

Statement of Mr. Roberto Lenton, Chairman of the Inspection Panel
Inspection Panel Report and Recommendation on Eligibility
Tajikistan - Energy Loss Reduction Project
For Board Meeting of February 3, 2011

We are pleased to take this opportunity to update the Board on the Panel's eligibility report and recommendation not to investigate matters relating to the Tajikistan: Energy Loss Reduction Project.

We would like first to express our thanks for the statements submitted by Executive Directors in advance of this Board meeting. We appreciate their indications of support, and also their important questions for the discussion. We also wish to express our thanks for the questions we received and the very constructive meetings held with Board members and Management.

The Panel received this Request from representatives of the Ecological Movement of Uzbekistan, as downstream affected people of a Project with transboundary impacts – the Assessment Studies of the Rogun Hydropower Plant (HPP) in Tajikistan, which are planned to be financed under the Energy Loss Reduction Project. This Request raised many serious concerns, both about the Assessment Studies and the Rogun Plant itself.

To better understand and ascertain the facts related to issues of eligibility, between December 13 and 18, 2010, a Panel team headed by the Panel Chair visited Tashkent in Uzbekistan as well as Dushanbe and Rogun in Tajikistan. The Panel team met with Requesters, high level Government officials, including the First Deputy Prime Minister of Uzbekistan and the First Deputy Prime Minister of Tajikistan, and staff of the Bank country offices in both capitals.

In its Report, the Panel recognized that most issues raised by the Requesters refer to potential harm related to Rogun HPP. However, as the Report notes, at this stage the only issues that are relevant, and can be considered under the purview of the Panel, are those related to activities currently supported through Bank-financing, namely, the Assessment Studies and their related issues of harm. The Panel also noted that the issues raised in the Request have been reflected in the Terms of Reference of the proposed Assessment Studies, and that hence, the purpose of the Assessment Studies is to ensure that a fact-based decision is taken on this complex and sensitive hydropower project.

The Panel received a question regarding the interpretation and applicability of criterion 9(a) of the 1999 Clarifications of the Resolution, which states that the Requesters be “*in the Borrower's territory.*” We would like to note that this is not the first Project with transboundary effects about which the Panel has received complaints. In this particular case, before registering the Request (a step created by the Panel shortly after its establishment to avoid burdening this Board and Management with frivolous Requests or those that are manifestly outside of its mandate), the Panel considered the literal and

legalistic reading of the eligibility criterion referred to in this criterion, and also took into account the relevant precedents. These precedents adopted an interpretation which calls for a focus on where the material adverse effect of the Bank-financed Project occurs, even if it is in a territory that happens not to be that of the Borrower. This interpretation by Management and the Panel was previously accepted by the Board. Precedents related to this interpretation include the Yacyretá Hydroelectric Project, built between Argentina (the Borrower) and Paraguay (the country of the Requesters), concerning which two different Requests for Inspection for this Project had been received in 1996 and 2002. More recently, in 2006, the Panel investigated a Request for Inspection submitted by Communities living in Nigeria related to the West African Gas Pipeline Project, for which financial assistance was provided to Ghana in the form of an IDA Guarantee. Nigeria was not the Borrower in the context of this Project.

The Panel also received a question whether the Management Response was available before the Panel's field visit and whether it might have been considered sufficient to determine eligibility. While the Management Response was indeed made available prior to the Panel's visit, the Panel needs to make its assessments independently after meeting with the Requesters and considering the Management Response. The Panel visit was crucial to ascertain the facts concerning the eligibility of this Request and nature of the concerns of the Requesters about potential non-compliance and harm.

On that, my colleagues and I would like to thank all involved in this process and especially the Governments of Uzbekistan and Tajikistan who assisted the Panel greatly in the conduct of its work.

Thank you.