

REQUEST FOR INSPECTION

1. SOBREVIVENCIA, Amigos de la Tierra Paraguay, files this dual claim to the World Bank Inspection Panel and the Inter-American Development Bank's Investigation Mechanism, on its own behalf and on behalf of other persons whose names and addresses are attached, all of whom are directly and adversely affected by the Yacyretá Hydroelectric Project. SOBREVIVENCIA, a non-profit organization dedicated to protecting the environment and the quality of life of indigenous, peasant and marginalized urban communities living in poverty, has been actively working in the areas affected by the project since 1991. The individual claimants live in Encamación, Paraguay, and are suffering from the Project's rising water level. Due to the potential for retaliation, the names of those persons who have authorized SOBREVIVENCIA to represent their interests have been made available only to the World Bank Inspection Panel and are otherwise to remain confidential.

2. Claimants have suffered, as a direct result of the partial filling of the Yacyretá reservoir and the violations of Bank policies set forth below, serious impacts on their standards of living, their economic well-being, and their health. For example, the Banks have violated policies on resettlement, environmental assessment, indigenous peoples, and wildlands. They have also failed to adequately supervise or monitor the Borrower or the beneficiary, with the result that the programs designed to mitigate the social and environmental impacts of the project have been neglected to the harm of the claimants and others directly affected by the project.

3. Socio-economic impacts include loss of jobs and livelihood and forced resettlement to smaller homes of poorer quality. Workers in occupations including ceramic making and fishing have lost their resource base. Others, including washerwomen, bakers and pastry makers in the zone adjacent to the reservoir have lost customers concerned over the effects of lower water quality on the goods they produce and the services they provide. The distances of resettlement areas from their former homes have resulted in additional economic dislocation from the claimants' prior jobs and sources of income. They have also lost their social network, and are suffering separation from their families and friends. Their diminished economic capacity and the relatively high cost of transportation has forced many of them to withdraw their children from school so that they can work to help support their families, with a resulting loss of educational opportunities and hope for future generations. Families that were given small plots of land in compensation for lost farmland have often found that they are in areas of very poor soil, which in practical terms means they can be farmed only as long as EBY provides fertilizers and other chemical inputs.

4. The claimants have also suffered increased health problems caused by poor water quality. The rising reservoir has introduced stagnant, polluted water and has contaminated the groundwater supplies used for drinking water. The rising water table has also incapacitated sanitation systems and destroyed crops. In addition, untreated sewage is discharged into the lake and instead of being carried downstream it stagnates in the proximity of homes now near the water level. The municipal slaughterhouse, now on the shore of the reservoir, discharges wastes directly into an arroyo used by local residents for bathing and cooking

water. Localized stagnant pools in the reservoir have also caused concern regarding the presence of vectors for- diseases such as malaria, schistosomiasis and skin diseases. Among the health impacts which have been registered, and which probably result from the filling of the reservoir, are increased respiratory infections, diarrhea, skin rashes, skin and intestinal parasites, nutritional disorders, and stress-related conditions.

5. The partial filling of the reservoir has also inundated and destroyed island communities and ecosystems, flooded farmlands and wildlands, and displaced local people and local wildlife. The damming of the river has disrupted fish migration, with dramatic impacts on subsistence diets, earning capacity of fisherfolk, and biodiversity.

6. The World Bank and the Inter-American Development Bank have a mandate to provide financing to stimulate development and alleviate poverty. People affected by Bank projects are supposed to participate in and benefit from the projects. In the case of the Yacyretá Hydroelectric Project, the quality of life for local people and their environment have only been diminished by the project. The intended beneficiaries are consumers of electricity in Buenos Aires, but even if the dam were fully operational and the water level rose to a devastating 83 meters above sea level, the cost of electricity generated by the project would be more than three times the competitive market price in the region, according to the World Bank's own review of the project. The negative impacts of the project on the local people and their environment have been exacerbated by a failure of the Banks to adequately supervise and monitor the project, and their failure to follow their own policies and procedures.

7. Given that completion of the project would cause even greater problems than at present; given that the Banks and the entity they have financed (the Entidad Binacional Yacyretá, or EBY) have demonstrated very little interest in or capacity to mitigate the social and environmental consequences of the project; and given that the economic justifications for the project are inherently flawed, we call for construction to be stopped with the reservoir at elevation 76 meters asl and for a prohibition on raising the level of the reservoir unless and until (a) proper social and environmental mitigation has been done to the satisfaction of the affected people and (b) there has been further examination of the economic feasibility of continuing the project.

1. Introduction to Project.

8. The Yacyretá Hydroelectric Project is a joint project between Argentina and Paraguay that involves the construction of a major dam, 67 km in length, on the Rio Parana. The Parana forms part of the border between Argentina and Paraguay. One of the largest hydroelectric projects in the world, the darn will produce 2,700 megawatts of electricity for Argentina. The project has been plagued by delays, corruption, procurement disputes, political changes, failures to conform to Bank policies, and the reluctance of the Argentine government to provide its share of counterpart financing.

9. The World Bank and the Inter-American Development Bank (IDB) have a long history of involvement in the Yacyretá Hydroelectric Project. The first loan for the project was approved in 1979. The beneficiary of the loans has been a bi-national commission, the

Entidad Binacional Yacyretá (EBY), which was established pursuant to a treaty signed by the two countries in 1973. The International Treaty of Yacyretá calls for equally shared co-ownership of the project between Argentina and Paraguay. (SAR, IBRD Loan 3520-AR, para. 2.1). EBY's mandate is to design, build and implement the project; it is administered by a Board of Directors and an Executive Committee, whose members are appointed by both Argentina and Paraguay. The hydroelectric complex installations and ancillary works are jointly owned by both countries in equal parts, and the power produced is also owned by both countries in equal parts. (SAR, IBRD Loan 3 520-AR, Annex 2. 1, paras. 5, 7).

10. Although the electricity from the joint project is going exclusively for use in Argentina, most of the adverse impacts of the project are in Paraguay. The vast majority of the physical works of the dam are located on Paraguayan territory, and the loss of wildlands and homes will also be concentrated in Paraguay. If the reservoir is raised from the current level of approximately 76 meters asl to its targeted elevation of 83 meters asl, it would cover 1,650 square kilometers, inundating approximately 80,000 hectares in Paraguay and 29,000 hectares in Argentina above and beyond the original river bed.

11. At the moment, the civil works are nearly complete, eleven out of the proposed 20 turbines are operating and the water level behind the dam is approximately 76 meters above sea level (asl). The project calls for raising the water in two additional stages, to 78 meters asl and then to 83 meters asl. According to the terms of the loan agreements, raising the water level above 78 meters will require the approval of the World Bank. The Bank documents also state that the Bank cannot approve raising the reservoir level above 78 meters unless there is a satisfactory completion of the Resettlement and Environmental Management programs (REMP), together with an adequate financing plan to carry out the activities under the programs. Adequate financing, in turn, requires deposits into the currently non-existent Environmental Trust Fund (discussed below). The actual rise should not occur before a "fully satisfactory completion of the revised REMF." (SAR, IBRD Loan 3520-AR, para. 2.46).

12. Each stage of filling the reservoir has significant social and environmental impacts. For example, at 83 meters asl the Project will displace approximately 50,000 people and inundate over 1 00,000 hectares of previously undisturbed wildlands. "Of the total flooded area, about 78,200 ha will be in Paraguay and 29,400 ha will be in Argentina. The great majority of the area to be inundated is sparsely-populated wildlands." (SAR, IBRD Loan 3520-AR, para. 2.45). Island ecosystems, marshes and grasslands, which harbored unique biodiversity, have already been lost, and the indigenous peoples and traditional communities that lived on those islands have been involuntarily resettled. The Project has also adversely affected small riverside communities and the cities of Encarnación, Paraguay and Posadas, Argentina, causing enormous social disruption. People are being forced to abandon their homelands, their sources of sustenance from the river and their means of earning a livelihood. These impacts have been significant at the current water level, but will increase by an order of magnitude when and if the water level is raised to 83 meters asl.

13. We find it particularly disturbing that a reservoir level-of 83 meters asl, which has the most devastating social and environmental impacts, is described as the optimal level for the dam. A lower water level would significantly reduce the environmental and social

consequences, and save considerable money in a project already experiencing massive cost overruns. Certain Bank policies, such as the resettlement policy and the environmental policy for dams and reservoirs, recognize that design considerations such as lower reservoir levels can vastly reduce the social and environmental impacts of a project; such policies have not been applied in this me. The environmental policy on dams and reservoirs states that wherever possible, adverse environmental impacts should be avoided, minimized or compensated for in project design, including modification of dam height. (OD 4.00, Annex B, para. 4). Similarly, the resettlement policy states that all viable options for project design need to be explored to minimize involuntary resettlement, and it specifically notes that "reductions in dam height may significantly reduce resettlement needs." (OD 4.30, para. 3 (a)).

14. There has been inadequate consideration of design alternatives that would involve markedly less social and environmental impacts. The SAR for Loan 3520-AR specifically notes that "Permanent operation of the Yacyretá reservoir at a lower level (such as EL 76 or 78) would significantly reduce environmental mitigation costs." The SAR summarizes the savings as follows: (1) the number of involuntarily resettled people is at least 34,500 people fewer at 76 than 83; (2) less risk of stagnant water at 76 than at 83; (3) 50% less wildlands flooded at 76 than 83, with proportionately lower wildlife losses (4) protect the Parana-type rainforest (with its various endangered species) upriver of Posadas and Encamación at 76; at 83, over 3,600 hectares would be flooded; (5) at 76, the Ana Cua branch of the Paraná river would receive a substantial amount of water all year long, since the Ana Cua spillway would operate on a more or less continuous basis. (SAR, IBRD Loan 3520-AR). Thus, operating the reservoir at a lower level would specifically avoid the worse damages associated with the project, damages which the Borrower and EBRY have failed to demonstrate that they have the willingness or capacity to mitigate.

15. The governments and the multilateral Banks are actively promoting privatization of the project. Proponents of privatization argue that it is the only way to finance the environmental and social mitigation required by the project. This argument ignores the responsibility of the Banks and the Argentine government for failing to live up to Bank policies and the terms of the numerous loan agreements. Social and environmental mitigation should have been built into the financing of the project. Argentina is using economic and political leverage to pressure Paraguay to agree to privatization. This, in turn, is leading to political unrest as evidenced by the recent contractors' strike. We request that the Inspection Panel and the Investigation Mechanism consider this claim in the context of the privatization debate. How would privatization affect the environmental and social components of the project now and in the future? How would the rights and interests of those who have already been harmed by the project be protected under a privatization scheme? How would privatization affect decision-making relating to water management for multiple use, e.g. electricity, fisheries, health? How will the private sector be held accountable for recurrent costs of environmental mitigation, including reservoir maintenance to guard against schistosomiasis, malaria, and other water-borne diseases? What responsibilities must the Banks assume before privatization could be approved?

II. History of Project Financing

16. Over the past seventeen years, the World Bank and the Inter-American Development Bank have together provided over \$1,740,000,000 in support of the Project. Several loans

have been granted specifically for the project - such as IBRD loan 1761-AR for \$250 million in 1979, IBRD loan 2998-AR for \$250 million in 1988, IBRD loan 3520 -AR for \$300 million in 1992; IDB loan 346/OC-RG for \$210 million in 1978, IDB loan 555/OC-RG for \$250 million in 1988, IDB loan 583/OC-RG for \$250 million, and IDB loan RG/0004 for \$130 million in 1993. These loans account for only a part of the financing, however, as the Banks have also re-directed funding from other loans to benefit the project, including, at a minimum, funds from IBRD loan 2854-AR (the SEGBA V loan, redirecting approximately \$138 million) and IBRD loan 3281-AR (originally for sanitation for the Province of Misiones) and IBRD loan 3521-AR (Flood Rehabilitation Project). In addition, there have been many other loans by both the World Bank and the IDB to finance improvements in the Argentine energy sector and transmission of electricity, which have also directly affected the Yacyretá Project. The IDB has also financed PR-0030, a \$50 million loan to Paraguay for the Yacyretá Transmission System. Together, this financing package constitutes continuous and ongoing support by both Banks for the project.

17. Despite these enormous expenditures, the Banks have not adequately financed the environmental and social mitigation that is necessary to address the negative impacts of the project. Instead, they have required the Government of Argentina to provide counterpart financing to cover land acquisition, administration, and the resettlement and environmental protection program. Requiring Argentina, which the Banks have recognized is in a financial crisis, to provide financing for the mitigation of impacts felt largely in Paraguay is totally unrealistic and ignores consideration of political will. In fact, Argentina decided to reduce its contribution to the project's 1995 budget and has reportedly refused to finance any of its contribution to the 1996 budget. In addition to failing to provide funding that would allow EBY to operate the environmental and resettlement programs, Argentina is also apparently failing to meet its commitments under the loan agreement to resettle all members of its population affected by the project, regardless of when they moved into the project area.

18. The Banks have also failed to ensure that EBY was capable of implementing the required environmental and resettlement mitigation measures. They have consistently provided continued funding knowing that EBY was institutionally weak. "Under Loans 1761-AR and 2998-AR, EBY considered the resettlement and environmental protection works as secondary to the construction of the civil works. Within EBY's management, there was no professional with requisite skills, experience or interest to oversee the resettlement and environmental protection." (Project Completion Report, IBRD Loans 1761-AR and 2998-AR). In addition, the staffing of the resettlement and environment department in EBY has been poor. In fact EBY reduced the number of people in the Environment and Resettlement Unit from 195 in 1990, to 117 in 1991, to 42 in 1992. (SAR, IBRD Loan 3520-AR, Para. 2.23).

19. We understand that the World Bank has the following relevant policies and/or procedures: Environmental Policy for Dam and Reservoir Projects (OD 4.00 - Annex B); Environmental Assessment (OD 4.01); Involuntary Resettlement (OD 4.30); Indigenous Peoples (OD 4.20); Wildlands (OPN 11.02); Supervision (OD 13.05); Project Monitoring and Evaluation (OD 10.70); Suspension of Disbursements (OD 13.40); Cultural Property (OPN 11.03); and Environmental Aspects of Bank Work (OMS 2.36). In addition, the Inter-American Development Bank has policies on Procedures for Classifying and

Evaluating Environmental Impacts of Bank Operations and Strategies and Procedures on Socio-Cultural Issues as Related to the Environment. During the course of the design and construction of the Yacyretá Hydroelectric Project, each of these policies has been violated.

20. Although we have been unable to locate a particular World Bank or IDB policy regarding trans-boundary project impacts, we believe that if such a policy exists it must have been violated. This project involves the construction of an enormous dam for the benefit of Argentina, with most of the negative effects being felt in Paraguay. The majority of the environmental and resettlement impacts are in Paraguay. Argentina's refusal to provide counterpart financing is directly impacting Paraguayans, as is the Banks' failure to incorporate environmental and social mitigation into the design and financing of the Project. We believe that the decision to structure the financing in such a way that trans-boundary mitigation depended on national counterpart funding, rather than including such mitigation in the core Bank loan financing, was irresponsible and ignored political and economic realities. The claimants are among the many thousands of people who are suffering the consequences of this decision by the Banks.

21. The range of violations have been systematic and pervasive. The violations are both procedural and substantive in nature. Basic rights of participation and access to information, which are incorporated in many of the above policies, have been denied in this project. The Banks have provided financial support to a supra-national entity, the Entidad Binacional Yacyretá (EBY), which is systematically unresponsive to the concerns of citizens or either of the two governments. The Banks have also been unresponsive and unaccountable. Citizens affected by and concerned about the impacts of the Project have not been allowed meaningful participation in any phase of the Project. Attempts to raise problems and concerns with EBY and the Banks have been unsuccessful. The specific concerns of the claimants are discussed below.

IV. Social Concerns

A. Resettlement

22. The Banks have failed to take financial responsibility for the resettlement of persons displaced by the project. Although they have known from the beginning that the project would displace tens of thousands of people and impact many more, the Banks failed to incorporate resettlement planning in the design and financing of the project. This violates OD 4.30, which states that "Planning and financing resettlement components or free-standing projects are an integral part of preparation for projects that cause involuntary resettlement" and that resettlement "should be dealt with from the earliest stages of project preparation." (OD 4.30, paras. 1, 3). The Resettlement policy also states that the World Bank needs to ensure that involuntary resettlement is avoided or minimized, that laws and regulations concerning displaced people provide compensation sufficient to replace A lost assets, and that displaced persons are assisted to improve, or at least restore, their former living standards, income earning capacity, and production levels. (OD 4.30, para. 24).

23. Similarly, the IDB's Strategies and Procedures on Socio-Cultural Issues as Related to the Environment states that "the relocation component will be made an integral part of

overall project design, execution schedule and project budget, avoiding, where possible, the approval of the resettlement component as a 'parallel' project to be financed by local funds and over which the IDB will have no or little control." (Part C2(b)(3)). It also emphasizes the importance of community consultation and participation in all stages of project design and execution. (Part C2(b)(6)).

24. Rather than financing a resettlement component or integrating the resettlement program into the design and preparation of the project, the Banks have instead treated resettlement as separate from the civil works aspect of the Project and they have placed primary responsibility for financing resettlement on the government of Argentina. In addition, the Banks failed to ensure that Argentina or EBY had the institutional capacity to implement a resettlement program. The Banks also ignored the lack of political will: the majority of displaced people live in Paraguay, yet Argentina is being asked to provide hundreds of millions of dollars in compensation. Not surprisingly, Argentina has refused to provide its agreed counterpart funding for environmental and social mitigation.

25. The Banks have consistently failed to correct the compliance problems. Specifically, Loan 3520-AR was approved after the issuance of clear policy guidance on resettlement, and after ample opportunity to learn from past financing mistakes, but again the World Bank failed to properly incorporate the resettlement component into the project. The SAR for Loan 3520-AR estimated that the total Resettlement and Environmental Management Program would cost \$720 million dollars. However, the Bank only provided \$9 million to cover the costs of studies and technical assistance. (SAR, IBRD Loan 3520-AR, p. 33 and Annex 2.2, para. 2). This hands-off approach allowed the project to be built without taking financial responsibility for mitigating the impact on people and their environment.

26. As part of the 1992 World Bank loan, the Banks also required that EBY establish an Environmental Trust Fund with the proceeds from the sale of electricity, to fund environmental mitigation and resettlement. This Trust Fund has not been created. The Staff Appraisal Report for IBRD Loan 3520-AR stated that:

Given the underlying importance of satisfactorily completing the Resettlement and Environmental Management programs required for different reservoir operation levels, during negotiations EBY agreed to establish by November 1, 1994, and, thereafter, maintain an Environmental Trust Fund on terms and conditions satisfactory to the Bank by depositing therein the amounts necessary to finance in a timely manner all activities under these programs and for the Arroyos protection works, such amounts to be derived from the sales of electricity or any other source and be at least US\$18.3 million in 1995, US\$60.9 million in 1996, US\$101.6 million in 1997, and US\$20.7 million in 1998; withdrawals from these accounts would be made exclusively to finance these activities. (Para. 2.16).

27. The failure of the Bank to take responsibility for or supervise the development of a Resettlement plan has resulted in concrete hardship and violations of the rights and interests of affected persons. Affected people did not have meaningful participation and consultation in the design or implementation of the EBY resettlement plan, violating OD 4.30 paras. 3(c) and 8 and Part C2(b)(5) of the IDB's Strategies and Procedures on Socio-Cultural Issues as Related to the Environment. Most of the claimants were denied any reasonable choice from among several reasonable resettlement alternatives, again violating

OD 4.30. For example, several of the claimants were told by EBY that they could accept the resettlement home being offered or cash compensation, but the cash compensation would not be paid for a year or two and the assessment upon which the level of compensation was based undervalued their homes.

28. The Banks have failed in their duty to ensure that persons resettled by the project, including the claimants, improve or at least maintain their standards of living. In fact, resettled persons have suffered financial losses and the destruction of their way of life. They have not participated in the development benefits of the project. There has been a noticeable lack of the "intense Bank monitoring" required throughout project execution, as required by the IDB's Strategies and Procedures on Socio-Cultural Issues as Related to the Environment (Part C2(c)(6)).

29. The claimants have not been compensated adequately for the impacts on their livelihoods. The claimants must now depend on odd jobs, while before they were owners and managers of their own businesses, independent and sufficient to assure that they ate well, and that their children could study. Their entire communities and social fabric have been disrupted. Before, they lived in a neighborhood with a small-scale system of production and a social fabric that they themselves determined, for example chipa (bread) baking, pastry making, carpenters who worked with the ceramicists, riverine carpenters who worked with fisherfolk, and plumbers. Now, they live far from their former clients or places of employment, and at the same time their cost of living has gone up: they have to pay for transportation to their jobs, their children do not have a regular school bus and therefore must pay bus fare to get to school, they must pay for their water supply, electricity bills are expensive, and they have lost their basic source of food (fish). People whose livelihood have been threatened or destroyed, such as ceramists, launderers, bread bakers, and fishermen have not received adequate retraining that would allow them to shift to a new method of earning a living. The social consequences have been grave, as neighborhoods have been lost and traditional ways of life destroyed. This violates the IDB's Strategies and Procedures on Socio-Cultural Issues as Related to the Environment, which states that relocation efforts must be designed to assure the long-term economic viability of the new communities . . . and the overall increase in income levels and socioeconomic well-being of the resettled population." (Part C2(b)(7)).

30. In addition to displacement, people affected by the project have suffered from the rising water table, which has destroyed crops, flooded sanitation systems and contaminated drinking water wells. The impacts of the rising water table forced the inhabitants of Isla del Medio to abandon their lands. Residents of the barrios Santa Rosa, M'boi Cae and Barril Paso in Encamación have also suffered damage from the rising water table, without compensation or assistance from EBY. Photographs showing the water table seeping through land, contaminating wells and impacting latrines are all attached to the claim.

31. The claimants have been manipulated and pressured by EBY, and do not believe that EBY has developed a fair or equitable system of compensation. The determination of benefits has been inconsistent, and the claimants have not had a clear understanding or explanation of the entitlements available. They have not received adequate compensation to cover the losses suffered as a result of the project, and in many cases have not been compensated for their losses in advance of the move. The lack of a framework that meets

Bank standards has also deprived them of the ability to negotiate fairly with EBY, which has stated to affected persons that it is bound only by the terms of Paraguayan law in determining compensation.

32. In addition, EBY has failed to compensate some of the claimants for the loss of structures of economic importance. One of the claimants owned a carpentry shop and was able to support his family. When EBY resettled him, it failed to do anything about his workplace. Now he has difficulty working, and cannot pay the electricity bills. His granddaughter cannot go to school because he does not have money to pay the 200 guaranies per day (\$1) for bus fare. He has tried to speak with social workers from EBY, without any resolution. Now, he says "I am so desperate that I will now have to sell my tools, which are my only means of work."

33. Another claimant owned a butcher shop in his old neighborhood, and was able to make a living selling meat to his customers. When he was relocated, his family of 8 was moved from a house with 5 rooms, a kitchen and a storeroom to a house with only two bedrooms, forcing the family to crowd together. EBY told him that they would compensate him for the cost of building a new kiosk, and he borrowed 9 million guaranies for his small business (\$4,500). However, EBY has failed to reimburse him for the debt incurred to move his business. In addition, he has fewer customers in the new neighborhood and can only sell a fraction of what he used to. Two of his four children had to leave school because they could not afford to pay for transportation. He has complained in the past, but now feels that it does no good, that he has no rights and nowhere to go.

B. Health Impacts.

34. The health problems caused by the reservoir are quite serious. The reservoir is an ideal habitat for vectors that transmit malaria, leishmaniasis, schistosomiasis and other diseases. Records of the Ministry of Health and Welfare of Paraguay (1990, 1992, 1994, Seventh Sanitary Region) show that illnesses related to the reservoir are among the most common cause of hospital visits. Examples include diarrhea, anemia, parasitic diseases, skin diseases (piodermatitis and ectoparasitosis), and stress-related disorders such as cefalea (recurrent headache), epigastralgia (heartburn) and dispepsia (digestive imbalance). Since the filling of the reservoir, people living in the area have complained increasingly of fever; this symptom must be investigated because it may indicate the presence of diseases associated with stagnant water. Water quality problems are another cause of diseases and will be the source of the most important health problems in the future if appropriate measures are not taken. Some of the claimants have suffered from reservoir-related diseases and all of the claimants face an increased risk of these diseases in the future. There are inadequate health centers to attend to the needs of the affected people. Sanitation has been adversely impacted by the rising water table, which has fouled latrines and contaminated well water. Finally, the fouling of the reservoir and disruption of fish migration has also impacted the food security of the affected populations, with related impacts on health and nutrition. These health impacts were not considered sufficiently in the Environmental Assessment process, and local populations were not consulted adequately. In addition, the Banks have failed to supervise or monitor the Borrower's and beneficiary's performance on the mitigation of health impacts.

C. Indigenous Peoples.

35. The islands on the Parana river, now flooded or transformed by the Yacyretá project, were part of the traditional territory of the Mbya Guarani Indigenous People.

Many of them left Isla Yacyretá in 1987 because of the construction of the dam; most of them were later relocated to a tract of land of 370 hectares, in a place called Pindo. This tract of land is bisected by National Highway I and by the main power transmission line running from Trinidad to Ayolas. Even though, as stated by William Partridge of the World Bank, they were given title to a piece of land "for the first time", these people really lost their traditional territory which covered tens of thousands of hectares of diverse ecosystems, rich in fauna and flora, and their livelihoods were completely changed in the process of moving from the Island.

36. The Mbya families from the island were moved to the reserve at Pindo and placed with other groups of Mbya whose original habitats and cultural development was different. The land they were allocated is inadequate to support those families currently living there, due to its small size and limited natural resources. Some of them have been returning to the portion of Isla Yacyretá not flooded by the reservoir, which, according to the National Constitution of Paraguay, they can legally claim as their own. Independent anthropological and ecological studies need to be carried out to evaluate and monitor the situation at Pindo in the context of the environmental limitations, the rights of the Mbya as indigenous peoples and the survival of their cultural heritage. It is also critical to address the question that the remaining portion of Isla Yacyretá, which has been designated by EBY as a compensatory reserve, is part of the constitutionally recognized traditional territory of the Mbya people. In addition, there was no real participation by the Mbya people in the decision about their destination, nor were they given alternatives they could choose from. SOBREVIVENCIA has repeatedly raised their concerns about the treatment of the indigenous communities in correspondence and meetings with the World Bank and the IDB. For example, these concerns are summarized in a letter to Mr. Serageldin of September 26, 1995, a copy of which is attached to the claim.

V. Environmental Concerns.

A. Environmental Assessment and Environmental Mitigation

37. The Environmental Assessment of the Project was flawed in many ways, including the failure to ensure the meaningful participation of affected persons and concerned NGOS. The Environmental Assessment was not funded by IBRD until 1991, although construction had begun in 1984. The SAR for Loan 3520 acknowledges that the 1992 Environmental Assessment did nothing more than compile and synthesize the findings of earlier environment-related studies on the Project. (SAR, IBRD Loan 3520-AR, Annex 2.7, Attachment 2, para. 2). Although the SAR states that the draft EA and EMP were "submitted for review to interested NGOS", in fact the process excluded NGO participation and was structured in such a way that the NGO review could not be meaningful. For example, representatives of EBY sent SOBREVIVENCIA the Environmental Management Plan and the Resettlement and Rehabilitation Plan on May 26, 1992; the documents arrived on May 29", and the stated deadline for comments was May 31". Two days is obviously an unrealistic time frame for NGO participation.

SOBREVIVENCIA noted its objection to the process in several letters, which are attached to this claim. When meetings were arranged to discuss the plans, EBY failed to provide NGOs with the necessary documentation ahead of time that would have allowed them to have meaningful participation. Thirteen NGOs prepared a Declaration criticizing the Environmental Assessment process, and sent the declaration 'with a letter outlining their concerns to Lewis Preston, President of the World Bank, on July 20, 1992. They did not receive a response to this letter.

38. In addition to the procedural problems, the EA also failed to adequately consider several important substantive aspects of the project, including the impacts on the Ana Cua branch of the Rio Parana, the need for adequate compensatory reserves (discussed in more detail in the section on Wildlands), the removal of vegetation, the impacts on the water table, the impacts on fish migration both upstream and downstream, the development of environmental management plans for Encarnación and Carmen del Parana, and the lack of baseline environmental data.

39. Despite these flaws, the Environmental Assessment concluded that significant adverse environmental and social impacts were associated with raising the water level to 83 meters asl and that keeping the reservoir at 76 meters asl would have "significant advantages from an environmental and resettlement standpoint" and would "significantly reduce environmental mitigation costs." (Env. Assessment Summary, SecM92-674, paras. 53-54). These considerations, however, were subsumed beneath the higher economic goal of maximizing output from the dam, even though the project cannot produce electricity at a price which is competitive in the market according to World Bank reviews of the project.

1. Impacts on the Ana Cua Branch.

40. The Ana Cua is a branch of the Rio Parana which separates Yacyretá Island from the Paraguayan mainland; on average it carries about one third of the total river flow at the Project site. As a result of the reservoir operation plan, the Ana Cua Branch would, according to statistical studies carried out on 90 *years* of river flow records, dry up during long periods; about 80% of the time on the average. Thus only when the Parana River flow is higher than the total flow capacity of the powerhouse turbines (20% of the time), would any water flow along the 25 kilometer stretch of this 2,000 meter wide branch between the Ana Cua Spillway and the confluence of the Ana Cua with the San Jose Mi branch, just downstream from the city of Ayolas.

41. The consortium of consulting companies which designed the Yacyretá project, CIDY, developed mitigation plans for the environmental impacts from the drying out of this channel for long periods (decomposition of organic material in isolated holes with stagnant water, lowering water tables that would radically affect the proposed compensatory reserve on Isla Yacyretá, inhibition of the water intake of the city of Ayolas, etc). This mitigation plan would include the implementation of small reservoirs in the Ana Cua channel along the affected stretch, with the construction of two rock dam and the discharge of 50 m³/s of water from the Ana Cua Spillway during the dry periods to maintain minimum water quality in the channel reservoirs. In a meeting with Fernando Yaluk, the Environmental Director of EBY, members of SOBREVIVENCIA, were told

that there is a chance that the proposed mitigation plan may not be implemented due to lack of funds.

42. Members of SOBREVIVENCIA have also heard from IDB officials that the program would likely not be implemented because it is now considered not to be technically sound; however the proposed program is necessary for mitigation of the anticipated adverse impacts. According to a letter sent by EBY's Paraguayan Director Joaquin Rodriguez to the Paraguayan Chamber of Deputies in response to their June 22, 1995 request for information from EBY, the final design for the mitigation scheme on the Ana Cua was to be developed from September 1, 1995 to December 12, 1995, and the construction of the proposed works was supposed to be carried out from January 1, 1996 to October 1, 1996.

2. Removal of vegetation.

43. The Bank's Environmental Policy for Dam and Reservoir Projects notes that vegetation should be removed from the reservoir areas in order to protect water quality, reduce growing conditions for aquatic weeds, enhance water circulation, reduce obstacles to fishing, and promote oxygen distribution. (OD 4.00, Annex B, para. 5) The Executive Summary to IDB Loan RG/0004 notes specifically that the islands are designated for biomass removal, among other places. Photographs attached to the claim clearly demonstrate the lack of biomass removal on the islands.

44. World Bank officials have told SOBREVIVENCIA that the lack of removal of most of the vegetation mass in the reservoir would not pose any problem to water quality in the reservoir because the average turnover period of the water in the lake is only a few days. Reliance on an average figure is misleading, however, because the turnover period varies widely in different areas of the lake. This turnover period in the areas of the old river channels is only a few hours, while in other areas, for example the bays along the coast and the islands, the water hardly moves at all.

45. Also, bank officials noted that the removal of vegetation mass was carried out according to what was established in the Environmental Mitigation Plans. Unless there has been some change since the mitigation plan was approved, those plans state that all of the tall standing forests in the lake had to be removed; and so far only one tenth of these forests have been removed, while there are extensive areas where the trees were left dying, their trunks in the water. The mitigation plan also stated that all of the vegetation in stagnant areas had to be removed, as well as all of the vegetation around the urban areas. In many areas observed by SOBREVIVENCIA on the Paraguay side, including the Paraguayan coast from the end of the right lateral dam to San Cosme; the Yacyretá Island from the area of Ka'aguy Hh, in the middle of the island, to its eastern end; the entire area of Talavera Island; and all of the numerous islands in the "Canal de los Jesuitas" (the river channel that separates Yacyretá and Talavera Islands), there has been no removal of vegetation. Nonetheless, Bank technicians are apparently satisfied with the work, when EBY clearly did not carry out the vegetation removal plans specified in the Environmental Management Plan of 1992. This demonstrates the Banks' failure to supervise the project, which is also discussed in Part VI.

3. Impacts on Water Table.

46. Variations in water table levels on the Paraguayan side of the reservoir have not been assessed adequately. There should be a study of the impact on the water table north of the right lateral dam due to the damming effect on ground water produced by the cement- bentonite wall under the dam. Studies on the impact of this channel on the ground water table need to be carried out. In addition, impacts on the water table along the coasts of the reservoir must be carried out, especially in the urban areas.

4. Impacts on Fish Migration.

47. The lack of facilities for the migration of fish downstream necessitates that the fish must either pass through the turbines or over the spillways (if they are operating), which has resulted in the death of a great number of fish. Press clippings attached to the claim indicate that there have been large fish kills as a result of the dam. In addition, the facilities for fish migration upstream are extremely inefficient, when they function. The Environmental Impact Assessment failed to adequately consider the impact of the dam on migratory fish species and failed to develop mitigation techniques which were appropriate to the Rio Parana.

48. There are several migratory fish species in the Rio Parana that are being harmed by the Project. Some of these species migrate both upstream and downstream, two or three times during their lifetimes. The Project has incorporated very expensive technology which is inappropriate for the river. The fish elevators, which cost \$30 million, only transport fish upstream. Even if the fish elevators operated properly, Bank officials have acknowledged that at best only 7% of the fish seeking to migrate upstream past the dam would be transported by the fish elevators. Fish which must then migrate back downstream are forced to navigate the turbines or the spillway, resulting in high fish mortality. The World Bank's Project Completion Report for Loans 1751-AR and 2998-AR notes that "Since Bank preparation/appraisal missions did not include resettlement and environmental specialists, the flaws were not detected in many cases. For example, a fish passage facility was based upon the consultants' knowledge and experience with fish migrations on the Columbia River in North America, where, upon reaching upstream areas, the fish immediately die after spawning. In the case of the Parana River, however, fish tend to return to the sea and, therefore, it would be desirable that facilities permit passage downstream as well. This aspect was not considered." (PCR, Loans 1761-AR and 2998-AR, para 4.25).

49. The claimants also question the accuracy of the data kept by EBY. Although EBY claims that the fish elevators run every hour, they have not been in use during any of the five visits that members of SOBREVIVENCIA have made to the dam. In fact, during a visit by members of the Paraguayan National Commission for the Defense of Natural Resources on July 5, 1995 the operator of the elevator said that the last transfer of fish had occurred just half an hour before their arrival, but the elevator was completely dry. When the members of the delegation checked the logbook used to record fish transfer data, they found that the operator had already recorded data for the following day.

50. On a subsequent visit to the dam site, members of SOBREVIVENCIA discussed the reservoir and the fish with one of the people who had been displaced from Isla Yacyretá. He and his family were farmers on Isla Yacyretá and owned 150 head of cattle. However, when the land was flooded, the money his father received in compensation was only enough to buy a small house in San Cosme. They were unable to buy enough land to support the cattle or maintain their lifestyle as farmers. He has therefore turned to fishing to provide food for his family, although there is no market where he can sell any additional fish that he catches. He told members of SOBREVIVENCIA that many fish species that used to live in the river had disappeared. When asked about the fish elevators, he stated that they only run when people from the World Bank visit the dam.

Need for Environmental Management Plans in Urban Areas.

51. Adequate environmental management plans must be developed for the cities of Encarnación and Carmen del Parana, including management plans for the Quiteria, Mboi Ka'e and Tacuary rivers, in order to assure water quality and avoid public health risks in these urban areas, surrounded by mostly stagnant reservoir water.

6.Failure to Conduct Biotic Surveys: Flawed Animal Rescue Program.

52. The Banks failed to assess adequately the biodiversity at the Project site before filling the reservoir, despite repeated requests from NGOS. The survey of flora and fauna made by the Centro Paraguayo de Datos was apparently limited to a survey of several species of vertebrates, particularly large mammals and birds in danger of extinction. The Banks are therefore operating on extremely limited knowledge of the natural biodiversity that has been destroyed, which will hinder efforts to protect similar ecosystems. OD 4.0, Annex BI, para. 3 notes that "Biotic surveys are normally essential. Loss of wildlife may be mitigated by including elsewhere in the country a wildlands management area equivalent to the inundated tract." The language requiring equivalent wildlands elsewhere in the country affected is especially relevant in this case, as the Banks and EBY are seeking to concentrate their efforts at creating compensatory reserves in Argentina, while Paraguay has lost the majority of the wildlands to the project.

53. The ineffectual approach to categorizing the fauna and flora to be impacted is also reflected in the Banks' attempt to rescue threatened animals. The focus was almost exclusively on charismatic megafauna, and amounted to little more than an attempt to manipulate public opinion. The few animals that were "rescued" from the flooded islands were not placed in suitable replacement reserves, and their survival was unlikely. The Chief of the Environmental Unit at the World Bank clarified the objectives of the animal rescue program in a quote on the Canadian Broadcasting Company's documentary on Yacyretá: "The animal rescue program has in large part achieved its objectives. The rescue of individual animals makes good television, makes good propaganda for the project to show that they've made an effort to rescue monkeys, rescue deer and whatnot. But in terms of the impact upon biodiversity, the impact upon ecological values that we all share, its impact is minimal." A visit to the flooded islands as recently as July 1996 found stranded monkeys clinging to trees above the water.

54. Finally, we believe that this casual approach to surveying and protecting natural resources to be impacted may also extend to the impacts on cultural property. The project is located in an area that has a rich cultural history, and World Bank policy requires that the Bank "assist in the protection and enhancement of cultural properties." OPN 11.03. We request that the Inspection Panel evaluate the extent to which this policy has been complied with.

B. Wildlands.

55. The project destroyed wildlands without establishing adequate compensatory reserves, thus violating the Bank's policy on Wildlands (OPN 11.02). The policy specifically recognizes that hydroelectric projects have significant adverse impacts on wildlands. It states that such projects should contain wildland components and that those components need to be incorporated early in the project cycle, adequately financed by the Bank, and supervised to ensure that the components are protected in fact rather than simply on paper. The policy also requires the protection of an ecologically similar area and that compensatory wildlands management areas should be no smaller than the wildland area converted by the project. All of these policy prescriptions have been violated in this case. Bank documents recognize that of the 107,600 hectares of land to be inundated in addition to the existing riverbed, 105,300 would be classified as natural ecosystems little touched by human activity which retain the great majority of their native plant and animal species. (IDB loan RG-0004, Executive Summary, para. 4.5). Nonetheless, the creation of compensatory reserves has been illusory. The EBY and the Banks claim that six compensatory reserves have been created. However, in most cases they have failed to actually acquire title to the lands, and the areas are not being protected.

56. While approximately 80,000 hectares of land are to be inundated in Paraguay, only 9,000 hectares of compensatory reserves have been designated by EBY in Paraguay, on the extreme western edge of Isla Yacyretá. Although that area is an extremely important ecosystem, it can hardly be considered protected, given that it is currently being degraded by cattle grazing, burning of grasslands, and slash and burn agriculture in forested areas. In addition, within the boundaries of this "reserve" are a military base, an international highway, a large unregulated garbage dump for the city of Ayolas, and an area that has been destroyed by borrow pits for the construction of the dam. This last area is the only part of the reserve that is currently owned by EBY. The rest is privately owned. The rare arary forest remaining on Isla Yacyretá, which is one of the most important ecosystems needing protection, will also be threatened by the drying out during long periods of the Ana Cua Branch, once the turbines are functioning, if the planned program for mitigating this problem is not implemented. Arary trees are an endangered species.

57. The wildlands policy specifically notes that there must be effective management on the ground, not simply on paper. "Paper parks", which exist only on a legal document or a map and not on the ground, are vulnerable to colonists and resource extraction. Wildland management objectives have to be translated into specific measures with a budget for their implementation. These measures include hiring and training of personnel, provision of necessary infrastructure and equipment, development of a scientifically sound management plan for each particular wildland, and a policy environment - legal, economic and institutional - which supports the wildland preservation objective. (OPN 1 1.02, para. 17).

58. World Bank officials agreed with these concerns regarding the extremely urgent need for effective protective measures, mentioning that EBY was planning on supplying guards. But this cannot be considered adequate because the land has not been purchased by EBY. SOBREVIVENCIA has urgently suggested, several times, that first, the land should be purchased immediately. Second, all of the small farmers should be adequately compensated and moved. Third, all of the cattle should be removed, and fourth there should be put in place a program for ecological restoration of the complete 9,000 hectares, including the complete removal of the garbage dump. Finally, it is also critical to address the question that this land is part of the constitutionally recognized traditional territory of the Mbya people.

59. The proposed Yabebyry Reserve and the "Refugio Faunístico" Atinguy lie within a proposed irrigation and drainage scheme developed by the Japanese International Cooperation Agency (JICA). EBY was originally committed to buy a total of more than 41,000 hectares in the headwater area of the Yabebyry river, to establish a compensatory reserve. Later, EBY transferred this responsibility to the government of Paraguay, which has designated an area of 30,000 hectares in this zone as part of the proposed National System of Protected Areas (SINASIP). This land is still under private property and exploited as cattle ranches. Besides, this tract that does not include some of the most important ecosystems that could assure the survival of some of the wildlife to be released there.

60. A scientific team from SOBREVIVENCIA has identified as well an area of about 10,000 hectares of gallery forests along the Atinguy river on the Paraguayan mainland downstream from the Ana Cua Branch, which should be included among the compensatory reserve areas for Yacyretá, because it contains important and fairly well preserved examples of ecosystems lost by reservoir flooding.

61. The Cerro Yvyku'i Sand Dunes used to be the highest point on Isla Yacyretá, and they have partially survived the filling of the reservoir at 76 m. The protection of these dunes, representing a unique ecosystem very rich in biodiversity must be assured. Most of these dunes are still above water level with the present reservoir level, but if the reservoir is elevated above 78 meters, they will disappear. Protection measures against the action of waves must be undertaken immediately.

62. Argentine side: The proposed reserve areas of Apípe Grande and Apípe Chico would be in most part flooded by the reservoir of the Itati-Itacora binational Hydroelectric project, downstream from Yacyretá, near the confluence of the Parana and the Paraguay rivers, while the proposed reserve areas of Teyd Cuare and Campo San Juan would be partially flooded by the Corpus-Itacua reservoir.

C. Compliance with International Treaties.

63. Finally, the World Bank and the IDB should both be, responsible for not undermining the objectives of global environmental agreements. In fact, OMS 2.36 states that the World Bank "will not finance projects that contravene any international environmental agreement to which the member country concerned is a party." (para. 9(d)). Paraguay is a "member party concerned" and is a party to the Convention on Biological

Diversity and other international environmental agreements such as the Climate Change Convention. The violations of the wildland policy described above, the failure to survey or preserve biotic information, and the failure to mitigate the impacts on fish migration all constitute a systematic disregard for the impact of the project on biodiversity, and certainly undermine the goals of the Biodiversity Convention to conserve and sustainably use biological diversity.

VI. Failures in Supervision and Monitoring.

64. OD 13.05 states quite clearly that project supervision is one of the Bank's most important activities and that its purposes include (a) ensuring that the borrower implements the project with due diligence to achieve the agreed development objectives and in conformity with the loan agreements; (b) to promptly identify problems as they arise and help the borrower to resolve them, and to modify as necessary the project concept and design; and (c) to cancel a project if its continuation is no longer justified. The OD also notes that there should be coordination with the borrower's monitoring and evaluation of the project (detailed in OD 10.70). The Yacyretá Hydroelectric Project is a clear example where Bank supervision and monitoring was essential, particularly in light of the institutional weakness of the implementing agency. By failing to take an active role to actually correct the problems with implementation of the social and environmental components of the project, the Banks have allowed the project to stray drastically off-course, with the consequences borne by the local affected communities. For example, OD 13.05 notes that multipurpose hydroelectric projects, which proceed in stages and begin to produce benefits before the investment stage is complete, require informational feedback relating to benefit distribution which could "lead to changes in the project during implementation." Rather than change the project to reduce the environmental and social impacts in light of repeated violations of loan agreements and project documents, the Banks changed the project to allow the borrower to delay implementation of these neglected components.

65. Finally, the Banks did not adequately exercise their remedies when the borrower failed to comply with project conditions. (OD 13.05, para. 41). In particular, the Banks should have suspended disbursement on the project when the environmental and social components were consistently violated. (OD 13.40). Alternatively, they should have ensured that the Borrower and EBY were adequately implementing the environmental and social mitigation required for the project, through direct financing, supervision, and either the exercise of remedies or the threatened exercise of remedies. The failure to provide co-financing and the complete failure to adequately implement the environment and resettlement programs should have triggered more oversight and monitoring, and the continued failure over many years should have also led the Banks to consider pulling out of the Project.

VII. Attempts to Resolve Violations with Bank Staff.

66. We believe the actions and omissions described above are the responsibility of the World Bank, Inter-American Development Bank and EBY. We have met with and corresponded with each of these entities in our attempts to resolve the problems. Copies of correspondence and summaries of meetings are attached to this claim. Despite repeated attempts by concerned citizens, members of congress and NGOs to raise questions and

concerns about the status of the project, the Banks and EBY either failed to respond or indicated that the project was proceeding in a satisfactory manner. Copies of responses we have received from the Banks are also attached to this claim.

VIII. Conclusion.

67. For the reasons detailed above, we respectfully request that the World Bank Inspection Panel and the IDB Investigation Mechanism conduct thorough investigations into the violations of IBRD and IDB policies that occurred and continue to occur in the design and implementation of the Yacyretá Hydroelectric Project. We also ask the Panel to advise the Bank on any remedies which should be implemented to compensate the people affected by the Project fully for the harms they have suffered as a result of inadequate environmental and social mitigation. At a minimum, this should include provisions for the creation of compensatory reserves, adequate compensation for people who have been and will be resettled, fair financial compensation and retraining for those who have suffered impacts to their livelihood, consideration of the current water level in the reservoir and possible unanticipated impacts that may require mitigation, purchase and protection of compensatory wildlands, and a prohibition on raising the reservoir until the responsible parties can demonstrate the capacity, willingness and financial commitment to actually meet environmental and social mitigation needs. The structuring of remedies should be done in full consultation with affected people, and should not be considered adequate until the affected people have been fully compensated for the losses they have suffered and will suffer in the future as a result of this project. Privatization should also not proceed without adequate legal safeguards regarding reservoir level, monitoring of the impact of the reservoir level on the health and well-being of affected populations and the environment, an environmental impact assessment of the impact of privatization, and the meeting of the minimum standards which have already been violated. There should be an evaluation of the economic rationale behind privatization, and the implications for dam-affected people and the environment. Other alternatives should also be fully evaluated, including dismantling the dam or operating the Yacyretá reservoir at a lower level than the projected 83 meters asl.

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

Attachments: Yes.

We authorize you to make this Request public.