The World Bank's New Inspection Panel: Will It Increase the Bank's Accountability?

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On September 21, 1993, the Executive Directors of the World Bank took unprecedented action in creating an independent inspection panel to address complaints related to Bank projects and the Bank's failure to follow its own rules. For the first time in the Bank's 50-year history, citizens, associations, and nongovernmental organizations harmed by Bank-funded developments have the opportunity to request an independent, accountable investigation. But how independent and how accountable?

This paper briefly describes events leading to the resolution that established the panel, then addresses shortcomings in the resolution that may impede the panel's performance. It also contains recommendations aimed at increasing the likelihood that the panel will, in fact, play a viable role in investigating complaints about Bank projects and operations.

For the past decade, the World Bank has been the target of increasing criticism directed at systematic and pervasive problems in its loan portfolio. Of special concern is the lackluster environmental and social record of Bank projects and programs. Indeed, the Bank has financed a seemingly endless line of poorly designed, environmentally damaging development projects, including the Sardar Sarovar dam in western India, the Yacyreta water project on the Argentine-Brazil border, the Pak Mun dam in Thailand, the Polonoroeste project in the Brazilian Amazon, the Transmigration project and Kedung Ombo dam in Indonesia, and several forestry projects in Cote d'Ivoire and Gabon.

Numerous case studies by nongovernmental organizations (NGOs) and other researchers have also documented the lack of openness in the Bank's decision-making process that continues to undermine the institution's ability to promote environmentally responsible and socially progressive projects this despite numerous reforms at the Bank, including establishment of an environment department, issuance of environmental and social policies and guidelines, and increased lending for programs that should benefit the environment and poverty-stricken areas.

In 1992, two Bank-sponsored studies brought even more attention to fundamental problems at the Bank. First, a high level, independent review of India's Sardar Sarovar projects uncovered the Bank's widespread failure to implement its resettlement and energy policies and loan agreements. The so-called Morse Commission concluded that the "problems besetting the Sardar Sarovar projects are more the rule than the exception to resettlement operations supported by the Bank" (Morse Commission 1992). India subsequently withdrew its request for additional funding for Sardar Sarovar, but the questions raised in the independent review about the Bank's appraisal process, its adherence to operational policies, and its lack of public accountability remained. The Morse Commission's well-documented investigation and clear analysis inspired the later efforts to create an inspection panel.

Shortly after the release of the Morse Commission report, an internal review of the Bank's loan portfolio (World Bank 1992) was leaked to the public. Now known as the Wapenhans report, the review criticized the quality of the Bank's portfolio and found that the Bank is not enforcing fully 78 percent of financial conditions in the loan agreements. Using the Bank's own criteria, the reviewers discovered that 37.5 percent of recently evaluated projects was unsatisfactory, up from 15 percent in 1981. The report linked the decline in project quality to a "pervasive" "culture of approval" for loans, whereby Bank staff members perceive the appraisal process as merely a "marketing device for securing loan approval," and pressure to lend overwhelms all other considerations.

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The adverse publicity that accompanied release of the Morse Commission and Wapenhans reports forced the Bank to consider proposed reforms, such as an independent inspection panel and revision of its information policy. The idea for the panel did not originate at the Bank; environmental and other organizations had previously advanced specific proposals for an appeals or investigative body. In 1990, the Natural Resources Defense Council outlined an independent appeals mechanism (Christensen 1990). More recently, CIEL proposed a model for an appeals function of the European Bank for Reconstruction and Development (Wold and Zaelke 1992) and joined the Environmental Defense Fund (EDF) in drafting a detailed resolution to create an independent appeals board at the World Bank (Udall and Hunter 1993). Professor Daniel Bradlow of The American University's Washington College of Law urged the Bank to appoint an ombudsman to resolve disputes over Bank projects. Policy makers from other countries and even some of the Bank's Executive Directors also voiced support for an inspection function. Ultimately, the U.S. Congress pushed for the inspection panel, making it a condition of continued funding of the Bank's International Development Association.

No longer able to ignore calls for reform, the Executive Directors released a scoping paper on a proposed inspection panel in July 1993. Several NGOs, led by CIEL, EDF, and Friends of the Earth in the United States and the Swiss group Erklaerung von Bern, provided a detailed critique of and extensive comments on the draft resolution (Bossard *et al.* 1993). Finally, under pressure from several donor governments, the Executive Directors adopted their resolution in September (World Bank 1993a).

Environmental groups and other long-time advocates of reform at the Bank presented several proposals for an independent review body before the Bank's Executive Directors acted.

The Inspection Panel. Although many of the operational and structural details still must be adopted, the Bank's resolution does provide a broad framework. The three-member panel will receive requests for inspection from any "affected party in the territory of the borrower which is not a single individual....The affected party must demonstrate that its rights or interests have been or are likely to be directly affected by an action or omission of the Bank as a result of a failure of the Bank to follow its operational policies and procedures with respect to the design, appraisal and/or implementation of a project financed by the Bank...provided in all cases that such failure has had, or threatens to have, a material adverse affect" (World Bank 1993b). Thus any group of two or more affected people in a borrowing country can bring a complaint. The complaints can be filed by a "local representative," but, in an apparent attempt to limit the role of North American NGOs and lawyers, other representatives will be allowed only in "exceptional circumstances" where local representation is not available. Unless the Directors vote otherwise, the panel will then investigate the complaint and prepare a written report of its findings. The Executive

Directors can also request an inspection on their own initiative as a group, or in "special cases of serious alleged violations," an individual Executive Director can ask for an investigation.

The panel is supposed to be functionally independent of Bank staff. Panel members will be nominated by the Bank President and approved by the Executive Directors and can only be removed by the Directors. The panel is guaranteed a "sufficient" budget, and panel members will have access to all Bank documents and staff. The results of panel investigations will go first to the Bank staff and then to the Directors, who will resolve any conflict between the panel findings and the staff response. At that time, the panel report will be released to the complainant.

Evaluating the New Inspection Panel. While Bank critics generally agree that the inspection panel established by the resolution is a positive step forward, many are concerned that the resolution fails to ensure the panel's credibility and independence. Its shortcomings can be addressed in the context of three key criteria: independence, public accountability, and effectiveness.

1. Is the panel independent of Bank staff and Executive Directors? It is the resolution's handling of the critical matter of independence that causes the most concern. Environmentalists contend that any effort to counter the Bank's inherent "culture of approval" for loans, as documented by the Wapenhans Report, must be free of that culture and must respond to a different reward structure. At a minimum, panel members should be chosen from outside the Bank, and the budget should be independent and adequate.

Instead, the resolution creates the potential for an unhealthy reliance on the Bank. Panel members are nominated by the Bank President and approved by the Executive Directors. Panel members are subject to the requirements of the Bank's Articles of Agreement that demand exclusive loyalty to the Bank. The President also recommends salaries for the members, and Bank administrative personnel will apparently determine whether or not to reimburse panel members for travel expenses. The Bank will even assign the panel's executive secretary.

2. Will the panel be publicly accountable? Although the resolution does not forbid disclosure of panel reports, it excludes the public from access until after the Executive Directors consider the reports. Thus the public is taken out of the process at the very stage where additional comment and information concerning panel findings could be important to the Directors' decisions.

All panel proceedings, findings, and reports should be made available to the public at the same time they are released to the Bank staff and to the Executive Directors for final decisions. This will improve the accountability of Bank operations and provide the panel with protection against internal Bank pressures. It will also help ensure the panel's credibility with the public.

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3. How effective will the panel be in improving the Bank's operations and addressing harms? The panel's effectiveness is obviously linked to its independence and accountability, as well as to its accessibility to the public. Also important is whether the panel will be allowed to conduct thorough investigations and make recommendations. Unfortunately, although the resolution appears to ensure the panel broad investigative powers, the panel's actual authority may be unreasonably limited. The panel must receive approval from the Executive Directors before it can begin an investigation. Moreover, nothing in the resolution commits the Bank to rectifying problems uncovered by panel investigations. The Bank President is only required to respond to panel findings by informing the Executive Directors of actions that she or he intends to take, if any. As noted above, the Executive Directors resolve any conflicts between panel findings and staff responses.

Monitoring the New Inspection Panel. Because of the shortcomings in the resolution, the effectiveness of the panel will depend as much on the diligence of NGOs and citizen groups as on the actions of the panel members. The following steps should help ensure that the inspection panel will fulfill its promise.

Using the Panel. The panel is complaint driven. Affected parties must be willing and able to use it, even before the complaint process is finalized. Sufficient guidelines are now available for parties to follow in preparing complaints for the panel to review. The complaints must be in writing; they must demonstrate that an interest has been materially affected; and they must show that Bank management has been given an opportunity to respond to the complaint, but has failed to do so.

In addition, environmental, human rights, and other groups must be alerted to the panel's potential. For this reason, the Bank Information Center is releasing its *Citizen's Guide on the World Bank's Inspection Panel*. In a related effort, CIEL and the Washington College of Law recently held a one-day workshop on the inspection panel for representatives of church, human rights, and other organizations.

Strengthening the Panel's Procedures and Operations. Developing clearly stated, effective procedures will be the first test of the panel's willingness and ability to be a credible, independent force. The first complaints may be critical in helping the panel establish a user-friendly complaint process with precisely defined procedures that make the filing of complaints as simple as possible and ensure that investigations are conducted in a manner that responds to the allegations in the complaints.

The panel should be urged to distribute a description of its procedures (once they are in place) written in the local languages of the areas where the Bank operates.

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In devising its procedures, the panel has the opportunity to correct many of the deficiencies in the resolution by emphasizing openness and thoroughness in its investigations. For example, missing from the resolution are specific powers normally associated with open, independent investigations, such as holding meetings with government officials where the complaint originated; conducting public hearings and site visits in the immediate and surrounding areas of the project; requesting written and oral submissions from affected peoples and NGOs; and hiring outside expert consultants to conduct studies. If the panel is denied significant investigative powers, or if it never tries to exercise them, the resulting reports may well be incomplete and ineffective.

Reviews of the Inspection Panel. The World Bank intends to review the inspection panel after two years of operation. Also, as noted earlier, the U.S. Congress in 1993 limited replenishment of the International Development Association (IDA), the Bank's concessional loan fund, to just two years rather than the usual three-year period. That unprecedented decision was due in part to disatisfaction with the resolution creating the inspection panel and with Bank reforms relating to access to information. Congress' next review of Bank operations will thus coincide with the Bank's review of the inspection panel, implicitly linking the relative success of the panel to the level of IDA funding from the United States. Supporters of the strategy believe it will help ensure that the Bank provides the panel with the resources and independence it needs to be credible. NGOs should monitor panel activities testing them against the standards of independence, accountability, and effectiveness and report their findings to Congress.

Conclusion. The World Bank's Executive Directors and management should be credited with creating the inspection panel. In adopting the complaint mechanism, the Executive Directors have made the Bank the only international institution explicitly accountable to citizens. As such, the panel is a remarkable advancement in international law. But for the inspection panel to have a truly independent and credible voice and thus aid the Bank in meeting the challenges of the future, the Bank must empower the panel and respect its decisions. Oversight by environmental and other groups will help to ensure that the panel does not perpetuate business as usual at the Bank.

> **Despite shortcomings in the resolution creating the inspection panel, the Executive Directors have made the World Bank the only international institution explicitly accountable to citizens. As such, the panel represents a remarkable advancement in international law**.

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