

# The World Bank Inspection Panel: Amplifying Citizen Voices for Sustainable Development

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## I. Providing Context: Why the Inspection Panel Was Created

### A. Background — The Growing Demand for Sustainable Development

The World Bank Inspection Panel was created in 1993, as a result of the ongoing efforts of an international coalition of non-governmental organizations (NGOs) to transform the World Bank into a transparent and accountable sustainable development organization. Many ill-designed and controversial projects, such as the Pak Mun dam in Thailand, the Kedung Ombo dam in Indonesia, the Polonoroeste road project in Brazil, the transmigration project in Indonesia and the Sardar Sarovar dam on India's Narmada River, mobilized international NGOs and donor countries to begin questioning the Bank's way of doing business.<sup>1</sup> The international Bank reform campaign reflected a growing awareness that public tax dollars from donor countries were going to support projects in borrowing countries that had significant, adverse effects on the local and global environment, and that seemed to exacerbate rather than alleviate poverty.

After years of pressure, the transformation to sustainable development is far from complete, but many observers have noted the important successes of the reform campaign in pushing environmental and other reforms at the World Bank.<sup>2</sup> Among the most important reforms was the Bank's adoption of a set of environmental and social policies that aimed at improving the environmental, human rights and citizen participation record of the Bank. These included policies to ensure environmental assessment, consultation with indigenous peoples in projects that affected their rights, public access to information, and appropriate compensation for local people who are forcibly resettled by Bank-financed projects.

In short, these policies provided the fabric of rules for the Bank—the body of law in essence—for the transition of Bank activities toward sustainable development. The rules embodied the Bank's commitment to sustainable development and represented in many ways a new bargain between donor and borrower governments. In the future, money would be available not for old-style development that tended to impoverish people and to harm the environment, but for sustainable development that was based on tenets of environmental protection, respect for human rights, local participation, and broader transparency.<sup>3</sup> These new policies set the conditions by which donor countries could expect future Bank projects to be designed and implemented.

Although taken together the policies were an important step toward sustainable development, a major weakness plagued the Bank's reliance on a policy-based approach since the outset. Implementation of the policies depended entirely on self-policing, with no independent oversight. The Bank's "culture of approval" encourages staff to process loans quickly and move large amounts of money without adequate concern for the quality of implementation or the extent to which the projects are in compliance with Bank policies. As a result, policies that were supposed to ensure social and environmental sustainability have in many cases been routinely ignored by Bank staff, and the policies seemed to have little or no significant impact on improving the environmental and social profile of the Bank's overall portfolio.

The Bank's failure to comply with its policies was clearly demonstrated by its involvement with the controversial Sardar Sarovar dam on India's Narmada River. The Bank-supported project would affect over 200,000 people and have devastating environmental impacts. A grassroots uprising against the dam was supported by national and international NGOs.

Human rights observers documented the social consequences of the project, and the world called for an evaluation of the World Bank's role.

In response, the Bank commissioned the first-ever independent review of a Bank-financed project. The review team, which became known as the Morse Commission after its Chairman Bradford Morse, published its findings in June 1992. The Morse Commission Report meticulously documented clear and routine violations of Bank policies on environmental impact assessment and involuntary resettlement, and the devastating human and environmental costs of those policy violations. The report concluded that the responsibility for improper resettlement of thousands of families appeared to "rest with the Bank" and that the "history of the environmental aspects of Sardar Sarovar is a history of noncompliance."<sup>4</sup> Indian NGOs called for the Bank to withdraw from the project, and ultimately the Indian government asked for cancellation of the Bank loan.

The Morse Commission's findings that the Bank largely disregarded its social and environmental policies and tolerated the borrower's violations of the policies, were soon confirmed more generally by an internal review of Bank projects. The Narmada policy violations were not an aberration, but a systemic part of the Bank's culture. The report, authored by Bank Vice President Willi Wapenhans, criticized the Bank's pervasive "culture of approval," in which the incentive structure encouraged staff to perceive the appraisal process as merely a "marketing device for securing loan approval."<sup>5</sup> This culture of approval led to the promotion of projects based on financial considerations, without adequate attention to the social and environmental implications of those projects. In essence, the failure of the Bank to ensure compliance with its environmental and social policies meant that the promise of sustainable development embodied in the policies was being sacrificed to the expedience of moving money through the pipeline.

## B. Creation of the Inspection Panel

Spurred on by the international NGO reform campaign and the emerging global consensus for sustainable development, member country governments called on the Bank to develop a transparent

system of accountability, to ensure that public funds were spent more consistently with the Bank's mandate of sustainable development and poverty alleviation. The emphasis was now on improving Bank accountability for violating its policies and procedures. In response, in 1993 the Bank's Board of Directors passed an improved access-to-information policy and created the independent inspection panel.

The Inspection Panel, which formally opened in 1994, is an innovative forum for those people most directly affected by World Bank projects to raise their concerns at the highest levels of the Bank. Project-affected people can bring a claim to the Inspection Panel asking for an independent analysis of the Bank's role in the project, and the extent to which the Bank has complied with its own policies and procedures. The claimants must be directly and adversely affected by the Bank's alleged policy violations, and the subject matter of the claim must have been brought previously to the Bank without a satisfactory response to the problem. The Panel is by definition an avenue of last resort, to be used when the staff of the Bank have been unresponsive to the concerns of the affected people.<sup>6</sup>

The Inspection Panel is a unique institutional development. It represents the first time that a global institution has created a direct line of access for citizens to monitor its own operations. By recognizing that nation-states are made up of individual stakeholders who have a legitimate role to play in international affairs, the Panel is a critical precedent for the democratization of international institutions generally.<sup>7</sup> The Inspection Panel does not only offer project-affected people a unique opportunity to enforce their rights to participate in the design, oversight and monitoring of Bank-financed projects; it also provides important opportunities for both the Board of Directors and Bank staff to improve their performance in moving the Bank toward a sustainable development model.<sup>8</sup>

Unfortunately, the Panel's role and value have not been fully internalized either by the Board of Directors or by Bank management and staff. The result is that for two years now, the Panel has been under almost constant 'review' by the Board of Directors, and its recommendations and independence have been undermined by deep rifts at the Board level and suspicion from senior Bank management. As a result,

the Panel has never been allowed to achieve its full potential for improving Bank performance. In the following sections we first revisit the potential benefits of the Panel process to the World Bank and then address some of the current impediments being placed in the way of an effective Panel.

## II. The Inspection Panel's Importance for the World Bank's Mandate

The Inspection Panel embodies a unique approach to increasing accountability at an international institution, in that it places the power to initiate oversight in the hands of citizens, often living and working at the project level. As a result, the Panel has the potential to bridge the gap between top-level decisionmakers at the World Bank and the people who actually feel the impacts of those decisions. By amplifying the voices of project-affected people, the Panel offers the Bank a critical avenue for moving toward a more sustainable development model and provides a surprisingly wide range of related benefits at every level of the institution—from the Board of Directors, which is provided unscreened, field-based information, to Bank Management, which is provided another tool to help ensure policy compliance, to the project task managers, who can use Panel investigations and findings as a way to improve project implementation, and to affected communities, who can ask that their interests under Bank policies be protected.

### A. Facilitating a Culture of Results

As a mechanism for overseeing policy compliance, the Inspection Panel complements the Bank's other efforts to improve project implementation and move towards President Wolfensohn's stated goal of a culture of results. The very existence of the Panel helps to improve the incentive system within the Bank and should encourage Bank staff to be more careful in ensuring compliance with Bank policies and in being more responsive to the concerns voiced by local citizens. In several situations, local groups have decided against filing a claim to the Inspection Panel, because Management became more responsive to their concerns and took their suggestions into account at the project level. This heightened awareness of the need to ensure policy compliance or be held accountable will play a critical role in shifting the Bank from a culture of

approval to a culture of results. As the Bank's General Counsel has noted,

the mere presence of the Panel is likely to make the Bank staff more diligent in the observance of Bank policies. The usual zeal of presenting projects for Board approval in a manner and pace that meet the lending program's targets will be tempered, to a greater extent than in the past, by the zeal not to put the institution in the embarrassing position of being found in non-compliance with its own policies and procedures. Since these policies and procedures are meant to ensure quality in the Bank-financed projects and to serve broader institutional objectives approved by Bank members (through the Executive Directors), the greater attention paid to them can only serve the Bank, its members as a whole, and in particular the borrowers concerned.<sup>9</sup>

In addition, as with the findings of the Morse Commission, the findings of the Inspection Panel can play an important role in highlighting the consequences of pushing projects through based on loan targets rather than quality. For example, according to the *Financial Times* the Inspection Panel report for its desk review of the Singrauli claim found that violations were even worse than initially thought and were primarily attributable to intense pressure from the Bank's own management to accelerate the loan approval process. Further, the Panel reportedly concluded that "[t]here was no time to ensure that essential mechanisms and preconditions, such as state government commitment, capacity of implementing agency, etc. were in place or adequate" and as a result, "many local inhabitants lost their homes and livelihoods, while associated environmental problems damaged nearby farms and crops."<sup>10</sup> The Panel's independent analysis of the history of processing the Singrauli loan demonstrates the continuing influence of the culture of approval.

Inspection Panel claims provide a context for evaluating the Bank's progress in improving the quality of project implementation. Indeed, most claims brought to the Panel have sought *improvements* in project design or implementation, not to stop or prohibit specific projects. Many claimants to the Panel have a shared objective with the Bank—ensuring that

Bank funds are spent in accordance with the promises made in the loan agreement and in furtherance of the Bank's policies.

## B. Identifying Systemic Policy Violations

Although neither the Board nor Bank management has yet reviewed the experience with the Panel with the aim of learning about the *Bank's* activities, the accumulating lessons of the Panel's investigations do highlight that the Bank is regularly violating certain policies. For example, nearly every legitimate claim that has come to the Inspection Panel has emphasized a failure of the Bank to meet the terms of its policy on project supervision. This policy is fundamental to the Bank's ability to transform itself to a sustainable development organization, because the components of the projects most frequently ignored are precisely those that mark the difference between development as it was practiced in the past and sustainable development. In short, social and environmental planning and mitigation have frequently not been implemented. Thus, for example, Brazil successfully built the roads contemplated in the PLANAFLORO project but neglected to demarcate the indigenous lands or rubber tapper reserves that were the 'sustainable' part of the project. Argentina was able to construct the Yacretá dam, but failed to provide the mitigation measures required prior to filling the reservoir, including providing adequate sanitation and housing to resettled communities. Most of the claims to date have thus sought to make the Bank fulfill its project supervisory role and thereby ensure that the parts of projects meant to mitigate the environmental or social impacts are not forgotten during design, appraisal and implementation.

Similarly, most claims have also identified violations of the Involuntary Resettlement policy.<sup>11</sup> This is a critical issue for the Bank as a development institution, particularly given that current World Bank projects in process or in the pipeline are projected to displace more than two million people. As Theodore Downing has noted, "when people are displaced by development projects, social impoverishment seems incongruous, if not grotesque."<sup>12</sup> Recognizing the risks associated with development-induced displacement, the Bank's policy on involuntary resettlement requires that those who lose their lands or livelihoods to make way for a project should at least have their former standards

of living restored, if not improved.

The Bank's dismal record of compliance with its policy on involuntary resettlement is borne out by the reality on the ground, and from internal and external critiques. A 1994 World Bank study of its experience with resettlement found that the Bank was failing in large part to rehabilitate the millions of people involuntarily displaced by Bank-financed projects.<sup>13</sup> Further analysis of problems with resettlement has been provided by the Inspection Panel's experience in several cases, such as Itaparica and Yacretá. The Panel reports have documented and confirmed that large-scale resettlement leads to impoverishment of affected communities, and that the Bank has repeatedly failed to meet the terms of its policy on Involuntary Resettlement. The Panel experience could serve as a much-needed catalyst to force the Bank to re-evaluate its experience with involuntary resettlement. Any objective reconsideration of the issue should lead the Bank to change its lending portfolio to avoid large-scale resettlement. The focus should be on improving the performance of the Bank's portfolio, rather than on weakening the policy on involuntary resettlement.

## C. Requiring the Bank and Borrower to Keep Their Promises

As noted above, many of the major Panel claims thus far have demonstrated significant problems with the Bank's supervision of project implementation. This is not simply an issue of a failure to follow Bank policies, however, but is an issue of whether the Bank can keep its promises—both to the donor countries and to the project-affected people. The Panel claims involving PLANAFLORO, Itaparica, Yacretá, the IFC-financed BioBio project, and Singrauli have all demonstrated that promises made at the time controversial projects are designed (and in some cases made specifically to gain the support of Executive Directors and project-affected peoples) are largely ignored and forgotten during project implementation.

Most Panel claims at their root have simply asked that the Bank do a better job of keeping its promises and, when those promises also imply promises from the Borrower, that the Bank take its role of supervising the Borrower more seriously. Viewed in this light, it is hard to understand the deep resentment

that Panel claims seem to instill in Bank staff and Borrower government officials. Having a mechanism that investigates projects that are not being implemented according to the approved terms and conditions allows the Bank to exercise its fiduciary duty to its members and the affected people its projects are designed to help.

#### D. Bridging the Board's Information Gap

The World Bank's Board of Executive Directors is faced with a tremendous amount of paper and information that is passed up from the World Bank staff. However, this information is often filtered and packaged by the Bank management and staff in a way that facilitates smooth Board approval of proposed projects. The Board has little opportunity to gather independent information or to conduct any independent due diligence to check on the information. Moreover, the sheer amounts of information facing the Board mean that the challenge of identifying problem projects is virtually impossible from their perspective.

The Inspection Panel process provides an important, alternative mechanism for informing the Board (and top Bank Management) of potential problem projects. By providing an impartial analysis of a particular project, the Panel provides the Board with timely information that can allow the Board of Directors to focus on challenges in project implementation and policy compliance, on both a project-specific basis and also systematically as certain patterns emerge from the various claims. The Board has a fiduciary responsibility to ensure that the projects it approves are implemented in accordance with the objectives and policies of the institution. The Board is also the appropriate organ within the Bank to take responsibility for problem projects, and to authorize and mandate steps to improve the projects. As the General Counsel has noted, the Panel simply "provides the Executive Directors and the President, through its findings, with *independently ascertained facts* which enable them to perform their duties and to ensure the Bank's compliance with its policies and procedures."<sup>14</sup>

The Inspection Panel thus provides an important opportunity for the Board to receive local-level information about the quality of project design and implementation and to hear directly from the people

who are affected by projects approved by the Board. However, the claims are not the only process for facilitating this dialogue with project-affected people. A recent meeting organized by the Inspection Panel brought the Board together with individuals from Brazil, Paraguay and Nepal who had participated in the Panel process. This historic event illustrated the potential value of providing members of the Board with direct access to the experiences and insights of those affected by Bank projects. The Board should take increased advantage of such an opportunity in the future.

#### E. Increasing Bank Credibility

The existence of an impartial and independent forum for affected people increases the accountability, and thus credibility, of the Bank as an institution. This is true globally, as the international Bank reform effort has supported the Panel's mandate of increased accountability and transparency, and it is true locally, as claimants discover that they finally have a forum responsive to their concerns. For example, when Elias Díaz Peña of Sobrevivencia in Paraguay met with Executive Directors about the Yacyretá project, he explained that the visit of the Inspection Panel to the project area in response to a claim filed by the people, the attentiveness of the members of the Panel to the concerns of the people, and the fact that the people could expect an official response from the Bank, were all new and remarkable developments in the relationship between the local people and the Bank. Said Peña, "this was the first time that someone from the Bank actually *listened* to our concerns." Experiences like this are what build the credibility of the Bank amongst the local people.

#### F. Channeling Local Opposition to a Project

The Inspection Panel has the potential to help reconfigure the relationship between the World Bank and people who are directly affected by the projects it finances. As explained above, the Panel can help to restore the credibility of the World Bank in the eyes of local people, who in many cases have viewed the Bank as a non-responsive entity that provided continued financial support for seriously flawed projects. The process of filing a claim can also help foster a sense of community empowerment. The people work together to develop a claim and then also to engage in what they

hope can be a constructive dialogue with the Panel and the Bank, a dialogue which can take more than a year. The Panel process allows the community to articulate its concerns in a way that actually leads to a result rather than further neglect, and this helps to restore a sense of participation in the project.

This process serves an important role for the institution as well as the community, in that it helps channel the peoples' frustrations into a process that reinvigorates dialogue with the Bank. If the Panel process is allowed to operate as intended, it can provide an important means of constructively dealing with local concerns and dissatisfaction, potentially defusing mass protest. The oversight of the Inspection Panel stimulates greater openness and transparency by the Bank and borrower. The involvement of the Panel often compels project authorities to focus more seriously on the social and environmental problems in the project. Ideally, this should lead to greater communication flow between the institution and the affected people, and greater respect for and attention to their concerns.

The Itaparica claim illustrates what can happen when these lines of communication are closed. Hundreds of Brazilians affected by the Itaparica dam petitioned the Panel for a review of the Bank's role in a loan that was supposed to provide resettlement and irrigation benefits to the displaced population. The Panel found very serious problems in the project and recommended an investigation. However, the Board refused to authorize an investigation, approving instead an action plan promised by the Brazilian government—an action plan that neither the Board, the Panel nor the claimants had ever seen. Several more months passed without the claimants or other affected people receiving any action plan, but still continuing to suffer the ill effects of the failed resettlement effort. On March 11, 1998, 3,000 rural workers occupied the offices of the project authority in protest of the failures of the project and the refusal of the Brazilian government to meet with Polo Sindical, the peasants' organization that represented the claimants to the Inspection Panel. If the Panel had been allowed to conduct an investigation in the first place, or if the action plan had been vetted publicly as part of the response to the Panel claim, the energy expended in the social unrest could have been harnessed for developing an appropriate solution.

## G. Improving the Plight of Affected Communities

Many of the reasons for the Panel described above have to do with how Panel claims can help the overall structure and operations of the Bank, but of equal or perhaps even greater importance is the value of the Panel as a mechanism for improving the day-to-day lives of project-affected people and communities. The experience with Bank-financed projects, particularly large infrastructure projects over the past few decades (and continuing today) is that these projects can have potentially devastating impacts on local communities that are either forcibly resettled or that have lost local resources vital to their economic well-being.

To be sure, no matter how well intentioned and no matter how well implemented, large infrastructure projects like those historically financed by the Bank will have negative impacts on some local communities. Mitigating those impacts is exactly the goal of many of the Bank's policies and many of the loan conditions that are made at the time of project approval. The Panel is not set up to reduce all harm to affected people, but only that harm exacerbated or caused by the Bank's neglect of its policies or the loan conditions. And who better than the project-affected people, themselves, to be empowered to bring these problems to the attention of the highest levels of the World Bank?

Nor should the Bank be overly concerned, as has been suggested by some Borrowing countries, about establishing islands of prosperity, where some local people seem to enjoy more rights and privileges than do the general population. To some extent, this is exactly the *goal* of Bank projects, and certainly it is the *goal* of the Bank's environmental and social policies and procedures—i.e. to establish a set of minimum standards for improving the treatment of projected affected communities. In this respect, projects financed by the World Bank may very well treat locally affected people better than projects financed from other means. That is the point, after all, of the environmental and social policies and related loan covenants, and indirectly of the Panel's oversight authority.

Ultimately, the Panel should be evaluated

according to its ability to bring about improvements on the ground—to improve the lives of the affected peoples that have taken the difficult step to file a claim in the first place. It is frankly difficult at this time to evaluate the Panel’s record in this regard. The filing of most of the claims has had an immediate positive impact on the plight of local communities, because the threat of independent oversight has led the Bank staff and the entities responsible for project implementation to improve their operations at least temporarily. Thus, for example, the Jamuna Bridge claim from Bangladesh led almost immediately to the inclusion of tens of thousands of people who had been inappropriately left out of the resettlement program. The filing of the PLANAFLORO claim led almost immediately to initial steps for demarcating indigenous lands—steps that were two years overdue. Similarly, shortly after the Yacyretá claim was filed, Argentina began its first modest steps toward providing the \$300 million promised for resettlement and environmental mitigation. Unfortunately, long-term improvements in the communities seem to be less certain because as soon as the threat of transparent outside oversight is gone, the projects seem to revert back to many of the pre-existing problems.

### III. Getting Back on Track: Returning to the Quest for Accountability

As of March 1998, ten claims have been filed with the Panel. The claims have successfully elevated the voice and concerns of project-affected people to the highest levels of the Bank and forced Bank Management and the Board of Executive Directors to confront difficult questions about the ground-level reality of certain controversial projects. But the experience thus far has not provided the range of benefits to the Bank described above, and in this section we explore some of the obstacles that have been placed in the way of the Panel process and offer specific recommendations for overcoming them.<sup>15</sup>

#### A. The Bank’s Defensive Responses: Blocking Panel Investigations

Unfortunately, neither Bank Management nor the Board as a whole has viewed Panel claims positively and thus neither has risen to the challenges or opportunities presented by the Panel process. For example, rather than viewing the Inspection Panel as an impor-

tant complement to improving project quality, Bank Management has responded to claims, claimants, and the Panel with suspicion and in some cases outright antagonism. Indeed, Bank Management’s responses to claims have gone outside of the process envisioned in the Board Resolution creating the Panel. Management’s responses and its tendency to disregard the intended process, have served to turn virtually every claim into a conflict situation. Rather than providing information and evidence about whether the Bank has complied with its policies as required under the Resolution, Management in Arun, Rondonia, Itaparica and Yacyretá responded by challenging the eligibility of the claim. In addition to violating the Resolution,<sup>16</sup> Management’s adversarial and legalistic approach immediately placed the Inspection Panel on the defensive and led them to take the unanticipated role of being an advocate for the claim and the panel process. This has detracted from the Panel’s role as a neutral fact-finder.

The legalistic nature of some of the responses from Bank Management also presents potentially significant issues regarding conflicts of interest in the multiple roles taken on by the Bank’s Office of General Counsel. In fact, the Bank’s legal department which answers to the General Counsel, is charged internally with reviewing the response to each claim. Then, as the claims are presented to, and debated among the Executive Directors for their decision, the General Counsel provides additional legal interpretations. Thus, the General Counsel’s office both represents Management in its response to a claim *and* provides legal advice to the decisionmaker (the Board). In some narrow circumstances, the Bank’s Legal Department is even authorized to provide advice to the Panel regarding the Bank’s rights and obligations.<sup>17</sup> The result is at least an appearance of a conflict of interest that significantly undermines the perceived credibility and objectivity in the overall Panel process. The General Counsel’s response—that he is not personally engaged in responding to Inspection Panel claims on behalf of Bank Management—does not alleviate the conflict, particularly since the lawyers at least partly responsible for representing Management’s interests in the claim process work directly for the General Counsel. *To avoid the appearance of any conflict of interest and to increase the overall credibility of the process, the Board of Directors should engage independent, outside*

*counsel when addressing legal issues raised in an Inspection Panel claim.*<sup>18</sup>

For its part, except for the very first claim, the Board has significantly modified, conditioned or outright rejected every single recommendation the Panel has made to investigate a claim. Before the investigation can proceed under the Panel Resolution, the Board must authorize a full investigation, after receiving the recommendation of the Panel based on a preliminary review. In practice, the Board's decisionmaking has been plagued with delays and has been highly politicized. In some instances, for example in the case of PLANAFORO, the Board asked for additional information from the Panel as an obvious way to delay making any decision. Overall, the Board's reluctance to authorize investigations in cases that clearly meet the eligibility requirements set forth in the Resolution has infringed on the Panel's independence and diminished the Panel's (and the Bank's) overall credibility.

The Board should take itself out of this initial stage, and *empower the Panel to determine whether a claim warrants an investigation*. The Board could continue to have a role in that decision, but the presumption should be more clearly in favor of upholding Panel recommendations. One suggestion is that the Panel could submit to the Board a memorandum summarizing its decision whether or not to investigate, and the Board could review that on a "no objection plus" basis—in other words, if there was an objection by a certain number of Board members, then a full Board meeting would be convened to determine by majority vote whether to reverse the Panel's decision.

In recent claims where the Board has rejected a full investigation, but authorized a "review and assessment" (Yacyretá) or a "limited investigation" (Singrauli), the Board has collectively determined the terms of reference for the Panel's investigation. Thus, in Yacyretá, the Board asked the Panel to look at current problems in the project and to assess the adequacy of the action plans. This restricted the Panel from examining the history of policy violations in the project, which is critical both for understanding how the project got to its current state and therefore how to design an appropriate remedy, and also for purposes of accountability. Even more seriously, in the Singrauli

claim, the Board restricted the Panel to a "Washington" review and prohibited the Panel from going to India, where the project is located. This decision effectively cut the affected people out of the investigation process and prevented the Panel from exercising many of the investigatory measures outlined in the Panel's Operating Procedures (such as meetings with the claimant, Bank authorities and NGOs in the country where the project is located; visiting the project site, etc.). *The Panel should be empowered to set the terms of reference for any investigation*. After having evaluated all of the evidence presented in the claim and submitted by Bank management and having visited the site as part of the preliminary review, the Panel is in the best position to issue its own terms of reference for an investigation.

#### B. The Claimants Want Action, Not Action Plans

Management's suspicion and lack of support for the Inspection Panel has also been demonstrated by the way Management has developed action plans in response to many of the claims—particularly when one considers that for a claim to be eligible it means Management must have failed to respond adequately to the same complaint previously. Indeed, at this time one of the almost certain outcomes of filing a claim is that management and the borrower will develop an action plan. The development of action plans is, conceptually a positive step, as they offer an opportunity for fixing the specific problems raised in the claim. In practice, though, the action plans have been developed without participation of the claimants, other project-affected people or the Panel; they have been introduced at a time and in a way that tends to undermine the Panel's ability to conduct an investigation; and they have been used to shift the focus of the claim process (and thus the blame for policy violations) from the Bank to the borrower country governments.

The way in which Management has developed and provided action plans also contravenes the Resolution creating the Panel mechanism. Under the Resolution and the Panel Operating Procedures, any action plan developed in response to a claim should be presented either when Management provides its initial response to a claim<sup>19</sup> or when it submits final recommendations after the Panel's full investigation is over.<sup>20</sup> Instead, Management and/or the Borrower have

submitted action plans directly to the Board of Directors, offering them as an alternative to authorization of an inspection into the specific claim. In several cases, the Board has used approval of Management's Action Plan as an excuse to deny an Inspection Panel investigation. When this happens, no independent mechanism is left to ensure that action plans are translated into action (unless the Panel is invited to monitor implementation of the plan).

Moreover, under the ad hoc practice developed by Management, action plans have not been developed in cooperation with the claimants, nor do they necessarily address the specific problems raised in the claim. Perhaps more importantly, the claimants have demonstrated that the problems they have identified in Bank-financed projects deserve action—not action plans. The claimants have often seen multiple action plans by Management that promise change but accomplish little on the ground. For example, there had been several action plans to fix problems with the Yacyretá dam project before the claim, but little had actually been done to provide closed sewers or otherwise improve the plight of the resettled people.

Outside observers and some Board members have noted that, if properly developed and introduced, action plans and Panel investigations need not be mutually exclusive. Indeed, most of the claimants thus far have filed their claims specifically to catalyze action to improve the projects, *but the action plans should be used to respond to, not undermine, the claims.* If Management is designing a plan in response to a claim, Management should consult with the claimants and other affected people in the preparation of the plan and the final plan should be publicly available in the local language *before* the Board makes any decision.<sup>21</sup> The Panel should also be allowed to comment on the action plan before it is finalized and should be authorized to oversee the plan's implementation, with both the Panel and Management jointly and periodically reporting back to the Board on the plan's implementation. Such Panel review and oversight would provide the Board with an objective evaluation of the extent to which the action plan is responsive to the concerns identified in the claim, as well as the extent to which the plan itself is in compliance with Bank policies. It would also provide the claimants with greater confidence that their claim will be addressed through the

action plan. Continued Panel oversight would give Management and the Borrower the incentive to actually implement the plan, and would provide a forum for both the claimants and the Board to ensure that implementation was satisfactory.

### C. Politicization of the Panel Process at the Board Level

The single most important threat to the Panel at this time is the split between borrowers and donors at the Board of Directors. This split explains why the Board of Directors, once it created the Panel, has been unable to simply let the Panel operate with respect to individual claims. The split has also led to the current state of essentially permanent 'review' of the Panel, in which the Board of Directors, unable either to endorse or indict the Panel by consensus, muddles along effectively crippling the Panel's ability to operate.

The borrowing countries' general opposition to the Panel has been articulated in several ways—(1) a distaste for the word "inspection," (2) resentment of Management's tendency to blame the borrowing country government for problems identified by the claims; and (3) concern about who will pay for the costs of remedial actions which might be identified as necessary by the Panel process.

The concern about the language is one that could be fairly easily addressed. At least conceptually, *the Panel could be authorized to 'review' a project, without any substantive changes in the Panel's mandate.* In the one example where this was tried, however, in the 'review' of Yacyretá the Board actually reduced the substantive parameters of the Panel's investigation.

The concern about the borrowing government being blamed for project failure is more complex. Often, the problems in the project stem from poor design or planning and poor implementation, by both the Bank and the Borrower. In particular, if a claim challenges the Bank's failure to supervise its Borrower, the inquiry inevitably shifts to one that explores the relationship between those parties. Nonetheless, the very purpose of the Inspection Panel is to evaluate the Bank's role and to determine the extent to which the Bank has undermined a particular project. The Panel has been very careful to focus on the Bank, and most claimants to the Panel have insisted that they consider

the Bank, rather than their government, to have primary culpability for project problems. Yet, the focus on the adequacy of action plans has tended to shift the Board discussions away from Bank responsibility and toward the Borrower's conduct.

The borrowing countries should endorse Panel oversight of the Bank's role in project design and implementation, because the Panel analysis can help clarify that many of the key problems in a project are attributable to the Bank, rather than the Borrower. The Bank is responsible for supervising and monitoring the project, and for ensuring that the Borrower is applying the proceeds of the loan or credit consistently with the loan agreement and Bank policy. The Bank should also be responsible for ensuring that the Borrower has the necessary capacity and resources to meet the terms of World Bank policies. In practice, however, projects are often designed in such a way that the Bank takes responsibility for financing the construction of the civil works and shifts the technical and financial responsibility for the social and environmental mitigation to the borrowing country government. The Bank also has the responsibility to ensure that social and environmental assessment and mitigation are fully incorporated in the design and implementation of projects. The Bank has a wealth of technical expertise to assist in these aspects of a project. It also has legal tools that it can utilize to ensure that these responsibilities are met at an early stage. All too often, though, the Bank has refused to utilize its resources or its remedies to correct obvious social and environmental devastation associated with projects. This can have economic, ecological, social and political ramifications for borrowing countries, which ultimately are left to cope with the consequences of failed development projects.

The third concern, regarding whether the Borrower will be forced to pay for additional costs of remedial actions that might be identified during a Panel investigation, is also potentially complicated. On the one hand, an investigation may find (such as was the case in Yacyretá) that the Bank failed to supervise the project effectively, and as one manifestation of this failure the Borrower simply did not contribute to the environmental and social mitigation that was promised at the time of loan approval. In such a case, the Borrower might reasonably be asked to fulfill the earlier promises. In other contexts, however, where the

Bank's negligence has harmed affected people, the Bank (not the Borrower) might very well be the entity that should provide funds to fix the problem.

Note, however, that in most cases neither the Borrower nor the Bank should be surprised by the costs that may result from a Panel investigation. The Panel is simply enforcing operational policies and procedures that were in effect at the time the project was developed and implemented. These are not new costs, but costs about which both the Bank and the Borrower were fully informed all along. The only reason these costs may be a surprise is if they were not taken seriously at the time when the project was being designed. The Bank, for its part, must show the courage and the commitment to tell the Borrowers that projects cost more to do right—i.e. to do them according to the operational policies and directives.

The three reasons for opposition as articulated by the Borrowing countries tend to shroud deeper, more fundamental, concerns about the Panel process generally, and indeed about the Bank's commitment to the goal of sustainable development. In essence, the Borrowing countries oppose the Panel because they do not welcome the additional oversight into project implementation within their territory. This is seen both as a donor-driven infringement on their sovereignty and as an unnecessary condition on development assistance.

To some extent, this deeper borrowing-country opposition seems to misconceive the driving force behind Panel claims. The Panel process is not driven by donor countries or northern NGOs, but rather by project-affected citizens of borrowing countries. In this respect, Panel investigations are not donor-driven infringements on borrowing country sovereignty. They are rather an outlet for borrower-country citizens to ensure that their rights are not infringed upon by international institutions that they otherwise have limited access to or control over. This may still make borrowing country governments uncomfortable, but such discomfort has less to do with north-south politics than with concern that project-affected people may undermine top-down development decisions in their countries. Empowering local communities to participate in this way in development decisions is a hallmark of the sustainable development model.

The Panel mechanism has also brought to the surface a lingering lack of commitment among some borrowing countries to the Bank's environmental and social policies—policies adopted by the Bank in order to move toward sustainable development. Some borrowing country representatives now openly reject the benchmarks mandated by policies, for example, on involuntary resettlement. There is concern that the Bank's standards are often higher than the country's standards, resulting in disparity between the treatment of people affected by Bank projects and those affected by other development projects.

In the past, the Bank has been sympathetic to these concerns about the practicality of achieving the objectives of its policies. Rather than modifying the scale of its projects to comply with the policies, Bank staff has given a wink and a nod to policy violations, allowing project implementation to proceed. By providing a mechanism for enforcing the policies, the Panel has tightened the system and forced those who never took the policies seriously in practice to resist both the mechanism and the policies themselves. In response, Bank Management has suggested weakening some policies, such as involuntary resettlement. By weakening the policies, Management would not only deprive project-affected people of procedural and substantive rights, but also reduce the Panel's jurisdiction. This is a wrong-headed response to the serious problem of pervasive policy violations. As an institution dedicated to facilitating sustainable development and alleviating poverty, *the Bank should change its portfolio, not its policies.*

Essentially, the Board of Directors and top Bank officials must decide whether the Bank is going to take seriously the challenge of sustainable development and hold its projects to appropriate social and environmental standards. Is the Bank a standard setter, and will it only loan money for those projects that can meet its standards? Or will it water down its toughest policies, thereby undermining the shift toward sustainable development and place at risk the future support of donor countries?

To some extent, the borrowing countries' concerns with the Panel reflect the inherent unfairness of an oversight mechanism (the Panel) that operates only in borrowing countries; no similar institution

operates in donor countries to ensure that their projects meet international standards. On the other hand, the Panel is established to monitor compliance with policies that now reflect the conditions under which donors are politically able and willing to continue providing financial support to the World Bank Group. In short, the policies and Panel may very well be the price of admission to future World Bank development assistance.

#### D. Impediments to Filing Claims

In bringing claims, locally affected people have overcome significant hurdles and in many cases demonstrated exceptional courage. Numerous factors block access to the Panel process, including a lack of knowledge of the existence of the Panel at the field level and the enormous risk that comes from challenging a Bank-financed project. Other hurdles include the fact that local people often do not have access to Bank policies and procedures, and that even when those policies are available they have not been translated into the local language.

More telling perhaps than what the Bank has done in opposing certain claims, is what they have not done to facilitate awareness of and access to the Inspection Panel. Despite a 1996 pronouncement by the Board that "Management will make significant efforts to make the Inspection Panel better known in borrowing countries,"<sup>22</sup> Bank Management has not taken any concrete steps to educate even Bank staff regarding the Panel's role, let alone steps to inform project-affected people of the existence and role of the Panel. For example, the Bank organizes regional meetings with NGOs throughout the world, but has never invited the Panel to attend nor have they distributed at the meetings any significant information about the Panel's existence.

*World Bank regional offices should actively disburse information relevant to the Panel process including the Resolution, Panel Procedures, Panel forms on how to file a claim, and Panel Annual Reports in local languages. World Bank policies and any claims and Panel reports from that country should also be available in local languages in all regional Bank offices and public information centers. The Panel should more actively initiate meetings with affected people and*

communities to increase understanding about the Panel and its operations. Additionally, the Panel should ensure that relevant documents are translated into the language of the country from which the claim originated.

Simply expanding information about the Panel will not overcome what is perhaps the most significant impediment to filing an Inspection Panel claim: the danger associated with raising concerns about projects in some countries. Bank-financed projects often have a significant impact on borrowing countries' economies, and the governments of the countries are by definition supportive of the projects and often unwilling to entertain criticism from locally affected people. The political dynamic inherent in a large-scale development project, particularly one involving resettlement, is that the government authorities have determined that a certain local population will have to undergo enormous upheaval in the name of the greater economic good of the country. To file a Panel claim would in many cases be considered anti-development and hence anti-government, a position that could lead to reprisals by the project authorities or the government. This can be highly risky for claimants. As a result, many claimants have opted, pursuant to Paragraph 18(a) of the Operating Procedures of the Inspection Panel, to request that the Panel keep their names confidential.

Three recent claims illustrate the dangers people face when they take a public stance regarding problems in Bank-financed projects. Fulgencio Manuel da Silva, one of the lead organizers of the claimants from the Itaparica project in Brazil, was shot and killed on October 16, 1997. Although it is not clear that his death was related directly to the claim, Mr. da Silva's murder has been linked more generally to his efforts to organize and protect the rights of the peasant communities uprooted by the Itaparica project. On November 21, 1997 Madhu Kohli, the designated representative of claimants from Singrauli, India, was beaten as she tried to prevent a bulldozer from destroying the crops of a family that has not agreed to shift from its lands. The contractor assaulted Madhu Kohli in the presence of four officials of the National Thermal Power Corporation (NTPC). The NTPC is the World Bank's largest-ever beneficiary, and its representatives reportedly did nothing to prevent the violence. Subsequently, Senior Bank management refused to investigate

the incident, because a site visit would be "inconvenient" and would only "raise expectations."<sup>23</sup> Ultimately, the Bank and NTPC created an independent monitoring panel to evaluate grievances in the region; the results of this inquiry have yet to be published. Finally, in February 1998 local people affected by the Yacyretá Hydroelectric Project, also the subject of a claim to the Inspection Panel, were beaten by police as they demanded that their concerns be addressed by the project authorities and the multilateral development banks.

Bank staff seem insufficiently aware of the risks that are assumed by claimants to the Inspection Panel in their quest for accountability. The Bank must consider the threats faced by people who are trying to argue for the rights guaranteed by Bank policies. As noted by Professor Daniel Bradlow, one of the early architects of the Panel concept, Bank policies often create the political space for local people to either participate in or protest a particular project. Often, by exercising—or attempting to exercise—the rights articulated in Bank policies, local people become exposed to repression by the State.<sup>24</sup> Even when disturbing events are called to the attention of Bank management, the Bank has refused to take a strong stand against such human rights abuses and has refused to provide any sort of institutional shield to the people who have invoked their rights under Bank policies or the Panel process.

### Conclusion: Expanding the Role of the Claimants

Despite the many problems that have beset the Inspection Panel process, one very clear message has emerged from the claims: the claimants have a perspective and ground-level understanding of Bank projects that the Bank desperately needs to hear, whether or not Management or the Board likes the message. By amplifying, rather than obstructing the voices from the project areas, the Bank could recapture the inherent value of the Panel process. The Inspection Panel was created to provide the Board and top Bank Management with an effective feedback loop to test the impact of their policies and projects on the ground and to assist in the broader effort to make the Bank's activities more sustainable. In practice, however, the early history of the Panel process shows insufficient

support for learning from the experiences of project-affected people. Thus, expanding the effectiveness of claimant participation must overcome a strong institutional skepticism toward the value of hearing the voices from the field. It requires a cultural shift in the institution, but one that would reinforce the Bank's other steps toward a culture of results aimed at sustainable development.

The Panel process was designed to provide an effective voice for locally affected people. Yet, under current practice, once a claim is filed, the claimants disappear from the equation. The current Inspection Panel process lacks participation by the very people who initiate the inquiry and who are most directly affected by the outcome (or absence thereof) of the Panel review. For example, claimants have no opportunity to comment on Management's response, or the Panel's preliminary recommendation or final report before it goes to the Board. Second, claimants have no opportunity to advocate for their interests or concerns at the time when the Board is determining whether to authorize an investigation or designing remedies based on the Panel's final report. In contrast, Management is present during these Board deliberations and actively tries to influence the decision making process. Third, the claimants have not been involved in the design or implementation of action plans, and in several cases have even been denied access to the action plans. Fourth, the claimants have no way to appeal decisions of the Panel or the Board, nor are they able to request that their claims be heard in a timely manner. These shortcomings should be considered and addressed as the Board evaluates its experience with the Inspection Panel.

Modest changes in the process can relatively easily increase the process's responsiveness to the rights and interests of claimants. *Specific steps could be taken to extend the role of the claim and to provide greater fairness and due process to the claimants*, including steps to ensure that the claimants have an opportunity to comment on the terms of reference for an investigation, the Panel's initial report and recommendation, Management action plans, and the Panel's final report. The claimants should also receive copies of all memoranda, letters or reports generated from Bank management, the Panel or General Counsel which are directly relevant to their claim. Finally, the claimants or an

appointed representative should be allowed to attend any Board meeting (or part of a meeting) that specifically addresses their claim (particularly since Bank Management and the Panel can attend Board meetings where a claim is discussed).

If the claimants role is thus enlarged, the community-based aspect of the Panel process will be preserved and the shift from top-down development to development that considers the concerns and aspirations of local people will be advanced. In short, the Panel will be allowed to further its potentially unique and profound role in moving the Bank toward sustainable development.

## Endnotes

<sup>1</sup> For further information on the environmental critique of the World Bank's operations, see BRUCE RICH, *MORTGAGING THE EARTH* (1993); CATHERINE CAULFIELD, *MASTERS OF ILLUSION: THE WORLD BANK AND THE POVERTY OF NATIONS* (1996).

<sup>2</sup> See, e.g., Robert Wade, *Greening the Bank*, at 654, in DEVESH KAPUR, ET AL, EDs., *THE WORLD BANK: ITS FIRST HALF CENTURY* (Brookings Institution, 1997).

<sup>3</sup> See, e.g., Declaration of the Copenhagen Social Summit, para. 6. For explanations of the relationship of sustainable development to issues of environment, human rights and good governance, see, e.g., KONRAD GINTHER ET AL, EDs., *SUSTAINABLE DEVELOPMENT AND GOOD GOVERNANCE* (1995).

<sup>4</sup> SARDAR SAROVAR: *AN INDEPENDENT REVIEW*, xx-xxi (1992).

<sup>5</sup> World Bank, *Effective Implementation: Key to Development Impact*, Report of the Portfolio Management Task Force, at iii, 12 (Washington, D.C., 1992).

<sup>6</sup> For a further discussion of the elements for bringing a claim, see DANA CLARK & MICHAEL HSU, *A CITIZEN'S GUIDE TO THE WORLD BANK INSPECTION PANEL* (Center for International Environmental Law, 1997). See also, International Bank for Reconstruction and Development, *The World Bank Inspection Panel*, Res., No. 93-10 (Sept. 22, 1993); The Inspection Panel, *Operating Procedures* (Aug. 1994). <<http://www.igc.apc.org/ciel/>>.

<sup>7</sup> For a conceptual discussion of the need for greater civil society involvement in international affairs, see, e.g., PHILIP ALLOT, *EUNOMIA* (1992).

<sup>8</sup> IBRAHIM SHIHATA, *THE WORLD BANK INSPECTION PANEL 5* (1994).

<sup>9</sup> Id. at 114.

<sup>10</sup> Mark Suzman, *World Bank Accuses Itself of 'Serious Violation'*, *FINANCIAL TIMES*, Jan, 7, 1998, at 5.

<sup>11</sup> See, *Involuntary Resettlement*, World Bank Operational Directive 4.30 (June 1990).

<sup>12</sup> Theodore Downing in McDowell, *Understanding Impoverishment* 34 (1996).

<sup>13</sup> Out of the 192 projects involving involuntary resettlement between 1986-1993, the Bankwide Review could identify only one where the Bank could claim that the resettled population had improved its standard of living, and even that claim is disputed by members of the identified community. The World Bank, *Resettlement and Development: The Bankwide Review of Projects Involving Involuntary Resettlement 1986-1993* (1994) 4, 2; see also Alex Wilks & Nicholas Hildyard, *Evicted! The World Bank and Forced Resettlement*, THE ECOLOGIST, vol. 24, no. 6, at 226 (Nov-Dec. 1994).

<sup>14</sup> See Shihata, *supra* note 7, at 117 (emphasis in original).

<sup>15</sup> These recommendations are adapted in part from an independent review of the Panel process conducted in 1997. See Lori Udall, *The World Bank Inspection Panel: A Three Year Review* (Bank Information Center, Oct. 1997).

<sup>16</sup> According to the Board Resolution and Panel Operating Procedures, Bank Management's initial response to a claim is supposed to be limited to providing the Panel "with evidence that it has complied, or intends to comply with the Bank's relevant policies and procedures." See Board Resolution, *supra* note 7, at para. 18; Panel Operating Procedures, *supra* note 7, at para. 27. Management is not authorized to provide legal interpretation of the Resolution or of the claimants eligibility. Initially, Bank Management provided their eligibility arguments directly to the Board of Directors, thus trying to bypass and undermine the Panel completely. This practice was stopped after complaints by NGO observers.

<sup>17</sup> Board Resolution, *supra* note 7, at para. 15.

<sup>18</sup> Note that there is precedent within the World Bank Group for using independent counsel. When President Wolfensohn was facing difficult legal issues relating to the release of the independent report he commissioned to investigate the Pangué Dam on Chile's BioBio River, he engaged the law firm of Wilmer, Cutler & Pickering to provide him with legal advice independent of the IFC General Counsel.

<sup>19</sup> See Board Resolution, *supra* note 7 at Para. 18; Panel Operating Procedures, *supra* note 7, at para. 27 ("Management shall provide the Panel with evidence that it has complied, or intends to comply with the Bank's relevant policies and procedures.").

<sup>20</sup> Board Resolution, *supra* note 7, at para. 23; Panel Operating Procedures, *supra* note 7, at para. 54 ("Management will submit to the Executive Directors for their consideration a report indicating its recommendations in response to such findings.").

<sup>21</sup> The fact that many of the action plans have never been made publicly available is particularly disturbing. Claimants from Itaparica and Yacyreta have been unsuccessfully requesting a copy of the action plans that were developed in response to their claims. The Board of Executive Directors approved Brazil's action plan for Itaparica in lieu of authorizing an inspection, and never even saw the proposed document. Bank Management has also thus far refused to release the Yacyreta action plan, claiming that it is the property of the borrower.

<sup>22</sup> Clarification of Certain Aspects of the Resolution, Oct. 17, 1996.

<sup>23</sup> In a letter dated November 25, 1997 to Dana Clark of CIEL, Mieko Nishimizu, Vice President South Asia Region, wrote regarding the attack on Madhu Kohli: "I have instructed our Director in India [Edwin Lim] to advise me on this situation by obtaining a first hand report, on an urgent basis and in whatever manner he deems

necessary." In a meeting one week later, Ms. Clark asked Mr. Lim what steps had been taken to obtain this urgent, first hand report. Mr. Lim responded to Ms. Clark that he had not gone to the field, had not discussed the incident with Madhu Kohli, and had not interviewed the NTPC staff involved. He further stated that no one from the Bank staff would be going to the field to investigate the alleged attacks because it was "inconvenient for Bank staff" and because Bank visits to the field "raise expectations of compensation." Personal communication between Dana Clark and Edwin Lim, at the World Bank (Dec. 1, 1997).

<sup>24</sup> Daniel D. Bradlow, "The World Bank, the IMF, and Human Rights," *Transnational Law and Contemporary Problems* 48, 50 (Spring 1996).