

Matrix of Comments from Former Panel Members on Update of Inspection Panel Operating Procedures

<u>Issues</u>	<u>Former Panel Members</u>
1. <u>Pre-Request</u>	
2. <u>Submitting a Request</u>	Former Panel Member 1: Procedures need to be updated to reflect the electronic aspects of communication (email, facebook, etc).
3. <u>Procedures on Receipt of Request</u>	
<ul style="list-style-type: none"> ▪ Registration 	Former Panel Member 2: The Panel should register the claim when it comes in. This puts everyone on notice. Creating space for problem solving at this stage could undermine the panel process and the perception of its independence. Once it is registered is when Management starts to take notice.
4. <u>Management Response</u>	
5. <u>Eligibility Phase</u>	
<ul style="list-style-type: none"> ▪ Ensuring clarity of information in describing findings on eligibility 	<p>Former Panel Member 2: The Panel should not box itself into a formula on the prior contact issue or on identifying harm by laying out methodology in the procedures. The Panel should focus on the policy compliance and not get more involved in what kind of harm has been done.</p> <p>Former Panel Member 2: [The Panel] might have procedural requirements and substantive requirements for eligibility. It is entirely in the realm of the Panel authority to determine if prior contact is sufficient.</p> <p>Former Panel Member 3: a) The Panel has clear authority in the Resolution over determining whether there is prior contact with Management. This should be clear in procedures. b) The requirement to cite specific policies is burdensome for the requester. The procedures should clearly state that this is not required [as per the 1999 clarification].</p> <p>Former Panel Member 4: As is the case in most mechanisms, people first have to show they have tried to solve the problems at local level with the Borrower and Management. This could be a huge hindrance for people to go to the Bank. In some countries, people might not feel safe to complain due to repercussions and secondly if they are send back to Management they could feel intimidated.</p> <p>Former Panel Member 4: I would not be too precise on [prior contact] in the procedures. Every case is</p>

	<p>different and as we know in some countries it is a risk for people to come forward with a complaint.</p> <p>Former Panel Member 6: The Panel should not require citation of policy violations in the procedures. Causation [of harm] is also very hard for the Requester to prove.</p>
<ul style="list-style-type: none"> ▪ Fostering Opportunities for Management to address Problem During Early Stages of the Panel Process 	<p>Former Panel Member 2: Creating space for management at the eligibility phase is fine but there should be a clear process in the procedures. This power comes from Article 13 in the Resolution.</p>
<p>6. <u>Panel Recommendation to Board</u></p>	
<p>7. <u>Investigation Phase</u></p>	
<ul style="list-style-type: none"> ▪ Shortening investigation phase 	<p>Former Panel Member 2: If the Panel is concerned about the length of the investigation it could issue best practices on investigation time frames with allowances for unforeseen circumstances.</p> <p>Former Panel Member 5: The investigation phase should have a shorter time frame and one that is acceptable to management. This could make it more efficient.</p> <p>Former Panel Member 3: If the Panel is going to speed up the investigation process, it could lay out best practice such as 6 months with a disqualifier for difficult cases. If the investigation period it too long the requesters loses interest in the process.</p> <p>Former Panel Member 4: For the investigation phase, a proper amount of time, (on a case by case basis) should be set aside.</p> <p>Former Panel Member 6: Investigations should be time bound. The Panel should be authorized to reduce the scope of the investigation and only focus on certain issues. The Panel should limit or prioritize the issues that it investigates (especially if doubts are raised). Prioritizing is important during the investigation phase.</p>
<ul style="list-style-type: none"> ▪ Methods of investigation 	<p>Former Panel Member 1: The Panel has lost some of its focus on policy compliance. There are opinions that the Panel should strengthen the side of the mechanism to deal with grievances and problem solving. The Panel should be focused on Policy compliance. Since the World Bank is a lead institution, the operating procedures and the Panel should keep its eye on the integrity of the policy structure.</p>

	<p>Former Panel Member 4: If the Panel has to operate in an unknown country (no one in the Panel has extensive information about the country), it is wise to search for an “inside-outsider” person. This could be a well known author in the country, a professor at a University, a foreign diplomat. It should be someone that knows the country very well and could react on the implications of the project, but who is not involved in the project. Meetings with those people for background information almost always resulted in new insights. How to word this in the procedures is a question.</p> <p>Former Panel Member 5: It was very difficult to avoid the media. The press always tried to talk to the Inspection Panel and we had to avoid it [required by the Resolution]. This was a problem because the Panel is supposed to be transparent about what it is doing.</p> <p>Former Panel Member 5: [The Panel needs to] understand requesters better and spend more time in the field. There was limited time in the field. The Panel needs to pay more attention to the facts.</p>
<ul style="list-style-type: none"> ▪ Participation of Requester: Improving transparency, including access of requesters to panel investigation findings when action plans to address the findings are being developed. 	<p>Former Panel Member 1: The Requester should be more involved in the final aspect of the investigation, report writing, even while Management is writing its response. There should be a procedure to keep a focus on a series of landmark points thru the investigation process where the Requester is involved. The Requesters should be consulted on the fact checking with the report.</p> <p>Former Panel Member 3: The Requesters need to know what is in Management’s action plan. They should be provided access to the action plan and be consulted.</p>
<ul style="list-style-type: none"> ▪ Participation of Third Parties 	
<p>8. <u>Panel Report to the Board and President</u></p>	<p>Former Panel Member 2: The Panel should not release [a summary] of the draft report to requesters. Then there would be suggestions about changing the report and implications for the Panel’s independence. Also there is the issue of confidentiality before Board meetings.</p> <p>Former Panel Member 4: I believe that the opportunity for stakeholders to comment [on the draft report] should only be introduced as a last check for the Panel. And it is only up to the Panel to decide if the comments or ‘corrections’ are a clear factual addition or correction and NOT a matter of interpretations. If this right is given to Management and Borrowers, it should also be given to the complainants. As long as the final report is in the hands of the Panel, I can see the value of sending draft reports to the stakeholders.</p>
<p>9. <u>Management Response and Action Plan</u></p>	<p>Former Panel Member 2: If the Panel comments on Management’s involvement of requesters in designing the action plan this provides more access for requesters. The Panel should maintain regular contact with the</p>

	<p>Requesters during the investigation and panel process.</p> <p>Former Panel Member 6: The requesters have to be involved in the action plan.</p>
<p>10. <u>Board Decision and Public Release</u></p>	<p>Former Panel Member 1: Requesters would be intimidated by attending a Board meeting. The Requesters' physical presence at a Board meeting would not be of much value. But they should be given an opportunity to comment on the final report or a summary of the report.</p> <p>Former Panel Member 3: Requesters should not attend Board meetings: they would be too intimidated and would not understand the process.</p> <p>Former Panel Member 6: A statement from the Requesters could be presented at the Board meeting.</p>
<p>11. <u>Return Visits</u></p>	<p>Former Panel Member 2: The practice of return visits could be included in the updated procedures as "best practice" but the panel should be careful not to box itself in by putting it in the procedures.</p> <p>Former Panel Member 3: The return visit should be clearly spelled out in the procedures.</p> <p>Former Panel Member 6: A return visit is probably better than a Requester taking part in a Board meeting.</p>
<p>12. <u>Panel Follow Up</u></p> <ul style="list-style-type: none"> ▪ Fact-finding follow-up if requested by Board 	<p>Former Panel Member 1: Panel monitoring and follow-up is a bad idea because it takes the mechanisms away from policy compliance. This was the experience at the [other mechanisms]. The mechanism always ends up being involved in "on the ground" remedies and implementation and not looking at policy compliance which is its mandate.</p> <p>Former Panel Member 2: The Board has shown that it has the power to request monitoring. It requested monitoring in Mumbai and Yacyreta. It may be useful to lay out methodology and prior practice but be careful not to box the Panel's work in.</p> <p>Former Panel Member 2: The follow-up should be a factual inquiry the same as a Panel investigation into whether the project is in compliance or not and whether management did what they said they were going to do. It should also be distinguished from the type of monitoring and evaluation that Management does.</p> <p>Former Panel Member 4: If the panel is asked to follow-up, it should verify inside the Bank and in the project area what actions are taken and if they are in compliance with both the planned activities and in compliance with the Banks policies.</p> <p>Former Panel Member 5: The follow-up should be clearly defined. The Panel should definitely have a role</p>

	<p>in follow-up fact finding. This would increase local people’s confidence. The Panel should not leave requesters in the dark: it needs to keep going back and fact checking. There should be a clear methodology for follow-up so that the Bank knows what the Panel is doing.</p> <p>Former Panel Member 6: Management should do follow-up monitoring but the Panel could do some evaluation or spot-checking. Management should provide a matrix of everything they are doing post inspection and report it to the Board.</p>
13. <u>General Procedures</u>	<p>Former Panel Member 1: The updated procedures need be more simple and straight forward. The 1996 procedures were very legalistic and stiff. Current procedures weakness is that they are far too detailed and legalistic. By being detailed they become restrictive as opposed to opening up possibilities for the Panel. For example there are too many “musts” and “shalls” that overreach. By being unequivocal this becomes a kind of weakness and constrains the Panel. When Panel members deal with cases they need to have grey area and flexibility.</p>
14. <u>Cross-cutting general categories and themes</u>	
<ul style="list-style-type: none"> ▪ <i>Improving public awareness of Inspection Panel</i> 	<p>Former Panel Member 1: Environmental Impacts Assessments are visible. Every Environmental Impact Assessment should have a section about the Panel and how to file a request.</p> <p>Former Panel Member 2: Communications and outreach could be a “best practice” but Panel should not box itself in on it methodology.</p> <p>Former Panel Member 4: Everybody involved in the Panel should be able to communicate in a way that ordinary people do not feel overwhelmed, impressed etc. Everybody should be conscious about that every moment that people try to contact the Panel.</p> <p>Former Panel Member 5: The Panel’s outreach strategy should be in the procedures.</p>
<ul style="list-style-type: none"> ▪ <i>Transparency and Disclosure during Panel Process</i> 	
<ul style="list-style-type: none"> ▪ <i>Problem Solving</i> 	<p>Former Panel Member 1: The Panel currently goes out of its way to give management a chance to problem-solve. That is not the Panel’s business. The Panel needs to look at the policy compliance failure and the systemic failures. It is a problem that the Panel is waiting to register complaints. Panel is inviting management to take it off the books. The Request needs to put on the books. This also puts time pressure on</p>

	management.
<ul style="list-style-type: none"> ▪ <i>Affected People’s Access to the Panel</i> 	<p>Former Panel Member 2: Summaries of final reports should be in local languages.</p> <p>Former Panel Member 5: a) In some cases there was retaliation from local authorities as a result of a request being filed. The Panel is not able to deal with this problem. b) Some Requests dig deeper into issues such as human rights and the Panel is not able to deal with these issues. Preparing a request is difficult for affected people, even sometimes difficult with the help of NGO representatives. It should be easier to file a request.</p>
<ul style="list-style-type: none"> ▪ <i>Promoting Effective Panel Interaction with Management, the WB Board, and Borrower Countries</i> 	<p>Former Panel Member 2: It is important to meet with the borrower governments so they understand the Panel’s work. Management drives up the cost because they develop very long elaborate responses which are unnecessary. Management should develop a clear outline and frame work for responding to claims so that they do not spend huge amounts of resources.</p> <p>Former Panel Member 3: Bank staff fear the Panel and Management devotes a lot of time critiquing the Panel instead of responding whether it complied or did not comply with the policies.</p> <p>Former Panel Member 4: I do not think it is wise to put too many processes on paper. It will finally ‘bind your hands’. Nevertheless, it might be good to clarify in general terms that the Panel as a principle will communicate to the best of its ability with Management.</p> <p>Former Panel Member 5: There are legitimate concerns about the cost to the project. The Board needs to be continually updated and the Panel should have regular meetings with Board members. Management does not understand the work of the Panel and this creates misunderstandings. Management does not appreciate the Panels work even though the Panel is actually helping the project become better.</p>
<ul style="list-style-type: none"> ▪ <i>Promoting Corporate Learning based on the experiences of Panel Investigations</i> 	<p>Former Member 2: There should be more interaction with Management on lessons learned. The Panel should give seminars to staff in the regions and in the Bank and provide its insights and observations.</p> <p>Former Panel Member 3: Corporate learning is the responsibility of management.</p>
<p>15. <u>Issues Outside the Scope of this Review</u></p>	<p>Former Panel Member 4:</p> <p>a) The fact that the Panel cannot investigate if 95% of the project budget is spent is out of date. In most other organizations such as the ___ affected people can come forward until the Project Completion Report (PCR) is</p>

	<p>finalized.</p> <p>b) Introduction of a problem solving/mediation function (first phase) for IBRD and IDA should be considered. However it should bring a lot of procedure changes, such as a Chinese wall between those involved who operated in the [problem solving] should never be involved in the compliance function. Both functions should be accessible as the first choice of the people. A study of how it works in the other mechanisms is something to be considered. All those mechanisms have totally different procedures concerning problem solving.</p> <p>c) There should be a record of complaints/problems [in projects] at the local level and how they are dealt with before becoming a subject of a compliance review.</p> <p>d) It is worthwhile to further look into this [problem solving] option for the Panel. It is a less (semi) judicial approach and with a focus on solving problems. Introducing such a function would indicate a rather substantial change of the time frame for complainants. In short: there is first eligibility for the problem solving function and the process of problem solving with or without success, in the later case possibly (depending on the wishes of complainants and or on the decision of the Panel if non-compliance is at stake) followed by compliance review.</p>
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