

# **The Inspection Panel**

## **Report and Recommendation On Request for Inspection**

### **Mexico: Indigenous and Communities Biodiversity Conservation Project (COINBIO) (GEF Trust Fund Grant No. TF24372)**

1. On January 26, 2004, the Inspection Panel (Panel) received a Request for Inspection (Request) related to the above-referenced Project, dated November 25, 2003.<sup>1</sup> On January 30, 2004, in accordance with the Resolution establishing the Inspection Panel (Resolution),<sup>2</sup> the Panel notified the Executive Directors and the President of the International Bank for Reconstruction and Development (IBRD)<sup>3</sup> that it had received the Request, which constituted Registration of the Request under the Panel's *Operating Procedures*.<sup>4</sup> The Panel received Bank Management's Response to the Request on March 2, 2004 (Management Response).<sup>5</sup> As provided in paragraph 19 of the Resolution, the purpose of this report is to determine the eligibility of the Request and make a recommendation to the Executive Directors as to whether the Panel should investigate the matters alleged in the Request.

#### **A. THE PROJECT**

2. The Request raises issues related to a Project financed under the Global Environmental Facility (GEF Trust Fund No. 24372), Indigenous and Communities Biodiversity Conservation Project (COINBIO), (hereinafter referred to as "the Project"). The objective of the Project is to conserve high biodiversity

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<sup>1</sup> The Requesters state that they sent the Request e-mail on the earlier date, but the Panel did not receive the Request.

<sup>2</sup> International Bank for Reconstruction and Development (IBRD) Resolution 93-10, *The Resolution Establishing the Inspection Panel*, (September 22, 1993).

<sup>3</sup> For the purposes of this Report, the IBRD is sometimes referred to as the "Bank."

<sup>4</sup> See The Inspection Panel, *Operating Procedures* (August 19, 1994), ¶17.

<sup>5</sup> Bank Management Response to Request for Inspection Panel Review of the Mexico: Indigenous and Community Biodiversity Conservation Project (COINBIO) (GEF Trust Fund Grant No. TF24372), (March 1, 2004) [hereinafter Management Response].

areas in the states of Oaxaca, Michoacan, and Guerrero, Mexico “by strengthening and promoting community conservation initiatives on communally-owned lands, building on the cultural values and traditional management practices that such communities have developed in relationship to the resources in these areas.”<sup>6</sup>

3. The Project provides, inter alia, for local capacity building through the establishment of a State Committee in each of three states, Oaxaca, Michoacan, and Guerrero.<sup>7</sup> The State Committees are supported by State Coordination Units, which include one coordinator and one administrator who are chosen by Nacional Financiera, S.N.C. (NAFIN), the grant recipient, in consultation with the relevant State Committee and with the national Secretaría de Medio Ambiente, Recursos Naturales y Pesca (Secretary of Environment, Natural Resources and Fisheries - SEMANARP).<sup>8</sup> Each State Committee consists of “six members (three representing the Communities and Ejidos,<sup>9</sup> one representing SEMARNAP, one representing the government of the relevant Participating State, and one representing the relevant Participating State's non-governmental organization and/or academic sector).”<sup>10</sup> The Project further provides for the establishment of a National Committee and a National Coordination Unit to coordinate project implementation. According to the Grant Agreement, the National Committee consists of, inter alia, “one Community or Ejido representative of each of the State Committees.”<sup>11</sup> The Project is implemented by the State Committees and the State Coordination Units and is to receive technical assistance from the National Forest Commission (CONAFOR), a semi- autonomous agency responsible for forestry issues that was created in 2001 under the Secretary of Environment and Natural Resources (SEMARNAT), the successor to SEMARNAP.<sup>12</sup>

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<sup>6</sup> Global Environment Facility Trust Fund Grant Agreement (Indigenous and Community Biodiversity Project) among Nacional Financiera, S.N.C., and United Mexican States, and International Bank for Reconstruction and Development, GEF Trust Fund Grant Number TF 24372, (February 1, 2001), [hereinafter Grant Agreement], Schedule 2 (Description of the Project).

<sup>7</sup> Grant Agreement, Schedule 2 (Part A).

<sup>8</sup> According to the grant agreement, § 3.04(c) the grant recipient should “hire and thereafter maintain throughout Project implementation three coordinators and three administrators (as consultants, chosen by the Recipient in coordination with SEMARNAP and in consultation with the relevant State Committee, to work under terms of reference set forth in the Operational Manual) . . .”

<sup>9</sup> As defined in Management Response, an *ejido* is “a land-holding consisting of either indigenous or non-indigenous members with rights, stipulated in law, in communal resources under which an individual family has a right to an individual plot of land allocated by communal decision as well as access to communally owned lands (often forest lands, pasture and watercourses).” Management Response, ¶10 n.3.

<sup>10</sup> Grant Agreement, § 3.03(a)(ii).

<sup>11</sup> Grant Agreement, § 3.03(a)(i). The other members of the National Committee are one representative of each of SEMARNAP, CONANP (National Protected Areas Council - Consejo Nacional de Areas Naturales Protegidas), CONABIO (National Biodiversity Use and Awareness Commission - Comisión Nacional para el Conocimiento y Uso de la Biodiversidad) and CONAF (National Technical Consultative Forestry Council - Consejo Técnico Consultivo Nacional Forestal). Id.

<sup>12</sup> In 2001 SEMARNAP (Secretaría de Medio Ambiente, Recursos Naturales y Pesca - Secretary of Environment, Natural Resources and Fisheries ) changed into SEMARNAT (Secretaría de Medio Ambiente y Recursos Naturales - Secretary of Environment and Natural Resources) “when responsibility for fisheries was passed to the National Agriculture Secretariat.” Management Response, ¶9 n.1. In addition, the

4. The COINBIO Project provides grants to communities and to *ejidos* to create community conservation areas and to carry out conservation and sustainable use activities.<sup>13</sup> The Project provides for technical assistance to communities and *ejidos* to formulate, present, administer financially, and monitor projects, known as “Community Subprojects.”<sup>14</sup> The Project is “demand-driven,” because communities propose the subprojects and activities. These community subprojects include the following: “[e]stablishment of biodiversity conservation areas in Community and Ejido lands . . . ,” “[d]evelopment of the information base and institutional framework to maintain such conservation areas, by: (a) carrying out conservation capacity-building activities . . . [and] (b) strengthening conservation networks among Communities and Ejidos . . . [, and] [i]nvestments in such conservation areas and sustainable use activities . . . .”<sup>15</sup>
  
5. The Grant Agreement establishes that the grant recipient, Nacional Financiera, S.N.C. (NAFIN), “shall carry out the Project in accordance with the terms of a manual, satisfactory to the Bank.”<sup>16</sup> The approval of an Operational Manual satisfactory to the Bank (Manual) was a condition of effectiveness of the Grant. Under the Grant Agreement, the Manual must provide that “the Recipient shall disburse proceeds under the Project only: (a) to Communities and Ejidos, with legal personality, in the Participating States . . . in support of Community Subprojects.” Each community subproject is “(i) proposed by the Community or Ejido that will carry it out . . . (ii) cleared in writing by the SEMARNAP representative on the relevant State Committee . . . [and] (iii) approved by the State Committee for the Participating State in which the Community or Ejido is located.”<sup>17</sup>
  
6. The Manual sets forth the Project’s organizational structure. It specifies the composition and the roles of the State and National Committees and the State and National Coordinators and Administrators. At the national level, the Manual provides that the National Administrator submit to the Bank an Annual Operative Program (POA), the purpose of which is to describe the activities included in the

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National Forestry Commission (Comisión Nacional Forestal - CONAFOR) was created as a semi autonomous agency under SEMARNAT’s mandate and was given responsibility for the COINBIO and the PROCYMAF Projects. See id. ¶9. The Second Community Forestry Project (PROCYMAF II) is aimed at assisting indigenous communities and ejidos that own forests in priority regions of Durango, Guerrero, Jalisco, Michoacan, Oaxaca, and Quintana Roo, to improve the management and conservation of their forest resources, and to generate alternative sources of income in a sustainable manner. See Mexico-Community Forestry Project, Loan 4137-ME (May 2, 1997), Schedule 2.

<sup>13</sup> Management Response, ¶10.

<sup>14</sup> Grant Agreement, Schedule 2 (Part B).

<sup>15</sup> Grant Agreement, Schedule 2 (Part B).

<sup>16</sup> Grant Agreement, § 3.02(a); Proyecto de Conservación de la Biodiversidad en Comunidades Indígenas de los Estados de Oaxaca, Michoacán y Guerrero COINBIO, Manual de Operación (June 7, 2001)

[hereinafter Operational Manual]. The issuance of the Manual was one of the conditions of effectiveness of the Grant Agreement. On June 22, 2001, the Bank notified NAFIN and the government of Mexico that the Agreement became effective on June 21, 2001.

<sup>17</sup> Grant Agreement, Schedule 4(1)(a), (c).

- Project and provide for their timely and effective implementation. The POA determines the amount/level of resources to be allocated to each State and the criteria for accessing them.<sup>18</sup> The POA requires that each State Coordination Unit prepare its own state operative plan, which is first submitted to the State Committee for approval and then given to the COINBIO/PROCYMAF liaison. The latter, in coordination with the National Administrator, integrates the three State operative plans into one POA that is submitted to the National Committee for its approval.
7. The Manual establishes that the State Committees will execute and supervise the Project at the State level in accordance with the norms and criteria of the Operational Manual. According to the Manual, the State Committees define the selection criteria and select the sub-project proposals of the communities and *ejidos*. The State Committees are also in charge of resolving any problems arising in the implementation of the Project at the State level.
  8. In evaluating the proposed subprojects, the Committees consider whether the communities or *ejidos* meet certain eligibility criteria, such as whether they are included in the proper registry, their willingness to participate in the Project activities, and whether their properties are in high biodiversity priority areas identified during Project design. The areas must not be the subject of boundary conflicts. The State Committees also verify that the proposed subprojects do not fall within a number of restrictions (e.g. the subproject promotes conversion of natural habitats), that they promote the creation of new conservation areas or the strengthening of existing ones, and that they meet additional criteria, such as feasibility and sustainability.<sup>19</sup>
  9. If the State Committee approves the proposal, the Manual requires that two agreements be concluded: the Participation Agreement (Convenio de Participación) and the Disbursement Agreement (Convenio de Derivación de Fondos). Both are concluded between the relevant community/*ejido* and the Grant recipient, NAFIN. The first agreement establishes the basis, mechanisms and participatory actions necessary to support and manage the conservation areas. The latter determines the obligations of the parties and the terms for disbursement of funds to carry out the subproject.
  10. According to the Project Appraisal Document (PAD), the Project is to be implemented in “*highly biodiverse priority areas,*” which include “*1,300 communities within the biological zones of the three States . . .*”<sup>20</sup> The communities have been identified through a participatory social assessment process and, over the life of the Project, “*300 communities and ejidos*” are

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<sup>18</sup> Operational Manual, § 4.1.

<sup>19</sup> See Operational Manual, § 4.4.

<sup>20</sup> World Bank, Project Appraisal Document on a Proposed Global Environment Facility Grant, Indigenous and Community Biodiversity Conservation Project in Mexico (October 31, 2000) [hereinafter PAD], 7.

expected to come forward to participate in project activities, although “any community within the 1,300 is eligible to present proposals to the project...”<sup>21</sup>

## **B. FINANCING**

11. The Project is financed by a Global Environmental Facility (GEF) grant, with resources of SDR5.8 million (about US\$7.5 million).<sup>22</sup> The GEF grant is formally treated as incremental resources to the IBRD-financed PROCYMAF Project.<sup>23</sup> The total Project cost is estimated at US\$18.7 million. The recipient of the GEF grant is Nacional Financiera, S.N.C. (National Financial Agency - NAFIN). The GEF Grant proceeds do not cover the taxes on goods and services connected with the COINBIO Project. Rather they must be paid from other funds, for example, from CONAFOR funds.<sup>24</sup>
12. The Board of Executive Directors approved the GEF-financed Project on November 28, 2000. The legal agreements were signed on February 1, 2001, and became effective on June 6, 2001. The closing date for the Grant is June 30, 2008.

## **C. THE REQUEST**

13. The Request was submitted by members of the Comité Estatal de COINBIO Oaxaca (the Project’s State Committee for Oaxaca) representing the regions of Yautepec-Istmo and Costa Sur, the Secretary of the Project’s Natural Resources Committee representing Yautepec-Itsmo, and the Chief, Office of the Commissioner (Presidente del Comisariado) of Ixtlán de Juárez in Sierra Norte, who claim that they represent the communities living in the regions of Yautepec-Itsmo, Costa Sur, and Istlan de Juarez in Sierra Norte, all in the state of Oaxaca.
14. The Requesters state that “[a]s a result of a participatory process of project design, involving communities, environmental organizations, academia, and governments, the following was decided with respect to the project: (i) the community should be actively involved in decisions and should be given flexibility in terms of modifying the criteria for project operation; and (ii) technical and strategic supervision by the Government should be kept at a minimum, in order to ensure institutionalization of the community conservation model.”
15. According to the Request, the Bank has violated its policies and procedures on project supervision and indigenous peoples because it has proposed a restructuring of the COINBIO Project without involving the State Committees. In

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<sup>21</sup> PAD, 7-8.

<sup>22</sup> Grant Agreement, § 2.01.

<sup>23</sup> According to the PAD for the COINBIO Project, community project proposals under the COINBIO would be channeled to PROCYMAF when they are appropriate for its financing, while GEF funding would target areas not receiving financing from other sources. See PAD, 8.

<sup>24</sup> According to Management Response, CONAFOR agreed in 2002 to finance the taxes on goods and services for the COINBIO Project from its own resources. Management Response, ¶9.

- the Requesters' view, the restructuring proposal entails that the State Committees will be stripped of their powers in order to revert to a vertical structure, rather than the horizontal decision-making approach used so far, as required by the Bank's Indigenous Peoples policy and the Grant Agreement. They also claim that the Bank violated its policies by giving its approval, on a "no objection" basis, to the removal of the State Coordinators for Oaxaca and Guerrero without consulting the State Committees, as required by the legal agreement.
16. The Requesters believe that their rights have been adversely affected as a result of the Bank's breach of the agreement. They state that they do not agree with the "*unjustified removal*" of the Coordinators of the States of Oaxaca and Guerrero and that the way in which it was done has created an environment of uncertainty in the regions where the Project is being implemented. The Requesters claim that the Bank bears responsibility for this situation because the Bank has supported the removal of the State Coordinators and their replacement with Coordinators of the PROCYMAF Project (also financed by the Bank) which is unrelated to COINBIO. The Requesters state that they requested the removal of the National Coordinator, because they view him as "persona non grata" among the people, and the reinstatement of the State Coordinators because, in their opinion, the removal of the two State Coordinators had violated the legal agreements. They add that on November 5, 2003, in a meeting with Bank officials, "*it was agreed ... that the World Bank would authorize the 'no objection' for the reinstatement of our coordinator, in view of the fact that his [sic] removal constituted an irregularity. However, a few days after the meeting, these persons failed to honor the agreements.*"
  17. The Request claims that "*the violation of the process has led the beneficiary communities to fear that the project currently underway will not be continued or that the rules of operation governing the project will be changed and money for the project given directly to service providers rather than to communities, as has been the case so far.*"
  18. The Request alleges that the Bank has proposed modifying the Project so as "*to divest the State Committees of their authority and vest the national coordinator with full powers.*" It also states that the Bank proposed these changes and "*gave precise instructions to Nacional Financiera, S.N.C. ... to implement them as soon as possible, arguing that this action did not require a legal amendment.*" The Requesters state that they have actively participated in the COINBIO meetings in Oaxaca to outline the strategies, which have then been developed through the State Committees, but fear that in the future their views will not be taken into account.
  19. In its Notice of Registration, the Panel noted that the above claims may constitute violations by the Bank of various provisions of the following operational Policies and Procedures:

## D. MANAGEMENT RESPONSE

20. Before focusing on the specific claims included in the Request for Inspection, Management addresses what it calls ‘*Special Issues*.’<sup>25</sup> The Response describes the participatory nature of the Project, explains how rural communities in Mexico are organized, provides the historical background of the COINBIO Project and the Project’s organizational structure, and in so doing focuses on the role of the indigenous communities.<sup>26</sup> Management further addresses “*Compliance with OD 4.20, Indigenous Peoples*” during the Project preparation<sup>27</sup> and analyzes the issue of “*Compliance with OD 13.05 and OP/BP 13.05, Supervision*.”<sup>28</sup> The Special Issues section also includes a part called “*Implementation Issues*”<sup>29</sup> where Management deals with the specific Requesters’ claims. These claims are analyzed in detail in Annex 1 to Management Response.
21. With respect to the requirements of OD 4.20 in the Project preparation, the Response asserts that the ‘*Project design incorporates the requisite elements of an IPDP [Indigenous Peoples Development Plan].*’ The Project Appraisal Document (PAD) has been regarded “*in its entirety*” as an IPDP given that 80 percent of the people affected by the Project are indigenous peoples.<sup>30</sup> The Response emphasizes that the Project preparation “*benefited from intensive social assessment*” and that “[m]any meetings were held with indigenous communities and groups of leaders to develop the project design, which incorporated local patterns of community governance and traditional leadership . . . .”<sup>31</sup> Management adds that the current and the past Task Team Leaders (TTL) of this Project are anthropologists with experience with indigenous peoples in Mexico and that the grant recipient, NAFIN, has ensured that community traditions were respected by fostering participation of community representatives in various decisions regarding the Project.
22. Management believes that the COINBIO Project implementation is in compliance with OD 4.20 on Indigenous Peoples. Management claims that the representatives of the forest communities “*have participated actively in decision-making for the Project in the three participating States*” and that, to date, “*93 sub-projects (16 in Guerrero, 42 in Oaxaca and 35 in Michoacan) have been approved by the State Committees and have received financing from the GEF Grant.*”<sup>32</sup>

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<sup>25</sup> Management Response, § IV.

<sup>26</sup> Management Response, ¶17-25.

<sup>27</sup> Management Response, ¶26.

<sup>28</sup> Management Response, ¶41-44.

<sup>29</sup> Management Response, ¶27-40.

<sup>30</sup> Management Response, ¶26.

<sup>31</sup> Management Response, ¶26.

<sup>32</sup> Management Response, Annex 1, Claim No. 1, 17.

23. As to Project supervision, Management states that, since June 2001, “*eight supervision missions have been undertaken, jointly with supervision of the PROCYMAF Project...*”<sup>33</sup> In addition, as the Grant Agreement requires, NAFIN has submitted Progress Reports and Annual Reviews on Project Implementation. Management acknowledges some problems in Project implementation, such as the late hiring of a National Coordinator,<sup>34</sup> but claims that, since mid-2002, “*actions were taken to improve Project Implementation and achieve compliance with the GEF Grant Agreement.*”<sup>35</sup> According to the Response, the Bank proposed measures to improve Project implementation and conducted “*more intensive supervision [that] led to changes in the status quo of the Project, which, in turn, caused apprehension and resistance by the State Coordinators of Oaxaca and Guerrero and some members of the State Committee of Oaxaca.*”<sup>36</sup>
24. According to the Response, however, the Project is “*two years behind schedule; targets for sub-projects have not been met and implementation has not yet begun for some components.*” Moreover, Management Response notes that although it was expected that the earliest beneficiaries of the Project would be the communities of the Sierra Norte in Oaxaca where the Project was conceived and where the levels of community organization are high, ninety-one percent of the communities in all three states that submitted subproject proposals and secured funding were “*those with low organizational capacity.*”<sup>37</sup> In response, discussions are being held with the Project stakeholders, including the State Coordinators, to improve Project management and bring the Project into compliance with the Grant Agreement.<sup>38</sup>
25. With respect to the allegation that a restructuring of the Project has been proposed without consulting local communities, Management states that “*as of October 2003, discussions had not yet advanced to the stage of specific restructuring proposals to be considered by the State Committees,*” and, as of March 30, 2004, no restructuring has taken place. Management also claims that the discussions that may lead to modifying the Project have involved the community representatives and “*will continue to involve systematic consultation with Project stakeholders.*”<sup>39</sup>
26. As to the Requesters’ claim that the State Coordinators from Oaxaca and Guerrero have been removed without consulting the State Committees, Management asserts that NAFIN, following a number of events described below, “*considered that it was in the best interest of the project to terminate the contracts of the State*

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<sup>33</sup> Management Response, ¶42.

<sup>34</sup> Management Response, ¶46. For more information about the hiring of a national coordinator see infra ¶30.

<sup>35</sup> Management Response, ¶43.

<sup>36</sup> Management Response, ¶43.

<sup>37</sup> Management Response, ¶29.

<sup>38</sup> Management Response, Annex 1, Claim No. 1, 17.

<sup>39</sup> Management Response, Annex 1, Claim No. 1, 18.



*Coordinators of Oaxaca and Guerrero.*<sup>40</sup> As a result, NAFIN requested the Bank to give its “no objection” to a mutually agreed separation document, which the Bank issued on July 29, 2003. However, since the two State Coordinators rejected the separation document, NAFIN notified them of “*the termination of their contracts in accordance with Section 11 of the original labor contracts*” and gave as reasons a proposed restructuring of the Project and the change of the terms of reference for State Coordinators.<sup>41</sup> Management states that “*the Bank did not review or provide a no objection to the July 30, 2003 termination letters.*” It learned about the terminations in early August and was formally notified of the termination of the State Coordinators’ contracts on August 28, 2003.<sup>42</sup>

27. Management claims that the decision to remove the Coordinators for Oaxaca and Guerrero was based upon “*a track record consisting of: (a) poor management of their responsibilities as State Coordinators, resulting in low project performance levels; (b) bias in the administration of Project resources with regards to individuals, communities and sub-regions; and (c) activities that were considered to be undermining and confrontational.*”<sup>43</sup> The Response cites a number of examples as justifying the termination: retention by both Coordinators of individual members on the State Committees although their mandates as community representatives had expired,<sup>44</sup> and inviting “*‘guests’ of their choosing*” to participate and vote in the Committee Meetings while excluding others, and, in Oaxaca, calling a large number of meetings that resulted in substantial operating costs.<sup>45</sup>
28. According to Management, the termination of the State Coordinators of Oaxaca and Guerrero is lawful under Mexican law.<sup>46</sup> Management states, however, that although the Grant Agreement may be interpreted as not expressly requiring prior consultation for such contract termination, it believes that “*prior consultation by NAFIN with the State Committees would have been the most appropriate course of action.*”<sup>47</sup> Management also agrees with the Requesters that the removal of the Coordinators has created an atmosphere of uncertainty regarding the Project.<sup>48</sup> The Independent Evaluation of the Project, begun in November 2003 and received by the Bank on February 10, 2004, also characterized the termination of the Coordinators as “*poorly executed and poorly explained.*”<sup>49</sup> However, the Response emphasizes that the Independent Evaluation indicates that “*the State*

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<sup>40</sup> Management Response, ¶35.

<sup>41</sup> The Panel was informed that there were no specific proposals yet.

<sup>42</sup> Management Response, Annex 1, Claim No. 2, 18.

<sup>43</sup> Management Response, Annex 1, Claim No. 2, 18.

<sup>44</sup> Management Response, ¶34. According, to Management, while this practice may foster continuity, it is “*contrary to the Operational Manual (Section 7.4) and to the traditional rotation of key positions in indigenous communities.*” Management adds that this practice “*reduces accountability because, once their terms expire, such representatives are no longer accountable to their home communities.*”

<sup>45</sup> Management Response, ¶34.

<sup>46</sup> Management Response, Annex 1, Claim No. 2, 18.

<sup>47</sup> Management Response, Annex 1, Claim No. 2, 19.

<sup>48</sup> Management Response, Annex 1, Claim No. 3, 19.

<sup>49</sup> Management Response, ¶38.

- Coordinators of Oaxaca and Guerrero took an anti-institutional approach to the Project, choosing to build up their own personal status vis-à-vis the communities, leading to the present crisis.*<sup>50</sup> Management thus considers that removing the Coordinators was “appropriate.”<sup>51</sup>
29. Management claims that, after the termination of the State Coordinators, a group of community representatives from Oaxaca sent various letters to Mexican officials alleging that the Bank intended to restructure the Project without public consultation. This also prompted correspondence from a “number of individuals in Oaxaca to various parties,” including the Bank’s Country Director for Mexico.<sup>52</sup> Management states that, because the Bank’s responses to these letters “elicited abusive replies from one of the Requestors,” the Bank “made the decision to await the results of the Independent Evaluation process that began in November 2003 rather than continue exchanges of correspondence.”<sup>53</sup>
30. The Response claims that, contrary to what the Requesters maintain, there is “no proposal from any party to subordinate the COINBIO Project to the PROCYMAF Project,” although the GEF Grant resources are formally linked to the IBRD loan for the PROCYMAF Project.<sup>54</sup> Management states that during the past year concerns were raised among Mexican officials in SEMARNAT and CONAFOR over, *inter alia*, the potential for overlap between various CONAFOR forestry programs, including COINBIO and PROCYMAF, remuneration differences and rivalries between different project staff groups, and confusion over multiple funding sources. Officials also discussed the possibility that PROCYMAF staff could help promote the COINBIO Project among indigenous communities.<sup>55</sup> Management claims that the State Coordinators who were terminated were “privy” to these matters, but never raised the issue presented in the Request for Inspection in meetings with Bank staff.<sup>56</sup>
31. Management also discusses issues related to the appointment of the National Coordinator, as provided by the Grant Agreement. The Response clarifies that in early 2001, in an effort to reduce administrative costs, the Bank, NAFIN, and SEMARNAT considered distributing the functions of the National Coordinator among the State Coordinators, the newly created liaison for the COINBIO and the PROCYMAF Projects, and others.<sup>57</sup> NAFIN agreed to this change. As a result, “the Effectiveness Letter dated June 21, 2001, waived the condition requiring a National Coordinator . . . in accordance with the procedure of OD 13.05, para 34.” Management adds that “[a]n amendment to the GEF Grant Agreement

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<sup>50</sup> Management Response, ¶38. Management indicates that the Bank accepted the report prepared by the independent consultants. Id. at ¶37.

<sup>51</sup> Management Response, Annex 1, Claim No. 2, 19.

<sup>52</sup> Management Response, ¶36.

<sup>53</sup> Management Response, ¶36.

<sup>54</sup> Management Response, Annex 1, Claim No. 4, 20.

<sup>55</sup> Management Response, Annex 1, Claim No. 4, 20.

<sup>56</sup> Management Response, Annex 1, Claim No. 4, 20, 21.

<sup>57</sup> Management Response, ¶27.

*reflecting this change was not prepared at the time.*"<sup>58</sup> However, Management noted that "[p]roject experience showed that because of this change, the COINBIO Project lacked clear leadership [and] [t]he State Coordinators did not have guidance in shaping their respective programs nor a clear strategy for resource allocation."<sup>59</sup> This acknowledgement led to a decision to fill the position of National Coordinator, who was appointed in January 2003. Management maintains, however, that "[n]o proposal has been made to 'divest the State Committees of their authority and vest the national coordinator with full powers,'" as the Request alleges.<sup>60</sup>

32. Finally, Management maintains that the decision to remove the State Coordinators is an issue of labor contracts and pertains to NAFIN, not to the Bank. Thus, in Management's view, the issues raised in the Request "*do not constitute a violation of Bank policy.*" Management concludes by stating that the draft minutes of the November 5, 2003 meeting where the Bank allegedly agreed to reinstate the removed State Coordinators for Oaxaca and Guerrero were broadly circulated before the Bank could review them. Management states that "*on November 17, 2003, the two Bank staff who had been present at the meeting sent a letter to NAFIN copied to members of the State Committee correcting erroneous statements contained in the Minutes regarding the Bank's commitments.*"<sup>61</sup>

## **E. ELIGIBILITY**

33. The Panel must determine whether the Request satisfies the eligibility criteria for an Inspection, as set forth in the 1993 Resolution establishing the Panel and the 1999 Clarifications, and recommend whether the matter alleged in the Request should be investigated.
34. The Panel has reviewed the Request and Management's Response. The Panel Chairperson, Professor Edith Brown Weiss, together with Panel member Ms. Maartje van Putten and Executive Secretary Eduardo Abbott, visited Mexico from March 3 through March 9, 2004. During their visit, the Panel members met with the Requesters, federal and state government officials, representatives of NAFIN, CONAFOR, PROCYMAF, COINBIO, and local and international NGOs. The Panel also interviewed World Bank staff responsible for this Project.

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<sup>58</sup> Management Response, ¶27.

<sup>59</sup> Management Response, ¶28.

<sup>60</sup> Management Response, Annex 1, Claim No. 5, 21.

<sup>61</sup> Management Response, Annex 13. The letter states, for example, that contrary to the agreement contained in the minutes, the Bank representatives at the meeting made "no commitment whatsoever regarding either the dismissal of COINBIO National Coordinator or the rehiring of the former State Coordinator of Oaxaca." Rather they informed the committee that this is an "issue of NAFIN's concern."

35. The Panel is satisfied that the Request meets all of the eligibility criteria provided in the 1993 Resolution and paragraph 9 of the 1999 Clarifications, with one important exception as noted below.<sup>62</sup>
36. During the visit, the Panel confirmed that the Requesters and other signatories of the Request are legitimate parties under the Resolution to submit a Request for Inspection to the Inspection Panel. They have a common interest and common concerns and reside in the Borrower's territory, as required in Paragraph 9(a).
37. 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.*" The Request alleges that no consultation with the State Committees has taken place with respect to the Bank's proposed restructuring of the COINBIO Project and the removal of the State Coordinators for Oaxaca and Guerrero. The Requesters assert that this constitutes a violation of Bank policies and procedures on indigenous peoples and supervision and has had a significant adverse effect on the Requesters' rights, as required by paragraph 9(b). However, the Panel notes that in the context of this Request, the alleged violation and material adverse effect need further consideration, as provided below.
38. The Panel is satisfied that the Request "*does assert that its 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.*" The Requesters state that although they submitted their complaints to Bank officials with letters signed by the Requesters in their capacity as community representatives and by communal and municipal authorities, they did not receive a positive response. The Requesters believe that the Bank's response is "*unsatisfactory*" because they allege that Bank officials have put their "*personal opinion ahead of the explicit request of the State Committee . . . .*" A number of letters exchanged between the Requesters and the Bank are attached to the Request for Inspection submitted to the Panel. Hence, the Request meets the requirement of Paragraph 9(c).

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<sup>62</sup> Paragraph 9 of the 1999 Clarifications mentions certain "technical eligibility criteria" that must be met by a request for inspection:

- (a) The affected party consists of two or more persons with common interests or concerns and who are in the borrower's territory.
- (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.
- (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.
- (d) The matter is not related to procurement.
- (e) The related loan has not been closed or substantially disbursed.
- (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.

39. The Panel notes that the subject matter is not related to procurement, as required by paragraph 9(d).
40. The expected closing date of the related Grant is June 30, 2008. Only about 25 percent of the Grant had been disbursed as of the date the Request was filed. The Request therefore satisfies the requirement in paragraph 9(e) that the related Grant has not been closed or substantially disbursed.
41. Furthermore, the Panel has not previously made a recommendation on the subject matter of the Request. Therefore, the Request satisfies paragraph 9(f).
42. The Panel, however, wishes to draw attention to the special circumstances of this Request and to address in detail the criterion in paragraph 9(b) relating to a serious violation by the Bank of its operational policies and procedures which has or is likely to have material adverse effect upon the Requesters.
43. During its visit to Mexico during the eligibility phase, the Panel was struck by the widespread enthusiasm about the COINBIO Project and by the fear of many that the Project would be cancelled in Oaxaca or its administrative/managerial arrangement substantially changed. These people fear that as a result of the conflict that arose over the termination of the State Coordinator and the proposed restructuring of the Project, such changes would occur in terms that would be detrimental to the Project's beneficiaries. The people of these communities repeatedly stressed to the Panel that the Project was of great importance to them because it was driven by their needs and priorities and their definition of conservation. Thus, the Panel notes the importance of continuing the Project and finding a way to overcome the present difficulties.
44. As noted above, the PAD states that “[w]ith respect to the Bank’s Indigenous Peoples’ [sic] Policy, O.D. 4.20, the entire project is regarded as an Indigenous Peoples Development Plan [IPDP] since the majority of the project beneficiaries (80%) are indigenous peoples.”<sup>63</sup> The Bank policy’s strategy on indigenous peoples fully applies to this Project. This policy states that “*issues pertaining to indigenous peoples must be based on the **informed participation** of the indigenous peoples themselves. Thus, identifying local preferences through direct consultation [and] incorporation of indigenous knowledge into project approaches . . . are core activities for any project that affects indigenous peoples and their rights to natural and economic resources* (emphasis in original).”<sup>64</sup> Consistent with this principle, the policy requires that, *inter alia*, “[p]lanning should encourage early handover of project management to local people.”<sup>65</sup> The Panel is impressed by the degree of participation by indigenous communities and *ejidos* in the decision-making process provided under the Project’s current structure. The Panel witnessed the high level of interest of local communities in

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<sup>63</sup> PAD, 26.

<sup>64</sup> OD 4.20, ¶8.

<sup>65</sup> OD 4.20, ¶14(f).

the management and execution of this Project, and is therefore concerned about the issues that are at the root of the Request for Inspection.

45. The Panel inquired about the problems underlying the Request for Inspection and the relationship with the Bank's compliance with its own policies and procedures. There are two main issues, as acknowledged in Management's Response. The first concerns the Bank's supervision of the Project and its participation in the managerial decisions regarding the Project. The second refers to the Requesters' concern about the future structure of the Project and their perception that their participation in decision-making and project implementation would be substantially reduced as a result of a restructuring of the current implementation arrangement.
46. After lengthy conversations with all the stakeholders,<sup>66</sup> the Panel observed that the Bank's supervision of the Project appears to have been inadequate in certain respects, especially since the Project is concerned with indigenous peoples. Several problems with the execution of the Project were not addressed in an effective and timely matter. These problems ranged from the lack of essential supplies for Oaxaca's coordination unit to perform its duties, such as a vehicle to reach indigenous communities and office materials and equipment (e.g. a computer) to carry out daily functions, to organizational shortcomings that resulted in disputes among stakeholders. The Bank staff's rather rigid position regarding the tenure and requested reinstatement of State Coordinators when the local stakeholders were trying to reach a compromise and temporary solution seems to have compounded the problems.<sup>67</sup> The Panel understands that Bank Management is now trying to resolve this matter in a manner that is satisfactory both to the Requesters and to Federal and State authorities. A satisfactory solution can only be reached with meaningful consultation and participation of all stakeholders.
47. An issue of broader concern to the Panel is the proposed restructuring of the Project and the Project's future implementation. The Project is especially important, because at its core it is "*demand-driven by communities*"<sup>68</sup> and *ejidos*. The State and National Committees responsible for decision-making and sub-project implementation are composed of representatives of participating communities.<sup>69</sup> Sub-projects are identified by participating communities and *ejidos* and proposed by these groups to the State Committees; grants are given directly to the local entities.<sup>70</sup> Although the State Committees and Coordinators formally supervise implementation of the projects, the primary responsibility for implementing the projects is with the communities and *ejidos*. To illustrate the

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<sup>66</sup> See ¶ 33 of this Report.

<sup>67</sup> The Bank refused to provide a "no-objection" to the rehiring of the terminated state coordinator in Oaxaca, after NAFIN agreed in discussions with the State Committee to consider it.

<sup>68</sup> PAD, 27; see also Management Response, ¶10.

<sup>69</sup> PAD, 27.

<sup>70</sup> PAD, 9, 28.

community focus of the Project, each of the four types of sub-project grants established by the Project<sup>71</sup> has a “*community counterpart requirement*,” a stipulation that a certain percentage of the total cost of the sub-project is required to be furnished by the community through in-kind contributions of labor, travel, and participation in training and meetings.<sup>72</sup> In sum, as noted in the PAD, “*The entire project is structured around the ongoing participation and monitoring by the project beneficiaries themselves, through state and national level coordinating committees, ongoing evaluations and local-level decision making for sub-projects by participating communities and ejidos.*”<sup>73</sup>

48. Until now no changes have been made to the original Project framework. As described above, the framework has involved the active participation of indigenous communities (through three representatives in the State Committees) in the definition of the COINBIO work program and in the selection and approval of individual subprojects to be financed out of the proceeds of the GEF Grant. Since Management has stated clearly that the Project constitutes an IPDP, any amendments that would be detrimental to the active and “*informed participation of the indigenous peoples themselves*” would be contrary to stated Bank policies and procedures.
49. At the time the Request was filed and when the Panel made its visit to Mexico to determine eligibility, Bank Management had presented no specific proposals for changes in or restructuring of the Project. However, thereafter from March 17 to 19, 2004, a Strategic Planning Workshop on the COINBIO Project was held in the state of Michoacan to consider the findings of the independent project evaluation and the “ways to strengthen project implementation.”<sup>74</sup> Representatives of the communities in the States of Guerrero, Michoacan and Oaxaca participated in the Workshop, including some of the Requesters. The Workshop led to specific proposals for changes to the Project, several of which could require restructuring the Project. According to Bank Management, participants considered and reached general consensus in a concluding plenary session on fourteen preliminary recommendations regarding Project changes and restructuring. These emerged from three working groups during the Workshop. The recommendations concern the State Committees, the National Committee, the National and State Coordinators and Project administration.<sup>75</sup> The recommendations are being submitted to the State Committees for further consideration, who are to consult with the natural resources committees within the State. According to Bank Management, the intent is for the three State Committees to reach common agreement on recommended changes and restructuring.

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<sup>71</sup> See generally PAD, 9-10.

<sup>72</sup> PAD, 9-10.

<sup>73</sup> PAD, 29.

<sup>74</sup> Back to Office Report, March 25, 2004.

<sup>75</sup> Id. The Minutes of the Workshop must still be approved by participants. The Panel thus does not include the detailed recommendations in its Report.

50. The Panel notes the positive steps that have been taken since the Panel's eligibility visit to Mexico at the beginning of March. These include Bank Management's effort to address personnel issues, the participation of community representatives in the Strategic Workshop, including several Requesters, and the intent to obtain approval of State Committees to proposed changes in the Project. The Panel, however, remains very concerned about ensuring that the voices of disaffected community people are heard throughout the process and that the restructuring reflects the desires of the communities and does not lose the demand-driven approach to national top-down coordination. The Panel hopes that the remarkable nature of the Project, which respects the needs and desires of indigenous communities, will be maintained and improved as a result of restructuring and change, not dissipated.

## **F. CONCLUSIONS**

51. The Request and Management Response contain conflicting assertions and interpretations about the issues, the facts, and compliance with Bank policies and procedures. In this case, however, several considerations apply. With regard to the Requesters claim regarding the termination of the State Coordinators, Management has already admitted that the procedures for terminating the coordinators were inadequate and has committed in discussion to remedying its participation in the Project. An investigation on this issue, which could be a rather lengthy process, might not contribute to the appropriate and speedy resolution of the State Coordinator problem and other personnel issues raised by the Requesters.
52. On the other hand, the Panel continues to be very concerned that a restructuring of the Project not be detrimental to the interests of the indigenous communities. Because the specific proposals for Project changes and restructuring have emerged only during the Workshop in mid-March after the Request was filed and since Bank Management has committed to having the State Committees consent to Project restructuring or other changes, the Panel believes that an investigation would not be the best course of action at this time. Since the Panel is not making a recommendation on this issue, the Requesters may still have recourse to the Panel if they consider there are serious violations of Bank policies and procedures causing material adverse effect which are based on specific acts or omissions of the Bank relating to restructuring and implementation of the Project. In this event, the Panel may recommend an investigation to the Board of Executive Directors.
53. In light of the foregoing and in fairness to all the parties concerned, the Panel cannot take a position at this time on whether the Request merits an investigation and awaits further developments.