

**Statement of Lori L. Udall**

**on Behalf of**

**Bank Information Center  
Center for International Environmental Law  
Environmental Defense Fund  
International Accountability Project  
National Wildlife Federation  
Oxfam America  
World Wildlife Fund**

**Regarding the World Bank Inspection Panel  
Update and Recommendations for Reform in the Context of  
The Fifteenth Replenishment of the International Development Association**

**Before the  
Committee on Financial Services  
U.S. House of Representatives**

**June 18, 2008**

## I. Introduction and Background

Good Morning. My name is Lori Udall, Senior Advisor to the Bank Information Center. I'm testifying today on behalf of Bank Information Center, Center for International Environmental Law, Environmental Defense Fund, International Accountability Project, National Wildlife Federation, Oxfam America, and World Wildlife Fund. Thank you for the opportunity to testify before the House Committee on Financial Services.

Fifteen years ago during the Tenth Replenishment of the International Development Association (IDA), under the leadership of Representative Barney Frank (D-MA) and the House Subcommittee on International Development, Finance, Trade, and Monetary Policy, the World Bank was pressured to establish twin accountability reforms: an independent appeals mechanism called the Inspection Panel and a comprehensive revision of the Bank's Information Disclosure Policy. These two reforms constituted a sea change in the way that the Bank relates to civil society and to people who are directly adversely affected by Bank projects in developing countries.

The World Bank Inspection Panel (hereinafter Panel) was established in 1993 by the World Bank Board of Executive Directors (hereinafter Board).<sup>1</sup> The purpose of the Panel is to serve as an independent body to investigate claims of policy violations in World Bank projects and programs brought by people who have suffered direct adverse impacts. The Panel also serves as a tool through which Bank Executive Directors receive information independently of Bank operations and management regarding compliance with Bank policies and procedures in specific projects and programs. Through these functions, the Panel serves to increase transparency and public accountability of the Bank. The existence of the Panel also underscores that the Bank acknowledges civil society as stakeholders with rights and interests that can be affected by Bank decisions and operations.<sup>2</sup>

The Fifteenth Reauthorization of U.S. participation in the International Development Association (IDA) provides an opportunity for legislators and policy makers to consider the development effectiveness of this soft loan window of the World Bank, whose mission is to help the world's poorest countries by reducing poverty, inequality and improving living conditions. During the 2007 IDA donor government meetings, IDA participants selected three special themes for the IDA-15 replenishment. The most relevant to the Inspection Panel is the theme of effectiveness of IDA's assistance at the country level.<sup>3</sup>

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<sup>1</sup> The Panel was created during the U.S. Congress authorization of U.S. participation in the International Development Association Tenth Replenishment (IDA 10) as a result of external pressure from NGOs, the US Congress, and internal factors such as the need for the Board of Executive Directors to have independent information and evaluation of problem projects. The Bank also revised its Information Disclosure Policy during this period. For a brief history of the creation of the Panel see: Lori Udall, "The World Bank Inspection Panel: A Three Year Review, Bank Information Center," October 1997, Chapter One, pages 5-15. See also Dana Clark, Jonathan Fox, Kay Treakle, *Demanding Accountability: Civil Society Claims and the World Bank Inspection Panel*, (Lanham, MD: Rowman and Littlefield, 2003), pages 258-266.

<sup>2</sup> Dana Clark, et al., *Demanding Accountability*, page 247.

<sup>3</sup> The other two themes are IDA's role in the global aid architecture at the country, regional and global level, and IDA's role in fragile states.

My testimony will provide an update on selected Panel features and offer recommendations for strengthening the Panel process in the context of the IDA-15 objectives. The recommendations take into consideration Panel reforms made in the intervening years since its establishment, as well as innovations in parallel accountability mechanisms at other International Financial Institutions (IFIs).

Past experience with opening the Panel's governing document, (called a "Resolution") for review suggests that the presence of external public pressure is crucial for the process to lead to the strengthening (and not weakening) of the Panel. Given the current political climate among World Bank management and the Bank's Executive Directors we do not recommend opening the Panel Resolution for review at this time. Today we are recommending a series of relatively simple reforms and updates that will make the Panel process even more accessible and user-friendly to affected people. These reforms are compatible with the current Panel Resolution.

Section II discusses the importance of the Inspection Panel; Section III lays out the previous Board amendments to the Panel Process; Section IV addresses problems with the current Panel process; and Section V lays out recommendations for reform. Appendices include a note on longer-term reform issues as well as background material on the Panel.

## **Key Elements and Independence of the World Bank Inspection Panel**

The Inspection Panel is an independent mechanism that is empowered to investigate claims from people who are directly adversely affected by a World Bank project or program as a result of violations of World Bank policy and procedures.

The Inspection Panel has three members that are appointed by the World Bank Board of Executive Directors and serve for five years terms.

Independence of the Panel is safeguarded through the following features:

- The Panel is appointed by and reports only to the Board of Executive Directors;
- Panel members are selected on the basis of their ability to deal fairly and thoroughly with claims, their integrity and their independence from World Bank management, and their exposure to developmental issues and to living conditions in developing countries.
- Panel members are prohibited from ever working for the World Bank Group after their Panel terms are over.
- Panel members can only be removed by a decision of the Board of Executive Director for cause;
- Panel members are disqualified from participating in a hearing or investigation related to a matter in which they have a personal interest or had significant involvement in any capacity.

## **II. Significance of the World Bank Inspection Panel**

At the time of its establishment the Inspection Panel was the first of its kind and provided a model for the other International Financial Institutions. Since then the Asian Development Bank (ADB), the Inter-American Development Bank (IDB), the African Development Bank (AfDB), the European Bank for Reconstruction and Development (EBRD), and the International Monetary Fund (IMF) have all created accountability mechanisms to deal with complaints from adversely affected people.<sup>4</sup> The International Financial Corporation (IFC) and Multilateral Investment Guarantee Agency (MIGA)—the commercial arms of the World Bank—also have a mechanism called the Compliance Advisor Ombudsman (CAO).

A testament to the Panel's importance is the extent to which it has been used by adversely affected people. It remains the only avenue for affected people to obtain an independent investigation of an IDA or International Bank for Reconstruction and

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<sup>4</sup> Since 2005, the Inter-American Development Bank (IDB) has had a proposed revised policy for its Independent Investigation Mechanism that has not yet been approved by the IDB Board.

Development (IBRD) Project and to have a voice at the Board level.<sup>5</sup> In its 2005-06 Annual Report the Panel stated that it was the busiest year to date, registering four new claims, and investigating five claims simultaneously. In 2006-07, the Panel registered six new claims, completed two investigations, and conducted three new investigations.<sup>6</sup>

In its 15 years, the Panel has processed 52<sup>7</sup> claims with both positive and negative outcomes for claimants. Overall, the Panel process has been positive, producing project level reform and/or creating political space for affected people in developing countries.

For example some of the results have been as follows:

- ✓ Claimants have received compensation;
- ✓ Environmental impacts have been mitigated;
- ✓ More project information has been released;
- ✓ Resettlement packages for affected people have improved;
- ✓ Evictions have stopped;
- ✓ Projects have been suspended, cancelled or redesigned.<sup>8</sup>

In addition to assisting affected people and reviewing non-compliance, research on the impacts of the Inspection Panel on the Bank as an institution suggests that risky and potentially damaging IDA and IBRD infrastructure projects have not made it to the drawing board because of the Panel's existence.<sup>9</sup> The World Bank Report *Infrastructure at the Crossroads* stated that, as a result of Panel claims on large scale infrastructure projects, staff held internal training and knowledge exchanges with a focus on safeguard policies, including lessons learned from Inspection Panel investigations.<sup>10</sup>

Former World Bank veteran Katherine Marshall cited the Inspection Panel review of the China Western Poverty Reduction Project as having forced the Bank to rethink how it assessed risk and implemented its safeguard policies.<sup>11</sup> Marshall also cites the Panel as an important evaluator of Bank projects and compliance with policies. Additionally the risk of being subjected to a Panel Inspection has caused operations staff to ensure compliance with World Bank policies and procedures.<sup>12</sup>

Independent analyses of the Inspection Panel have also underscored the Panel's importance.

For example:

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<sup>5</sup> The CAO conducts problem-solving and audits of investment projects of the commercial arm of the World Bank: the International Finance Corporation and the Multilateral Investment Guarantee Agency. This mechanism also provides an avenue for adversely affected people to be heard in the President's office and at the Board level on the Bank's commercial ventures.

<sup>6</sup> The Inspection Panel, *Annual Report, July 1, 2006-June 30, 2007*, page 13.

<sup>7</sup> Five of these claims were not registered.

<sup>8</sup> Dana Clark, et al., *Demanding Accountability*, pages 258-266.

<sup>9</sup> World Bank, *Infrastructure at the Crossroads: Lessons for 20 Years of World Bank Experience* (Washington: World Bank, 2006), page 68-71.

<sup>10</sup> World Bank, *Infrastructure at the Crossroads*, page 68-71.

<sup>11</sup> Katherine Marshall, *The World Bank: From Reconstruction to Development to Equity* (London: Routledge Press, 2008), page 127.

<sup>12</sup> Dana Clark, et al., *Demanding Accountability*, pages 269-274.

- ✓ In 2007, because of the Inspection Panel, the Global Accountability Report of One World Trust ranked the World Bank as the highest among 30 organizations studied for accountability policies on the issue of complaint and response mechanisms.<sup>13</sup>
- ✓ *Policing the World: Accountability Mechanisms for Multilateral Financial Institutions and Private Financial Institutions* discusses the importance of the Inspection Panel in the context of globalization and the need for accountability.<sup>14</sup>
- ✓ *Demanding Accountability: Civil Society Claims and the World Bank Inspection Panel* highlights the importance of the Panel and public accountability and evaluates the outcome of various claims.<sup>15</sup>

This cumulative evidence underscores that the Inspection Panel is thriving and doing a superb job with its current prescribed mandate and powers. However, there is still much work to be done to ensure that affected people have full access to the Panel and claims process and are consulted about the remedies for project improvement or re-design. There is also a need to link the Panel to the improvement of World Bank development effectiveness and project quality.

### III. Previous Inspection Panel Process Reform

In 1996 and 1999 respectively, the Panel's governing document was opened for review by the World Bank Board.<sup>16</sup> The first review was mandated by the Board Resolution that established the Panel. The second review was forced due to some Board members and management interference with the Panel process. The second review involved Board consultations with claimants and international NGOs. The reviews cumulatively resulted in two amendments (called *Clarifications*) to the original Resolution leading to the following reforms:<sup>17</sup>

- 1) In 1996, the Board *specifically limited* the Panel's activities to making *findings, and prohibited it from making **recommendations*** in its final report.<sup>18</sup> This left only Bank management and operations with the task of making recommendations regarding remedial measures to be taken in connection with the report. (Bank management normally issues an action plan in its response to the Panel's report.)

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<sup>13</sup> Monica Blagescu and Robert Lloyd, *2006 Global Accountability Report* (London: One World Trust, 2006).

<sup>14</sup> Maartje van Putten, *Policing the World, Accountability Mechanisms for the Multilateral Financial Institutions and Private Financial Institutions* (Tilburg: Tilburg University, 2006), see generally chapters 1, 3 & 4.

<sup>15</sup> Dana Clark, et al., *Demanding Accountability*.

<sup>16</sup> The Inspection Panel, *Annual Report July 1, 2006-June 30, 2007*, "Review of the Resolution Establishing the Inspection Panel 1996 Clarification of Certain Aspects of the Resolution" and "1999 Clarification of the Boards Second Review of the Inspection Panel," Annex 5, pages 98-108 (included as an annex to this testimony).

<sup>17</sup> The rationale for issuing clarifications instead of revising the resolution was concern among some Part I Board members that opening the resolution would result in a weakening of the Panel's mandate. However the clarifications did in fact weaken the panel and make a clear reading of the resolution impossible.

<sup>18</sup> This was a confirmation of the original Resolution which only allowed the Panel to make findings.

- 2) The Panel's mandate does not extend to reviewing the consistency of Bank practice with any of its policies and procedures across multiple operations, but is limited to cases of alleged failure of the Bank to follow its policies and procedures with respect to the design, appraisal or implementation of each individual project.
- 3) The Board directed Bank management to strictly follow the Resolution, and limited management's attempt to have *ex-parte* communications with the Board, to derail Panel investigations, or to generally interfere with eligibility determinations.
- 4) The Board would authorize investigations "without discussion or judgment" of the merits of the claim, except related to eligibility. This paved the way for a more fluid process that prevented Board members from blocking a claim on various grounds. The practical effect is that Panel investigations are more easily approved on a "no objection" basis.
- 5) For assessing material adverse effect, the Board made the standard more difficult by using a "without project standard." This approach requires assessing the potential damage that could have occurred in the complete absence of the project, and comparing this with the damage claimed to have occurred as a direct result of policy violations associated with the project.
- 6) The Panel **does not** have a mandate to monitor implementation of management action plans after an inspection is completed. *The Resolution and Clarifications are silent on whether the Panel can specifically monitor policy compliance.*
- 7) The Panel **does** have a mandate to report to the Board on its view of the adequacy of management's consultations with the claimants in the preparation of action plans (though the Panel is prohibited from undertaking field visits to assess the adequacy of these consultations without an invitation).

Three of these clarifications (1, 2 & 6) specifically limited the Panel's mandate; number 5 made it more difficult for claimants to establish eligibility, and numbers 3 & 4 facilitated the Panel process by making approval of investigations more streamlined, with less intervention by management and the Board. The Panel can also take site visits to determine eligibility without Board approval. Number 7 gave the Panel the power to comment on the extent to which management involved the claimant's in developing action plans, but at the same restricted the Panel from taking a site visit to assess this involvement. Number 4 was significant because the WB Board has not denied one investigation since this clarification.

As the clarifications illustrate, reviewing of the Resolution can result in both weakening and strengthening of the Panel's mandate depending on the internal positions and politics of the Board.

#### **IV. Issues Related to the Inspection Panel Process**

There has now been 15 years of experience with the Inspection Panel process, a number of recurring themes have emerged that require reforms. These include the need to: increase stakeholder access to the Panel Process (including being consulted about project remedies), increase the Panel's powers to conduct post inspection follow-up and

monitoring of project remedies and compliance; develop a more transparent selection process, develop wider public outreach and communications, and secure Panel control over their own budgetary resources.

## **A. Need to Increase Access and User-friendliness for Claimants during Panel Process**

Since the establishment of the Panel in 1993, NGOs have warned that the Panel process does not allow enough access for claimants to have their concerns heard by management and the Board *throughout* the Panel process.<sup>19</sup> These concerns have borne out in the intervening years.

### **1. Access to Information**

The current Panel process has important instances when the claimant is left out of the process and finds it difficult to get information or provide important comments or input. For example, after the claim is filed and the Panel site visit has been completed, the claimant has few opportunities for engagement in the process.

Importantly, claimants do not have access to management's initial response to their claim of harm until it is too late to respond. Further on in the process when the Panel issues its final report to the Board, Bank management receives a copy, and sends a response to the Board that makes recommendations for next steps called an "action plan." (See page 35 for a chart outlining the Panel process.)

Currently, claimants do not see management's response to the Panel Report, or the Panel's final report, before it is sent to the Board or before a Board decision. While management and the Panel both have opportunities to report their views to the Board the claimants have no such opportunity.

The Panel has recently established a process that involves a site visit after the inspection is over to explain the inspection outcome, management response and the Board decision. While the Panel should be applauded for these efforts, unfortunately it is too late in the process for claimants to provide input that could change the outcome of the claim.

By contrast, at the ADB Accountability Mechanism, the claimant does have an opportunity to comment on the draft findings and has a 30-day period during the time that management is commenting to review and comment.<sup>20</sup> The ADB's Compliance Review Panel then reviews the response and makes changes to the report that it deems necessary. In addition to this, the ADB policy requires that the Compliance Review Panel attach the claimants' (and management's) comments to the final report it sends to the Board. The ADB is the only accountability mechanism that has this innovation.

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<sup>19</sup> Testimony of Lori Udall, "World Bank Disclosure Policy and Inspection Panel," Hearing before the Subcommittee on International Development Finance, Trade and Monetary Policy, June 21, 1994.

<sup>20</sup> Asian Development Bank, Review of the Inspection Function: Establishment of a New Accountability Mechanism, May 2003, Point 125

## 2. Full Consultation with Claimants and affected Stakeholders on Developing Actions Plans

In 1999, the World Bank Board mandated that management should communicate to the Panel the outcome of its consultations with affected parties regarding the action plans, implicitly requiring management to involve claimants in developing action plans regarding project remedies. The Board also gave the Panel a mandate to comment to the Board on whether the claimants were adequately consulted on the actions plans. Neither of these processes has developed adequately.

For years, NGO case studies have documented the absence of claimant involvement in developing action plans or remedies to bring the project back into compliance.<sup>21</sup> For example in the Chad Cameroon Pipeline, the claimants whose livelihoods and environment were harmed by the pipeline said they were never consulted about the plans to improve compliance in the project, and thus the actions plans fell short of their needs.

Claimants usually have first-hand experience and knowledge to provide recommendations for remedial measures that would improve their own situation, but have generally been prevented by the process from doing this. As a result, management produced action plans are usually the course followed by the Board.

The irony is that the claimants are left with solutions offered by operations staff who often ignored their complaints in the first place and who are now also responsible for their implementation. As stated in *Demanding Accountability*:

“The same Bank officials whose actions and omissions may have caused the claimants problems are tasked with resolving the very problems they may have caused. This is particularly ironic given that [ ] staff and management have frequently denied the problems existed.”<sup>22</sup>

In a recent field study of six Panel claims, the fact that claimants have not been involved in action plans by management was cited a major shortfall of the Panel process.<sup>23</sup> The same study illustrated that a significant number of the Panel’s findings in nine claims were ignored when they developed their actions plans. For example, in the India Coal Sector Claim the Panel made 27 findings, and in response, Bank management proposed only 9 actions in it plans.

If the claimants were involved in developing solutions, the likelihood of this problem would be drastically decreased.

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<sup>21</sup> For example see Delphine Djiraibe, Korinna Horta and Samuel Nguiffo , “Access to Justice from Local Village to Global Boardroom: An Experience in International Accountability–The World Bank Inspection Panel and the Chad-Cameroon Oil and Pipeline Project,” September 2004. See also Dana Clark, et al., *Demanding Accountability*, pages 258-275. See also Lori Udall, “The World Bank Inspection Panel,: A Three Year Review.”

<sup>22</sup> Dana Clark, et al., *Demanding Accountability*, page 266.

<sup>23</sup> Tess Bridgeman, “An Independent Evaluation of the World Bank Inspection Panel, Summary of Findings and Recommendations, October 22, 2007.” This report evaluates six out of fifty two claims the Panel received.

## B. Post- Inspection Follow-up and Monitoring

Since the establishment of the Panel, the World Bank Board has changed its position on whether the Panel should be empowered to monitor projects that have been the subject of a claim. In some of the early claims—such as the Rondonia Natural Resources Project in Brazil, the Itaparica Resettlement and Irrigation Project, the Jamuna Multipurpose Bridge Project, and the Yacyreta Hydroelectric Project—the Panel was asked to monitor and review the implementation of the Bank’s action plans. In some cases, the Panel was asked to monitor progress in lieu of a full investigation.

Leading up to the 1999 Board Review of the Panel many borrowing (Part II) country Board members objected to the Panel returning to projects sites yet another time in order to monitor remedial actions. This resulted in the Board explicitly prohibiting the Panel from an oversight or monitoring role in management-generated action plans in the second clarification of the Panel’s Resolution.<sup>24</sup> *However, the Board did not specifically prohibit the Panel from monitoring whether the project has returned to compliance with Bank policy.*

Over the years, the lack of monitoring and follow-up has resulted in inadequate resolution of problems and policy violations in many problem projects. In some claims, such as Yacyreta Hydroelectric Project, Itaparica Resettlement, NTPC Power Generation Project, Bujagali Hydropower Project and Brazilian Land Reform, the claimants have had no choice but to file additional claims to seek remedies for their problems and to request further policy compliance.

The Board has been left with overseeing implementation of remedies and ensuring that projects are being brought back into compliance, but the Board has no process for monitoring and has not appointed any independent panels to undertake this critical function. In some cases the Board has asked management to report back but this has no independent feature to it.

The current Bank Board may realize the limitations of not having an independent voice to follow-up on remedial actions and compliance. Recently it has requested the Panel to conduct follow-up fact finding in the Mumbai Urban Transport project and in the second Yacyreta Power project.

It has long been recognized by Panel claimants and advocacy NGOs that monitoring would be a logical and effective step to ensure that the issues that gave rise to the complaint are in fact being addressed. Follow-up and monitoring is also required in order for the Bank’s Board to have independent information and to exercise effective oversight of management. Independent monitoring would also pressure the Bank’s operations staff to fulfill their action plans.

By contrast the accountability mechanisms at the IFC/MIGA, IDB, AfDB, and EBRD all have monitoring functions. To date, experience with monitoring suggests that it is a positive process for checking back in with claimants regarding implementation of any

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<sup>24</sup> In the 1990s the Executive Board assigned the Panel monitoring roles in two claims, one in Brazil and one in Bangladesh, but Part II Executive Directors complained and in the end the Board clarified that the panel had no mandate to monitor. The exception to this as stated in Section I is that the Panel can review whether the development of actions plans involved consultations with affected people.

recommendations or, in the case of a mediation exercise, monitoring of the agreement. It may also prevent the time wasted when claimants must re-file a claim just to get attention or remedial action on project improvement.

### **C. Need for a Transparent Inspection Panel Selection Process**

Panel members are supposed to be appointed by the World Bank Board of Executive Directors. On the appointment of Panel members, the Resolution states that

“The President, after consultation with the Executive Directors, shall nominate the members of the Panel to be appointed by the Executive Directors.”<sup>25</sup>

In the early years of the Panel, the Executive Directors took a strong role in the nominations process by asking NGOs for names of candidates that would be suitable for the Panel positions. Many of the Part I Executive Directors actively promoted NGO candidates that were widely considered to be independent, possessing a high level of integrity and knowledge about conditions in developing countries. This was quite appropriate considering the strong role that NGOs had in promoting and establishing the Panel. In the mid- to late-1990s when Panel positions were open, the Panel members themselves were also consulted about possible candidates.

In the last several years the process for selecting Panel members has become increasingly more internal to the Bank and less transparent. Even the Panel itself has been left out of the process, limited to an advisory role when it comes to selection. This was evident during the 2007 process to replace retiring Panel member Edith Brown Weiss. The elevated secrecy around the selection process prompted Washington-based NGOs to write a letter to the Bank citing the lack of transparency and public participation.<sup>26</sup> Bank management’s response was to defend the inadequate selection process. In 2008 another selection process is underway for retiring Panel member Mr. Tongroj Onchan.

The selection procedures for Panel members were approved by the Board without any public consultation and, until recently, there were no public advertisements of Panel positions.

Under current procedures, the President appoints a selection committee that includes two Board members (the Chair of the Committee on Development Effectiveness and the Dean of the Board) and two members of senior management including a Managing Director (or a regional Vice President) and the General Counsel. The involvement of upper-level management in selections has the potential to undermine the independence of the Panel and presents a serious potential conflict of interest, since the job of the Panel is, in effect, to review management and operations adherence to their own policies. A plain reading of the Resolution reveals that the President’s involvement is based on his/her capacity as chair of the Board, not because management should be choosing independent Panel members.

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<sup>25</sup> World Bank, “Resolution No. IBRD 93-10 and Resolution No. IDA 93-6, The World Bank Inspection Panel, September 22, 1993,” Point 2.

<sup>26</sup> CIEL and BIC Letter to President Wolfowitz, April 27, 2007 on Selection Process for the World Bank Inspection Panel Vacancy.

In most other accountability mechanisms selection processes are non-transparent in varying degrees and do not serve as a model for the World Bank. While the ADB and the AfDB did publicly advertise the opening of positions in their mechanisms, the ADB did so only after pressure from NGOs. The AfDB also appointed an external review committee to pick the roster members.

The CAO had the most independent selection process during the selection of the Ombudsman, Meg Taylor, in 1997. The CAO reports directly to the office of the World Bank President, so in this case it made sense for the President to lead the process. The President appointed a working group of six people from civil society and the private sector, all from outside the IFC/MIGA. The position was advertised inside and outside the Bank and after interviews the working group agreed to recommend two candidates to the President but also informed him of their top choice. The President selected the working group's top choice. This process has not yet been codified but it illustrates how a multi-stakeholder group can effectively be involved in the selection process.

#### **D. Increased Public Outreach and Education**

Since 1996, through its clarifications the Board has charged Bank management with the task of public outreach to make the Panel "better known" in the Bank's borrowing countries. Management has not filled this mandate and would be unlikely to do so since it has an adversarial relationship with the Panel.

The Panel is the appropriate body to conduct its own outreach and develop relationships with civil society stakeholders and NGOs. The Panel already holds meetings with NGOs during World Bank annual meetings and conducts outreach meetings in borrower countries. However in order to pursue a much more robust outreach program the Panel would need additional resources which would constitute a strong signal from the Board that it should develop a more effective outreach program. In a recent development, the World Bank's Board Committee on Development Effectiveness (CODE) requested the CAO to develop an outreach communications plan so that potential stakeholders could learn more about opportunities to engage with the CAO. There is no reason that the Board could not mandate or encourage the Panel to conduct a broader outreach program as well.

#### **E. Panel Should Maintain Control over its own Budgetary Resources**

The Panel Resolution provides that:

"The Panel shall be given such budgetary resources as shall be sufficient to carry out activities."<sup>27</sup>

One aspect of the Panel's independence is being able to secure the resources it needs to fulfill its mandate. The Panel's budget has been maintained in real terms over the years and recently increased slightly on an ad-hoc basis to reflect the increased case load. In 2006-07, the Panel budget was US\$3.083 million. For 2007-08 the Panel requested and received an increase due to an expanding workload. To date there has

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<sup>27</sup> The World Bank, "Resolution No. IBRD 93-10, Resolution No. IDA 93-6, The World Bank Inspection Panel, September 22, 1993."

not been a problem with obtaining the resources necessary: usually the Board Budget Committee approves the Panel budget increases.

Some of the reforms recommended in this testimony such as public outreach and follow-up and monitoring would involve the need for increased resources. We recommend that there be a transparent process for the Panel to secure the necessary resources.

## **V. Recommendations for Reform and Updates for the World Bank Inspection Panel Process**

### **A. Increase Claimant Access to the Inspection Panel and the Panel Process**

There are several areas where the Panel process can be made more user-friendly and increase access to the Panel process.

**1. Information Access.** Claimants should have access to the Panel's final report before or as it is sent to the Board and to management's response to the report and to action plans.

**2. Claimants Involvement in Remedies and Management's Action Plan.**

Management should implement its mandate to involve claimants in remedies for projects and action plans. The Panel should implement its mandate to follow-up and comment on whether management sufficiently involved the claimants' in developing the action plan.

**3. Claimants Access to the Board.** The Panel and management both have access to the Board during the Panel process and after the Panel report is sent to the Board. The claimants should also be provided an opportunity to appeal to the Board with comments on management's response, actions plans or the Panel report. This would be especially important if the claimants disagree with management's responses, the action plan or feel there are missing remedies in the action plans.

### **B. Panel Selection Process**

The World Bank Panel (like the CAO) could lead the other accountability mechanisms in developing a selection process that is open, transparent, and participatory. The unique character of the Panel deserves a participatory process to ensure the best interests of the mechanism are served and the credibility and independence of the Panel is preserved.

The following improvements are recommended and these would compliment the current policy.

**1. Open Nominations Process.** There should be an open and transparent nominations process that invites nominations from civil society and NGOs. Openings in the Inspection Panel should be publicly announced and circulated to NGOs and civil society groups through the Panel itself, World Bank External Relations, and World Bank field offices.

**2. Public Roster.** The C.V.'s of all nominees for the Panel should be kept on a roster and made publicly available by request or on the World Bank website for review.

**3. Board Selection Committee with Civil Society Representation.** The World Bank selection committee for the Panel should include one civil society representative, the Chair of the Panel, The Dean of the Board and the Chair of CODE.

These simple steps are compatible with the current Resolution, and could easily be instituted by the World Bank Board to add transparency to the process.

### **C. Post Inspection Follow-up and Monitoring**

The Panel should be empowered by the Board with more flexibility to follow-up and monitor implementation of remedial measures to bring the project back into compliance with Bank policies and procedures. This follow-up is important to completing the Panel process and to ensuring that concrete improvements occur on the ground.

### **D. Public Outreach**

The Panel should be empowered and encouraged to conduct extensive public outreach and communications, and provided the necessary budget to conduct this activity.

### **E. Budgetary Concerns**

The Panel should maintain control over its budget and the budget should be increased for communications outreach and post inspection follow-up and monitoring compliance.

## **VI. Conclusion**

The occasion of the re-authorization of U.S. participation in IDA 15 provides an important opportunity for review and reform of the World Bank Inspection Panel. The Panel now has 15 years of experience. It has been eight years since the Panel has been up for review by the Board of Executive Directors and 13 years since the Panel was reviewed in the U.S. Congress.<sup>28</sup>

The Panel is an important and effective tool for communities that are adversely affected by Bank projects and programs. With these few innovations and reforms the Panel process could be more effective and efficient and contribute to increasing project quality. An improved Panel would enable the Bank to strengthen its public accountability, transparency and, most importantly, to ensure that the Panel process is more accessible for poor and marginalized people who are adversely affected by Bank projects and programs.

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<sup>28</sup> World Bank Disclosure Policy and Inspection Panel, Hearing Before the Subcommittee on International Development Finance, Trade and Monetary Policy, June 21, 1994.

## **Note on Longer Term Issues Relating to the Inspection Panel**

Below I have noted several issues relating to the Inspection Panel that should be addressed in the coming years.

### **A. IDA/IFA Joint Projects**

IDA and IFC have recently launched a program of closer collaboration which will result in IFC transferring US\$1.7 billion to IDA through year 2011. On March 25, 2008 IFC Executive Vice President and CEO Lars Thunell signed an agreement for IFC to transfer the first \$500 million to IDA. In order to guide the IDA/IFC collaboration, a new IDA-IFC secretariat has been established and is looking to develop joint projects, particularly in infrastructure.<sup>29</sup> The IDA-IFC Secretariat has announced that it will conduct consultations with NGOs and civil society to listen to their concerns about the new collaboration.

The possibility of joint IDA-IFC projects raises a number of questions for NGOs in broader terms such as the different set of organizational priorities, policies, programs and standards and how these will play out in the context of the new term “lead agency” which implies that for each joint project either IDA or IFC would be the lead agency.

Regarding the Inspection Panel and CAO, NGOs are concerned that the joint IDA-IFC framework may cause confusion for affected people who may wish to file claims. For example: Would affected parties send a complaint to the CAO or to the Panel, or both? How would the difference in IFC and IDA safeguard policies play out? How would the CAO and Inspection Panel ensure maximum user-friendliness for the claimant?

With this in mind, the following guiding principles should undergird joint IDA/IFC claims process:

- ✓ The claims process should be transparent, user-friendly, and as simple as the current process in both mechanisms;
- ✓ The claimants should have a choice where to file a claim: with the Inspection Panel or with the CAO;
- ✓ If the claimant seeks both problem solving and compliance functions, the process should be afforded them without a predetermined rule that would force one process over the other.

While this issue may not yet be ripe for Congressional action, we hope the Committee will continue to monitor the developments.

### **B. Problem Solving Function for IDA and IBRD?**

Several accountability mechanisms have instituted the innovation of providing an alternate “problem-solving” window for claimants to bring their grievances in addition to a compliance review unit. These include the CAO, ADB, AfDB, and the EBRD mechanisms.<sup>30</sup> These grew out of the practical reality that claimants are almost always

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<sup>29</sup> The new Director of the IFC-IDA Secretariat is Nigel Twose.

<sup>30</sup> The IDB’s draft policy also has a problem solving unit.

more concerned with finding solutions and remedies to their problems than they are with compliance or non-compliance. While the WB Inspection Panel in practice does conduct some problem solving in the initial stages of the inspection process, technically it does not have a mandate to review claimants problems that are not related to policy compliance. In such cases, the Panel has sent a notice to the Board and Senior Management describing the claimants concerns and noting its lack of authority to deal with the matter.

When there are other issues raised by claimants that do not relate to compliance the Panel has not been able to address them even if they are just as critical to the claim as the policy violations. For example, in the Chad Cameroon Pipeline claim, according to an NGO report, the Panel did not address problems relating to workers rights, capacity building in the project, and indigenous land security because the issues were not related to a policy violation.

As noted by two experts involved with the ADB's Review of the Inspection Function:

"MDBs have shifted their focus to both problem solving and compliance review from simply investigating the compliance or non-compliance of an MDB's operational activities. The move is in accord with the substantive principles behind empowering project-affected people to have affective access to the problem-solving institution. The [problem solving] phase adds stability, power, and effectiveness to the mechanism designed to enhance the institutions accountability and development effective on the ground."<sup>31</sup>

In the ADB, the claimants are first required to appeal to a problem solver function. The rationale for this is that often claimants have a problem with the Bank that could be resolved through mediation or dispute resolution and may not have any policy implications. If the claimant is dissatisfied with the problem solver process they can then proceed to the Compliance Review Panel. At the AfDB, the Director of the Compliance Review Mediation Unit conducts a preliminary review to determine whether the claim is eligible for a compliance review or problem solving.

At the EBRD, the chief compliance officer of the Independent Recourse Mechanism can determine whether the claim should undergo a compliance review or start a problem solving process in order "to facilitate the early resolution of issues."<sup>32</sup> However, the process is not as independent as other mechanisms since the President of the EBRD has to approve the problem solving effort.

At the CAO, the Ombudsman is the main port of entry, and the decision to refer the claim to the compliance auditor lies with the Ombudsman and not the claimant.<sup>33</sup> Of all

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<sup>31</sup> Eisuke Suzuki and Suresh Nanwani, "Responsibility of International Organizations: the Accountability Mechanisms of the Multilateral Development Banks," *Michigan Journal of International Law*, Fall 2005, page 223.

<sup>32</sup> EBRD, Independent Recourse Mechanism, As Approved by the Board of Executive Directors on April 29, 2003.

<sup>33</sup> A compliance audit can also be triggered by IFC/MIGA Senior management or the President of the World Bank, or at the discretion of the CAO Vice-President. Also, under recent guidelines, problem solving claims that do not reach satisfactory outcomes are automatically referred to the compliance auditor for review.

the accountability mechanisms, the CAO has the most extensive experience with problem solving and under the new guidelines has a more user-friendly system.<sup>34</sup> The Ombudsman also has total independence to determine eligibility, conduct site visits, undertake an assessment or assist with resolution of a problem. Since 1999, the CAO has handled 66 claims in 24 different IFC/MIGA projects.

One of the advantages of problem solving over compliance review is the flexibility to address problems in a number of informal consensus based methods such as consultation, mediation, and dispute resolution. Another advantage is the absence of formal requirements such as policy violations in the claimant's submission. The problem solver can use various approaches, such as convening meetings with various stakeholders, organizing and facilitating consultations processes, and engaging in a fact-finding review. The problem-solving phase does not seek to put blame on any party but instead seeks consensus and agreement among parties as to the matters in dispute, the modality of problem solving, and the time frame.

Compliance reviews by their nature are contentious and often bring intense pressure on operations staff and local government agencies. The problem solving function on the other hand seeks to build consensus and is solution oriented. This makes problem solving an important compliment to compliance mechanisms.

### **C. Country Systems and the Inspection Panel Powers**

The mandate and powers of the Panel could be diminished by changes to the policies and procedures that the Panel is charged to oversee. For example, the Bank's Operational Policy 4.00, which allows use of borrower systems to address environmental and social safeguard issues (known as "country systems"), presents risks of weakening environmental and social standards.

Under country systems, the Bank must first assess whether a borrower's laws, policies and procedures are "equivalent" to a streamlined version of existing Bank safeguard policies—not the full suite of safeguard policies—and reach agreement with the borrower on measures to fill "gaps" between its own standards and the Bank's streamlined policies. Additionally, the Bank must determine whether a borrower's capacity to implement its own laws, policies and procedures is "acceptable." Unfortunately, the equivalency determination is not fully transparent, the measures proposed to fill gaps are exceedingly unclear, and the timeline for implementing these measures is unapparent.

The acceptability determination focuses on very narrow aspects of borrower capacity, and the process by which the determination is undertaken is unapparent. As a result, communities would be left with little understanding of what is required of the Bank and borrower with respect to meeting environmental and social standards for the project. Increasing transparency associated with implementation of Operational Policy 4.00, including an independent third party review of its application, may prevent weakening of these standards as the World Bank moves to expand its country systems approach. Questions regarding Panel's authority to fully assess compliance with Bank policies arise under the country systems model.

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<sup>34</sup> The CAO issued revised guidelines in April 2007 after receiving comments from civil society, NGOs, and IFC/MIGA.

## **ANNEX I**

Source: World Bank Inspection Panel, *Annual Report, July 1, 2006, to June 30, 2007*, pp. 98-108.  
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### **World Bank Inspection Panel 1993 Resolution**

September 22, 1993

#### **INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT INTERNATIONAL DEVELOPMENT ASSOCIATION**

**Resolution No. IBRD 93-10**

**Resolution No. IDA 93-6**

#### **“THE WORLD BANK INSPECTION PANEL”**

The Executive Directors:

Hereby resolve:

1. There is established an independent Inspection Panel (hereinafter called the Panel), which shall have the powers and shall function as stated in this resolution.

#### **COMPOSITION OF THE PANEL**

2. The Panel shall consist of three members of different nationalities from Bank member countries. The President, after consultation with the Executive Directors, shall nominate the members of the Panel to be appointed by the Executive Directors.

3. The first members of the Panel shall be appointed as follows: one for three years, one for four years, and one for five years. Each vacancy thereafter shall be filled for a period of five years, provided that no member may serve for more than one term. The term of appointment of each member of the Panel shall be subject to the continuity of the inspection function established by this Resolution.

4. Members of the Panel shall be selected on the basis of their ability to deal thoroughly and fairly with the requests brought to them, their integrity and their independence from the Bank’s Management, and their exposure to developmental issues and to living conditions in developing countries. Knowledge and experience of the Bank’s operations will also be desirable.

5. Executive Directors, Alternates, Advisors, and staff members of the Bank Group may not serve on the Panel until two years have elapsed since the end of their service in the Bank Group. For purposes of this Resolution, the term “staff” shall mean all persons holding Bank Group appointments as defined in Staff Rule 4.01, including persons holding consultant and local consultant appointments.

6. A Panel member shall be disqualified from participation in the hearing and investigation of any request related to a matter in which he/she has a personal interest or had significant involvement in any capacity.

7. The Panel member initially appointed for five years shall be the first Chairperson of the Panel, and shall hold such office for one year. Thereafter, the members of the Panel shall elect a Chairperson for a period of one year.

8. Members of the Panel may be removed from office only by decision of the Executive Directors, for cause.

9. With the exception of the Chairperson who shall work on a full-time basis at Bank headquarters, members of the Panel shall be expected to work on a full-time basis only when their workload justifies such an arrangement, as will be decided by the Executive Directors on the recommendation of the Panel.

10. In the performance of their functions, members of the Panel shall be officials of the Bank enjoying the privileges and immunities accorded to Bank officials, and shall be subject to the requirements of the Bank's Articles of Agreement concerning their exclusive loyalty to the Bank and to the obligations of subparagraphs (c) and (d) of paragraph 3.1 and paragraph 3.2 of the Principles of Staff Employment concerning their conduct as officials of the Bank. Once they begin to work on a full-time basis, they shall receive remuneration at a level to be determined by the Executive Directors upon a recommendation of the President, plus normal benefits available to Bank fixed-term staff. Prior to that time, they shall be remunerated on a per diem basis and shall be reimbursed for their expenses on the same basis as the members of the Bank's Administrative Tribunal. Members of the Panel may not be employed by the Bank Group, following the end of their service on the Panel.

11. The President, after consultation with the Executive Directors, shall assign a staff member to the Panel as Executive Secretary, who need not act on a full-time basis until the workload so justifies. The Panel shall be given such budgetary resources as shall be sufficient to carry out its activities.

## **POWERS OF THE PANEL**

12. The Panel shall receive requests for inspection presented to it by an affected party in the territory of the borrower which is not a single individual (i.e., a community of persons such as an organization, association, society, or other grouping of individuals), or by the local representative of such party or by another representative in the exceptional cases where the party submitting the request contends that appropriate representation is not locally available and the Executive Directors so agree at the time they consider the request for inspection. Any such representative shall present to the Panel written evidence that he is acting as agent of the party on behalf of which the request is made. 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 (including situations where the Bank is alleged to have failed in its follow-up on the borrower's obligations under loan agreements with respect to such policies and procedures) provided in all cases that such failure has had, or threatens to have, a material adverse effect. In view of the institutional responsibilities of Executive Directors in the observance by the Bank of its operational policies and procedures, an Executive Director may in special cases of serious alleged violations of such policies and procedures ask the Panel for an investigation, subject to the requirements of paragraphs 13 and 14 below. The Executive Directors, acting as a Board, may at any time instruct the Panel to conduct an investigation. For purposes of this Resolution, "operational policies and procedures" consist of the Bank's Operational Policies, Bank Procedures and Operational Directives, and similar

documents issued before these series were started, and does not include Guidelines and Best Practices and similar documents or statements.

13. The Panel shall satisfy itself before a request for inspection is heard that the subject matter of the request has been dealt with by the Management of the Bank and Management has failed to demonstrate that it has followed, or is taking adequate steps to follow, the Bank's policies and procedures. The Panel shall also satisfy itself that the alleged violation of the Bank's policies and procedures is of a serious character.

14. In considering requests under paragraph 12 above, the following requests shall not be heard by the Panel:

(a) Complaints with respect to actions which are the responsibility of other parties, such as a borrower, or potential borrower, and which do not involve any action or omission on the part of the Bank.

(b) Complaints against procurement decisions by Bank borrowers from suppliers of goods and services financed or expected to be financed by the Bank under a loan agreement, or from losing tenderers for the supply of any such goods and services, which will continue to be addressed by staff under existing procedures.

(c) Requests filed after the Closing Date of the loan financing the project with respect to which the request is filed or after the loan financing the project has been substantially disbursed.<sup>35</sup>

(d) Requests related to a particular matter or matters over which the Panel has already made its recommendation upon having received a prior request, unless justified by new evidence or circumstances not known at the time of the prior request.

15. The Panel shall seek the advice of the Bank's Legal Department on matters related to the Bank's rights and obligations with respect to the request under consideration.

## **PROCEDURES**

16. Requests for inspection shall be in writing and shall state all relevant facts, including, in the case of a request by an affected party, the harm suffered by or threatened to such party or parties by the alleged action or omission of the Bank. All requests shall explain the steps already taken to deal with the issue, as well as the nature of the alleged actions or omissions and shall specify the actions taken to bring the issue to the attention of Management, and Management's response to such action.

17. The Chairperson of the Panel shall inform the Executive Directors and the President of the Bank promptly upon receiving a request for inspection.

18. Within 21 days of being notified of a request for inspection, the Management of the Bank shall provide the Panel with evidence that it has complied or intends to comply with the Bank's relevant policies and procedures.

19. Within 21 days of receiving the response of the Management as provided in the preceding paragraph, the Panel shall determine whether the request meets the eligibility criteria set out in paragraphs 12 to 14 above and shall make a recommendation to the Executive Directors as to whether the matter should be investigated. The recommendation of the Panel shall be circulated to the Executive Directors for decision within the normal distribution period. In case the request

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<sup>35</sup> This will be deemed to be the case when at least 95 percent of the loan proceeds have been disbursed.

was initiated by an affected party, such party shall be informed of the decision of the Executive Directors within two weeks of the date of such decision.

20. If a decision is made by the Executive Directors to investigate the request, the Chairperson of the Panel shall designate one or more of the Panel's members (Inspectors) who shall have primary responsibility for conducting the inspection. The Inspector(s) shall report his/her (their) findings to the Panel within a period to be determined by the Panel taking into account the nature of each request.

21. In the discharge of their functions, the members of the Panel shall have access to all staff who may contribute information and to all pertinent Bank records and shall consult as needed with the Director General, Operations Evaluation Department, and the Internal Auditor. The borrower and the Executive Director representing the borrowing (or guaranteeing) country shall be consulted on the subject matter both before the Panel's recommendation on whether to proceed with the investigation and during the investigation. Inspection in the territory of such country shall be carried out with its prior consent.

22. The Panel shall submit its report to the Executive Directors and the President. The report of the Panel shall consider all relevant facts, and shall conclude with the Panel's findings on whether the Bank has complied with all relevant Bank policies and procedures.

23. Within six weeks from receiving the Panel's findings, Management will submit to the Executive Directors for their consideration a report indicating its recommendations in response to such findings. The findings of the Panel and the actions completed during project preparation also will be discussed in the Staff Appraisal Report when the project is submitted to the Executive Directors for financing. In all cases of a request made by an affected party, the Bank shall, within two weeks of the Executive Directors' consideration of the matter, inform such party of the results of the investigation and the action taken in its respect, if any.

## **DECISIONS OF THE PANEL**

24. All decisions of the Panel on procedural matters, its recommendations to the Executive Directors on whether to proceed with the investigation of a request, and its reports pursuant to paragraph 22, shall be reached by consensus and, in the absence of a consensus, the majority and minority views shall be stated.

## **REPORTS**

25. After the Executive Directors have considered a request for an inspection as set out in paragraph 19, the Bank shall make such request publicly available together with the recommendation of the Panel on whether to proceed with the inspection and the decision of the Executive Directors in this respect. The Bank shall make publicly available the report submitted by the Panel pursuant to paragraph 22 and the Bank's response thereon within two weeks after consideration by the Executive Directors of the report.

26. In addition to the material referred to in paragraph 25, the Panel shall furnish an annual report to the President and the Executive Directors concerning its activities. The annual report shall be published by the Bank.

## **REVIEW**

27. The Executive Directors shall review the experience of the inspection function established by this Resolution after two years from the date of the appointment of the first members of the Panel.

**APPLICATION TO IDA PROJECTS**

28. In this resolution, references to the Bank and to loans include references to the Association and to development credits.

## **1996 Clarification**

### **REVIEW OF THE RESOLUTION ESTABLISHING THE INSPECTION PANEL 1996 CLARIFICATION OF CERTAIN ASPECTS OF THE RESOLUTION**

The Resolution establishing the Inspection Panel calls for a review after two years from the date of appointment of the first panel members. On October 17, 1996, the Executive Directors of the Bank and IDA completed the review process (except for the question of inspection of World Bank Group private sector projects) by considering and endorsing the clarifications recommended by Management on the basis of the discussions of the Executive Directors' Committee on Development Effectiveness (CODE). The Inspection Panel and Management are requested by the Executive Directors to observe the clarifications in their application of the Resolution. The clarifications are set out below.

#### **THE PANEL'S FUNCTION**

Since the Resolution limits the first phase of the inspection process to ascertaining the eligibility of the request, this phase should normally be completed within the 21 days stated in the Resolution. However, in cases where the Inspection Panel believes that it would be appropriate to undertake a "preliminary assessment" of the damages alleged by the requester (in particular when such preliminary assessment could lead to a resolution of the matter without the need for a full investigation), the Panel may undertake the preliminary assessment and indicate to the Board the date on which it would present its findings and recommendations as to the need, if any, for a full investigation. If such a date is expected by the Panel to exceed eight weeks from the date of receipt of Management's comments, the Panel should seek Board approval for the extension, possibly on a "no-objection" basis. What is needed at this preliminary stage is not to establish that a serious violation of the Bank's policy has actually resulted in damages suffered by the affected party, but rather to establish whether the complaint is prima facie justified and warrants a full investigation because it is eligible under the Resolution. Panel investigations will continue to result in "findings" and the Board will continue to act on investigations on the basis of recommendations of Management with respect to such remedial action as may be needed.

#### **ELIGIBILITY AND ACCESS**

It is understood that the "affected party" which the Resolution describes as "a community of persons such as an organization, association, society or other grouping of individuals" includes any two or more persons who share some common interests or concerns.

The word "project" as used in the Resolution has the same meaning as it generally has in the Bank's practice, and includes projects under consideration by Bank management as well as projects already approved by the Executive Directors.

The Panel's mandate does not extend to reviewing the consistency of the Bank's practice with any of its policies and procedures, but, as stated in the Resolution, is limited to cases of alleged failure by the Bank to follow its operational policies and procedures with respect to the design, appraisal, and/or implementation of projects, including cases of alleged failure by the bank to follow up on the borrowers' obligations under loan agreements, with respect to such policies and procedures.

No procurement action is subject to inspection by the Panel, whether taken by the Bank or by a borrower. A separate mechanism is available for addressing procurement related complaints.

## **OUTREACH**

Management will make its response to requests for inspection available to the public within three days after the Board has decided on whether to authorize the inspection. Management will also make available to the public opinions of the General Counsel related to Inspection Panel matters promptly after the Executive Directors have dealt with the issues involved, unless the Board decides otherwise in a specific case.

Management will make significant efforts to make the Inspection Panel better known in borrowing countries, but will not provide technical assistance or funding to potential requesters.

## **COMPOSITION OF THE PANEL**

No change in the composition of the Panel is being made at this time.

## **ROLE OF THE BOARD**

The Board will continue to have authority to (i) interpret the Resolution; and (ii) authorize inspections. In applying the Resolution to specific cases, the Panel will apply it as it understands it, subject to the Board's review. As stated in the Resolution, "[t]he Panel shall seek the advice of the Bank's Legal Department on matters related to the Bank's rights and obligations with respect to the request under consideration."

October 17, 1996

## **1999 Clarification**

### **1999 CLARIFICATION OF THE BOARD'S SECOND REVIEW OF THE INSPECTION PANEL**

The Executive Directors approved today, April 20, 1999, with immediate effect, the report of the Working Group on the Second Review of the Inspection Panel, as revised in light of the extensive consultations that took place after the report was first circulated.

The report confirms the soundness of the Resolution establishing the Inspection Panel (IBRD Resolution No. 93-10, IDA Resolution No. 93-6 of September 22, 1993, hereinafter "the Resolution") and provides clarifications for its application. These clarifications supplement the clarifications issued by the Board on October 17, 1996, and prevail over them in case of conflict. The report's recommendations approved by the Board are as follows:

1. The Board reaffirms the Resolution, the importance of the Panel's function, its independence and integrity.
2. Management will follow the Resolution. It will not communicate with the Board on matters associated with the request for inspection, except as provided for in the Resolution. It will thus direct its response to the request, including any steps it intends to take to address its failures, if any, to the Panel. Management will report to the Board any recommendations it may have, after the Panel completes its inspection and submits its findings, as envisaged in paragraph 23 of the Resolution.
3. In its initial response to the request for inspection, Management will provide evidence that
  - i. it has complied with the relevant Bank operational policies and procedures; or that
  - ii. there are serious failures attributable exclusively to its own actions or omissions in complying, but that it intends to comply with the relevant policies and procedures; or that
  - iii. the serious failures that may exist are exclusively attributable to the borrower or to other factors external to the Bank; or that
  - iv. the serious failures that may exist are attributable both to the Bank's noncompliance with the relevant operational policies and procedures and to the borrower or other external factors.

The Inspection Panel may independently agree or disagree, totally or partially, with Management's position and will proceed accordingly.

4. When Management responds, admitting serious failures that are attributable exclusively or partly to the Bank, it will provide evidence that it has complied or intends to comply with the relevant operating policies and procedures. This response will contain only those actions that the Bank has implemented or can implement by itself.
5. The Inspection Panel will satisfy itself as to whether the Bank's compliance or evidence of intention to comply is adequate, and reflect this assessment in its reporting to the Board.
6. The Panel will determine the eligibility of a request for inspection independently of any views that may be expressed by Management. With respect to matters relating to the Bank's rights and obligations with respect to the request under consideration, the Panel will seek the advice of the Bank's Legal Department as required by the Resolution.

7. For its recommendation on whether an investigation should be carried out, the Panel will satisfy itself that all the eligibility criteria provided for in the Resolution have been met. It will base its recommendation on the information presented in the request, in the Management response, and on other documentary evidence. The Panel may decide to visit the project country if it believes that this is necessary to establish the eligibility of the request. In respect of such field visits, the Panel will not report on the Bank's failure to comply with its policies and procedures or its resulting material adverse effect; any definitive assessment of a serious failure of the Bank that has caused material adverse effect will be done after the Panel has completed its investigation.

8. The original time limit, set forth in the Resolution for both Management's response to the request and the Panel's recommendation, will be strictly observed except for reasons of force majeure, i.e., reasons that are clearly beyond Management's or the Panel's control, respectively, as may be approved by the Board on a no-objection basis.

9. If the Panel so recommends, the Board will authorize an investigation without making a judgment on the merits of the claimants' request, and without discussion except with respect to the following technical eligibility criteria:

a. The affected party consists of any two or more persons with common interests or concerns and who are in the borrower's territory (Resolution para. 12).

b. The request does assert in substance that a serious violation by the Bank of its operational policies and procedures has or is likely to have a material adverse effect on the requester (Resolution paras. 12 and 14a).

c. The request does assert that its subject matter has been brought to Management's attention and that, in the requester's view, Management has failed to respond adequately demonstrating that it has followed or is taking steps to follow the Bank's policies and procedures (Resolution para. 13).

d. The matter is not related to procurement (Resolution para. 14b).

e. The related loan has not been closed or substantially disbursed (Resolution para. 14c).

f. The Panel has not previously made a recommendation on the subject matter or, if it has, that the request does assert that there is new evidence or circumstances not known at the time of the prior request (Resolution para. 14d).

10. Issues of interpretation of the Resolution will be cleared with the Board.

11. The "preliminary assessment" concept, as described in the October 1996 Clarification, is no longer needed. The paragraph entitled "The Panel's Function" in the October 1996 "Clarifications" is thus deleted.

12. The profile of Panel activities, in-country, during the course of an investigation, should be kept as low as possible in keeping with its role as a fact-finding body on behalf of the Board. The Panel's methods of investigation should not create the impression that it is investigating the borrower's performance. However, the Board, acknowledging the important role of the Panel in contacting the requesters and in fact-finding on behalf of the Board, welcomes the Panel's efforts to gather information through consultations with affected people. Given the need to conduct such work in an independent and low-profile manner, the Panel—and Management— should decline media contacts while an investigation is pending or under way. Under those circumstances in which, in the judgment of the Panel or Management, it is necessary to respond to the media, comments should be limited to the process. They will make it clear that the Panel's role is to investigate the Bank and not the borrower.

13. As required by the Resolution, the Panel's report to the Board will focus on whether there is a serious Bank failure to observe its operational policies and procedures with respect to project design, appraisal, and/or implementation. The report will include all relevant facts that are needed to understand fully the context and basis for the panel's findings and conclusions. The Panel will discuss in its written report only those material adverse effects, alleged in the request, that have totally or partially resulted from serious Bank failure of compliance with its policies and procedures. If the request alleges a material adverse effect and the Panel finds that it is not totally or partially caused by Bank failure, the Panel's report will so state without entering into analysis of the material adverse effect itself or its causes.

14. For assessing material adverse effect, the without-project situation should be used as the base case for comparison, taking into account what baseline information may be available. Non-accomplishments and unfulfilled expectations that do not generate a material deterioration compared to the without-project situation will not be considered as a material adverse effect for this purpose. As the assessment of material adverse effect in the context of the complex reality of a specific project can be difficult, the Panel will have to exercise carefully its judgment on these matters, and be guided by Bank policies and procedures where relevant.

15. A distinction has to be made between Management's report to the Board (Resolution para. 23), which addresses Bank failure and possible Bank remedial efforts, and "action plans," agreed between the borrower and the Bank, in consultation with the requesters, that seek to improve project implementation. The latter "action plans" are outside the purview of the Resolution, its 1996 clarification, and these clarifications. In the event of agreement by the Bank and borrower on an action plan for the project, Management will communicate to the Panel the nature and outcomes of consultations with affected parties on the action plan. Such an action plan, if warranted, will normally be considered by the Board in conjunction with the Management's report, submitted under Resolution para. 23.

16. The Panel may submit to the Executive Directors for their consideration a report on their view of the adequacy of consultations with affected parties in the preparation of the action plans. The Board should not ask the Panel for its view on other aspects of the action plans nor would it ask the Panel to monitor the implementation of the action plans. The Panel's view on consultation with affected parties will be based on the information available to it by all means, but additional country visits will take place only by government invitation.

17. The Board underlines the need for Management to make significant efforts to make the Inspection Panel better known in borrowing countries, as specified in the 1996 "Clarifications."

18. The Board emphasizes the importance of prompt disclosure of information to claimants and the public, as stipulated in the Resolution (paras. 23 and 25) and in its 1996 Clarifications. The Board requires that such information be provided by Management to claimants in their language, to the extent possible.

19. The Board recognizes that enhancing the effectiveness of the Inspection Panel process through the above clarifications assumes adherence to them by all parties in good faith. It also assumes the borrowers' consent for field visits envisaged in the Resolution. If these assumptions prove to be incorrect, the Board will revisit the above conclusions.

## ANNEX II List of Inspection Panel Claims

Source: World Bank Inspection Panel, *Annual Report, July 1, 2006, to June 30, 2007*, pp. 125-129.

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TABLE 1

### SUMMARY OF REQUESTS FOR INSPECTION<sup>1</sup>

JUNE 30, 2007

REQUEST (SHORT FORM)	REQUEST RECEIVED	REQUEST REGISTERED	INSPECTION PANEL RECOMMENDATION	RECOMMENDATION APPROVED BY THE BOARD	PANEL'S ACTIVITY
1. Nepal: Arun III Proposed Hydroelectric Project and Restructuring of IDA Credit	October 24, 1994	Yes	Investigation	Yes	Eligibility Report and Investigation Report
2. Ethiopia: Compensation for Expropriation and Extension of IDA Credits to Ethiopia	May 2, 1995	No	—	—	—
3. Tanzania: Power VI Project	May 16, 1995	Yes	No investigation	Yes	Eligibility Report
4. Brazil: Rondônia Natural Resources Management Project	June 16, 1995	Yes	Investigation	No	Eligibility Report, Additional Review report, and Review of Progress in Implementation
5. Chile: Financing of Hydroelectric Dams in the Bio-Bio River	November 17, 1995	No	—	—	—
6. Bangladesh: Jamuna Multipurpose Bridge Project	August 23, 1996	Yes	No investigation	Yes	Eligibility Report, and Report on Progress on Implementation of Action Plan
7. Argentina/Paraguay: Yacretá Hydroelectric Project (1996)	September 30, 1996	Yes	Investigation	No	Eligibility Report and Review of Present Project Problems and Assessment of Action Plans
8. Bangladesh: Jute Sector Adjustment Credit	November 13, 1996	Yes	No investigation	Yes	Eligibility Report

*continued*

<sup>1</sup> Normally, the Panel advises the Executive Directors and the President when it receives a Request for Inspection that it cannot process (as it did in the Requests regarding Chile: Bio-Bio River, India: NTPC, Second Request, Cameroon: Pipeline Project, Second Request and Burundi: Public Works and Employment Creation Project). The Inspection Panel received a letter, dated August 27, 1999, also addressed to the President and the Executive Directors of the World Bank, requesting for the second time the "installation of an Inspection Panel" to investigate the Itaparica Resettlement and Irrigation Project in Brazil. Since the Bank's loans for this project were then long closed, the Panel was precluded from processing this Request. Furthermore, as the Request had been already addressed to the President and Executive Directors, no action on the part of the Panel was necessary. However, some regard this extemporaneous request as a formal Request for Inspection that should be added to the Panel's records.

REQUEST (SHORT FORM)	REQUEST RECEIVED	REQUEST REGISTERED	INSPECTION PANEL RECOMMENDATION	RECOMMENDATION APPROVED BY THE BOARD	PANEL'S ACTIVITY
9. Brazil: Itaparica Resettlement and Irrigation Project	March 12, 1997	Yes	Investigation	No	Eligibility Report and ActionPlan review
10. India: NTPC Power Generation Project	May 1, 1997	Yes	Investigation	Yes	Eligibility Report and Report on Desk Investigation
11. India: Ecodevelopment Project	April 2, 1998	Yes	Investigation	No	Eligibility Report
12. Lesotho/South Africa: Phase 1B of Lesotho Highlands Water Project (1998)	May 6, 1998	Yes	No investigation	Yes	Eligibility Report
13. Nigeria: Lagos Drainage and Sanitation Project	June 17, 1998	Yes	No investigation	Yes	Eligibility Report
14. Brazil: Land Reform Poverty Alleviation Project	December 14, 1998	Yes	No investigation	Yes	Eligibility Report
15. Lesotho: Highlands Water Project (1999)	April 26, 1999	Yes	No investigation	Yes	Eligibility Report
16. China: Western Poverty Reduction Project	June 18, 1999	Yes	Investigation	Yes	Eligibility Report and Investigation Report
17. Argentina: Special Structural Adjustment Loan	July 26, 1999	Yes	No investigation	Yes	Eligibility Report
18. Brazil: Land Reform Poverty Alleviation Project, Second Request	September 14, 1999	Yes	No investigation	Yes	Eligibility Report
19. Kenya: Lake Victoria Environmental Management Project	October 12, 1999	Yes	Investigation	Yes	Eligibility Report and Investigation Report
20. Ecuador: Mining Development and Environmental Control Technical Assistance Project	December 13, 1999	Yes	Investigation	Yes	Eligibility Report and Investigation Report
21. India: NTPC Power Generation Project, Second Request	November 27, 2000	No	—	—	—
22. Chad: Petroleum Development and Pipeline Project, Management of the Petroleum Economy Project, and Petroleum Sector Management Capacity-Building Project	March 22, 2001	Yes	Investigation	Yes	Eligibility Report and Investigation Report

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	REQUEST (SHORT FORM)	REQUEST RECEIVED	REQUEST REGISTERED	INSPECTION PANEL RECOMMENDATION	RECOMMENDATION APPROVED BY THE BOARD	PANEL'S ACTIVITY
23.	India: Coal Sector Environmental and Social Mitigation Project and Coal Sector Rehabilitation Project	June 21, 2001	Yes	Investigation	Yes	Eligibility Report and Investigation Report
24.	Uganda: Third Power Project, Fourth Power Project, and proposed Bujagali Hydropower Project	July 27, 2001	Yes	Investigation	Yes	Eligibility Report and Investigation Report
25.	Papua New Guinea: Governance Promotion Adjustment Loan	December 6, 2001	Yes	No investigation	Yes	Eligibility Report
26.	Paraguay/Argentina: Reform Project for the Water and Telecommunication Sectors, SEGBA V Power Distribution Project (Yacyretá 2002)	May 17, 2002	Yes	Investigation	Yes	Eligibility Report and Investigation Report
27.	Cameroon: Petroleum Development and Pipeline Project, and Petroleum Environment Capacity Enhancement Project	September 25, 2002	Yes	Investigation	Yes	Eligibility Report and Investigation Report
28.	Philippines: Manila Second Sewerage Project (MSSP)	September 26, 2003	Yes	No recommendation, as the Requesters failed to satisfy a procedural criterion, that the Requesters had brought the subject matter to Management's attention and that, in the Requester's view, Management failed to respond adequately.	Yes	Eligibility Report
29.	Cameroon: Petroleum Development and Pipeline Project (not registered)	November 26, 2003	No	—	—	—
30.	Mexico: Indigenous and Community Biodiversity Project (COINBIO)	January 26, 2004	Yes	In fairness to all parties concerned, the Panel could not take a position on whether the Request merits an investigation and awaits further developments.	Yes	Eligibility Report

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	REQUEST (SHORT FORM)	REQUEST RECEIVED	REQUEST REGISTERED	INSPECTION PANEL RECOMMENDATION	RECOMMENDATION APPROVED BY THE BOARD	PANEL'S ACTIVITY
31.	Colombia: Cartagena Water Supply, Sewerage, and Environmental Management Project	April 20, 2004	Yes	Investigation	Yes	Eligibility Report and Investigation Report
32.	India: Mumbai Urban & Transport Project	April 28, 2004	Yes	Investigation	Yes	Eligibility Report and Investigation Report
33.	India: Mumbai Urban Transport Project—Gazi Nagar	June 29, 2004	Yes			
34.	Pakistan: National Drainage Program Project	September 10, 2004	Yes	Investigation	Yes	Eligibility Report and Investigation Report
35.	Burundi: Public Works and Employment Creation Project	September 17, 2004	No	—	—	—
36.	Cambodia: Forest Concession Management and Control Pilot Project	January 28, 2005	Yes	Investigation	Yes	Eligibility Report and Investigation Report
37.	Democratic Republic of Congo: Transitional Support for Economic Recovery Credit Operation (TSERO) and Emergency Economic and Social Reunification Support Project (EESRSP)	November 19, 2005	Yes	Investigation	Yes	Investigation Ongoing
38.	Honduras: Land Administration Project	January 3, 2006	Yes	Investigation	Yes	Investigation Report
39.	Romania: Mine Closure and Social Mitigation Project	January 6, 2006	Yes	In fairness to all parties concerned, the Panel could not take a position on whether the Request merits an investigation and awaits further developments.	Yes	Eligibility Report
40.	Nigeria: West African Gas Pipeline Project	April 27, 2006	Yes	Investigation	Yes	(First) Eligibility Report and Final Eligibility Report; Investigation Ongoing
41.	Brazil: Paraná Biodiversity Project	July 10, 2006	Yes	No investigation	Yes	(First) Eligibility Report and Final Eligibility Report
42.	Argentina: Santa Fe Infrastructure Project	August 28, 2006	Yes	No recommendation, as the Requesters failed to satisfy a procedural criterion, that the Requesters had brought the subject matter to Management's attention and that, in the Requester's view, Management failed to respond adequately.	Yes	Eligibility Report
43.	Argentina: Provincial Road Infrastructure Project	September 21, 2006	Yes			

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REQUEST (SHORT FORM)	REQUEST RECEIVED	REQUEST REGISTERED	INSPECTION PANEL RECOMMENDATION	RECOMMENDATION APPROVED BY THE BOARD	PANEL'S ACTIVITY
44. Uganda: Private Power Generation Project	March 5, 2007	Yes	Investigation	Yes	Eligibility Report; Investigation Ongoing
45. India: Uttaranchal Decentralized Watershed Development Project	March 7, 2007	Yes	In fairness to all parties concerned, the Panel could not take a position on whether the Request merits an investigation and awaits further developments.	Yes	Eligibility Report
46. Albania: Power Sector Generation and Restructuring Project	April 30, 2007	Yes			

## **ANNEX III**

Source: Adapted from World Bank Inspection Panel, *Annual Report, July 1, 2006, to June 30, 2007*, pp. 17-20. Reprinted with Permission of the Inspection Panel

### **THE INSPECTION PANEL**

#### **PANEL PROCESS**

The Panel's process is straightforward. Any two or more individuals or groups of individuals who believe that they or their interests have been or are likely to be harmed by a Bank-financed Project can request that the Panel investigate their complaints. After the Panel receives a Request for Inspection, it is processed as follows:

- The Panel determines whether the Request is barred from Panel consideration.
- If not, the Panel registers the Request—an administrative procedure.
- The Panel promptly notifies the members of the Board that a Request has been received and sends the Request to them and to Bank Management.
- Bank Management has 21 working days to respond to the allegations of the Requesters.
- Upon receipt of Management's Response, the Panel conducts a review in 21 working days to determine the eligibility of the Requesters and the Request for an Investigation.
- The Panel delivers its Eligibility Report and any recommendation on an Investigation to the Board for its approval on a no-objection basis.
- If the Panel does not recommend an investigation, the Board of Executive Directors may still instruct the Panel to conduct an investigation if warranted.
- After the Board's approval of the Panel's recommendation, the Requesters are notified.
- Shortly after the Board decides whether an investigation should be carried out, the Panel's Report (including the Request for Inspection and Management's Response) is publicly available at the Bank's InfoShop and the respective Bank Country Office, as well as on the Panel's Web site (<http://www.inspectionpanel.org>).
- If the Board approves the Panel's recommendation for an investigation,<sup>36</sup> the Panel undertakes an investigation. The investigation is not time bound.
- When the Panel completes an investigation, it sends its findings on the matters alleged in the Request for Inspection to the Board and to Bank Management for its response to the Panel findings.
- Bank Management then has six weeks to submit its recommendations to the Board on what, if any, actions the Bank intends to take in response to the Panel's findings.
- The Board then takes the final decision on what should be done based on the Panel's findings and Bank Management's recommendations.

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<sup>36</sup> See Conclusions of the Board's Second Review of the Inspection Panel, paragraph 9: "If the Panel so recommends, the Board will authorize an investigation without making judgment on the merits of the claimant's request..." See, 1999 Clarification, available at the Inspection Panel's homepage (<http://www.inspectionpanel.org>) and included in Annex I of this report.

- Shortly after the Board's decision, the Panel's Report and Management's Recommendation are publicly available through the Inspection Panel's Web site and Secretariat, the Bank's InfoShop, and the respective Country Office.
- The Panel's Report, Management's Response, and the press release concerning the Board's decision are posted on the Panel's Web site (<http://www.inspectionpanel.org>).

***Who may submit a Request for Inspection?***

- Any two or more persons directly affected by a Bank-supported Project.
- Local representatives on behalf of directly affected persons with proper proof of authorization.
- Subject to Board approval, a non-local representative (in exceptional circumstances where local representation is not available) may file a claim on behalf of locally affected persons.
- An Executive Director.

***What are the criteria for recommending an Investigation?***

- The affected party consists of any two or more persons in the borrower's territory who have common interests or concerns.
- The Request asserts that a serious violation by the Bank of its operational policies and procedures has, or is likely to have, a material adverse effect on the Requester.
- The Request asserts that its subject matter has been brought to Management's attention and that, in the Requester's view, Management has failed to respond adequately in demonstrating that it has followed or is taking steps to follow the Bank's policies and procedures.
- The matter is not related to procurement.
- The related loan has not been closed or more than 95 percent disbursed.
- The Panel has not previously made a recommendation on the subject matter or, if it has, the Request asserts that there is new evidence or circumstances not known at the time of the previous Request.

**FIGURE 1**  
**INSPECTION PANEL PROCESS**

