

The Inspection Panel

Report and Recommendation on Request for Inspection

Re: Request for Inspection Argentina: Santa Fe Road Infrastructure Project (Proposed)¹

1. On August 28, 2006, the Inspection Panel (the “Panel”) received a Request for Inspection (the “First Request”), dated August 20, 2006, related to the proposed Argentina: Santa Fe Road Infrastructure Project (“the Project”). The Request was submitted by Mr. Hugo Mario Arriola-Klein and Dr. Nancy Beatriz Jullier, residents of Chateaux Blanc, district of San Agustín, Province of Santa Fe (PSF) in Argentina. They represent residents who live, work, and “*are users or owners of shops and dwellings in the location known as Chateaux Blanc.*”² Attached to the Request for Inspection were copies of a letter sent to the Presidents of the Communes of the localities of San Agustín and Franck with 31 signatories, and other communications sent to the Bank. The Panel registered the Request on September 11, 2006.
2. On September 21, 2006, the Panel received a second Request for Inspection (the “Second Request”), dated September 21, 2006, related to the above-mentioned Projects. This Request was submitted by Mr. Víctor Hugo Imhoff and Ms. María Alejandra Azzaroni, on their own behalf and on behalf of people living in San Jerónimo del Sauce, in the Department of Las Colonias, Province of Santa Fe, Argentina. The Panel registered the Second Request on September 27, 2006. The Second Request is similar to the First Request and refers to the same Project and issues. For reasons of economy and efficiency the Panel decided to process the two Requests jointly.

¹ The Notices of Registration of the Requests state that the preparation of the Santa Fe Road Infrastructure Project may have been partially financed by the Argentina: Provincial Road Infrastructure Project (Loan No. 7301-AR). Management has confirmed that “none of the activities related to the improvement of National Road 19 are financed under the Provincial Road Infrastructure Project.” Bank Management Response to Request for Inspection Panel Review of the Argentina: Provincial Road Infrastructure Project (Loan No. 7301-AR) and the proposed Santa Fe Road Infrastructure Project, October 18, 2006 [hereinafter “Management Response”], ¶ 10.

² Request for Inspection, letter dated August 20, 2006, p.1.

A. The Project

3. The proposed Project, which, according to Bank Management, is currently under preparation and not yet appraised, aims at improving transport conditions along a strategic road corridor linking the PSF with regional and international markets.³ This objective is to be achieved through two components: Upgrading of National Road 19 and Institutional Strengthening. The Project would finance the improvement of National Road 19 as part of a broader strategy aimed at facilitating traffic flows along major road corridors in the PSF. This would allow linking the province with regional and international transportation trade hubs and fostering regional integration between three provinces (Santa Fe, Cordoba and Entre Ríos) in the Center Región of Argentina. National Road 19 is the third most important corridor in the PSF and its upgrading is deemed to be a top priority by Provincial authorities. As a national road, its improvement would fall under the jurisdiction of the national Government. However, limited fiscal resources have led the national Government to accept PSF's offer to provide financing for the proposed Project. Once the works are completed, the PSF will hand the new assets to the National Road Directorate (DNV) and maintenance will be the sole responsibility of the national Government.
4. The Project, as described in Management Response, will upgrade 135 kilometers (km) of Road 19 between the cities of Santo Tome in PSF and San Francisco in the province of Cordoba. The proposed Project will finance the PSF portion (130 km), while five km in the province of Córdoba will be funded by the DNV. Under the Project's Component 1, Road 19 will be widened from the existing two lanes to a four-lane road (motorway or autovía) – two lanes in each direction. Management states that these works are the first stage of a program aimed at eventually converting Road 19 into a limited-access high speed freeway (autopista).
5. The Project's Component 1 provides for the construction of a two-lane carriageway serving East - West traffic parallel to the existing road (these two new lanes will become in the future one of the carriageways of the freeway). Although National Road 19 will not be converted into a freeway under the Project, the PSF will expropriate land running along approximately 75km of the north side of the road so that the right of way (ROW) will reach 120m, which is the design standard required by the DNV for constructing a freeway.⁴ Under the proposed design, the two-lane carriageway will run along the northern part of the 120meters (m) ROW. The future freeway would require construction of an

³ Information about the proposed Project included in this section of the Report is based on, the Project Information Document (PID), discussions between the Panel and the Project Implementation Unit during the Panel's visit to Argentina (November 2-10, 2006) and Bank staff.

⁴ During the 1970s the national Government expropriated land along 54 km of the north side of the road.

additional two-lane carriageway that would occupy the central ROW area, south of the carriageway to be built under the proposed Bank-financed Project.

6. Project component 1 also includes the construction of three four-lane bypasses of the towns of San Jerónimo del Sauce, Sa Pereyra, and Frontera in the PSF; ground level interchanges at intersections with provincial and rural roads; and turn lanes and returns at intervals of 6km to facilitate access to properties along the corridor.
7. Component 2 of the proposed Project aims at providing institutional support to the PSF and is composed of five subcomponents, related to road safety, systemic measurement of logistic costs in the PSF, strengthening of the planning capacity of the PSF for strategic development, strengthening of the capacity of the Provincial Road Directorate (DPV) to enhance environmental and social management, and a design capacity building program to incorporate monitoring and evaluation analysis in infrastructure projects.

B. Financing

8. The total cost of the PSF portion of the Project is estimated at US\$175.2 million equivalent. The proposed IBRD Loan to the PSF would be US\$126.7 million, while US\$48.5 million would be financed by the PSF. The Argentine Republic would guarantee the loan. As of the date of the Panel's report, the Project had not been appraised.

C. The Requests

I. First Request for Inspection

9. The Requesters fear that they will suffer damages and will be prejudiced as a consequence of the deficiencies or omissions of the World Bank in the design and eventual implementation of the proposed Project. The alleged damages and prejudices include loss of jobs and sources of employment, excessive expropriations of agricultural fields and low productivity on the remaining fields, noise and visual pollution, impact on the landscape, lack of communications, dangers from traffic hazards including heavy transport and increased accident-related mortalities, and lack of police protection. In the Requesters' view, the Bank has not complied with its operational policies and has agreed to finance a project that was designed without consulting directly with affected people.
10. The Requesters are concerned with the current Project design because it *"contemplates an overpass consisting of an elevated bridge and its*

corresponding bankings in Road No. 6 at its intersection with the highway”⁵. They suggest replacing the overpass with a roundabout.

11. In the Requesters’ view, a roundabout would not require expropriating a large portion of lands adjacent to the road; shops and services of the area would be conserved, as well as jobs and sources of income. In addition, since their area has a history of frequent accidents, the Requesters believe that changing the Project design could help reduce accidents and enhance safety for pedestrians because it would slow traffic. The Requesters also claim that if the overpass were constructed, a strategically important police post would become useless and several houses on Road No.6 would remain behind the slope required to cross the elevated bridge. This would cut off the communication roads needed to access the new highway and generate significant traffic noise and affect the views of those owning houses.
12. The Requesters are also concerned about the expropriation of *“assets, such as fields, houses, crops etc. especially taking into account that the state’s machinery always becomes autistic in order to undervalue real estate.”⁶* They claim that, under the Project, the landowners on the north side and the south side of the existing Road 19 will be in unequal positions. The Requesters believe that while the landowners on the northern side *“are insecure, dispossessed and unhappy”*, the landowners on the southern side *“remain secure with a greater quality of life and above all happy to see the value of land increase its price.”⁷*
13. They propose that only 20 meters be expropriated now and the remaining 70m slated to be expropriated under the current design be acquired in the future when the freeway is actually built. In this way farmers would be able to farm their land until construction of the freeway begins. In addition, according to the Requesters, the 70m of land needed for the ultimate road design should be expropriated equally from the northern and southern sides of the road.
14. The Requesters state that they have raised their concerns with the World Bank staff through *“a) letter sent on 07/07/06⁸ to the [Bank] office located in Bouchard 547, 28th floor, Buenos Aires (1106); b) fax on 08/15/06 to 5411 43131233 belonging to [the Bank] offices; c) e-mail on 08/16/06 to Ms Mara Laudonia (Press) and María José Ravalli (Information and Publications) who are part of the World Bank’s staff; d) e-mail on 08/18/06 to Ms Myrna Alexander, World Bank Director for Argentina.”⁹* The Requesters indicate that they have received no answer to these communications.

⁵ First Request for Inspection, letter dated August 20, 2006, p.1.

⁶ First Request for Inspection, p.1.

⁷ First Request for Inspection, p.1.

⁸ During the Panel’s eligibility visit the Requesters stated that the actual date of the letter was August 7, 2006.

⁹ First Request for Inspection, p.1.

houses and buildings would be destroyed, but in reality 2000 to 3000ha would be affected because this additional land could not be used for productive activities as it was before since it would be isolated with no access to the highway. In the Requesters' view, some fields would be divided and this would also hinder production activities.

21. The Requesters acknowledge that the improvement of the existing road is necessary, and believe that “*developing a comprehensive and consistent project that minimizes the damages to the affected people*” would “*foster a new production pole.*”¹¹ They argue that the Project would be reasonable if it took less land than planned, indemnified land owners for the updated values of the assets expropriated, and took into consideration that people may lose their means of livelihood.
22. The Requesters are also concerned about road safety. They believe that the Project should ensure safe access to adjacent property and that the junctions should be provided with measures to reduce speed. The Requesters also assert that the water runoff flows have changed and this has created critical situations in various parts of the road.
23. The Requesters state that they have raised their concerns with the World Bank staff and sent them a fax on September 21, 2006. In their Request to the Panel, the Requesters asked the Inspection Panel to recommend to the Board of Executive Directors of the World Bank that an investigation be conducted on the alleged matters.
24. According to the Panel's Notice of Registration, the above claims may constitute non-compliance by the Bank with various provisions of the following operational Policies and Procedures:

OP/BP 4.01
OP/BP 4.12

Environmental Assessment
Involuntary Resettlement

D. Management Response

25. On October 18, 2006, Management submitted its Response to the two Requests for Inspection. The Response refers both to the First and the Second Request.
26. The Response, which includes seven annexes, provides background information on the Project. In addition, it discusses a number of the Project's so-called “special issues”, such as (1) the timeframe for the PSF and Management to respond to the Requesters' concerns; (2) Consultation; (3) Design for improving National Road 19; and (4) Application by the Bank of its safeguard

¹¹ Second Request for Inspection, p. 3.

policies. Detailed responses to each specific claim raised by the Requesters are provided in Annex 1 of Management Response. Management believes that it “*has consistently and fully applied its policies and procedures.*”¹²

27. The Response includes an initial summary of Management’s position with respect to the issues addressed. Management questions the eligibility of the Request on the ground that Management did not have adequate time to respond to the concerns of the Requesters before the Requests were submitted to the Panel. Management also states that the consultation process is still ongoing and the design evolving because the Project is still in the preparation phase.
28. With respect to the overpass issue raised in the First Request, the Response states that the problem has been resolved: the overpass will not be built, as the Requesters asked, and the intersection between National Road 19 and Provincial Road 6 will have a ground level interchange. As to the amount of land to be expropriated, which the Requesters find excessive, Management states that “*alternative schemes for land expropriation were carefully analyzed and design requirement confirmed on economic, technical and social grounds.*”¹³
29. The first special issue addressed in Management Response relates to the time frame to respond to the Requesters concerns. According to Management, the fact that the First Requesters’ letter was received by the Bank on August 15, 2006, and the Request was filed on August 20, while the Second Requesters sent their letter the same day they submitted the Request, “*precludes Management’s ability to engage with, and react in a timely manner to, the concerns that were raised.*”¹⁴ The Response states that the Bank has no record of a letter allegedly sent by the First Requesters to the Bank on July 7, 2006.¹⁵
30. Management states that the consultation process began in April 2006 and is still ongoing with potentially affected communities near the ROW. According to Management, the Environmental and Social Mitigation Plan (ESMP) and the Resettlement Action Plan (RAP) were presented and discussed with the communities, along with key issues such as the amount of land to be expropriated and the expropriation process, access to property along the road, preservation of trees, and construction of bicycle paths. Management asserts that “*these consultations have been critical in the decision-making process*”¹⁶ with respect to such issues, for example, as the income restoration programs in urban areas. In addition, Management states that an electronic mailbox and mailboxes in 15 localities along the road provided affected people with a means to express concerns and convey comments.

¹² Management Response, ¶ 19

¹³ Management Response, ¶ 19.

¹⁴ Management Response, ¶ 19.

¹⁵ This letter was actually dated August 7, 2006. See supra note 8.

¹⁶ Management Response, ¶ 23.

31. According to Management, some of the Requesters participated in meetings open to the public at large. A meeting held on August 7, 2006, in San Agustin was attended by 31 citizens, including property and business owners along National Road 19 and Provincial Road 6 (at the intersection with Road 19). Management also cites a meeting held on August 10, in which one signatory of the Second Request participated. A summary of the issues raised in the consultations and a list of participants is included with the draft ESMP report. Management claims that the project preparation, from identification to pre-appraisal (the current project stage), “*has incorporated a review of the specific concerns raised by the Requesters regarding improvements of National Road 19.*”¹⁷

32. Management also claims that, in order to address the Requesters’ concerns regarding land acquisition and resettlement, it asked the PSF to study alternative options to reduce the amount of land to be expropriated. The Bank asked the PSF to consider the possibility of constructing the central carriageway rather than the northern one under the Project, so as to minimize expropriations. Management states that in a report issued on July 27, 2006, the PSF confirmed that, as planned, it will expropriate lands to reach the planned 120m ROW northwards, for three main reasons. The first relates to construction costs and potential negative environmental externalities. According to the Response, with a reduced ROW, the soil for the construction of the embankments would have to be partially extracted in a location far from the road site, where land would have to be purchased and soil transported to the construction site, thus doubling the costs of construction of the embankments. In addition, the extraction of soil from locations outside the ROW could create negative environmental liabilities. The second reason for maintaining the 120m ROW is that it will allow constructing frequent returns to minimize restrictions on access to properties, as requested by affected communities. The third reason for confirming the project design is that the DPV standards require 120m of ROW for eventual construction of a limited-access high speed freeway, as planned under phase two of the program.

33. Management also claims that the Requesters’ proposals regarding land acquisition would be inconsistent with addressing other concerns expressed by the Requesters and would not be compatible with a cost effective and safe design. Expropriating only 20m of land to the south would reduce the ROW to a width that would not allow the construction of an autovia and would result in expropriating facilities located in the intersection of National Road 19 and Provincial Road 6. The proposal to expropriate equal amounts on both sides would require additional expropriations. Lastly, Management notes that the proposal for incremental expropriation, in which the acquisition of the full 120 m ROW is deferred until the decision to build the freeway with full access

¹⁷ Management Response, ¶ 28.

control, was rejected by the PSF because of the need to extract soil from within the 120 ROW for use in the highway embankments.

34. Management notes that the shops and services mentioned by the Requesters are located south of the latest road alignment design presented by the Province and will not be affected. In Management's view, these shops will benefit from higher traffic flows after the road improvement. Management does not expect any negative impacts on industry from the improvements but rather envisages positive impacts through reduced transportation costs.
35. Management states that the PSF is in the process of preparing a Resettlement Action Plan (RAP) that meets the requirements of OP 4.12. Management states that the National Road 19 is in an area with low population density and intensive agricultural and livestock productive activities. The Response claims that of the 1,313 hectares needed for the expanded ROW, 633 hectares in 210 properties along the road remain to be expropriated, with 190 of these properties lying within PSF. Most of the properties will be only partially affected, and for more than half of them (56%), less than 10% of the total area will be affected. 27 buildings (houses and businesses) will be displaced: 15 are to be relocated within the same property, four on new properties, and eight are being evaluated.
36. According to Management, expropriated land will be compensated in cash, with the amount corresponding to replacement cost at market price. Compensation will be provided before land acquisition is undertaken. Additionally, the PSF is assessing the legal status of the land acquired by expropriation in the 1970s.
37. In its Response, Management indicates that the proposed Project would be categorized as "Category B". According to Management, the Project area is already heavily developed and no significant adverse environmental impacts will occur. Management also notes that the PSF has prepared a comprehensive and detailed draft ESMP that includes mitigation and enhancement measures in accordance with Bank policies.
38. Regarding the Requesters concerns related to noise and heavy impact resulting from the Project, Management indicates that these problems have become obsolete because no overpass will be constructed at the intersection of National Road 19 with Provincial Road No.6.
39. In response to the Requesters statements regarding the runoff, Management notes that the Requester's Province suffered from significant floods in 2003 and that the draft ESMP addresses hydrological aspects.
40. As to the Requesters' concerns regarding road safety, Management claims that this was a priority issue during Project preparation, that a study was conducted, and that the ESMP identified road safety black spots. Management believes that

the improvement of the National Road 19 together with the measures identified in the ESMP will improve road safety. The police post referred to by the Requesters will not be affected.

E. Eligibility

41. The Panel must determine whether the Requests satisfy the eligibility criteria for an Inspection, as set forth in the 1993 Resolution¹⁸ establishing the Panel and the 1999 Clarifications¹⁹, and whether to recommend whether the matters alleged in the Requests should be investigated.
42. The Panel has reviewed the Requests and Management Response. The Panel Chairperson, Edith Brown Weiss, together with Executive Secretary Eduardo Abbott and Panel Operations Officer Tatiana Tassoni visited Argentina from November 2 – 10, 2006. During their visit, the Panel met with signatories of both Requests for Inspection and with other affected people in the area near Santa Fe. The Panel also met with national and provincial Government officials, and with local authorities in Santa Fe, with the Project Implementation Unit in Santa Fe, and with Bank staff in Buenos Aires and Washington.
43. The Panel wishes to express its deep appreciation to the Requesters for showing Project areas of concern to the Panel, and to other affected people who met with the Panel to explain their concerns. The Panel also wishes to thank PSF authorities and management and staff of the Project Implementation Unit, especially Mr. Francisco Sobrero, for their fine assistance and for providing documents and discussing points of concerns with the Panel team visiting the Project area. The Panel wishes to thank Lic. Gerardo Hita, National Director of Projects with International Financial Institutions for meeting with the Panel team and providing valuable insights about the proposed Project, and Bank staff in Buenos Aires and Washington for providing relevant information and assisting with logistical arrangements.
44. During the visit, the Panel confirmed that the Requesters are legitimate parties under the Resolution to submit a Request for Inspection to the Inspection Panel. The Requesters live in the Project area and have common interests and concerns as required in Paragraph 9(a). The Panel confirmed that people who would allegedly be affected by the proposed Project have authorized Mr. Hugo Mario Arriola-Klein, Ms. Nancy Jullier, Mr. Víctor Hugo Imhoff and Mrs. Maria Alejandra Azzaroni to represent their interests to the Inspection Panel. Several other local inhabitants also expressed similar concerns and their support for the Request for Inspection.

¹⁸ Resolution No. IBRD 93-10 of September 22, 1993, hereinafter “the Resolution”.

¹⁹ The 1999 Clarifications to the Resolution (hereinafter “the 1999 Clarifications”) are contained in the “Conclusions of the Board’s Second Review of the Inspection Panel” dated April 20, 1999.

45. The Panel notes that the Request “*assert[s] in substance that a serious violation by the Bank of its operational policies and procedures has or is likely to have material adverse effect upon the requesters.*” (Paragraph 9(b)).
46. The Panel visited the Requesters and noted that they acknowledge the importance of improving and widening the road. However, the Panel found that they have legitimate concerns as to whether the Project could cause them harm as a result of the Bank’s possible non compliance with its policies and procedures, particularly if the current road design is maintained. The Requesters claim that they were not adequately consulted during the design of the Project and that, as a result, the analysis of Project alternatives did not adequately consider the Requesters’ views, concerns and problems. They claim that the current design provides for excessive expropriations, which are not based on the proposed Project to be financed by the Bank but rather a road design²⁰ that has yet to be properly analyzed and evaluated from a technical, environmental and economic point of view.
47. The Requesters state that because they are small landholders, the loss of even a small portion of their properties will have disproportionately negative effects on their productive activities. They claim that in some cases they will lose access to the remainder of their land because fencing for the highway will cut off any access to their properties. In other cases, they complain that the amount of land to be expropriated will make their farms no longer suitable for sustainable production, and they will lose their source of income and livelihood. The Requesters claim that the possible failure of the Bank to comply with its policies will likely cause them serious harm in the future.
48. The Panel notes Management’s statement at paragraph 50 of its Response that the proposed Project “*has caused no harm given that it is under preparation.*” The Panel observes that paragraph 12 of the Resolution establishing the Panel provides that “*the affected party must demonstrate that its right or interest have been or **are likely to be** directly affected as a result of an action or omission of the Bank ...*” [Emphasis added] The concept that Requesters may raise their concerns with the Panel about actual and *potential* harm possibly deriving from a Bank-financed project is restated in the 1999 Clarifications to the Resolution at paragraph 9 (b).
49. The Panel notes that the subject matter of the Request is not related to procurement, as required by paragraph 9(d).

²⁰ As already noted, the Bank-financed Project provides for the construction of a two-lane carriageway, which will transform the existing road into an Autovia (four-lane highway), but the expropriations are being carried out on the basis of a much larger investment project that will convert Road 19 into an Autopista (limited-access high speed freeway).

50. The Request satisfies the requirement in paragraph 9(e) that the related loan has not been closed or substantially disbursed.²¹
51. Furthermore, the Panel has not previously made a recommendation on the subject matter of the Request. Therefore, the Request satisfies Paragraph 9(f).
52. The 1999 Clarifications further provide that the Panel shall satisfy itself that the Request *“does assert that the subject matter has been brought to Management’s attention and that, in the Requesters’ view, Management has failed to respond adequately demonstrating that it has followed or is taking steps to follow the Bank’s policies and procedures”* as set forth in Paragraph 9(c).
53. In this context, the Panel is concerned about Management’s position that the Panel should determine that these Requests are ineligible because *“Management did not have adequate time to address the concerns raised by the Requesters before the Requests were filed.”* Management’s statement is based on the timing of the receipt by the Bank of a written complaint and the filing of a complaint with the Inspection Panel. The Panel notes that the Resolution and subsequent Clarifications do not require that potential Requesters/affected people submit a formal written complaint to the Bank in order to meet the criteria for eligibility of the Request. Rather they require that Requesters have made the Bank aware of their problems and concerns so that the Bank may try to address them and demonstrate that it has complied with Bank policies and procedures. Panel practice approved by the Executive Directors confirms that in this context the Panel has not required the submission of a formal letter of complaint to Management, and Management has not objected.
54. In the present Requests, the Panel notes that the Requesters and other affected people made several attempts to make their concerns about the Project known. One of the Second Requesters, for example, put a note to Project authorities, dated June 29, 2006, in one of the mailboxes mentioned in Management Response (more than two months before filing the Request and sending a formal letter to the Bank), but received no response. The Requesters repeatedly emphasized that no one from the Bank had approached them.
55. The Panel notes, however, that Management Response indicates that the *“Requesters were part of the consultation process, they attended consultation meetings and exchanged emails with PIU personnel,”*²² and that Bank staff conducted various missions to the Project area to prepare the Project.²³ Bank staff informed the Panel that they have detailed information about the affected areas, farms, and affected businesses and schools, and the allegations of

²¹ According to the Resolution, *“this will be deemed to be the case when at least ninety-five percent of the loan proceeds have been disbursed.”* Footnote to Paragraph 14 (c).

²² Management Response, ¶ 19.

²³ See Annex 6 of Management Response *“List of missions Santa Fe Road Infrastructure Project,”* p. 47.

excessive expropriation.²⁴ The Panel did not find evidence that Bank staff or their consultants had any contact with the Requesters and those people contacting the Panel, prior to receiving the formal letters from the Requesters.

56. The Panel notes the special circumstances of the two Requests. The First Requesters approached the Bank in writing in August, shortly before filing their Request with the Panel.²⁵ The Second Requesters sent a letter of complaint to Project authorities on June 29, 2006, as noted above, but approached the Bank and the Panel at the same time in September 2006. In this regard, the Panel observes that it has been difficult for the Requesters to know about the possibility of bringing their problems to the attention of the Bank and how to do it.
57. The Panel further notes that one of the major concerns of the first Request seems now to have been addressed (See paragraph 28 above). Other concerns in the First Request and the concerns expressed in the Second Request had not yet been addressed as of the time of the Panel's visit, but the Panel notes that the Bank seems now in contact with the Second Requesters and other affected people.
58. While the Requesters are otherwise eligible to submit a Request for Inspection, the Panel finds that the Requesters do not meet the procedural criterion set forth in paragraph 9(c) of the 1999 Clarifications that "*the subject matter has been brought to Management's attention.*" The Panel is therefore not in a position to recommend whether an investigation of the matters alleged in the Requests should be carried out.²⁶
59. The Panel is very concerned about statements in Management Response that suggest that the Requesters' exercise of their right to raise their concerns before the Inspection Panel at the design stage of the Project would be detrimental to the preparation of the Project or the ability of Management to respond to their concerns.
60. The Panel notes the following statement at paragraph 48 of Management Response

*"The **registration** of the Request **has prevented** Management from demonstrating that the project's preparatory design and appraisal phases are indeed proceeding in a Requester-responsive, policy compliant manner. It is during such preliminary design phases that Management is best positioned to*

²⁴ This would seem to suggest that Management was aware of the kinds of concerns raised by the Requesters.

²⁵ During its visit to Argentina, the Panel confirmed that the First Requesters initial letter to the Bank was filed in August, 2006.

²⁶ The Panel reached a similar conclusion in the Philippines Request. Philippines: Manila Second Sewerage Project, Inspection Panel Report and Recommendation, December 3, 2003.

react to such concerns, as it would have done if the Requesters had afforded it an opportunity to do so.” [Emphasis added]

The Panel would like to emphasize that paragraph 17 of the Resolution provides that *“the Chairperson of the Panel shall inform the Executive Directors and the President of the Bank promptly upon receiving a Request for Inspection.”* The Panel established the process of registering the Request to formalize the prompt notification of any Request received to the Executive Directors and to Management. According to its Operating Procedures, the Panel registers a Request for Inspection **except** where *“the matter is without doubt manifestly outside the Panel’s mandate.”*²⁷ This does not apply to either of the Requests for Inspection received in relation to the proposed Argentina: Santa Fe Infrastructure Project.

61. As to Management’s suggestion that the Panel should not process the Requests during the design stage of Project preparation, the Panel notes that the Resolution clearly provides that a Request for Inspection may be submitted *“with respect to the design, appraisal or implementation of a project financed by the Bank”* (paragraph 12). The 1996 Clarifications to the Resolution provide that the word *“project”* as used in the Resolution includes *“projects under consideration by Bank Management as well projects already approved by the Executive Directors.”* Furthermore, paragraph 23 of the Resolution expressly provides that *“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.”* [Emphasis added] The Board of Executive Directors clearly acknowledged the usefulness of a Panel intervention in the early stages of a project and mandated that the documents submitted to the Board for loan approval describe and take into account the Panel’s findings.
62. In this context, the Panel would also like to point out that the submission of a Request for Inspection does not prevent Management from engaging in a constructive dialogue with the Requesters to try to address their concerns. This was the case, for example, in respect to recent Requests for Inspection submitted on Nigeria: West Africa Gas Pipeline Project and Romania: Mine Closure and Social Mitigation Project. On September 29, 2006, the Panel recommended to the Board of Executive Directors that the processing of the Romania Request for Inspection be closed since all the Requesters concerns had been adequately addressed by Bank Management and Project authorities.²⁸ Moreover, in the instant case, the registration of the Requests did not in fact prevent Management from meeting with one of the Second Requesters in an effort to address his concerns.

²⁷ Inspection Panel, Operating Procedures As Adopted by the Panel on August 19, 1994, ¶ 22.

²⁸ INSP/R2006-0006. See also Requests for Inspection related to Bangladesh: Jamuna Multipurpose Bridge Project, Philippines Manila Second Sewerage Project, Mexico: Indigenous Community Biodiversity Project and Argentina: Special Structural Adjustment Loan.

F. Conclusions

63. The Requests and Management Responses contain conflicting assertions and interpretations about the issues, the facts, compliance with Bank policies and procedures, and harm. The Panel can only address these issues during an investigation.
64. However, while the Requesters are otherwise eligible to submit a Request for Inspection, the procedural criterion of paragraph 9(c) requiring that the Requesters have brought the “*subject matter (...) 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*” has not been fully met. Therefore the Panel cannot make a recommendation on whether to investigate the subject matter of the Requests for Inspection.
65. If the Board of Executive Directors concurs with the foregoing, the Inspection Panel will advise the Requesters and Management accordingly.