

The Inspection Panel

International Bank for Reconstruction and Development

International Development Association
Report

August 1, 1994 to July 31, 1996

World Bank Inspection Panel.
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of the International Bank for Re-
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, International Development
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International Bank for Reconstruction and Development

International Development Association

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Overview

The independent Inspection Panel is a three-member body created in 1993 to provide an independent forum to private citizens who believe that they or their interests have been or could be directly harmed by a project financed by the International Bank for Reconstruction and Development (IBRD) or the International Development Association (IDA)—together referred to as the “Bank”. The Panel’s authority comes from identical Resolutions (IBRD No. 93-10 and IDA 93-6) (“Resolution”) adopted by the Executive Directors of both institutions (“Board”).

There has never before been a body of this kind to give voice to private citizens in this international context. Therefore, the Panel’s structure and its operations had of necessity to be innovative and will be evolving as the Panel develops experience in carrying out its work. The Panel’s current method of functioning is laid out in Operating Procedures that the Panel members developed to implement the Board Resolution that created the Panel.

When the Panel receives a “Request for Inspection” about a Bank-financed project from affected people in a project area, the following steps are taken:

- The Panel sends the Request to Bank Management who prepare a response to the allegations and submit it to the Panel.
- The Panel makes a preliminary review of the Request, conducts an independent assessment of the merits of the Bank Management response to it, and recommends to the Bank Board whether or not the Request should be investigated.
- If the Board approves a Panel recommendation to investigate, the Panel then proceeds with the investigation.
- When the Panel finishes an investigation, it sends its findings to the Board as well as to Bank Management.
- The Bank Management then has six weeks to submit its recommendations to the Board on what, if any, actions the Bank should take in response to the Panel’s findings.
- Based on the Panel’s findings and the Bank Management’s recommendations, the Board then takes the final decision on what should be done.

What follows here is a report on the Panel’s structure, initial operations and experience over the first two years of the Panel’s existence. For convenience, the text of the Board Resolution and the Panel’s Operating Procedures are included in Annexes to this Report.

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Letter of Transmittal

This Report, which covers the period August 1, 1994 to July 31, 1996, has been prepared by the members of the Inspection Panel for the International Bank for Reconstruction and Development and the International Development Association in accordance with the Resolution establishing the Panel. This Report has been circulated to the President and the Executive Directors of both institutions.

The Panel members would like to take this opportunity to pay tribute to Lewis T. Preston and express appreciation for his support for the initial operations of the Panel until his untimely death on May 4, 1995. His successor, James D. Wolfensohn, has continued this support and highlighted the importance of the initiative as an integral part of his strategy for transparency, openness and accountability in Bank operations.

Ernst-Günther Bröder
Chairman

July 31, 1996

Introduction

On July 31, 1996 we completed our first two years as members of the independent Inspection Panel ("Panel") for the IBRD and IDA (collectively "Bank"). This report highlights successes and difficulties of an unprecedented international function whose practical application is still evolving.

During these first two years many of the benefits intended by the Board of Executive Directors ("Board") when creating an inspection mechanism have been realized. Direct results include:

- Providing some affected people with a formal mechanism to voice their concerns—particularly in the environmental and social areas.
- Providing Bank Management and the Board with the results of an independent review of controversial Bank projects.
- Enhancing public confidence in the Bank's commitment to greater transparency and accountability.

The Panel's experience with two major Requests for Inspection also highlighted operational deficiencies in project monitoring, enforcement of loan/credit covenants, and observance of policies and procedures. Efforts to deal with these institutional goals, stimulated by the Panel's existence and operation, include:

- More focus on supervision of project implementation and monitoring.
- Management's increased internal observance of Bank policies and procedures—although the Panel observes that their plethora and detail makes full application at times unrealistic.
- Internal response and constructive reaction to the public's criticisms of aspects of specific proposed or ongoing Bank projects.

The Panel started operations in August 1994 and in September published "Operating Procedures" to explain and regulate its role and processes. During the first two years we devoted a significant amount of time to (a) responding to requests for information on the Panel's role and function, (b) processing specific Requests for Inspection ("Requests"), and (c) advising potential Requesters.

Five formal Requests were received. The processing of two—one on the proposed Arun III Hydroelectric Project in Nepal, the other on the Rondonia Natural Resources Management Project in Brazil—required extensive use of Panel resources. This helped define our role in relation to the Board, Bank Management, outside parties and the particularly important relationship with locally affected people.

Public criticism of aspects of these two projects had gone on for years. To our knowledge, the intervention of the Panel as an independent body was instrumental in channeling this criticism into a formal debate and promoting constructive commitments from all parties concerned. In both cases, the Requesters saw the outcome of the process as positive. The President decided to withdraw IDA's support for the Arun III project. The final outcome in the Rondonia Request is pending while Bank Management and implementing agencies, with the participation of NGOs, are taking corrective measures. The Board decided to review Management's progress later this year and will invite the Panel to assist in that review.

The independent intervention of the Panel in these two major controversies clearly averted potential material damage at the local level. Nonetheless, the Panel met with unforeseen difficulties in establishing the eligibility of Requesters. We believe this was because of a misperception that the Panel's role was to accuse the Bank of violations of policies and procedures and an apparently mistaken assumption that Requests would come to the Panel with a full analysis of Bank policy violations. In fact the Panel's function is triggered by an allegation of damage. Requesters on the ground do not know what Bank policies say—rather, they know when damage has or is likely to occur to their livelihood and their prospects for the future.

From the outset we have sought constructive solutions for all interested parties when dealing both with formal Requests and with potential Requesters. We avoided any negative accusatory role and instead shifted the focus to the Panel's fundamental task—determining the existence and extent of alleged damage.

The Resolution outlined the general procedure for processing Requests. In a practical, day-to-day context, the Bank's Board applied the Resolution on a case by case basis as the processing of Requests

emerged. This pragmatic approach by the Board set the stage for the formal review of the Panel function. The Resolution calls for this review to be done at the end of the first two years of the Panel's operation. Recently the Board began this formal review.

Both the public and the Bank staff viewed the establishment of an independent Panel with some skepticism. But that skepticism has had a positive effect on the direction of the Panel's evolution in the past two years by reinforcing the need to have a genuinely independent body with an arm's length, even-handed perspective.

We sincerely value the confidence in our independence expressed by the Board, the President, Management and Staff, the Requesters, NGOs, the public and development experts.

Ernst-Günther Bröder
Alvaro Umaña Quesada
Richard Etter Bissell

Panel Composition

The Panel consists of three members who were appointed by the Board in April, 1994, on the basis of qualities set out in the Resolution—"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 living conditions in developing countries." The terms of the first appointees—Mr. Ernst-Günther Bröder, a German national, Mr. Alvaro Umaña Quesada, a Costa Rican national, and Mr. Richard Bissell, a United States national—are staggered respectively for five, four and three years. Future members will each serve one five-year term. To further guarantee independent judgment, Panel members are prohibited from future employment with the Bank.

The first chairperson, Mr. Ernst-Günther Bröder, was appointed by the Executive

Directors for the first year. Thereafter, the Panel members are required to select their Chairperson. Mr. Bröder was subsequently elected by the Panel to serve as Chairman for the second year and Mr. Bissell for the year beginning August 1, 1996.

Secretariat. The Panel has a Secretariat, headed by an Executive Secretary, which provides administrative support to the Chairman and Panel members; helps in the processing of Requests, and coordinates other activities such as information dissemination, requests for information, Panel consultations inside and outside the Bank, and disclosure processes. The Bank's President in consultation with the Board assigned Mr. Eduardo G. Abbott, a Chilean national, as Executive Secretary of the Secretariat, which consists of an Assistant Executive Secretary and two office staff.

BOX 1. Inspection Panel Members

Dr. Ernst-Günther Bröder is the former President of the European Investment Bank (EIB) (1984-1993), where he also served as a director from 1980-1984. He held several supervisory and consultative functions in international banks and other institutions. Dr. Bröder was a Governor of the European Bank for Reconstruction and Development from 1991-1993, and a member of the special advisory group for the Asian Development Bank in Manila from 1981-1982. He is a member of the Panel of Conciliators for the International Centre for Settlement of Investment Disputes, Washington. Before being appointed President of the EIB he served from 1964-1984 with the Kreditanstalt für Wiederaufbau in Frankfurt, where he was a member of the Managing Board from 1975-1984 and a spokesman since 1980. He has written and co-authored several books and articles on financial and economic subjects. Dr. Bröder holds a Doctorate in Economics from the University of Freiburg, and studied political and natural sciences at the Universities of Cologne, Mainz, and Paris.

Mr. Alvaro Umaña Quesada is Professor and Director of the Natural Resources Management Program at INCAE, a Latin American Graduate School of Management. He served as Costa Rica's first Minister of Natural Resources from 1986-1990 under President Arias. Mr. Umaña is a member of the Board of the Rockefeller

Foundation and the World Resources Institute. He has published several books and many technical articles on energy, economics of natural resources and environment. Mr. Umaña is a private entrepreneur in the ecotourism and conservation areas and is involved in sustainable wildlife reproduction and export. Mr. Umaña holds a Ph.D. in Environmental Engineering and a Master in Economics from Stanford University. He also holds a Master's Degree in Environmental Pollution Control and a Bachelor's Degree in Physics from Pennsylvania State University.

Mr. Richard Etter Bissell is a former senior official with the U.S. Agency for International Development (USAID). Currently a Research Fellow at the American University, he focuses on issues of aid policy, particularly in Africa and Asia. He founded and served as a senior manager of a high-technology pollution monitoring company with world-wide sales. He served at USAID from 1986-1993, as head of policy and later as director of Science and Technology, and was previously a professor at several U.S. universities, including Georgetown University and the University of Pennsylvania. Between 1984 and 1986, he was editor of The Washington Quarterly. He has published widely, in both books and articles, on political economy in developing countries. He was educated at Stanford University, and took his Ph.D. at the Fletcher School of Law and Diplomacy, Tufts University.

Initial Operations

The Panel members took office on August 1, 1994 and its office opened for business in September 1994.

Operating Procedures

To ensure maximum transparency of its operations, procedures and processes, the Panel gave priority to providing detailed public information on how Requests would be processed and guidance on how to file Requests. In this context, the Panel formulated operating and administrative procedures. Because of the obvious lack of national or international precedents, the initial operating and administrative procedures are provisional.

The Operating Procedures were adopted by the Panel on August 19, and published and circulated to the Board on September 7, 1994. They are intended to provide detail to operational provisions of the Resolution creating the Panel. They also explain how the Panel discloses information to Requesters and the public during the processing of Requests. The text of the Resolution is in ANNEX 1 and the Panel Operating Procedures are in ANNEX 2 of this Report.

Administrative Procedures, designed to regulate the internal administration of the Panel, were developed and adopted at the same time.

Information Activities

The Panel has made every effort to keep its processes open and transparent—consistent with the new public disclosure policy adopted by the Bank's Board in 1993, which was intended to increase transparency and accountability in World Bank operations.

Information about the existence, purposes and the procedural steps required for—and limits to—the Panel's intervention in response to Requests is disseminated mainly through the Operating Procedures, which also include the text of the Resolution. The Procedures are available on the Internet, at World Bank offices and to participants at the Bank's Annual Meetings. Translations into Spanish, Portuguese and French are available on request at the Panel's office.

Processing of Requests. In an effort to deal transparently with Requests, the Panel introduced a Register. There the Executive Secretary records the dates and all actions taken in connection with the processing of a Request, as well as the dates on which any document or notification under the Panel procedures is received in or sent from the Panel's Office. This Register is open to the public. Similar information is also disseminated through the Internet to ensure wider disclosure.

A notice that a Request has been registered and all other notices or documents issued by the Panel are made available to the public at: (1) the Bank's Public Information Center in Washington, D.C.; (2) the Bank's Resident Mission in the country where the project relating to a Request is located or at the relevant regional office; and (3) at the Bank's Paris, London and Tokyo offices.

Documents relating to each Request are made available to the public by the Bank when permitted by the Resolution. Under Paragraph 25 of the Resolution, Requests for Inspection, Panel Recommendations and Board decisions are to be made available to the public *after* the Executive Directors have considered a Panel recommendation on, and/or the results of, an investigation.

World Bank Annual Meetings. The Panel began participating in the World Bank Annual Meetings in 1994. Its office was the focal point for individual meetings with Government officials, private organizations and citizens and numerous NGO representatives. In addition several meetings were held with individual Executive Directors.

Panel members participated in open meetings with representatives of a substantial number of NGOs from several developing and industrialized countries. These meetings were aimed at improving the NGO community's understanding of the precise role and the nature of Panel operations, and to explain who may file a Request and how to do it. Copies of the Operating Procedures were widely available.

At the 1995 Annual Meetings in Washington, D.C., the Panel was involved in similar consultations, including one with NGOs interested in reviewing the first year of Panel operations.

Public Inquiries

Responding to general and specific questions accounted for a significant portion of the Panel's workload.

General Information. During the first two years there was a heavy demand for general information on the Panel and its activities from the press, NGOs and other organizations, academics, Bank staff and others. In response, copies of the Operating Procedures—including French, Spanish and Portuguese translations—were provided, as were further clarifications when requested.

In addition, both members and staff of the Panel were invited to participate in seminars and meetings with academics, NGOs and Bank staff.

Specific Queries. The Panel office received a proliferation of questions on both the substance and processing of all five Requests filed as well as many other queries related to ongoing and proposed Bank projects.

Internet Queries. To help the public become more aware of its function, the Panel created an Internet home page in 1994, which offers a broad range of information on the Panel and on Requests. (See ANNEX 3.) Internet queries have proven to be a powerful additional medium for the Panel to communicate with the public. While recognizing that direct access by potentially affected people at the local level around the world is limited, provision of information on the Internet has in general evidently either answered queries or educated users. On the average more than one hundred files a day have been transmitted to more than 55 countries via the Internet.

Documents. ANNEX 3 of this report contains a list of Panel documents. The list does not include academic and other commentaries on the creation and operations of the Panel.

Requests for Inspection

BOX 2. Procedure for Filing Requests for Inspection.

At minimum Requesters must show that they:

- live in or represent people in the project area
- are or are likely to be affected adversely by project activities
- believe that actual or likely harm results from failure by the Bank to follow its policies and procedures
- discussed their concerns with Bank Management and are not satisfied with the reaction.

Detailed steps are explained in the Panel's Operating Procedures and the attached Model Request Form, the text of

which is attached to this report as ANNEX 2.

Comment: The five formal Requests received have been in the form of sophisticated legal documents aimed at addressing all the complex filing requirements in the Resolution and reflecting considerable study and analysis of Bank policies and procedures. This was expensive and time consuming and did not necessarily focus on what the Panel needed to know. The Panel anticipated receiving statements or short letters along the lines suggested in the Model Request Form attached to its Procedures. To ensure access to the Panel by those intended and to allow concerns to be heard as quickly and expeditiously as possible, the Panel expects in the future to receive simply essential factual information.

BOX 3. Note on Processing Requests for Inspection

According to the Resolution, after the Panel receives a Request:

- The Panel sends the Request to Bank Management who prepare a response to the allegations and submit it to the Panel.
- The Panel makes a preliminary review of the Request, and of the merits of the Bank Management response to it and recommends to the Bank Board whether or not the Request should be investigated.
- The Board then meets to decide on whether to accept or reject a Panel recommendation.
- After the Board has considered the Panel's preliminary review and recommendation it is made public as is the Request. The Resolution is silent on release of the Management Response.
- If the Board approves a Panel recommendation to investigate, the Panel then proceeds with the investigation.
- When the Panel finishes an investigation, it sends its findings to the Board as well as to Bank Management.

- The Bank Management then has six weeks to submit its recommendations to the Board on what, if any, actions the Bank should take in response to the Panel's findings.
- Based on both the Panel's findings and the Bank Management's recommendations, the Board then takes the final decision on what should be done.
- A Panel investigation report as well as Management recommendations are made public after the Board decision.

Comment: During the processing of all Requests, the Bank Management gives the Panel unlimited access to files and upon request, provides other records. The Panel maintains constant contact with representatives of the Requesters, frequently asking them to clarify statements or provide further information. The Requesters generally seek detailed explanations of every step in the process. Panel members visit project sites to hear concerns of groups of locally affected people. In addition, the Panel meets with Bank staff and Management as needed. All correspondence from interested members of the public is carefully reviewed and taken into consideration.

The outlines that follow show the continuously evolving process for dealing with Requests through first, processing the five formal Requests received and, second, responding to representatives of potential Requesters through numerous informal consultations on filing specific Requests.

Formal Requests

REQUEST NO. 1: NEPAL: PROPOSED ARUN III HYDROELECTRIC PROJECT

In October 1994 the Panel received its first formal Request. It concerned the proposed Arun III Hydroelectric project and restructuring of a 1989 IDA Credit (No. 2029) which had been extended to Nepal for construction of an access road over the hills to the future hydroelectric dam site in the Arun Valley. The proposal was to restructure the Credit to finance an alternative access road through the Arun Valley.

The Request was submitted by a citizens group from Katmandu as well as people living at the project site claiming to be adversely affected by the 1989 Credit for the hill access road. The Requesters claimed harm or potential harm through alleged non-compliance by IDA with inter-alia five operational policies and procedures: economic evaluation of investment operations, disclosure of information policy, environmental assessment, involuntary resettlement and indigenous peoples.

On November 22, 1994, Bank Management responded to the Request and reported to the Panel that it had complied with all requirements of such policies and procedures.

1st Stage—Preliminary Review

After one of the Panel members had met with the Requesters and others in Nepal, the Panel completed its preliminary review of the

Request and Management Response and sent its report to the Board on December 16, 1994. The members of the Panel unanimously found that apparent violations of IDA policy existed and recommended further investigation in three areas: environmental assessment, involuntary resettlement, and treatment of indigenous peoples.

The Panel did not recommend further investigation of two areas:

- (i) Disclosure of Information Policy. In its preliminary review the Panel stated that although there was a formal non-compliance with the provisions of BP 17.50, the disclosure policy was evolving so rapidly during the later phases of project preparation that full compliance may not have been feasible. On this issue, the Panel concluded that an investigation by the Panel was not warranted because it would not add to the facts and policy violations established in its preliminary review.
- (ii) Economic Analysis of Project Alternatives. On compliance with policy directives on economic analysis of project alternatives, including environmental and social aspects, the Panel concluded that the Bank Management response did "not demonstrate that equivalent levels of effort were devoted to alternative economic analysis. In light of the decision to change the route of the access road, the extensive environmental assessments that had been undertaken for Arun III have to be updated. The cost of the project, greater than one year's budget for the Kingdom of Nepal, will have an extensive impact on living conditions through the country. This suggests that if a more exhaustive study of alternatives is made, it would enable Management to deal with the numerous nega-

tive side effects ... even if immediate construction of Arun III were the preferred option. The absence of a close examination of the alternatives makes it difficult for this Panel to draw more than *prima facie* conclusions in that regard."

On the question of the adequacy of alternative economic analysis, the Panel concluded an investigation was not warranted—since the Panel could do no more than point out the shortcoming based on the facts established in the preliminary review. In addition the Panel considered an investigation inappropriate since the extensive work needed—examination of alternatives—is clearly a Bank Management, not a Panel function.

The Resolution envisaged that the next step would be a decision within the usual 2-3 weeks by the Board on whether or not they would authorize the recommended investigation. In fact a number of additional steps were taken before the Board made a decision:

- At the Board meeting of December 20, 1995 the IDA Management offered a status report on the proposed project.
- Following a suggestion by an Executive Director, the Senior Vice President and General Counsel, on January 3, 1995, provided the Board with a Legal Opinion on the "Role of the Inspection Panel in the Preliminary Assessment of Whether to Recommend Inspection."
- In response to a question by an Executive Director, on January 9, 1995 the Panel provided an informal note to the Board summarizing its recommendation. On the same date the Panel met informally with the Board to discuss the recommendation. At this meeting the Panel was advised that Management had offered to provide detailed

project information not included in its November 22, 1994 Response. The Board agreed that Management would furnish the Panel with more information on IDA's actions with regard to the alleged violations of IDA policies claimed in the Request, and following a review by the Panel, that the Board would act on the Panel's recommendation by the end of January.

- As requested, the Panel then had meetings with Management and staff and received a number of documents deemed by Management to be further evidence of compliance with IDA policies or of its current efforts to take remedial action in order to comply fully with such policies.
- After thorough consideration of the documents received, and in light of the discussions with Management, the Panel decided to reiterate its original recommendation for an investigation on possible violations of IDA policies relating to environmental assessment, involuntary resettlement and indigenous peoples—as set forth in its December 16, 1994 Report and informal note of January 9, 1995. This recommendation was contained in a Memorandum to the Board dated January 20, 1995.

In this Memorandum the Panel reiterated its conclusion that "with regard to [alternative] economic analysis, the application of the relevant policies by IDA to Arun III generates continued concern on the part of the Panel, particularly in light of additional information provided by Management. It also believes that an investigation of environmental risks—environmental assessment, involuntary resettlement and indigenous peoples issues—would shed useful light on the overall economic analysis, as called for in

operational policies on the latter."

The Panel estimated that an investigation as proposed would need approximately three months. The exact length would be subject inter-alia to: the extent of cooperation the Panel received from Management and the proposed borrower; other factors including actual progress in the then current efforts being made by the Government and IDA to update the Regional Action and Indigenous Peoples Plans; and, the time required to reach an agreement on resettlement issues arising out of expropriation actions already taken in preparation for construction of the hill access road now to be abandoned in favor of a valley access road.

The Panel also informed the Board that it felt that efforts by the Government and IDA should be pursued concurrently with the proposed investigation.

- On January 31, 1995, IDA Management sent "Background Material relevant to the recommendations put forward by the Inspection Panel in their Memorandum ...dated January 20, 1995."

Board Decision

On February 2, 1995, the Board, after extensive deliberations accepted the Panel's unanimous recommendation that the allegations of damage resulting from apparent violations of IDA policies—in the areas of environmental assessment, involuntary resettlement and indigenous peoples—had to be investigated. Specifically, the Board authorized the Panel to investigate (1) the consistency of the determination of the road alignment with Operational Directive 4.01 (Environmental Assessment); (2) the consistency of the treatment of indigenous peoples, if any, with Operational Directive 4.20 (Indigenous Peoples); and (3) the consistency of arrangement for compensating seriously affected

families for land acquired by the Government with OD 4.30 (Involuntary Resettlement).

The Board asked the Panel to "take into account information and studies subsequently provided by the Government of Nepal, the Bank and other cofinanciers, as well as any remedial measures agreed by Nepal and the Bank, and taking into account the complexities of the issues involved, will examine whether the requirements of the above-mentioned ODs were observed in substance."

Because a new Government had been elected in Nepal during the period between the filing of the Request and this decision, the Board instructed the Panel to commence field work only after the Bank received a decision from the new Government of Nepal on the Bank's financing of the Project.

On the same day the Board decision was made public through a World Bank News Release and by the Panel through Internet. Then the Request for Inspection and the Panel's Reports to the Board were made public.

2nd Stage—The Investigation

To avoid delays while the recently elected Government of Nepal considered whether to reiterate Nepal's request for project financing, the Panel decided to divide the investigation into two phases, i.e. a desk study in Washington followed by field work subject to the Government's decision.

The Requesters, as well as a number of concerned NGOs expressed dissatisfaction that there was no investigation of compliance with economic analysis and disclosure policies. By letter dated February 22, 1995 the Requesters called for an investigation into these two areas.

On March 16, 1995 Bank Management informed the Panel that the Government of Nepal had requested IDA's financing. After

this the Panel requested a progress report from Management.

On March 31, 1995 the Panel sent the Board a note summarizing the status of the investigation. The Panel concluded at this stage that work was now in progress in the three areas where the investigation was authorized; Management's agreement to take remedial actions and the work in progress seemed to indicate that it intended to observe the requirements of the three policies; and, to avoid delays, duplication of time and financial resources, the Panel's planned field investigation would be postponed to allow time for Management to take or propose remedial measures which the Panel could then take into account when assessing compliance.

The public was informed of the status of the investigation through a Panel Press Release on April 11, 1995.

After receiving a report from Management on proposed remedial measures, the Panel, with the consent of the Government of Nepal conducted a site investigation. Two Panel members walked through areas proposed for the access road through the Arun valley where they consulted with local populations through public and individual meetings.

The Panel completed its investigation in June 1995 and sent its report to the Board and to the President of IDA on June 21, 1995. The Panel stated that "based on its assessment of the proposed remedial measures the Panel concludes that IDA is moving towards and intends to comply in substance with the requirements of the three operational directives" and that the "specific remedial measures proposed by management of the Bank appear to be adequate as long as they continue to be consistent with the specific operational directives and appropriate follow-up mechanisms are introduced". The Panel also

stated that the Bank needed to pay attention to remedial measures relating to implementation and whether these measures "could be implemented in the time frame proposed for construction of the project taking into account the existing institutional capacities in Nepal".

In the report, the Panel reiterated its concern about the lack of equivalent levels of effort devoted to alternative economic analysis particularly in view of the size and sequencing of the proposed project in relation to the overall economic and institutional framework of the country.

The next step in the process calls for the Management to submit to the Board for their consideration within six weeks, a report indicating its recommendations in response to the investigation findings.

After receipt of the Panel's investigation report Bank Senior Management reassessed the project as proposed and upon their recommendation, the Bank's President informed the Board on August 2, 1995 that he had decided not to proceed with the project.

In this response to the Panel's investigation report the Bank's President stated that the Management was in broad agreement with the Panel's findings and conclusions. Given the decision not to support the project the President, noting that it was not necessary to elaborate on the corrective measures Management had proposed, stated however that "the highly appreciated work of the Inspection Panel on the Arun III Hydroelectric project remains relevant to the Bank's work generally and to future Bank investments in the power sector of Nepal in particular". The President informed the Board that he had assured the Nepalese authorities that IDA attached the highest priority to supporting Nepal in devising and implementing an alternative strategy for meeting its needs for electric power.

The Panel's investigation report was made public after the Board was formally informed of the President's decision.

REQUEST NO. 2: COMPENSATION FOR EXPROPRIATED FOREIGN ASSETS IN ETHIOPIA

In April 1995 the Inspection Panel received a Request alleging that IDA failed to observe the provisions of Operational Manual Statement 1.28 when it granted several credits to Ethiopia and now was negotiating more financial assistance with the Transitional Government of Ethiopia ("TGE"), even though TGE had refused to deal with the Requesters' claim for compensation for a previous government's expropriation of their assets and blocking of their bank accounts. The Panel did not accept this request because (1) the Requester had not exhausted local remedies before submitting the Request (2) the Requester failed to establish how this lack of compensation was the consequence of any alleged acts or omissions of IDA, as required by paragraph 12 of the Resolution. For further details relating to this Request see ANNEX 4.

REQUEST NO. 3: EMERGENCY POWER PROJECT IN TANZANIA

In this instance, the Requesters claimed that financing to be provided under IDA Credit 2489-TA (Power VI Project) to buy and install emergency power generating units was against IDA's Articles of Agreement because private sector financing was available on reasonable terms (from the firm they owned or worked for).

The Panel did not recommend an investigation because it found during its preliminary review that the Bank Management had considered the alternative financing proposed by the Requesters and adequately

reported on it to the Executive Directors before they approved IDA's financing under the existing Credit. The Requesters also claimed potential harm as a result of an alleged violation of environmental policies. The Panel found that the Requesters were not eligible to file that claim since they could not possibly be harmed directly by the alleged violation.

The Panel made its decision and sent its report to the Board on August 15, 1995, after careful review and consideration of the Request, of the evidence and other information provided by the Requesters, by Tanzanian Government officials, IDA Management in its Response to the Request and of the Panel member's report on his visit to Dar es Salaam.

The Board approved the Panel's recommendation not to investigate on a no-objection basis on September 11, 1995.

REQUEST NO. 4: BRAZIL: RONDONIA NATURAL RESOURCES MANAGEMENT PROJECT ("PLANAFLORO")

Early in 1992 the Bank approved a loan (No. 3444BR) to Brazil to support the above project in Rondonia known locally as PLANAFLORO. Implementation of the environmental and social components of a series of Bank-financed projects in Rondonia in the 1980s—known as POLONOROESTE—had been neither adequate nor implemented. PLANAFLORO, intended to redress this failure, was designed in accordance with strengthened Bank environmental and social policies and procedures introduced in the late 1980s/early 1990s. This was meant to be a showcase project for a new era in Bank lending for sustainable development.

Communities previously adversely affected in Rondonia by the POLONOROESTE program expected beneficial effects from the implementation of PLANAFLORO according to the standards and timetable agreed by the

Federal and State governments and the Bank. But expectations were not met.

On June 14, 1995 intended beneficiaries living in the project area—such as rubber tappers and indigenous peoples—represented by local non-governmental organizations ("NGOs"), requested the Panel to investigate the Bank's failure to enforce its commitment to prevent further damage to their land, incomes and health.

The Requesters' fundamental complaint was that PLANAFLORO—intended to benefit fragile communities and the natural environments they depend on for their livelihood—had not been adequately implemented since Board approval three and a half years ago especially since the Closing Date of the Loan was December 31, 1996.

The Requesters claimed that the project design of PLANAFLORO and the Bank's lack of enforcement of several project covenants had resulted in the damage claimed. They alleged that such acts and omissions violated the Bank's policies on indigenous peoples, forestry, investment lending, accounting, financial reporting and auditing, project monitoring and evaluation, procurement, wildlands, use of consultants, project supervision, borrower compliance with audit covenants, suspension of disbursements, and involvement of NGOs in Bank-supported activities.

Bank Management response to the Request, delivered to the Panel on July 19, 1995, acknowledged and explained a number of instances of lack of compliance with policies.

The Panel considered that an initial field study was required to assess the Requesters' claims of damage and the adequacy of the Management response. In August a Panel member consulted with the Government of Brazil, federal entities involved in PLANAFLORO, Rondonia State authorities and institutions, and people in the project area and their organizations. He interviewed

numbers of intended project beneficiaries.

On the basis of the Panel member's review and a preliminary review of project files and records the Panel concluded that the rights and interests of intended beneficiaries of PLANAFLORO may have been or are likely to be directly and adversely affected in a material way as a result of alleged failures in design, delays in the execution, and omissions in supervision or monitoring of PLANAFLORO.

The Panel acknowledged the effort—made by Bank Management in its response to the Request—to provide extensive information and a fair and realistic assessment of most of the project's difficulties and delays. However, the Panel was not convinced that there had been full compliance with policies and procedures. Nor was it convinced that proposed remedial measures were adequate in the instances where Management admitted failures. On August 17, 1995 the Panel recommended that the Board authorize an investigation.

The next step in the procedure outlined in the Resolution calls for a Board decision on whether to accept or reject the Panel recommendation. At its meeting on September 12, 1995, the Board concluded that it needed more factual information on which to base a decision on whether an investigation should be carried out. They instructed the Panel "to further substantiate the materiality of the damages and to establish whether such damages were caused by a deviation from Bank policies and procedures." The following additional steps were therefore taken:

- The Panel conducted an "Additional Review" of the complaints in the Request, taking into account further information from the Requesters, Bank Management and outside parties.
- At the end of November, the Bank Management presented the Panel with

a draft project progress report and "plan of action" to remedy past failures and refocus project design and implementation. This was discussed with the Panel on December 4, 1995.

- On December 8, 1995, the Panel sent a report on its Additional Review to the Board, with copies to Bank Management.

The Panel established that specific lessons of experience from POLONOROESTE, pointed out by the Bank's own Operational Evaluation Department (OED), had not been taken into account when designing PLANAFLORO.

The Panel pointed out that the draft "plan of action" presented by Management "pushes forward dates of compliance through actions and plans to be defined in the future." In its view, the project needed to be restructured "around a comprehensive and realistic assessment of available remedies and attainable objectives. To do so would necessarily take into account OED lessons of experience from POLONOROESTE and the past flaws and shortcomings of PLANAFLORO."

It also informed the Board that the situation for many intended beneficiaries is by and large worse than two years ago when the project started.

The Panel concluded that there was sufficient preliminary evidence of harm linked to policy violations to warrant an investigation. The Bank's policies and procedures included: Operational Manual Statement 2.34 and Operational Directive 4.20 on indigenous peoples; Operational Directives 10.70, 13.05 and 13.40 on supervision, monitoring and evaluation, on accounting and auditing, and on suspension of disbursements; Operational Directive 14.70 on NGO participation; and, Operational Manual Statement 2.12 and Operational Directive

13.40 on application of lessons of experience.

The Panel again recommended that the Board authorize an investigation and attached to its report a "Work Plan" which summarized the principal issues to be investigated.

- On December 20, 1995, Bank Management submitted to the Board its "Report on the Status of Implementation", which included a Plan of Action—agreed with the Federal and State Governments—to deal with the principal issues listed by the Panel in its Additional Review and proposed investigation "Work Plan".

Board Decision

On January 25, 1996 the Bank Board considered the Panel's Additional Review and Bank Management's Status Report and Agreed Plan of Action.

The Board decision—World Bank News Release (No. 96/537) summarizing the Decision of the Board—notes that the "President of the World Bank and Chairman of the Bank's Board concluded the meeting by thanking the Inspection Panel on behalf of the Executive Directors for providing invaluable insights and thorough assessment of the issues, which allowed staff and Management to critically examine responses to the difficulties faced in the implementation of this complex operation."

"In light of [the agreed] action plan and the follow-up now underway, the Executive Directors concluded it would not be advisable to proceed with the investigation as recommended by the Panel. However, in view of the complexity of the project and the desire of the Bank to help assure its success, the Executive Directors agreed to review Management's progress report in six to nine months and will invite the Inspection Panel to assist in that review."

On the same day the Board decision was made public through a World Bank News Release and by the Panel through Internet. Then the Request for Inspection, the Panel's Reports and Recommendation and the Management Response [and Report] were made public.

While there has been public criticism of the decision not to authorize an investigation into the Rondonia Request, the approach taken by the Board achieved a similar result: the Panel's Additional Review provided not only sufficient preliminary evidence of possible material harm but also the basis for corrective action—achieving in fact important objectives of the Request and Panel function.

REQUEST NO. 5: CHILE: PANGUE/RALCO HYDROELECTRIC COMPLEX

This Request, received in November 1995, came from a Chilean NGO, representing the people living in the project area. They allege that the International Finance Corporation's ("IFC") participation in the construction of the Pangue/Ralco complex of hydroelectric dams on the upper BioBío River violates a number of IFC and World Bank policies. The Chairman of the Panel informed the Requesters and Executive Directors of IBRD, IDA and IFC that the Request was inadmissible because the Panel has no authority to look at complaints about IFC projects. The IBRD/IDA Resolutions that established the Inspection Panel, restrict its mandate to review alleged violations of operational policies and procedures in the design, approval or implementation of projects financed by the IBRD or IDA only.

Although the Panel had to reject this Request, afterwards:

- Mr. Wolfensohn, as President of IFC, instructed IFC Management to conduct an impartial internal review of the

project. The results of this review are pending.

- The Executive Directors are reviewing a joint proposal for an inspection mechanism for IFC and MIGA projects.

Consultations on Potential Requests

The Panel received a continuous flow of queries from potential requesters. Most of the representatives of potential requesters asked for confidentiality, often to protect locally affected peoples' perceived fear of being identified. Although the confidential nature of these consultations does not allow provision of specific information, it can be noted that they related mostly to projects in the Africa, South Asia, East Asia, and the Latin America and Caribbean Regions—four of the Bank's six Regions.

The issues raised most frequently were on resettlement, environmental protection and rights of indigenous peoples, as well as matters outside the Panel's mandate, such as procurement issues raised by suppliers or contractors.

The complexity of potential requests varied widely. In most cases representatives lacked up-to-date project-specific information or were unfamiliar with the details of the many applicable Bank operational policies and procedures. The Panel, through its members and Secretariat, made its best efforts to facilitate access to the required information. Where appropriate, the Panel advised representatives to seek further discussion with relevant Bank Management and staff in the hope that constructive dialogue would resolve questions of alleged damage, thus avoiding the need to resort to a formal Request for Inspection. This approach seems to have succeeded: in several instances Bank Management has taken constructive steps to meet the Requesters' concerns, removing the need for formal Requests.

Lessons of Experience

Decisions of the Bank's Executive Directors

During the first year of Panel operations the Executive Directors clarified two provisions of the Resolution. Details are in ANNEX 4.

The first decision dealt with the exclusion from Panel scrutiny of procurement matters arising from the procurement of goods and services financed by the Bank.

The second decision supported the Bank Management's view that the Resolution does not give the Panel an absolute mandate to review the consistency of all Bank actions with its policies and procedures: it is only when they relate to the design, appraisal or implementation of specific projects financed or to be financed by the Bank. The Board also agreed with the Panel and Management view that the term "project" in the Resolution has the same meaning as used in Bank practice: which is that it includes loans supporting projects consisting of programs or activities other than specific physical works (e.g. structural adjustment loans and sector loans).

Panel Experience

The independent Panel's task is to determine whether alleged damage to locally

affected people or the environment has, or is likely to occur in connection with Bank-financed projects. This is a factual and technical exercise for which Panel members were carefully selected. Only when alleged damage is confirmed does the question of any failure to observe Bank policies arise. The Panel avoided a negative or accusatory focus by concentrating on the Requesters' real concern—the question of whether allegations of actual or potential harm are justified. This allows the Bank to take early corrective action.

Review of Panel Mechanism

In September 1995 the Board agreed that an informal review of the Panel's functions should start before the formal two-year deadline required by the Resolution. To this end the Board asked the Panel to prepare a working paper. The Panel proposed focusing its work on an examination of whether or not alleged damage had or was likely to occur prior to making any recommendation on an investigation to the Board. This would mean—as instructed by the Board in the Rondonia Request—that the Panel would conduct an assessment of harm at the outset and if necessary extend the preliminary review time-frame. The Board is reviewing this proposition.

The Panel observed that access to the new mechanism by potentially affected people themselves had proved difficult since they did not know of the Panel's existence. The Board recognized that efforts to inform locally affected people of the Panel's existence and role could be improved. The Board, Management and the Panel are discussing solutions to these issues.

The review, which will also examine whether and how the International Finance Corporation and the Multilateral Investment Guarantee Agency (the two other members of the World Bank Group) can fall under the Panel's mandate, is expected to be completed in fiscal year 1997.

Review of Operating Procedures

In the "Introduction" to the Operating Procedures the Panel indicated that it would review and revise the Operating Procedures, as necessary from experience gained in Panel operations. Consistent with this, the Panel has continuously explored ways to expedite

processing of Requests. In light of this experience, as well as the outcome of the current Bank Board review of Panel functions and constructive comments received from the public, the Operating Procedures will be revised in the coming months. In the meantime two particular areas for possible change have been identified:

(1) The Operating Procedures includes a two page model form for filing a Request. This was aimed at making it easier for locally affected people to access the Panel. However, this approach has not succeeded because the Resolution's demanding and multiple prerequisites for filing a Request have made it necessary for Requesters to call on seasoned international lawyers to prepare Requests.

(2) The Operating Procedures also tried to provide clear guidance on the novel procedural requirements for the processing of Requests. However, some details, in particular the addition of a "Registration" procedure, appear to have complicated rather than simplified the process and given rise to unforeseen legal questions at all stages from Requesters, Bank Executive Directors, Management and staff.

Budget

The Resolution provides that the "Panel shall be given such budgetary resources as shall be sufficient to carry out its activities". Due to the unprecedented nature of the Panel and the unpredictability of its operations, the Panel's annual funding level was tentatively set at about \$1.5 million for each of the first two years.

The administrative arrangements for the Panel provide for the Chairman to work on a full-time basis supported by a small secretariat. He calls on the two part-time Panel members on a case-by-case basis as required by the Panel's workload related to Requests, public inquiries and consultations as well as institutional and administrative matters. In practice the Panel has worked by consensus with the two part-time members fully involved in all activities related to Requests, informational, institutional and administrative matters. The Resolution provides that if the workload reaches a level that would make it reasonable for the Panel to recommend it, the Board would appoint one or both part-time members on a full-time basis. The Panel has not yet recommended this.

During the first years, the start-up work of the Panel demanded a substantial amount of work by all three Panel members and the Secretariat. Except to acquire empirical technical data in connection with the Rondonia Request, the Panel used in-house resources. This cost effective approach resulted in substantial savings in budgeted resources.

The demand-driven nature of the Panel's work requires a flexible budgetary strategy to ensure that sufficient resources are available to process all Requests received. At the same time, experience has demonstrated that significant cost containment can be achieved by relying on a small and efficient Secretariat to conduct the Panel's affairs. In spite of significant start-up costs, the handling of two complex Requests, an unpredictably high number of public inquiries and consultations and the participation of the whole Panel in the preparation of institutional and administrative documents, the Panel's FY 95 and FY 96 expenditures were nevertheless about one third under budget. ANNEX 5 contains a breakdown of the Panel's administrative and operational expenses for FY 1995 and 1996.

ANNEX 1

Resolutions of the Executive Directors Establishing the Inspection Panel

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. (This will be deemed to be the case when at least ninety-five percent of the loan proceeds have been disbursed.)
- (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 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.

ANNEX 2

Operating Procedures as adopted by the Panel on August 19, 1994

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INTRODUCTION

The Inspection Panel (the "Panel") is an independent forum established by the Executive Directors of the International Bank for Reconstruction and Development ("IBRD") and the International Development Association ("IDA") by IBRD Resolution No. 93-10 and the identical IDA Resolution No. 93-6 both adopted by the Executive Directors of the respective institutions on September 22, 1993 (collectively the "Resolution"). The text of the Resolution is in Annex 1. References in these procedures to the "Bank" includes the IBRD and IDA.

The Panel's authority is dictated by the Resolution: within that framework, these Operating Procedures are adopted by the Panel to provide detail to the operational provisions. The text is based on the Resolution and takes into account suggestions from outside sources.

In view of the unprecedented nature of the new inspection function the current procedures are provisional: the Panel will review them within 12 months, and in light of experience and comments received, will revise them if necessary; and will recommend to the Executive Directors ("Executive Directors") amendments to the Resolution that would allow a more effective role for the Panel.

Composition

The Panel consists of three Inspectors. At the outset, one Inspector, the Chairperson, will work on a full-time basis: the other two will work part-time. This arrangement is provisional. The Panel's workload will be dictated by the number and nature of requests received. If necessary, the Panel will recommend alternative arrangements to the Executive Directors.

Purpose

The Panel has been established for the purpose of providing people directly and adversely affected by a Bank-financed project with an independent forum through which they can request the Bank to act in accordance with its own policies and procedures. It follows that this forum is available when adversely affected people believe the Bank itself has failed, or has failed to require others, to comply with its policies and procedures, and only after efforts have been made to ask the Bank Management ("Management") itself to deal with the problem.

Functions

The role of the Panel is to carry out independent investigations. Its function, which will be triggered when it receives a request for inspection, is to inquire and recommend: it will make a preliminary review of a request for inspection and the response of Management, independently assess the information and then recommend to the Board of Executive Directors whether or not the mat-

ters complained of should be investigated. If the Board decides that a request shall be investigated, the Panel will collect information and provide its findings, independent assessment and conclusions to the Board. On the basis of the Panel's findings and Management's recommendations, the Executive Directors will consider the actions, if any, to be taken by the Bank.

Participants

During the preliminary review period—up to the time the Panel makes a recommendation to the Board on whether or not the matter should be investigated—the Panel will accept statements or evidence from (a) the Requester, i.e. either the affected people and/or their duly appointed representative, or an Executive Director; (b) Management; and, (c) any other individual or entity invited by the Panel to present information or comments.

During an investigation, any person who is either a party to the investigation or who provides the designated Inspector(s) with satisfactory evidence that he/she has an interest, apart from any interest in common with the public, will be entitled to submit information or evidence relevant to the investigation.

Administration

The Panel has approved separate Administrative Procedures which are available from the Office of The Inspection Panel.

Please note that all heading are for ease of reference only. They do not form part of these procedures and do not constitute an interpretation thereof.

I. SUBJECT MATTER OF REQUESTS

Scope

1. The Panel is authorized to accept requests for inspection ("Request(s)") which claim that an actual or threatened material adverse effect on the affected party's rights or interests arises directly out of an action or omission of the Bank as a result of a failure by the Bank to follow its own operational policies and procedures during the design, appraisal and/or implementation of a Bank financed project. Before submitting a Request steps must have already been taken (or efforts made) to bring the matter to the attention of Management with a result unsatisfactory to the Requester.

Limitations

2. The Panel is not authorized to deal with the following:
 - (a) complaints with respect to actions which are the responsibility of other

- parties, such as the 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/credit agreement, or from losing tenderers for the supply of any such goods and services, which will continue to be addressed by Bank staff under existing procedures;
- (c) Requests filed after the Closing Date of the loan/credit financing the project with respect to which the Request is filed or when 95% or more of the loan/credit proceeds have been disbursed; or
- (d) Requests related to a particular matter or matters over which the Panel has already made its recommendation after having received a prior Request, unless justified by new evidence or circumstances not known at the time of the prior Request.

II. PREPARATION OF A REQUEST

3. The Panel's operational proceedings begin when a Request is received. This section of the procedures is primarily designed to give further guidance to potential Requesters on what facts and explanations they should provide.

A. Who Can File a Request

4. The Panel has authority to receive Requests which complain of a violation of the Bank's policies and procedures from the following people or entities:

- (a) any group of two or more people in the country where the Bank-financed project is located who believe that as a result of the Bank's violation their rights or interests have been, or are likely to be adversely affected in a direct and material way. They may be an organization, association, society or other grouping of individuals; or
- (b) a duly appointed local representative acting on explicit instructions as the agent of adversely affected people; or
- (c) in exceptional cases, referred to in paragraph 11 below, a foreign representative acting as agent of adversely affected people; or
- (d) an Executive Director of the Bank in special cases of serious alleged violations of the Bank's policies and procedures.

B. Contents of a Request

5. In accordance with the Resolution, Requests should contain the following information:

- (a) a description of the project, stating all the relevant facts including the harm suffered by or threatened to the affected party;
- (b) an explanation of how Bank policies, procedures or contractual documents were seriously violated;

- (c) a description of how the act or omission on the part of the Bank has led or may lead to a violation of the specific provision;
- (d) a description of how the party was, or is likely to be, materially and adversely affected by the Bank's act or omission and what rights or interests of the claimant were directly affected;
- (e) a description of the steps taken by the affected party to resolve the violations with Bank staff, and explanation of why the Bank's response was inadequate;
- (f) in Requests relating to matters previously submitted to the Panel, a statement specifying what new evidence or changed circumstances justify the Panel revisiting the issue; and
- (g) if some of the information cannot be provided, an explanation should be included.

C. Form of a Request

Written

6. All Requests must be submitted in writing, dated and signed by the Requester and contain his/her name and contact address.

Format

7. No specific form is necessary: a letter will suffice. A Requester may wish to refer to the guidance and use the model form specifying required information. (Attached as Annex 2)

Language

8. The working language of the Panel is English. Requests submitted directly by affected people themselves may be in their local language if they are unable to obtain a translation. If requests are not in English, the time needed to translate and ensure an accurate and agreed translation may delay acceptance and consideration by the Panel.

Representatives

9. If the Requester is a directly affected person or entity representing affected people, written signed proof that the representative has authority to act on their behalf must be attached.

10. If the Request is submitted by a non-affected representative, he/she must provide evidence of representational authority and the names and contact address of the party must be provided. Proof of representational authority, which shall consist of the original signed copy of the affected party's explicit instructions and authorization, must be attached.

11. In addition, in the cases of non-local representation, the Panel will require clear evidence that there is no adequate or appropriate representation in the country where the project is located.

Documents

12. The following documents should be attached:

- (a) all correspondence with Bank staff;
- (b) notes of meetings with Bank staff;
- (c) a map or diagram, if relevant, showing the location of the affected party or area affected by the project; and
- (d) any other evidence supporting the complaint.

13. If all the information listed cannot be provided an explanation should be included.

D. Delivery of Request

14. Requests must be sent by registered or certified mail or delivered by hand in a sealed envelope against receipt to the Office of The Inspection Panel at 1818 H Street, N.W., Washington, D.C. 20433, U.S.A. or to the Bank's resident representative in the country where the project is located. In the latter case, the resident representative shall, after issuing a receipt to the Requester, forward the Request to the Panel through the next pouch.

E. Advice on Preparation

15. People or entities seeking advice on how to prepare and submit a Request may contact the Office of The Inspection Panel, which will provide information or may meet and discuss the requirements with potential requesters.

III. PROCEDURES ON RECEIPT OF A REQUEST

16. When the Panel receives a Request the Chairperson, on the basis of the information contained in the Request, shall either promptly register the Request, or ask for additional information, or find the Request outside the Panel's mandate.

A. Register

17. If the request, appears to contain sufficient required information the Chairperson shall register the Request in the Panel Register; promptly notify the Requester, the Executive Directors and the Bank President ("President") of the registration; and transmit to the President a copy of the Request with the accompanying documentation, if any.

Contents of Notice

18. The notice of registration shall:

- (a) record that the Request is registered and indicate the date of the registration and dispatch of that notice;

- (b) the notice will include the name of the project, the country where the project is located, the name of the Requester unless anonymity is requested, and a brief description of the Request;
- (c) notify the Requester that all communications in connection with the Request will be sent to the address stated in the Request, unless another address is indicated to the Panel Secretariat; and
- (d) request Management to provide the Panel, within 21 days after receipt of the notice and Request, with written evidence that it has complied, or intends to comply with the Bank's relevant policies and procedures. The notice shall specify the due date of the response.

B. Request Additional Information

- 19. If the chairperson finds the contents of the Request or documentation on representation insufficient, he/she may ask the Requester to supply further information.
- 20. Upon receipt of a Request, the chairperson shall send a written acknowledgement to the Requester, and will specify what additional information is required.

- 21. The Chairperson may refuse to register a Request until all necessary information and documentation is filed.

C. Outside Scope

- 22. If the Chairperson finds, that the matter is without doubt manifestly outside the Panel's mandate, he/she will notify the Requesters, of his/her refusal to register the Request and of the reasons therefor; this will include but not be limited to the following types of communications:
 - (a) Requests which are clearly outside the Panel's mandate including those listed above at paragraph 2;
 - (b) Requests which do not show the steps taken or effort made to resolve the matter with Management;
 - (c) Requests from an individual or from a non-authorized representative of an affected party;
 - (d) any correspondence, including but not limited to letters, memoranda, opinions, submissions or requests on any matter within the Panel's mandate which are not requests for an inspection; and
 - (e) Requests that are manifestly frivolous, absurd or anonymous.

Records

- 23. The number of such Requests and communications received shall be noted in the Register on a quarterly basis and the yearly total included in the Annual Report.

D. Need for Review

24. In cases where additional information is required, or where it is not clear whether a Request is manifestly outside the Panel's mandate, the Chairperson shall designate a Panel member to review the Request.

E. Revised Request

25. If the Requester receives significant new evidence or information at any time after the initial Request was submitted, he/she may consider whether or not it is serious enough to justify the submission of a revised Request.

26. If a revised Request is submitted, the time periods for Management's response and the Panel recommendation will begin again from the time such Request is registered.

IV. MANAGEMENT'S RESPONSE

27. Within 21 days after being notified of a Request, Management shall provide the Panel with evidence that it has complied, or intends to comply with the Bank's relevant policies and procedures. After the Panel receives Management's response, it shall promptly enter the date of receipt in the Panel Register.

28. If there is no response from Management within 21 days, the Panel shall notify the President and the Executive Directors and send a copy to the Requester.

Clarification

29. In order to make an informed recommendation, the Panel may request clarification from Management; in the light of Management's response, request more information from the Requester; and provide relevant portions of Management's response for comment. A time limit for receipt of the information requested shall be specified; and

- (a) whether or not such clarification or information is received within the time limit, make its recommendation to the Executive Directors within 21 days after receipt of Management's response; or
- (b) in the event it is not possible for the Requester to provide the information quickly, the Panel may advise the Requester to submit an amended Request; the Executive Directors and Bank Management will be notified that the process will begin again when the amended Request is received.

V. PANEL RECOMMENDATION

30. Within 21 days after receiving Management's response, the Panel shall make a recommendation to the Executive Directors as to whether the matter should be investigated.

A. Basis

31. The Panel shall prepare its recommendation to the Board on the basis of the information contained in:

- (a) the Request;
- (b) Management's response;
- (c) any further information the Panel may have requested and received from the Requester and/or Management and/or third parties; and
- (d) any findings of the Panel during this stage.

B. Required Criteria

32. If, on the basis of the information contained in the Request, it has not already been established that the Request meets the following three conditions required by the Resolution, the Chairperson, in consultation with the other Panel members may, if necessary, designate a Panel member to conduct a preliminary review to determine whether the Request:

- (a) was filed by an eligible party;
- (b) is not time-barred; and
- (c) relates to a matter falling within the Panel's mandate.

Criteria for Satisfactory Response

33. The Panel may proceed to recommend that there should not be an investigation, if, on the basis of the information contained in the Request and Management's response, the Panel is satisfied that Management has done the following:

- (a) dealt appropriately with the subject matter of the Request; and
- (b) demonstrated clearly that it has followed the required policies and procedures; or
- (c) admitted that it has failed to follow the required policies and procedures but has provided a statement of specific remedial actions and a time-table for implementing them, which will, in the judgment of the Panel, adequately correct the failure and any adverse effects such failure has already caused.

Preliminary Review

34. If, on the basis of the information contained in Management's response and any clarifications provided, the Panel is satisfied that Management has failed to demonstrate that it has followed, or is taking adequate steps to follow the Bank's policies and procedures, the Panel will conduct a preliminary review in order to determine whether conditions required by provisions of the Resolution exist.

35. Although it may not investigate Management's actions in depth at this

stage, it will determine whether Management's failure to comply with the Bank's policies and procedures meets the following three conditions:

- (a) whether such failure has had, or threatens to have, a material adverse effect;
- (b) whether the alleged violation of the Bank's policies and procedures are, in the judgment of the Panel, of a serious character; and
- (c) whether remedial actions proposed by Management do not appear adequate to meet the concerns of the Requester as to the application of the Bank's policies and procedures.

Initial Study

36. If the Chairperson considers, after the preliminary review and consultation with the other Panel members, that more factual data not already provided by the Requester, Management or any other source is required to make an informed recommendation to the Executive Directors, he/she may designate a Panel member to undertake a preliminary study. The study may include, but need not be limited to, a desk study and/or a visit to the project site.

C. Contents

37. On the basis of the review, the Panel shall make its recommendation to the Board as to whether the matter should be investigated. Every recommendation shall include a clear explanation setting forth reasons for the recommendation and be accompanied by:

- (a) the text of the Request and, where applicable, any other relevant information provided by the Requester;
- (b) the text of Management's response and, where applicable, any clarifications provided;
- (c) the text of any advice received from the Bank's Legal Department;
- (d) any other relevant documents or information received; and
- (e) statements of the majority and minority views in the absence of a consensus by the Panel.

D. Submission

38. The recommendation shall be circulated by the Executive Secretary of the Panel to the Executive Directors for decision. The Panel will notify the Requester that a recommendation has been sent to the Executive Directors.

**VI. BOARD DECISION
AND PUBLIC RELEASE**

39. The Board decides whether or not to accept or reject the Panel's recommendation; and, if the Requester is a non-local representative, whether excep-

tional circumstances exist and suitable local representation is not available.

Notification

40. The Panel shall promptly inform the Requester of the Board's decision on whether or not to investigate the Request and, shall send the Requester a copy of the Panel's recommendation.

Public Information

41. After the Executive Directors have considered a Request the Bank shall make such Request publicly available together with the Panel's recommendation on whether to proceed with the inspection and the decision of the Executive Directors in this respect.

VII. AN INVESTIGATION

A. Initial Procedures

42. When a decision to investigate a Request is made by the Board, or the Board itself requests an investigation, the Chairperson shall promptly:

- (a) designate one or more of the Panel's members (Inspector(s)) to take primary responsibility for the investigation;
- (b) arrange for the Panel members to consult, taking into account the nature of the particular Request, on:
 - (i) the methods of investigation that at the outset appear the most appropriate;
 - (ii) an initial schedule for the conduct of the investigation;
 - (iii) when the Inspector(s) shall report his/her (their) findings to the Panel, including any interim findings; and
 - (iv) any additional procedures for the conduct of the investigation.

43. The designated Inspector(s) shall, as needed, arrange for a meeting with the Requester and schedule discussions with directly affected people.

44. The name of the Inspector(s) and an initial work plan shall be made public as soon as possible.

B. Methods of Investigation

45. The Panel may, taking into account the nature of the particular Request, use a variety of investigatory methods, including but not limited to:

- (a) meetings with the Requester, affected people, Bank staff, government officials and project authorities of the country where the project is located, representatives of local and international non-governmental organizations;
- (b) holding public hearings in the project area;
- (c) visiting project sites;

- (d) requesting written or oral submissions on specific issues from the Requester, affected people, independent experts, government or project officials, Bank staff, or local or international non-governmental organizations;
- (e) hiring independent consultants to research specific issues relating to a Request;
- (f) researching Bank files; and
- (g) any other reasonable methods the Inspector(s) consider appropriate to the specific investigation.

Consent Required

46. In accordance with the Resolution, physical inspection in the country where the project is located will be carried out with prior consent. The Chairperson shall request the Executive Director representing such country to provide written consent.

C. Participation of Requester

47. During the course of the investigation, in addition to any information requested by the Inspector(s), the Requester (and affected people if the Requester is a non-affected Representative or an Executive Director) or Bank staff may provide the Inspector(s) either directly or through the Executive Secretary with supplemental information that they believe is relevant to evaluating the Request.

48. The Inspector(s) may notify the Requester of any new material facts provided by Bank staff or by the Executive Director for, or authorities in the country where the project is located.

49. To facilitate understanding of specific points, the Panel may discuss its preliminary findings of fact with the Requester.

D. Participation of Third Parties

50. During the course of the investigation, in addition to any information requested by the Inspector(s), any member of the public may provide the Inspector(s), either directly or through the Executive Secretary, with supplemental information that they believe is relevant to evaluating the Request.

51. Information should not exceed ten pages and include a one-page summary. Supporting documentation may be listed and attached. The Inspector(s) may request more details if necessary.

VIII. PANEL REPORT

Contents

52. The report of the Panel (the "Report") shall include the following:

- (a) a summary discussion of the relevant facts and of the steps taken to conduct the investigation;
- (b) a conclusion showing the Panel's findings on whether the Bank has complied with relevant Bank policies and procedures;
- (c) a list of supporting documents which will be available on request from the Office of The Inspection Panel; and
- (d) statements of the majority and minority views in the absence of a consensus by the Panel.

Submission

53. Upon completion of the Report, the Panel shall submit it to:

- (a) the Executive Directors: accompanied by notification that the Report is being submitted to the President on the same date; and
- (b) the President: accompanied by a notice against receipt that within 6 weeks of receipt of the Report, Management must submit to the Executive Directors for their consideration a report indicating Management's recommendations in response to the Panel's findings.

IX. MANAGEMENT'S RECOMMENDATIONS

54. Within 6 weeks after receiving the Panel's findings, Management will submit to the Executive Directors for their consideration a report indicating its recommendations in response to the Panel's findings. Upon receipt of a copy of the report, the Panel will notify the Requester.

X. BOARD DECISION AND PUBLIC RELEASE

55. Within 2 weeks after the Executive Directors consider the Panel's Report and the Management's response, the Bank shall inform the Requester of the results of the investigation and the action decided by the Board, if any.

56. After the Bank has informed the Requester, the Bank shall make publicly available:

- (a) the Panel's Report;
- (b) Management's recommendations; and
- (c) the Board's decision.

These documents will also be available at the Office of The Inspection Panel.

57. The Panel will seek to enhance public awareness of the results of investigations through all available information sources.

XI. GENERAL

Business Days

58. "Days" under these procedures means days on which the Bank is open for business in Washington, D.C.

Copies

59. Consideration of Requests and other documents submitted throughout the process will be expedited if an original and two copies are filed. When any document contains extensive supporting documentation the Panel may ask for additional copies.

Consultations

60. The borrower and the Executive Director representing the borrowing (or guaranteeing) country shall be consulted on the subject matter before the Panel's recommendation and during an investigation.

Access to Bank Staff and Information

61. Pursuant to the Resolution and in discharge of their functions, the members of the Panel shall have access to all Bank 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.

Legal Advice

62. The Panel shall seek, through the Vice President and General Counsel of the Bank, the written advice of the Bank's Legal Department on matters related to the Bank's rights and obligations with respect to the Request under consideration. Any such advice will be included as an attachment to the Panel's recommendation and/or Report to the Executive Directors.

Confidentiality

63. Documents, or portions of documents of a confidential nature will not be released by the Panel without the express written consent of the party concerned.

Information to Requester and Public

64. The Executive Secretary shall record in the Register all actions taken in connection with the processing of the Request, the dates thereof, and the dates on which any document or notification under these procedures is received in or sent from the Office of The Inspection Panel. The Requester shall be informed promptly. The Register will be publicly available.

65. A notice that a Request has been registered and all other notices or documents issued by the Panel will be available to the public through the Bank's PIC in Washington, D.C.; at the Bank's Resident Mission in the country where

the project is located or at the relevant regional office; at the Bank's Paris, London and Tokyo offices; or on request from the Executive Secretary of the Panel.

ANNEX 1

Text of this ANNEX [the Resolutions] is reproduced as ANNEX 1 to this 1996 Report.

ANNEX 2

GUIDANCE ON HOW TO PREPARE A REQUEST FOR INSPECTION

The Inspection Panel needs some basic information in order to process a Request for Inspection:

1. Name, contact address and telephone number of the group or people making the request.
2. Name and description of the Bank project.
3. Adverse effects of the Bank project.
4. If you are a representative of affected people attach explicit written instructions from them authorizing you to act on their behalf.

These key questions must be answered:

1. Can you elaborate on the nature and importance of the damage caused by the project to you or those you represent?
2. Do you know that the Bank is responsible for the aspects of the project that has or may affect you adversely? How did you determine this?
3. Are you familiar with Bank policies and procedures that apply to this type of project? How do you believe the Bank may have violated them?
4. Have you contacted or attempted to contact Bank staff about the project? Please provide information about all contacts, and the responses, if any, you received from the Bank. You must have done this before you can file a request.
5. Have you tried to resolve your problem through any other means?

6. If you know that the Panel has dealt with this matter *before*, do you have new facts or evidence to submit?

Please provide a summary of the information in no more than a few pages. Attach as much other information as you think necessary as separate documents. Please note and identify attachments in your summary.

You may wish to use the attached model form.

**MODEL FORM:
REQUEST FOR INSPECTION**

TO: THE INSPECTION PANEL: 1818 H St., N.W., Washington, D.C. 20433, U.S.A.

We, _____, and _____, and other persons whose names and addresses are attached live/represent others, living in the area known as: _____ [and shown in the attached map or diagram] claim the following:

1. The Bank is financing the design/appraisal and/or implementation of a project [name and brief description]

2. We understand that the Bank has the following policy(ies) and/or procedures [list or describe]:

3. Our rights/interests are [describe]:

4. The Bank has violated its own policies/procedures in this way:

5. We believe our rights/interests have been, are likely to be adversely affected as a direct result of the Bank's violation. This is, or is likely to cause us to suffer [describe harm]:

6. We believe the action/omission is the responsibility of the Bank.

7. We have complained/made an effort to complain to Bank staff by [describe]:

Please attach evidence or explanation.

8. We received no response; or

We believe that the response(s) (attached/not attached) is unsatisfactory because: [describe why]:

9. In addition we have taken the following steps to resolve our problem:

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

As advised in your Operating Procedures, this Request for Inspection is brief. We can provide you with more particulars.

DATE: _____

SIGNATURES: _____

CONTACT ADDRESS: _____

Attachments: [Yes][No]

We authorize you to make this
Request public [Yes][No]

ANNEX 3

Inspection Panel Documents

All documents are available from the World Bank Public Information Centers. The texts marked * are available on the Internet. The list was taken from the Inspection Panel Internet home page which the Panel updates constantly.

General

Inspection Panel Operating Procedures (August 1994) (English, French, Spanish, Portuguese)*

Inspection Panel Overview (Rev. June 1996) (English, French, Spanish, Portuguese)*

Biographical Summaries of Panel Members (August 1994)*

Information Releases:

New Independent Inspection Panel Office Opens (September 1994)*

Decision of the Executive Directors of IBRD & IDA on Panel's mandate over Procurement Matters (April 1995)*

Election of the Chairperson (August 1995)*

Election of the Chairperson (July 1996)*

Request for Inspection #1

The Inspection Panel: Memorandum to the Executive Directors re: "Request for Inspection - Nepal: Arun III Hydroelectric Project - Notification of Registration," (November 3, 1994).

Request for Inspection - Nepal: Arun III Hydroelectric Project - Notice of Registration.*

The Inspection Panel: Memorandum to the Executive Directors re: "Request

for Inspection: Panel Report - Nepal: Arun III Hydroelectric Project (Credit 2029-NEP)," (December 16, 1994).

The Inspection Panel: "Note for the Executive Directors in Response to a Question from an Executive Director on the Request for Inspection: Nepal - Proposed Arun III Hydroelectric Project and Restructuring of the May 1989 IDA Credit-2029 (Nepal - Arun III Access Road)", (January 9, 1995).

The Inspection Panel: Memorandum to the Executive Directors re: "Request for Inspection - Nepal: Arun III Hydroelectric Project," (January 20, 1995).

Board of Executive Directors of the International Development Association ("IDA"): Decision authorizing an inspection of the Proposed Arun III Hydroelectric Project, (February 2, 1995). (Text in the World Bank Information Release of February 2, 1995.)

The Inspection Panel: Memorandum to the Executive Directors re: "Nepal: Proposed Arun III Hydroelectric Project - Initial Work Plan for Investigation," (February 15, 1995).*

The Inspection Panel: Note to the Executive Directors re: "Request for Inspection Nepal: Proposed Arun III Hydroelectric Project - Note on Investigation by the Inspection Panel," (April 3, 1995).*

The Inspection Panel: Note to the Executive Directors re: "Nepal: Arun III Proposed Hydroelectric Project and Restructuring of IDA Credit-2029 - Note on Investigation by the Inspection Panel," dated May 31, 1995.

The Inspection Panel: Memorandum to the Executive Directors re: "The Inspection Panel Investigation Report - Nepal: Arun III Proposed Hydroelectric Project and Restructuring of IDA Credit-2029-NEP," (June 22, 1995).

Arun III Hydroelectric Project: President's Memorandum to the Executive Directors on: "Management Response to the Inspection Panel's Investigation Report of June 21, 1995," (August 2, 1995).

Information Releases:

First Request for Inspection - NEPAL: ARUN III (November 4, 1994)*

NEPAL: Arun III Hydroelectric Project - Response from Bank Management (November 23, 1994)*

Inspection of Arun III Hydroelectric Project Authorized (February 3, 1995)*

Proposed Arun III Hydroelectric Project - Inspection Panel Investigation Report (June 23, 1995)*

Request for Inspection #2

The Inspection Panel: Note to the Executive Directors re: "Request for Inspection: Compensation for Expropriation and Extension of IDA Credits to Ethiopia," (April 4, 1995).

The Inspection Panel: Memorandum to the Executive Directors re: "Request for Inspection: Compensation for Expropriation and Extension of IDA Credits to Ethiopia," (May 19, 1995).

Request for Inspection #3

The Inspection Panel: Memorandum to the Executive Directors re: "Request for Inspection: Tanzania: Power VI Project (Cr. 2489-TA) - Notification of Registration" (June 16, 1995.)

Request for Inspection - Tanzania: Power VI Project (Cr. 2489-TA) - Notice of Registration.*

The Inspection Panel: Memorandum to the Executive Directors re: "Request for Inspection: Tanzania: Power VI Project (Cr. 2489TA) - Panel Recommendation," (August 15, 1995).

Memorandum from the Vice President and Secretary re: "Inspection Panel - Request for Inspection - Tanzania: Power VI Project (Cr. 2489TA) - Panel Recommendation," (August 18, 1995).

Information Releases:

TANZANIA: Power VI Project (June 20, 1995)*

TANZANIA: Power VI Project (July 25, 1995)*

TANZANIA: Power VI Project (August 25, 1995)*

TANZANIA: Power VI Project (September 26, 1995)*

Request for Inspection #4

The Inspection Panel: Memorandum to the Executive Directors re: "Request for Inspection: Brazil - Rondonia Natural Resources Management Project (Loan 3444-BR) - Notification of Registration," (June 19, 1995).

Request for Inspection - Brazil - Rondonia Natural Resources Management Project (Loan 3444-BR) - Notice of Registration.*

The Inspection Panel: Memorandum to the Executive Directors re: "Request for Inspection: Brazil - Rondonia Natural Resources Management Project (Loan 3444-BR) - Panel Recommendation," (August 17, 1995).

The Inspection Panel: Memorandum to the Executive Directors re: "Request for Inspection: Brazil - Rondonia Natural Resources Management Project (Loan 3444-BR) - Report on Additional Review," (December 12, 1995).

Status Report submitted to the Executive Directors by Country Department I, Latin America & Caribbean Regions "BRAZIL: Rondonia Natural Resources Management Project (Ln. 3444-BR) Status Report," (December 20, 1995).

Information Releases:

- BRAZIL: Rondonia Natural Resources Management Project (June 20, 1995)***
 - BRAZIL: Rondonia Natural Resources Management Project (July 25, 1995)***
 - BRAZIL: Rondonia Natural Resources Management Project (August 25, 1995)***
 - BRAZIL: Rondonia Natural Resources Management Project (January 23, 1996)***
 - BRAZIL: Rondonia Natural Resources Management Project (January 25, 1996)***

Request for Inspection #5

The Inspection Panel: Memorandum to the Executive Directors re: "Request for Inspection: Alleged Policy Violations by IFC in the Financing of Hydroelectric Dams in the Biobío River in Chile," (December 1, 1995).

Information Releases:

- CHILE: Alleged Policy Violations by IFC in the Financing of Hydroelectric Dams in the Biobío River (January 23, 1996)***

ANNEX 4

Decisions of the Executive Directors

Decision Number 1:

Inspection Panel's Mandate on Procurement Matters

In February 1995 the Inspection Panel received a query from a Bangladesh firm that wanted to know whether the Inspection Panel could deal with complaints on procurement decisions made by Bank staff.

The query was based on the text of paragraph 14(b) of the Resolution that reads as follows:

"In considering request under paragraph 12 above, the following requests shall not be heard by the Panel... (b) [c]omplaints 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 tenders for the supply of any such goods and services, which will continue to be addressed by staff under existing procedures."

In March of the same year, the Chairman of the Inspection Panel sent a memorandum requesting a clarification of this provision from the Board of Executive Directors. In his memorandum, the Chairman referred to a book, "The World Bank Inspection Panel" (Oxford University Press, 1994), by Mr. Shihata, Senior Vice President and General Counsel, of the Bank. The Chairman noted that Mr. Shihata has indicated that although "a literal reading of the text of paragraph 14(b) of the Resolution, could suggest... that the exclusion is limited in all cases to complaints against procurement decisions of Bank borrowers and does not apply to any decision by the Bank or its staff with respect to procurement, the Board's intention was to exclude procurement matters whether the complaint is against action by the borrower or by the Bank." This opinion is substantiated by providing detailed information on the Board dis-

cussions of this part of the Resolution (pages 51 and 52). Mr. Shihata reiterates his opinion in Part III, paragraph 3 of his Legal Opinion on the "Role of The Inspection Panel in the Preliminary Assessment of Whether to Recommend Inspection" dated January 3, 1995 (SecM95-11).

The Chairman's memorandum ended by stating "[b]ased on the above-mentioned opinion and the information provided in Mr. Shihata's book, unless other instructions are received from the Board of Executive Directors by c.o.b. April 11, 1995, I intend to inform the inquirer that the Inspection Panel has no jurisdiction over procurement matters whether the complaint is against an action of borrowers or Bank staff." The Chairman's request for clarification did not suggest or imply an amendment to paragraph 14(b) of the Resolution but rather sought a Board interpretation of the text.

In their meeting of April 11, 1995, "[t]he Executive Directors recorded their approval on April 11, 1995 of the recommendation contained in paragraph 4 of the memorandum from the Chairman of the Inspection Panel. Entitled "Inspection Panel's Jurisdiction over Procurement Matters" (R95-60)."

Decision Number 2:

Scope of the Inspection Panel's Mandate Compensation for Expropriation and Extension of IDA Credits to Ethiopia under OMS 1.28

In April 1995 the Inspection Panel received a Request for Inspection alleging that IDA failed to observe the provisions of OMS 1.28, when it granted several credits to Ethiopia and now was negotiating more financial assistance with the Transitional Government of Ethiopia ("TGE"), even though TGE had refused to deal with the Requesters' claim for compensation for a previous government's expropriation of their assets and blocking of their bank accounts. Before requesting a response from IDA's Management, the Panel asked for more information from the Requesters and some specific information from IDA Management, since "the Request involved a number of unusual features relating to the standing of the Requesters."

On May 19, 1995, the Inspection Panel—after reviewing the Request, the evidence and additional information submitted by the Requesters and the information provided by Management—decided that the Requesters had failed to file a claim for compensation for the expropriation of assets and blocking of accounts in accordance with the laws of Ethiopia and therefore had not established "that the lack of compensation is the direct consequence of any alleged acts or omissions of IDA as required by the terms of paragraph 12 of the Resolution..."

On May 30, 1995, the then Bank President ad interim sent a memorandum to the Executive Directors entitled "Request for Inspection: Compensation for Expropriation and Extension of IDA credits to Ethiopia."

The memorandum stated Management's belief that the Request was "...completely outside the mandate of the Panel as detailed in the provisions of the Resolution, and should not, therefore, have been considered in terms of whether the lack of compensation was or was not a consequence of IDA's actions or omissions."

After stating that paragraph 12 of the Resolution referred to "a failure of the Bank to follow its operational polices and procedures with respect to the design, appraisal and/or implementation of *a project* financed by the Bank" (emphasis added), the memorandum stated that "[n]either the Requesters' claim nor OMS 1.28, which is the basis of the Requesters' claim, covers any matters related to the *design, appraisal* and/or *implementation* of any project financed by the Bank."

Finally, the memorandum concluded that "... Bank management is of the view that the correct reading of the Resolution makes this particular request inadmissible irrespective of whether or not it meets the eligibility requirements set forth in the Resolution. This Resolution does not give the Panel an absolute mandate to review the consistency of Bank or IDA actions with any of their policies, but only with those policies and procedures which relate to the approval or implementation of projects financed by the Bank or IDA."

The cover memorandum from the Vice President and Secretary that circulated the Memorandum of the President ad interim, dated May 30, 1995 added that "[s]ubject to any comments to be communicated to the Vice President and Secretary or the Deputy Secretary by close of business on June 8, 1995, Bank Management will inform the Inspection Panel that the interpretation of the Resolution contained in the President's Memorandum has been endorsed by the Executive Directors and will be so recorded in the minutes of a subsequent meeting of the Executive Directors."

The members of the Inspection Panel felt that while the Executive Directors have the final authority to determine whether a particular Request for Inspection is admissible or not, the method used by Management could cast doubts on the effective independence of the Panel from Management. In addition, regarding the specific claim, the Panel's view was that not only did paragraph 10(a) of OMS 1.28 direct the Bank not to lend for or appraise projects in a country where its position on expropriation could affect its credit standing, but also the apparently narrow interpretation given to paragraph 12 of the Resolution and the term "project" could preclude the Panel's reviewing loans supporting projects consisting of programs or activities other than specific physical works.

After a meeting between Management represented by Messrs. Ibrahim Shihata, Richard Frank, Gautam Kaji, and Tim Thahane, and members of the Panel, and a further exchange of memorandums between the Chairman of the Panel and the Senior Vice President and General Counsel, an agreement was reached "to the effect that (i) the Panel's mandate is limited to reviewing compliance with Bank policies and procedures with respect to the design, appraisal and/or implementation of projects as provided for in paragraph 12 of Bank Resolution No. 93-10, IDA Resolution No. 93-6; and (ii) the term "project" as used in the Resolutions and above has the same meaning as used in Bank practice" (Memorandum to the Executive Directors and Alternates from Mr. T. T. Thahane, dated June 16, 1995). The Inspection Panel, however, did not agree to revise its decision on this.

All the above memoranda—including the proposal contained in the Vice President and Secretary's cover memorandum of May 30, 1995 quoted above—were discussed by the Board of Executive Directors on July 6, 1995 and the minutes of that meeting state that "[t]he Executive Directors considered the President ad interim's Memorandum entitled 'Request for Inspection: Compensation for Expropriation and Extension of IDA Credits to Ethiopia' (IDA/R95-83) and the memorandum from the Vice President and Secretary entitled 'Scope of the Mandate of the Inspection Panel: Compensation for Expropriation and Extension of IDA Credits to Ethiopia' dated June 16, 1995. The Executive Directors approved the interpretation contained in the President ad interim's Memorandum with the clarifications contained in the memorandum of the Vice President and Secretary."

ANNEX 5

The Inspection Panel Expenses *July 1, 1995 to June 30, 1996*

Fees - Panel Members	203.3
Salaries*	365.3
Temporaries	29.7
Consultants Short-term	3.9
Overtime	0.0
Travel - Members/Staff	37.3
Benefits*	255.7
Equipment	5.8
Other Costs	46.4
Office Occupancy	59.0
Total Expenses	1,006.4
ORIGINAL BUDGET	1,575.5

August 1, 1994 to June 30, 1995

Fees - Panel Members	276.5
Salaries*	351.3
Temporaries	15.3
Overtime	0.2
Travel - Members/Staff	57.8
Benefits*	245.1
Equipment	14.9
Other Costs	31.1
Office Occupancy	71.9
Total Expenses	1,064.0
ORIGINAL BUDGET	1,480.5

* Includes the Chairman's salary





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