhya Pradesh), a remote area about 1,000 miles away from Delhi. The region was once the home of the famous white tiger, and its Kaimur mountain range was known for its rich biodiversity. Now, however, the region is increasingly becoming the home of heavy industry. At the time the Request was filed in May 1997, the Singrauli region housed six thermal power stations, nine open-cast coal mines, an aluminum extraction project, a pesticide manufacturing industry, several explosive factories, three cement manufacturing units, and hundreds of stone-crushing units. Vast stretches of the Singrauli area were being surveyed for the presence of uranium.

For 2 years before filing her Request in May 1997, Madhu Kohli worked as an independent activist representing a group of small subsistence farmers who were concerned about the environmental impact of an intensive thermal power development program financed by the Bank. Her Request on behalf of these families claimed that the costs of continued development and exploitation of the area were being disproportionately borne by the poor villagers whom she represented, who had been continually displaced to make way for the huge, coal-fired power generating plants. Fly ash from the coal used for operating the plants was to be disposed of in ash dikes or ponds, and additional land was being acquired to accommodate the ash resulting from the increased capacity. These large-scale purchases of land (much of it unused for years) had resulted in deforestation. The Request further alleged that severe mercury and chromium poisoning and dust pollution arose from the plants. Less than 20 percent of the permanent jobs in the industry went to local residents, and almost all of them were jobs requiring little skill.

According to the Request, the borrower agency, NTPC, was completely disregarding the rights of the people it was displacing. Villagers were being forcibly removed from their homes and resettled in urban areas completely unsuited to their mode of living. They were being given lump-sum cash payments in lieu of being provided with permanent jobs or training programs to enable them to maintain their livelihood. The failure to upgrade existing ash ponds or to consider back filling of ash in existing open-cast mines resulted in involuntary resettlements that could have been avoided, as large tracts of land were acquired for new ash ponds.

The Request alleged that the Bank had failed to mitigate similar damage from past projects and did not adequately incorporate those experiences in its management of the current project. The Bank's continued acquiescence in NTPC's actions violated its policies on the consideration of investment alternatives, on involuntary resettlement, and on environmental assessments, among other things. People affected by the project had not been kept up to date on Bank field visits and were not permitted to meet with Bank officials without NTPC also being present, which created a climate of intimidation and made it impossible for the Bank to comply with its project supervision policies.

Management's Response to the Request was unusual in that this case was the first in which Management admitted that the Bank had failed to fully comply with the policies. Management agreed that the Bank's environmental assessments procedures and steps

for consultation had not been complied with fully. In its defense, Management stated that resettlement Action Plans had been considered adequate when prepared, but that it had underestimated the practicality of implementing those aspects of the plans that called for alternative land to be offered to displaced people and for assistance in finding new ways for them to earn a living. NTPC had accordingly encountered delays and problems in plan implementation. In addition, Management acknowledged that NTPC's resettlement policies were inconsistent with the Bank's policies on the treatment of indigenous people, particularly in reference to land tenure rights.

Management identified two other areas in which NTPC was not fully in compliance with loan covenants: (a) timely implementation of the environmental Action Plan, and (b) timely implementation of the resettlement Action Plans for certain areas. Management asserted that it preferred to exhaust all other methods of persuasion before declaring the borrower in violation of the loan covenants.

Various critics of the Bank took a far less charitable view of Management's performance. They noted that problems of this sort with NTPC projects had been going on for years, creating a disturbing pattern of forced resettlement and an alarming lack of capacity on the part of NTPC to implement Bank policies with respect to the treatment of local inhabitants, as well as continued environmental devastation. Such critics accused the Bank (a) of pushing loan programs through at an accelerated pace without proper consideration of whether the borrower had made the necessary commitments to fulfilling the relevant covenants and (b) of woefully failing to properly supervise the borrower's behavior.

As it had done in previous cases, Management attached to its Response a remedial



E-G-Binder

India: NTPC—Destruction of farmland and ash dike construction.



Action Plan, which was designed to forestall a full inspection by the Panel. The Action Plan promised to improve project implementation and to bring the Bank into full compliance with its directives on involuntary resettlement, environmental assessment, and project supervision. In particular, Management pledged (a) to improve procedures for community participation in project design and implementation and (b) to identify better strategies for minimizing social dislocation and environmental degradation. Management also promised a review of all environmental assessments and resettlement components in the entire India loan portfolio, reflecting how far the problem had gotten out of hand.

The Panel conducted a preliminary field visit and found *prima facie* evidence that, if anything, the situation on the ground was even worse than admitted by Management in its Response. Previous reports by the Bank's field office and other groups had identified deficiencies in the Bank's monitoring of the project that had not been acted on. The Panel found further evidence of harm based on violations of the Bank's policies on involuntary resettlement, environmental assessment, and supervision.

The Panel was also troubled that the remedial Action Plans proposed by Management had been developed without local participation, and Management was not proposing that the local people be consulted even now. Nor did the Action Plans address the fundamental question of whether there currently were serious problems in the resettlement plans and the environmental operations as alleged by the Requesters and supported by others during the Panel's field visit. The Panel strongly believed that the numerous problems raised should be mitigated or prevented at the time instead of waiting for retrospective identification through future reviews and remedial actions. Accordingly, the Panel recommended a full investigation.

Management and NTPC submitted a revised Action Plan to the Board after the Panel's Eligibility Report had been issued. The revised plan contained features that responded directly to some of the Panel's concerns. A key aspect of the plan was a proposal to hire an outside consultant to perform a social impact assessment of the resettlement program as it had been implemented to date. The consultant would evaluate how the local villagers had been treated by NTPC until that point and would recommend specific remedial action. The plan also proposed the appointment of a panel of three independent experts to monitor the ongoing implementation of the resettlement program. The experts would mediate between the claims of people affected by the project and NTPC, which, as everyone now realized, had failed to develop the institutional capacity to comply with its obligations to the local community.

In September 1997, the Board met to consider the Panel's recommendation. The situation had become politicized by that time. The borrower country was extremely reluctant to let the Panel return to the project area, fearing that this would reflect badly on the borrower and that the public would view the visit as an investigation of the borrower's actions. After some very tense discussion, the Board approved an inspection but limited it to a desk study in Washington, D.C. The Board also approved Management's revised Action Plan and requested that Management submit follow-up reports on the plan's implementation.

Meanwhile, the situation in the field had not improved. In November, two NGOs reported forcible resettlements of people in the area, even though NTPC had agreed to a moratorium on such action. (In response to allegations of forced moves in July 1997,



A. Maceo

India: NTPC—  
Thermal Power Plant  
Singrauli.

NTPC had submitted a number of affidavits from people affected by the project stating that they had moved voluntarily.) Unable to visit the project area to verify the new claims, the Panel moved as quickly as it could to complete its work in Washington, D.C.

The Panel's report in December 1997 confirmed violations of the three policies referred to earlier and added that the failures appeared more serious than previously assumed. In particular, the Panel focused on the fact that the Bank had not assured itself that the borrower had the necessary initial capacity to carry out plans on resettlement and environmental assessment. The loan had been processed rapidly, and Management had been under extreme pressure to approve it, even though Management had not had time to ensure that a number of essential mechanisms and preconditions were in place or were adequate. Nor did the Bank provide the necessary support to NTPC to strengthen its capacity to carry out its obligations, and much of the project monitoring was based on secondary-source information rather than on ground supervision.

The Board decided to review progress reports on Management's Action Plan rather than making any immediate decisions on the Panel's report of the desk study. The Panel was not permitted to participate in this process. Nevertheless, the appointment of outside experts to assist with overcoming the severe problems that had developed in the implementation of the resettlement program was a significant step. Indeed, this was unprecedented, and it is doubtful that the appointments would have occurred without the Panel's involvement. In a report prepared after the project was finally completed in the spring of 2000, Management acknowledged that attention to involuntary resettlement policies had often been regarded as marginal in comparison to the overall objectives of a project. Management stated that in the future far greater attention would be given to the borrower's capacity and commitment to implementing those policies.

## Brazil: Land Reform Poverty Alleviation Project

For impoverished farmers and laborers struggling to earn a subsistence living in Brazil, the Bank's financing of the Land Reform Poverty Alleviation Project promised to provide loans on favorable terms to enable the farmers to form cooperative associations for buying their own small tracts of land and acquiring the materials necessary to plant and harvest their own crops. These lands would be acquired in the marketplace from willing sellers. The program was intended to be part of Brazil's overall constitutionally mandated agrarian reform program, which also included expropriation of larger farms and other redistributive techniques.

Bank Management was justifiably proud of its involvement in the program, which by most accounts was proceeding successfully. Nevertheless, in April 1997, the Panel received a Request for Inspection from a number of local NGOs and individuals who claimed that they were being adversely affected by the design and implementation of the project and that the Bank had violated various policies on poverty reduction, environmental assessment, and disclosure of information. The Request claimed that borrowers would be unable to repay their loans and that the prices of property sought to be acquired had risen sharply, making their purchase impossible.

In its Response, Management asserted that the loan program was working very well. Land prices had not risen sharply as alleged by the Requesters, and there was no evidence that the project beneficiaries were being harmed. In addition, Management questioned the standing of the Requesters to file the Request and also claimed that the Requesters had a political motivation: their objective was to stop the project and to prevent the expansion of market-based land reform because they favored expropriation as the only legitimate means for redistributing land assets in Brazil. The foundation of this argument, Management noted, centered on a policy choice of the Brazilian government and not on the proper application by the Bank of its own policies and procedures. The Panel agreed with this assessment in general but noted that it provided a useful context for understanding the concerns of the Requesters. Management also stated that since the Request was filed, the terms and conditions of the loans provided under the project had been dramatically improved in favor of the project beneficiaries.

As had become customary, the Panel visited the project area as part of its initial assessment and met with a number of beneficiaries and local officials. The Panel did not find any evidence that project beneficiaries were suffering material harm; on the contrary, the Panel concluded that the project was improving the lives of poor farmers in the region. The Panel did note, however, that certain favorable loan terms had not been fully implemented and were not yet reflected in the existing contracts. The Panel also was uncomfortable with the prospect of expropriated lands being used in the program, fearing that such a practice would encourage unfair profit-taking and other forms of corruption.

Although, because of the improved lending conditions, the Panel did not find sufficient evidence of material harm to justify a full investigation, the mere fact that the Panel visited the project area during its preliminary investigation yielded important results. The Brazilian Ministry of Agrarian Reform confirmed that loan terms would be revised to provide for a low fixed rate rather than a floating rate and that these terms





E.S. Aguiar

Brazil: Land Reform—Cultivation beginning at one of the farms.

would be reflected in all existing loan contracts. The Brazilian government and Bank Management also confirmed that lands that could be expropriated under the Agrarian Reform Law would not be purchased under the project. The Panel also reported that project beneficiaries had requested additional working capital and technical assistance to improve agricultural techniques and management skills, and Management later confirmed to the Panel that the requests would be honored.

## Argentina: Special Structural Adjustment Loan

In November 1998, the Bank agreed to fund a mammoth US\$2.5 billion structural adjustment loan that was designed to help the Republic of Argentina improve its social services infrastructure and the quality of those services, as well as to strengthen the financial sector and improve the regulatory framework. The loan was to be disbursed in three tranches, and one of the conditions for the second tranche was that the borrower's overall budget for certain social programs would be maintained at a certain level.

In July 1999, the Panel received a Request from an NGO representing beneficiaries of Pro Huerta, a food security program designed to help the poor maintain small vegetable gardens to produce food for their own consumption. The amount of money budgeted for the Pro Huerta program was proposed to be cut by nearly 65 percent. The Requesters believed that, because the Pro Huerta program was specifically included in the loan agreement as one of the programs the Bank felt should be protected, permitting such drastic budget cuts would eviscerate the program and violate the Bank's policies on poverty reduction. The Requesters acknowledged the Argentine government's need to restructure its social services but claimed that the restructuring should not result in such a drastic reduction of a program protecting Argentina's neediest social sectors. The Requesters felt that Argentina was in violation of the "social budget conditions" of the loan, and they wanted the Bank to withhold disbursement of the third tranche.

For its part, Management insisted that it was in compliance with Bank policies and that the borrower was in compliance with loan conditions. Management also claimed that, as a result of its supervision efforts, it had persuaded the borrower to provide, after the Request was filed, an additional US\$3 million to the Pro Huerta program, nearly doubling its budget (though total funding for the program was still substantially below levels for the previous year).

After Management had issued its Response, the Panel undertook a field visit. In interviews with officials at the Argentine Ministry of Finance, the Panel members received confirmation that the Pro Huerta budget was to be increased as Management had stated. However, to release the increased funds, the minister of finance was required under Argentine law to send an authorizing instruction to Congress. This step was not taken until after the Panel's visit reinforced the seriousness of the matter. In addition, the Panel was told during its visit that the Ministry had decided to allocate another US\$1.5 million in lottery revenues to the Pro Huerta program.

The Requesters subsequently told the Panel that the total funds allocated to Pro Huerta would be adequate to fund its operations for the current fiscal year. They noted that there seemed to be a renewed level of commitment to maintain the program during the remaining time period of the structural adjustment loan. Because the potential harm claimed by the Requesters appeared to have been averted, the Panel did not recommend a formal investigation. As was the case with Brazil's Land Reform Poverty Alleviation Project, the mere fact that the Panel had gotten involved seemed to provide the impetus for the parties to take steps to ensure the survival of a key component of the borrower country's commitment to provide social services to its poorest citizens.

## CHAPTER 4

# Requests for Inspection Subject to Panel Investigation



he main role of the Inspection Panel is to conduct investigations into the matters alleged in the Requests for Inspection. The Board of Executive Directors has authorized the Inspection Panel to conduct a full investigation for 10 of the Requests received. The Panel has been engaged in four investigations during fiscal year 2003. Each of the 10 cases in which the investigation has been completed can be considered a success story, because the Panel was able to identify and substantiate significant instances in which the Bank had not complied with its policies and procedures.

The six cases described below were selected to illustrate the importance of the Panel's work and its ability to improve the lives of people affected by Bank projects. The cases come from Africa, Asia, and Latin America and cover projects for hydroelectric dams, oil pipelines, and other programs to alleviate poverty. The cases were also selected to reflect the evolution of the Panel. They are presented here in chronological order.



## On the Right Route?—Nepal: Arun III Proposed Hydroelectric Project and Restructuring of IDA Credit

“One of the most important roles of the Inspection Panel, in my opinion, is to allow the Executive Directors of the Bank to have a second opinion on whether Bank Management has gotten too close to the project to be objective.” These words were articulated by Mr. Bikash Pandey (Alliance for Energy, Nepal) in a speech before the World Bank Board of Executive Directors on February 3, 1998. Mr. Pandey delivered the speech almost 3 years after Bank President James D. Wolfensohn decided to withdraw Bank financing of the proposed Arun III Hydroelectric Project in Nepal. The Arun Project was also the subject matter of the first Request for Inspection the Inspection Panel received in October 1994.

### The Demand for Electricity

While Nepal is known for its picturesque landscape, the country’s population also suffers from its weak economy. One of the biggest economic constraints is the lack of electricity, with only 9 percent of the population having access to power at the time of project preparation. In an effort to provide other forms of energy to the Nepalese people and to seek a source of income by potentially selling surplus power to India, the government of Nepal initiated a hydropower project that would attempt to strengthen the national economy. The proposed Arun III Hydroelectric Project—the largest project ever envisioned to be implemented in Nepal—was the first 201-megawatt stage of a 402-megawatt run-of-the-river hydroelectric power scheme located on the Arun River and included other components such as a power house, a 68-meter dam, and a proposed 122-kilometer access road that would cut across a section of eastern Nepal: the Arun Valley.

The estimated cost of the project was approximately US\$800 million, about the equivalent of Nepal’s annual government budget. To turn the project proposal into reality, the government of Nepal sought financial assistance from different donors, including the IDA, which considered approving a development credit equivalent to US\$140.7 million to support the Arun Project. In addition, the IDA restructured an existing credit for the Arun III Access Road Project (Credit 2029-NEP) for the equivalent of US\$32.8 million to the Kingdom of Nepal. The latter credit, approved in 1989, was originally intended to fund the construction of an access road to the dam site, aligned over the hills surrounding the Arun Valley. However, this plan was later changed into a proposal for a route that cut across the valley. According to project documents, the new route was preferable because it would save on costs, provide safer and easier travel conditions, affect fewer families, and have less impact on cultivated land.

### Controversy and the First Request for Inspection

The magnitude of the proposed project attracted much international controversy, and several stakeholders such as governments and NGOs questioned the project’s

economic soundness or justification and its regional impacts. Also, people living along the proposed access road in the Arun Valley raised concerns about their future and possible resettlement. Many of those who opposed the project felt Nepal's economy and resources could not sustain the large project and argued for several small, and reportedly less expensive, power projects as alternatives.

On October 24, 1994, the Inspection Panel received its first Request for Inspection. Four Nepalese citizens filed the Request regarding the proposed Arun Project. Fearing their safety, two Requesters asked that their names be made available only to the Inspection Panel but otherwise remain confidential.

According to the Requesters, the Bank failed to undertake relevant studies of alternative projects because it did not consider a number of smaller projects (with fewer social and environmental adverse consequences) that ultimately could have generated the same amount of power as the proposed Arun Project. In addition, the Request claimed that information relating to the project was not disclosed in accordance with Bank policies and that the risk analysis conducted by the Bank was "faulty" because it neither assessed the risk of a possible natural catastrophe nor considered the need for a prior bilateral agreement as a legal basis for potential surplus energy sales to India to reduce the project's economic risks.

More contentious concerns pertained to the proposed access road leading to the dam site and its effect on the valley's indigenous population. The Requesters raised concerns that they would not receive adequate compensation for being resettled during the implementation of the valley route since the originally planned hill route did not provide for adequate compensation. The Requesters believed such violations would recur

with the valley route. The Request also stated that indigenous peoples of the Arun Valley were not provided benefits and would experience serious additional adverse impacts.

As to whether the project would reduce poverty, the Requesters believed that "the project will not contribute to poverty alleviation in Nepal, rather it will contribute to more poverty . . . because the project requires very high government investment commitments [which threaten] to 'crowd out' investments in social sectors such as health and education."

Particularly, the Requesters claimed several violations of the Bank's policies and procedures on economic evaluation of investment operations (OP/BP 10.04), disclosure of information (BP 17.50), environmental assessment (OD 4.01), involuntary resettlement (OD 4.30), and indigenous peoples (OD 4.20).



Nepal: Arun—Arun Valley.

### *The Panel's First Recommendation*

As provided for by the Resolution establishing the Inspection Panel, the Bank's Management responded to the allegations contained in the Request by denying the Requesters' allegations and stating that the Response "clearly demonstrates that the Bank has followed its operational policies and procedures with respect to the design and appraisal of the proposed project." In determining whether to recommend an investigation, the Panel reviewed the Request, the Response, and additional clarifications received from the Requesters and the Bank. Additionally, one Panel member visited the project site. In a memorandum to the executive directors of the Bank, the Panel noted that "apparent violations of policy do exist that require further investigation." The Panel also stated that the Bank encountered "clear-cut problems" in meeting the requirements of its policies on information disclosure, indigenous peoples, environmental and social impacts, and involuntary resettlement.

In its Eligibility Report, dated December 16, 1994, the Inspection Panel found the Request and the Requesters eligible and recommended an investigation into the issues raised in the Request relating to indigenous peoples, environmental assessment, and involuntary resettlement. With respect to the alleged noncompliance with the applicable disclosure policy, the Panel thought full compliance would be difficult given that the policy evolved rapidly during the last phases of project preparation. Thus, the Panel concluded that an investigation was unwarranted in this respect. Also, while expressing concern about the subject matter, the Panel decided not to recommend an investigation regarding the adequacy of alternative economic analysis. However, the Panel did address certain shortcomings of the Bank in its Eligibility Report, such as the failure to update the environmental assessment after changing the route of the access road.

### *The Board's Authorization*

After having previously asked the then-general counsel for a legal opinion on the eligibility requirements, the Board of Directors met on February 2, 1995, to consider the Panel's Eligibility Report. The Board decided to authorize the Panel to conduct an investigation in the matters recommended by the Panel—environmental assessment, indigenous peoples, and involuntary resettlement. The Board also instructed the Panel to "take into account information and studies subsequently provided by the Government of Nepal and the Bank, and other Co-financiers, as well as any remedial measures agreed by Nepal and the Bank."

### *The Panel's First Investigation*

While the Panel conducted interviews with Bank staff members and reviewed project-related Bank documents, Bank Management worked intensively to address the issues included in the Request and the Panel's Eligibility Report. Bank Management revisited the project site and on May 23, 1995, transmitted a memorandum to the Inspection Panel. The memorandum included remedial measures to improve the situation on the ground. After having received the Bank's remedial Action Plan, Panel members Richard E. Bissell and Alvaro Umaña-Quesada conducted a field visit from May 27 to June 1,



1995. The goal of the field inspection was not only to assess the situation on the ground but also to determine whether Bank Management's remedial proposals were appropriate. Without doubt the field study was one of the most challenging, yet rewarding, aspects of the investigation because it gave voice to the inhabitants of the Arun Valley.

While in Nepal, Mr. Bissell and Mr. Umaña-Quesada met with the Requesters, Nepalese officials, representatives of the donor community, and NGOs and held many public consultations with the people of the valley. Specifically, large public meetings were conducted in the towns of Amrang, Chewabesi, Chhyangkuti, Khandbari, Num, and Tumlingtar; seven meetings were held in small communities along the valley and hill route alignments. The Panel also met privately with the Requesters to allow them to voice their personal concerns. The field study also included aerial reconnaissance of the entire valley, treks along the hill and valley route alignments, and visits to the proposed powerhouse locations.

### Investigation Report and Findings

The Panel submitted its first Investigation Report on June 21, 1995, to the Board of Executive Directors and focused—as instructed by the Board—on the Bank's compliance with the policies on environmental assessment, indigenous peoples, and involuntary resettlement, while considering the proposed remedial actions.



Nepal: Arun—Land cultivation in the Arun Valley.

A. Umaña

### *Environmental Aspects*

The Panel found that the route aligning the hills would cause environmental and social harm; however, the extent of harm could not be precisely determined. Previous experiences with the originally intended hill route served as lessons learned and added much light to foreseeable consequences of the proposed route that cuts through the valley. The original hill route was once described as environmentally state of the art for a major road project in Nepal. While the proposed route was shortened in length and said to be easier and less expensive to construct, some local valley officials and many of the inhabitants saw the route as economically less beneficial. The hill route would have linked many towns and villages of the valley, thus allowing easy access throughout the community. In 1992, a panel of experts recommended an analysis of the two routes, but such a report was never initiated. Nevertheless, the Bank favored the proposed route.

Regarding the environmental assessment for the Arun Project, the Panel found that the Bank did not follow the comprehensive scheme of the relevant policy. Instead, the assessment “followed a piece-meal approach that had recognizable sequence, but did not fully comply with OD 4.01.” The Panel noted several inadequacies, including (a) the Bank’s inclination to proceed with the appraisal and negotiation portions of the project before completing the environmental assessment of the valley route and (b) inadequate efforts to promote the use of local labor. Additionally, the Panel expressed concern about whether the proper institutional structures for managing the environmental impacts of the project would come into operation before construction began. The latter concern pertained to environmental issues such as forest conservation and management, as well as the risk of natural disasters such as glacial lake outburst floods and road washouts.

However, the Panel acknowledged Bank Management’s efforts to bring the project into compliance with the applicable policies on environmental assessment (OD 4.01) by identifying “training for construction-related activity”—an employment scheme that would benefit the local people—and preparing a detailed analysis of alternative route alignments. This analysis favored the valley route alignment; however, it also recommended that the environmental impact assessment consider several important factors such as spoils disposal, impact on wildlife and aquatic life, and impact of increased traffic in the market town of Hile. The Bank also addressed concerns about the risks associated with flooding; other concerns raised in the Request were dealt with in a regional Action Plan proposed by the Bank. This plan was a revolutionary approach, but as the Panel noted, the plan “has the potential to become either a model for future work, or if badly implemented, a serious weakness of the entire Arun III project.”

### *Inhabitants of the Arun Valley—Indigenous Peoples?*

Regarding the Bank’s safeguard policy on indigenous peoples (OD 4.30), the question of whether the policy would apply to the valley’s population required a considerable amount of interpretation by Management, the Board, and the Panel.

The Nepal Federation of Nationalities described the Arun Valley as having 24 distinct ethnic groups. As noted by the Panel, “We are not dealing . . . with the kind of isolated tribal group untouched by modernity that some would argue is foreseen in the OD.”



The Panel's conversations with the valley inhabitants reaffirmed that population groups would be affected in different ways. On the one hand, some ethnic groups would be prepared to deal with changes; on the other hand, groups such as the Rai communities that live north of Tumlingtar might not. A sensible approach in this respect included, in the Panel's view, guaranteeing the performance of adequate anthropological surveys well in advance of construction, "with clear measures of well-being," and providing close monitoring of such communities' condition as the project progressed. Such responsibilities could be an "integral part of [the Bank's] oversight." In its memorandum to the Panel, Bank Management proposed that all people within the valley be considered "indigenous" for purposes of OD 4.20. The Panel was pleased with this position because it observed that people who fell within the definition of "indigenous" were scattered throughout the valley and shared similar living conditions as those who were not considered indigenous peoples. Ultimately, the Panel noted that Management's proposed action would "bring the project into substantial compliance with OD 4.20 if its implementation [was] subject to continuous monitoring and supervision."

### *Involuntary Resettlement Issues*

The Panel noted changes in the Bank's policies regarding involuntary resettlement. The new operational directive (OD 4.30) was issued after an agreement on the original hill route was reached, and therefore the previous policy on social issues associated with involuntary settlement in Bank-financed projects (OMS 2.33) applied.

The Panel reiterated the purpose of this safeguard policy and the Bank's obligation: "When development projects require people to be relocated, the Bank's general policy is to help the borrower to ensure that . . . the displaced people regain at least their previous standard of living and that, so far as possible, they be economically and socially integrated into the host communities."

Generally, the Panel agreed with the Requesters, stating that "the resettlement issue on the Hill Route had suffered abuse by neglect" and that the interests of farmers along the route suffered through an inadequate compensation system. The farmers received only cash, but were never provided with any form of rehabilitation. Also, the change of the access road drove down the value of the land in the valley, causing adverse effects on those whose lands were partially taken. Consequently, the Panel found the Bank had "failed to observe in substance the policy requirements for supervision of resettlement components and consequently failed to enforce covenants in the Credit Agreement."

However, the Bank addressed those issues in its remedial measures and found several families who were seriously affected by the access road project in Tumlingtar and in the Basantapur area. The Bank also realized that, out of the 1,635 families who received compensation for their acquired land, only 15–20 percent experienced the legal process of transfer of ownership. To counteract these effects, Management proposed remedial measures that included requiring the borrower to formulate a "time-bound plan indicating which land is to be utilized for future road construction and which is to be returned." The measures would also include mechanisms "for protecting the standard of living of those whose lands will be possessed and the procedures to enable original owners to regain their lands."

### *Panel Conclusions*

In its Investigation Report, the Panel stated, “Based on its assessment of the proposed remedial measures, the Panel concludes that IDA is moving towards and intends to comply in substance with the requirements of the three operational directives.” However, the report also disclosed several remaining problems and issues lacking sufficient attention and again reiterated the Panel’s concern about the proposed hydroelectric project and its magnitude in relation to Nepal’s overall economy and institutional framework.

### *On the Right Route?*

Before the Board finally decided on financial support for the project, then-incoming Bank President James D. Wolfensohn requested that an independent group chaired by Maurice Strong conduct a separate review of the project. As noted by the president in a memorandum to the executive directors on August 2, 1995, the “separate report considered the potential for significantly higher cost overruns, an uncertainty regarding co-financing at the present stage, as well as implementation and management aspects of the project relative to its size and risks. The review also assessed alternative means for assisting Nepal in meeting its power needs.”

After receiving the Panel’s Investigation Report and reviewing the independent study, the Bank’s president decided not to proceed with the project. In a memorandum to the Executive Directors on August 2, 1995, he praised the Inspection Panel and noted that its work “remains relevant to the Bank’s work generally, and to future Bank investments in the power sector of Nepal in particular.”

However, President Wolfensohn’s decision to withdraw the Bank’s support brought mixed reactions. Within the global community, some felt Nepal would literally be left in the dark, while others felt the decision would allow Nepal to consider smaller-scale projects that ultimately would promote its economy at less risk.

Undisputed was (and still is) the Inspection Panel’s important role in voicing the concerns of people affected by such projects and in assessing the Bank’s compliance with its own policies and procedures. The legal framework—the Resolution Establishing the Panel—was now filled with life. The Panel’s process had proven to be valuable for improving the Bank’s performance and for ensuring “the right route”: accountability and participation for sustainable development for a world free of poverty.

## The World's Number One?—Argentina/Paraguay: Yacyretá Hydroelectric Project

Hydroelectric power provides a significant portion of the world's electricity. Argentina and Paraguay are important Latin American producers and exporters of hydroelectric power. The world's longest earthen dam, the Yacyretá-Apipé Dam, is located on the boundary between the two countries and is known for its controversial past and uncertain future. Also, the Yacyretá Hydroelectric Project was the subject matter of the seventh Request for Inspection that the Inspection Panel received since its establishment in 1993.

### The Yacyretá Project and World Bank Financial Support

The World Bank has been involved in designing and implementing the Yacyretá Hydroelectric Power Project since the mid-1970s. To manage the project and operate the facility, Argentina and Paraguay signed a treaty in 1973 to establish the Entidad Binacional Yacyretá (EBY or Yacyretá Binational Entity). A decade later, construction began on a concrete and earth dam (67 kilometers long and 83 meters high) on the Rio Paraná, where the river forms the border between Argentina and Paraguay, as well as on a power plant, a powerhouse, two spillways with drainage, and diversion canals on the Paraguayan side. The planned water reservoir, with a projected height of 83 meters above sea level, was expected to flood about 1,650 square kilometers in total—80,000 hectares of land in Paraguay and 29,000 hectares in Argentina. Upon completion, the project was expected to generate 3,100 megawatts of electricity mostly for urban areas in Argentina.

The Yacyretá Hydroelectric Project is one of the largest and most complex construction projects ever undertaken in Latin America, and a number of agreements between the World Bank, the Republics of Argentina and Paraguay, and EBY relate fully or partially to the project.

The World Bank, through the IBRD, provided financial assistance to the Yacyretá Hydroelectric Project with a US\$210 million equivalent loan in 1980 (1761-AR), and with most of the proceeds of a US\$252 million equivalent loan approved in 1989 for the Electric Power Sector Project (2998-AR).

In 1992, the World Bank renewed its commitment to Yacyretá with additional financing. A loan for US\$300 million equivalent was approved for the Second Yacyretá Hydroelectric Project (3520-AR). A principal aim of the project was to bring better environmental protection and appropriate measures to address social aspects in affected areas. In August 1994, an additional US\$146.6 million was reallocated from the uncommitted balance of a loan made to Argentina for the Servicios Electricos del Gran Buenos Aires (SEGBA) Power Distribution Project (2854-AR). The reallocation brought the total amount of financial support to Argentina from the IBRD to US\$895.5 million.

Furthermore, in 1995, the Board of Executive Directors approved a loan to the Republic of Paraguay (3842-PA) for US\$46.5 million equivalent for the Ascunción Sewerage Project. Of that amount, about US\$1.2 million was to finance infrastructure works in Encarnación, Paraguay, for the benefit of 3,000 people to be resettled under the Yacyretá



Project. In addition to the World Bank's support package, the IDB and private banks and suppliers also provided financing for the Yacyretá Project.

### Implementation Problems

The implementation of the Yacyretá Project has been plagued by delays, disputes, political changes, cost overruns, and financial scandals. Argentine President Carlos Menem called Yacyretá a "monument of corruption."<sup>1</sup> In 1994, the World Commission on Dams reported an alleged US\$6 billion loss to corruption. Because of the difficulties arising during the implementation of the Yacyretá Project, the level of trust between the community and the government became extremely low.

In the early 1990s, project implementation was more than 8 years behind schedule. The social and environmental mitigation measures particularly lagged. Nonetheless, EBY decided in 1994 to start filling the reservoir to 76 meters above sea level and to operate the facility. The project's main sponsors, the World Bank and the IDB, concurred. EBY planned in the near future to fill the reservoir further to 83 meters above sea level.



E.S. Myers

Argentina/Paraguay: Yacyretá—Requester showing documents that acknowledge him as a project-affected person (2002).

## Request Submitted to the Inspection Panel

In September 1996, Sobrevivencia/Friends of the Earth, Paraguay, an NGO located in Paraguay, submitted a Request for Inspection to the Inspection Panel on behalf of itself and people living in Encarnación, Paraguay.

The organization alleged that the environment, as well as the standard of living, health, and economic well-being of people in the Yacyretá area, had been or could be directly and adversely affected as a result of filling the Yacyretá reservoir to 76 meters above sea level. It alleged that the Bank failed to ensure—through supervision and enforcement of legal covenants with the governments of Argentina and Paraguay and EBY—the adequate execution of the environmental mitigation and resettlement activities included in the project.

More specifically, the Request claimed that because of the filling of the reservoir and the failures of the Bank, the water had become stagnant and polluted. Not only had the groundwater supplies used for drinking water become contaminated, but also the sanitation system had been affected through discharge of untreated sewage into the now stagnant water. The Request also stated that the project's implementation had destroyed island communities as well as ecosystems. As a result of EBY's raising the water level, farmland had been flooded and crops destroyed. According to the Request, fish migration had been disrupted, thereby seriously affecting the subsistence diets. The Request identified the project's adverse socioeconomic impacts: the loss of jobs and source of income for those involved in fishing, ceramics, and bakery. As another adverse impact of the Yacyretá Project, the Request listed health problems such as respiratory infections and skin and intestinal parasites.

The Request claimed that these adverse effects resulted from the Bank's actions and omissions in preparing and implementing the Yacyretá Project. Those actions and omissions violated the following Bank policies: environmental policies for dam and reservoirs projects (OD 4.00, Annex B), environmental assessment (OD 4.01), involuntary resettlement (OD 4.30), indigenous peoples (OD 4.20), wildlands (OPN 11.02), supervision (OD 13.05), project monitoring and evaluation (OD 10.70), suspension of disbursements (OD 13.40), cultural property (OPN 11.03), and environmental aspects of Bank work (OMS 2.36).

The Requesters asked that their names be revealed only to the Inspection Panel but otherwise remain confidential. On October 1, 1996, the Inspection Panel registered the Request for Inspection. At about the same time, Sobrevivencia also submitted a claim to the inspection function of the IDB.

## Bank Management's Response

Following the Panel's procedures, the Bank's Management responded to the allegations in November 1996. In its Response, Management not only addressed the alleged failures but also challenged the eligibility of the Requesters themselves.

First, Management questioned the eligibility of the Requesters under the Resolution establishing the Panel, which requires the Requesters to be affected parties "in the terri-



tory of the borrower.” Management raised the question of whether a group of people from Paraguay could file a Request for Inspection even though the project was partly located in Argentina and Argentina was the recipient of the Bank’s financial support. Second, the Bank’s Management assumed that an NGO could not file a Request for Inspection because the NGO itself had not been adversely affected. In addition, the Bank questioned the eligibility of anonymous Requesters by stating that their anonymity would impose serious constraints on the Bank’s ability to respond to the allegations.

Regarding the allegations of Bank failures, the Response included a description of pending actions to sustain the project at its current level and stated: “We do not agree that the problems which have occurred and their possible consequences for the local population are the result of any alleged Management violation of the Bank’s policies and procedures.”

After receiving Management’s Response, the Panel visited the project site in December 1996 to verify the eligibility of the Request and the Requesters. The Panel’s lead inspector, Alvaro Umaña-Quesada, consulted with people in the project area, the Argentine and Paraguayan governments, and EBY representatives.

The initial field visit, conducted with a representative from the IDB, planted hope among the local communities. Dana Clark of the Center for International Environmental Law summarized the views of local people: “The Banks have failed to respect the rights of people who have lost their homes and livelihoods and are forced to live in a degraded environment. The claimants are pinning their hopes for accountability and redress on the inspection panels.”<sup>2</sup>



Argentina/Paraguay: Yacyretá—Downtown Encarnación: Area to be flooded when the project is completed (2002).

### The Panel's Recommendation

On December 24, 1996, the Inspection Panel submitted its Eligibility Report and determined the Request and the Requesters to be eligible. Particularly, the Panel considered the Request to be from “the territory of the borrower” because the project had a binational character and the government of Paraguay had also assumed legal obligations under so-called owners’ agreements between the Bank, Argentina, and Paraguay. And, in fact, most of the flooding and environmental damage was to take place in Paraguay. Furthermore, the Panel’s report revealed that the Bank had also provided financial support in the form of a loan to Paraguay, in part to address the resettlement of people in the Yacyretá Project area. In addition, all loan proceeds were transferred to EBY, making an institution jointly owned and operated by both countries the actual beneficiary of these loans.

The Inspection Panel’s Eligibility Report clarified that the Requesters were not anonymous. The Panel had their names, but had agreed to keep them confidential. This practice was foreseen by the Panel’s Operating Procedures. Regarding the argument raised by the Bank that the NGO was not eligible to file a claim since it was not adversely affected, the Panel pointed out that Sobrevivencia alleged that violations of Bank policies caused damage to biodiversity and other environmental conditions at a national level.

Regarding the alleged Bank failures to enforce the covenants related to environmental mitigation and resettlement activities, the Bank’s Management stated in its Response that legal remedies are a discretionary tool for the Bank. The Inspection Panel did not share this point of view but indicated in its Eligibility Report that “compliance is not achieved by merely including covenants in loan agreements but rather by ensuring that their provisions are implemented.” The Panel’s position was also supported by the Bank’s Operations Evaluations Department, which stated in its audit report for two of the Bank’s loans providing financing to Yacyretá that “the Bank accepted repeated violations of major covenants.”

In conclusion, the Inspection Panel was “not convinced that there has been substantial compliance with the relevant policies and procedures”; therefore, the Panel recommended that the Board of Executive Directors authorize a full investigation into the matters raised in the Request.

### Board Split over Panel Recommendation

On February 28, 1997, the Board of Executive Directors of the World Bank considered and discussed the Panel’s recommendation. Right before the meeting, the Bank’s Management presented two Action Plans agreed upon with the responsible authorities in Argentina and Paraguay. The plans dealt with actions that should have been completed before the reservoir was filled in 1994, as well as with proposed activities aimed at permitting continued operation of the reservoir at the present level in an environmentally sound manner. In the end, the Board decided not to follow the Panel’s recommendation. Later, in an informal meeting, the Board reached agreement on the Panel’s role in the Yacyretá case.

The Board invited the Inspection Panel to review the existing problems of the Yacyretá Project regarding environmental and resettlement issues and to provide an assessment of the adequacy of these Action Plans within the following 4 months. At the same time, the executive directors decided that “independent of the above decision, the Inspection Panel [was] expected to look at the extent to which the Bank staff had followed Bank procedures with respect to this project.”

However, NGO representatives criticized the Board’s decision not to support a full Inspection Panel investigation as a blow to the Panel’s credibility. A letter sent in 1997 by the Center for International Environmental Law on behalf of 25 organizations to World Bank President James Wolfensohn asserted that “To deny an inspection of this claim would deny the claimants the fair hearing they seek and would undermine the credibility and utility of the Inspection Panel as a forum to which directly affected local people can turn for impartial review.”

### The Inspection Panel Review

Within the following 4 months, the Inspection Panel conducted the review that the Board had requested. The Panel returned twice to the Yacyretá Project site, in May and July 1997. During the Inspection Panel’s review activities, it received a number of additional Requests for Inspection concerning specific aspects of the project’s implementation. After consulting with the Board, the Panel included in its report the issues raised in those Requests, such as the replacement of housing on the Argentine side; the quality of housing and community infrastructure on both sides of the reservoir; and the economic situation of fishermen, *oleros*, and workers in the brick-making industry.

The Inspection Panel’s report, which was submitted to the Board in September, was structured in four parts: a review of the Yacyretá Project’s problems, an assessment of the adequacy of the Action Plans presented by the Bank’s Management, the additional Requests, and a review summary of the World Bank’s compliance with its procedures.

### *Fundamental Imbalance and Insufficient Financial Resources*

One of the fundamental problems of the Yacyretá Project that the Inspection Panel identified was an imbalance between the execution of (a) the civil and electromechanical work and (b) the resettlement and environmental measures. While the former were, at the time of the Panel’s review, 99.8 percent complete, less than a third of the environmental and resettlement plans had been completed. The Panel stated clearly:

This imbalance is dramatically illustrated by the fact that the reservoir was filled prior to completion of the agreed environmental and resettlement measures which resulted in negative environmental impacts and placed populations living in low-lying areas on both sides of the reservoir at higher risk for a prolonged period of time. This action—to which Bank Management gave its non-objection triggering the Request for Inspection and the Panel’s intervention—has caused risks of serious health hazards through exposure to unsanitary conditions and poor water quality. Other risks include potential loss of sustainable livelihood through loss of high quality clay and fish resources.



The imbalance also led to increasing social and environmental liabilities with mounting financial costs. The Inspection Panel considered this imbalance to be exacerbated by the Bank's usual practice of financing mostly civil works and leaving resettlement and environmental measures for counterpart funding, and it urged the Bank to reconsider this practice.

Regarding the delays, the Panel also noted that a number of issues raised in the Request could have been addressed earlier during project execution. It concluded, "The lack of participation by affected people and local authorities in the project-related activities and a tendency by Bank supervision missions to ignore or take lightly the concerns of area people may be at the root of these problems."

The Panel's review also revealed that the Yacyretá Project lacked sufficient financial resources for project completion. In 1979, the Bank's staff appraisal report initially estimated costs at US\$3.7 billion, while the Panel's review estimated that the costs would surpass US\$8.5 billion, more than double the initial estimate. The Panel also found that the expenses of effective mitigation measures had been significantly underestimated.

The project's financial difficulties increased in the mid-1990s, when the financial crisis in Mexico caused the government of Argentina to face difficult macroeconomic conditions. The government decided to cut off and finally suspend all financial support for the project and to seek private capital to complete and operate the facility. However, in 1996, the legislation to privatize Yacyretá failed to obtain approval in the congresses of



Argentina/Paraguay: Yacyretá—Access road to the resettlement site (2002).

E.S. Aguirre

both Argentina and Paraguay. As the Inspection Panel's report showed, this failure to obtain approval led to a complete paralysis of the project's complementary works for close to 2 years.

With regard to the socioeconomic impacts, the Inspection Panel found that thousands of residents, including fishermen and brick makers, lost their jobs and source of income as a result of the construction of the dam, and those people had not received any kind of compensation. Moreover, the Panel found that less than 25 percent of the people whom the dam would affect had been resettled before the filling of the reservoir.

### *Assessing the Bank's Action Plans*

The Inspection Panel also assessed the adequacy of the Bank's Action Plans, which were presented during the February Board meeting. "Plan A" was intended to remedy actions that should have been carried out before the filling of the reservoir in 1994, with projected costs amounting up to US\$16 million. The plan included expropriations, potable water supply for resettled populations, urban and rural housing, indemnification to brick makers and ceramicists, and issuance of property titles for resettled people. In its review, the Panel observed that not all of the plan's envisioned commitments, such as hydrogeological studies, could be completed before the stipulated date of December 1997.

The Bank Management's second Action Plan, "Plan B," set forth required complementary works needed to permit prolonged operation of the reservoir at 76 meters above sea level. These were to cost US\$117 million. The Inspection Panel's assessment revealed that this plan dealt with only some of the existing problems, and according to many people the Panel interviewed, the plan was "by no means" complete: "The process of implementing the so-called 'solutions' [has] not been adequate."<sup>3</sup> The Panel's assessment also showed that major decisions had not been finalized with regard to designing and locating wastewater treatment plants in Posadas and Encarnación, mitigating the effects of the dam on fisheries, and providing for long-term supplies of clay to the regional industry.

In the context of resettlement and environmental issues, the Panel's assessment found that the number of people to be involuntarily resettled—originally estimated to be 50,000—had increased to at least 70,000 people. The Panel identified the following difficulties in the entire process: the changed resettlement standards of the Bank's policy, the project's weak programs of social communication, and the lack of adequate identification of vulnerable groups who required special assistance. The Panel urged the Bank in its review to include in any future plans the inflow of people from new areas.

Regarding environmental issues, the Inspection Panel identified the lack of institutional support in EBY and the financial shortages to be major reasons for the difficulties in implementing the environmental mitigation measures. Also, the Panel assessed the reserves and biodiversity programs as deficient and determined that the linkages between environmental and health effects were not well established.

The Inspection Panel concluded that "a long history of delays and noncompliance tolerated by the Bank does not allow the Panel to provide a realistic assessment of future Project performance with any degree of confidence."



### *The Bank's Compliance with Its Policies and Procedures*

The Board's decision to invite the Panel to "look at the extent to which the Bank staff had followed Bank procedures with respect to the [Yacyretá] Project" did not state the precise extent and scope of this work. While the Panel requested clarification of its work, the Board did not give the Panel further guidance.

In its report, the Inspection Panel stated that the policy statements that were in force at the time the different loans for the projects were prepared and approved did not distinguish between what was meant to be a "policy" and what should be regarded as a "procedure." Citing the then-general counsel, the Inspection Panel noted that the limits in their application were not always clear. The Panel decided, in view of the lack of clarity of its mandate in this case, to highlight in its report "the major areas where staff performance could or should have better followed operational statements rather than prepare an encyclopedic review of all possible violations." The Inspection Panel identified those areas as participation of affected groups, supervision, and institutional strengthening.

Regarding the Bank's environmental and resettlement policies (OD 4.00 and OD 4.20, respectively), which call for continued participation by affected people, the Inspection Panel's review revealed that the process had been neglected. In this respect, the Panel reiterated that the Bank's supervision efforts would be crucial for the resumption of the participatory process.

The Inspection Panel's review further considered the project to be ill conceived, a problem that was compounded by changing standards and regulations over time, EBY's bureaucratic procedures, and a lack of financial resources. According to the Panel, institutional strengthening of executing agencies in the areas of resettlement and environmental protection continued to be an issue that needed addressing by the World Bank.

The Panel's report noted that prolonged operation of the reservoir at 76 meters above sea level had not been foreseen and resulted in predictable impacts, which affected the population living in low-lying areas above the present water level who had not been resettled.<sup>4</sup>

The Panel also cited other examples of noncompliance, including the lack of complete hydrogeological studies, the failure to monitor the impact of the reservoir on lands and soils, problems with the creation and management of compensatory reserves, and the lack of outside review of environmental management plans.

Although the Bank's Environmental Department praised the Yacyretá environmental actions as "the model," the Inspection Panel's review found that, in spite of the Bank's extensive supervision efforts, the Bank had not been able to bring the project into compliance with the relevant policies and procedures. The review also found that the two Action Plans were implicit recognition of noncompliance with environment and resettlement covenants.

In conclusion, the Inspection Panel identified—irrespective of the project's changing circumstances—a set of conditions essential to the project's successful completion. It recommended that the Bank continue all pending environmental and resettlement actions, involve the affected population to a greater extent in planning and executing complementary works, guarantee that Bank policies would be respected, and continue Bank supervision of present and future actions.

## The Aftermath: Reaction to the Panel's Report

Three months later, in December 1997, the Board of Executive Directors reviewed the Panel's report. During this meeting, the Board discussed the Panel's role in general and with regard to possible monitoring of the implementation of the Bank's Action Plans. Finally, the Board decided to exclude the Inspection Panel from any follow-up activities and to ask the Bank's Management to submit reports focusing on the progress of the implementation.

In March 1998, the Paraguayan newspaper *Ultima Hora* published a letter from the Bank's then-acting vice president for Latin America and the Caribbean, which stated: "The Bank is satisfied with the conclusions of the [Inspection Panel's] report which confirm that the Bank policies on resettlement, the environment, community participation and all other areas were fully met and implemented in the Yacyretá case." This statement did not accurately present the Inspection Panel's actual findings and triggered an NGO campaign involving international newspapers. "Row Brews over World Bank's Role in Dam Project," stated the *Financial Times* on May 4, 1998. The article dealt with the publication of the Bank's letter, quoting Bank staff members as saying that the letter had "only referred to policies and not their effects."

The subsequent weeks were filled with correspondence between the Bank's acting vice president for Latin America and the local residents in the project area. Many international NGOs and the media were involved, and finally, at a meeting with a representative of the Requesters, an NGO representative, and the Inspection Panel present, the



Argentina/Paraguay: Yacyretá—View from the power plant (2002).

Bank's president, James Wolfensohn, formally apologized for the way the Bank had dealt with the Inspection Panel's findings. Later on, after increasing pressure from civil society, the World Bank published in several Paraguayan newspapers a press statement to clarify that the previously published letter "conveyed an erroneous description of the [Inspection Panel's] findings."<sup>5</sup>

### Inspection Panel Relations between the World Bank and the Affected Population

From the beginning, the Inspection Panel process proved to be very valuable. It led to the formulation and financing of several Action Plans to mitigate environmental and social impacts. Although the Inspection Panel was not actively involved in the monitoring process itself, its findings led to the Bank's decision to establish a Blue Ribbon Panel to study options for the future development of the Yacyretá Hydroelectric Project.

In terms of raising the reservoir level to the originally projected 83 meters above sea level, the Bank's then-vice president for Latin America and the Caribbean stated: "The Bank feels strongly that no actions should be completed to raise the water level without guarantees that necessary measures were in place to protect affected communities, both those already resettled as well as others who would be displaced by raising of the water level—and the environment."<sup>6</sup> In June 1998, after the Bank's Management had visited the project area, the Board once again considered the situation in an informal meeting in which the Inspection Panel participated. As a result, the Bank's Management agreed to continue to report to the Board on the implementation of the Action Plans.

The Panel process has given a voice to the people in Argentina and Paraguay. It has raised their concerns and shone light on the project's environmental and social impacts. Shortly after the Panel's first visit to the project site, EBY started to consult with local residents—the Panel's process marked the beginning of increased community participation and of actions by residents to claim their rights. Elias Diaz Peña, then-representative of the Paraguayan NGO Sobrevivencia, on February 3, 1998, said to the Board of Executive Directors of the World Bank: "The Yacyretá Hydroelectric Dam Project has caused serious environmental impacts as well as social impacts, particularly on the population of the area. These problems have been repeatedly denounced by different affected sectors and by civil society organizations for years, ever since project implementation started." However, he continued, "The World Bank Inspection Panel has really contributed greatly to improve the relations of the World Bank and the affected population as well as the image of the Bank in the public opinion, both in Paraguay and Argentina because somehow it restored the trust of the population in the interests of the Bank in the well-being of all the communities."<sup>7</sup>

However, at the time of writing of this book, a new Request had been filed with the Inspection Panel by a Paraguayan NGO on its behalf and on behalf of more than 4,000 families affected by social and environmental impacts of the Yacyretá Hydroelectric Dam. The Board of Executive Directors has authorized an investigation by the Inspection Panel, and the Panel is now conducting the investigation. Whether this Request and the alleged adverse impacts on the ground could have been avoided by including the Inspection Panel in the monitoring of the Bank's Action Plans is an open question.



## The Qinghai Project—China: A Component of the Proposed China Western Poverty Reduction Project

The Qinghai Project became one of the most controversial projects ever handled by the World Bank. On April 30, 1999, hundreds of people gathered in a peaceful demonstration in the park across the street from the World Bank headquarters. Signs held by the protesters read, “Save Tibet” and “World Bank Kills Culture,” referring to the Bank’s proposed financial support for the China Western Poverty Reduction Project—specifically to one of its components in the province of Qinghai. Less than 2 months later, on June 18, 1999, the Inspection Panel received a Request for Inspection on the Qinghai component. The Request was submitted to the Inspection Panel on June 18, 1999.

### Efforts to Alleviate Poverty

According to the World Bank, the China Western Poverty Reduction Project was a successor project to five other similar undertakings initiated by the Chinese government in an effort to relieve the poverty that plagued the remote and inaccessible villages found in the Gansu and Qinghai Provinces and within the Inner Mongolia Autonomous Region.

The project aimed at reducing absolute poverty in these areas and assisting approximately 1.7 million people by providing a safe water supply, as well as improving social services (such as health and education), electricity connection, and quality of local roads. Additionally, the project was intended to increase productivity in both farm and off-farm activities and to help raise standards of living. As a whole, the China Western Poverty Reduction Project consisted of three different components to be carried out in the Inner Mongolia Autonomous Region, Gansu, and Qinghai. The Request for Inspection related to only the last component.

The Qinghai Province is located in western China, bordering Xinjiang, Gansu, Sichuan, and Xizang (the Tibet Autonomous Region). The major ethnic groups of the approximately 5 million population include Han, Tibetan, Mongolian, Hui, Salar, Tu, and other minorities.

The Qinghai Project purported to benefit 57,775 poor farmers on the hillsides of eastern Qinghai who practiced high-altitude rain-fed agriculture. The land they lived on was eroding because of high population pressure and could no longer sustain them.

The project proposal envisioned the voluntary resettlement of farmers from the eroded hillsides of eastern Qinghai, with a population of 1.3 million—the “move-out” area—to the dry land area of Dulan County in Haixi Prefecture, a Tibetan and Mongol Autonomous Prefecture, designated as the “move-in” area, some 450 kilometers to the west. The project was to provide direct benefits to the resettled farmers and to those staying on the hillsides of eastern Qinghai, such as reducing population pressures on the hillsides to limit the erosion of the land and enable the area to better support the livestock of those remaining. On the other hand, the resettled farmers moving to Dulan County would receive user rights to arable land, as well as support in learning how to grow their crops and manage their farms. The project also proposed several other components, including the renovation of an existing 8-meter dam, the construction of a new



E.S. Andersen

China: Western Poverty Reduction—Small village from which people were to be relocated.

40-meter dam at Keri, the building of a 29-kilometer canal from the Xiangride River to the Keri Dam, and the building of a 56-kilometer canal from the Keri Dam, which would be used to irrigate some 26,500 hectares of land in Dulan County.

On the surface, the project would assist the impoverished hillside farmers tremendously, giving them hope for the future and a better way of life. Nevertheless, this project led to a controversial global debate and was the subject of the 16th Request received by the Inspection Panel.

#### *Planned Financial Support*

The World Bank planned on contributing US\$160 million of the total US\$312 million cost for the China Western Poverty Reduction Project. Of the US\$160 million, the Bank earmarked US\$40 million for the Qinghai component, consisting of an IDA credit equivalent to US\$26.7 million (3255-CHA) and the equivalent of US\$13.3 million covered by an IBRD loan (4501-CHA).

#### *Caught by Surprise: A Request for Inspection*

During the final stages of approval, the Qinghai Project came under attack. An article published on April 27, 1999, by the Tibet Information Network (TIN) sparked a great



amount of public controversy. The article detailed many issues and concerns related to the developments in the proposed project areas. According to the article, "The relocation of more than 60,000 poor farmers west to . . . Qinghai would increase the Chinese population of the area and make Tibetans and Mongolians an even more marginal minority there. Population transfer of Chinese into traditional Tibetan areas has become a major concern for Tibetans in terms of the ongoing viability of their civilisation, identity and land."<sup>8</sup>

The effects of this controversy, as well as concerns expressed by some Bank staff members, shifted the focus from the poor farmers living in the hillsides to the effects their relocation would have on the Tibetans and Mongols in the move-in area. The external criticism turned the Bank's attention to conducting dialogues with TIN and other NGOs. Notwithstanding the completion of project negotiations, Bank staff members prepared a description of the Qinghai Project for distribution and compiled a list of proposed activities; also a small team of Senior Management staff members went to Beijing and to Qinghai Province to conduct an independent assessment of the situation. Additionally, the government of China agreed to several negotiated "refinements" to the project and publicly announced the assurance of free access to the project area for outside visits.

However, on June 18, 1999, the Inspection Panel received the 16th Request for Inspection. The International Campaign for Tibet (ICT), a U.S.-based NGO, filed the Request on behalf of affected people living in the project area.

ICT stated in its Request that it was eligible to represent the interests of the affected people per paragraph 12 of the Resolution establishing the Inspection Panel because many Tibetans and Mongols in the project area feared the consequences of speaking out against the Chinese government. Therefore, the exception provided for in the Resolution would apply.

A great concern raised in the Request was the transmigration of non-Tibetan and non-Mongol people into a traditionally Tibetan area, possibly posing great social and environmental risks, as well as the risk of conflict over resources and the danger of serious ethnic tension.

The Requesters also stated that moving forward with the project would result in a serious threat to the ethnic minorities living in the Tibetan and Mongol Autonomous Prefecture and pose harm to the ecosystem in which they lived. According to the Requesters, "The greatest disadvantage that Mongols and Tibetans face in the development process is increasing marginalization through dilution of their status within their traditional homelands."

The Request also questioned the classification of the project with regard to the necessary environmental evaluation. The Bank had previously classified the Qinghai component as Category B, a category that required a less meticulous environmental evaluation. The Requesters additionally claimed that the Bank's failure to publicly disclose the project's environmental assessment and resettlement Action Plan before its appraisal violated the Bank's policy and prevented civil society from evaluating the project.

Particularly, the Requesters claimed violations of the policies and procedures on environmental assessment (OD/BP 4.01), indigenous peoples (OD 4.20), involuntary resettlement (OD 4.30), disclosure of operational information (BP 17.50), pest management (OP 4.09), safety of dams (OP/BP 4.37), retroactive financing (OP 12.10),

investment lending—identification to the Board presentation (OD 10.00), and natural habitats (OP/BP 4.04).

However, just 6 days after the Inspection Panel registered the Request, the Board of Directors approved financing of the China Western Poverty Reduction Project. There was one caveat: In an unprecedented move, the Board agreed “that no work be done and no funds be disbursed for the US\$40 million Qinghai component of the project until the Board decides on the results of any review by the independent Inspection Panel.” Furthermore, the borrower and the Bank amended existing legal documents to include this condition of disbursement and agreed to implement necessary changes arising from the subsequent Panel process.

### *The Invitation: Management Response and Inspection Panel's Recommendation*

As provided for in the Resolution, the Bank's Management responded to the allegations contained in the Request. It generally concluded that Bank staff members, while designing and appraising the Qinghai Project, took the necessary steps required by corresponding Bank policies and procedures related to social issues, environment, administration, and disclosure.

While Management acknowledged issues raised in the Request about the impact of the Qinghai Project on indigenous peoples and minorities, it noted that issues related to political concerns were beyond the scope of the Bank's operational guidelines. Thus, while those issues have become a part of “the new openness in the Bank,” the project was still in compliance with the policy on indigenous peoples (OD 4.20).

Related to the claim that the Bank miscategorized the project into environmental screening Category B instead of Category A, Management responded, “Whether to assign this particular project to Category A or Category B was a matter of judgment, rather than of compliance with the policy.”

On the issue of disclosure, Management claimed compliance as well, but it also clarified that “good practice guidance regarding delivery of the Environmental Assessment and Resettlement Action Plan to the InfoShop was not followed.”

However, Management recognized that “some of the project's qualitative aspects [could] be improved.” For example, concerns pertaining to ethnic minorities “could have been better anticipated and more clearly addressed within loan documentation with greater clarity and greater attention.” Declaring its appreciation for the dialogue with civil society on the project, Management welcomed the opportunity for a review of the project by the Panel.

On August 18, 1999, after a careful examination of the Request and Management's Response to the Request, the Panel, having found the Request eligible, forwarded its recommendation for an investigation to the Board. The Board was to make the final determination as to whether the external representation by ICT was appropriate, but in an effort not to delay the Panel's investigation, the Board bypassed the question. On September 9, 1999, the Board instructed the Panel to investigate whether during the preparation and appraisal phases of the project, the Bank complied with policies or procedures on disclosure of information (BP 17.50), environmental assessment (OD 4.01), indigenous peoples (OD 4.20), involuntary resettlement (OD 4.30), pest management

(OP 4.09), safety of dams (OP/BP 4.37), retroactive financing (OP/BP 12.10), and investment lending—identification to the Board presentation (OD 10.00).

### The Inspection Panel's Analysis and Investigation Report

The work of the Panel during its approximately 7-month investigation was extensive. The Panel selected a small team of senior consultants to assist it, all having substantial experience in their respective areas of specialization. The Panel conducted in-depth interviews with almost all Bank staff members and consultants associated with the Qinghai Project and with other experts not associated with the Bank. Some interviews were conducted in Washington, D.C., while others were carried out in Beijing. The Panel also examined Bank correspondence and reports related to the project as well as a considerable amount of literature on the history and ethnography of the region, on resettlement, and on ethnic relations in China. In October 1999, many individuals participated in the Panel's field visit. The Panel team consisted of two Panel members, the Panel's executive secretary, and three world-renowned specialists. They were accompanied by Chinese-, Tibetan-, and Mongolian-language interpreters, all from outside China. During the field visit, the Inspection Panel team met with many Chinese



China: Western Poverty Reduction—The Inspection Panel's Team welcomed by the Chinese authorities.



officials regarding the project; however, the most relevant portions of the journey were the consultations and meetings with the people in villages located in both the move-out and move-in areas.

The Inspection Panel transmitted its findings to the Board on April 28, 2000: The Investigation Report concluded Management was substantially in compliance with the provisions of Annex B of the environmental policy on dam and reservoir projects (OD 4.00), safety of dams (OP/BP 4.37), investment lending—identification to the Board presentation (OD 10.00), and retroactive financing (OD 12.10).

The Panel, however, found the Bank in apparent violation of several provisions of the policies on environmental assessment, indigenous peoples, involuntary resettlement, natural habitats, pest management, investment lending—identification to the Board presentation, and disclosure of information.

### *Concerns with the Environmental Assessment*

The Panel's Investigation Report focused on the general compliance of applicable Bank policies. Among its findings, the Panel observed that different views existed among all levels of Bank staff members on the application of the Bank's policies. This disturbing wide range of views became a great concern for the Panel, which noted that such views should also alarm the Bank because divergences of opinion could prevent the consistency in the application of its policies.

The Panel also voiced many concerns regarding the project's environmental assessment. First, the environmental assessment did not distinguish between short-term impacts versus those that would occur only in the future. This issue raised serious questions about the scope of time over which the project was evaluated. In the Panel's view, the assessment "fail[ed] completely to place the project in proper time frames." Also, on reviewing project documentation, the Panel discerned a "high level of ambiguity, uncertainty, and inconsistency in the use of the term 'project area,'" resulting from the lack of reliable maps. It became evident to the Panel that many areas, people, and communities to be affected by the project were excluded from performed assessments because of the Bank's inadequate definition of "project area."

The Panel's third concern pertained to Management's imposed consultation and survey methods for the project. Specifically, it mentioned the Bank's failure to design a survey for a group that would be involuntarily resettled, even though the group's twice-yearly passage through the project site would be disrupted. Along the same lines, the Panel demonstrated its disagreement with the surveying methods imposed on both the move-out area and the move-in area.

Regarding the survey in the move-out area, the Panel's Investigation Report found (a) that the questionnaires used were not confidential because all four surveys required respondents to list their names and (b) that the surveys must have been completed by someone other than the individual respondents. The Panel also noted that very limited information was provided about the project because 93 percent of the respondents noted that they learned of the project through government propaganda. Moreover, examination of the questions asked suggested that the information gathered was unreliable.



In the move-in area, the methods mentioned were of greater concern. The respondents within this area were asked whether they would welcome the settlers from the move-out area but their responses were not kept confidential. This predicament was important to the Panel because the Request alleged “that expressions of disapproval of Han Chinese settlement in traditionally Tibetan-populated areas have been treated as ‘counter-revolutionary.’” While the Panel did not express its opinion regarding the allegations, it noted that Management did not refute the Requesters’ claims. The Panel also noted that the Bank had a responsibility (derived from ODs 4.01, 4.20, and 4.30) to guarantee confidentiality of the respondent where “there is even a perception of potential adverse effects that could result from a truthful statement of opposition to this Bank-financed project.” The Panel opined that the guarantee of confidentiality might have produced different results.

While the Panel received many positive comments about the proposed project, the field study also yielded different opinions and the perception that people felt at risk if they expressed opposition to the project, which led the Panel to conclude that Management agreed to inadequate methods of public consultation.

The Panel’s fourth concern pertained to the consideration of project alternatives: “One of the most noticeable and significant weaknesses of the environmental assessments is that investment and project alternatives are neither identified nor systematically compared.” The lack of this information made it almost impossible to conclude whether the proposed project was indeed the best to meet Bank objectives or, for that matter, to comply with Bank policies. Furthermore, the Panel found that there was no “systematic study of *in situ* alternatives to resettlement, of alternative resettlement sites, or of alternative development plans for the national minorities affected within the Move-in areas” because the Bank’s assessments concentrated only on the resettlement of the people from the move-out area.

### *A or B?—The Qinghai Project Categorization*

As far as the Bank’s compliance with the applicable environmental assessment standard was concerned, the Panel found Management’s decision to classify the project as Category B not in compliance with the Bank’s policy on environmental assessment because out of the 12 types of projects listed under Category A, 8 were found within the China Western Poverty Reduction Project and 4 within the Qinghai component. Experts sought by Bank Management reached the same conclusion. Irrespective of these views, Management held its position that the original categorization was in line with the applicable policy.

Other issues pertaining to environmental compliance included concerns on dam safety, pest management, and natural habitats. As to the safety of dams, the Panel noted compliance and commented that the design and the location of the proposed Keri Dam overall met the requirements of the policy. The Panel further stated that it was “highly unlikely that any unique biodiversity will be lost or adversely affected” as a result of this subcomponent. One concern, though, dealt with the lack of reference to the seismicity of the project area. Considering past occurrence of two serious earthquakes in Dulan

County, the Panel recommended an assessment of the risk should the dam fail because of another earthquake.

Even though the Panel was assured that a pest management program would be implemented, it noted a violation of the Bank's policy existed because Management did not currently possess the details of the plan. Similarly, the Panel stated the project contravened the policy on natural habitats because the necessary information to determine whether critical natural habitats would be lost was insufficient.

### *Indigenous Peoples*

Regarding the application of the Bank's policy on indigenous peoples, the Panel's investigation found that the policy allowed for indigenous peoples' concerns to be addressed by the project itself without the need to draw up a special development plan for indigenous peoples, provided that such peoples were the direct project beneficiaries as stated by Management. However, the project had to be as sensitive as such a plan would have been to attain the ultimate objective of the policy—that is, foster full respect for indigenous peoples' dignity, human rights, and uniqueness. The Panel did not find that objective met by the project's design because several national minorities in the move-in area—the Hui, Mongol, Tibetan, Tu, and Salar—were lumped together in the project even though they were culturally different from each other, particularly



China: Western Poverty Reduction—Panel member interviewing local people.

E. Abbott

with respect to their local patterns of social organization, religious beliefs, and resource use. The Panel stressed that not treating them separately effectively denied these different ethnic groups—especially the smallest and most vulnerable—an opportunity to participate in the design of the project to ensure the protection of their minority cultural traditions.

Among the most crucial concerns voiced by the Requesters in this case were the issues of cultural dilution and the status of the Mongolian and Tibetan Autonomous Haixi Prefecture after the transfer of non-Mongol and non-Tibetan settlers. As noted by the Panel, no Bank policy addressed the status of subnational boundaries in any member country; however, the Panel stated that “the autonomous status of the Prefecture might be relevant to OD 4.20 because its loss would constitute an ‘adverse effect’ of the Project on minority nationalities.” Generally, the Panel considered several figures to conclude that diluting effects of the settlement would be felt more strongly in the areas closer to the proposed irrigation site, such as in Dulan County, where Tibetan and Mongol ethnic composition would decrease from 36.8 percent before settlement to 20.7 percent after settlement. In the project townships themselves, Tibetan and Mongol ethnic composition would decrease from 59.5 percent before settlement to 10.8 percent after settlement. The Panel also noted that, at the project site itself, the Mongol population would drastically decrease from 69.9 percent to just 4.5 percent. The small Tibetan population at the project site would slightly increase proportionally as a result of the settlement, from 3.5 percent to 5.8 percent of the total.

With these findings, one could see why the Requesters were concerned about the settlement effects on the autonomous status of Haixi Prefecture. In its Response, Bank Management mentioned a supplemental letter from the government of China that was added after project negotiations were reopened. As part of the legal agreements entered into with respect to the project, the letter was signed by a representative of the national government and stated, “The Borrower hereby represents to the . . . Bank that the implementation of Qinghai’s Respective Part of the Project . . . will not affect the status of Qinghai’s Haixi Prefecture as a Mongolian and Tibetan Autonomous Prefecture. . . .”

Because the letter’s purpose was not clear to the Panel and did not even mention how long the status would last, the chairman of the Panel requested a legal opinion from the Bank’s then–vice president and general counsel as to the meaning and enforceability of these representations. The general counsel confirmed that the Bank had accepted this representation about the future of the Haixi Prefecture as “a statement by the Borrower of fact or an interpretation of Chinese law.” He further stated, “should the interpretation of Chinese law prove to have been wrong, the Representations would provide a legal basis for the Bank and the Association to exercise their respective suspension remedies under provisions of the applicable General Conditions.”<sup>9</sup>

Regarding Management’s compliance with the Bank’s policy on involuntary resettlement, the Panel noted that most adversely affected people were voluntarily resettled and thus not subject to the Bank policy’s requirement of a resettlement plan. However, the plan for those who were resettled against their will was inadequate because it did not provide fair compensation because of a lack of sufficient data to determine that compensation. The Bank’s plan to compensate herders who lose the use of land as a result of involuntary resettlement with some other land requires adequate baseline data on



pastoralism, including data on land use and inheritance; without these data no proper assessment of the losses incurred can be made.

The Panel also found that the project would displace a larger population than originally identified in project documents, and compensation for resettled herders was inadequate. Additionally, the involuntary resettlement plan provided an insufficient form and quality of consultation and failed to consider project alternatives.

Concerning the Bank's policy on disclosure of information, the Panel found the Bank not in compliance because of untimely disclosures of information pertaining to the project. More specifically, the first released project information document was 4 months behind schedule, and the document failed to adequately discuss the minorities to be affected. In the Panel's opinion, "Perhaps if public disclosure had occurred in a more timely fashion, the project could have been re-thought or improved without the level of controversy that it has attracted."

However, the Panel noted that the requirements of the Bank's policies on retroactive financing and on investment lending—identification to the Board presentation had been met.

### Management's Report in Response to the Panel's Findings

Within the 6 weeks following the Panel's Investigation Report, Management made an expeditious effort to address the Panel's findings. In a report submitted to the Board of



China: Western Poverty Reduction—A view of the "move-out" area.

E.S. Myers



Executive Directors, Management “recognized that during the Project preparation and appraisal, greater rigor in the application of safeguards standards should have been ensured in light of the special circumstances of this Project.” Specifically, the Bank acknowledged that “more should have been done to ensure the confidentiality and integrity of the consultative process, and more could have been done to ensure that there was greater involvement of project affected people, including indigenous groups, in the Project design.” Also, the Bank admitted that “a more thorough environmental analysis would have improved project preparation; documentation on the part of the Bank should have been better; and information on the Project should have been disclosed more promptly.”

In addition to the refinements Management had proposed before the Panel’s investigation, Management now recommended several changes, including reclassifying the Qinghai component, preparing a supplemental environmental impact assessment to include an overview of technical alternatives, initiating additional consultations with affected people under a confidential process, and preparing a separate development plan for indigenous peoples which would be made available in the written language of each ethnic group and would focus on issues pertaining to each individual ethnic group.

### The Aftermath

Despite Management’s efforts to bring the project into compliance, the Board could not agree on the proposed recommendations, and Management would have to determine compliance with the still-pending conditions of disbursement for this component. Ultimately, the Board voted against Management’s recommendation. In view of this development, the executive director representing China informed the Board of Executive Directors of his country’s decision to use its own funds and resources for the project without any financial support from the Bank. The China Western Poverty Reduction Project was subsequently renamed the Gansu and Inner Mongolia Poverty Reduction Project.

While ultimately the Bank did not fund this project, this Request demonstrates the continual need for the interchange of ideas between the Bank, the Panel, and civil society. Additionally, it illustrates how cases reviewed through the process can lead to institutional changes within the Bank so as to avoid future similar incidents. Internally, the Panel’s involvement indirectly triggered the establishment of the Bank’s Quality Assurance Group (QAG). The Bank’s president said, “QAG is providing feedback to senior management and Bank staff on the quality of our efforts, so that we can have a much bigger impact on alleviating poverty in the world’s poorest countries.”<sup>10</sup> Thereby, the Panel process led to an enlargement of the Bank’s accountability and improved the Bank’s performance. The Panel’s analysis also brought new light to the proposed application of the Bank’s social and environmental policies and called for a more rigorous application of these policies.

## The Power of the Bujagali Falls—Uganda: Third Power Project, Fourth Power Project, and Proposed Bujagali Hydropower Project

"Forget about rebel attacks and malaria. Uganda is currently reveling in its second decade of boom-time growth and steadily regaining its status as the pearl of Africa. When you stand next to the Nile river, you feel like a character from a Hemingway novel. All around sweeping stretches of tropical forests cascade down to the water's edge, where open-billed storks wade and crocodile lurk," states an Internet advertisement for white-water rafting at the Bujagali Falls in Uganda.

However, the Bujagali Falls also represent a special potential of hydropower—a source to meet Uganda's electricity requirements. According to the World Bank, at the time of the Bujagali Project's appraisal, only about 3 percent of Uganda's population had access to electricity. Recent surveys indicate that the quality and adequacy of power supply is the most binding constraint on private investment in Uganda. Ugandan private firms reported in 1998 that they incurred on average about 89 days of power outages per year. The electricity shortages are estimated to cost Uganda an annual economic loss of approximately US\$100 million. The World Bank Group's involvement was and still is crucial for the expansion of adequate and reliable electricity to support Uganda's growth. However, the Bank's investment in Uganda's hydropower sector—particularly



Uganda: Bujagali Hydropower—The Living Bujagali meeting with Inspection Panel members at the project site.

the Third and Fourth Power Projects as well as the proposed Bujagali Hydropower Project—was the subject of the 24th Request for Inspection that the Inspection Panel received since its establishment.

## Power Projects and Financial Arrangements

To develop Uganda's hydropower resources and expand its transmission and distribution system, the World Bank's lending affiliate for the poorest countries, the IDA, is supporting the Third Power Project. This project, also known as the Owen Falls Extension, included the construction of a powerhouse, the installation of two 40-megawatt generating sets, the provision of remedial works at the Owen Falls Dam, and the provision of technical assistance to the Uganda Electricity Board. The Bank's financial support consists of an original credit equivalent to US\$115 million (in 1991) and a supplemental credit equivalent to US\$33 million in 2000 (2268-UG).

The World Bank is also supporting the Fourth Power Project by providing a credit equivalent to US\$62 million in 2001 (3545-UG). The objectives of this hydropower project were to expand Uganda's power supply to meet the country's electricity demand and to strengthen its capabilities for managing the energy reform and privatization process.

The other project that was the subject of the 24th Request was the proposed Bujagali Hydropower Project. It represented a new modality of support for investments in infrastructure and involved the joint participation of the IDA and the IFC—the affiliate of the World Bank that supports private sector development. The project was the first hydropower operation of its size to be developed in sub-Saharan Africa and the first major power sector investment in Uganda to be carried out entirely by the private sector. The project, whose total cost was estimated at US\$582 million, was designed to promote Uganda's economic growth by providing power in an environmentally sustainable and efficient manner. It was also expected to mobilize private capital, promote private sector ownership, and support management of the power sector and its reform.

As conceived, the project involved the installation of a 200-megawatt run-of-the-river power plant at Bujagali Falls, a small reservoir, and a rock fill dam spillway, as well as the construction of approximately 100 kilometers of transmission lines and associated substations.

The Bank considered supporting the proposed project by issuing a partial risk guarantee as opposed to an IDA credit. The partial risk guarantee mechanism covers specific risks arising from nonperformance of sovereign contractual obligations or certain force majeure events. However, at the time the Request was filed, the World Bank Group's package of financial assistance had not been approved. This case illustrates that Requests for Inspection may be submitted at any time during the project cycle.

The Bujagali Project's financing plan envisioned an equity contribution of US\$111.3 million from a private sponsor, the AES Corporation, as well as contributions from other financiers such as the African Development Bank (US\$55 million) and export credit agencies (US\$219.5 million). The proposal envisioned that a privately owned and



operated project company, AES Nile Power (AESNP), would construct the hydropower plant on a build-own-operate-transfer basis and would sell electricity to a fully state-owned company under a 30-year power purchase agreement.

The preparation and design of the project encountered several obstacles. In particular, the cultural significance of the Bujagali Falls, its value for ecotourism, the resettlement of people living on the shore of the falls, and Uganda's legal obligations under the power purchase agreement provoked resentment toward the project from various parts of the country's civil society. Such critics in particular questioned the lack of competitive bidding for the project; the absence of official information about the project's financial arrangements; and, as a consequence, the project's potential for corruption in the development, construction, and implementation phases. The World Bank took this matter seriously and engaged its own antifraud unit to investigate the allegations.

### Submitting a Request for Inspection

Several Ugandan NGOs, meanwhile, wrote to the Bank's Management and asked for remedial actions. Because the local groups considered the Bank's answers unsatisfactory, the National Association of Professional Environmentalists of Kampala (NAPE), Uganda Save Bujagali Crusade (SBC), and other local institutions and individuals (the Requesters) submitted a Request for Inspection on July 25, 2001—almost 5 months before the Bank's Board of Executive Directors was to consider financial support for the Bujagali Hydropower Project.

The Panel registered this Request concerning the Third and Fourth Power Projects as well as the proposed Bujagali Hydropower Project on August 7, 2001. Since the Inspection Panel's jurisdiction only covers IDA and IBRD operations, the organizations also filed a claim with the compliance adviser ombudsman of the IFC.

The Requesters claimed that the World Bank's failures in the design, appraisal, and implementation of the projects had materially affected their rights and interests and were likely to jeopardize their future social, cultural, and environmental security. More specifically, they alleged that the Owen Falls Extension and the proposed implementation of the Bujagali Hydropower Project had resulted—or were likely to result—in social, economic, and environmental harm to the local population, such as negative effects on tourism activities, adverse impacts on fisheries, and increased electricity tariffs.

In its allegations of the World Bank's failures, the Request cited a failure to require an environmental assessment of the Owen Falls Extension, the lack of a cumulative environmental assessment related to the existing and proposed dams, and an inadequate involuntary resettlement plan (including inadequate compensation arrangements). The Request also alleged inadequate consultation and disclosure of information and a lack of satisfactory economic and technical analysis, including a lack of economic analysis of project alternatives, especially with respect to the Owen Falls Extension.

According to the Request, the World Bank was not in compliance with its own policies and procedures on environmental assessment (OD 4.01), involuntary resettlement (OD 4.30), natural habitats (OP/BP 4.04), safety of dams (OP 4.37), poverty reduction (OD 4.15), indigenous peoples (OD 4.20), forestry (OP 4.36), disclosure of operational



information (BP 17.50), economic evaluation of investment operations (OP 10.04), project monitoring and evaluation (OD 10.70), project supervision (OD 13.05), and management of cultural property in Bank-financed projects (OPN 11.03).

### The Inspection Panel's Involvement

Management's Response to the Request acknowledged some deficiencies that went beyond those enumerated in the Request for Inspection, and it also acknowledged that the staff appraisal report and the development credit agreement for the Third Power Project were not fully consistent in their description of the extension capacity, and that documents regarding the Third and Fourth Power Projects presented to the Bank's Board of Executive Directors did not reflect project modifications previously incorporated. Furthermore, Management's Response also noted that the required sectoral environmental assessment for the Third Power Project had never been carried out. With regard to the distribution of copies of the environmental assessment in Uganda, Management's Response acknowledged that the dissemination had not taken place until after project appraisal—in violation of the Bank's policy on environmental assessment.

The Response, however, questioned the Inspection Panel's jurisdiction regarding the Bujagali Hydropower Project because the lending instrument consisted of a partial risk guarantee as opposed to direct lending. Management further noted that the role of the guarantor is merely to appraise and assess the risks of an existing operation as opposed to cooperating with the borrower in designing and implementing an operation in the financing of a public sector project. This position, however, was not consistent with that taken by the Board in 1995, which gave the Inspection Panel jurisdiction over all projects—broadly defined in the Bank's practice—financed by the World Bank regardless of the nature of



Uganda: Bujagali Hydropower—Jaja Bujagali shows documents acknowledging him as the Living Bujagali.

the specific financial instrument used. That position was subsequently ratified in the 1996 Clarifications of the Resolution.

### World Bank Divided over Bujagali Project

After the Inspection Panel determined the Requesters' eligibility, the Board of Executive Directors approved on October 26, 2001, the Panel's recommendation that a full investigation be conducted into the allegations.

The months following the approval of an investigation by the Board were filled with uncertainty and debate over whether the World Bank would or should—despite the ongoing investigation—approve the proposed Bujagali Hydropower Project. During this period, the Ugandan media focused on the planned investments at the Bujagali Falls. On Friday, November 16, 2001, Uganda's leading daily, the *New Vision*, published a 26-page supplement with information about the World Bank's involvement in Uganda. Eight days later, the front page of Uganda's *The Monitor* read, "World Bank Divided over Bujagali Project."<sup>11</sup> However, despite the ongoing investigation, on December 28, 2001, the World Bank approved the equivalent of US\$115 million to support the Bujagali Hydropower Project.

### Spiritual Issues at Bujagali Falls

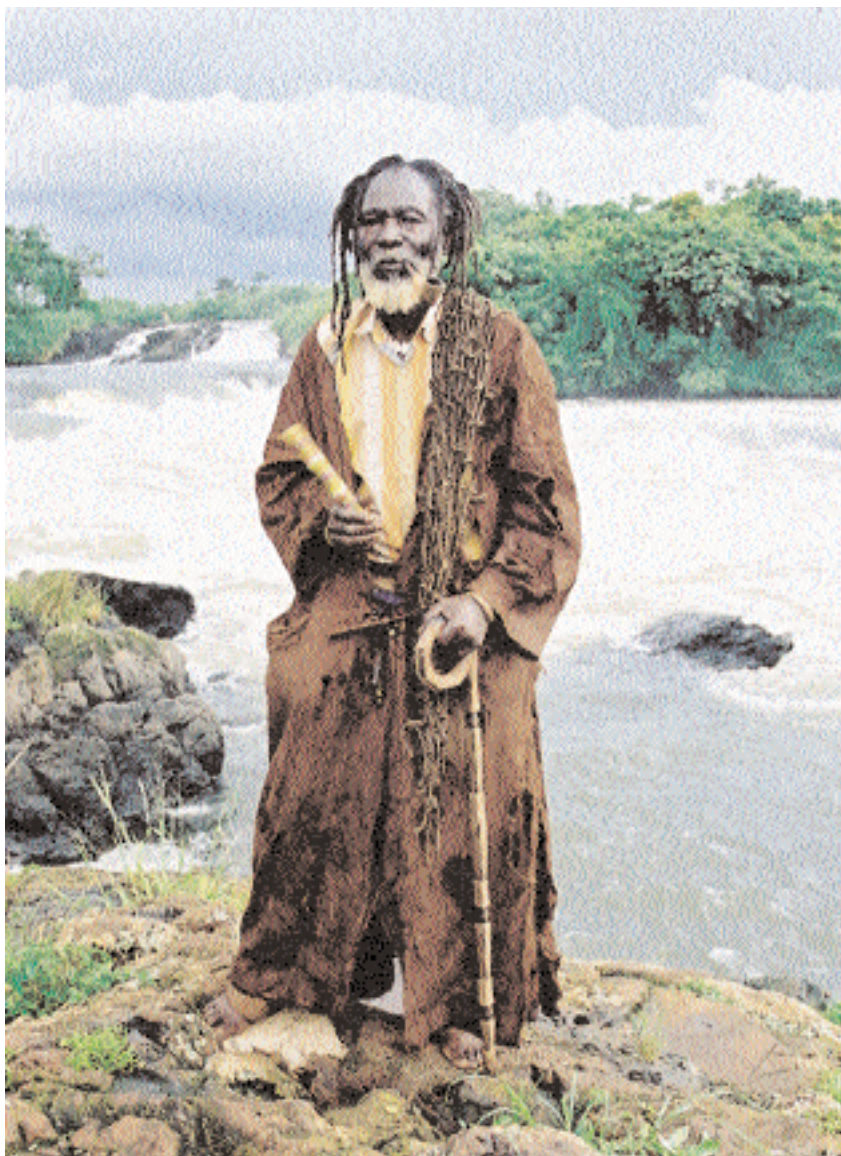
The Panel's investigation encompassed the Third Power Project (the Owen Falls Extension), including the supplemental credit, the Fourth Power Project, and the Bujagali Hydropower Project. The Panel focused on environmental, economic, social, and spiritual issues. Beyond the determination of whether the Bank had followed its own policies and procedures, the Panel also raised concerns regarding the three hydropower projects and the World Bank's contribution.

Without doubt, the Bujagali Falls site has a highly religious significance for Uganda's 2.5 million Busoga, who believe that their spirits reside in the churning waters at the Bujagali Falls. The site is considered the habitation of a high priest, Budhagali, who is the Busoga's communicator with the spirits of the Bujagali rapids.

The implementing company, AES, had previously claimed that the chief priest and spirit medium, Jaja Bujagali, had agreed to a "relocation" of the river's spirits at a public hearing. Jaja denied that claim: "If they want to relocate [spirits] to another place, will they carry the whole river or falls to that place? [Do] they really think that a [spirit] is like a goat that can be transferred from place to place?" "The spirits," he added, "would never allow the dam to be built."<sup>12</sup>

The Inspection Panel investigated the World Bank's appraisal of the cultural property with regard to the islands in the Nile River, as well as rocks or trees that were associated with recognized spiritual forces. It acknowledged the World Bank's efforts to permit consultations with local people and religious leaders, as well as the Bank's good faith in attempting to mitigate the cultural consequences of losing the Bujagali Falls. However, the Panel expressed concern that the World Bank had made no arrangements to minimize the realistic possibility of disturbance to the local communities.





E.S. Ayemba

Uganda: Bujagali Hydropower—The Living Bujagali at the Bujagali Falls.

### *Environmental Impacts*

The Panel's investigation revealed that the Bank's environmental assessment for the Third Power Project did not involve affected groups and did not use an environmental advisory panel. As a result, the Inspection Panel found the Bank only in partial compliance with the procedural aspects of the World Bank's policy on environmental assessment (OD 4.01). Under the supplemental credit and the Fourth Power Project, appropriate consultations were carried out that met the requirements of the applicable Bank policies.

The Panel's report also pointed out that the Bank had failed to perform a sectoral environmental assessment for the Third Power Project and that this failure constituted

a violation of the terms and conditions under which the Bank's Board of Executive Directors had approved the credit. In addition, the Bank did not comply with its policy on project supervision (OD 13.05) with respect to the sectoral environmental assessment because it did not address the project's cumulative impacts.

With regard to the Bujagali Hydropower Project, the Inspection Panel found the World Bank not in compliance with the policy on environmental assessment (OD 4.01). In this context, the Panel expressed concerns that a cumulative impact assessment of hydroelectric projects on the Nile was not properly completed.

In terms of dam safety issues, the Inspection Panel found the World Bank in compliance with its policy (OP 4.37).

Another topic discussed in the Panel's report concerned the protection of the Kalagala Falls as a natural habitat in view of its religious, cultural, and tourism importance. Bank staff had stressed during interviews with the Panel the importance of the Kalagala site as a valid environmental offset. However, the Inspection Panel's close examination—supported by a legal opinion issued by the Bank's legal department—revealed that the Ugandan government had assumed no obligation to preserve the Kalagala Falls as an offset. Therefore, the Bank had failed to ensure appropriate and technically justified mitigation measures, and it was not in compliance with its policy on natural habitats (OP/BP 4.04).

### *The Power Purchase Agreement*

Another controversy expressed by civil society and raised in the Request for Inspection concerned the Bujagali Project's legal framework, particularly the power purchase agreement between the government of Uganda and the private investor, AESNP. The agreement included, among other things, a clause requiring that the Ugandan government buy all the power that could potentially be produced, based on the plant's capacity, at a fixed price for 30 years, regardless of whether the power was actually produced or needed.

The Panel's report highlighted the two strategic risks of the agreement to the Ugandan Electricity Tariffs Committee and its guarantors: the shortfall in the projected demand for electricity and the nonaffordability of the electricity rates. The Panel's report suggested two possible additional risk mitigation measures to provide flexibility and a mutually acceptable way of sharing and reducing stranded costs.<sup>13</sup>

As far as consideration of project alternatives was concerned, the Panel found Management in compliance with the Bank's policies; however, the Panel noted that a greater degree of quantified analysis would have been desirable and would have added greater weight and certainty to the comparative assessments.

### *8,700 People to Be Resettled*

The Request also questioned the Bank's supervision of the resettlement of people in the project area. Some affected people voiced concern that, "unethical intimidation has been used to help guarantee local support." Moreover, the resettlement process had already started in 2000—before the Bank's approval for financing.



The Panel's investigation revealed that approximately 8,700 people had to be resettled. Because there was no evidence that minorities were involved, the Panel found the Bank's policy on indigenous peoples (OD 4.20) did not apply.

Because a significant number of affected people continuously disputed valuations of and payment for crops, the Panel expressed concerns regarding the Bank's resettlement Action Plan. It also found that the Bank's community development program set out neither long-term targets nor projects for institution building. In this respect, the Panel found the Bank not in compliance with its policy on involuntary resettlement. However, with regard to compensation, the Panel found that most of the affected people ended up better off than they were before their physical relocation and that the objective of the Bank's policy on involuntary resettlement had been achieved.

The Inspection Panel also focused on the economic and financial appraisal of the project and found that forecast of future electricity demands and the analysis of tariff affordability used by the project were flawed and, therefore, not consistent with the Bank's policy. In fact, the Panel raised several concerns relating to whether the project's appraisal gave sufficient consideration to project alternatives and to the project's downside risks and their mitigation. The Panel identified as a key area of concern the narrow range of the load forecast, although international experience and the potential for problems of affordability and distribution sector performance suggested wide tolerances. The Panel concluded that a wider range of the load forecast would have been needed to fully satisfy the requirements of the Bank's policy on economic evaluation of investment operations (OD 10.04).

The Panel's report also showed that a 10 percent per year depreciation of the Ugandan currency against the U.S. dollar could double the electricity tariff to Ugandan consumers over 7 years to the equivalent of 13–15 cents wholesale. The Panel questioned whether these tariff levels would be affordable for Uganda's population and pointed out that the effects of currency depreciation should have formed part of the risk analysis with regard to affordability in the project appraisal document.

The Panel also found that a thorough examination of the institutional risk of a delayed or under-performing privatization of the distribution system and its impact on the robustness of the Bujagali Project's affordability was missing from the economic appraisal, although such an examination was needed for full compliance with OD 10.04.

### ***Disclosure of Information and Consultations***

The Request also alleged the Bank's failure to disclose relevant documents related to the projects. The Panel found that, by not disclosing the "Economic Review of Bujagali Hydropower Project," a report of November 2001, the Bank was in noncompliance with BP 17.50 on disclosure of operational information.

The Inspection Panel addressed the nondisclosure of the power purchase agreement between the private company, AES, and the Ugandan government in its report. Although no specific requirements exist for the World Bank to disclose information to which it is not a party, the Panel noted that the disclosure of the document was critical for the public to understand and participate in an informed discussion.

Also, the Inspection Panel requested that the Board of Executive Directors clarify the Bank's policy on disclosure of operational information relating to Bank-supported private sector investments.

The Inspection Panel found no evidence of serious efforts on the part of the World Bank to actively engage with project-affected groups or NGOs and accordingly found the Bank not in compliance with its policy on environmental assessment with respect to public consultations regarding the Fourth Power Project.

### *The Aftermath*

The Bank's Management responded to the Panel's findings and proposed in its report specific actions that would remedy any cases of noncompliance.

The most notable outcome was the Bank's commitment to amend the agreement between Uganda and the Bank regarding the protection of the Kalagala Falls. The Ugandan government also reaffirmed its commitment not to develop the Kalagala Falls for hydropower but to set it aside exclusively as a natural habitat and for tourism.

In response to the Panel's findings, Management agreed to provide support for multistakeholder consultations on the three hydropower projects and to promote informed and comprehensive discussion. The World Bank also affirmed support for a strategic and sectoral environmental assessment, as well as social assessments that would be a prerequisite to any future World Bank financing of investments in Uganda's power generation facilities. The Bank would also monitor future growth in electricity demand and the implementation of agreements to be signed with tourism operators. The Bank would further support measures to address reemployment of Ugandan citizens affected by loss of tourism-related jobs. The Bank agreed to assist the government in examining alternatives in power generation and proposed financing of geothermal exploration and possible drilling in western Ugandan areas.

With regard to the social aspects addressed by the Inspection Panel, the Bank agreed to request that the private company, AESNP, conduct surveys that would support implementing and monitoring the project's community development Action Plan.

Although the Panel did not find violations of Bank policies that would warrant the termination of the World Bank Group support for the project, the project's implementation has been delayed because of some issues identified by the Panel in its report. Through the Panel's involvement, the Bank was making notable progress toward achieving full compliance with its own policies and procedures.

## Breaking New Grounds: The Pipeline of Hope?— Chad: Petroleum Development Project, Management of the Petroleum Economy Project, and Petroleum Sector Management Capacity Building Project

“Some have regretted the controversy which surrounded this project. But we feel that the international debate was necessary and valuable, and that the project is sounder as a result. Having to give clear answers to tough questions—even when we are confident that the project design should speak for itself—was a useful discipline,” said Callisto Madavo (then the World Bank’s vice president for the Africa Region) in October 2000 at the groundbreaking ceremony for the pipeline construction in Komé, Chad.<sup>14</sup>

Without doubt, the Chad–Cameroon Pipeline Project, the largest private sector investment on the African continent, initiated an intense debate involving local communities, international NGOs, and academics. The Project generated two Requests for Inspection: the first from a local group and individuals in Chad in March 2001 and the second from a local group and individuals in Cameroon in September 2002. The first Request from Chad concerned the Chad Petroleum Development and Pipeline Project, the Management of the Petroleum Economy Project, and the Petroleum Sector Management Capacity Building Project. The Board approved the Panel’s recommendation



Cameroon: The Pipeline Project—Panel Chairman standing in the middle of the pipeline corridor near Yaoundé.



of an investigation and considered the Panel's Investigation Report in September 2002. The Board also approved an investigation in response to the Panel's recommendation on the Cameroon Request, and the Panel's Investigation Report will be considered by the Board in late July 2003. The case study in this book focuses on the Chad Investigation.

### First-of-Its-Kind Program

According to World Bank literature, the Chad–Cameroon Petroleum Development and Pipeline Project set an unprecedented framework to transform oil revenue wealth into direct benefits for the respective national economies. The project aimed at serving as a new model with the potential to reduce poverty and increase public investments in health, education, and basic infrastructure.

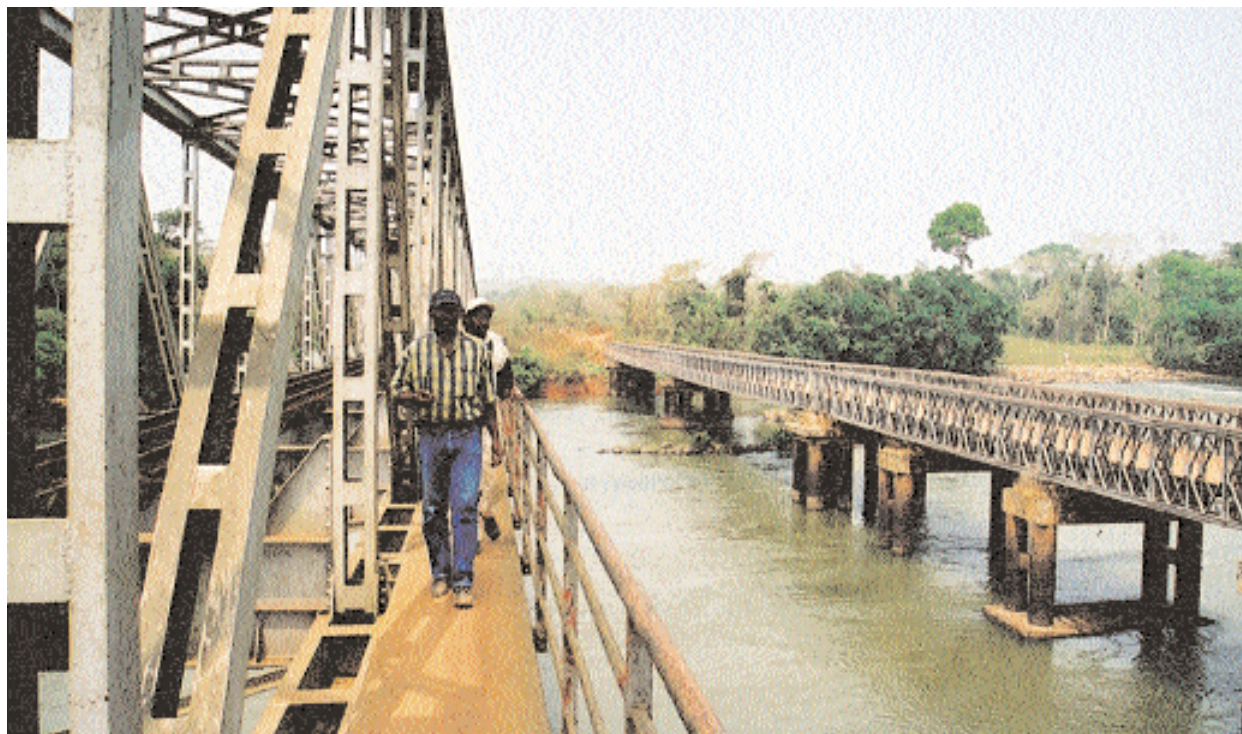
However, as history shows, natural resource booms are difficult to manage. Therefore, the pipeline project included a first-of-its-kind program to direct new revenues to support economic and social development in Chad. Approval of World Bank funding depended on clear commitments from the government that resources would be used to improve the lives of the poor. Chad's parliament approved a law that set out the government's poverty-reduction objectives and detailed arrangements for revenue use. For instance, under the law, out of the net revenues allocated to Chad, 10 percent of the royalties and dividends were designated to be held in trust for future generations. Five percent were earmarked for regional development in the oil-producing area, and a substantial proportion of the royalties was devoted to education services, health services, social services, rural development, infrastructure, and environmental and water resource management.<sup>15</sup> The new approach—to include revenue management commitments as a condition for the project's approval—represented an innovative modality for the international development arena.

Chad's oil wealth is located in the southern part of the country, in the Doba Basin. The area is estimated to contain about 900 million barrels of recoverable oil. As envisioned by the pipeline project appraisal documents, an international consortium of oil companies would develop oil fields in the basin by drilling some 300 wells and constructing a 1,070-kilometer (663-mile) underground pipeline to offshore oil-loading facilities on Cameroon's Atlantic Coast. During peak production, 225,000 barrels of oil could be produced daily. Depending on world oil prices, the pipeline project could yield up to US\$2 billion in revenues for Chad and US\$500 million for Cameroon over a 25-year production period, thereby increasing current annual government revenues by 45–50 percent per year.

### Private and Public Sector Investments—the Package of Support

Private sector investment is fundamental for this project. A consortium, consisting of ExxonMobil, Petronas, and Chevron, covered almost all of the US\$3.7 billion pipeline project costs. The World Bank Group contributed only 4 percent of the total expenses. The IBRD provided loans of US\$39.5 million for Chad and US\$53.5 million for





E.S. Ayemba

Cameroon: The Pipeline Project—Right: A project-built bridge over the Lom River. At the left is a railway bridge with walking path.

Cameroon to finance the governments' equity share in the project. The IFC, the private sector affiliate of the World Bank Group, provided a loan of US\$100 million to the joint-venture pipeline companies, as well as up to US\$100 million in syndicated loans to the oil transportation companies. The IFC's involvement—or the participation of any other financier—does not remove the operation from the purview of the Inspection Panel; the Bank's involvement is at all times subject to the Panel's process notwithstanding the involvement of actors that are not included in the Panel's mandate.

In addition, the IDA, the World Bank's lending affiliate for the poorest countries, granted a credit equivalent to US\$23.7 million for the Petroleum Sector Capacity Building Project and a credit equivalent to US\$5.8 million to support the Management of the Petroleum Economy Project. These credits aimed to strengthen Chad's (and Cameroon's) institutional framework related to the pipeline project, including environmental management and monitoring.

### International Public Debate

Despite—or because of—the project's new model, the project provoked many controversial debates within Chad and Cameroon, as well as around the world. While acknowledging the discussion surrounding the project, World Bank President James Wolfensohn expressed his strong support: "The Chad–Cameroon project reflects an unprecedented effort between the Bank Group, the consortium of private companies and the two governments. While some may still have doubts, I believe that the hard work of specialists from the Bank Group, the private companies and the two countries,

combined with the strong participation of civil society within Chad and Cameroon and around the world, have made this a better, stronger project. The real challenge is about to begin. We intend to pursue it, with our partners, with the same openness and thoroughness we have brought to the process so far."<sup>16</sup>

NGOs both in Chad and around the world, as well as civil society groups and academics, participated in a very heated debate. U.S. law schools assessed Chad's law on revenue management. Many international NGOs posted their positions regarding the pipeline project on the Internet and launched campaigns against the pipeline project through the press. A full-page advertisement in the *New York Times*, an appeal to stop the project, was only one example of the activities' dimensions. In the fall of 2000 and January 2001, the international media reported that the government of Chad had purchased weapons with part of a US\$25 million bonus paid by Chevron and Petronas after they joined the consortium of oil companies in mid-2000. Chad had thus broken its promise to the Bank on how it would spend its income from the oil project. The World Bank reacted immediately and froze the debt-relief program for Chad until the government stopped further spending of oil funds and made all government expenditures more transparent.

The intense discussion that took place during the project design phase also focused on the significant environmental risks of the pipeline. National experts, Bank Group specialists, and consortium personnel provided material for a 19-volume Environmental Impact Assessment and Management Plan. For 18 months, local and international organizations exchanged views with World Bank staff members to ensure that the project planners were considering the full range of potential risks and applying the appropriate standards of environmental and social protection. Nevertheless, the outcome was soon under fire by international critics: 200 organizations in 55 countries called for a World Bank moratorium, arguing that additional time was needed to strengthen local institutional capacity and create conditions in which a project of that magnitude and risk could be carried out in an environmentally sustainable and socially just manner.

The public debate also shed light on Chad's human rights situation. Amnesty International released information about an opposition leader in Chad's parliament, Ngarleje Yorongar, who was jailed and reportedly tortured after he spoke out against the pipeline project in May 2001. World Bank President James Wolfensohn himself telephoned President Idriss Deby, and Mr. Yorongar was released from prison immediately afterward.

To address some of the concerns of civil society, the Bank established an international advisory group (IAG) in February 2001 consisting of reputable international experts to monitor the project, with particular attention to social and environmental safeguards. The IAG's mandate also included advising the Bank and the two governments on the overall progress in the project's implementation, with special attention to the key objective of reducing poverty in Chad. Nevertheless, frustration about the situation constantly arose among affected people in Chad. The so-called Pipeline of Hope, which was meant to serve as a model for sustainable development on the African continent, was at stake.

## Receiving the Request for Inspection

Against this background scenario, the Inspection Panel received, on March 22, 2001, a Request for Inspection signed by Ngarlely Yorongar, who was acting on behalf of more than 100 residents living in the vicinity of the three oil fields in the Doba Basin of southern Chad. “We hold the Bank accountable for what it has done and/or omitted to do in this case. If the Bank had taken our observations into account, we would not be in the present mess,” read the Request, clearly marking the people’s demand for the Bank’s accountability.

In the Request, the local residents alleged that the Bank’s failure to comply with its policies and procedures would result in adverse direct or indirect impacts on their communities. The Request identified the impacts as pollution of water sources, degradation of the environment, lack of compensation for expropriation, violations of human rights, and threats to cultural property.

The Request accused the Bank of failing to conduct proper consultations and not including the NGOs in the consultation process. Reportedly, the Bank had not adequately disclosed all relevant information to the local communities. The Request also declared that the Bank had neither ensured that the borrower conducted an overall satisfactory assessment of possible environmental impacts nor ensured that the implementing agencies compensated people for the loss of medicinal plants or property during project implementation. Regarding the oil revenue management, the Request claimed that the Bank had “ridden roughshod over the legislation” in Chad, which had designated only a “laughably small quota” of the revenues for the production zone. Moreover, the Requesters claimed that the Bank’s monitoring and supervision efforts were insufficient.

Specifically, the Request alleged the Bank’s noncompliance with its own policies and procedures on environmental assessment (OD 4.01), involuntary resettlement (OD 4.30), natural habitats (OP/BP 4.04), pest management (OP 4.09), poverty reduction (OD 4.15), indigenous peoples (OD 4.20), forestry (OP 4.36), disclosure of operational information (BP 17.50), economic evaluation of investment operations (OP 10.04), project monitoring and evaluation (OD 10.70), project supervision (OD 14.05), and management of cultural property in Bank-financed projects (OPN 11.03).

## Processing the Request

The processing of the Request, which was filed by an opposition leader, coincided with the electoral and post-election period in Chad. Both the UNDP and the U.S. Department of State did not recommend traveling to Chad at the initially planned time for the Panel’s mission to ascertain the eligibility of the Request and the Requesters. Therefore, the Panel’s recommendation to the Board of whether to conduct a full investigation was delayed for 90 days, and the Panel’s field visit to the project site finally took place in August 2001.



After determining that both the Requesters and the Request met the eligibility criteria set forth in the Resolution, the Panel recommended an investigation to the Board of Executive Directors. The Board approved that recommendation on October 1, 2001.

The Panel then returned to the project area in January 2002 and met with Mr. Yorongar and with other people living along the pipeline route, as well as with government officials and NGO representatives. This visit particularly revealed the high degree of exasperation and distrust among the affected people with respect to the pipeline project. “The people’s reaction is understandable,” said the Panel’s chairman and lead inspector, Edward S. Ayensu, after his trip to Chad in an interview with this author. “We need to listen to them carefully. That is part of our work at the Inspection Panel.” Mr. Ayensu’s strong commitment was highly appreciated in the field: “Finally, somebody listens to us. And I am sure, Mr. Ayensu will make our voices heard,” said a local resident in Chad.

### The Panel’s Investigation Report

The Panel then investigated the issues raised in the Request, and, in addition to the field visit, the Panel researched Bank files and conducted interviews with Bank staff members and consultants. Regarding the environmental concerns, the Panel found that the Bank was not in compliance with its policy on environmental assessment (OD 4.01), because it had neither considered the spatio-temporal aspects of the project nor completed a cumulative impact assessment and regional environmental assessment for the impacts on the region as a whole. In addition, the Panel did not find any relevant records reflecting the work or conclusions of an external advisory panel, which would have been required under the Bank’s policy. Therefore, the Panel found that the Bank did not comply with OD 4.01 in this respect.

The Request alleged that the Bank did not comply with its forestry policy (OP 4.31); however, the Panel was satisfied that the project’s design avoided or minimized the clearing of riverbank gallery forest. The Panel found the Bank in compliance with the related policy on pest management (OD 4.09). However, the Panel’s investigation highlighted the need to ensure the provision of safe and clean water to those living in the project area.



Chad: The Pipeline Project—Villagers in southern Chad gathering for discussion with the Inspection Panel.

E.S. Ayensu



Although the Bank had acknowledged the project's complexity, the Panel found only a very brief discussion of sustainability and risks in Bank documents. Therefore, the Panel considered the Bank not in compliance with its policy on environmental assessment (OD 4.01) in this respect.

### *Resettling 80,000 Residents?*

Another question raised in the Request pertained to possible involuntary resettlement: "Are the 80,000 to 100,000 people inhabiting this district to be displaced?" Resettlement was a profound concern for the local residents. In this regard, the Panel's report confirmed the pipeline project's difference from other oil development projects. Only about 50 households had to be moved to new villages and they had successfully been accommodated within existing villages and lineage-based land resources.

Concerning the alleged failure to compensate affected persons, the Panel found the applied method (compensating the concerned community rather than the individual for fallow land) to be sensible and consistent with applicable Bank policies. With respect to the allegations of noncompliance with the Bank's policy on indigenous peoples, the Panel found that this policy did not apply to this project because the people living along the pipeline in Chad did not constitute indigenous peoples.

### *Reallocation of Revenues and the Panel's Access to Information*

Because the Inspection Panel did not find any analysis that could have underpinned the justification of the allocation of revenues among Chad, Cameroon, and the consortium, it raised concerns about the adequacy of allocation of revenues to Chad.



Anonymous

Chad: The Pipeline Project—Pipeline construction staff members explain details of the oil prospecting to the inspectors.

Unfortunately, it later became clear that the Bank's Management had deprived the Panel from accessing some important documents with regard to the oil revenue shares for Chad. Although the Resolution establishing the Panel provides for the Panel to have access to all "pertinent records," this clause had been disregarded by the Bank's Management. As a result of the Board's discussion of the Panel's and Management's reports, the Bank's general counsel issued a legal opinion in early October 2002 confirming that "Inspection Panel members may have access to pertinent proprietary information in the course of their work" to ensure strict observance of the legal framework as well as to ensure the Panel's integrity and future investigations.

### *Increasing Poverty Problems*

The Panel also confirmed serious concerns about the Bank's failure to assist in the timely development and strengthening of the institutional capabilities of the government of Chad to monitor the project effectively before revenues were expected to flow. The capacity building project was running significantly behind schedule, while oil field and pipeline development were running ahead of schedule. In the Panel's view, these delays could compromise the attainment of poverty reduction goals in the later stages of construction and the early stages of operation of the pipeline project: "Obviously, Management must renew and invigorate its efforts to ensure that the structures created are fully operational before the expected earnings arrive." The Inspection Panel added: "Furthermore, it was not obvious . . . that there is sufficient communication and coordination between the two projects to rule out the one possibility of their becoming poverty-increasing problems."

### *Presence of Security Forces*

The Panel's report also revealed that the Bank's consultations were—at least prior to 1997—conducted in the presence of security forces, which was certainly incompatible with Bank policy requirements. In its report, the Panel emphasized once again that full and informed consultation was impossible if those consulted perceive that they could be penalized for expressing their opposition to or honest opinions about a Bank-financed project. However, the Panel recognized that, since 1999, the Bank has made significant efforts and encouraged frequent consultations with local communities and civil society in an environment more conducive to an open exchange.

### *Human Rights*

The Request also alleged violations of Bank directives on proper governance and in regard to human rights and thereby touched a delicate topic for the Bank as well as for the Panel. The Articles of Agreement of the World Bank state that "only economic considerations shall be relevant to [the Bank's] decisions." As two legal opinions (in 1990 and 1995) by the Bank's general counsel and senior vice president state with respect to human rights, the prohibition of political activities in the Bank's work translates into a prohibition to interfere in a manner in which a country deals with political human rights, as long as this has no demonstrable effect on the country's economy.



A. Mino

Cameroon: The Pipeline Project—Pump Station # 3 in Belabo.

However, in the case of the pipeline project in Chad, the Inspection Panel felt for the first time the obligation to examine whether human rights issues as violations of proper governance would impede the implementation of the project in a manner that was incompatible with Bank policies. The Panel examined several reports addressing the human rights situation in Chad and the extensive exchange of correspondence between the Bank and local and international NGOs. It concluded that this situation was “far from ideal.”

### *Breaking New Ground*

The Inspection Panel’s Investigation Report broke new ground. For the first time, the Bank’s Board of Executive Directors had to consider human rights in the context of a specific operation. The Panel’s Chairman, Edward S. Ayensu, stated during a presentation to the Bank’s Board of Executive Directors on September 12, 2002:

Given the world-wide attention to the human rights situation in Chad . . . and the fact that this was an issue raised in the Request for Inspection by a Requester who alleged that there were human rights violations in the country, and that he was tortured because of his opposition to the conduct of the project, the Panel was obliged to examine the situation of human rights and governance in the light of Bank policies. We are convinced that the approach taken in our report, which finds human rights implicitly embedded in various policies of the Bank, is within the boundaries of the Panel’s jurisdiction. The Panel is pleased that by-and-large Bank Management agrees with the Panel’s approach to this sensitive subject and has pledged to continue to monitor the developments in this area within the context of the applicable Bank policies.<sup>17</sup>



Mr. Ayensu then added:

The Panel . . . believes that the human rights situation in Chad exemplifies the need for the Bank to be more forthcoming about articulating its role in promoting rights within the countries in which it operates . . . [and] perhaps this case should lead . . . to study [of] the wider ramifications of human rights violations as these relate to the overall success or failure of policy compliance in future Bank-financed projects.

Thereby, the Panel put more emphasis on human rights considerations by noting that they are embedded in Bank policies and by supporting the ongoing internal discussion to reconsider the Bank's position concerning respect for human rights in its borrowing countries.

### Beneficial Effects at the Project Level

Most notably, the Panel's work had beneficial effects at the project level because the Bank's Management responded to the Panel's findings with an Action Plan. The proposed activities included the intensification of the Bank's commitment to work with the agencies in Chad to address the environmental and social concerns. The Bank also agreed to intensify its monitoring and supervision efforts, strengthen the Bank's field presence in Chad, and pursue the establishment of a permanent framework for dialogue. To ensure appropriate consultation and disclosure of information, the Bank focused on upgrading radio station facilities in southern Chad and organized regular information caravans to the villages in the project area. The Bank also agreed to address the implementation delays and to support accelerated actions to improve the situation on the ground.

After the Panel's investigation, the Bank's president praised the Panel's positive effects at the project level: "The findings of the Panel will lead to improvements in the ongoing implementation of this challenging project, which has enormous potential to bring great benefits to the people of Chad and Cameroon."<sup>18</sup>

### Notes

1. See "Presidents Inaugurate Yacyretá Dam Amid Ongoing Problems," *NotiSur—Latin American Affairs* 8, no. 24 (July 10, 1998). Available at <<http://ssdc.ucsd.edu/news/notisur/h98/notisur.19980710.html>>.
2. See International Rivers Network, "Paraguayan Dam Victims File Complaint with Development Banks," press release, September 28, 1996. Available at <<http://www.hartford-hwp.com/archives/42/003.html>>.
3. See *Review of Present Project Problems and Assessment of Action Plans* (September 16, 1997), paragraphs 213 and 220.
4. See Panel Report at paragraph 256 (page 58).
5. See "Presidents Inaugurate Yacyretá Dam Amid Ongoing Problems," *NotiSur—Latin American Affairs* 8, no. 24 (July 10, 1998). Available at <<http://ssdc.ucsd.edu/news/notisur/h98/notisur.19980710.html>>.



6. See "World Bank Discusses Report of Advisory Panel on Yacyretá Hydro-Electric Project," News Release No. 2000/179/LAC, January 14, 2000. Available at <<http://www.worldbank.org/WBSITE/EXTERNAL/NEWS/0,,contentMDK:20013776~menuPK:34466~pagePK:34370~piPK:34424~theSitePK:4607,00.html>>.
7. See "Statement by Elias Diaz Peña (Sobrevivencia) to the World Bank Board of Executive Directors," February 3, 1998. Available at <<http://www.ciel.org/lfi/elias.html>>.
8. See "TIN Special Report: Development and Population Transfer in Qinghai," April 27, 1999. Available at <<http://www.tibetinfo.net/news-updates/nu270499.htm>>.
9. See office memorandum from Ko-Yung Tung to Jim MacNeill, April 19, 2000, p. 3.
10. See QAG homepage. Available at <<http://web.worldbank.org/WBSITE/EXTERNAL/PROJECTS/QAG/0,,contentMDK:20064785~menuPK:114863~pagePK:109615~piPK:109635~theSitePK:109609,00.html>>.
11. See the *Monitor*, November 24, 2001, p.1.
12. See Marc Lacey, "Traditional Spirits Block a \$500 Million Dam Plan in Uganda," *New York Times*, September 13, 2001. Available at <<http://forests.org/archive/africa/trspbloc.htm>>.
13. See Panel Report paragraphs 60 and 216.
14. See speech by Callisto Madavo, Vice President, Africa Region, World Bank, Groundbreaking Ceremonies Chad-Cameroon Pipeline Project, October 20, 2000, Kribi, Cameroon. Available at <<http://www.worldbank.org/afr/ccproj/news/index.htm>>.
15. For further information, see Project Appraisal Document, Report No. 19343, Annex 11, April 13, 2000, p. 96.
16. See "World Bank Group Approves Support for Chad-Cameroon Petroleum Development and Pipeline Project," News Release No. 2000/395/AFR, June 6, 2000. Available at <<http://web.worldbank.org/WBSITE/EXTERNAL/NEWS/0,,contentMDK:20058876~menuPK:34465~pagePK:34370~piPK:34424~theSitePK:4607,00.html>>.
17. See Edward S. Ayensu, "Remarks of the Chairman of the Inspection Panel to the Board of Executive Directors on the Chad-Cameroon Pipeline Projects," September 12, 2002. Available at <<http://www.inspectionpanel.org>>.
18. See United Nations Office for the Coordination of Humanitarian Affairs, "Cameroon-Chad: World Bank Sticks with Pipeline Project," Integrated Regional Information Network. Available at <<http://geoweb.fao.org/News/00016489.HTM>>.



# Annexes

## ANNEX I

### The Inspection Panel Members



**Ernst-Günther Bröder** is the former president of the European Investment Bank (EIB), in Luxembourg (1984–93), where he also served as a director (1980–84). He held several supervisory and consultative positions in international banks and other institutions. Mr. Bröder was a governor of the European Bank for Reconstruction and Development in London (1991–93), and a member of the special advisory group for the Asian Development Bank in Manila (1981–82). He is a member of the Panel of Conciliators for the International Centre for Settlement of Investment Disputes in Washington, D.C. He started his professional career on the staff of the Managing Board of the Bayer Corporation (1956–61). He then served at the World Bank in the Technical Operations Department's Industry Division (1961–64). Before being appointed president of the EIB, he served (1964–84) in the Kreditanstalt für Wiederaufbau in Frankfurt, where he was a member of the Managing Board (1975–84) and its spokesman (1980–84). He has written and coauthored several books and articles on financial and economic subjects. Mr. Bröder holds a doctorate in economics from the University of Freiburg, and studied political and natural sciences at the Universities of Cologne, Mainz, and Paris. Under the terms of the Resolution that established the Panel, Mr. Bröder served as the Inspection Panel's first chairman.



**Richard E. Bissell** is the executive director of the Policy Division at the National Academy of Sciences in Washington, D.C. Before serving on the Panel, he was a senior official with the U.S. Agency for International Development (USAID) (1986–93). He served at USAID first as head of policy and later as the head of the Bureau of Science and Technology. He was previously a professor at several U.S. universities, including Georgetown University and the University of Pennsylvania. Between 1984 and 1986, he was editor of *The Washington Quarterly*, and was previously managing editor of ORBIS between 1976 and 1982. His many publications include both books and articles on political economy in developing countries. He was educated at Stanford University and earned his Ph.D. at the Fletcher School of Law and Diplomacy, Tufts University.



**Alvaro Umaña-Quesada** served as Panel chairman from August 1, 1997 to July 31, 1998. Mr. Umaña was a professor and director of the Natural Resources Management Program at Instituto Centroamericano de Administración de Empresas (INCAE), a Latin American graduate school of management. He served as Costa Rica's first minister of natural

resources (1986–90) under President Oscar Arias Sanchez. Mr. Umaña is a member of the Board of the Rockefeller Foundation and the World Resources Institute. He has published several books and many technical articles on energy, economics of natural resources, and the environment. Mr. Umaña is a private entrepreneur in the ecotourism and conservation areas and is involved in sustainable wildlife reproduction and export. Mr. Umaña holds a Ph.D. in environmental engineering and a master's degree in economics from Stanford University. He also holds a master's degree in environmental pollution control and a bachelor's degree in physics from Pennsylvania State University. He is currently Head of UNDP's Environmentally Sustainable Development Group.



**Jim MacNeill**, a Canadian national, was appointed to the Inspection Panel in August 1997. He is a policy adviser on the environment, energy, management, and sustainable development to international organizations, governments, and industry. He is chairman emeritus of the International Institute of Sustainable Development and is a member of the boards of the Woods Hole Research Center and the Wuppertal Institute on Climate and Energy Policy. He is also a member of the Jury of the Volvo Environmental Prize. He was secretary general of the World Commission on the Environment and Development (the Brundtland Commission) and lead author of the Brundtland Commission's world-acclaimed report, "Our Common Future." He served for 7 years as the director of environment for the Organisation for Economic Co-operation and Development. Earlier, he was a deputy minister in the government of Canada. Mr. MacNeill holds a graduate diploma in economics and political science from the University of Stockholm and bachelor's degrees in science (math and physics) and mechanical engineering from Saskatchewan University. He is the author of many books and articles and is the recipient of a number of awards—national and international—including the Order of Canada, his country's highest honor.



**Edward S. Ayensu**, a Ghanaian national, chairs the Inspection Panel and was appointed to the Panel in August 1998. Professor Ayensu is chairman of the Council for Scientific and Industrial Research of Ghana, president of the Pan-African Union for Science and Technology, and international vice chairman of the International Institute for Sustainable Development. He is an international development adviser on environment, energy, mining, housing, biotechnology, and agriculture. He was senior adviser to the president and director for the Central Projects Department of the African Development Bank. He was formerly the vice chairman of the Scientific and Technical Advisory Panel of the Global Environment Facility administered by the World Bank, United Nations Development Programme, and United Nations Environment Programme. He was also a member of the Energy Sector Management Assistance Program Consultative Group, which is administered by the World Bank and UNDP, and a member of the Senior Advisory Council of the Global Environmental Facility. He held many senior positions, including director of Biological Conservation and senior scientist during his 20 years at the Smithsonian Institution in Washington, D.C. He was secretary-general of the International Union of Biological Sciences for 13 years and founding chairman of the African Biosciences Network. A prolific writer and photographer, Pro-



fessor Ayensu has written 19 books and numerous scientific and technical papers. He is coauthor of the publication *HIV/AIDS: Knowledge Protects; New and Specific Approaches to Contain the Spread of HIV in Developing Countries, 2001*. He obtained his doctorate degree from the University of London and was appointed a visiting fellow at Wolfson College, Oxford University. He is a distinguished professor of the University of Ghana and for many years has been a member of the Visiting Committee at Harvard University. He is a fellow of the Ghana Academy of Arts and Sciences, foreign fellow of the Indian National Science Academy, fellow of the Linnaean Society of London, fellow of the Third World Academy of Sciences, founding fellow of the African Academy of Sciences, and fellow of the New York Academy of Sciences. He was twice the recipient of the Ghana National Science Award and has received the U.S. National Museum of Natural History Outstanding Award. He received the Outstanding Statesman Award in Ghana during the millennium celebrations.



**Maartje van Putten**, a Dutch national, was appointed to the Panel in October 1999. Ms. van Putten was a member of the European Parliament between 1989 and 1999. She has been a highly active member of the Committee on Development and Cooperation for the past 10 years. Ms. van Putten has published widely on fair trade, on development aid for Asia and Latin America, on the European Union (EU) program for tropical forests, on European policies toward indigenous peoples, and on the effects of the General Agreement on Tariffs and Trade/Uruguay Round on developing countries. She is active with NGOs and is extremely committed to the cause of development. Ms. van Putten has worked closely with the World Wildlife Fund European policy office as a key political partner to promote better EU conservation and sustainable development policies. She was also a consistently active member of the ACP (African, Caribbean, and Pacific Group)–EU Joint Assembly. Ms. van Putten was a freelance multimedia journalist for most of her professional career and was a senior fellow of the Evert Vermeer Foundation (1981–89). She is the author of many articles and books on globalization, international division of labor, and gender issues. Currently the vice chair of the European Centre of Development Policy Management, Ms. van Putten is president of the Board of European Network of Street Children Worldwide. She holds an HBO (bachelor's) degree in community development from Sociale Academie Amsterdam, and a master's degree in social sector management from Protestantse Voortgezette Opleiding, Amsterdam. At present, she is working on a dissertation at the Catholic University of Tilburg in the Netherlands on the subject of "Compliance Mechanisms for Both Multilateral Organizations and the Private Sector."



**Edith Brown Weiss** was appointed to the Panel in September 2002 and is an outstanding legal scholar who has taught and published widely on issues of international law and global policies, including environmental and compliance issues. She is the Francis Cabell Brown Professor of International Law at Georgetown University Law Center, where she has

been on the faculty since 1978. Before Georgetown, she was a professor at Princeton University. Ms. Brown Weiss has won many prizes for her work, including the Elizabeth Haub prize from the Free University of Brussels and the International Union for the Conservation of Nature (IUCN) for international environmental law, and has received many awards for her books and articles. She served as president of the American Society of International Law and as associate general counsel for the U.S. Environmental Protection Agency, where she established the Division of International Law. She is a member of many editorial boards, including those of the American Journal of International Law and the Journal of International Economic Law. Ms. Brown Weiss has been a board member, trustee, or adviser for the Japanese Institute for Global Environmental Strategies, the Cousteau Society, the Center for International Environmental Law, and the National Center for Atmospheric Research, among others. Ms. Brown Weiss has been a special legal adviser to the North American Commission on Environmental Cooperation. She has been a member of the U.S. National Academy of Sciences' Commission on Geosciences, Environment, and Resources; the Water Science and Technology Board; and the Committee on Sustainable Water Supplies in the Middle East. She is an elected member of the American Law Institute, the Council on Foreign Relations, and the IUCN Commission on Environmental Law. Ms. Brown Weiss received a bachelor's degree from Stanford University with Great Distinction, an LL.B. (J.D.) from Harvard Law School, a Ph.D. in political science from the University of California at Berkeley, and an honorary doctor of laws from Chicago-Kent College of Law.

**Mr. Eduardo G. Abbott**, a Chilean national, serves as the Inspection Panel's Executive Secretary. Pursuant to paragraph 11 of the Resolution, the World Bank's President appointed him as Executive Secretary to the Panel on April 4, 1994, after consultation with the Executive Directors. Being head of the Secretariat since the Panel's establishment, Mr. Abbott has been instrumental in the development of the Panel as an institution. He has chaired several conferences related to the Panel's work and has served as an adviser to other institutions during the establishment and review of similar inspection functions. Preceding his assignment with the Inspection Panel, he was Senior Counsel, Operational Policy, a position that was re-designated as Principal Counsel, Operational Policy in 1993. In this position, Mr. Abbott collaborated with the Central Operations Department (now Operational Policy and Country Services Department) in preparing new Operational Directives and in revising older Policy Statements. In addition to his Operational Policy responsibilities, Mr. Abbott has also worked in the Latin America and Europe and Central Asia Divisions of the World Bank's Legal Department. Mr. Abbott joined the Bank in July 1978 as Assistant Counsel and was assigned to the Division in charge of Latin America, the Caribbean, and West Africa. A year later, he was promoted to Counsel, and in the following year to Senior Counsel. Prior to his career at the World Bank, Mr. Abbott worked at the U.S. Library of Congress as Legal Specialist in foreign law. In Chile, he had an active legal practice providing legal advice to a number of trade unions, as well as to industrial and financial institutions. He was assistant professor in the Law School of the University of Chile in Valparaiso; Mr. Abbott also served as a lecturer in the School of Social work of the Catholic University of Valparaiso, Chile, where he had earlier graduated from the Law School. After leaving Chile, he pursued his graduate studies at the University of Wisconsin at Madison, where he obtained his Masters of Science Degree in Legal Institutions.



## ANNEX II

# Panel Activities in Fiscal Year 2003

### A. Formal Requests Received

*Request No. 27—Cameroon: Petroleum Development and Pipeline Project (Loan No. 7020-CM) and Petroleum Environment Capacity Enhancement (CAPECE) Project (Credit No. 3372-CM)*

#### THE REQUEST

On September 25, 2002, the Panel received a Request for Inspection, dated September 20, 2002, on the Petroleum Development Pipeline Project and the Petroleum Environment Capacity Enhancement Project. The Request was submitted by the Center for the Environment and Development (CED), a local NGO based in Yaoundé, acting on behalf of a number of people living along the pipeline route in Cameroon, and by a number of individuals, including workers or former workers of Cameroon Oil Transportation Company (COTCO) and its contractors, all residents of the Republic of Cameroon. The Request also included a list of 21 signatories who asked that their names remain confidential with the Panel.

The Requesters claimed that the rights and interests of the people living in the areas of the pipeline project as well as the environment had been seriously affected as a result of violations of the World Bank's policies. The Requesters alleged violations had taken the form of insufficient information during the preparatory phase of the project and since its implementation began: an inadequate consultation process; insufficient, non-existent, or inadequate compensation; no respect for the workers' rights; and a renewed outbreak of sexually transmitted diseases (STDs) and HIV/AIDS all along the pipeline and around the project's main bases, as well as an increase in the prostitution of minors along the length of the oil pipeline. Specifically, the Requesters alleged violations of the Bank's policies and procedures on environmental assessment, natural habitats, poverty reduction, indigenous peoples, involuntary resettlement, and project supervision. The Panel registered the Request on September 30, 2002.

#### MANAGEMENT RESPONSE

The Panel received Management's Response to the Request on October 29, 2002. Management stated that the Bank had made every effort to apply the policies and procedures of the Bank and that it had followed the guidelines, policies, and procedures applicable to the matters raised in the Request. Management stated that it believed that the Requesters' rights or interests had not been, or would not be, directly and adversely affected by a failure of the Bank to implement its policies and procedures. Concerning

the environmental impact of the pipeline project, Management stated that the 1999 Environmental Assessment/ Environmental Management Plan (EA/EMP) identified and evaluated the potential impacts of the project and the mitigation measures were fully described in that EA/EMP. Management stated that the analysis of the cumulative impacts was satisfactory; the 1999 EA/EMP cumulative impact analysis properly focused on the impacts on natural habitats, tourism, and fisheries and noted that the pipeline would leave “only a small footprint in Cameroon.” With regard to the impact of the off-shore floating storage and offloading vessel and the 11-kilometer offshore pipeline, Management stated that the selection of Kribi as an offloading site had taken into consideration the existence of a similar facility in the Ebomé oil field and that Management considered the risk of having an oil spill in both installations simultaneously “statistically very unlikely.” Management noted that, as a result of an analysis of alternatives and in comparison to the 1997 EA, major changes had been made in the pipeline route to avoid sensitive natural habitats and indigenous groups. These changes, Management noted, were incorporated into the 1999 EA/EMP. Management did, however, recognize the gaps in the baseline data collected in the 1997 EA but noted that subsequently collected data filled those gaps in the 1999 EA/EMP. Management believed that the baseline study used in the 1999 EA/EMP was sufficient to evaluate potential impacts and determine appropriate mitigation measures.

In response to the Requesters’ claims of violations of the Bank’s policy on involuntary resettlement, Management reported that the compensation plan in the 1999 EA/EMP met and was being implemented in accordance with the requirements of the operational directive. Management stated that no household in Cameroon had been physically resettled as a result of the pipeline project, and only one household had lost a significant portion of its assets. With regard to the compensation process, Management maintained that the process had been conducted following wide-ranging consultations and that individual choices had been made on the basis of a “a catalogue of options.” Management noted that, out of more than 4,000 households that had been compensated for land and crop losses, only 27 claims remained unsettled. In terms of the Requesters’ claims on poverty reduction, Management questioned the applicability of the operational directive because the majority of the affected people had benefited from compensation offered, but nonetheless stated that it believed that the Bank was in compliance with the relevant provisions of the policy.

Regarding workers’ issues, Management noted that the Agreement of Establishment signed between the government of Cameroon and COTCO required COTCO to contract local workers and develop a training program for them. Concerning health issues related to the construction of the pipeline, Management stated that COTCO’s health and safety requirements conformed with the standards set out in the 1999 EA/EMP, that COTCO’s subcontractors had provided medical facilities for their employees, and that COTCO regularly screened and treated workers for curable STDs. Management also noted that the health programs of the subcontractors—including the programs of health education and immunization as well as condom distribution—had reached a level of effectiveness above the national level. In response to the Requesters’ claims concerning STDs, HIV/AIDS, and prostitution, Management indicated that the Bank did not have a specific policy covering these issues, nor was there any raw data available on the current HIV/AIDS prevalence rate. Management did acknowledge, however, that because the



pipeline was a boost to the local economy, renewed sexual activity was likely; as a result, the spread of STDs and increased vulnerability to HIV/AIDS were also likely.

Finally, in terms of supervision of the two projects, Management stated that supervision had taken place at several levels: (a) by the government of Cameroon, which through its ministries, had supervised the implementation of the projects; (b) by Bank staff members both at headquarters and in the project area; and (c) through two external groups, the External Compliance and Monitoring Group and the International Advisory Group, which reinforced the supervision framework by also monitoring the projects' implementation and compliance with the 1999 EA/EMP. Nevertheless, Management acknowledged that, while the construction of the pipeline was expeditious, the implementation of the CAPECE Project was delayed. Management asserted, however, that it had intensified its supervision efforts to accelerate implementation of the CAPECE Project.

#### THE PANEL ELIGIBILITY REPORT/BOARD DECISION

The Panel found both the Request and the Requesters eligible and submitted its report recommending an investigation to the Board on November 26, 2002. The Board approved the Panel's recommendation for an investigation on a no-objection basis on December 4, 2002. The Request, Management Response, and the Panel Eligibility Report were made public 3 days later and are available on the Inspection Panel's Web site: <<http://www.inspectionpanel.org>>. The Panel has completed its investigation into the matters alleged by the Requesters, and sent its Investigation Report to the Board on May, 2, 2003. Management submitted its Report in response to the Panel's findings on May 30, 2003.

## B. Actions on Pending Requests

***Request No. 22—Chad: Petroleum Development and Pipeline Project (Loan No. 4558-CD), Management of the Petroleum Economy Project (Credit No. 3316-CD), and Petroleum Sector Management Capacity Building Project (Credit No. 3373-CD)***

### THE REQUEST

On March 22, 2001, the Inspection Panel received a Request for Inspection submitted by Ngarlejoy Yorongar, a member of Parliament in Chad's National Assembly. Mr. Yorongar submitted the Request on behalf of himself and more than 100 residents living in the cantons of Bébédjia, Béboni, Béro, Komé, Mbikou, and Miandoum. The cantons are located in Bébédjia, a subprefecture of southern Chad that is in the vicinity of three oil fields of the Petroleum Development and Pipeline Project. The Request focused mainly on the Chad portion of the project and its complementary Bank-financed projects: the Management of the Petroleum Economy Project and the Petroleum Sector Management Project.

The Requesters claimed that their rights and interests had been directly harmed as a result of the Bank's actions in the design, appraisal, and supervision of the pipeline project. They alleged that the Bank had failed to comply with its policies and procedures on environmental assessment, natural habitats, pest management, indigenous peoples, involuntary resettlement, forestry, economic evaluation of investment operations, cultural property, disclosure of operational information, and project supervision; as a result, the Requesters claimed that they had been directly and adversely affected. They alleged that the development of petroleum activities—including development of the oil fields in southern Chad and the construction of an oil pipeline between Chad and Cameroon—represented a threat to local communities, to their cultural property, and to the environment. In particular, the Requesters claimed that people living in the Doba Basin were being harmed or were likely to be harmed because of the absence or inadequacy of compensation measures and environmental assessment. They claimed that the Bank's monitoring and supervision policies and procedures had been violated. The Requesters also alleged that proper consultation and disclosure of information to local communities had not taken place, and they held the Bank accountable for what it had done as well as for what it had omitted to do. They also alleged violations of their human rights.

### MANAGEMENT RESPONSE

Management submitted its Response to the Panel on July 20, 2001. Management stated that the Bank had complied with its operational policies and procedures with regard to the environmental, social, cultural, and procedural matters noted in the Request. Management stated that the Bank had taken the necessary measures to ensure that people in the project area were not directly and adversely affected as a result of the project design and preparation. Management noted that the project preparation process had taken several years and that an extensive review of the environmental and social aspects of the project was conducted with the participation of Bank-wide specialists. Furthermore, the review had led to significant changes in project design. The project had been designed to minimize environmental impacts. Management also noted that the public debate

around the project—its rationale, its impacts, and its significance for the development of Chad—had involved a broad spectrum of civil society actors, both in Chad and abroad. According to Management, the debate provided insights and inputs that further improved the project design and identified issues during implementation. Regarding Requesters' claims that their human rights had been violated as a result of the Bank's failure to apply its policies, Management stated that it "did not believe this to be the case." Nonetheless, Management did acknowledge that the Bank was "concerned by human rights in Chad as elsewhere," even though "its mandate [did] not extend to political human rights."

#### THE PANEL'S ELIGIBILITY REPORT/BOARD DECISION

The processing of the Request coincided with the electoral and postelection process in Chad, and as a result the Panel had to delay its Eligibility Report to the Board by 90 days. The Panel found the Request eligible and submitted its report recommending an investigation to the Board on September 12, 2001. The Board approved the Panel's recommendation on October 1, 2001.

#### THE PANEL'S INVESTIGATION FINDINGS

The Panel investigated the issues raised in the Request and submitted its Investigation Report to the Board on July 17, 2002. The Panel found Management in compliance with Bank policies and procedures on natural habitats, forestry, pest management, disclosure of information, and management of cultural property. The Panel found that the indigenous peoples policy did not apply because people living in the project area in Chad were not "indigenous peoples" as defined by the Bank policy. Regarding the environmental concerns raised in the Request, the Panel found that the Bank was in compliance with some aspects of its policy on environmental assessment but not in compliance with other aspects because the Bank had neither considered the spatio-temporal aspects of the project nor completed a cumulative impact assessment and regional environmental assessment to determine the impact of the project on the region as a whole. Concerning economic evaluation, the Panel found Management in compliance with pipeline project risk and externalities, but not in compliance with project alternatives and sustainability and risks for the Petroleum Economy Project and the Petroleum Sector Management Capacity Building Project. Regarding poverty reduction, the Panel found Management complied with the overall framework related to the allocation of oil revenues, but had not complied with the accelerated action needed for capacity building and possible variations in oil revenue inflows. The Panel also expressed concerns about, among other things, the Petroleum Revenue Management Program and implementation delays because of the lack of institutional capacity. With respect to monitoring and supervision, the Panel expressed satisfaction with the strong external project-monitoring capacity. Finally, the Panel expressed concerns about governance and human rights issues and the adequacy of allocations of revenues to Chad.

#### THE BOARD DECISION

On September 12, 2002, the Board met to consider the Panel's Investigation Report, as well as Management's actions and the next steps in response to the Panel's findings.

In presenting the Investigation Report to the Board, the Panel's chairman, Edward S. Ayensu, noted the exceptionally complex nature of the project, which he said was fundamental to the development of Chad. Mr. Ayensu commended the efforts made by Management to improve the project's performance on the ground and acknowledged that the Bank's participation in the project is critical for its success, especially in reducing poverty. The Panel's chairman also took the opportunity to highlight the Panel's concern over the continuing attention required by the project on issues such as the overall relation between the human rights situation in Chad and Bank compliance with its own policies, consultation with local stakeholders, institutional capacity, and monitoring and supervision. Mr. Ayensu noted that the Panel strongly believes that protection of human rights is embedded in various safeguard policies of the Bank and that their objectives cannot be achieved in the absence of respect for human rights and good governance.

Management's Action Plan, included in Management's report to address the Panel's investigation findings, focused on four areas: environmental and social compliance with the Bank's policies and procedures, economic issues, poverty reduction issues, and monitoring and supervision. The Board approved the Action Plan, and it is currently being implemented.

***Request No. 23—India: Coal Sector Environmental and Social Mitigation Project  
(Credit No. 2862-IN)***

**THE REQUEST**

The Panel received the Request for Inspection on June 21, 2001, and registered it on June 22, 2001. The Request was submitted by Bina Stanis of Chotanagpur Adivasi Sewa Samiti (CASS), a local NGO in the East Parej coal mining project area, on behalf of residents in the project area who asked that their names be made available only to the Panel. The Request exclusively concerned the preparation and implementation of the Coal Sector Environmental and Social Mitigation Project (CSESMP) for the Parej East opencast mine, one of the 25 mines slated to receive financial support under the Coal Sector Rehabilitation Project (CSRP). Parej East is owned by Central Coalfields Ltd. (CCL), a subsidiary of Coal India. The project-affected area of this mine covered two villages—Parej and Durukasmar.

The Requesters claimed that their rights and interests had been adversely affected as a result of the Bank's violations of its policies and procedures on involuntary resettlement, indigenous peoples, environmental assessment, disclosure of operational information, management of cultural property, and project supervision. They claimed that they have suffered harm as a result of failures and omissions by IDA in implementing the CSESMP in the project area. The Requesters claimed that their rights to participation and consultation were effectively denied, and that their attempts to raise their concerns were not successful. In particular, they claimed that failure to provide income restoration had resulted in significant harm: this failure destroyed their livelihoods, causing them to live in resettlement colonies without legal title to land, dismantled their productive sources, and caused their supporting networks and kin groups to disperse. The Requesters alleged that they suffered increased illnesses because of the pollution of water sources and wells in the resettlement colonies; that they had no medical services



to handle the increased illnesses, despite the building of a dispensary; and that they lacked the capability to acquire other services, such as education. They also alleged that the self-employment schemes—which the Bank had guaranteed would compensate for the loss of land and livelihood—had failed, and they were unable to participate in the new economy around the mines. Nonetheless, they asked Bank Management and the Board to extend the project, requesting that the remaining money be targeted toward the restoration of their livelihoods and toward environmental remediation.

#### MANAGEMENT RESPONSE

Management submitted its Response to the Panel on July 20, 2001, stating that the Bank had complied with the relevant policies and procedures related to the design and implementation of the project. They acknowledged that, throughout the project, resettlement in Parej East encountered a number of problems. Nonetheless, they claimed that while the problems had not been entirely overcome, there had been progress. Although during 1998 and 1999 implementation had been both slow and uneven across all of the mines under the project, from the first half of 2000 significant progress had been made on implementation throughout all the mines. However, economic rehabilitation remained unsatisfactory and as a result—as well as for other reasons related solely to the implementation of the CSR—the CSR had been canceled at the request of the borrower. Nevertheless, Management added, since the purpose of the CSESMP was to mitigate impacts of the CSR and to strengthen Coal India's capacity to manage such mitigation issues, the Bank had decided to "continue to actively work with Coal India to help develop practical solutions to improve environmental and social mitigation at the mine and corporate level, and to achieve compliance with Bank policies."

Management maintained that it had devoted full attention to the intense supervision effort required by the scale and complexity of the CSESMP's physical, mitigation, and institutional activities. It further asserted that consultations were adequate, although it acknowledged that CCL did not consult the project-affected people before it introduced changes on eligibility and entitlements in its resettlement and rehabilitation policy. In response to the Requesters' claims for adequate and fair compensation for the loss of villages and land, Management explained that the resettlement sites compensated for the loss of villages. With regard to the Requesters' claim that they were without legal titles or long-term leases for house plots in resettlement sites, Management acknowledged the claim, stating that supervision teams had raised the issue during every mission and that it would continue to seek a resolution to the matter. Management also stated that it was satisfied that compensation paid to entitled people affected by the project for agricultural land was equivalent to replacement costs. Common property resources were available for those choosing to shift to the resettlement sites, and Management added that it was also satisfied that the compensation provided for houses enabled the affected people to construct replacement houses on par with their original housing, as required by operational directive for involuntary resettlement.

Management claimed that it was too early to judge whether efforts made for income restoration would result in full income restoration as intended but acknowledged that mine jobs were limited to affected people losing more than 2 acres of land. Management acknowledged that income restoration schemes by themselves could not bring full

economic rehabilitation or result in an income comparable to working in the mines. Management argued that the Bank's policy on disclosure of information had been complied with in Parej East but agreed that the borrower had not permitted the release of the project's midterm review. Finally, in terms of services in the resettlement sites, Management asserted that the drinking water problem had been corrected but recognized that the school and health clinics were not yet staffed. Management stated that the supervision team would continue to follow up on the issue with CCL. Management also announced that the project would be extended for an additional year. The project closed on June 30, 2002.

#### THE PANEL'S ELIGIBILITY REPORT /BOARD DECISION

The Panel found both the Request and the Requesters eligible and submitted its report recommending an investigation to the Board on August 20, 2001. The Board approved the Panel's recommendation for an investigation on a no-objection basis on September 7, 2001. The Request, Management's Response, and the Panel's Eligibility Report were made public 3 days later and are available on the Inspection Panel's Web site: <<http://www.inspectionpanel.org>>.

#### THE PANEL'S INVESTIGATION REPORT

As authorized by the Board, the Panel carried out an investigation into the matters alleged in the Request. For those purposes, the Panel retained specialized consultants and visited the project area. The Panel interviewed the Requesters, Bank staff members, and others, and it reviewed extensive project documentation. The Panel completed its investigation and sent its Investigation Report to the Board on November 25, 2002. Management submitted its Response to the Panel's Investigation Report on May 13, 2003.

#### ***Request No. 26—Paraguay: Reform Project for the Water and Telecommunications Sectors (Loan No. 3842-PA); and Argentina: SEGBA V Power Distribution Project (Loan No. 2854-AR) (currently supporting the Yacyretá Hydroelectric Project)***

#### THE REQUEST

The Inspection Panel received a Request for Inspection related to the Reform Project for the Water and Telecommunications Sectors and the SEGBA V Power Distribution Project, which partially finance the Yacyretá Hydroelectric Project on the Paraná River, on May 17, 2002. The Request was submitted (a) by Federación de Afectados por Yacyretá de Itapúa y Misiones (FEDAYIM), a local NGO, on behalf of itself as well as more than 4,000 families affected by social and environmental impacts of the Yacyretá Hydroelectric Dam and (b) by six coordinators of affected people in the districts of Arroyo Potiy, Ayolas, Barrio Pacu Cúa, Barrio Sta. Rosa Mboy Caé, Barrio Santa Rosa, Distrito Cambyreta, and San Cosme y Damián. The Request also attached letters of evidence that the mayors and municipal councils of the City of Encarnación and of the District of Cambyreta had endorsed the Request. The Panel registered the Request on May 30, 2002.

The Requesters claimed to represent more than 4,000 families affected by raising the level of the reservoir of the Yacyretá hydropower plant to 76 meters above sea level and

possibly higher. The Request alleged that the project was inadequately supervised by the Bank; that the project-affected families had not been appropriately identified; and that, as a consequence, thousands of them were excluded from existing compensation and mitigation programs even though for more than 20 years they had owned and occupied lands affected by the dam.

The Request sets forth four groups of claims. First, the Requesters claimed that families for whom the Urban Creeks Flood Program—Programa de Desborde de Arroyos (PDA)—was established were being replaced by families from the neighborhoods of Ita Paso, Mboy Caé, Pacu Cúa, San Blas, and Santa Rosa, who were not affected by the devastating situation of those living on the creek banks. Second, the Requesters complained about environmental contamination and adverse health impacts caused by elevating the reservoir (which raised the water table, flooded latrines, and contaminated drinking water wells). They contended that the situation was further aggravated by the housing developments built by Entidad Binacional Yacyretá (EBY) in Buena Vista and San Pedro, where the wastewater spills into the Potiy, Santa María, and Mboi Caé creeks. They asserted that the planned wastewater treatment plant would not benefit the neighborhoods built by EBY nor others affected by the rise in water table. The Requesters claimed that the reservoir has caused severe health problems because it was filled with stagnant water and polluted with sewage, which was an ideal habitat for microorganisms that cause malaria, leishmaniasis, schistosomiasis, and dengue fever. They also alleged that there had been no programs for monitoring and controlling disease-causing microorganisms, which could lead to an alarming and catastrophic health situation. Third, the Requesters claimed that the Bank had failed to ensure that EBY provided people with suitable compensation and resettlement, and they alleged that the Bank and EBY had no plans to restore the families' productive infrastructure. Finally, the Request stated that compensation and resettlement programs for brick makers and ceramicists benefited only the owners and that the workers were left unemployed and in a very difficult economic condition.

In its Notice of Registration, the Inspection Panel stated that the Requesters' claims could constitute violations of the following bank policies and procedures: environmental policy for dam and reservoir projects, environmental assessment, involuntary resettlement, project supervision, project monitoring and evaluation, and suspension of disbursements.

#### MANAGEMENT RESPONSE

Management argued that the Request (Request II as it was titled by Management) was in many respects similar to a previous request brought before the Inspection Panel in 1996 by another Paraguayan NGO. Therefore, Management stated that it would address only the claims that reflected, in its view, new evidence. Management noted that the reservoir's water quality was constantly monitored and fell within satisfactory parameters; therefore, the water quality posed no significant health risks to people living in the vicinity of the reservoir, nor could any harm be attributed to the claim of violation of the Bank's policy on environmental assessment. In addressing the concern about sanitation, Management noted that the Bank was assisting in the construction of a wastewater treatment plant to serve the Paraguayan city of Encarnación. Management

pointed out that no harm could be attributed to any violation of Bank resettlement policy because the flooding of the urban creeks was due to hydrological conditions that predated the Yacyretá Project. Management noted that EBY is not responsible for the living conditions of the people who live along the creeks, and does not have to resettle them until, and if, the reservoir level is raised beyond 76 meters above sea level. Management argued that the environmental impact assessment prepared in 1992 took into consideration the preexisting hydrogeological conditions; however, the assessment could not reasonably foresee that the reservoir would be raised only to 76 meters above sea level and would remain at that level for a long time, or that an uncontrolled number of new people would move into the project-affected areas. Management also claimed that, when the 1997 El Niño floods revealed the gravity of issues such as the hydrogeological conditions, the prolonged level of the water reservoir at 76 meters above sea level, and the constant flow of new people, EBY responded by implementing the PDA program to anticipate the resettlement of those living in areas at higher risk.

As for the claim that the Bank was violating its policy on supervision, Management noted that its supervision of the Yacyretá Project since 1997 had been thorough, with particular attention paid to the social and environmental concerns. Management asserted that its supervision efforts had “helped keep the Yacyretá Project moving in a positive direction,” while the exercise of the formal legal remedies available to the Bank in case of noncompliance under the legal agreements would have jeopardized progress in project implementation. Management pointed out that this position was in line with the Bank’s supervision policy, was in line with the Inspection Panel’s recommendation on Request I, and was also endorsed by the Bank’s Board. In conclusion, Management stated that it believed that it had carried out its obligations in accordance with its relevant policies and procedures and that an investigation was not warranted.

#### THE PANEL’S ELIGIBILITY REPORT/BOARD DECISION

The Panel found both the Request and the Requesters eligible and submitted its report recommending an investigation to the Board on August 23, 2002. The Board approved the Panel’s recommendation for an investigation on a no-objection basis on September 9, 2002. The Request, Management’s Response, and the Panel’s Eligibility Report were made public 3 days later and are available on the Inspection Panel’s Web site: <<http://www.inspectionpanel.org>>. The Panel is in the process of conducting its investigation into the matters alleged by the Requesters.



### C. Outreach and Disclosure Activities

The Inspection Panel continued its internal and external outreach campaign during this period in an effort to make its existence, role, and functions better known by all stakeholders within and outside of the World Bank. As part of this effort, the Panel participated in the Rio + 10 World Summit on Sustainable Development held in Johannesburg, South Africa, from August 26 through September 4, 2002. The principal objective of the Panel's participation in the conference was to introduce its work to the international development community at large and specifically to government officials, international organizations, and NGOs. On Tuesday, August 27, the Panel's chairman, Edward S. Ayensu, participated in a panel discussion on "Strengthening Governance at the Regional and International Level," sponsored by the Environmental Law Institute (ELI) and Yale University. On Wednesday, August 28, the Panel, in cooperation with the CAO held a session on "Participation and Accountability in International Financial Institutions: The Role of the World Bank Inspection Panel and the IFC-Compliance Advisory." On Thursday, August 29, the Panel's executive secretary, Eduardo G. Abbott, delivered a presentation at the ELI-sponsored event "Giving People a Voice: Experiences in Good Governance at the Regional and International Level." The Panel also participated in a specially arranged meeting on the Panel's mechanism and human rights at the University of Pretoria's Faculty of Law, Center for Human Rights.

Panel member Maartje van Putten was invited by McGill University, Faculty of Agricultural and Environmental Sciences, to make a presentation on the Inspection Panel. The presentation, which was held on January 22, 2003, at the university's campus, attracted members of various faculties of McGill University, as well as senior representatives of Canadian industry, government officials, and a larger number of students.

For the World Bank Spring Meetings, the Panel held a joint conference with American University's Washington College of Law on Friday, April 11, 2003. The conference, "Public Accessibility to International Financial Institutions: A Review of Existing Mechanisms and Interim Experiences," focused on the accountability mechanisms in multilateral financial organizations, with special attention placed on how they function and their experiences to date. The conference featured representatives from most of the IFIs, including the Asian Development Bank and the International Monetary Fund.

The Inspection Panel, through its Secretariat, has offered advice and consulted with the Asian Development Bank and Inter-American Development Bank in the context of their efforts to review and improve their accountability mechanisms.

#### *Disclosure*

The rules for disclosure of documents generated by the Inspection Panel process are stipulated in the Resolution establishing the Panel as well as in the 1996 and 1999 Clarifications, which the executive directors adopted.

In the 1996 Clarifications, the executive directors instructed Management "to make significant efforts to make the Inspection Panel better known in borrowing countries." In the 1999 Clarifications, the Board underscored the need for Management to make significant efforts to make the Panel better known and emphasized the importance of prompt disclosure of information about the Requests for Inspection processed by the

Panel to claimants and the public. The Board also required that “such information be provided by Management to claimants in their language, to the extent possible.”

The Panel has made every effort to keep its processes open and transparent—which is consistent with the public disclosure policy adopted by the Bank’s Board in 1993. The Inspection Panel’s Web site continually updates the status of Panel activities and continues to receive a large number of queries.

### ***The Panel Register***

In an effort to deal transparently with Requests, the Panel has maintained a register. The executive secretary records the dates and all actions taken in connection with processing a Request, as well as the dates on which any formal notification is sent or received. The Panel keeps the Requester informed about the process. The register is open to the public and is also posted on the Panel’s Web site to ensure wider disclosure.

A notice that a Request has been registered and all other notices or documents issued by the Panel are made available to the public at (a) the Bank’s InfoShop in Washington, D.C.; (b) the Bank’s resident mission or regional or country office for the country in which the project relating to the Request is located or the relevant regional office; (c) the Bank’s Paris and Tokyo offices; and (d) the Panel’s Web site, <<http://www.inspectionpanel.org>>.

As provided by the Resolution, the Bank makes documents relating to each Request available to the public. Under paragraph 25 of the Resolution, Requests for Inspection, Panel Recommendations, and Board decisions are to be made available to the public after the executive directors have considered a Panel Recommendation on—or the results of—an investigation. During the 1996 review by the Board, the executive directors clarified that provision to ensure that Management’s Responses would also be made available within 3 days after action by the Board, along with the documents already cited. The Board also said that Management should make available any legal opinions issued by the legal department related to Inspection Panel matters promptly after Board action, unless the Board decided otherwise in a specific case.

### ***World Bank Annual Meetings***

The Panel has participated in each annual meeting of the World Bank since 1994. Participation in the meetings has allowed the Panel opportunities to meet with government officials, private sector organizations, citizens, and numerous NGOs. The experience has been invaluable to the Panel. When the annual meeting is held outside the United States, it has been particularly useful to the Panel in making organizations from that region more aware of the Panel’s work, the extent of its mandate, and the procedures for requesting an inspection.

### ***Public Inquiries***

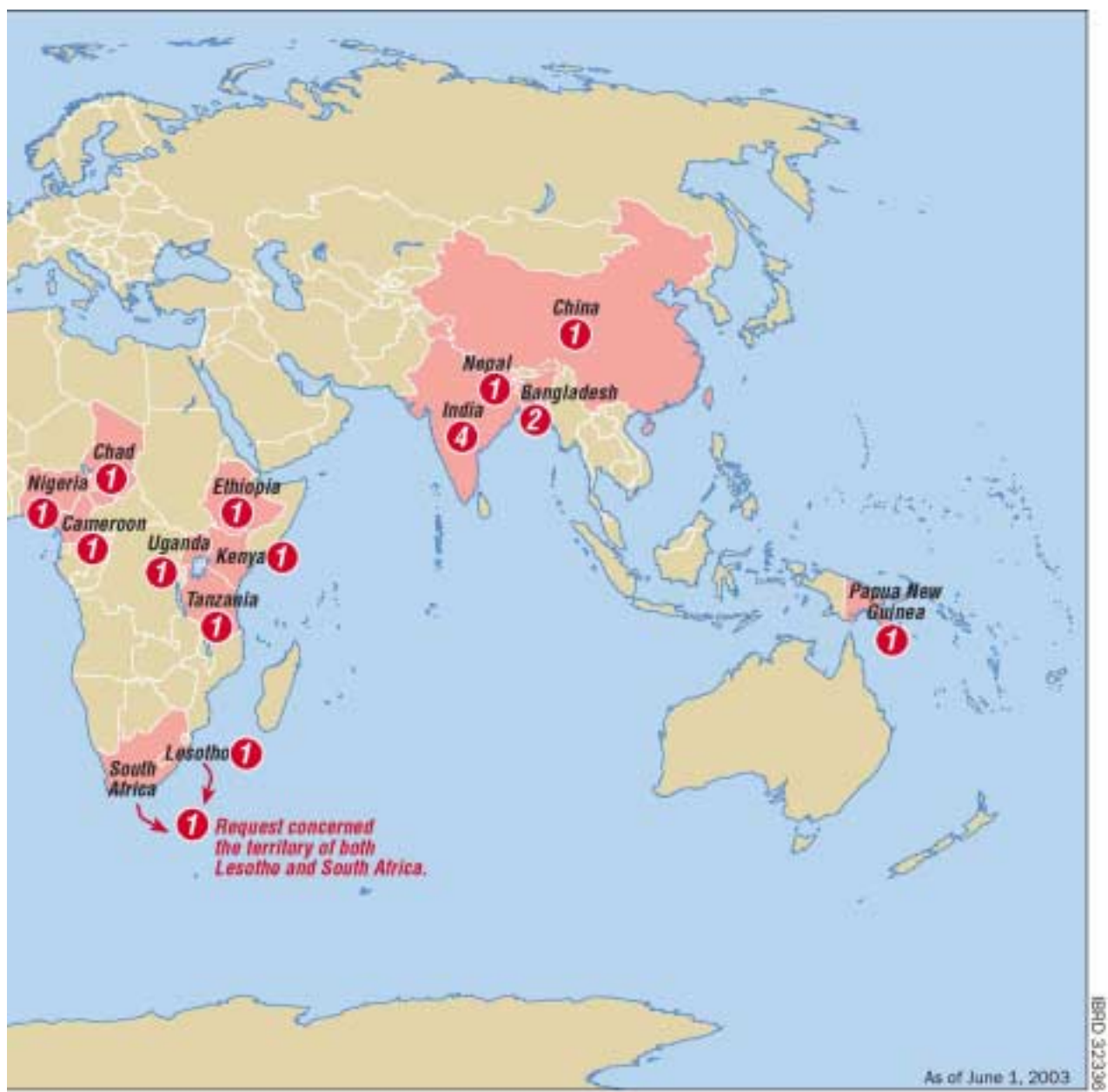
Given the Panel’s role and functions, there continues to be a substantial demand for information about its activities from the press, NGOs and other organizations, academics, Bank staff, and others. A brochure on the Panel is available in several languages from the Secretariat. The Panel also maintains a website at [www.inspectionpanel.org](http://www.inspectionpanel.org).

## ANNEX III

### Maps

#### Annex III–A. Geographical Distribution of Requests Received







## Annex III–B. Chronology of Requests

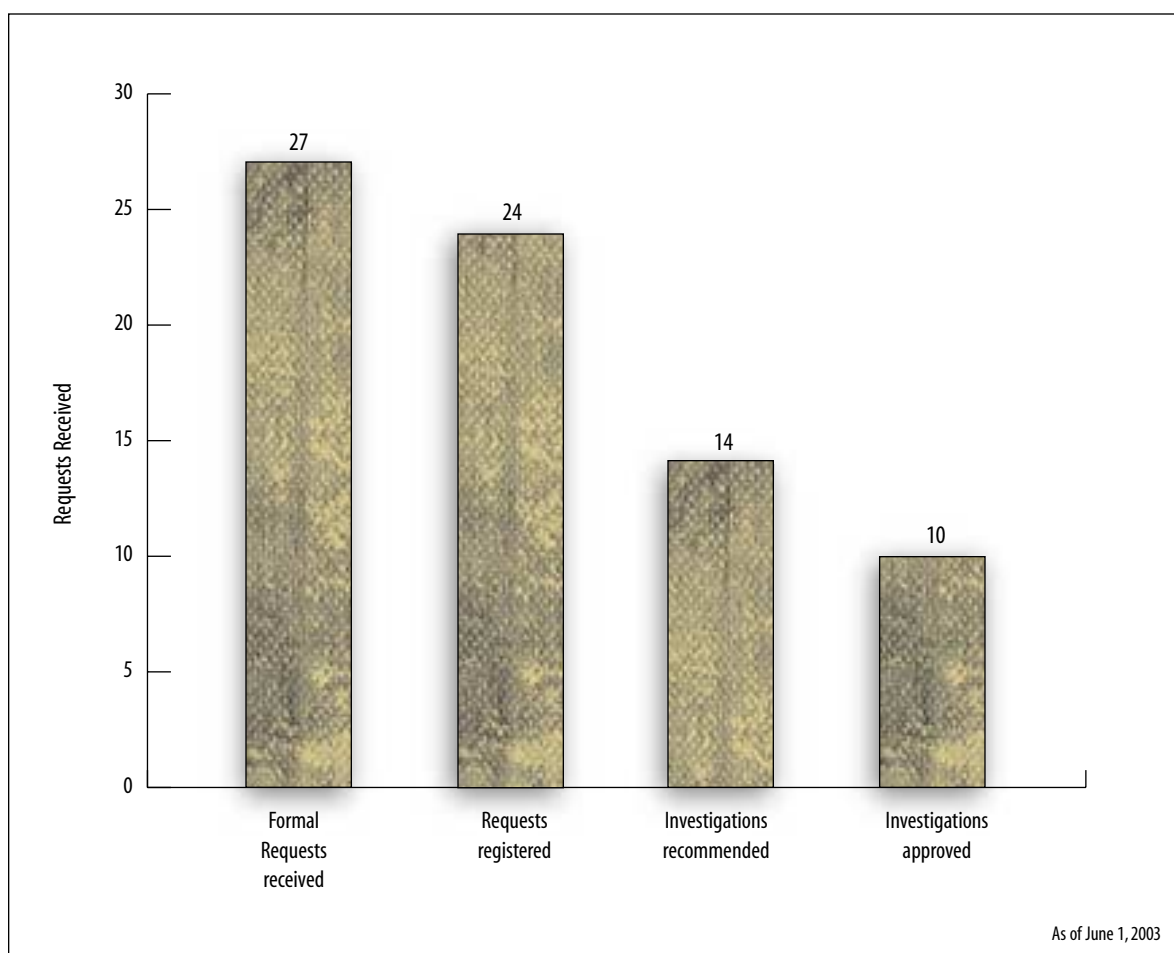




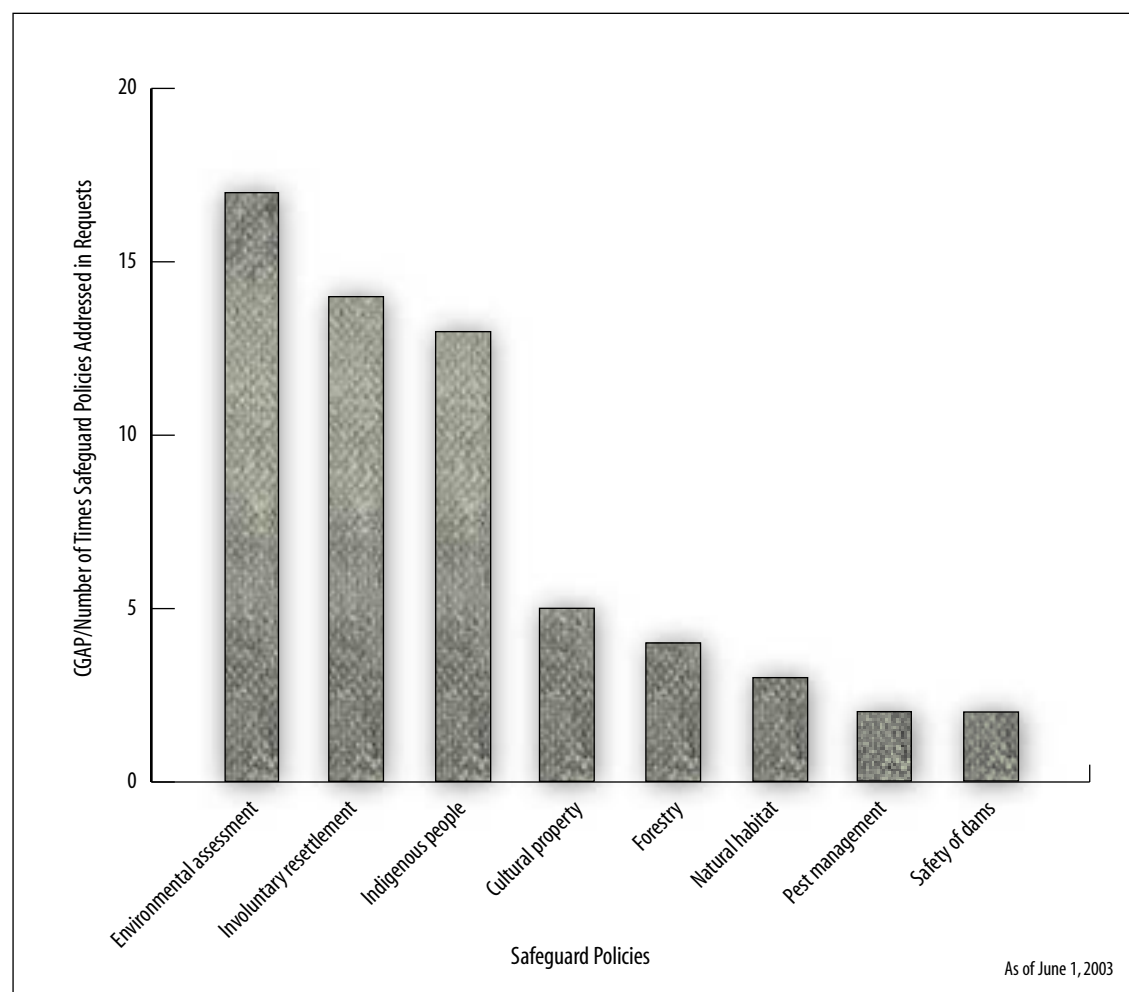
## ANNEX IV

# Figures

### Annex IV–A. Inspection Panel Request Record

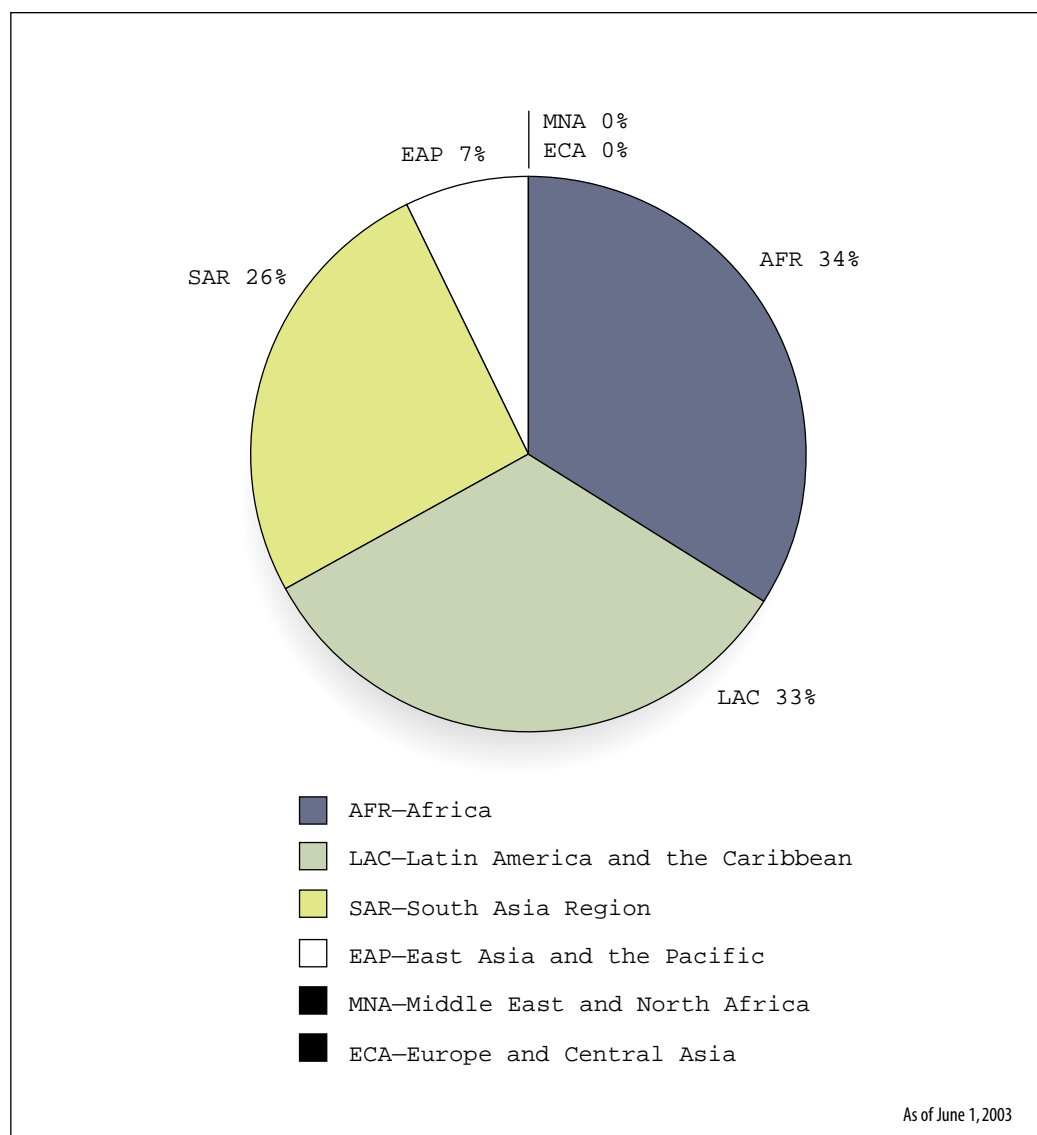


## Annex IV–B. World Bank Safeguard Policies Addressed in Requests

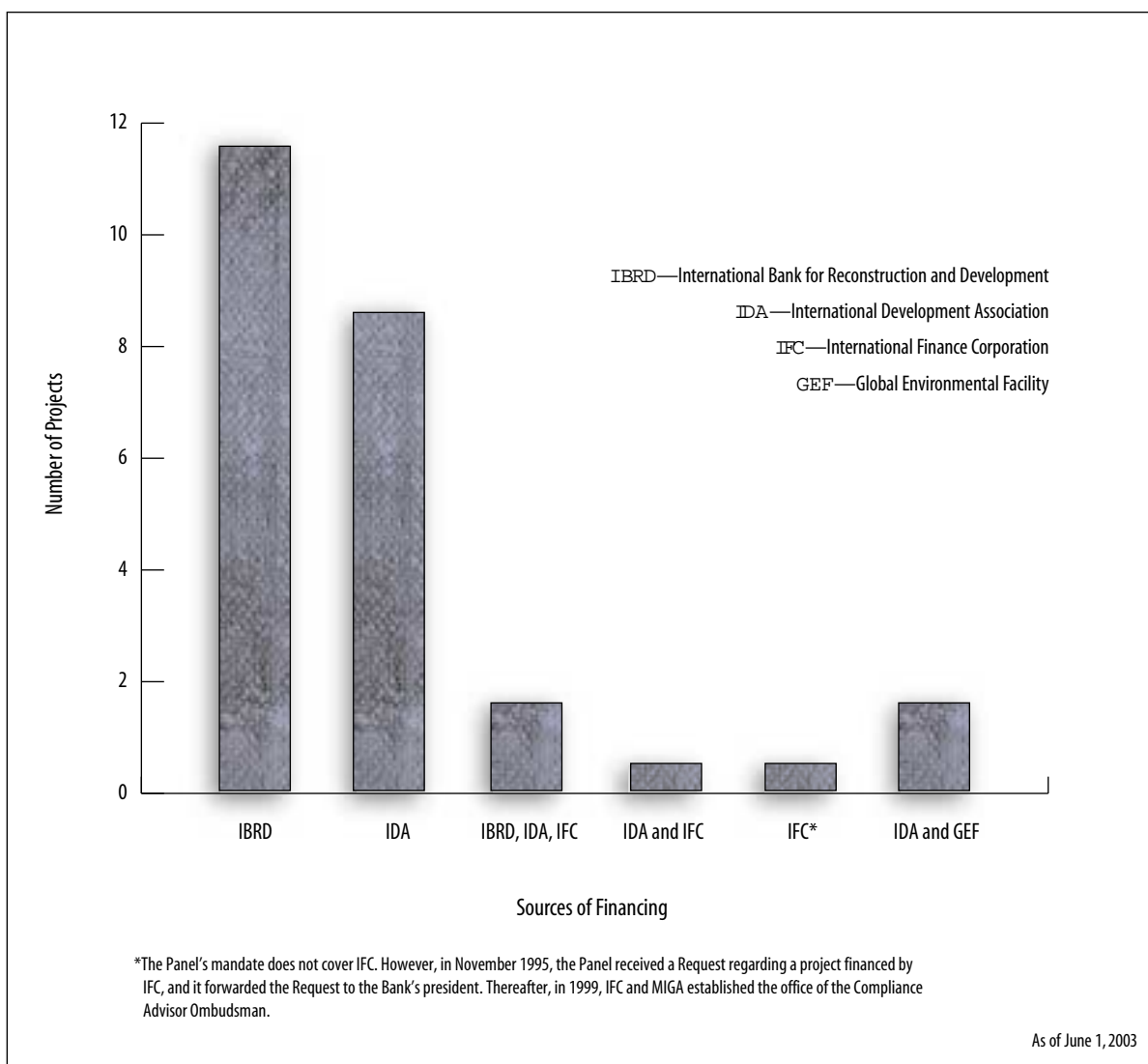




## Annex IV–C. Regional Distribution of Requests Received

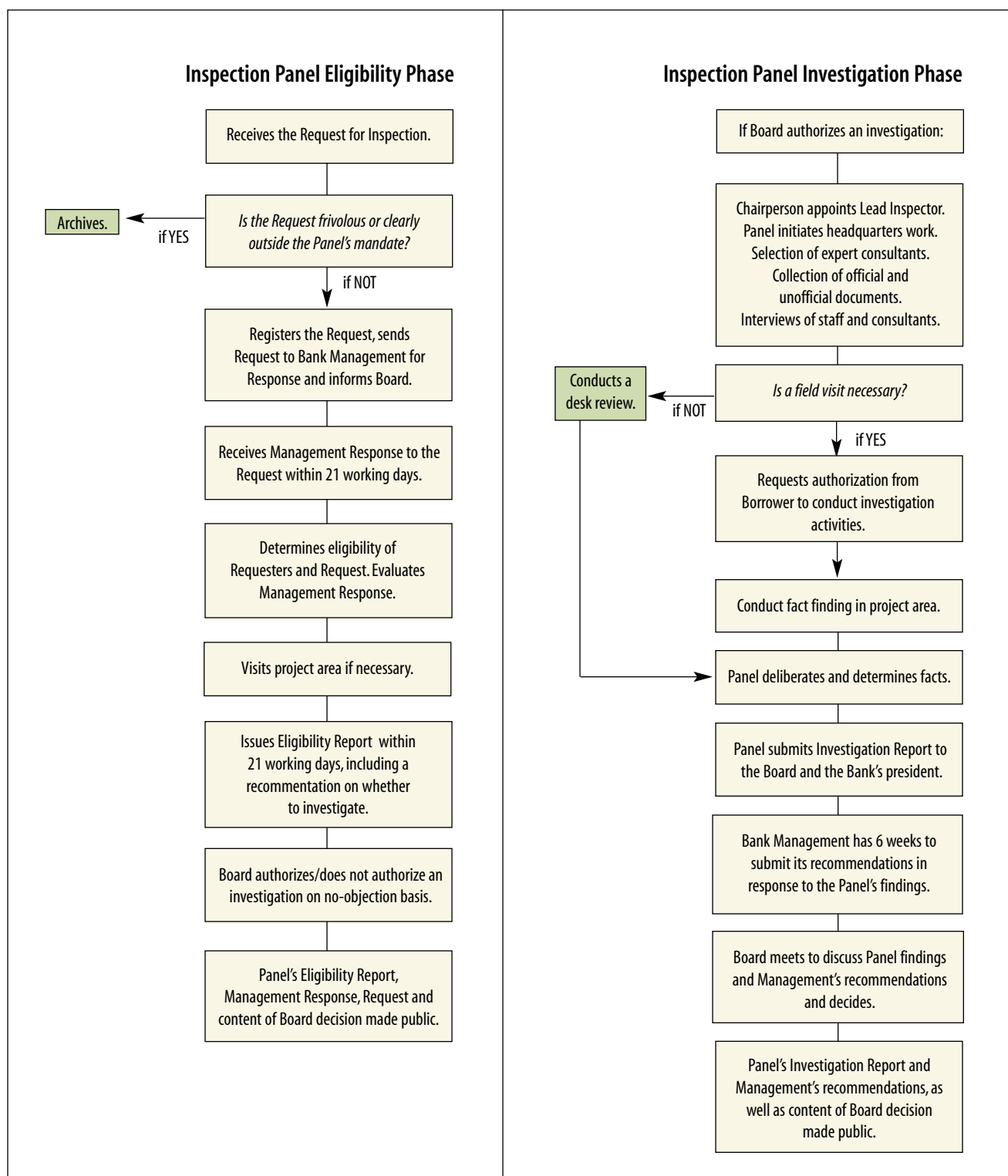


## Annex IV—D. Sources of Financing for Projects Subject to Request



## ANNEX V

# The Inspection Panel Process



## ANNEX VI

# Tables

### Annex VI—A. Summary of Inspection Panel Cases (as of June 1, 2003)<sup>a</sup>

	Request (short form)	Request received	Request registered	Inspection Panel recommendation	Recommendation approved by the Board	Panel's activity
1	Nepal: Arun	10/24/1994	Yes	Investigation	Yes	Eligibility Report and Investigation Report
2	Ethiopia: Expropriation	5/2/1995	No	—	—	—
3	Tanzania: Power VI	5/16/1995	Yes	No investigation	Yes	Eligibility Report
4	Brazil: Rondônia	6/16/1995	Yes	Investigation	No	Eligibility Report, Additional Review report, and Review of Progress in Implementation
5	Chile: Bío-Bío River	11/17/1995	No	—	—	—
6	Bangladesh: Jamuna	8/23/1996	Yes	No investigation	Yes	Eligibility Report, and Report on Progress on Implementation of Action Plan
7	Argentina/Paraguay: Yacyretá (1996)	9/30/1996	Yes	Investigation	No	Eligibility Report and Review of Present Project Problems and Assessment of Action Plans
8	Bangladesh: Jute Sector	11/13/1996	Yes	No investigation	Yes	Eligibility Report
9	Brazil: Itaparica	3/12/1997	Yes	Investigation	No	Eligibility Report and Action Plan review
10	India: NIPC	5/1/1997	Yes	Investigation	Yes	Eligibility Report and Report on Desk Investigation
11	India: Ecodevelopment	4/2/1998	Yes	Investigation	No	Eligibility Report
12	Lesotho: Highlands Water (1998)	5/6/1998	Yes	No investigation	Yes	Eligibility Report
13	Nigeria: Lagos Drainage	6/17/1998	Yes	No investigation	Yes	Eligibility Report
14	Brazil: Land Reform	12/14/1998	Yes	No investigation	Yes	Eligibility Report
15	Lesotho: Highlands Water (1999)	4/26/1999	Yes	No investigation	Yes	Eligibility Report
16	China: Western Poverty Reduction	6/18/1999	Yes	Investigation	Yes	Eligibility Report and Investigation Report
17	Argentina: Structural Adjustment	7/26/1999	Yes	No investigation	Yes	Eligibility Report
18	Brazil: Land Reform, Second Request	9/14/1999	Yes	No investigation	Yes	Eligibility Report
19	Kenya: Lake Victoria Environmental Management	10/12/1999	Yes	Investigation	Yes	Eligibility Report and Investigation Report
20	Ecuador: Mining Development	12/13/1999	Yes	Investigation	Yes	Eligibility Report and Investigation Report
21	India: NIPC, Second Request	11/27/2000	No	—	—	—
22	Chad: The Pipeline Project	3/22/2001	Yes	Investigation	Yes	Eligibility Report and Investigation Report
23	India: Coal Sector	6/21/2001	Yes	Investigation	Yes	Eligibility Report and Investigation Report



Request (short form)	Request received	Request registered	Inspection Panel recommendation	Recommendation approved by the Board	Panel's activity
24. Uganda: Bujagali Hydropower	7/27/2001	Yes	Investigation	Yes	Eligibility Report and Investigation Report
25. Papua New Guinea: Governance Promotion	12/6/2001	Yes	No investigation	Yes	Eligibility Report
26. Paraguay/Argentina: Yacyretá (2002)	5/17/2002	Yes	Investigation	Yes	Eligibility Report and Investigation Report
27. Cameroon: The Pipeline Project	9/25/2002	Yes	Investigation	Yes	Eligibility Report and Investigation Report

<sup>a</sup>Normally, the Panel advises the executive directors and the president when it receives a Request for Inspection that it cannot process (as it did in the Requests regarding Chile: Bío-Bío River and India: NIEC, Second Request). The Inspection Panel received a letter, dated August 27, 1999, also addressed to the president and the executive directors of the World Bank requesting for the second time the "installation of an Inspection Panel" to investigate the Itaparica Resettlement and Irrigation Project in Brazil. Since the Bank's loans for this project were then long closed, the Panel was precluded from processing this Request. Furthermore, as the Request had been already addressed to the president and executive directors, no action on the part of the Panel was necessary. However, some regard this extemporaneous request as a formal Request for Inspection that should be added to the Panel's records.

## Annex VI—B. The World Bank's Safeguard Policies

Policy	Summary of core requirements <sup>a</sup>	Applicability to lending instruments <sup>a</sup>	Public consultations	Explicit provision for exceptions
OP/BP 4.01, Environmental Assessment	Screen early for potential impacts and select appropriate instrument to assess, minimize, and mitigate potentially adverse impacts.	All investment projects. Applicable to sector adjustment loans.	Consult affected groups and NGOs as early as possible (for Category A and B projects).	Yes. For emergency recovery operations, subject to approval of the regional vice president, ENV Chair, and LEG.
OP/BP 4.04, Natural Habitats	Do not finance projects that degrade or convert critical habitats. Support projects that affect noncritical habitats only if no alternatives are available and if acceptable mitigation measures are in place.	All investment projects.	Consult local people in planning, designing, and monitoring projects.	No.
OP/BP 4.09, Pest Management	Support integrated approaches to pest management. Identify pesticides that may be financed under the project and develop appropriate pest management plan to address risks.	All investment projects and adjustment operations.	Consult local people in planning, designing, and monitoring projects.	No.
OP/BP 4.12, Involuntary Resettlement	Assist displaced persons in their effort to improve or at least restore their standards of living.	All investment projects.	Consult resettlers and host community, incorporate expressed views in resettlement plans, and list choices made by resettlers.	Yes. In unusual circumstances such as emergency recovery operations, subject to the approval of the Resettlement Committee.
OD 4.20, Indigenous Peoples	Identify adverse impacts and develop a plan to address them. Design benefits to reflect the cultural preferences of indigenous peoples.	All investment projects.	Consult indigenous people throughout the project cycle.	No.
OP 4.36, Forests	Support sustainable forestry practices that help reduce poverty. Prohibitions and restrictions apply.	All investment projects.	Consult local people, the private sector, and interest groups in the forest area.	No.
OP/BP 4.37, Safety of Dams	For large dams, carry out technical review and periodic safety inspections by independent dam safety professionals.	All investment projects.	No public consultation.	No.

Policy	Summary of core requirements <sup>a</sup>	Applicability to lending instruments <sup>a</sup>	Public consultations	Explicit provision for exceptions
OPN 11.03, Cultural Property	Investigate and inventory cultural resources potentially affected. Include mitigation measures when there are adverse impacts on physical cultural resources.	All investment projects.	Consult appropriate agencies, NGOs, and university departments.	No.
OP/BP 7.50, Projects in International Waterways	Ascertain whether riparian agreements are in place, and ensure that riparian states are informed of and do not object to project interventions.	All investment projects.	No public consultations. Riparian notification required.	No.
OP/BP 7.60, Projects in Disputed Areas	Ensure that claimants to disputed areas have no objection to proposed project.	All investment projects.	No public consultations. Claimants informed.	No.

<sup>a</sup> OP 8.60 provides guidance on the management of environmental and social issues in adjustment lending. The Bank's approach to adjustment lending is being clarified as OP 8.60 is revised and converted to the OP/BP format.

## Annex VI—C. Alleged Violations of World Bank Policies and Procedures per Request (as of June 1, 2003)

Date Request received	Request	Policies and procedures raised in the Request for Inspection
1 10/24/1994	Nepal: Ann III Proposed Hydroelectric Project and Restructuring of IDA Credit	Economic evaluation of investment operations (OP/BP 10.04) Disclosure of operational information (BP 17.50) Outline for a project information document (BP 10.00, Annex A) Environmental assessment (OD 4.01) Involuntary resettlement (OD 4.30) Indigenous peoples (OD 4.20)
2 5/2/1995	Ethiopia: Compensation for Expropriation and Extension of IDA Credits to Ethiopia (not registered)	Dispute over defaults on external debt, expropriation, and breach of contract (OMS 1.28)
3 5/16/1995	Tanzania: Power VI Project	Article V Section 1(c), IDA Articles of Agreement Article V Section 1(d), IDA Articles of Agreement Article V Section 1(g), IDA Articles of Agreement Environmental aspects of Bank work (OMS 2.36) Environmental assessment (OD 4.01)
4 6/16/1995	Brazil: Rondônia Natural Resources Management Project	Project supervision (OD 13.05) Forestry policy (OP 4.36) Wildlands policy (OPN 11.02) Indigenous peoples (OD 4.20) Involvement of NGOs in Bank-supported activities (OD 14.70) Project monitoring and evaluation (OD 10.70) Investment lending—identification to the Board presentation (BP 10.00) Suspension of disbursements (OD 13.40) Accounting, financial reporting, and auditing (OD 10.60) Procurement (OD 11.00) Use of consultants (OD 11.10) Borrower compliance with audit covenants (OD 13.10)
5 11/17/1995	Chile: Financing of Hydroelectric Dams in the Bío-Bío River (not registered)	Environmental policy for dam and reservoir projects, Annex B (OD 4.00) Indigenous peoples (OD 4.20) Wildlands policy (OPN 11.02) Management of cultural property in Bank-financed projects (OPN 11.03) Involuntary resettlement (OD 4.30) Project supervision (OD 13.05)
6 8/23/1996	Bangladesh: Jamuna Multipurpose Bridge Project	Environmental assessment (OD 4.01 and Annexes) Involuntary resettlement (OD 4.30) Involvement of NGOs in Bank-supported activities (OD 14.70)
7 9/30/1996	Argentina/Paraguay: Yacyretá Hydroelectric Project	Environmental policy for dam and reservoir projects (OD 4.00, Annex B) Environmental assessment (OD 4.01) Indigenous peoples (OD 4.20) Involuntary resettlement (OD 4.30) Project monitoring and evaluation (OD 10.70) Project supervision (OD 13.05) Wildlands policy (OPN 11.02) Management of cultural property in Bank-financed projects (OPN 11.03) Environmental aspects of Bank work (OMS 2.36) Suspension of disbursements (OD 13.40)



Date Request received	Request	Policies and procedures raised in the Request for Inspection
8 11/13/1996	Bangladesh: Jute Sector Adjustment Credit	Adjustment lending policy (OD 8.60) Project supervision (OP 13.05) Suspension of disbursements (OD 13.40)
9 3/12/1997	Brazil: Itaparica Resettlement and Irrigation Project	Environmental policy for dam and reservoir projects (OD 4.00, Annex B) Environmental assessment (OD 4.01) Involuntary resettlement (OD 4.30) Indigenous peoples (OD 4.20) Project supervision (OD 13.05)
10. 5/1/1997	India: NIPCO Power Generation Project	Economic evaluation of investment operations (OD 10.04) Environmental assessment (OD 4.01) Involuntary resettlement (OD 4.30) Indigenous peoples (OD 4.20) Project supervision (OD 13.05)
11. 4/2/1998	India: Eco-development Project	Indigenous peoples (OD 4.20) Involuntary resettlement (OD 4.30) Forestry (OP 4.36)
12. 5/6/1998	Lesotho/South Africa: Phase 1B of Lesotho Highlands Water Project	Environmental policy for dam and reservoir projects (OD 4.00, Annex B) Economic evaluation of investment operations (OD 10.04) Poverty alleviation (OD 4.15) Water resources and management (OP 4.07)
13. 6/17/1998	Nigeria: Lagos Drainage and Sanitation Project	Involuntary resettlement (OD 4.30) Poverty alleviation (OD 4.15) Gender dimensions of development (OD 4.20) Project monitoring and evaluation (OD 10.70) Economic evaluation of investment operations (OP/EP 10.04) Article V, Section 1(g), IDA Articles of Agreement
14. 12/14/1998	Brazil: Land Reform Poverty Alleviation Project	Poverty alleviation (OD 4.15) Disclosure of operational information (EP 17.50) Environmental assessment (OD 4.01) Involving NGOs in Bank operations (OP 14.70)
15. 4/26/1999	Lesotho: Highlands Water Project	Disputes over defaults on external debt, expropriation, and breach of contract (OP/EP 7.40) Disclosure of operational information (EP 17.50)
16. 6/18/1999	China: Western Poverty Reduction Project	Disclosure of operational information (EP 17.50) Involuntary resettlement (OD 4.30) Environmental assessment (OD 4.01) Indigenous peoples (OD 4.20) Pest management (OP 4.09) Safety dams (OP/EP 4.37) Retroactive financing (OD 12.10) Investment lending (OD 10.00)
17. 7/26/1999	Argentina: Special Structural Adjustment Loan	Project supervision (OD 13.05) Poverty alleviation (OD 4.15) Project monitoring and evaluation (OP/EP 10.70) Suspension of disbursements (OP/EP 13.40) Disclosure of operational information (EP 17.50)
18. 9/14/1999	Brazil: Land Reform Poverty Alleviation Project, Second Request	Poverty alleviation (OD 4.15) Disclosure of operational information (EP 17.50) Project supervision (OD 13.50)

Date Request received	Request	Policies and procedures raised in the Request for Inspection
19. 10/12/1999	Kenya: Lake Victoria Environmental Management Project	Environmental assessment (OD 4.01) Poverty alleviation (OD 4.15) Economic evaluation of investment projects (OP 10.04) Project supervision (OD 13.05)
20. 12/13/1999	Ecuador: Mining Development and Environmental Control Technical Assistance Project	Environmental assessment (OD 4.01) Wildlands (OPN 11.02; now OP/BP 4.04) Indigenous peoples (OD 4.20) Project supervision (OD 13.05)
21. 11/27/2000	India: NTPC Power Generation Project, Second Request (not registered)	Involuntary resettlement (OD 4.30) Project supervision (OD 13.05) Environmental assessment (OD 4.01)
22. 3/22/2001	Chad: Petroleum Development and Pipeline Project, Management of the Petroleum Economy Project, and Petroleum Sector Management Capacity Building Project	Environmental assessment (OD 4.01) Natural habitats (OP/BP 4.04) Pest management (OP 4.09) Poverty alleviation (OD 4.15) Indigenous peoples (OD 4.20) Forestry (OP 4.36) Disclosure of operational information (BP 17.50) Economic evaluation of investment operations (OP 10.04) Management of cultural property in Bank-financed projects (OPN 11.03) Project supervision (OD 13.05)
23. 6/21/2001	India: Coal Sector Environmental and Social Mitigation Project and Coal Sector Rehabilitation Project	Environmental assessment (OD 4.01) Indigenous peoples (OD 4.20) Involuntary resettlement (OD 4.30) Disclosure of operational information (BP 17.50) Management of cultural property in Bank-financed projects (OPN 11.03) Project supervision (OD 13.05)
24. 7/27/2001	Uganda: Third Power Project, Fourth Power Project, and proposed Bujagali Hydropower Project	Environmental assessment (OD/OP 4.01) Natural habitats (OP/BP 4.04) Indigenous peoples (OD 4.20) Involuntary resettlement (OD 4.30) Safety of dams (OP 4.37) Management of cultural property of Bank-financed projects (OPN 11.03) Economic evaluation of investment operations (OP 10.04) Poverty alleviation (OD 4.15) Disclosure of operational information (BP 17.50) Project monitoring and evaluation (OD 10.70) Project supervision (OD 13.05)
25. 12/6/2001	Papua New Guinea: Governance Promotion Adjustment Loan	Forestry (OP 4.36) Adjustment lending policy (OD 8.60) Project supervision (OD/OP/BP 13.05)
26. 5/17/2002	Paraguay: Reform Project for the Water and Telecommunication Sectors Argentina: SEGEA V Power Distribution Project	Environmental policy for dam and reservoir projects (OD 4.00, Annex B) Environmental assessment (OD 4.01) Involuntary resettlement (OD 4.30) Project supervision (OD/OP/BP 13.05) Project monitoring and evaluation (OD 10.70) Suspension of disbursements (OD 13.40)
27. 9/25/2002	Cameroon: Petroleum Development and Pipeline Project, and Petroleum Environment Capacity Enhancement Project	Environmental assessment (OD 4.01) Natural habitats (OP/BP 4.04) Poverty alleviation (OP 4.15) Indigenous people (OD 4.20) Involuntary resettlement (OD 4.30) Disclosure of operational information (BP 17.50) Project supervision (OD 13.05)

## ANNEX VII

# The Legal Framework

The Inspection Panel was established by two identical Resolutions of the Board of Executive Directors on September 22, 1993 (IBRD 93-10/ IDA 93-6). Since then, the Resolutions have been amended twice by the Board through the so-called Clarifications (the 1996 and 1999 Clarifications). The Inspection Panel has also issued its own Operating Procedures as well as Administrative Procedures to add detail to the procedural and administrative aspects of the Resolutions. This Annex presents the full text of the Resolutions, their Clarifications, and the Panel's Operating Procedures, as well as its Administrative Procedures.

## Annex VII-A. The Resolution Establishing the Inspection Panel

September 22, 1993

### INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT INTERNATIONAL DEVELOPMENT ASSOCIATION

**Resolution No. IBRD 93-10**

**Resolution No. IDA 93-6**

#### **"The World Bank Inspection Panel"**

The Executive Directors:

Hereby resolve:

1. There is established an independent Inspection Panel (hereinafter called the Panel), which shall have the powers and shall function as stated in this resolution.

#### ***Composition of the Panel***

2. The Panel shall consist of three members of different nationalities from Bank member countries. The President, after consultation with the Executive Directors, shall nominate the members of the Panel to be appointed by the Executive Directors.
3. The first members of the Panel shall be appointed as follows: one for three years, one for four years and one for five years. Each vacancy thereafter shall be filled for a period of five years, provided that no member may serve for more than one term. The term of appointment of each member of the Panel shall be subject to the continuity of the inspection function established by this Resolution.
4. Members of the Panel shall be selected on the basis of their ability to deal thoroughly and fairly with the requests brought to them, their integrity and their independence from the Bank's Management, and their exposure to developmental issues and to living conditions in developing countries. Knowledge and experience of the Bank's operations will also be desirable.
5. Executive Directors, Alternates, Advisors and staff members of the Bank Group may not serve on the Panel until two years have elapsed since the end of their service in the Bank Group. For purposes of this Resolution, the term "staff" shall mean all persons holding Bank Group appointments as defined in Staff Rule 4.01 including persons holding consultant and local consultant appointments.



6. A Panel member shall be disqualified from participation in the hearing and investigation of any request related to a matter in which he/she has a personal interest or had significant involvement in any capacity.
7. The Panel member initially appointed for five years shall be the first Chairperson of the Panel, and shall hold such office for one year. Thereafter, the members of the Panel shall elect a Chairperson for a period of one year.
8. Members of the Panel may be removed from office only by decision of the Executive Directors, for cause.
9. With the exception of the Chairperson who shall work on a full-time basis at Bank headquarters, members of the Panel shall be expected to work on a full-time basis only when their workload justifies such an arrangement, as will be decided by the Executive Directors on the recommendation of the Panel.
10. In the performance of their functions, members of the Panel shall be officials of the Bank enjoying the privileges and immunities accorded to Bank officials, and shall be subject to the requirements of the Bank's Articles of Agreement concerning their exclusive loyalty to the Bank and to the obligations of subparagraphs (c) and (d) of paragraph 3.1 and paragraph 3.2 of the Principles of Staff Employment concerning their conduct as officials of the Bank. Once they begin to work on a full-time basis, they shall receive remuneration at a level to be determined by the Executive Directors upon a recommendation of the President, plus normal benefits available to Bank fixed-term staff. Prior to that time, they shall be remunerated on a per diem basis and shall be reimbursed for their expenses on the same basis as the members of the Bank's Administrative Tribunal. Members of the Panel may not be employed by the Bank Group, following the end of their service on the Panel.
11. The President, after consultation with the Executive Directors, shall assign a staff member to the Panel as Executive Secretary, who need not act on a full-time basis until the workload so justifies. The Panel shall be given such budgetary resources as shall be sufficient to carry out its activities.

#### *Powers of the Panel*

12. The Panel shall receive requests for inspection presented to it by an affected party in the territory of the borrower which is not a single individual (i.e., a community of persons such as an organization, association, society or other grouping of individuals), or by the local representative of such party or by another representative in the exceptional cases where the party submitting the request contends that appropriate representation is not locally available and the Executive Directors so agree at the time they consider the request for inspection. Any such representative shall present to the Panel written evidence that he is acting as agent of the party on behalf of which the request is made. The affected party must demonstrate that its rights or interests have been or are likely to be directly affected by an action or omission of the Bank as a result of a failure of the Bank to follow its operational policies and procedures with respect to the design, appraisal and/or implementation of a project

financed by the Bank (including situations where the Bank is alleged to have failed in its follow-up on the borrower's obligations under loan agreements with respect to such policies and procedures) provided in all cases that such failure has had, or threatens to have, a material adverse effect. In view of the institutional responsibilities of Executive Directors in the observance by the Bank of its operational policies and procedures, an Executive Director may in special cases of serious alleged violations of such policies and procedures ask the Panel for an investigation, subject to the requirements of paragraphs 13 and 14 below. The Executive Directors, acting as a Board, may at any time instruct the Panel to conduct an investigation. For purposes of this Resolution, "operational policies and procedures" consist of the Bank's Operational Policies, Bank Procedures and Operational Directives, and similar documents issued before these series were started, and does not include Guidelines and Best Practices and similar documents or statements.

13. The Panel shall satisfy itself before a request for inspection is heard that the subject matter of the request has been dealt with by the Management of the Bank and Management has failed to demonstrate that it has followed, or is taking adequate steps to follow the Bank's policies and procedures. The Panel shall also satisfy itself that the alleged violation of the Bank's policies and procedures is of a serious character.
14. In considering requests under paragraph 12 above, the following requests shall not be heard by the Panel:
  - (a) Complaints with respect to actions which are the responsibility of other parties, such as a borrower, or potential borrower, and which do not involve any action or omission on the part of the Bank.
  - (b) Complaints against procurement decisions by Bank borrowers from suppliers of goods and services financed or expected to be financed by the Bank under a loan agreement, or from losing tenderers for the supply of any such goods and services, which will continue to be addressed by staff under existing procedures.
  - (c) Requests filed after the Closing Date of the loan financing the project with respect to which the request is filed or after the loan financing the project has been substantially disbursed.<sup>1</sup>
  - (d) Requests related to a particular matter or matters over which the Panel has already made its recommendation upon having received a prior request, unless justified by new evidence or circumstances not known at the time of the prior request.
15. The Panel shall seek the advice of the Bank's Legal Department on matters related to the Bank's rights and obligations with respect to the request under consideration.

### ***Procedures***

16. Requests for inspection shall be in writing and shall state all relevant facts, including, in the case of a request by an affected party, the harm suffered by or threatened to such party or parties by the alleged action or omission of the Bank. All requests shall explain the steps already taken to deal with the issue, as well as the nature of

the alleged actions or omissions and shall specify the actions taken to bring the issue to the attention of Management, and Management's response to such action.

17. The Chairperson of the Panel shall inform the Executive Directors and the President of the Bank promptly upon receiving a request for inspection.
18. Within 21 days of being notified of a request for inspection, the Management of the Bank shall provide the Panel with evidence that it has complied, or intends to comply with the Bank's relevant policies and procedures.
19. Within 21 days of receiving the response of the Management as provided in the preceding paragraph, the Panel shall determine whether the request meets the eligibility criteria set out in paragraphs 12 to 14 above and shall make a recommendation to the Executive Directors as to whether the matter should be investigated. The recommendation of the Panel shall be circulated to the Executive Directors for decision within the normal distribution period. In case the request was initiated by an affected party, such party shall be informed of the decision of the Executive Directors within two weeks of the date of such decision.
20. If a decision is made by the Executive Directors to investigate the request, the Chairperson of the Panel shall designate one or more of the Panel's members (Inspectors) who shall have primary responsibility for conducting the inspection. The Inspector(s) shall report his/her (their) findings to the Panel within a period to be determined by the Panel taking into account the nature of each request.
21. In the discharge of their functions, the members of the Panel shall have access to all staff who may contribute information and to all pertinent Bank records and shall consult as needed with the Director General, Operations Evaluation Department and the Internal Auditor. The borrower and the Executive Director representing the borrowing (or guaranteeing) country shall be consulted on the subject matter both before the Panel's recommendation on whether to proceed with the investigation and during the investigation. Inspection in the territory of such country shall be carried out with its prior consent.
22. The Panel shall submit its report to the Executive Directors and the President. The report of the Panel shall consider all relevant facts, and shall conclude with the Panel's findings on whether the Bank has complied with all relevant Bank policies and procedures.
23. Within six weeks from receiving the Panel's findings, Management will submit to the Executive Directors for their consideration a report indicating its recommendations in response to such findings. The findings of the Panel and the actions completed during project preparation also will be discussed in the Staff Appraisal Report when the project is submitted to the Executive Directors for financing. In all cases of a request made by an affected party, the Bank shall, within two weeks of the Executive Directors' consideration of the matter, inform such party of the results of the investigation and the action taken in its respect, if any.

### *Decisions of the Panel*

24. All decisions of the Panel on procedural matters, its recommendations to the Executive Directors on whether to proceed with the investigation of a request, and its reports pursuant to paragraph 22, shall be reached by consensus and, in the absence of a consensus, the majority and minority views shall be stated.

### *Reports*

25. After the Executive Directors have considered a request for an inspection as set out in paragraph 19, the Bank shall make such request publicly available together with the recommendation of the Panel on whether to proceed with the inspection and the decision of the Executive Directors in this respect. The Bank shall make publicly available the report submitted by the Panel pursuant to paragraph 22 and the Bank's response thereon within two weeks after consideration by the Executive Directors of the report.
26. In addition to the material referred to in paragraph 25, the Panel shall furnish an annual report to the President and the Executive Directors concerning its activities. The annual report shall be published by the Bank.

### *Review*

27. The Executive Directors shall review the experience of the inspection function established by this Resolution after two years from the date of the appointment of the first members of the Panel.

### *Application to IDA projects*

28. In this resolution, references to the Bank and to loans include references to the Association and to development credits.

### **Note**

1. "This will be deemed to be the case when at least ninety five percent of the loan proceeds have been disbursed."



## Annex VII-B. The 1996 Clarifications

### REVIEW OF THE RESOLUTION ESTABLISHING THE INSPECTION PANEL: 1996 CLARIFICATION OF CERTAIN ASPECTS OF THE RESOLUTION

The Resolution establishing the Inspection Panel calls for a review after two years from the date of appointment of the first Panel members. On October 17, 1996, the Executive Directors of the Bank and IDA completed the review process (except for the question of inspection of World Bank Group private sector projects) by considering and endorsing the clarifications recommended by Management on the basis of the discussions of the Executive Directors' Committee on Development Effectiveness (CODE). The Inspection Panel and Management are requested by the Executive Directors to observe the clarifications in their application of the Resolution. The clarifications are set out below.

#### *The Panel's Function*

Since the Resolution limits the first phase of the inspection process to ascertaining the eligibility of the request, this phase should normally be completed within the 21 days stated in the Resolution. However, in cases where the Inspection Panel believes that it would be appropriate to undertake a "preliminary assessment" of the damages alleged by the requester (in particular when such preliminary assessment could lead to a resolution of the matter without the need for a full investigation), the Panel may undertake the preliminary assessment and indicate to the Board the date on which it would present its findings and recommendations as to the need, if any, for a full investigation. If such a date is expected by the Panel to exceed eight weeks from the date of receipt of Management's comments, the Panel should seek Board approval for the extension, possibly on a "no-objection" basis. What is needed at this preliminary stage is not to establish that a serious violation of the Bank's policy has actually resulted in damages suffered by the affected party, but rather to establish whether the complaint is *prima facie* justified and warrants a full investigation because it is eligible under the Resolution. Panel investigations will continue to result in "findings" and the Board will continue to act on investigations on the basis of recommendations of Management with respect to such remedial action as may be needed.

#### *Eligibility and Access*

It is understood that the "affected party" which the Resolution describes as "a community of persons such as an organization, association, society or other grouping of individuals" includes any two or more persons who share some common interests or concerns.

The word "project" as used in the Resolution has the same meaning as it generally has in the Bank's practice, and includes projects under consideration by Bank management as well as projects already approved by the Executive Directors.

The Panel's mandate does not extend to reviewing the consistency of the Bank's practice with any of its policies and procedures, but, as stated in the Resolution, is limited to cases of alleged failure by the Bank to follow its operational policies and procedures *with respect to the design, appraisal and/or implementation of projects*, including cases of alleged failure by the bank to follow-up on the borrowers' obligations under loan agreements, with respect to such policies and procedures.

No procurement action is subject to inspection by the Panel, whether taken by the Bank or by a borrower. A separate mechanism is available for addressing procurement-related complaints.

### ***Outreach***

Management will make its response to requests for inspection available to the public within three days after the Board has decided on whether to authorize the inspection. Management will also make available to the public opinions of the General Counsel related to Inspection Panel matters promptly after the Executive Directors have dealt with the issues involved, unless the Board decides otherwise in a specific case.

Management will make significant efforts to make the Inspection Panel better known in borrowing countries, but will not provide technical assistance or funding to potential requesters.

### ***Composition of the Panel***

No change in the composition of the Panel is being made at this time.

### ***Role of the Board***

The Board will continue to have authority to (i) interpret the Resolution; and (ii) authorize inspections. In applying the Resolution to specific cases, the Panel will apply it as it understands it, subject to the Board's review. As stated in the Resolution, "[t]he Panel shall seek the advice of the Bank's Legal Department on matters related to the Bank's rights and obligations with respect to the request under consideration."

October 17, 1996

## Annex VII-C. The 1999 Clarifications

### 1999 Conclusions of the Board's Second Review of the Inspection Panel

The Executive Directors approved today, April 20, 1999, with immediate effect, the report of the Working Group on the Second Review of the Inspection Panel, as revised in light of the extensive consultations that took place after the report was first circulated.

The report confirms the soundness of the Resolution establishing the Inspection Panel (IBRD Resolution No. 93-10, IDA Resolution No. 93-6 of September 22, 1993, hereinafter "the Resolution") and provides clarifications for its application. These clarifications supplement the clarifications issued by the Board on October 17, 1996 and prevail over them in case of conflict. The report's recommendations approved by the Board are as follows:

1. The Board reaffirms the Resolution, the importance of the Panel's function, its independence and integrity.
2. Management will follow the Resolution. It will not communicate with the Board on matters associated with the request for inspection, except as provided for in the Resolution. It will thus direct its response to the request, including any steps it intends to take to address its failures, if any, to the Panel. Management will report to the Board any recommendations it may have, after the Panel completes its inspection and submits its findings, as envisaged in paragraph 23 of the Resolution.
3. In its initial response to the request for inspection, Management will provide evidence that
  - i. it has complied with the relevant Bank operational policies and procedures; or that
  - ii. there are serious failures attributable exclusively to its own actions or omissions in complying, but that it intends to comply with the relevant policies and procedures; or that
  - iii. the serious failures that may exist are exclusively attributable to the borrower or to other factors external to the Bank; or that
  - iv. the serious failures that may exist are attributable both to the Bank's non-compliance with the relevant operational policies and procedures and to the borrower or other external factors.

The Inspection Panel may independently agree or disagree, totally or partially, with Management's position and will proceed accordingly.

4. When Management responds, admitting serious failures that are attributable exclusively or partly to the Bank, it will provide evidence that it has complied or intends to comply with the relevant operating policies and procedures. This response will

contain only those actions that the Bank has implemented or can implement by itself.

5. The Inspection Panel will satisfy itself as to whether the Bank's compliance or evidence of intention to comply is adequate, and reflect this assessment in its reporting to the Board.
6. The Panel will determine the eligibility of a request for inspection independently of any views that may be expressed by Management. With respect to matters relating to the Bank's rights and obligations with respect to the request under consideration, the Panel will seek the advice of the Bank's Legal Department as required by the Resolution.
7. For its recommendation on whether an investigation should be carried out, the Panel will satisfy itself that all the eligibility criteria provided for in the Resolution have been met. It will base its recommendation on the information presented in the request, in the Management response, and on other documentary evidence. The Panel may decide to visit the project country if it believes that this is necessary to establish the eligibility of the request. In respect of such field visits, the Panel will not report on the Bank's failure to comply with its policies and procedures or its resulting material adverse effect; any definitive assessment of a serious failure of the Bank that has caused material adverse effect will be done after the Panel has completed its investigation.
8. The original time limit, set forth in the Resolution for both Management's response to the request and the Panel's recommendation, will be strictly observed except for reasons of force majeure, i.e. reasons that are clearly beyond Management's or the Panel's control, respectively, as may be approved by the Board on a no objection basis.
9. If the Panel so recommends, the Board will authorize an investigation without making a judgement on the merits of the claimants' request, and without discussion except with respect to the following technical eligibility criteria:
  - a. The affected party consists of any two or more persons with common interests or concerns and who are in the borrower's territory (Resolution para.12).
  - b. The request does assert in substance that a serious violation by the Bank of its operational policies and procedures has or is likely to have a material adverse effect on the requester (Resolution paras. 12 and 14a).
  - c. The request does assert that its subject matter has been brought to Management's attention and that, in the requester's view, Management has failed to respond adequately demonstrating that it has followed or is taking steps to follow the Bank's policies and procedures (Resolution para. 13).
  - d. The matter is not related to procurement (Resolution para. 14b).
  - e. The related loan has not been closed or substantially disbursed (Resolution para. 14c).
  - f. The Panel has not previously made a recommendation on the subject matter or, if it has, that the request does assert that there is new evidence or circumstances not known at the time of the prior request (Resolution para. 14d).

10. Issues of interpretation of the Resolution will be cleared with the Board.
11. The “preliminary assessment” concept, as described in the October 1996 Clarification, is no longer needed. The paragraph entitled “The Panel’s Function” in the October 1996 “Clarifications” is thus deleted.
12. The profile of Panel activities, in-country, during the course of an investigation, should be kept as low as possible in keeping with its role as a fact-finding body on behalf of the Board. The Panel’s methods of investigation should not create the impression that it is investigating the borrower’s performance. However, the Board, acknowledging the important role of the Panel in contacting the requesters and in fact-finding on behalf of the Board, welcomes the Panel’s efforts to gather information through consultations with affected people. Given the need to conduct such work in an independent and low-profile manner, the Panel—and Management—should decline media contacts while an investigation is pending or underway. Under those circumstances in which, in the judgement of the Panel or Management, it is necessary to respond to the media, comments should be limited to the process. They will make it clear that the Panel’s role is to investigate the Bank and not the borrower.
13. As required by the Resolution, the Panel’s report to the Board will focus on whether there is a serious Bank failure to observe its operational policies and procedures with respect to project design, appraisal and/or implementation. The report will include all relevant facts that are needed to understand fully the context and basis for the Panel’s findings and conclusions. The Panel will discuss in its written report only those material adverse effects, alleged in the request, that have totally or partially resulted from serious Bank failure of compliance with its policies and procedures. If the request alleges a material adverse effect and the Panel finds that it is not totally or partially caused by Bank failure, the Panel’s report will so state without entering into analysis of the material adverse effect itself or its causes.
14. For assessing material adverse effect, the without-project situation should be used as the base case for comparison, taking into account what baseline information may be available. Non-accomplishments and unfulfilled expectations that do not generate a material deterioration compared to the without-project situation will not be considered as a material adverse effect for this purpose. As the assessment of material adverse effect in the context of the complex reality of a specific project can be difficult, the Panel will have to exercise carefully its judgement on these matters, and be guided by Bank policies and procedures where relevant.
15. A distinction has to be made between Management’s report to the Board (Resolution para. 23), which addresses Bank failure and possible Bank remedial efforts and “action plans,” agreed between the borrower and the Bank, in consultation with the requesters, that seek to improve project implementation. The latter “action plans” are outside the purview of the Resolution, its 1996 clarification, and these clarifications. In the event of agreement by the Bank and borrower on an action plan for the project, Management will communicate to the Panel the nature and outcomes of consultations with affected parties on the action plan. Such an action plan, if war-



ranted, will normally be considered by the Board in conjunction with the Management's report, submitted under Resolution para. 23.

16. The Panel may submit to the Executive Directors for their consideration a report on their view of the adequacy of consultations with affected parties in the preparation of the action plans. The Board should not ask the Panel for its view on other aspects of the action plans nor would it ask the Panel to monitor the implementation of the action plans. The Panel's view on consultation with affected parties will be based on the information available to it by all means, but additional country visits will take place only by government invitation.
17. The Board underlines the need for Management to make significant efforts to make the Inspection Panel better known in borrowing countries, as specified in the 1996 "Clarifications."
18. The Board emphasizes the importance of prompt disclosure of information to claimants and the public, as stipulated in the Resolution (paras. 23 and 25) and in its 1996 Clarifications. The Board requires that such information be provided by Management to claimants in their language, to the extent possible.
19. The Board recognizes that enhancing the effectiveness of the Inspection Panel process through the above clarifications assumes adherence to them by all parties in good faith. It also assumes the borrowers' consent for field visits envisaged in the Resolution. If these assumptions prove to be incorrect, the Board will revisit the above conclusions.

## Annex VII–D. The Operating Procedures

Operating Procedures as adopted by the Panel on August 19, 1994

### CONTENTS

#### Introduction

- Composition
- Purpose
- Functions
- Participants
- Administration

#### Subject Matter of Requests

- Scope
- Limitations

#### Preparation of a Request

- A. Who Can File a Request
- B. Contents of a Request
- C. Form of a Request
  - Written
  - Format
  - Language
  - Representatives
  - Documents
- D. Delivery of Request
- E. Advice on Preparation

#### Procedures on Receipt of a Request

- A. Register
  - Contents of Notice
- B. Request Additional Information
- C. Outside Scope Records
- D. Need for Review
- E. Revised Request

#### Management's Response

Clarification

#### Panel Recommendation

- A. Basis
- B. Required Criteria
  - Criteria for Satisfactory Response
  - Preliminary Review
  - Initial Study
- C. Contents
- D. Submission

#### Board Decision and Public Release

- Notification
- Public Information

#### An Investigation

- A. Initial Procedures
- B. Methods of Investigation
  - Consent Required
- C. Participation of Requester
- D. Participation of Third Parties

#### Panel Report

- Contents
- Submission

#### Management's Recommendations

#### Board Decision and Public Release

#### General

- Business Days
- Copies
- Consultations
- Access to Bank Staff and Information
- Legal Advice
- Confidentiality
- Information to Requester and Public

#### Annexes

- Annex 1:* Guidance on How to Prepare a Request for Inspection
- Annex 2:* Model Request Form

## INTRODUCTION

The Inspection Panel (the “Panel”) is an independent forum established by the Executive Directors of the International Bank for Reconstruction and Development (“IBRD”) and the International Development Association (“IDA”) by IBRD Resolution No. 93-10 and the identical IDA Resolution No. 93-6 both adopted by the Executive Directors of the respective institutions on September 22, 1993 (collectively the “Resolution”). The text of the Resolution is in Annex 1. References in these procedures to the “Bank” includes the IBRD and IDA.

The Panel’s authority is dictated by the Resolution: within that framework, these Operating Procedures are adopted by the Panel to provide detail to the operational provisions. The text is based on the Resolution and takes into account suggestions from outside sources.

In view of the unprecedented nature of the new inspection function the current procedures are provisional: the Panel will review them within 12 months, and in light of experience and comments received, will revise them if necessary; and will recommend to the Executive Directors (“Executive Directors”) amendments to the Resolution that would allow a more effective role for the Panel.

### *Composition*

The Panel consists of three Inspectors. At the outset, one Inspector, the Chairperson, will work on a full-time basis; the other two will work part-time. This arrangement is provisional. The Panel’s workload will be dictated by the number and nature of requests received. If necessary, the Panel will recommend alternative arrangements to the Executive Directors.

### *Purpose*

The Panel has been established for the purpose of providing people directly and adversely affected by a Bank-financed project with an independent forum through which they can request the Bank to act in accordance with its own policies and procedures. It follows that this forum is available when adversely affected people believe the Bank itself has failed, or has failed to require others, to comply with its policies and procedures, and only after efforts have been made to ask the Bank Management (“Management”) itself to deal with the problem.

### *Functions*

The role of the Panel is to carry out independent investigations. Its function, which will be triggered when it receives a request for inspection, is to inquire and recommend: it will make a preliminary review of a request for inspection and the response of Management, independently assess the information and then recommend to the Board of Executive Directors whether or not the matters complained of should be investigated. If the Board decides that a request shall be investigated, the Panel will collect information and

provide its findings, independent assessment and conclusions to the Board. On the basis of the Panel's findings and Management's recommendations, the Executive Directors will consider the actions, if any, to be taken by the Bank.

### *Participants*

During the preliminary review period—up to the time the Panel makes a recommendation to the Board on whether or not the matter should be investigated—the Panel will accept statements or evidence from (a) the Requester, i.e. either the affected people and/or their duly appointed representative, or an Executive Director; (b) Management; and, (c) any other individual or entity invited by the Panel to present information or comments.

During an investigation, any person who is either a party to the investigation or who provides the designated Inspector(s) with satisfactory evidence that he/she has an interest, apart from any interest in common with the public, will be entitled to submit information or evidence relevant to the investigation.

### *Administration*

The Panel has approved separate Administrative Procedures which are available from the Office of The Inspection Panel.

Please note that all headings are for ease of reference only. They do not form part of these procedures and do not constitute an interpretation thereof.

## **SUBJECT MATTER OF REQUESTS**

### *Scope*

1. The Panel is authorized to accept requests for inspection ("Request(s)") which claim that an actual or threatened material adverse effect on the affected party's rights or interests arises directly out of an action or omission of the Bank as a result of a failure by the Bank to follow its own operational policies and procedures during the design, appraisal and/or implementation of a Bank financed project. Before submitting a Request steps must have already been taken (or efforts made) to bring the matter to the attention of Management with a result unsatisfactory to the Requester.

### *Limitations*

2. The Panel is not authorized to deal with the following:
  - (a) complaints with respect to actions which are the responsibility of other parties, such as the borrower, or potential borrower, and which do not involve any action or omission on the part of the Bank;
  - (b) complaints against procurement decisions by Bank borrowers from suppliers of goods and services financed or expected to be financed by the Bank under a loan/credit agreement, or from losing tenderers for the supply of any such goods and services, which will continue to be addressed by Bank staff under existing procedures;

- (c) Requests filed after the Closing Date of the loan/credit financing the project with respect to which the Request is filed or when 95% or more of the loan/credit proceeds have been disbursed; or
- (d) Requests related to a particular matter or matters over which the Panel has already made its recommendation after having received a prior Request, unless justified by new evidence or circumstances not known at the time of the prior Request.

## PREPARATION OF A REQUEST

3. The Panel's operational proceedings begin when a Request is received. This section of the procedures is primarily designed to give further guidance to potential Requesters on what facts and explanations they should provide.

### *A. Who Can File a Request*

4. The Panel has authority to receive Requests which complain of a violation of the Bank's policies and procedures from the following people or entities:
  - (a) any group of two or more people in the country where the Bank financed project is located who believe that as a result of the Bank's violation their rights or interests have been, or are likely to be adversely affected in a direct and material way. They may be an organization, association, society or other grouping of individuals; or
  - (b) a duly appointed local representative acting on explicit instructions as the agent of adversely affected people; or
  - (c) in exceptional cases, referred to in paragraph 11 below, a foreign representative acting as agent of adversely affected people; or
  - (d) an Executive Director of the Bank in special cases of serious alleged violations of the Bank's policies and procedures.

### *B. Contents of a Request*

5. In accordance with the Resolution, Requests should contain the following information:
  - (a) a description of the project, stating all the relevant facts including the harm suffered by or threatened to the affected party;
  - (b) an explanation of how Bank policies, procedures or contractual documents were seriously violated;
  - (c) a description of how the act or omission on the part of the Bank has led or may lead to a violation of the specific provision;
  - (d) a description of how the party was, or is likely to be, materially and adversely



affected by the Bank's act or omission and what rights or interests of the claimant were directly affected;

- (e) a description of the steps taken by the affected party to resolve the violations with Bank staff, and explanation of why the Bank's response was inadequate;
- (f) in Requests relating to matters previously submitted to the Panel, a statement specifying what new evidence or changed circumstances justify the Panel revisiting the issue; and
- (g) if some of the information cannot be provided, an explanation should be included.

### *C. Form of Request*

#### WRITTEN

- 6. All Requests must be submitted in writing, dated and signed by the Requester and contain his/her name and contact address.

#### FORMAT

- 7. No specific form is necessary: a letter will suffice. A Requester may wish to refer to the guidance and use the model form specifying required information. (Attached as Annex 2)

#### LANGUAGE

- 8. The working language of the Panel is English. Requests submitted directly by affected people themselves may be in their local language if they are unable to obtain a translation. If requests are not in English, the time needed to translate and ensure an accurate and agreed translation may delay acceptance and consideration by the Panel.

#### REPRESENTATIVES

- 9. If the Requester is a directly affected person or entity representing affected people, written signed proof that the representative has authority to act on their behalf must be attached.
- 10. If the Request is submitted by a non-affected representative, he/she must provide evidence of representational authority and the names and contact address of the party must be provided. Proof of representational authority, which shall consist of the original signed copy of the affected party's explicit instructions and authorization, must be attached.
- 11. In addition, in the cases of non-local representation, the Panel will require clear evidence that there is no adequate or appropriate representation in the country where the project is located.

#### DOCUMENTS

- 12. The following documents should be attached:
  - (a) all correspondence with Bank staff;

- (b) notes of meetings with Bank staff;
  - (c) a map or diagram, if relevant, showing the location of the affected party or area affected by the project; and
  - (d) any other evidence supporting the complaint.
13. If all the information listed cannot be provided an explanation should be included.

#### ***D. Delivery of Request***

14. Requests must be sent by registered or certified mail or delivered by hand in a sealed envelope against receipt to the Office of The Inspection Panel at 1818 H Street, N.W., Washington, D.C. 20433, U.S.A. or to the Bank's resident representative in the country where the project is located. In the latter case, the resident representative shall, after issuing a receipt to the Requester, forward the Request to the Panel through the next pouch.

#### ***E. Advice on Preparation***

15. People or entities seeking advice on how to prepare and submit a Request may contact the Office of The Inspection Panel, which will provide information or may meet and discuss the requirements with potential requesters.

### **PROCEDURES ON RECEIPT OF A REQUEST**

16. When the Panel receives a Request the Chairperson, on the basis of the information contained in the Request, shall either promptly register the Request, or ask for additional information, or find the Request outside the Panel's mandate.

#### ***A. Register***

17. If the request, appears to contain sufficient required information the Chairperson shall register the Request in the Panel Register; promptly notify the Requester, the Executive Directors and the Bank President ("President") of the registration; and transmit to the President a copy of the Request with the accompanying documentation, if any.

#### **CONTENTS OF NOTICE**

18. The notice of registration shall:
- (a) record that the Request is registered and indicate the date of the registration and dispatch of that notice;
  - (b) the notice will include the name of the project, the country where the project is located, the name of the Requester unless anonymity is requested, and a brief description of the Request;

- (c) notify the Requester that all communications in connection with the Request will be sent to the address stated in the Request, unless another address is indicated to the Panel Secretariat; and
- (d) request Management to provide the Panel, within 21 days after receipt of the notice and Request, with written evidence that it has complied, or intends to comply with the Bank's relevant policies and procedures. The notice shall specify the due date of the response.

#### ***B. Request Additional Information***

- 19. If the Chairperson finds the contents of the Request or documentation on representation insufficient, he/she may ask the Requester to supply further information.
- 20. Upon receipt of a Request, the Chairperson shall send a written acknowledgment to the Requester, and will specify what additional information is required.
- 21. The Chairperson may refuse to register a Request until all necessary information and documentation is filed.

#### ***C. Outside Scope***

- 22. If the Chairperson finds, that the matter is without doubt manifestly outside the Panel's mandate, he/she will notify the Requesters, of his/her refusal to register the Request and of the reasons therefor; this will include but not be limited to the following types of communications:
  - (a) Requests which are clearly outside the Panel's mandate including those listed above at paragraph 2;
  - (b) Requests which do not show the steps taken or effort made to resolve the matter with Management;
  - (c) Requests from an individual or from a non-authorized representative of an affected party;
  - (d) any correspondence, including but not limited to letters, memoranda, opinions, submissions or requests on any matter within the Panel's mandate which are not requests for an inspection; and
  - (e) Requests that are manifestly frivolous, absurd or anonymous.

#### **RECORDS**

- 23. The number of such Requests and communications received shall be noted in the Register on a quarterly basis and the yearly total included in the Annual Report.

#### ***D. Need for Review***

- 24. In cases where additional information is required, or where it is not clear whether a Request is manifestly outside the Panel's mandate, the Chairperson shall designate a Panel member to review the Request.

### *E. Revised Request*

25. If the Requester receives significant new evidence or information at any time after the initial Request was submitted, he/she may consider whether or not it is serious enough to justify the submission of a revised Request.
26. If a revised Request is submitted, the time periods for Management's response and the Panel recommendation will begin again from the time such Request is registered.

## MANAGEMENT'S RESPONSE

27. Within 21 days after being notified of a Request, Management shall provide the Panel with evidence that it has complied, or intends to comply with the Bank's relevant policies and procedures. After the Panel receives Management's response, it shall promptly enter the date of receipt in the Panel Register.
28. If there is no response from Management within 21 days, the Panel shall notify the President and the Executive Directors and send a copy to the Requester.

### *Clarification*

29. In order to make an informed recommendation, the Panel may request clarification from Management; in the light of Management's response, request more information from the Requester; and provide relevant portions of Management's response for comment. A time limit for receipt of the information requested shall be specified; and
  - (a) whether or not such clarification or information is received within the time limit, make its recommendation to the Executive Directors within 21 days after receipt of Management's response; or
  - (b) in the event it is not possible for the Requester to provide the information quickly, the Panel may advise the Requester to submit an amended Request; the Executive Directors and Bank management will be notified that the process will begin again when the amended Request is received.

## PANEL RECOMMENDATION

30. Within 21 days after receiving Management's response, the Panel shall make a recommendation to the Executive Directors as to whether the matter should be investigated.

### *A. Basis*

31. The Panel shall prepare its recommendation to the Board on the basis of the information contained in:
  - (a) the Request;

- (b) Management's response;
- (c) any further information the Panel may have requested and received from the Requester and/or Management and/or third parties; and
- (d) any findings of the Panel during this stage.

#### ***B. Required Criteria***

32. If, on the basis of the information contained in the Request, it has not already been established that the Request meets the following three conditions required by the Resolution, the Chairperson, in consultation with the other Panel members may, if necessary, designate a Panel member to conduct a preliminary review to determine whether the Request:
- (a) was filed by an eligible party;
  - (b) is not time-barred; and
  - (c) relates to a matter falling within the Panel's mandate.

#### **CRITERIA FOR SATISFACTORY RESPONSE**

33. The Panel may proceed to recommend that there should not be an investigation, if, on the basis of the information contained in the Request and Management's response, the Panel is satisfied that Management has done the following:
- (a) dealt appropriately with the subject matter of the Request; and
  - (b) demonstrated clearly that it has followed the required policies and procedures;
- or
- (c) admitted that it has failed to follow the required policies and procedures but has provided a statement of specific remedial actions and a time-table for implementing them, which will, in the judgment of the Panel, adequately correct the failure and any adverse effects such failure has already caused.

#### **PRELIMINARY REVIEW**

34. If, on the basis of the information contained in Management's response and any clarifications provided, the Panel is satisfied that Management has failed to demonstrate that it has followed, or is taking adequate steps to follow the Bank's policies and procedures, the Panel will conduct a preliminary review in order to determine whether conditions required by provisions of the Resolution exist.
35. Although it may not investigate Management's actions in depth at this stage, it will determine whether Management's failure to comply with the Bank's policies and procedures meets the following three conditions:
- (a) whether such failure has had, or threatens to have, a material adverse effect;
  - (b) whether the alleged violation of the Bank's policies and procedures is, in the judgment of the Panel, of a serious character; and
  - (c) whether remedial actions proposed by Management do not appear adequate to meet the concerns of the Requester as to the application of the Bank's policies and procedures.



#### INITIAL STUDY

36. If the Chairperson considers, after the preliminary review and consultation with the other Panel members, that more factual data not already provided by the Requester, Management or any other source is required to make an informed recommendation to the Executive Directors, he/she may designate a Panel member to undertake a preliminary study. The study may include, but need not be limited to, a desk study and/or a visit to the project site.

#### *C. Contents*

37. On the basis of the review, the Panel shall make its recommendation to the Board as to whether the matter should be investigated. Every recommendation shall include a clear explanation setting forth reasons for the recommendation and be accompanied by:
- (a) the text of the Request and, where applicable, any other relevant information provided by the Requester;
  - (b) the text of Management's response and, where applicable, any clarifications provided;
  - (c) the text of any advice received from the Bank's Legal Department;
  - (d) any other relevant documents or information received; and
  - (e) statements of the majority and minority views in the absence of a consensus by the Panel.

#### *D. Submission*

38. The recommendation shall be circulated by the Executive Secretary of the Panel to the Executive Directors for decision. The Panel will notify the Requester that a recommendation has been sent to the Executive Directors.

#### BOARD DECISION AND PUBLIC RELEASE

39. The Board decides whether or not to accept or reject the Panel's recommendation; and, if the Requester is a non-local representative, whether exceptional circumstances exist and suitable local representation is not available.

#### *Notification*

40. The Panel shall promptly inform the Requester of the Board's decision on whether or not to investigate the Request and shall send the Requester a copy of the Panel's recommendation.

#### *Public Information*

41. After the Executive Directors have considered a Request the Bank shall make such Request publicly available together with the Panel's recommendation on whether to

proceed with the inspection and the decision of the Executive Directors in this respect.

## AN INVESTIGATION

### *A. Initial Procedures*

42. When a decision to investigate a Request is made by the Board, or the Board itself requests an investigation, the Chairperson shall promptly:
  - (a) designate one or more of the Panel's members (Inspector[s]) to take primary responsibility for the investigation;
  - (b) arrange for the Panel members to consult, taking into account the nature of the particular Request, on:
    - (i) the methods of investigation that at the outset appear the most appropriate;
    - (ii) an initial schedule for the conduct of the investigation;
    - (iii) when the Inspector(s) shall report his/her (their) findings to the Panel, including any interim findings; and
    - (iv) any additional procedures for the conduct of the investigation.
43. The designated Inspector(s) shall, as needed, arrange for a meeting with the Requester and schedule discussions with directly affected people.
44. The name of the Inspector(s) and an initial work plan shall be made public as soon as possible.

### *B. Methods of Investigation*

45. The Panel may, taking into account the nature of the particular Request, use a variety of investigatory methods, including but not limited to:
  - (a) meetings with the Requester, affected people, Bank staff, government officials and project authorities of the country where the project is located, representatives of local and international non-governmental organizations;
  - (b) holding public hearings in the project area;
  - (c) visiting project sites;
  - (d) requesting written or oral submissions on specific issues from the Requester, affected people, independent experts, government or project officials, Bank staff, or local or international non-governmental organizations;
  - (e) hiring independent consultants to research specific issues relating to a Request;
  - (f) researching Bank files; and
  - (g) any other reasonable methods the Inspector(s) consider appropriate to the specific investigation.

#### CONSENT REQUIRED

46. In accordance with the Resolution, physical inspection in the country where the project is located will be carried out with prior consent. The Chairperson shall request the Executive Director representing such country to provide written consent.

#### *C. Participation of Requester*

47. During the course of the investigation, in addition to any information requested by the Inspector(s), the Requester (and affected people if the Requester is a non-affected Representative or an Executive Director) or Bank staff may provide the Inspector(s) either directly or through the Executive Secretary with supplemental information that they believe is relevant to evaluating the Request.
48. The Inspector(s) may notify the Requester of any new material facts provided by Bank staff or by the Executive Director for, or authorities in the country where the project is located.
49. To facilitate understanding of specific points, the Panel may discuss its preliminary findings of fact with the Requester.

#### *D. Participation of Third Parties*

50. During the course of the investigation, in addition to any information requested by the Inspector(s), any member of the public may provide the Inspector(s), either directly or through the Executive Secretary, with supplemental information that they believe is relevant to evaluating the Request.
51. Information should not exceed ten pages and include a one-page summary. Supporting documentation may be listed and attached. The Inspector(s) may request more details if necessary.

### PANEL REPORT

#### *Contents*

52. The report of the Panel (the "Report") shall include the following:
  - (a) a summary discussion of the relevant facts and of the steps taken to conduct the investigation;
  - (b) a conclusion showing the Panel's findings on whether the Bank has complied with relevant Bank policies and procedures;
  - (c) a list of supporting documents which will be available on request from the Office of The Inspection Panel; and
  - (d) statements of the majority and minority views in the absence of a consensus by the Panel.

### ***Submission***

53. Upon completion of the Report, the Panel shall submit it to:

- (a) the Executive Directors: accompanied by notification that the Report is being submitted to the President on the same date; and
- (b) the President: accompanied by a notice against receipt that within 6 weeks of receipt of the Report, Management must submit to the Executive Directors for their consideration a report indicating Management's recommendations in response to the Panel's findings.

### **MANAGEMENT'S RECOMMENDATIONS**

54. Within 6 weeks after receiving the Panel's findings, Management will submit to the Executive Directors for their consideration a report indicating its recommendations in response to the Panel's findings. Upon receipt of a copy of the report, the Panel will notify the Requester.

### **BOARD DECISION AND PUBLIC RELEASE**

55. Within 2 weeks after the Executive Directors consider the Panel's Report and the Management's response, the Bank shall inform the Requester of the results of the investigation and the action decided by the Board, if any.

56. After the Bank has informed the Requester, the Bank shall make publicly available:

- (a) the Panel's Report;
- (b) Management's recommendations; and
- (c) the Board's decision.

These documents will also be available at the Office of The Inspection Panel.

57. The Panel will seek to enhance public awareness of the results of investigations through all available information sources.

### **GENERAL**

#### ***Business Days***

58. "Days" under these procedures means days on which the Bank is open for business in Washington, D.C.

#### ***Copies***

59. Consideration of Requests and other documents submitted throughout the process will be expedited if an original and two copies are filed. When any document contains extensive supporting documentation the Panel may ask for additional copies.

### ***Consultations***

60. The borrower and the Executive Director representing the borrowing (or guaranteeing) country shall be consulted on the subject matter before the Panel's recommendation and during an investigation.

### ***Access to Bank Staff and Information***

61. Pursuant to the Resolution and in discharge of their functions, the members of the Panel shall have access to all Bank staff who may contribute information and to all pertinent Bank records and shall consult as needed with the Director General, Operations Evaluation Department, and the Internal Auditor.

### ***Legal Advice***

62. The Panel shall seek, through the Vice President and General Counsel of the Bank, the written advice of the Bank's Legal Department on matters related to the Bank's rights and obligations with respect to the Request under consideration. Any such advice will be included as an attachment to the Panel's recommendation and/or Report to the Executive Directors.

### ***Confidentiality***

63. Documents, or portions of documents of a confidential nature will not be released by the Panel without the express written consent of the party concerned.

### ***Information to Requester and Public***

64. The Executive Secretary shall record in the Register all actions taken in connection with the processing of the Request, the dates thereof, and the dates on which any document or notification under these procedures is received in or sent from the Office of The Inspection Panel. The Requester shall be informed promptly. The Register will be publicly available.
65. A notice that a Request has been registered and all other notices or documents issued by the Panel will be available to the public through the Bank's PIC in Washington, D.C.; at the Bank's Resident Mission in the country where the project is located or at the relevant regional office; at the Bank's Paris, London and Tokyo offices; or on request from the Executive Secretary of the Panel.

### ***Annexes***

*Annex 1: Guidance on How to Prepare a Request for Inspection*

*Annex 2: Model Request Form*



## Annex 1. Guidance on How to Prepare a Request for Inspection

The Inspection Panel needs some basic information in order to process a Request for Inspection:

1. Name, contact address, and telephone number of the group or people making the request
2. Name and description of the Bank project
3. Adverse effects of the Bank project

If you are a representative of affected people, attach explicit written instructions from them authorizing you to act on their behalf.

These key questions must be answered:

1. Can you elaborate on the nature and importance of the damage caused by the project to you or those you represent?
2. Do you know that the Bank is responsible for the aspects of the project that has or may affect you adversely? How did you determine this?
3. Are you familiar with Bank policies and procedures that apply to this type of project? How do you believe the Bank may have violated them?
4. Have you contacted or attempted to contact Bank staff members about the project? Please provide information about all contacts, as well as the responses, if any, that you received from the Bank. You must have done this before you can file a Request.
5. Have you tried to resolve your problem through any other means?
6. If you know that the Panel has dealt with this matter before, do you have new facts or evidence to submit?

Please provide a summary of the information in no more than a few pages. Attach as much other information as you think necessary as separate documents. Please note and identify attachments in your summary.

You may wish to use the attached model form.

## Annex 2. Model Form:

### *Request for Inspection*

To: The Executive Secretary  
The Inspection Panel  
1818 H St., NW, Washington, D.C. 20433, U.S.A.  
(or to a World Bank Country/Regional Office)

We \_\_\_\_\_, \_\_\_\_\_, and other persons whose names and addresses are attached, living/representing others living in the area known as \_\_\_\_\_ [and shown in the attached map or diagram], claim the following:

1. The Bank is financing the design/appraisal/implementation of a project [name and brief description].
2. We understand that the Bank has the following policy/policies or procedures [list or describe]:
3. Our rights/interests are [describe].
4. The Bank has violated its own policies or procedures in this way:
5. We believe our rights/interests have been or are likely to be adversely affected as a direct result of the Bank's violation. This is—or is likely to—cause us to suffer [describe harm].

6. We believe the action/omission is the responsibility of the Bank.

7. We have complained/made an effort to complain to Bank staff by [describe]:

[Please attach evidence or explanation.]

8. We received no response/We believe that the response/responses (attached/not attached) are unsatisfactory because [describe why]:

9. In addition, we have taken the following steps to resolve our problem:

We therefore believe that the above actions/omissions, which are contrary to the above policies or procedures, have materially and adversely affected our rights/interests and request the Panel to recommend to the Bank's Board of Executive Directors that an investigation of these matters be carried out in order to resolve the problem.

As advised in your Operating Procedures, this Request for Inspection is brief. We can provide you with more particulars.

DATE: \_\_\_\_\_

SIGNATURES: \_\_\_\_\_

CONTACT ADDRESS: \_\_\_\_\_

Attachments: [Yes] [No]

We authorize you to make this Request public [Yes] [No]

## Annex VII–E. The Administrative Procedures

**THE INSPECTION PANEL FOR  
THE INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT  
INTERNATIONAL DEVELOPMENT ASSOCIATION  
ADMINISTRATIVE PROCEDURES  
AS AMENDED BY THE PANEL ON JULY 10, 1998**

### CONTENTS

#### INTRODUCTORY NOTES

#### PART I PANEL MEETINGS

1. Dates and Location
2. Notices
3. Quorum
4. Agenda
5. Attendance
6. Chair
7. Decisions
8. Secretary and Minutes
9. Annual Report

#### PART II THE PANEL

10. Independence
12. Impartiality
13. Responsibility
14. Communications
15. Election of Chairperson
16. Resignation of Chairperson or Inability to Act
18. Recommendation for Full-Time Work
19. Disqualification

#### PART III THE CHAIRPERSON

21. Responsibility
22. Publicity
23. Delegation of Authority
24. Acting Chairperson
25. Appointment of Inspector(s)
26. Inability of Inspector(s) to Complete  
an Initial Review or Inspection
29. Secretariat: Authority of the Chairperson

#### PART IV THE SECRETARIAT

31. The Executive Secretary
32. Acting Executive Secretary
33. Appointment of Staff Members
34. Independence

#### PART V REQUESTS FOR INSPECTION: GENERAL ADMINISTRATIVE FUNCTIONS

35. General
36. Procedures for a Preliminary Review
37. The Register and Depository Functions
39. Means of Communication
40. Place of Meetings and Proceedings
41. Time Limits and Notices
42. Supporting Documentation
44. Confidentiality

#### PART VI AN INVESTIGATION:

##### LEAD INSPECTOR

45. Responsibilities
49. Employment of Consultants/Experts/  
Researchers
51. Oral Hearings
52. Preparation of Report
54. Resources of Secretariat

#### PART VII BUDGET

#### PART VIII MISCELLANEOUS

56. Immunities and Privileges: Certificates  
of Official Travel
57. Business Days
58. Language
59. Publications

## INTRODUCTORY NOTES

- A. The Inspection Panel (the “Panel”) was established by the Executive Directors of the International Bank for Reconstruction and Development (“IBRD”) and the International Development Association (“IDA”) by IBRD Resolution No. 93-10 and the identical IDA Resolution No. 93-6, both adopted by the Executive Directors of the respective institutions on September 22, 1993 (collectively the “Resolution”). These provisional Administrative Procedures (“Procedures”) are adopted by the Panel pursuant to paragraph 24 of the Resolution establishing the Panel. They are designed to implement certain powers and obligations of the Panel. They are intended to be complementary both to the provisions of the Resolution and to the Operating Procedures adopted by the Panel on August 19, 1994. The Procedures should similarly be considered as complementary to any ad hoc procedures adopted by the Panel for the conduct of a particular investigation pursuant to the Operating Procedures. In light of experience these Procedures may be revised as considered necessary by the Panel.
- B. References in these Procedures to the “Bank” include the IBRD and IDA and references to the “Executive Directors” mean the Executive Directors of the Bank.
- C. Please note that all headings are for ease of reference only. They do not form part of these Procedures and do not constitute an interpretation thereof.

## PART I PANEL MEETINGS

### *Dates and Location*

1. The Panel shall hold an Annual Meeting and other meetings as circumstances require. Meetings shall be convened at dates and locations fixed by the Chairperson.

### *Notices*

2. The Executive Secretary shall use any rapid means of communication to give notice to Panel members of the time and place of each meeting not less than 21 days in advance of the date fixed, except that in urgent cases notice shall be given not less than 7 days prior to such date.

### *Quorum*

3. A quorum for any meeting shall be 2 members of the Panel.

### *Agenda*

4. Under the direction of the Chairperson, the Executive Secretary shall prepare a brief agenda for each meeting and transmit it with notice of the meeting. Additional



items may be placed on the agenda by any Panel member at no less than 3 days' notice.

### *Attendance*

5. (a) Meetings shall be attended by Panel members, the Executive Secretary and staff designated by the Chairperson.  
(b) The Panel may invite any other persons.  
(c) At the Chairperson's discretion, meetings may be conducted by conference call.

### *Chair*

6. The Chairperson, or in his/her absence a Panel member designated by the Chairperson, shall preside over all meetings of the Panel.

### *Decisions*

7. (a) Election of the Chairperson, decisions on procedural matters, recommendations to the Executive Directors, reports of investigations, and adoption of the Annual Report shall be reached by consensus, and in the absence of consensus the majority and minority views shall be recorded in the minutes of the meeting.  
(b) Decisions on administrative matters shall be reached by consensus and in the absence of consensus will be decided by the Chairperson.  
(c) When, in the judgment of the Chairperson, an administrative or procedural action must be taken by the Panel which cannot be postponed until the next meeting or does not warrant the calling of a special meeting, the Chairperson, after consulting with the Panel members by any rapid means of communication, shall act or take such decision without meeting. Such actions will be confirmed by the Panel at its next meeting.

### *Secretary and Minutes*

8. (a) The Executive Secretary shall act as Secretary of the Panel's meetings.  
(b) Except as otherwise specifically directed by the Panel, the Executive Secretary, in consultation with the Chairperson, shall have charge of making and supervising all arrangements for Panel meetings.  
(c) At the request of any Panel Member: (i) the Executive Secretary shall prepare summary records of the proceedings of the Panel and provide member with copies; (ii) verbatim records of his/her statements shall be included by the Executive Secretary in the summary records.  
(d) Draft minutes shall be circulated to Panel members as promptly as possible after meetings. Such minutes shall be approved by the Panel on a no objection basis

or at their next meeting. Verbatim records will be included in the summary record if a Panel member requests that his/her remarks be written down.

- (e) Draft minutes shall be circulated to Panel members as promptly as possible after meetings. Such minutes shall be approved by the Panel on a no objection basis or at their next meeting.

### *Annual Report*

- 9. The Annual Report on the operations of the Panel shall be approved at the Annual Meeting. The Report will be published by the Bank. Copies of the Report will be available on request from the Office of the Inspection Panel.

## **PART II THE PANEL**

### *Independence*

- 10. The Panel is an independent forum. Any attempt to interfere with the functioning of the Panel for political or economic reasons or exert political or other influence on the Panel shall be made public.
- 11. The Panel members shall serve on the Panel in their individual capacity.

### *Impartiality*

- 12. Recommendations and findings of the Panel shall be strictly impartial: only facts relevant to the Request or investigation under consideration shall be relevant to their decisions. Consideration of political factors shall be strictly prohibited.

### *Responsibility*

- 13. The Panel members shall be responsible for the general operations of the Panel.

### *Communications*

- 14. In general the Panel members shall communicate by any rapid means of communication as frequently as the workload demands. In connection with each Request for Inspection ("Request[s]") in progress, the part-time Panel member designated to conduct a preliminary review and/or an investigation will receive all documents and records of communications. The other Panel member(s) will receive notice of the documents received and a summary of activities on a weekly basis.

### *Election of Chairperson*

- 15. The Chairperson of the Panel shall hold office for one year and will be elected by the Panel members annually at the Annual Meeting.

### ***Resignation of Chairperson or Inability to Act***

- 16 (a) If a Member resigns from, or is unable to serve on, the Panel, the other Panel Members will constitute the Panel until a new Member is appointed by the Executive Directors.
- (b) If the Member that resigns or becomes unable to serve on the Panel is the Chairperson, the other Members shall decide who among them will serve as Acting Chairperson until such time as the Executive Directors appoint a new member, and an election of a new Chairperson can take place.
17. If the Chairperson resigns or is unable to act as a Chairperson but remains as a Panel Member, all the Panel Members may elect a new Chairperson for the remainder of his/her term or for the full one-year term referred to in paragraph 7 of the Resolution.

### ***Recommendation for Full-Time Work***

18. The Chairperson, with the agreement of the other Panel members, may recommend to the Executive Directors, the employment on a full-time basis of one or more of the part-time Panel members when, in his/her judgment, this is justified by the workload.

### ***Disqualification***

19. A Panel member shall not participate in the preliminary review and investigation of any Request related to a matter in which he/she has a personal interest or had significant involvement in any capacity. A Panel member shall disclose to the Chairperson any circumstances, which might be deemed to affect his/her impartiality or independence.
20. A Panel member who becomes aware, in the course of a preliminary review or investigation, of any circumstances which may disqualify him/her must immediately inform the Chairperson.

## **PART III THE CHAIRPERSON**

### ***Responsibility***

21. The Chairperson shall be responsible for the daily operations of the Panel, external relations, organization of the Panel members and allocation of tasks, and the functions and administration of the Secretariat.

### ***Publicity***

22. The Chairperson shall be the spokesperson for the Panel and, after consultation with the Panel members, make all formal public statements on behalf of the Panel

as a whole. Panel members making any other statements must make it clear they are doing so in a personal capacity.

#### *Delegation of Authority*

23. The Chairperson may delegate his/her authority to any other Panel member or, after consultation with the Panel, may delegate any of his/her administrative authority and functions to the Executive Secretary.

#### *Acting Chairperson*

24. The Chairperson shall appoint another Panel member or the Executive Secretary to act in his/her absence or in the event of his/her inability to act. The functions of the Executive Secretary, if appointed, shall be limited to administrative and routine procedural matters.

#### *Appointment of Inspector(s)*

25. The Chairperson shall designate the Panel member(s) to be primarily responsible for the conduct of a preliminary review or initial study or investigation.

#### *Inability of Inspector(s) to Complete an Initial Review or Inspection*

26. If the Inspector(s) designated by the Chairperson should resign or be unable to complete an initial study or investigation, the Chairperson shall promptly designate another Panel member to replace him/her.
27. Any such succeeding Inspector shall continue to conduct the initial study or investigation according to the same procedures and requirements as his/her predecessor.
28. If no other Panel member is able to undertake responsibility for completion of an investigation, the Chairperson or any Panel member shall propose another candidate(s) who shall meet the same eligibility criteria as contained in the Resolution appointing Panel members and who shall be appointed by the Executive Directors acting on the unanimous recommendation of the Panel.

#### *Secretariat: Authority of the Chairperson*

29. The Executive Secretary and the members of the staff, whether on direct appointment or on secondment, shall act solely under the direction of the Chairperson and the Panel.
30. The Chairperson shall have authority to impose disciplinary measures in accordance with the provisions of the Bank's Staff Manual and other applicable instruments.

## PART IV THE SECRETARIAT

### *The Executive Secretary*

31. Under the general direction of the Chairperson, and in addition to what is otherwise specifically provided for in the Resolution and in these Procedures, the Executive Secretary shall be responsible for support and daily administration of the Panel's operations; the operation and administration of the Secretariat; and organization of staff.

### *Acting Executive Secretary*

32. In consultation with the Chairperson, the Executive Secretary may appoint an Assistant who shall act for him/her in his/her absence or in the event of his/her inability to act.

### *Appointment of Staff Members*

33. The Executive Secretary, in consultation with the Chairperson, shall select the members of the staff of the Secretariat. Appointments may be made directly or by secondment from the Bank in accordance with the provisions of the Bank's Staff Manual and other applicable instruments.

### *Independence*

34. The Executive Secretary and the staff of the Secretariat shall be committed to the functions and role of the Panel. Any attempt by Bank member countries, non-governmental and other organizations, the Executive Directors, or Bank staff to interfere with or influence staff of the Secretariat in the discharge of their functions shall be reported to the Panel.

## PART V REQUESTS FOR INSPECTION: GENERAL ADMINISTRATIVE FUNCTIONS

### *General*

35. The Panel's Operating Procedures provide general guidance on the submission and processing of Requests.

### *Procedures for a Preliminary Review*

36. The Chairperson, in consultation with the other Panel members as needed, shall in light of the nature and complexity of the Request, decide how a preliminary review shall be conducted.



### *The Register and Depository Functions*

37. The Secretariat shall establish and maintain a Register for Requests to record notices and summaries of all other significant data concerning the commencement, conduct and disposition of a Request. The Register shall be open to the public.
38. The original text of the said notices and summaries, as well as all documents submitted or prepared in connection with any Request shall be deposited in the archives of the Panel.

### *Means of Communication*

39. The Chairperson shall be the official channel for written communications and may delegate this function to the Executive Secretary. Evidence and documents shall be introduced into the proceeding by transmitting them to the Chairperson or Executive Secretary, who shall retain the original for the Panel files and arrange for distribution of copies and notices.

### *Place of Meetings and Proceedings*

40. The Secretariat shall be responsible for making and supervising arrangements for proceedings held in Washington, D.C. or elsewhere;

### *Time Limits and Notices*

41. The Executive Secretary shall be responsible for computing time limits specified in the Resolution or by the Panel and for the dispatch of all notices relating to a Request.

### *Supporting Documentation*

42. The Executive Secretary shall compile a document bank (a compilation of essential documents from all sources). After the document bank has been established, the parties to the Request or any other persons will be expected not to attach copies of any document in the bank to their reports, evidence or submissions etc., but to refer to it, giving the document number: this is to avoid adding to the paper load.
43. When any additional material is made available to a Panel member during the preliminary review period, or to the Inspector(s) leading an investigation, he/she shall promptly inform the other Panel members and provide copies of such material on request. The Chairperson, in consultation with the other Panel members, will determine whether such additional material shall be added to the document bank.

### *Confidentiality*

44. Documents of a confidential nature will not be released without the express written consent of the party concerned.

## PART VI AN INVESTIGATION: LEAD INSPECTOR

### *Responsibilities*

45. Upon designation by the Chairperson, the Inspector(s) with primary responsibility for an investigation shall prepare and present for consideration and adoption by the Panel, a proposal containing but not limited to:
  - (a) procedures for the conduct of the investigation;
  - (b) an initial estimate of the professional and administrative support needed to carry out the investigation and the budgetary resources required for these purposes.
46. The Inspector(s) in charge will make every effort to carry out the investigation within the initial budgetary allocation approved by the Panel.
47. If in the course of the investigation, the Inspector(s) decides that the initial procedures are inadequate he/she shall promptly prepare an amended proposal for consideration by the Panel.
48. The Executive Secretary, under the direction of the Chairperson, shall be responsible for:
  - (a) administrative and logistical support,
  - (b) administration of the budgetary allocations for each case.

### *Employment of Consultants/Experts/Researchers*

49. The Inspector(s) shall have responsibility for the appointment of any consultants and/or researchers and/or technical experts he/she considers necessary to carry out the investigation. The selection and employment of consultants shall be made in accordance with the principles and procedures applicable to the hiring of consultants by the Bank. In addition the Panel shall establish an independent roster of consultants.
50. The Executive Secretary, under the general direction of the Chairperson, shall be responsible for administration of the employment of such consultants/researchers/technical experts.

### *Oral Hearings*

51. The Inspector(s) having primary responsibility for an investigation shall decide in each case whether oral hearings are necessary for gathering information relevant to the particular matter.

### *Preparation of Report*

52. The Inspector(s) shall prepare a Report and submit it to the Panel through the Chairperson for consideration and adoption.

53. The Secretariat shall assist the Inspector(s) in the preparation of the Report.

#### *Resources of Secretariat*

54. If during an investigation the Inspector(s) considers that there are not enough Secretariat staff to assist him/her in carrying out the investigation, he/she shall recommend to the Chairperson the employment, and specify the qualifications required, of extra temporary staff. The Chairperson shall decide whether extra Secretariat staff is required.

### **PART VII BUDGET**

55. The expenses of the Panel and the Secretariat shall be provided by the Bank, which shall give the Panel such budgetary resources as shall be sufficient to carry out its activities. The Panel will inform the Bank of the level of resources required to carry out its mandate.

### **PART VIII MISCELLANEOUS**

#### *Immunities and Privileges: Certificates of Official Travel*

56. The Executive Secretary may issue certificates to the following persons indicating that they are traveling in connection with a proceeding under the Resolution: members of the Panel, officers and employees of the Secretariat; and as needed to Requesters, consultants, witnesses and experts appearing in any proceedings authorized by the Panel.

#### *Business Days*

57. "Days" under these procedures means days on which the World Bank is open for business in Washington, D.C.

#### *Language*

58. The working language of the Panel shall be English.

#### *Publications*

59. The Panel shall request the Secretariat to prepare, publish and/or disseminate any material it considers will help in the understanding of its role and the preparation of Requests by affected parties.

## ANNEX VIII

# Guidance on How to Prepare a Request for Inspection

The Inspection Panel needs some basic information in order to process a Request for Inspection:

1. Name, contact address, and telephone number of the group or people making the request
2. Name and description of the Bank project
3. Adverse effects of the Bank project

If you are a representative of affected people, attach explicit written instructions from them authorizing you to act on their behalf.

These key questions must be answered:

1. Can you elaborate on the nature and importance of the damage caused by the project to you or those you represent?
2. Do you know that the Bank is responsible for the aspects of the project that has or may affect you adversely? How did you determine this?
3. Are you familiar with Bank policies and procedures that apply to this type of project? How do you believe the Bank may have violated them?
4. Have you contacted or attempted to contact Bank staff members about the project? Please provide information about all contacts, as well as the responses, if any, that you received from the Bank. You must have done this before you can file a Request.
5. Have you tried to resolve your problem through any other means?
6. If you know that the Panel has dealt with this matter before, do you have new facts or evidence to submit?

Please provide a summary of the information in no more than a few pages. Attach as much other information as you think necessary as separate documents. Please note and identify attachments in your summary.

You may wish to use the attached model form.

## Model Form:

### *Request for Inspection*

To: The Executive Secretary  
The Inspection Panel  
1818 H St., NW, Washington, D.C. 20433, U.S.A.  
(or to a World Bank Country/Regional Office)

We \_\_\_\_\_, \_\_\_\_\_, and other persons whose names and addresses are attached, living/representing others living in the area known as \_\_\_\_\_ [and shown in the attached map or diagram], claim the following:

1. The Bank is financing the design/appraisal/implementation of a project [name and brief description].
2. We understand that the Bank has the following policy/policies or procedures [list or describe]:
3. Our rights/interests are [describe].
4. The Bank has violated its own policies or procedures in this way:
5. We believe our rights/interests have been or are likely to be adversely affected as a direct result of the Bank's violation. This is—or is likely to—cause us to suffer [describe harm].



6. We believe the action/omission is the responsibility of the Bank.

7. We have complained/made an effort to complain to Bank staff by [describe]:

[Please attach evidence or explanation.]

8. We received no response/We believe that the response/responses (attached/not attached) are unsatisfactory because [describe why]:

9. In addition, we have taken the following steps to resolve our problem:

We therefore believe that the above actions/omissions, which are contrary to the above policies or procedures, have materially and adversely affected our rights/interests and request the Panel to recommend to the Bank's Board of Executive Directors that an investigation of these matters be carried out in order to resolve the problem.

As advised in your Operating Procedures, this Request for Inspection is brief. We can provide you with more particulars.

DATE: \_\_\_\_\_

SIGNATURES: \_\_\_\_\_

CONTACT ADDRESS: \_\_\_\_\_

Attachments:    [Yes]    [No]

We authorize you to make this Request public    [Yes]    [No]

## ANNEX IX

### Selected Bibliography of Publications Related to the Inspection Panel

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