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**The Inspection Panel
Investigation Report**

The Qinghai Project

A Component of the

**China: Western Poverty Reduction Project
(Credit No. 3255-CHA and Loan No. 4501-CHA)**

April 28, 2000

INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT
INTERNATIONAL DEVELOPMENT ASSOCIATION

THE INSPECTION PANEL

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MEMORANDUM TO THE EXECUTIVE DIRECTORS AND ALTERNATES

SUBJECT: The Inspection Panel Investigation Report
CHINA: Western Poverty Reduction Project
(Credit No. 3255-CHA and Loan No. 4501-CHA)

Pursuant to paragraph 22 of the IBRD Resolution 93-10 and IDA Resolution 93-6 establishing the Inspection Panel, and paragraph 53 of the Panel's *Operating Procedures*, and in accordance with the terms of the decision of the Board of Executive Directors dated September 9, 1999 that authorized the investigation, please find attached the above-referenced Report.

The Report concludes that Management is substantially in compliance with the provisions of Annex B of OD 4.00 (Environmental Policy for Dam and Reservoir Projects), OP/BP 4.37 (Safety of Dams), BP 10.00 (Investment Lending: Identification to Board Presentation), and OP/BP 12.10 (Retroactive Financing), but is in apparent violation of several provisions of OD 4.01 (Environmental Assessment), OD 4.20 (Indigenous Peoples), OD 4.30 (Involuntary Resettlement); OP 4.09 (Pest Management), OP 10.00 (Investment Lending: Identification to Board Presentation), and BP 17.50 (Disclosure of Information).

Please be advised that a copy of the Report has today been delivered to the President of IBRD and IDA, and that according to paragraph 23 of the Resolutions that established the Panel "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."

It is our fervent hope that our Report and findings will be of value to the Bank.



Attachment

About the Panel

The Inspection Panel was created in September 1993 by the Board of Executive Directors of the World Bank to serve as an independent mechanism to ensure accountability in Bank operations with respect to its policies and procedures. The Inspection Panel is an instrument for groups of two or more private citizens who believe that they or their interests have been or could be harmed by Bank-financed activities to present their concerns through a Request for Inspection. In short, the Panel provides a link between the Bank and the people who are likely to be affected by the projects it finances.

Members of the Panel are selected “on the basis of their ability to deal thoroughly and fairly with the request 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.”¹ The three-member Panel is empowered, subject to Board approval, to investigate problems that are alleged to have arisen as a result of the Bank having ignored its own operating policies and procedures.

Processing Requests

After the Panel receives a Request for Inspection it is processed as follows:

- The Panel decides whether the Request is prima facie not barred from Panel consideration.
- The Panel registers the Request—a purely administrative procedure.
- The Panel sends the Request to Bank Management, which has 21 working-days to respond to the allegations of the Requesters.
- The Panel then conducts a short 21 working-day assessment to determine the eligibility of the Requesters and the Request.
- If the Panel does not recommend an investigation, and the Board of Executive Directors accepts that recommendation, the case is considered closed. The Board, however, may approve an investigation against the Panel’s recommendation if it so warrants.
- Three days after the Board decides on whether or not an investigation should be carried out, the Panel’s Report (including the Request for Inspection and Management’s Response) is publicly available at the Bank’s InfoShop and the respective Bank Country Office.

¹ IBRD Resolution No. 93-10; IDA Resolution No. 93-6.

- If the Panel recommends an investigation, and the Board approves it, the Panel undertakes a full investigation, which is not time-bound.
- When the Panel completes an investigation, it sends its findings and conclusions on the matters alleged in the Request for Inspection 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 actions the Bank would take in response to the Panel's findings and conclusions.
- The Board then takes the final decision on what should be done based on the Panel's findings and the Bank Management's recommendations.
- Three days after the Board's decision, the Panel's Report and Management's Recommendation are publicly available through the Bank's InfoShop and the respective Country Office.

Acknowledgements

When the Board of Executive Directors of the World Bank decided on September 9, 1999 to ask the Inspection Panel to conduct an investigation of the Qinghai component of the China: Western Poverty Reduction Project, the multifaceted nature of the assignment was only dimly appreciated. The issues ranged from seemingly mundane and simple to some of the most complex and difficult that the Panel has encountered over the past five years of its existence.

The Panel could not have undertaken and completed the investigation without the very kind assistance of a large number of people in Washington, D.C., Beijing, Qinghai and elsewhere, and it wishes to acknowledge this and express its appreciation for their cooperation and support.

The Panel wishes to thank especially the Requesters, other NGOs and individuals for their assistance, and for the hundreds of people it met in the Project areas who shared their hopes and aspirations and, in some cases, their homes with us.

The Bank staff involved in this Project are an exceptional group of people. Under the Resolution establishing the Panel, the Bank and the Bank alone is the object of this and any investigation. Even though staff members were under the spotlight, they worked long and hard to respond to the Panel's many requests for documents and other information and they patiently and often eloquently expressed their own assessment of the Project in interviews. The Director and staff of the Bank's Resident Mission China could not have been more helpful and the Panel wishes to recognize their enterprise, hospitality and assistance throughout the investigation.

The Panel also wishes to thank the Executive Director representing China and his office for their advice and assistance especially concerning the field visits. The Chinese Government officials in Beijing (including those of the Ministry of Finance, the State Ethnic Minorities Commission, and the State Council Leading Group on Poverty Alleviation) were very helpful in assisting the Panel to place the Project in the broader context of Chinese Government policies. Special thanks are also due to the Qinghai Provincial Government staff in Xining, especially the Executive Vice Governor of Qinghai, the Provincial Project Management Office and the Qinghai Research Institute of Plateau Geography, including the social and environmental staff, for their generous assistance and for creating a congenial atmosphere for the Inspection Team during its visits to the Project areas.

Representatives and officials of the following embassies in Beijing deserve a special word of gratitude for sharing with the Panel Members their views and insights: Australian Embassy, British Embassy, Canadian Embassy, European Commission Delegation, French Embassy, German Embassy, Swiss Embassy, and the U.S. Embassy.

The Panel also wishes to thank the staff in the Beijing offices of the United Nations Development Programme (UNDP), the United Nations Office for Project Services (UNOPS), the Development Cooperation office for the European Commission Delegation, Australian Development Cooperation, World Food Programme, Ford Foundation, and other organizations who helped the Panel Team to compare this Project with poverty alleviation projects undertaken in Qinghai Province by other international aid donors and organizations.

The Panel wishes to express its appreciation and admiration to the members of its own Team; our consultants Vernon Heywood, Richard Fuggle, Paul Taylor, Robert Wade and Richard Tillman, and our Chinese, Mongol and Tibetan interpreters.

The Panel owes a debt of gratitude to Eduardo G. Abbott, Antonia M. Macedo, and Claudio L. Vasconcelos for their expert and professional assistance during the preparation of this Report. The Panel also wishes to thank Pamela Fraser and Nimanthi A. Attapattu for their logistical support.

Finally, the Panel could not have completed this investigation without the kind assistance and guidance of many people. They should share any credits given to this work but, of course, the Inspection Panel remains solely responsible for its findings, and conclusions.

Photo Credits:

Eduardo Abbott: Figs. 2a, 8a-b, 13a, 22, 25b; Edward S. Ayensu: Figs. 1, 2b, 3, 4a-b, 5, 6, 7, 9a-b, 10a-d, 11a-d, 12a-d, 13b, 14a-b, 16, 17, 18, 19, 20, 21, 23, 24, 25a; Vernon Heywood: Fig. 15.

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ABBREVIATIONS AND ACRONYMS

| | |
|-------|--|
| BP | Bank Procedures |
| BIC | Bank Information Center (Washington DC NGO) |
| CIEL | Center for International and Environmental Law (Washington, D.C., NGO) |
| CWPRP | China Western Poverty Reduction Project |
| EA | Environmental Assessment |
| ED | Executive Director |
| EIA | Environmental Impact Assessment |
| EMMP | Environmental Mitigation and Monitoring Plan |
| FAO | Food and Agriculture Organization |
| GEF | Global Environment Facility |
| GP | Good Practice |
| IBRD | International Bank for Reconstruction and Development |
| ICT | International Campaign for Tibet |
| IDA | International Development Association |
| IEPS | Initial Executive Project Summary |
| IFAD | International Fund for Agricultural Development |
| IPDP | Indigenous Peoples Development Plan |
| NGO | Nongovernmental Organization |
| OD | Operational Directive |
| OP | Operational Policies |
| PAD | Project Appraisal Document |
| PCD | Project Concept Document |
| PID | Project Information Document |
| PIC | World Bank Public Information Center (now Infoshop) |
| PIP | Project Implementation Plan |
| PMO | Project Management Office |
| PP | Project Province |
| PRC | People's Republic of China |
| RAP | Resettlement Action Plan (for Involuntary Resettlement) |
| SA | Social Assessment |
| TIN | Tibet Information Network |
| VSIP | Voluntary Settlement Implementation Plan |
| WFP | World Food Programme |

WORLD BANK ORGANIZATION CODES

| | |
|-------|--|
| EAP | East Asia & Pacific |
| EAPVP | EAP Office of the Regional Vice President |
| EASRD | EAP Rural Development and Natural Resources Sector Unit |
| EASES | EAP Environment and Social Development Sector Unit |
| EASEN | EAP Environment Sector Unit (<i>part of EASES from January 1999</i>) |
| EASSD | EAP Social Development Sector Unit (<i>part of EASES from January 1999</i>) |
| ENV | Central Environment Department |
| ESD | Central Environmentally & Socially Sustainable Development Vice Presidency |
| LEGEA | EAP Division of the Legal Department |
| OED | Operations Evaluation Department |
| RED | Regional Environment Department (<i>in this report means EASEN then EASES</i>) |
| RMC | World Bank Resident Mission in China |
| SDV | Social Development Department |
| TT | Task Team |
| TTL | Task Team Leader |
| QAG | World Bank Quality Assurance Group |

INSPECTION PANEL'S REPORT AND FINDINGS ON THE QINGHAI PROJECT

EXECUTIVE SUMMARY

The Qinghai Project

1. The objective of the China: Western Poverty Reduction Project is to reduce the incidence of absolute poverty in three provinces of China: the Inner Mongolia Autonomous Region ("Part A"), Gansu ("Part B") and Qinghai ("Part C"), shown on Map 1. This Report is concerned exclusively with "Part C," the Qinghai component of the Project.

2. When the Western Poverty Reduction Project was placed before the World Bank in 1997, the basic design of the Qinghai component (hereinafter referred to more simply as the Project) was already substantially developed. Located entirely in Qinghai Province, the Project area comprises two parts: the so called Move-out area to the east of Xining city, as shown on Map 1, and the Move-in area some 450 kilometers to the west, as shown on Map 2. The Project aims to alleviate poverty by voluntarily resettling 57,775 poor farmers who currently practice high-altitude rain-fed agriculture in five counties in Haidong Prefecture and one county in Xining City Prefecture (Move-out area). They will be resettled into a new irrigation project in the dryland area of the Haixi Tibetan and Mongolian Autonomous Prefecture in Dulan County (Move-in area). Within the Move-in area, the Project proposes to renovate an existing 8 m dam, and construct a new 40 m dam at Keri. It will also build a 29 km canal from the Xiangride river to the Keri Dam and a further 56 km canal from the Dam to supply water to irrigate some 26,500 ha in Dulan County — all shown on Map 2.

Panel Asked to Conduct Investigation

3. The Qinghai component became the subject of public controversy in late April 1999, following the publication of an article by the Tibet Information Network. In response to this article and a growing volume of external criticism, Bank Management conducted an intensive internal review of environmental and social aspects of the Qinghai Project. As a result, some "refinements" or "improvements"

were proposed. Negotiations with the Chinese Government were reopened and the agreed modifications were presented in a revised loan package for Board approval.

4. On June 18, 1999, the International Campaign for Tibet (ICT), a U.S. based non-governmental organization, acting on behalf of affected people who live in the Project area, submitted a Request for Inspection to the Panel. The Requesters claimed that the Tibetan and Mongolian ethnic peoples would suffer potentially irreversible harm from the Project and that this harm stemmed from Management's failure to comply with several Bank policies and operational procedures.

5. On June 24, 1999, the World Bank Board decided to proceed with the financing of the Western Poverty Reduction Project. This decision came with a caveat, however. In an unusual move, the Board agreed *"that no work be done and no funds be disbursed for the \$40 million Qinghai component of the project until the Board decides on the results of any review by the independent Inspection Panel."*

6. On July 19, 1999, Management replied to the allegations in the Request. In brief, it considered the Project in compliance with all relevant Bank policies except that of the disclosure of information. Management pointed out that a number of "refinements" had been made to the Project since public concerns had been raised in late April. Internal reviews confirmed compliance with safeguard policies, but it had nevertheless identified areas that would benefit from additional qualitative strengthening during implementation.

7. In its report to the Board on August 18, 1999, the Panel found the Request eligible (except that the Board itself had to decide the question of external representation by ICT of project affected people) and recommended that the Executive Directors authorize an investigation. On September 9, 1999, the World Bank Board of Executive Directors authorized the Panel to conduct an investigation. The Terms of Reference required that the Panel investigate whether the Bank has violated one or more of its operational policies and procedures with respect to the design and appraisal of the Project: BP 17.50 (Disclosure of Information); OD 4.01 (Environmental Assessment); OD 4.20 (Indigenous Peoples); OD 4.30 (Involuntary Resettlement); OP 4.09 (Pest Management); OP/BP 4.37 (Safety of Dams); OP/BP 12.10 (Retroactive Financing); and OP/BP 10.00 (Investment Lending — Identification to the Board Presentation).

8. The Panel was assisted by a small team of senior consultants and a set of interpreters from outside China. Between September, 1999, and January, 2000, the Panel undertook a field visit of Qinghai Province and conducted interviews in Washington, D.C., Beijing, Xining and many villages in the Project area. It also examined relevant documents, including published and unpublished literature — a process that continued through the third week of April, 2000.

General Compliance

Interpretation of the Bank's Policies and Procedures

9. During the course of examining some 20 projects over the past five years, the Panel has encountered certain differences in views among staff on just how the Bank's operational policies and procedures should be applied. In this case, however, the Panel's interviews revealed an unusually and disturbingly wide range of divergent and, often, opposing views. These large differences pervade all ranks of the staff, from senior management to front-line professionals. And they apply to virtually all of the major decisions required by the policies. The implications of this for a reasonable application of the Bank's policies and procedures became a matter of serious concern to the Panel, and ought to be of concern to the Bank generally since there is no way that the policies can be applied with reasonable consistency in the face of such wide divergences of opinion.

10. For example, a number of staff members felt that the Bank's Operational Directives and other policies were simply idealized policy statements, and should be seen largely as a set of goals to be striven after. Others of equal or more senior rank disagreed with this view. They felt that this interpretation could render the policies virtually meaningless and certainly incapable of being employed as benchmarks against which to measure compliance.

11. In discussions about compliance, staff often pointed out that the policies allow for flexibility of interpretation. The decisions made on the specific matters were thus covered and in compliance. It was simply a matter of "judgement at Management's sole discretion." The Management Response itself makes several claims in this respect. Other staff argued, however, that the policies are clear enough to distinguish areas that are binding from areas where some reasonable flexibility in interpretation is called for. Read in their entirety, the Panel feels that the directives cannot possibly be taken to authorize a level of "interpretation" and "flexibility" that

would permit those who must follow these directives to simply override the portions of the directives that are clearly binding.

12. Most staff at all levels agreed that, in appraising compliance, Management had an obligation to satisfy itself not only that the process and procedures mandated by the policies had been followed, but also that the work under review met professionally acceptable standards of quality. In other words, both process and quality were essential components of compliance. Some staff, however, took the opposite view that, while it might be appropriate to ensure professionally acceptable standards of quality, it is not required for compliance. This 'check-list' or 'process' approach to compliance represents a minority view but, in the Panel's judgement, it is of concern when senior persons in the project decision-chain hold it.

13. Questions about compliance were often answered with claims of "precedent." The Management Response itself cites "...past practice with ... a large number of similar integrated agricultural development projects financed by the Bank in China over the last 10 years," as a reason, for example, for assigning an environmental Category "B" rather than "A." Management's past experience in a country can obviously provide the basis for a certain level of comfort that the work required by the policies will be undertaken successfully. In the Panel's view, it is an entirely different matter, however, to suggest that experience and precedent can determine what is required by the policies.

14. Interviews with some staff were punctuated by the refrain that "*in China things are done differently.*" This is echoed in the Management Response which states that: "*The level and quality of preparation and analysis for this Project were very much in line with Bank practice in applying social and environmental policies to projects in China in the context of its political and social systems.*" The Panel has carefully examined the policies and has failed to find any grounds for the view that precedents in a country, or a country's "social and political systems," can in any way determine what is required by the policies.

15. Faced with these widely divergent views among the staff, the Panel was forced to revisit its views on and experience with Bank policies and compliance. In the end, it returned to the approach reflected in its earlier reports. There is indeed room for some flexibility and interpretation but, as provided in the Resolution that established the Panel, the Operational Directives (and updated OPs, BPs, GPs, etc.) are the primary source of Bank policy for purposes of assessing compliance.

The Qinghai Project in Space and Time

16. The Environmental Assessment does not distinguish between short term impacts and those that will only occur at some time in the future. This raises serious questions about the time horizons over which the Project was evaluated.

17. Moreover, in examining the Project documentation, the Panel found a high level of ambiguity, uncertainty and inconsistency in the use of the term "project area." This confusion is compounded by the fact that the documentation is poorly supported by maps. (The Panel had eventually to prepare its own set of maps; i.e. Maps 1 and 2.) As a result, it appears that significant numbers of people, including members of minority nationalities, have been left out of the environmental and social assessments required by Bank policy.

18. The "project area," as interpreted in the EA and other documentation, includes neither the commercial and service centers of Xiangride, nor several of the townships surrounding it, including some Tibetan and Mongol villages visited by the Inspection Team. Similarly, the "project area" does not include several villages between Xiangride and Dulan and between Xiangride and the new towns to be created in the irrigation site. These omissions are difficult to understand. A network of social, commercial and political interactions clearly exists in Dulan County and in Xiangride Township. Yet no assessment has been made of how these linkages and interactions will be affected, for better or worse, by a Project that will completely change the economy and demography of the County.

19. Speaking to merchants in Xiangride, the Panel found that those who were even partially informed about the Project were full of expectations that it would increase their trade and commerce and that it would act as a pole of attraction for further people and investment. The same is true of the townships adjacent to the Xiangride prison farm. The interdependence is clear.

20. Tibetan and Mongol village leaders in Xiangride township, whose villages lie directly on the proposed supply-canal route to the irrigated area, told the Panel that they had neither been officially contacted nor asked about the Project. These villages will be impacted directly by the Project's physical infrastructure and indirectly by, at the very least, a doubling of their county's population.

21. Many parts of the Move-in area have been overlooked or glossed over in the EA and in other documentation of the Project. Little or no attention was paid to the environmental impacts on areas other than the proposed new irrigation areas and the Balong Soak. Compliance with OD 4.01 requires that many other areas receive detailed consideration.

22. An adequate environmental and social assessment would require a much greater consideration of the effects of the Qinghai Project on nearby townships including Xiangride and Dulan, as well as a much larger number of villages, some visited by the Inspection Team. It would require consideration of the multiplier effects of impacts caused by the construction of the new dam and reservoir, irrigation system, roads, and townships with all their infrastructure; and also the likely population increase as the nearly 60,000 resettled farmers will have growing families and will attract more migrants, merchants, teachers, medical personnel, etc.

23. In the Panel's view, given the letter and intent of ODs 4.01, 4.20 and 4.30, the actual scale of the area to be impacted by the Qinghai Project, the ethnic composition of the Project's impacted populations, the boundaries of the "project area" were far too narrowly defined by Management. As a result, the assessments fail to address many of the most significant social and environmental impacts of the Project on the potentially affected populations, including those who are members of minority nationalities. The Panel finds that this is not in compliance with these ODs.

The Consultation and Survey Method

24. A comparison of the three populations in the Move-in area that will be involuntarily resettled by this Project with the populations that were surveyed, is vital to an understanding of the sampling procedures. The Involuntary Resettlement Plan lists these impacted populations as follows: (1) 63 herder households (352 persons) who use the land "under formal lease agreements with the townships;" (2) 289 herder households (2,411 persons) who pass twice yearly, with their herds, through the area proposed for transformation into irrigated farmland and townships for the resettled population; and (3) 248 households (1,237 persons) who currently farm on the area served by an existing irrigation system, which will be integrated into the Project's new irrigation systems.

25. The extent to which these involuntarily resettled groups were "consulted" through the survey method is very different. Take the second group, for example.

No survey was designed for, and no survey carried out among, the estimated 289 nomadic pastoralist households (2,411 persons) in this group, whose twice-yearly passage through the project site with their herds will be disrupted. That is to say, zero percent of this group was surveyed. In stark contrast, 100 percent of the 63 herder households in the first group were surveyed. Of the 248 households (1,237 persons) in the third group, who are currently farming an irrigated area in Balong township, and whose irrigation system will be expanded and integrated into the new system, 80 households or 32 percent were surveyed.

26. Thus, the largest group of persons involuntarily resettled by this Project (i.e., the pastoralists in the second group whose passage through the irrigation site with their herds will be disrupted) received the least consultation, at least as measured by the survey data. Although this group makes up 60 percent of the people and 72 percent of the households to be involuntarily resettled, none (zero percent) of this group was surveyed, using Management's own population estimates and survey data.

27. Management also failed to consider weighting the surveys by ethnicity, or to assure adequate representation in the survey sample of affected minority groups. Most striking is the fact that in the entire Move-in area only three Tibetan households were included in the survey. This is in spite of the fact that the Project occurs in a Tibetan and Mongolian Autonomous Region, and the physical infrastructure for the Project (its supply-canals) passes through Tibetan villages that were not included within Management's definition of the "project area."

28. Four points can be made concerning the survey in the Move-out area. First, the questionnaires are not confidential. (All four surveys required the respondent to put his or her name on the survey.) Second, from the internal evidence of the questionnaires themselves, they must have been filled out by someone other than the individual respondents. Third, the very limited source of information about the subject-matter of the survey is striking; 93% of respondents indicated that they learned of the resettlement from "government propaganda." Fourth, an examination of the questions asked, and the context in which they were asked, indicates that opinions and information gathered are probably not reliable because respondents will probably think that this questionnaire could directly influence whether they get selected for the resettlement project.

29. The hazards of using the methods of consultation discussed above are even greater in the Move-in area, because here respondents are being asked, without

guarantee of confidentiality, whether they would welcome the influx of settlers. The Bank must be aware that if there is even a *perception* of potential adverse effects that could result from a truthful statement of opposition to this Bank-financed project, then Bank staff has a responsibility to guarantee confidentiality of the respondent. This responsibility derives from the requirements for “full and informed” consultation in ODs 4.20 (esp. par. 8), 4.30, and 4.01, since full and informed consultation is impossible if those consulted even *perceive* that they could be adversely affected for expressing their opposition to, or honest opinions about, a Bank-financed project.

30. Though the Bank seems to have accepted these methods of consultation, the Inspection Team found that other international organizations working in the same Qinghai Province did not accept them.

31. A believable guarantee of respondent confidentiality might have yielded very different results, especially in the Move-in area. The Inspection Team’s short field visit, though it recorded many positive comments about the proposed Project, also yielded some disturbing and dramatic examples of what can only be described as a climate of fear, through which some individuals nevertheless managed, at great perceived risk, to express their opposition to this Project.

32. The Project Appraisal Document admits, as does the Management Response, that the consultative process “was not always smooth nor did it fulfill all best practice guidelines. At times during the social assessment process respondent confidentiality was not fully observed, and the data gathering process was less than ideal.” Nonetheless, Management still concluded that “the will of the move-in host population was adequately expressed.”

33. The Inspection Team obviously did not conduct a scientific sample of opinion during its brief stay in Qinghai. Nonetheless, in the Panel’s view, the expressions of opinion it heard and the incidents it witnessed indicate the need for far greater efforts to obtain public consultation under adequate conditions, before Management can be said to have met the requirements for public consultation in the Operational Directives. The mere fact that opinions expressed were so strikingly different, and especially the fact that there was a strong perception of risk from those expressing opposition to the Project during the Inspection Team’s visit, indicates that methods of public consultation used for this Project have so far been inadequate.

The Consideration of Project Alternatives

34. If there is no alternative there can be no choice. The Bank's policies and procedures leave no room for doubt as to the need for a careful and systematic consideration of a number of different types of alternatives, including investment alternatives, alternative sites, alternative project designs, alternative implementation plans. The purpose of considering these alternatives is to ensure that the option supported by the Bank will achieve the project's objectives most cost effectively, while meeting the Bank's safeguard policies.

35. One of the most noticeable and significant weaknesses of the assessments is that investment and project alternatives are neither identified nor systematically compared. For all practical purposes, the Environmental Assessment avoids consideration of alternatives, both for poverty reduction in the Move-out areas and for sites in the Move-in area. From the documentation, it is not possible to deduce whether the Qinghai Project as proposed is the best way for the Bank to meet the Project's objectives or to ensure that the Bank's safeguard policies are being respected.

36. Management failed to ensure that those responsible for the EA understood their brief to include an examination of alternatives to resettlement in both the Move-out and Move-in areas. Instead, the Panel found that they understood the main purpose of their studies to be to assist in the optimal resettlement of around 60,000 people from the Move-out area into the Balong-Xiangride irrigation area. The same is true of the Social Assessment. There is no systematic study of *in situ* alternatives to resettlement, or of alternative resettlement sites, or of alternative development plans for the national minorities affected within the Move-in area.

37. Why the Bank accepted Assessments conducted in such a circumscribed and limiting manner is unclear. Whatever the reasons, the Panel finds that the Assessments do not make any meaningful analysis of realistic project alternatives as required by Bank policy.

Environmental Compliance

Environmental Screening of the Qinghai Project

38. One of the most important decisions (perhaps the most crucial) that Management must make concerning the environmental assessment of any project is

the category of the assessment that will be undertaken. Under OD 4.01, this critical judgement is made in the first instance by the Task Manager (now Task Team Leader), with the concurrence of the regional environment unit. The project is assigned to Category "A," in which case a full Environment Assessment (EA) is required, or a Category "B," in which case a full EA is not required, but an environmental analysis is, or a Category "C," in which case no environmental analysis is required. An Annex E to the OD provides illustrative lists of the types of projects best classified in Categories "A," "B" and "C." Twelve types of projects are listed for "A," of which eight are found in the entire Western Poverty Reduction Project and four in the Qinghai component of the Project. The four are: dams and reservoirs, irrigation, land clearance and leveling, resettlement and all projects with potentially major impacts on people. The OD further provides that a full EA is required if a project is likely to have significant adverse impacts that may be sensitive, irreversible, and diverse. A footnote explains that impacts qualify as "sensitive" if they affect vulnerable ethnic minorities or involve involuntary resettlement.

39. This critical decision of the category of the EA is made at a very early stage in the project cycle, but the OD permits a later revision of the category as new information becomes available. Neither the OD nor the Annex provides for exceptions on the basis of past experience or precedent in the country in question, or the area of the project relative to the area of the geographic or political jurisdiction involved.

40. The initial decision to assign a "B," taken on January 8, 1998, was made before the Task Team Leader, or any other Bank official associated with the decision, had an opportunity to visit the Move-in area. It was also made without detailed maps and other basic information being available and, it would appear, without regard to the illustrative examples of "A" projects mentioned above. Furthermore, the assignment was made on the stated assumption that there would be no involuntary resettlement.

41. The first Bank official involved in the decision to visit the Project site was the Consultant who was engaged to be responsible for the environmental impact assessment aspects of the Project. Following his visit, on March 13, 1998, he raised a number of issues with senior staff and recommended the re-classification of the Qinghai component as an "A." Senior staff responded at length, citing reasons why it should remain a "B." Management was aware of the A/B debate, but did not

intervene. The Project Concept Document meeting of April 14, 1998, in effect confirmed a "B."

42. The EAs for the three components of the Western Poverty Reduction Project were received prior to the December, 1998 Decision Meeting. The same Consultant who had prepared their Terms of Reference, negotiated them with the local institutes, and overseen their implementation, also reviewed the resulting assessments and advised the Task Team Leader that he approved them – in effect, recommending them for clearance. Subsequently, the documentation for the entire Western Poverty Reduction Project was presented to the East Asia Country Director and Legal Department for clearance and authorization to issue an invitation to negotiate.

43. Following completion of the negotiations during the week of April 12, external criticism of the Qinghai component of the Project erupted, starting with publication of the Tibet Information Network (TIN) article on April 27, 1999. This triggered an intensive internal review of, inter alia, the environmental classification of the Project as "B" rather than "A."

44. Management decided to ask several senior experts from the central departments to advise on classification and compliance. One of these experts informed the Panel that from the time that he first saw any documentation related to the Qinghai Project, he had been convinced that the Project should have been classified an "A" on at least eight grounds. He recommended that the Project be immediately reclassified as "A" as preferable to further jeopardizing the Bank's reputation by defending the category "B." Another expert agreed that the Project should have been classified as Category "A," and told the Panel that he had advised Management that it should simply acknowledge that a "well-intentioned" mistake was made. Another expert took a slightly different view. Agreeing that if the Project were to be categorized now, under OP 4.01, it would be an "A" (OD 4.01 was applicable to this Project), he understood that the size of the Project was not out of line with others in the China portfolio and that its categorization as a "B" was consistent with accepted practice in the Region.

45. A senior official, also with strong credentials in the field, informed the Panel that in his view the Project was quite clearly an "A," whether under the old or new rules. The Region, he felt, was in non-compliance, not with whether or not the Project was categorized (obviously, it was), but with the A/B judgement and, in late May, he so advised Senior Management. Expressing understanding with the

position of colleagues who must contract their services to, and are paid in part out of, project budgets, he went on to say that “Frankly, they don’t want to bite the hand that feeds them (for cross support) by taking a hardline view.”

46. After reviewing the screening process, the Panel finds that Management’s decision to classify the project as a “B” was not in compliance with OD 4.01. Several components of the Project fall within the illustrative list of “A” projects in Annex E, e.g., dams and reservoirs, irrigation, and resettlement. And the impacts qualify as “sensitive” since vulnerable ethnic minorities are affected and involuntary resettlement is involved.

Environmental Assessment of the Qinghai Project

47. Management adopted a very limited definition of “environment” in the Project with the result that the Assessment fails to analyze the full range of Project effects. The Assessment also fails completely to place the Project in proper time frames. As noted above, the spatial boundaries of the Move-out and Move-in areas are defined narrowly, or not at all, with the result that whole communities and populations, whose lives will be impacted by the project, have been left out of the Environmental and Social Assessments.

48. Concerning the Move-out areas, the EA and other Project documentation are moot with respect to both the plans and levels of financing for improving the living conditions of those remaining behind. There is also a lack of documentation on the social and economic implications for a village of “moving out” a significant proportion of their most productive and economically active population. This voluntary resettlement could have major, long-lasting, and irreversible social impacts. Considerably more detailed analysis of the social and environmental problems of the Move-out villages and of how these will be addressed by the Project are required in order to comply with OD 4.01.

49. In May/June 1999, following the outbreak of public concern, Management tried to compensate for this by requiring a study to evaluate the environmental and social impacts of the Voluntary Settlement Implementation Plan. This study (which is to recommend measures to enhance the environmental sustainability and the living conditions of the people in the Move-out counties) is to be undertaken not later than three years after the implementation of the Plan has commenced. Undertaking an environmental and social assessment three years after the commencement of resettlement is a bit late, not only in terms of the policies, but also in terms of any

elemental understanding of the purposes of such assessments. Within the social arena, this is comparable to requiring that the safety of a proposed dam should be studied within three years after it has been built!

50. As to the Move-in area, the proposed in-migration to Dulan County will more than double its population. The proposed new towns will each have populations five times as large as Xiangride, the nearest established town to the main irrigation site. This will lead to further induced development, on which OD 4.01 lays great stress. The dam, irrigation and resettlement parts of the Qinghai Project are treated as though they were to take place in a regional vacuum. The potential impact of this development on the network of social, commercial and political interactions that exists in Dulan County and Xiangride Township has not been considered. There is no indication of how these communities and their populations will be affected, for better or worse, by the Project. Without this assessment, the Bank's policy goal of enhancing Project benefits has no substance or meaning.

51. The EA and other Project documents fail to consider the appropriateness of implanting large-scale irrigated agriculture in this Region. It does not examine its suitability or viability in comparison with the traditional forms of land use, including agropastoralism, sedentary pastoralism, semi-sedentary pastoralism (semi-nomadism), and migratory pastoralism involving the herding of sheep and other animals. There appears simply to be an assumption that irrigated agriculture is "a good thing" without consideration of alternatives and relative costs.

52. The EA is uninformative about the layout of the new towns and villages, their infrastructure, and the facilities such as water, heat and light that will be provided for the settlers. It is silent on what methods the new towns and villages will use to manage and dispose of their wastes. Similarly, the EA is virtually silent on the impacts of the emissions and wastes on the areas surrounding and downstream from the two new towns (with initial populations nearing 30,000), and villages. Contrary to OD 4.01, the Bank's Terms of Reference for the EA did not call for any such assessment.

53. The standard of maps, charts and references is inadequate. They do not provide a satisfactory record of the settlements, infrastructure and land use in the areas that will be affected by the Project. The Qinghai Project involves a total transformation of the vegetation of some of the Project areas, a substantial impact on others during the construction phases, and a substantial impact on areas that are adjacent to or downstream of the construction areas. Management should therefore

have required a proper vegetation survey and map. The Assessment provides no description whatsoever of the vegetation in the Move-out area and an inadequate description of the vegetation in the Move-in area. Attention had been drawn by an FAO consultant to the urgent need for a detailed soil survey and land classification in connection with the irrigation scheme, but the recommended map (at a scale of 1:10,000) had not been completed at the time of the Panel's visit.

54. The information on the biodiversity of the area is very sketchy and inadequate. It does not incorporate an assessment of the diversity encountered with regard to distribution, frequency/rarity and conservation status. While an exhaustive inventory of the biodiversity would not be expected, it would have been appropriate to search the literature and to reference studies (including lists) as these are not lacking in China.

55. Extensive exploitation of oil, natural gas and minerals is carried out in parts of the Qaidam basin and test drillings have been undertaken near the Project area. No mention is made in the EA of the general economic importance of oil and minerals in the Province, or its possible effects on the Project areas, or of any drilling activities in the Region.

56. The Panel finds that the Environmental Assessment of the Qinghai Project is not in compliance with Bank policies as set out in OD 4.01.

Dam Safety, Pest Management and Natural Habitats

57. While the design and location of the proposed Keri Dam appears to be in compliance with OP/BP 4.37 and Annex B of OD 4.00, there is no reference to the seismicity of the Project area and the fact that two earthquakes of magnitude 7⁺ (equivalent to the 1999 Turkish (Ismir) earthquakes), occurred in Dulan County in 1937 and 1963. An assessment of the risk to the nearby Keri irrigated area should the dam fail (as a result of an earthquake) should be undertaken in the near future.

58. The use of pesticides forms part of the implementation phase. No Bank funds will be used for the procurement of pesticides, as these will be provided by the borrower as counterpart funds for the Project and, as such, acquisition and use of pesticides is, therefore, an integral part of the Project. No detailed comments can be made on the subject, as the exact nature of pest management proposals is not known. In the Panel's view, the lack of pest management plans is a violation of OP

4.09. However, assurances were given to the Inspection Team that an integrated pest management programme would be undertaken for the Qinghai Project.

59. The increasing pace and scale of habitat conversion in the Qinghai-Tibetan Plateau requires a broader view to be taken of the fate of the various ecosystems in the region, not just those in or adjacent to the Project area.

60. Given the scale of absolute habitat conversion in the Project area, involving 19,000 ha of land that will be irrigated, and construction developments such as the dam, canals, townships, villages and roads - all adding up to an estimated 21,444 ha — it cannot be asserted with confidence that critical natural habitats will not be lost. The necessary baseline information is not available in the Environmental Assessment. The Panel is therefore of the view that the Project is in contravention of the Bank's policy, OP 4.04, in regard to the significant conversion of critical natural habitats.

Social Compliance

The Qinghai Project and Indigenous Peoples

61. OD 4.20 is quite clear about Bank policy concerning the preparation of an Indigenous Peoples Development Plan. Paragraph 13 states that: *“For an investment project that affects indigenous peoples, the borrower should prepare an indigenous peoples development plan that is consistent with the Bank's policy. Any project that affects indigenous peoples is expected to include components or provisions that incorporate such a plan...”*

62. Management acknowledges that an Indigenous Peoples Development Plan (IPDP) is required for the Qinghai Project. It asserts, however, that the Project as a whole constitutes the IPDP because a majority of the Project's beneficiaries are minorities. This assertion hinges on an interpretation of the last sentence of paragraph 13 quoted above; i.e., *“... When the bulk of the direct project beneficiaries are indigenous people, the Bank's concerns would be addressed by the project itself and the provisions of this OD would thus apply to the project in its entirety.”*

63. In the Panel's view, Management's interpretation of this one sentence of paragraph 13 of OD 4.20 cannot be accepted. In the case of this Project, it is inconsistent with other parts of the OD and especially inconsistent with the objective of Bank policy towards indigenous people, which is *“...to ensure that the*

development process fosters full respect for their dignity, human rights, and cultural uniqueness...” and to “*ensure that indigenous peoples do not suffer adverse effects during the development process..., and that they receive culturally compatible social and economic benefits.*”

64. The Inspection Team's conversations with villagers inside the narrow “project area,” as defined by Management, uncovered a positive attitude towards the idea of separate IPDPs for each of the minorities. When the Panel visited project-affected towns near Xiangride, and Tibetan villages along the proposed supply-canal for the project—all left out of the “project area” as defined by Management—it received a similarly positive response to self-standing IPDPs for each of the ethnic groups. Although the Team's visit was short, it is satisfied that some, if not all, of the ethnic minorities in the Move-in area would welcome the opportunity to participate in the development of separate IPDPs.

65. The “*indigenous peoples,*” or national minorities, in the Move-in area, the Hui, Mongol, Tibetan, Tu and Salar, are very different from each other, in their “*cultural uniqueness*” as well as their “*local patterns of social organization, religious beliefs, and resource use.*” Retroactively lumping together these very different cultures into a single one-plan-fits-all IPDP, whether that is the “project in its entirety,” or a single IPDP for the whole of the Move-in area, effectively denies these very different ethnic groups, especially the numerically weakest and most vulnerable, an opportunity to participate in a process that would ensure that their minority cultural traditions are taken into account in the overall design of the Project. No number of add-on indigenous-culture-boosting activities (bilingual schools, Islamic religious sites, Tibetan pharmacological centers, corridors for nomadic herders) can override the fact that the initial Project design is flawed by this failure to recognize, from the outset, the cultural uniqueness of the separate ethnic minorities involved. The Panel finds that a serious attempt to prepare separate, free-standing IPDPs for each of the national minorities in the Move-out area is required to bring the Project in compliance with OD 4.20.

66. OD 4.20 also stipulates the process and procedures to be followed in developing an IPDP within the context of the Bank's “project cycle,” i.e., identification, preparation, appraisal, negotiations, and presentation to the Board. After reviewing the actual processing of this Project, the Panel finds that Management's decisions on Indigenous Peoples during the identification, preparation and appraisal were not in compliance with the process and procedures mandated by paragraphs 16-18 of OD 4.20. The Panel finds that the Project as a

whole does not constitute the IPDP required by OD 4.20, and that separate, free-standing IPDPs are required to bring the Project into compliance with OD 4.20.

Involuntary Resettlement

67. The Qinghai Project involves two types of resettlement, voluntary and involuntary, and, in assessing compliance, a clear distinction must be made between the two, since OD 4.30 only applies to involuntary resettlement.

68. Management contends that the nearly 60,000 migrants from the Move-out area are “voluntary” resettlers and therefore not covered by OD 4.30. In Management’s view, OD 4.30 applies only to the 4,000 individuals in the Move-in area considered to be “involuntarily” affected. And, in its view, an adequate Involuntary Resettlement Plan has been prepared to cover them. The elements that now make up this Plan were originally included within the Voluntary Settlement Implementation Plan (VSIP). Later, however, following the outbreak of public concern, those provisions in the VSIP relating to involuntary resettlement were revised and brought together as a separate annex to the VSIP.

69. During its discussions with people in the Move-out area, the Team was able to confirm that they felt they had a choice whether they could move or not, and most of those interviewed wanted to move to Haixi Prefecture. Although it is difficult to say whether the choice was an informed one in many instances, OD 4.30 does not give clear guidance on the quality of full and informed choice that is needed to consider a resettlement as “voluntary.” The Panel thus accepts Management’s contention that OD 4.30 does not apply to the migrants from the Move-out area.

70. OD 4.30 applies to those people who are displaced or adversely affected by the Project. As noted repeatedly, Management’s narrow definition of the boundaries of the Project area resulted in many people and communities affected by the Project being left out of the assessments. This appears to be true of the population of persons who will be displaced by the Project which is likely to be larger than that accounted for in Project documents. In the Panel’s view, the Project is not in compliance with OD 4.30.

71. Paragraph 4 of OD 4.30 requires the development of a plan that will assist involuntarily resettled persons with their move, and will provide fair compensation for their loss (whether they lose the land itself, or the use of the land, or other

productive resources). The method of compensation chosen for the herders who are to be involuntarily resettled is "land-for-land." Adequate baseline data on pastoralism, including the data on land use and inheritance that would allow a proper assessment of the compensation offered, are unfortunately lacking for this Project. Although envisaged by the OD, it appears that this work was not done. Without the results of such work, it is difficult to assess the adequacy of the compensation offered, not only for the Panel but also, in the first instance, for Management. Indeed, it is difficult to understand how the OD's policy objectives can be achieved without this information.

72. For all of the above reasons, and others discussed in the Report, the Panel finds that the Project's current Involuntary Resettlement Plan is not in compliance with the requirements of Bank policy as set out in OD 4.30.

Disclosure of Information

73. The timely disclosure of information on evolving projects is designed to provide opportunities for comment on and improvement of Bank projects. When a project is under consideration, Bank policy requires that a Project Information Document (PID) be released on it. The PID is to be made available at the Bank's Infoshop at the Project Concept Document (PCD) stage. The very short PID for the Western Poverty Reduction Project bears the same date as the PCD, March 25, 1998. It makes one reference to "minorities" or "minority nationalities", saying in passing that China's current "absolute poor" comprise "largely minority nationalities." There is no mention of minorities in the Qinghai component of the Project. Rather, the beneficiaries are defined only in terms of their poverty and their precarious future in the absence of the Project.

74. The Bank's policy expects that this initial PID will be updated and expanded periodically as project preparation proceeds. In any event, it is required to be revised before formal project appraisal. This was not done. If changes are then made, a final version of the PID is prepared. A first revision of the PID was made available at the Bank's Infoshop on May 4, 1999, nearly four months after the Appraisal Mission of January 26, 1999.

75. Following the TIN article, the Public Information Document (PID) was revised a second time and released on June 1, 1999. The June version contained a long, 11-page annex on "Social Aspects" of the Project. This revision is the first official public document on the Project that contains a description of the Social Assessment

preparation, the selection of beneficiaries, measures for land acquisition and compensation, and measures for protecting minority rights.

76. In its Response to the Request for Inspection, Management agrees that there were shortcomings in the timeliness with which the required documents were sent to the Infoshop. The EA and the Involuntary Resettlement Plan were not sent to the Board of Executive Directors and the Infoshop until June, 1999. As Management admits, the Qinghai Project is not in compliance with BP 17.50. And the Panel so finds.

Investment Lending and Retroactive Financing

77. The September 9, 1999 decision of the Board of the Executive Directors asked the Panel to look into compliance by Management with the provisions of OP/BP 10.00 on *"Investment Lending: Identification to Board Presentation"* and OP/BP 12.10 on *"Retroactive Financing."*

78. The Panel is satisfied that the Project is consistent with the Articles of Agreement and the CAS and is anchored in country policy/sector analysis, as provided in OP/BP 10.00. This Report shows, however, a number of instances where the Panel feels that operational policies and procedures were not followed, casting doubt as to whether the Project, as it stands, is the best alternative to contribute to poverty reduction and sustainable economic growth, and, thus, economically justified, as required in the same policy.

79. In the Panel's view, the Project is in compliance with OP/BP 12.10 on Retroactive Financing.

Part One

Introduction

Chapter 1

China: Western Poverty Reduction Project in Qinghai Province

1. The objective of the China: Western Poverty Reduction Project is to reduce the incidence of absolute poverty in remote and inaccessible villages of three provinces of China: the Inner Mongolia Autonomous Region ("Part A"), Gansu ("Part B") and Qinghai ("Part C"), shown on Map 1.¹ According to Bank Management, it will assist a total of about 1.7 million people in all three locations increase their incomes and productivity in both farm and off-farm activities. It will also improve their health and education services, water supply, the availability of electricity, and the quality of roads used to bring local goods to market.

2. This Report is concerned exclusively with Part C, the Qinghai component of the project, located entirely in Qinghai Province. As explained below, it was this component only that was the subject of both the Request for Inspection by the International Campaign for Tibet (ICT)² representing the affected people and, later, the World Bank Board of Executive Director's decision to ask the Panel to undertake an investigation.³

3. Qinghai Province is located in western China, as can be seen on Map 1. It borders Xinjiang on the northwest, Gansu to the north and east, Sichuan to the southeast, and Xizang (the Tibet Autonomous Region) to the west and southwest.⁴ It

¹ It is the sixth World Bank assisted poverty reduction program in China, following projects in the Southwest, in the Gansu-Hexi Corridor, in the Qinba Mountains, in Shanxi and in the Ningxia Hui Autonomous Region.

² INTERNATIONAL CAMPAIGN FOR TIBET (ICT), *Request for Inspection: China Western Poverty Reduction Project (Credit No. 32550 CHA and Loan No. 4501-CHA)*, INSP/R99-6 (18 June 1999) (*hereinafter* "Request for Inspection" or "Request").

³ See INTERNATIONAL DEVELOPMENT ASSOCIATION (IDA) and INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT (collectively "The World Bank" or "Bank"), *Proposed Decision on Request for Inspection — China Western Poverty Reduction Project (Credit No. 32550 CHA and Loan No. 4501-CHA)*, INSP/R99-6/2 (7 September 1999) [*hereinafter* Board Decision], at § 2.

⁴ In project documents, the nearby Xizang and Nei Mongol provinces (as shown on Maps 1 and 2) are generally referred to by their official English translations: "Tibet Autonomous Region" and "Inner Mongolian Autonomous Region," respectively.

is a large and, as the Team discovered, stunningly beautiful province covering one-thirteenth of China. It is the source of both the Yellow and Yangtze rivers although much of the province's drainage is internal to either the Qaidam Basin in the west or to Qinghai salt lake, also known as Koko Nor, in the center – the largest lake in China.



Figure 1. Landscape, with sheep and rain-fed ricefields, amid mountains of Qinghai Province.

The average elevation of the province exceeds 3000 m and mountain peaks rise to over 7000 m. It is an arid province with annual precipitation ranging from about 500 mm in the rugged loess-covered hill country to the east to below 100 mm in the flat sedimentary Qaidam Basin to the west. The Qaidam Basin is bounded to the north and east by major strike-slip faults and to the south by the active Kunlun fault. Major earthquakes (magnitude 7+) occurred on this fault near Dulan in 1937 and 1963.

4. The Qinghai component (hereinafter referred to as the Qinghai Project or, more simply, as the Project) comprises two parts: the so called Move-out area to the east of Xining City, as shown on Map 1, and the Move-in area some 450 kilometers to the west, as shown on Map 2.⁵ It aims to alleviate poverty by voluntarily resettling 57,775 poor farmers who currently practice high-altitude rain-fed agriculture in the

⁵ "Map 1" and "Map 2" should be referenced as IBRD 30629 and IBRD 30630, respectively.

mountainous areas of five counties in Haidong Prefecture and one county in Xining City Prefecture. They will be resettled into a new irrigation project in the dryland area of the Haixi Tibetan and Mongolian Autonomous Prefecture in Dulan County. Within the Move-in area, the Project proposes to renovate an existing 8 m dam, and construct a new 40 m dam at Keri. It will also build a 29 km canal from the Xiangride River to the Keri Dam and a further 56 km canal from the Dam to supply water to irrigate some 26,500 ha, all shown on Map 2.

5. According to Management, the object is to benefit both those remaining behind in the Move-out area and those migrating to the Move-in area. Management expects those remaining in the Move-out area to benefit as a result of reduced population and livestock pressure on scarce land and other resources and from investments in land rehabilitation. Improvements in infrastructure are also foreseen. Those moving to Dulan County in Haixi Prefecture would benefit from start-up costs for resettlement and from user rights to irrigated land for cultivation and grazing. They will be taught how to grow crops using irrigation and how to manage their farms. Schools are planned in the Move-in area that reflect the migrant population's ethnic and language backgrounds, as well as vocational and adult education services. Twenty-three clinics with trained health care workers are also planned to serve the health needs of the Move-in area.

Chapter 2

Inspection Panel Asked to Conduct Investigation

6. The Western Poverty Reduction Project became active in the Bank's China portfolio in January 1997, although preliminary work on the Keri Dam began in 1989 and significant background work on the concept underlying the project as a whole began early in the 1990s.⁶ The Project was appraised in January 1999 and it became the subject of public controversy in late April 1999, following the publication of an article by the Tibet Information Network.⁷

2.1 Background to the Investigation

7. On June 18, 1999, the International Campaign for Tibet (ICT), a U.S. based non-governmental organization, acting on behalf of affected people who live in the Project area, submitted a Request for Inspection to the Panel.⁸ The Requesters claimed that approval and implementation of the Project would affect the lives and livelihoods of Tibetan and Mongolian ethnic peoples who would suffer potentially irreversible harm.⁹ More specifically, they maintained that the resettlement of the new migrants would directly and adversely impact 4,000 local people and the carrying capacity of their area. The move would also impact indirectly on the entire county and risk escalating ethnic tensions and conflicts over resources.

8. The Requesters alleged a failure to comply with the Bank's policy on Indigenous Peoples (OD 4.20), and a number of other policy failures. They claimed that Management failed to comply with the Bank's policy on Environmental Assessment (OD 4.01), citing the decision to categorize the Project as a Category "B"

⁶ THE WORLD BANK, *China: Strategies for Reducing Poverty in the 1990s*, Report No. 10409-CHA (29 June 1992).

⁷ See TIBET INFORMATION NETWORK (TIN), *World Bank Funds Controversial Population Transfer Scheme*, News Update (27 April 1999).

⁸ See ICT, *Request for Inspection*, *supra* note 2. See, also, INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT (IBRD) & INTERNATIONAL DEVELOPMENT ASSOCIATION (IDA), *Resolution No. 93-10/Resolution No. IDA 93-622 (adopted 22 September 1993)*, at § 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 ... or by the local representative ... or by another representative in the exceptional cases where the party submitting the request contends that appropriate representation is not locally available..."

⁹ The Panel also received a letter from The International Committee of Lawyers (ICLT) attaching a 5-page Report detailing legal arguments against the Project.

for environmental screening instead of the more rigorous Category "A". They claimed that the Bank failed to prepare an adequate involuntary resettlement plan for the 4,000 people living in the Move-in area (OD 4.30). They alleged that the conversion of a natural habitat to irrigated agriculture, canals, roads and housing, would lead to a potential loss of wildlife and wildlife habitat (OP/BP 4.04). They claimed that the Bank failed to apply its pest management control policy (OP 4.09) and they raised questions about a possible failure to follow dam safety policies (OP/BP 4.37). In addition, they claimed that Management failed to disclose the Environmental Assessment, Resettlement, and Voluntary Resettlement Plans until just before the Project was to be considered by the Bank's Board of Executive Directors (BP 17.50). Finally, they claimed that these failures by Management to comply with Bank policies and procedures would "...undermine the integrity of the entire project... and ... constitute a serious threat to the ethnic minorities in the area and the fragile ecosystem in which they live."¹⁰

9. In response to external criticism beginning in late April, Bank Management conducted an intensive internal review of the environmental and social aspects of the Qinghai Project. As a result, some "refinements" or "improvements" were proposed. Negotiations with the Chinese Government were reopened and the agreed modifications were presented in a revised loan package for Board approval.

10. On June 24, 1999, the World Bank Board decided to finance the equivalent of US\$ 160 million of the US\$ 311 million required for the entire West China Poverty Reduction Project, \$100 million in concessional funds through an IDA Credit (No. 3255-CHA) and \$60 million through an IBRD Loan (No. 4501-CHA). Of this amount, \$50 million is intended to benefit 674,000 people in the Inner Mongolia Autonomous Region, \$70 million to benefit 930,000 people in Gansu. The balance of \$40 million is provided to benefit people in Qinghai, including the 57,750 who are being resettled from the Move-out area, the 110,000 who are staying, and the 4,000 who live in and around the Move-in area.

11. This Loan and Credit approval came with a caveat, however. The Bank reported that the Executive Directors, "...in an unusual move, agreed that no work be done and no funds be disbursed for the \$40 million Qinghai component of the project

¹⁰ Request for Inspection, supra note 2, at 2.

until the Board decides on the results of any review by the independent Inspection Panel.”¹¹

12. On July 19, 1999, Management replied to the allegations in the Request, addressing a number of concerns relating to the potential adverse impact of the movement of a large number of non-Tibetan and non-Mongol populations into the Move-in area.¹² It considered the Project in compliance with OD 4.20 on Indigenous Peoples since during the preparation of the Project it claimed that “...the substantive objectives of the OD should be addressed by the project itself and the provisions of the OD would thus apply to the project in its entirety.”¹³ Management did recognize, however, “...that some of the project's qualitative aspects regarding ethnic minorities could have been better anticipated and addressed in loan documentation.”¹⁴ Management also considered that it was in full compliance with OD 4.01 on Environmental Assessment, since whether to assign the Project to Category “A” or “B” was, in its opinion, a matter of “judgment.”¹⁵ It also felt that it was in compliance with OP 4.04 on Natural Habitats, OP 4.37 on Safety of Dams, and OP 12.10 on Retroactive Financing. It stated that it had been consistent with OD 10.00 on standards for quality at entry and in broad consistency with policies on Pest Management in OP 4.09 and BP 4.01. On disclosure of information, Management agreed that there was “a shortcoming in the timeliness” with which the Environmental Assessment Report and Resettlement Action Plan were sent to the Bank's Infoshop in Washington, DC “...relative to Management guidance to staff in this regard.”¹⁶

13. Management also pointed out that a number of “refinements” had been made to the Project as presented to the Board since public concerns had been raised in late April. Although Management's internal reviews confirmed compliance with safeguard policies, it had “...identified areas that would benefit from additional qualitative strengthening during implementation.” A small team of senior management staff had visited Qinghai Province to make an “...independent assessment of the situation and the efficacy of the plan,” an outline of additional

¹¹ See The World Bank, World Bank Approves China Western Poverty Reduction Project: Qinghai Component Delayed for Inspection Panel Review, Press Release (24 June 1999), at § 1.

¹² See, IDA AND IBRD, *Management Response to the Request for Inspection Submitted to the Inspection Panel* (18 June 1999) [hereinafter “Management Response” or “Response”].

¹³ See, *Management Response*, *supra* note 12, at p. 10.

¹⁴ *Id.*, *supra* note 12, at p. 28.

¹⁵ *Id.*, *supra* note 12, at p. 2.

¹⁶ *Id.*, *supra* note 12, at p. 2.

activities was prepared, and negotiations with the Chinese Government were reopened.

14. Some of the “refinements” agreed and included in supplemental letters to the Loan and Credit agreements included: a) assurances that there will be no change in the administrative status of the Haixi Mongol and Tibetan Autonomous Prefecture; b) strengthening the Pilot Program whereby 200 households will be settled on 300 hectares of land as a field test of the social and environmental aspects of the Project; c) adding a Pre-Pilot phase to ensure adequate preparation of the Pilot Program and to update the previous work on environmental and social issues through evaluation of existing multi-ethnic settlements adjacent to the Project area; and d) making additional investments in social services in both the move-out and move-in areas for people beyond the specific Project boundaries.¹⁷ Finally, Management welcomed “...the opportunity to have its actions reviewed independently by the Inspection Panel.”

15. On August 18, 1999, the Panel submitted its Report on the eligibility of the Request and the Requesters and its recommendation on the Request for Inspection. It concluded that the Request met all eligibility criteria required under the Resolution establishing the Panel, except that the Board itself had to decide on whether external representation was appropriate. It also concluded that the Request for Inspection and the Management Response to it contained “...a wide range of conflicting assertions and interpretations about issues, the underlying assumptions, the facts, compliance and harm.” It therefore recommended that the Executive Directors authorize an investigation.¹⁸

2.2 The Board’s Decision: Terms of Reference

16. On September 9, 1999, the Board of Executive Directors authorized the independent Inspection Panel to conduct an investigation into the Project. The memorandum containing the decision, taken on a non-objection basis, states: “On August 24, 1999, Executive Directors received a memorandum from the Chairman of the Inspection Panel entitled ‘Request for Inspection: China: Western Poverty Project (Credit No. 3255-CHA and Loan No. 4501-CHA) - Panel Report and

¹⁷ See IDA AND PEOPLES’ REPUBLIC OF CHINA, *Supplemental Letters to Loan and Credit Agreement — China Western Poverty Reduction Project (Credit 3255-CHA/Loan 4501-CHA)*, (signed 30 December 1999).

¹⁸ INSPECTION PANEL, *Panel Report and Recommendation on Request for Inspection*, INSP/R99-6 (18 August 1999) at p. 6, § 28.

Recommendation'. In this memorandum, the Chairman requested (i) agreement of Executive Directors that 'appropriate representation is not locally available' for purposes of eligibility of the requesters under paragraph 12 of Resolution 93- 10 and of Resolution No. IDA 93 -6 (Inspection Panel Resolution); and (ii) Executive Directors' approval of the recommendation that the Board authorise an investigation by the Panel into the matters alleged in the Request for Inspection.

Board determination of the issue of eligibility of the requesters will require obtaining and considering additional information and the careful analysis of a number of important issues. This process is likely to delay investigation by the Panel. Consequently, in order to expedite Panel investigation, it is proposed that, pursuant to paragraph 12 of the Inspection Panel Resolution, the Executive Directors, acting as a Board, instruct the Panel to conduct an investigation into whether the Bank has violated one or more of the following operational policies and procedures of the Bank, with respect to the design and appraisal of the Western Poverty Reduction Project (Credit No. 3255-CHA; Loan No. 4501-CHA): BP 17.50 (Disclosure of Information); OD 4.01 (Environmental Assessment); OD 4.20 (Indigenous Peoples); OD 4.30 (Involuntary Resettlement); OP 4.09 (Pest Management); OP/BP 4.3 7 (Safety of Dams); OD 12.10 (Retroactive Financing); and OD 10.00 (Investment Lending: Identification to Board Presentation)".¹⁹

2.3 The Investigation Process

17. The Panel's membership changed during the course of the investigation. At the start of the investigation, the Panel was composed of two members, the Chairman, Jim MacNeill,²⁰ and his colleague, Edward S. Ayensu.²¹ On November 1, 1999, they were joined by Maartje van Putten.²²

¹⁹ BOARD DECISION, *supra* note 3. In the absence of a request for discussion by the close of business on Wednesday, September 8, 1999, the Executive Directors were deemed to have approved the Proposed Decision.

²⁰ **Jim MacNeill, O.C., D.Sc. (McGill), LL.D. (Sask.), Chairperson**, a Canadian national, appointed August 1997. He is a policy advisor on the environment, energy, management, and sustainable development to international organizations, governments, and industry. He is Chairman Emeritus of the International Institute of Sustainable Development, and a member of the boards of the Woods Hole Research Center, the Wuppertal Institute on Climate and Energy Policy, and a member of the Jury of the Volvo Environmental Prize. He was Secretary General of the World Commission on the Environment and Development (the Brundtland Commission) and lead author of the Commission's world-acclaimed report, "Our Common Future." He served for seven years as Director of Environment for the Organization for Economic Cooperation and Development. Earlier, he was a Deputy Minister in the Government of Canada. Mr. MacNeill holds a graduate diploma in economics and political science from the University of Stockholm and bachelor degrees in science (math and physics) and mechanical engineering from Saskatchewan University. He is the author of many books and articles and the recipient of a number of awards, national and international, including the Order of Canada, his country's highest honor.

18. Within days of the Board's decision, the Panel began to select a small team of senior consultants to assist and advise it. Professor Richard F. Fuggle, University of Cape Town,²³ and Professor Vernon H. Heywood, University of Reading,²⁴ were

²¹ **Edward S. Ayensu (Ph.D., London Univ., 1966)**, a Ghanaian national, appointed August 1998. He is President of the Pan-African Union for Science and Technology; Chairman of Edward S. Ayensu Associates Ltd.; Executive Chairman of Advanced Gracewell Communications Co. Ltd.; founding Chairman of the African Biosciences Network, and formerly the Secretary-General of the International Union of Biological Sciences; Chairman of the Ghana National Biodiversity Committee; member of the International Advisory Board on Global Scientific Communications, UNESCO; and member of the Board of Directors and International Vice-Chairman of the International Institute for Sustainable Development. Professor Ayensu is a fellow of various academies of arts and sciences. He has been Senior Advisor to the President of the African Development Bank and the Bank's Director for Central Projects. Previously he has held posts in international scientific organizations, including Director and Senior Scientist at the Smithsonian Institution, Washington, D.C. Professor Ayensu was a Visiting Fellow of Wolfson College, Oxford University, and Distinguished Professor of the University of Ghana, and twice the recipient of the Ghana National Science Award. He has a doctorate degree in the biological sciences from the University of London, and has published many books and articles on science, technology and social and economic development of developing countries. Professor Ayensu was the recipient of the Outstanding Statesman Award in Ghana during the Millennium celebrations.

²² **Maartje van Putten (Diploma, Hoger Sociaal Pedagogisch Onderwijs, PVO 1983)**, a Dutch national, appointed October 1999. Until recently Ms. Van Putten was a member of the European Parliament. She has been a highly active member of the Committee on Development and Cooperation for the past 10 years. Ms. van Putten has produced many outstanding reports on the effects of the GATT/Uruguay Round on the developing countries, fair trade, development aid for Asia and Latin America, the EU program for tropical forests and European policies towards indigenous peoples. She has extensive exposure to developing countries, and is active with non-governmental organizations and extremely committed to the cause of development. Ms. van Putten has closely worked with the WWF European Policy Office as a key political partner to promote better EU conservation and sustainable development policies. She was also a consistently active member of the ACP (African, Caribbean and Pacific Group)-European Union Joint Assembly. Ms. van Putten was a freelance multimedia journalist for most of her professional career, and was a Senior Fellow of the Evert Vermeer Foundation from 1981 to 1989. She is the author of many articles and books on globalization, international division of labor and on gender issues. Currently a member of the European Center of Development Policy Management in the Netherlands, Ms. van Putten is President of the Board of European Network of Street Children Worldwide (ENSCW). She holds a HBO (bachelor) degree in community development from Sociale Academie Amsterdam, and a Diploma, Hoger Sociaal Pedagogisch Onderwijs (PVO) Amsterdam.

²³ **Richard Fuggle (Ph.D., McGill Univ., 1971)** holds the Shell Chair of Environmental Studies at the University of Cape Town. He is Head of the Department of Environmental and Geographical Science and is Director of the Environmental Evaluation Unit. He has served as Visiting Professor to Universities in the United States, Canada, Australia, New Zealand and the United Kingdom and has visited the Peoples' Republic of China and the United States as a distinguished scholar. He is a Founder Member of the Academy of Science of South Africa and is a Registered Natural Scientist and Professional Member of the South African Institute of Ecologists and Environmental Scientists. He serves on the Board of Directors for the Network for Environment and Development in Africa and serves on the editorial boards of the Journal for Impact Assessment and Project Appraisal, the South African Journal of Environmental Law and Policy and the International Journal of Geography and Environmental Education. He has edited two books on environmental management in South Africa and has published over 100 academic papers on environmental topics. He led the teams which developed the South African Guidelines for Integrated Environmental Management. He has served on

asked to provide advice on environment, dam, habitat and pest management issues, and on compliance with the relevant Bank policies and procedures. Dr. Paul Michael Taylor²⁵ took leave from the Smithsonian Institution to provide independent advice on social issues, including indigenous peoples, and on compliance with relevant policies and procedures. Professor Robert Wade, Brown University,²⁶ was asked to undertake a desk audit to assist the Panel to describe the decision process undertaken and to compare it to the process required by the various policies and procedures. The Panel is grateful to them for their advice and for the dedication, knowledge and wisdom they brought to their work, on which it has drawn heavily for this Report.

19. Between September 1999 and January 2000, the Panel conducted interviews with virtually all Bank staff and consultants associated with the Qinghai Project, and with some experts not associated with the Bank, for information on the history of the Project, the studies and the consultation process undertaken, the decision process

five Commissions of Enquiry related to Environmental Assessments. He has received many awards and distinctions for his contributions to the advancement of Environmental Impact Assessment.

²⁴ **Vernon Heywood (Ph.D., Cambridge Univ., 1953)** is Emeritus Professor in the University of Reading, President, IUBS International Council for Medicinal and Aromatic Plants (ICMAP), and a consultant to FAO, UNEP, GEF, and DFID. He was formerly Chief Scientist, Plant Conservation, of IUCN (The World Conservation Union) and Director of Botanic Gardens Conservation International. He holds Honorary Professorships at the Institute of Botany, Chinese Academy of Sciences, Nanjing, China and at the Universidad 'Juan Agustín Maza', Mendoza, Argentina. He is a world authority on biodiversity and the systematics and evolution of plants, and has had extensive experience of conservation problems in many parts of the world. He co-ordinated and edited the UNEP Global Biodiversity Assessment, and has advised governments, ministries, universities and NGOs in many parts of the world. He has been the recipient of numerous awards and distinctions. His publications include sixty books and 500 papers in scientific journals.

²⁵ **Paul Michael Taylor (Ph.D., Yale Univ., 1980)**, a cultural anthropologist based in Arlington, Virginia, served while on leave from his position as research anthropologist and Director of the Asian Cultural History Program (Department of Anthropology), Smithsonian Institution. He has produced four books and numerous other scholarly publications on the ethnography, ethnobiology, and languages of Asia, especially Indonesia; he has also curated twelve museum exhibitions and served as anthropological consultant for five films. The recipient of numerous international grants and awards, he has served on the Board of Directors of the Association for Asian Studies, and currently serves on the Advisory Board of the US-Indonesia Society. His research on rural social and ecological issues has included living for over three years in rural village or tribal communities of Southeast Asia.

²⁶ **Robert Wade (D.Phil., Sussex Univ., 1972)** is professor of political science and international political economy at Brown University, professor-designate of political economy and development at the London School of Economics, and fellow-designate at the Institute for Advanced Study, Berlin. He has taught at MIT, Princeton University, and Sussex University, and worked as a staff economist at the World Bank. He is the author of "Greening the Bank: the struggle over the environment, 1970-1995", in the recent history of the World Bank's first fifty years (The World Bank: Its First Half Century, Brookings Institution, 1997); *Governing the Market: Economic Theory and the Role of Government in East Asian Industrialization* (Princeton, 1990); and of "Wheels within wheels: rethinking the Asian crisis and the Asian model", *Annual Review of Political Science* 2000.

and clearance procedures, compliance and other aspects. Some interviews took place in Washington, D.C. and some at the Resident Mission China offices in Beijing. Some individuals were interviewed both before and after the field visit to the Project area. With the assistance of Bank staff and others, the Panel requested and examined the available Bank correspondence and reports about the Qinghai Project. It also assembled and examined both published and unpublished literature on the history and ethnography of the region, resettlement and ethnic relations in China, and methods of social or environmental assessment.²⁷ The Panel also met with NGOs, academics and others with information, insights and views on the Project before, during and after its visit to China.

20. In October 1999, Panel Chairman Jim MacNeill and his colleague Edward S. Ayensu made a field visit to Beijing and Qinghai Province, accompanied by the Panel's Executive Secretary, Eduardo Abbott, and Professors Fuggle, Heywood and Dr. Taylor (here in after referred to as the Team). The Team arrived with its own Chinese-, Tibetan-, and Mongolian-language interpreters, all of whom currently live

²⁷ See THE WORLD BANK, *Environmental Assessment at the World Bank*, CD-ROM version 1.0, Washington DC: The World Bank (1999). See, also, ALAN GILPIN, *Environmental impact assessment (EIA): cutting edge for the twenty-first century*, Cambridge etc.: Cambridge Univ. Press (1995) and INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT, *Environmental Assessment Sourcebook, vol. I (Policies, Procedures, and Cross-Sectoral Issues), vol. II (Sectoral Guidelines), vol. III (Guidelines for Environmental Assessment of Energy and Industry Projects)*, 139, 140 and 154 World Bank Technical Papers, Washington DC: The World Bank (1991). On social assessments and for World Bank case studies, see RABEL J. BURDGE, (ed.), *A conceptual approach to social impact assessment* (revised ed. Middleton), Wisconsin: Social Ecology Press (1998); RABEL J. BURDGE, *A Community Guide to Social Impact Assessment* (revised ed. Middleton) Wisconsin: Social Ecology Press (1999) and MICHAEL CERNEA & AYSE KUDAR (eds.), *Social Assessments for Better Development: Case Studies in Russia and Central Asia*, 16 Environmentally Sustainable Development Studies and Monograph Series, Washington DC: The World Bank (1997). On resettlement issues see, in particular, THE WORLD BANK, *Resettlement and Rehabilitation Guidebook*, CD-ROM version 2.0, Washington DC: The World Bank (1999) and WORLD BANK OPERATIONS EVALUATION DEPARTMENT, *Recent Experience With Involuntary Resettlement: Overview*, Report No. 17538 of 2 June 1998, Washington DC: The World Bank (1998). Earlier guidelines for preparing and appraising resettlement plans had been published in THE WORLD BANK, *Involuntary Resettlement in Development Projects*, 80 World Bank Technical Paper, Washington DC: The World Bank (1988). On stakeholder participation, see JENNIFER RIETBERGEN-MCCRACKEN (ed.), *Participation in Practice: The Experience of the World Bank and Other Stakeholders*, 333 World Bank Discussion Paper (1996). On national minorities in China, see JUNE TEUFEL DREYER, *Assimilation and Accommodation in China*, in MICHAEL E. BROWN & SUMIT GANGALY (eds.), *Government Policies and Ethnic Relations in Asia and the Pacific*, Cambridge, Mass./London: The MIT Press (1997) at pp. 351-392; STEVAN HARREL, *Cultural Encounters on China's Ethnic Frontiers*, Seattle/London: University of Washington Press (1994); NICHOLAS TAPP, *Minority Nationality in China: Policy and Practice* in R.H. BARNES, ANDREW GRAY & BENEDICT KINGSBURY (eds.), *Indigenous Peoples of Asia*, 48 Monograph and Occasional Paper series, Ann Arbor, Michigan: Association for Asian Studies (1995) at pp. 195-220 and NATIONAL MINORITIES COMMISSION OFFICE, *Zhonghua Renmin gongheguo minzu zhengce gagui xuanbian [Selected Compilation of the Laws and Legal Regulations on PRC's National Minority Policies]*, Beijing: Chinese Aviation Publishing House (1997) [original in Chinese].

outside China. The Bank's Resident Mission China staff also generously assisted with Chinese-language interpretation, at the Team's request. In Beijing, the Team met with Resident Mission China staff and consultants on this Project both before and after visiting Qinghai. It met with Chinese government officials at the Ministry of Finance, the State Ethnic Minorities Commission, State Council Leading Group on Poverty Alleviation, and other offices. It met with ambassadors and senior officials from a number of countries to obtain various perspectives on the Project. And it met with the Beijing staff of other donor agencies or foreign aid missions who have been involved in quite different poverty alleviation efforts in Qinghai. These include Australian Aid, the World Food Programme, the European Union, and the United Nations Development Programme.²⁸

21. Traveling to Xining, the capital of Qinghai Province, the Team divided into groups to more effectively examine different issues. The Panel members met with the Executive Vice Governor and his staff both before and after visiting the Move-out and Move-in areas. Together with members of the Team, they had extensive meetings with the Provincial Project Management Office, especially for briefings on the social assessment by the Qinghai Research Institute of Plateau Geography; and a formal meeting with scholars and faculty at the Qinghai Ethnic Minorities Research Institute/University.

22. The Team visited several villages in the Move-out areas (Map 1).²⁹ They then spent a day driving some 450 kilometers on the Xining to Lhasa Road to Dulan, the Dulan county seat in Haixi Prefecture, near the Move-in area (Map 2). From Dulan, the Team visited Tibetan, Mongol, and Han villagers in or near the proposed project site and in Xiangride township, as well as Mongol herders encamped at the irrigation site. Follow-up meetings with government officials and private citizens continued after returning by road to Xining.

²⁸ See World Food Programme Reports (Executive Board, Second Regular Session, Agenda item 7(a), Project China 5717) ("Integrated agriculture development in Haidong Prefecture, Qinghai Province"); also Project China 2708 ("Improvement through irrigation of low yielding lands, Haidong Prefecture, Qinghai Province"). On European Union's Qinghai Livestock Development Project (ALA/CHN/9344) and Qinghai Potato Development ALA/CN/9410), see the UNDP website <http://www.unchina.org/undp/press/html/eu.html#livestock>; on UNDP projects also see <http://www.unchina.org/undp>.

²⁹ These included Machang village (Luchagou Township) in Minhe county; Hongyan village (Shihuiyao township) and Chierpu village (Gucheng township) in Ping'an county; Hashijia Village (Arshnu [=A'shinu] township) in Hualong county; Daheigou village (Donxia township) in Huangyuan county; Heran village (Galeng township) in Xunhua county; and Xipo village (Shishan township), in Datong county.

23. These site visits in the Move-out and Move-in areas, as well as meetings with government officials involved in the Qinghai Project, were extremely important for assessing formal and substantive compliance with Bank policies and procedures. They allowed the Team to witness first-hand the urgent need for and importance of poverty alleviation programs in the Move-out areas. The Panel does not question that: the urgent need for poverty alleviation was clearly evident. And meetings with other donor agencies (see Acknowledgements) provided evidence of the effectiveness of various alternative *in situ* strategies for poverty alleviation in Qinghai. The site visits also enabled the Team to witness the overall climate in which consultation with the affected people was conducted in both the Move-out and Move-in areas, and the range of local opinion toward many aspects of the proposed Project.

Part Two

General Compliance

Chapter 3

Interpretation of Bank's Policies and Procedures, and Questions about Compliance

24. The Board's decision of September 9, 1999 instructing the Panel to conduct an investigation of the Project is quite clear about the focus of the investigation. The Panel is to determine "... whether the Bank has violated one or more of the following operational policies and procedures of the Bank, with respect to the design and appraisal of the ... Project ..." ³⁰ In other words, the Panel is to determine whether, in the design and appraisal of the Project, Management complied with the Bank's own operational policies and procedures. This is, of course, one of the main purposes of the Panel. ³¹

25. During the course of examining some 20 projects over the past five years, the Panel has gained much experience in determining how the Bank's operational policies and procedures should be applied. The Board recently completed an eighteen-month review of the Panel during which some Board and Panel members had extensive opportunities to share their views on this. When the Board took its decision following the review, the Panel expected no significant questions in this regard. The Panel's interviews over the past few months, however, have revealed an unusually and disturbingly wide range of divergent, and even opposing, views among staff on how the operational policies and procedures should be applied. Some differences are, of course, to be expected. But the Panel found the differences in staff interpretation of the ODs and how they are to be applied so significant that it raises serious questions about the ability of Management to apply them with any reasonable degree of consistency.

³⁰ Board Decision, *supra* note 3.

³¹ See, e.g., IBRD/IDA *supra* note 8, at § 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." See, also, THE WORLD BANK INSPECTION PANEL, *Operating Procedures* (adopted 19 August 1994) at *Purpose*: "The Panel was 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."

26. In view of this, the Panel feels it desirable to begin this Report with a brief discussion of the Bank's safeguard policies and procedures, how they evolved, their importance, and how the Panel understands them in relation to the question of compliance.

3.1 Evolution of Bank's Policies and Procedures: Safeguards

27. Since the early 1970s, the World Bank has been a leader in the development of what are now called 'safeguard policies.' In 1971, the Bank required that impact on the environment be considered in project appraisal but no specific mechanisms were stipulated. In 1975, it issued voluntary *Guidelines on Environmental Developments of Projects*. In 1984, the Operational Manual Statement on *Environmental Aspects of Bank Work* was adopted. In 1989, Operational Directive 4.00, Annex A, mandated environmental assessments for all Bank projects but did not specify detailed procedures. Two years later, in October 1991, this was revised and issued as OD 4.01 Environmental Assessment. It set out the procedures to be followed by the Bank in some considerable detail. The Directive itself consisted of six pages followed by 12 pages of Annexes which give detailed instructions with respect to matters such as potential issues for an assessment, the outline of an EA report, and environmental mitigation plan and environmental screening.³² This OD remained in force until January 1999. In other words, it was in force during the design and preparation of the Qinghai Project. In 1999, OD 4.01 was recast and released as the suite *OP/BP/GP 4.01 Environmental Assessment*, which now frames the Bank's approach to environmental assessment in terms of Operational Policies (OP), Bank Procedures (BP) and Good Practice (GP).

28. The evolution of the Bank's environmental policies ran parallel to the development of safeguard policies in other related areas. As far back as 1982, the Bank issued Operational Manual Statement (OMS) 2.34 on Tribal People in Bank-financed Projects, the purpose of which was to protect the interests of relatively isolated and culturally distinct indigenous groups in Bank-financed development interventions. It was replaced in 1991 with OD 4.20 on Indigenous Peoples.

29. In 1980 the Bank issued OMS 2.33 on "*Social Issues Associated with Involuntary Resettlement in Bank-Financed Projects.*" This was complemented in 1986 with Operation Policy Note (OPN) 10.08 on "*Operations Policy Issues in the Treatment of Involuntary Resettlement in Bank-Financed Projects.*" Both were

³² IBRD/IDA, *Operational Directive 4.01 on Environmental Assessments* (October 1991) [hereinafter OD 4.01].

replaced in 1990 with OD 4.30 on Involuntary Resettlement. This OD broadened the treatment of resettlement issues beyond hydropower and irrigation projects to all types of investment projects.

30. In the early 1990s the Bank began a process of converting Operational Directives, Memoranda, Notes etc. into a new format that distinguished between policies, procedures and practices. According to Management, this development did not signify a change of Bank policy. Rather, it was designed to clarify what are Bank policies (OPs), what is Bank "procedure" (BPs), both mandatory "rules," and what is international best practice (GPs). It was also designed to streamline the procedures for more effective implementation by Bank staff. In his new book on the Inspection Panel, Shihata comments on this as follows: *"Some ODs were seen to be at times too detailed or reflecting what should be sought and not necessarily what could be done in practice. The limits of flexibility in the application of the ODs were not always clear either, especially those written before their drafters were aware of the controversy regarding the nature of these documents. Differences on this issue and the desire of the Bank's Management to streamline and simplify the Bank's business practices lead, after an informal discussion by the Executive Directors, to the Management's decision in late 1992 to gradually replace the ODs by OPs and BPs, which would be binding on the staff, as well as by Good Practices (GPs), which would disseminate knowledge and indicate successful examples without being binding. This is the process that came to be known in the Bank practice as conversion."*³³

31. The adoption of OP/GP on Forestry in September 1993 reflected the shift, distinguishing between Operational Policies and Good Practice. The adoption in September 1994 of an OP/BP 10.04 on Economic Evaluation of Investment Operations reflected the Bank Procedure category. In October 1994, OP/BP/GP 4.02 on Environmental Action Plans divided what was previously one OD into three separate statements. This triumvirate was continued in September 1995, with the adoption of OP/BP/GP 4.04 on Natural Habitats. This replaced OPN 11.02 on Wildlands. In September 1996 OP/GP (no BP) 4.36 on Safety of Dams was adopted. In December 1998 an OP on Pest Management replaced a 1996 version of the same. This OP had replaced old OD 4.03 on Agricultural Pest Management.

32. Bank policies and directives leave no doubt whatsoever that environmental assessments must be undertaken for all Bank projects classified as "A" or "B." The situation is not as clear-cut with respect to the need for social assessments.

³³ I.F.I.SHIHATA, *The World Bank Inspection Panel: In Practice* (2nd edition, 2000), New York: Oxford, pg. 44. See pp. 41-46 for a full discussion.

However, several World Bank operational directives require or imply the use of social assessment, including those on Environmental Assessment (paragraph 3), Indigenous Peoples (paragraphs 14 and 15), and Involuntary Resettlement (paragraph 11). Since these policy statements do not specify the methods and procedures that should be implemented in undertaking the required social assessments, the professional competence of the social scientists involved becomes of paramount importance, as does the Bank's obligation to provide guidance.

33. Throughout the 1990s, the World Bank has played a leading international role in promoting sound procedures for project assessment. With ODs 4.01 on Environmental Assessment in place, and later 4.30 on Involuntary Resettlement and 4.20 on Indigenous Peoples, the Bank is widely regarded as being in the forefront of international attempts to use environmental and social policies to ensure the sustainability of development projects. It has gained an enviable reputation for sound environmental assessment procedures among environmental professionals. Its performance in overseeing environmental assessments for Bank funded projects, to ensure that they meet the standards it has set and promoted, is watched closely by both environmental scientists and organizations interested in sustainability.

3.2 Wide Divergence of Views on Interpretation/Application of ODs

34. In earlier cases, the Panel noted a certain difference of views among staff on just how the Bank's operational policies and procedures should be applied. In this case, however, the nature and range of these divergences, and their implications for a reasonable application of the Bank's policies and procedures, became a matter of serious concern. These differences pervade all ranks of the staff, from senior management to front-line professionals. And they apply to virtually all of the major decisions required by the policies. This ought to be of concern to the Bank generally since there is no way that the policies can be applied with reasonable consistency in the face of such wide divergences of opinion. A few general examples of these differences will be provided here and the Panel will return to them later as required when dealing with specific issues.

35. Certain staff members felt that the Bank's Operational Directives and other policies were simply idealized policy statements, and should be seen largely as a set of goals to be striven after. According to this view, very little, if anything, is mandatory. What would be more important is the overall trend in the Bank, which should work toward the achievement of these goals. In the meantime, one may have to accept what might appear to be failures in achieving the sometimes high standards

embodied in the policies. Others of equal or more senior rank disagreed with this view, feeling that this interpretation could render the policies virtually meaningless and certainly incapable of being employed as benchmarks against which to measure compliance.

36. In discussions about compliance, staff often pointed out that the policies allow for flexibility of interpretation and they asserted that the decisions made on the specific issues in question were thus covered and in compliance. It was simply a matter of “judgement at Management’s sole discretion.” The Management Response itself makes several claims in this respect. For example, after citing preambulatory phrasing in OD 4.01 on Environmental Assessment that suggests the need for “flexibility,” the Response argues that this project was correctly assigned to environmental screening Category “B,” rather than the more stringent Category “A.”

37. It is of course true that the texts of the policies do allow for some flexibility of interpretation. They must do so in order to allow professionals to make decisions best suited to a range of projects. Yet, as other staff argued, and as will be emphasized throughout this report, the policies are clear enough to distinguish areas that are binding from areas where general guidelines call for some reasonable interpretation and flexibility. **Read in their entirety, the Panel feels that the directives cannot possibly be taken to authorize a level of “interpretation” and “flexibility” that would permit those who must follow these directives to simply override the portions of the directives that are clearly binding.**

38. Most staff at all levels agreed that, in appraising compliance, Management had an obligation to satisfy itself not only that the process and procedures mandated by the policies had been followed, but also that the work under review met professionally acceptable standards of quality. A senior official put it clearly when he told the Panel that the Management has a duty to ensure that our minimum standards are adhered to, and it has a duty to ensure that the quality of the project meets the standard that the Bank expects. In other words, both process and quality were essential components of compliance.

39. Some staff, however, took an entirely different view. Recalling that the OD 4.01 on Environmental Assessment mandates a process through which an assessment should move from inception to final appraisal and sign-off, they maintained, for example, that even a one-page environmental assessment of a major project could be in compliance if it passed the desks of, and was checked off by, the appropriate persons at the appropriate times in the decision process. While it might

be desirable to ensure professionally acceptable standards of quality, it is not required for compliance. This 'check-list' or 'process' approach to compliance represents a minority view but, in the Panel's view, it is of concern when it is held by senior persons in the project decision-chain.

40. A starting point for some staff was the Bank's goal that "ownership" of the development process should reside within the borrowing country. In their view, this led necessarily to trade-offs in several areas, including the application of the Bank's safeguard policies. By this reasoning, occasionally inadequate social and environmental assessments are a cost of encouraging government staff and consultants to move toward greater understanding of Bank policies, and greater compliance, as they take over and come to "own" the development process. As a result of that "ownership," the safeguard policies could eventually be internalized and applied to the much larger number of development projects within the country that are not funded by the Bank. These views were sometimes presented to the Panel as general perspectives on local capacity-building for social and environmental assessments of development projects.

41. Others, accepting the broad goal of "ownership" and recognizing that Bank-financed projects may represent only a small percentage of development projects in a country, came to a very different conclusion. In their view, this meant that Bank-financed projects should take on an added significance and have an example-setting role within the country's development process. It would be well within the Bank's mission, and consistent with the Bank's policies, for Bank-financed projects to emphasize and insist upon the best possible practice within the safeguards. The extra time and effort this would require from Bank staff would add to, rather than subtract from, in-country capacity-building for development. This becomes even more important if the Bank's safeguard practices are being held up as models for development projects elsewhere in the country and the world. This view is especially skeptical of the notion that "ownership" of "poor practice" constitutes a stepping-stone toward "better practice" later on. **In the Panel's view, to accept what otherwise would be seen as inadequate assessment seems especially patronizing in developing countries whose scientists are clearly capable of world-class contributions in every area where they are provided the opportunity. And, in the meantime, it leaves those countries saddled with the social and environmental costs of inadequate assessments.**

42. Often, in interviews with Bank staff and consultants, questions about compliance were answered with claims of "precedent." Precedents from other

approved projects in China, or from other social and environmental assessments within China, were cited as evidence that Bank policies and procedures were followed in this case as well. The Management Response itself cites “...*past practice with ... a large number of similar integrated agricultural development projects financed by the Bank in China over the last 10 years,*” as a reason for assigning an environmental Category “B” rather than “A.”³⁴ **Management’s past experience in a country is obviously important. It can provide the basis for a certain level of comfort that the work that is required by the policies will be undertaken successfully. It is an entirely different matter, however, to suggest that experience and precedent can determine what is required by the policies.**

43. Interviews with some staff were punctuated by the refrain that “*in China things are done differently,*” and that what may not be accepted elsewhere as compliance had always been accepted for China. This refrain echoed the Management Response where, on page 1, Management states that: “*The level and quality of preparation and analysis for this Project were very much in line with Bank practice in applying social and environmental policies to projects in China in the context of its political and social systems.*” This, too, seems to be a very long reach. **The Panel has carefully examined the policies and has failed to find any grounds for the view that precedents in a country, or a country’s “political and social systems,” can in any way determine what is required by the policies.**

44. Faced with these widely divergent views among the staff about the Bank policies and compliance, the Panel was forced to ask itself a number of questions. What are the limits of flexibility and interpretation allowed by these policies? Does compliance involve obligations regarding both process and quality? What would be the consequences of making exceptions to what is otherwise required by the policies, based on precedents within a country? What would be the consequences of interpreting what is required by the policies in light of a country’s “*political and social systems*”?

45. In the end, the Panel returned to the approach to compliance reflected in its earlier reports. There is room for some flexibility and interpretation but, **in the Panel’s view, the Operational Directives (and updated OPs, BPs, GPs, etc.) are the primary source of Bank policy for purposes of assessing compliance.** Shihata is instructive in this regard. As Senior Vice President and General Counsel

³⁴ Management Response, *supra* note 12, at p. 18; footnote 21.

of the World Bank in 1994, he wrote: *“However, exceptions which are not authorized by the text of the OD must be kept to a minimum, if the ODs are to serve their purpose and if the Bank is to avoid undue differentiation among its borrowers. After all, the ODs are not meant to be ‘marching orders’ for a specific operation but a ‘general operational code’ which is written to apply in different situations and allows for the differentiation and exceptions deemed acceptable at the time of its issuance. While not all the standards provided for in the ODs are binding (it depends on the wording of each standard), those stated in binding terms create a duty for the staff to exert their best efforts to achieve them.”*³⁵

³⁵ IBRAHIM SHIHATA, *The World Bank Inspection Panel*; New York: Oxford (1994) at p. 43-45.

Chapter 4

The Qinghai Project in Space and Time

46. A clear understanding of the spatial and temporal parameters of a project being studied is fundamental to its proper evaluation and assessment.³⁶ There is a need to know what areas are involved and are likely to experience environmental, social and economic impacts, and the time frame within which these impacts occur. With that knowledge, it is possible to determine the scope of any assessments to be undertaken and later to review them using the same space and time scales.

47. OD 4.01 is clear on this, and while ODs 4.20 and 4.30 are less direct, they do provide clear guidance. OD 4.01 calls for a *“Concise description of the project's geographic, ecological, social, and temporal context, including any off-site investments that may be required by the project”* This is to be based on an *“Assessment of the dimensions of the study area and description of relevant physical, biological, and socioeconomic conditions, including any changes anticipated before the project commences. Current and proposed development activities within the project area (but not directly connected to the project) should also be taken into account.”*³⁷ OD 4.01 also points out that *“The classification of each proposed project depends on the type, location, sensitivity, and scale of the proposed project, as well as the nature and magnitude of its proposed impacts.”*³⁸

48. The requirement that project boundaries be defined to include the impacted population seems also to be a requirement of OD 4.20, insofar as the impacted population may consist of indigenous peoples. This is implied by OD 4.20's stated central objective: *“to ensure that indigenous peoples do not suffer adverse effects during the development process, particularly from Bank-financed projects, and that they receive culturally compatible social and economic benefits”*³⁹ Clearly, the Bank cannot “ensure” that a population will not suffer adverse social or environmental effects from a project unless it properly determines the boundaries within which the project's social and environmental effects occur.

³⁶ See OD 4.01, *supra* note 32, at Annex B: Outline of a Project-Specific EA Report, at 2 (c) and (d).

³⁷ *Id.*, *supra* note 36, Annex B § 2(d).

³⁸ *Id.*, *supra* note 36, at Annex E § 1.

³⁹ IBRD/IDA, *OD 4.20 on Indigenous Peoples* (Sept 1991) at § 6.

49. Within the text of OD 4.01, of course, many social dimensions are included. The “*Checklist of Potential Issues for an EA*” includes “*Induced Development and Other Sociocultural Aspects*”⁴⁰ And within the checklist of issues that should be assessed, it cross-references with other relevant Bank policies including, *inter alia*, the ODs on Involuntary Resettlement and Indigenous Peoples.

4.1 Ambiguous and Narrow Definition of the Project Area

50. In examining the Qinghai Project, the Panel found a high level of ambiguity, uncertainty and inconsistency in the use of the term “project area” and in the extent to which the Move-out and Move-in areas are analyzed and treated in the Project documentation. There is no explicit statement in the documentation of either the space or time scales used in the evaluation of the Project. The documentation recognizes two geographical areas, the Move-out areas in the hill country around Xining, and the Move-in areas in Dulan County 450 kilometers to the west of Xining in the Qaidam Basin. The precise spatial dimensions being considered in both the Move-out and Move-in areas are not defined.

51. While the stated rationale for the Qinghai Project claims significant potential net benefits for people in both the Move-in and Move-out areas, the assessments focus almost exclusively on the Move-in areas. Moreover, both the documentation on the Move-in area and discussions in the field reveal considerable confusion as to what constitutes the “project area” in which the expected impacts will accrue. In some contexts “the project” is confined to the six areas to be irrigated, or even to the main area to be irrigated at Xiangride-Balong (see Map 2), and excludes adjacent infrastructure. In others, it is confined to the irrigated land plus new infrastructure -- but excludes the water diversion works. In general, it excludes a number of small and larger settlements, including Mongol and Tibetan minority settlements visited by the Panel, that will clearly be impacted by the Project. **As a result, it appears that significant numbers of people, including members of minority nationalities, have been left out of the environmental and social assessments required by Bank policy.**⁴¹

⁴⁰ See OD 4.01, *supra* note 32, at Annex A (h).

⁴¹ On page 108 of the Project Appraisal Document (PAD), Management draws a distinction between the immediate ‘move-in’ area, or ‘project specific’ area, and the ‘project townships’ and ‘Dulan county’, but the discussion implies that the Project will impact only on people in the ‘move-in’ townships of Zongjia and Balong. On this basis, Management can state that “The immediate ‘move-in’ area currently has no Tibetans at all” and claim that “The Project as currently planned will thus introduce a Tibetan presence in the area as they will make up nearly 6 percent of the population.” Going beyond the immediate Move-in area to the two townships of Zongjia and Balong, (which the PAD calls the ‘immediate project area’), Management states that they “yield a pre-project Mongol majority (about 55

4.2 Unclear Time Horizons for Project Evaluation

52. There is also a serious question about the time horizons over which the Project has been evaluated. They are not the same as the Project construction period but they are not stated. The Environmental Assessment does not distinguish between short term impacts and those that will only occur at some time in the future. Similarly, when impacts are judged to be negative (-) or double negative (--) or +, ++, or +++, no statement is given as to whether such judgement is relative to a one, five or twenty-five year time horizon.⁴² It is thus impossible for anyone reviewing the EA to assess whether or not the projected impacts are based on reasonable time frames. **In short, in the Panel's view, the EA fails completely to place the project in proper time frames for informed decisions to be taken.⁴³ This is a serious shortcoming that significantly reduces the value of the Environmental Assessment.**

4.3 Documentation Poorly Supported by Maps and References

53. The confusion the Panel encountered over what is and what is not included in the definition of the 'project area' is no doubt compounded by the fact that the documentation is very poorly supported by maps. Those maps that were in the documentation were of a very small scale. Most lacked scale lines and all omitted latitude and longitude or other co-ordinates. Even detailed 1:50000 maps of the irrigated areas that were provided to the Inspection Team on the day it visited the main irrigation area of Xiangride-Balong did not provide grid references or latitude and longitude, so that exact positions on the map could be determined. **It is thus very difficult, if not impossible, for anyone reading the Environmental Assessment to gain a clear and unambiguous view of the locational aspects of the Project from the information provided. This applies to both the Move-out and Move-in areas.**

percent) of the area's population of 5,736. Among these are 276 Tibetan herders who bring their animals to pasture in the Kunlun Mountains.... After the settlement is completed, Han and Hui would be the predominant nationalities in the project townships, followed by smaller numbers of the Tu, Salar, Tibetans, and Mongols." Later in the same section, Management acknowledges that the ethnic mix is a function of "the territorial unit considered" as part of the project area. See IDA/IRDB, *Project Appraisal Document on a Proposed Loan of US\$60 million and a Proposed Credit of SDR 73.8 million (US\$100 million equivalent) to the People's Republic of China for the Western Poverty Reduction Project*, Report No: 18982-CHA (1 June 1999) [*hereinafter* Project Appraisal Document or "PAD"].

⁴² The section in the text of the Environmental Assessment explaining these values (p.35) is in fact meaningless, as all values are the same. QINGHAI INSTITUTE FOR ENVIRONMENTAL SCIENCE, *Environmental Impact Assessment for the Agricultural Development and Poverty Reduction Project in Xiangride-Balong, Qinghai* (October 1998) [*hereinafter* "Environmental Assessment" or "EA"].

⁴³ See requirements for temporal context in OD 4.01, *supra* note 32, at Annex B at § 2 (c).

54. The FAO Consultant who made an independent assessment of the suitability of the land for irrigation in October 1998, drew attention to the urgent need for a detailed soil survey and land classification.⁴⁴ He recommended the preparation of a soil map or land classification map at a final scale of 1:10,000. Following an inquiry, Management informed the Panel on January 11, 2000 that the map had not been completed. It had been initially delayed due to severe winter weather conditions and then further delayed “*due to the intensive questioning and discussions regarding the project that started end of April, 1999.*”⁴⁵ Given the crucial importance of knowing the extent of irrigable land available for the Project, it is surprising that Management did not pursue the completion of this map with greater diligence.



Figure 2a. Inspection Panel Member interviews villagers in Tuanjie Village, Xiangjia Township



Figure 2b. Han villagers in Tuanjie Village, Xiangjia Township

This village was portrayed as a Mongol village, but inhabitants were Han except for four Mongol families and one mixed Tibetan-Mongol family, according to the head of the village.

55. Some of the maps of the Move-in area that were provided to the Inspection Team were found to be of doubtful value since they omitted many settlements clearly within the orbit of influence of the Project. As a consequence, the Inspection Team spent a great deal of time trying to locate particular sites or features, sometimes unsuccessfully as the following two examples will illustrate.

⁴⁴ See K. DE ALWIS, *China: Western Poverty Reduction Project Qinghai Component — Assessment of Suitability of Land for Irrigation*, Consultancy Report (1998).

⁴⁵ Project Files (11 January 2000)

56. In order to get a somewhat clearer picture of the geography of the Move-in area, just prior to its visit the Team was provided with a hand-drawn sketch map showing all of the villages and townships in the area. The Panel wishes to record its appreciation for the last-minute effort that went into its creation, but even this map proved deficient in that during its visit the Panel "found" several villages that were not on it. It is fair to say that Bank officials themselves were not aware of the existence of these villages although they are clearly within the orbit of the Project



Figure 3. Panel Member (in cap) meeting with Qinghai provincial officials to find the "missing" Mongol villages in Xiangjia Township.

57. On October 15, 1999, for example, the Team was informed that there were several Mongol villages on the southeastern edge of Xiangride town, in a township referred to as Xiangjia, and that there were approximately 3,000 people in the township, 80 percent of them Mongol and 20 percent Han. (This was subsequently revised to 4,972 people, 2,576 of whom were Mongols.) It was decided that a part of the Inspection Team would visit one of the villages identified as a Mongol village, called Tuanjie. On arrival, however, the Team discovered that they were in a Han and not a Mongol village. Attempts to visit other Mongol villages in the area proved fruitless. When the Team reassembled, explanations were sought and at least three mutually contradictory accounts were given. The Team finally asked for a written list of all of the villages in the Township, Mongol and Han, and their populations. This was provided and, before returning to Xining, the Team asked that the villages on the

list be shown on the sketch map that was still evolving. When this arrived following the Panel's return to Washington, the Team was surprised to note that almost all the villages were shown to be located not on the south eastern edge of Xiangride town, but on a line directly north of the irrigation site (see Map 2). If correct, this would potentially bring an additional 4,972 people, including 2,576 Mongols, into the "immediate move-in area", to use the term employed by Management in the PAD. But it does not explain the whereabouts of the Mongols who, on the morning of October 15, the Panel was assured lived in several villages southeast of Xiangride.

58. Overall, the standard of maps, charts and references provided in the assessments is quite unacceptable for a project of this nature. They do not provide a complete record of the settlements, infrastructure and land use in the areas that will be affected by the Qinghai Project. There is also no ethnolinguistic map, showing the locations of minority populations. Given the poor map coverage of the area, the Team eventually had to prepare its own set of maps indicating, as far as it could ascertain, all the areas, localities, Project sites, roads, townships, villages, rivers and key topographic features of this multi-faceted and complex project. (Maps 1 and 2).

59. An assessment of the potential impacts and a delimitation of boundaries *should* have been among the initial topics of study in order to properly scope the Environmental and Social Assessments required by Bank policies. This report obviously cannot substitute for such studies (which have yet to be carried out). However, in paragraph 73 below, it notes several areas that will potentially be impacted by this Project that should have been included within those assessments.⁴⁶ These are discussed more fully in Chapter 8.

⁴⁶ In its Request for Inspection, the International Campaign for Tibet (ICT) raised this issue but the discussion was restricted (unnecessarily, from the perspective of compliance with the ODs) to the question of whether ICT had standing to request an inspection since there were no Tibetans living in the most restrictively defined "immediate project area" (i.e., the proposed irrigation and new township area, see Map 2). Arguing that a much larger number of ethnic Tibetans in Dulan County would be impacted by the project, ICT proposed that Dulan County in its entirety be considered the project area, due to the importance of local government for infrastructure, funding and access to services. "Residence in Dulan County is sufficient to establish proximity to the project area and to assure that anyone in the county will be affected by the project," the Request asserts. Yet, the boundary of the impacted population may not be coterminous with any political boundary, such as a County. The impacts of a project, and the time requirements for those impacts to be felt, can be estimated broadly by comparison with similar projects elsewhere. see RABEL J. BURDGE, (ed.), *A conceptual approach to social impact assessment* (revised ed. Middleton), Wisconsin: Social Ecology Press (1998).

4.3.1 The Move-out Area

60. A too-narrow or confused definition of the Project area can result, and in this case has resulted, in people and communities that will be impacted being left out of the Assessments of the Project. In this regard, the Panel was struck by the failure of both the Social and the Environmental Assessments to attempt to measure, or even to address, the impacts of this Project in the Move-out area. The Move-out areas involve 57,775 migrants from households in 448 villages in 48 townships in 5 counties in Haidong Prefecture and one county in Xining City Prefecture. They should be addressed in both Assessments.

61. Management maintains that the requirements of OD 4.30 (Involuntary Resettlement) do not apply to the Move-out area because the resettlement is voluntary. However, the requirements of OD 4.20 (Indigenous Peoples) do apply because many of those left behind in the Move-out area are minority nationalities, including Mongols, Tibetans, Salar, and Hue. The potential adverse impacts on them will need to be addressed as a matter of Bank policy. Management's presumption seems to have been that the non-migrating minority populations left behind will not suffer any adverse impacts. This may or may not be the case. Testing it requires more than an assumption; it requires an assessment.

4.3.2 The Move-in Area

62. The failure to properly define the boundaries of the Project in the Move-in area also has potentially serious consequences. People and communities that will be impacted by the Project have been left out of the Assessments because they were left out of the Bank's definition of the 'project area'. Moreover, some aspects of the Project have not been assessed at all. The documentation on the Move-in area, for example, is virtually silent on the Project's relationship to the regional economy and its spatial networks and appears to include no systematic analysis of the relationship of the Project to pastoral land use in the eastern Qaidam Basin.

4.3.2.1 The Project Area and the Spatial Urban Network

63. The documentation fails to situate the Move-in area within a realistic regional context. A network of social, commercial and political interactions clearly exists in Dulan County and in Xiangride Township. Yet no assessment is made of how these linkages and interactions will be affected, for better or worse, by a project that will greatly change the economy and demography of the County.

64. The "project area," as interpreted in the EA and other documentation, includes neither the commercial and service center of Xiangride, nor several of the villages surrounding it, including some Tibetan and Mongol villages visited by the Inspection Team. Similarly, the "project area" does not include several villages between Xiangride and Dulan and between Xiangride and the new towns to be created in the irrigation site. These omissions are difficult to understand.

65. The new Towns of Dongba and Tawen ("A" and "B" on Map 2), with populations projected at 22,938 and 26,814 inhabitants will be considerably larger than the existing towns in the resettlement area.⁴⁷ They will have a significant influence on the economies, trading patterns and socio-political influence of the existing service centers like Xiangride, with a population of 9,621 in 1996; Xiangjia, 4,835, and Balong, 3,696.⁴⁸ The most elementary principles of Town and Regional Planning suggest that this should have been a major factor in defining the boundaries of the Project area, but it was not considered.

66. Xiangride is the locus of the transport services, banking and commercial services, medical, health and education services for the entire Project area. People in Balong and Zongjia townships, which are in the narrow 'project area' accepted by the Bank, speak of Xiangride town routinely as the place they must go for most of their locally-based services. Speaking to merchants in Xiangride, the Team found that those who were even partially informed about the Project were full of expectations that it would increase their trade and commerce, and that it would act as a pole of attraction for further people and investment. The interdependence is clear.

67. The same is true of the townships adjacent to the Xiangride prison farm. On October 15, 1999, standing beside the large canal on the edge of the farm, the Team was informed by a senior Chinese official that the canal supplied water from the Xiangride River to irrigate some 80,000 mu of land on the prison farm as well as some 80,000 mu of land immediately adjacent to and south of the farm occupied by

⁴⁷ See QINGHAI RESEARCH INSTITUTE OF PLATEAU GEOGRAPHY, *Report on Implementation Plan for Voluntary Migration Resettlement* (15 April 1999) [hereinafter "Voluntary Settlement Plan" or "VSIP"] Table 9-1 at p. 64. It should, however, be noted that the Inspection Team has been unable to obtain detailed information on the structure and relationships between "Natural Villages", "Administrative Villages" and "New Towns" in the resettlement area. It is thus possible that the populations of the new towns themselves may be less than the numbers suggest, due to much of the population being dispersed amongst villages near to, or at some distance from, the towns

⁴⁸ See EA, *supra* note 42, at p. 33, Table 3-9.

some 20,000 “free” farmers.⁴⁹ There were no physical connections between the Project and this system, the official stated. And, he insisted, there would be absolutely no economic interactions of any kind between the prison farm and the Project. All of the produce of the prison farm, he stated, mostly wheat, is absorbed by the prison farm system.⁵⁰



Figure 4a. Panel Members interviewing officials in front of the main avenue to the prison farm near Xiangride, Dulan County.



Figure 4b. Canal to prison farm, near Xiangride. Water will be diverted from this canal to irrigate the Proposed Project's Xiaoxiatan Irrigation Sub-district.

68. Economic relationships between the Project and the townships occupied by the “free” farmers are a different matter, however. The Project will bring in nearly 60,000 people to the new irrigation area in Balong township, 40 kilometers to the west northwest. These people would be dependent on outside farms and merchants for much of their food, supplies and other services, certainly during the initial

⁴⁹ The *free* farmers, as they were characterized by the Chinese Senior Official, live mainly in two towns visited by the Panel, Xingyuan and Xiachaikai.

⁵⁰ The Bank has sought and received assurances that no prison labor would be used on the Project and Supplementary Letter 4 states that: “.....Qinghai's Respective Part of the Project will not benefit any prison farm or other prison facility in Qinghai, and no such farms or facilities or organizations affiliated with such farms and facilities will participate in any activities under Qinghai's Respective Part of the Project. no goods, works or services procured under Qinghai's Respective Part of the Project will be provided by any such farm or facility or organization, or using any labor associated with any such farm or facility or organization...” See *Supplemental Letter No. 4 (signed 30 December 1999)*. Supplemental Letter No. 4 was partially reproduced in the Management Response as Annex 11. The above-mentioned quotation, however, was not reproduced in the Management Response. See IDA, *Management Response, supra* note 11, Annex 12, at p. 87-89.

development period, and the “free” farmers, the senior official told the Panel, naturally looked forward to supplying a part of this new demand. They also looked forward to gaining some of the longer term benefits that the economic development the Project would bring. Yet, these townships are not considered within the ‘project area’ as defined by Management.

69. The Bank’s assistance in assessing the environmental effects of induced development is also envisaged by OD 4.01. It states that “*Secondary growth of settlements and infrastructure, often referred to as “induced development” or “boomtown” effects, can have major indirect environmental impacts, which relatively weak local governments may have difficulty addressing.*”⁵¹

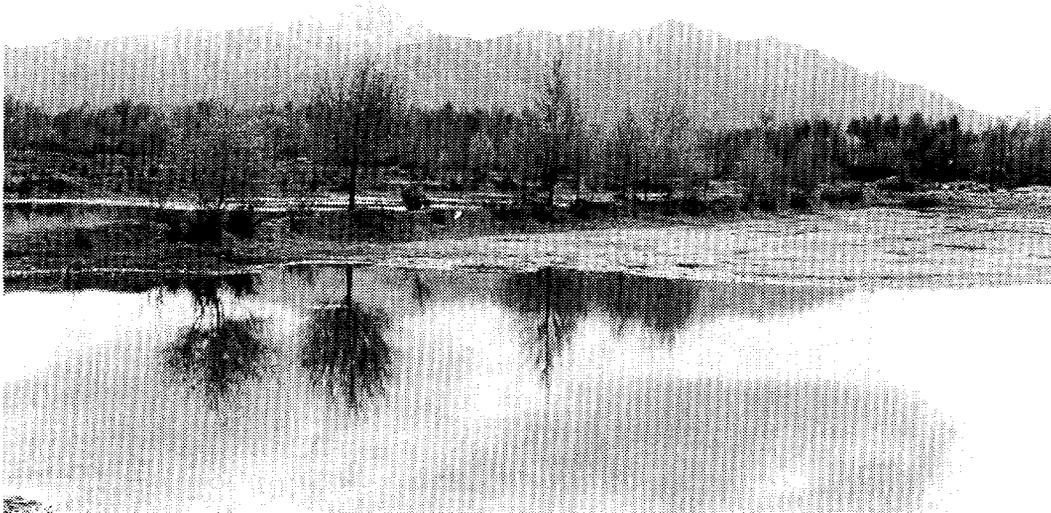


Figure 5. View opposite the main avenue to the prison farm, showing farms belonging to free farmers (former prisoners), located adjacent to the prison farm, near Xiangride (Dulan County).

70. It is quite clear that moving some 60,000 people into Balong and Zongjia Townships, with large initial and ongoing investments to build an irrigation system and the two new Towns of Dongba and Tawen (“A” and “B” on Map 2), of 22,938 and 26,814 people respectively, will represent a significant addition to the regional economy and its interdependent spatial urban network. Standard economic and

⁵¹ See OD 4.01, *supra* note 32, at Annex A (h).

benefit-cost analysis of a project normally considers the multiplier effects of this type of intervention and its longer term impact on the region in question.

4.3.2.2 The Project Area and the Environmental Assessment

71. The Environmental Assessment notes that the Project involves the Town of Xiangride and the “five” villages (sic), which it lists as: Xiangjia, Balong, Zongjia and Gaoli.⁵² Nowhere, however, does it clearly identify all the areas that are covered by the Assessment, nor how those areas relate to the area that will be affected by the Project. The sketch map provided in the Management Response indicates the Move-in Areas in red as Balong, Keri, Xiaoxiatan, Hatu and Yikegaoli. But the January, 1999 *Voluntary Resettlement Policy Framework and Action Plan* states that there will be six irrigation areas (Balong, Qingshuie, Hatu, Keri, Yikegaoli and Xiaoiatan) and 4 townships (i.e., the two new towns and the existing Balong and Zongjia townships which will be expanded). In discussions with Bank and Chinese officials from the PMO and the Plateau Institute, the “project area” was frequently equated with the main area to be irrigated at Balong.⁵³ And, as noted earlier, the PAD seems to equate it with the two Move-in townships of Balong and Zongjia.⁵⁴

72. Beyond this confusion, it is clear that a very narrow approach was taken to the definition of the “project area” and that little or no attention was paid to the environmental impacts on areas other than the proposed new irrigation areas and the Balong Soak. The possible environmental impacts of the influx of nearly 60,000 people on the wider region is simply not addressed: it is, for example, inconceivable that such a large population of migrants will not regularly visit the areas adjacent to the new settlements and exploit their plant and animal resources for fodder, hunting and so on. Management, it must be noted, recognized this in the period following the Request for Inspection. In Annex 14 of its Response, it provides the Terms of Reference for a series of supplementary environmental studies to be undertaken to address some of these issues including impacts on surrounding natural habitats during the now-planned “Pre-Pilot Phase” of the Project.⁵⁵

⁵² See Environmental Assessment, *supra* note 42, at p.22. “Goali,” used here in the Environmental Assessment is a synonym for Yikegaoli used elsewhere and on Map 2.

⁵³ As a result of the Panel’s inquiries, an irrigation map was provided in October, 1999, from which an early draft of Map 2 was produced. Then, in January, 2000, the RMC provided the Panel with the outlines and locations of the six irrigation districts now shown on the map. Final information on the location of the canals was provided, in response to further inquiries, in March, 2000. This information is presented in Map 2.

⁵⁴ See PAD *supra* note 41, at p. 108.

⁵⁵ See *Management Response*, *supra* note 12, at p. 96-108, Annex 14.

73. Many parts of the Move-in areas have been overlooked or glossed over in the EA and in other documentation of the Project; consequently many potential environmental effects have not been systematically analyzed. In the Panel's view, compliance with OD 4.01 requires that these areas receive detailed consideration. The environmental effects of the canal from the Xiangride River to the Keri dam, the Keri dam itself, and the canal from the Keri dam to the irrigation area need to be assessed. Similarly, the effects of the proposed new township areas, and the administrative villages to be located within the main irrigated area, and their associated infrastructure such as public utilities and roads, must be considered. The effects on the Xiangride River downstream to the salt lakes need to be assessed, as do the effects on the Keri Dam area, the six irrigation areas, the Balong Soak and other marshlands, and on the desert, semi-desert and low scrub areas in the vicinity of the irrigation area and the new townships. The effects on the existing townships that are to be expanded through resettlement (Balong and Zongjia) and the other existing townships, especially Xiangride town and surrounding villages need also to be evaluated.



Figure 6. Inspection Team members and Chinese officials at location for proposed supply-canal from Keri Dam. Dulan County.

74. The EA does not give any clear idea of where the nearly 60,000 people will be located within the project areas, whether their villages will be located within the irrigation areas or outside them, where the penned land for animal husbandry will be located, how the villages will be clustered (if at all), and how many and what kinds of people will be housed in the new Towns. Some of the numerical data can be

obtained from the Involuntary Resettlement Plan⁵⁶ but the only locational information the Inspection Team has been able to ascertain is given in the irrigation drawing provided by the Hydrology and Power Research Institute on the day it visited the irrigation site.

4.3.2.3 The Project Area and the Social Assessment

75. Within the Move-in area, the Management Response distinguishes the "immediate project area" (i.e., the "proposed area of irrigation and new townships") from a wider region around it, known as the "project site." It recognizes that the Project "will likely have a wider demographic and social impact beyond the immediate project area,"⁵⁷ since it will immediately double Dulan County's official population.⁵⁸

76. The March 1999 Social Assessment notes that discussions were held with local government officials and leaders in this broader impacted area, beyond the Project site. Still, it makes clear that in the Move-in area, the methods of actual *public* consultation used to fulfill the consultation requirements of Bank policy (that is, the surveys and the focus group meetings) were limited to the three directly impacted groups:

- (1) the 63 herder households (352 persons) having formal leasehold rights (on file in the lands registry of Dulan County) in the "immediate project area";
- (2) a sample of the estimated 289 herder households (2,411 persons) who pass through the area proposed for transformation into irrigated farmland and townships for the resettled population; and
- (3) a sample of the 248 households (1,237 persons) who currently farm on the area served by an existing irrigation system, which will be integrated into the Project's new irrigation systems.

77. The figure of 2,411 herders was Management's estimate of the number of herders who would cross the proposed irrigation area approximately twice each year.

⁵⁶ See QINGHAI PROVINCIAL PMO, *Involuntary Resettlement Plan*, RP-0015, Vol. 2 (May 1999).

⁵⁷ Management Response, *supra* note 12, at p. 7.

⁵⁸ This recognition, it must be noted, came very late, evolving between the beginning of public concern in late April and the submission of the Response on July 19, 1999.

Management agrees that these people must also be considered involuntarily resettled under the terms of OD 4.30.⁵⁹

78. Management makes no claim to have carried out equivalent public consultation with the wider population impacted outside the "project site" in the Move-in area. Tibetan and Mongol village leaders in Xiangride township, whose villages lie directly on the proposed supply-canal route to the irrigated area, told the Inspection Team that they had neither been officially contacted nor asked about the Project. These villages will be impacted directly by the Project's physical infrastructure, and indirectly by a doubling of their county's population. Yet village leaders did not know important details about the Project such as whether settlers would number a few thousand or tens of thousands. They had learned about the project only by hearsay or, in one case, from a report broadcast on a shared community television.

79. As noted earlier, OD 4.20's stated central objective is *"to ensure that indigenous peoples do not suffer adverse effects during the development process, particularly from Bank-financed projects, and that they receive culturally compatible social and economic benefits"* (OD 4.20 par. 6). Thus, it is simply not within Management's prerogative to define the Project in a very limited way (the *"immediate project area"*) for purposes of fulfilling this OD, since that does not ensure against adverse impacts on indigenous populations who live and work beyond the "immediate project area."

80. A full social assessment would require a much greater consideration of the effects of the Qinghai Project on nearby Towns including Xiangride and Dulan, as well as a much larger number of villages, some visited by the Inspection Team. It would require consideration of the multiplier effects of impacts caused by the construction of the new dam and reservoir, irrigation system, roads, and townships with all their infrastructure; and also the likely population increase as the nearly 60,000 resettled farmers will have growing families and will attract more migrants, merchants, teachers, medical personnel, etc. Simple models for population growth and for expected changes in trading patterns would be useful. The sources of this growing population's food (for people and livestock) and firewood or other fuels should be determined. A full social assessment is not simply a matter of applying

⁵⁹The Directive specifies that "compensation should be provided to ... pastoralists who may have usufruct or customary rights to the land or other resources taken for the project. The absence of legal title to land by such groups should not be a bar to compensation." See, IBRD/IDA, *Operational Directive 4.30 on Involuntary Resettlement* (June 1990) [hereinafter OD 4.30] at § 3(e).

good practice in Social Impact Assessment. The requirements for a proper assessment are emphasized here because a proper assessment would also determine the proper boundaries of the impacted population. That information, in turn, would affect the application of the Operational Directives for Indigenous People and Involuntary Resettlement. Indeed, one of the central questions of both Social and Environmental Assessment is to determine the boundaries of a project's expected impacts.

81. In the Panel's view, given the letter and intent of ODs 4.01, 4.20 and 4.30, the size of the area that will be impacted by the Qinghai Project, the ethnic composition of the Project's impacted populations and the boundaries of the "project area" were far too narrowly defined by Management. As a result, the Assessments fail to address many significant social and environmental impacts of the Project, including impacts on potentially affected members of minority nationalities. The Panel finds that, in this regard, Management failed to comply with the provisions of these ODs.

Chapter 5

The Consultation and Survey Method.

82. The previous chapter demonstrates that there is a much larger impacted population in the Move-in area than Management recognized for purposes of consultation. This chapter assesses the methodology of the consultation and survey methods used among the more restricted population consulted as part of the preparations for the project.

83. Management has emphatically argued that the design of this project meets the consultation requirements of OD 4.20 on Indigenous Peoples, OD 4.30 on Involuntary Resettlement, and OD 4.01 on Environmental Assessment.⁶⁰ In its Response, Management states: "*Consultation was carried out by means of questionnaires with members of the indigenous population at large, through meetings involving their leaders and religious notables, and by bringing into the consultation process grass-roots organizations in the project areas. The consultation process was based on 'informed participation' of the project's direct stakeholders. Consultation tasks were supported by an information campaign carried out by means of mass media, posters, pamphlets, and direct communication [in] both out-migration and in-migration areas. The extensive and varied opinions expressed by the participants in the consultation process indicate that the information provided was broad enough to allow the expression of judgements on the potential effects of the project, and on the remedial activities needed to counter balance the project's potential negative impacts. Stakeholders were able to criticize aspects of the project and to provide their inputs to the design of mitigating measures.*"⁶¹

84. Some of the information needed for this assessment includes the Chinese-language questionnaires administered in the survey and the raw survey data compilations.⁶² It is perhaps worth noting that, even though these surveys form the

⁶⁰ For the substantive requirements concerning consultations, see IBRD/IDA, OD 4.20, *supra* note 39, at §§ 8, 9, 13, 14 (a), 15 (d) (a) (f), 17, 18 and 20; OD 4.30, *supra* note 54 *in fine*, at §§ 3 (c) (d), 5 (b), 8 and 9; OD.401, *supra* note 32, at §§ 19 to 21.

⁶¹ The Management Response summarizes the methods of consultation employed. See *Management Response*, *supra* note 12, at p. 12-13 and, *in particular*, Annex 9: Stakeholder Consultation Activities, at p. 77-83.

⁶² These compilations of the survey data were kindly sent by Resident Mission China to the Inspection Panel after a follow-up inquiry of January 18, 2000. Annexes 2 to 5 include the questionnaires used in all four surveys undertaken; raw data has been provided for the survey in the Move-out area (Annex 2) and for the survey of the (mostly Han and Hui) farmers in the Project area (Annex 5), though the

primary record of the *'full and informed'* participation on the part of the impacted population, copies of the questionnaires had apparently never been requested by those responsible within the Bank for reviewing or clearing the Project in relation to its safeguard policies. The questionnaires and the raw data compilations were checked by Bank staff in Beijing (though not included in material sent to Washington for the clearance procedures). The Management Response states (p. 13): "*Careful cross-checking of this data by Bank staff (including review of the raw data) strengthened the judgement of Bank experts that the key social issues involved in the Project had been raised by the SA [Social Assessment].*"⁶³

85. During its field visit, the Inspection Team tried to obtain copies of brochures, pamphlets or other materials distributed in the Move-out areas. Some villagers remembered seeing pamphlets and posters but said they no longer had any to provide. In February 2000, the Resident Mission in China kindly translated and made available their file copy of the brochure describing the Project.

86. The Panel's field visit, meetings with villagers, interviews with officials, and examination of the survey questionnaires and information materials, all raised several concerns about the adequacy of the consultation process.⁶⁴ This chapter begins with a discussion of the adequacy of the survey's sampling procedure. It then turns to the survey method and other related stakeholder consultation procedures in the Move-out and the Move-in areas.

5.1 The Sampling Procedures

87. According to the raw data compilations, 2,058 households were surveyed, of which 1,458 were in the Move-out area and 600 were in the Move-in area. Documents or interviewers who refer to the "4,000 persons surveyed" in the Move-in area, etc., are referring to the size of the population sampled, not the number of surveys.

88. It is worthwhile first to compare the three populations in the Move-in area that will involuntarily be resettled by this Project with the populations that were surveyed. This is vital to an understanding of the sampling procedures.

Panel does not have complete raw data for the first and second surveys of the Mongol herders (Annexes 3 and 4).

⁶³ Management Response, *supra* note 12, at p. 13.

⁶⁴ See English translations, Annex 3

89. The Bank's publicly available "Involuntary Resettlement Plan," dated May, 1999, for this Project states that most of the land to be developed for the proposed irrigation system is "arid, uninhabited, and largely unutilized."⁶⁵ It acknowledges, however, that "in terms of involuntary resettlement-related issues and impacts, ... development or expansion of settlements is expected to adversely affect some 4,000 persons (600 households) from Balong and Zongjia townships." The Plan lists these impacted populations as follows, "...[b]ased on a census and survey of affected areas":

(1) 63 herder households (352 persons) who use the land "under formal lease agreements with the townships;"

(2) 289 herder households (2,411 persons) who pass twice yearly, with their herds, through the area proposed for transformation into irrigated farmland and townships for the resettled population;

(3) 248 households (1,237 persons) who currently farm on the area served by an existing irrigation system, which will be integrated into the Project's new irrigation systems.

90. The sum of these three groups, then, provides a total Project-impacted population of *exactly* 600 households, and *exactly* 4,000 persons – thus exactly equal to the estimated population. In other words, the careful enumeration of these groups leads to a surprisingly round set of figures: 600 households, having 4,000 persons. There is little doubt that the 63 herder households (352 persons) were carefully surveyed (the name of each household head, and size of his family, is listed in Project documents). Another survey (Annex 5) was given to a sample of only 80 of the 248 mostly Han and Hui farmer households using the affected irrigation systems in Balong and Xinglong townships. But, population statistics on residents of these townships were undoubtedly available, so there is no reason to mistrust the figures of 248 households (1,237 persons) in this category. It is likely that considerable flexibility exists in defining which herders pass through the region (group 2), so figures of 289 households (or 2,411 persons) are probably estimates producing the round figures of 600 households and 4,000 persons in total. As noted below, this group's size was almost certainly estimated since no survey was taken of them.

⁶⁵ See *Involuntary Resettlement Plan*, *supra* note 56, at p. 2.

91. Thus it is already apparent that the extent to which these involuntarily resettled groups were "consulted" through the survey method is very different. Take the second group, for example. No survey was designed for, and no survey carried out among, the (presumably estimated) 289 nomadic pastoralist households (2,411 persons) in this group, whose twice-yearly passage through the project site with their herds will be disrupted. In other words, zero percent of this group was surveyed. **The failure to survey this group is especially striking since Management recognizes that these people need to be involuntarily resettled, and that the provisions of OD 4.30 for full and informed consultation, compensation, etc., therefore, need to be fulfilled.**⁶⁶

92. In stark contrast to the fact that zero percent of the herders passing through the Project's proposed irrigation areas were surveyed, 100 percent of the 63 herder households in the first group were surveyed. In fact, examination of the survey data and interviews with those responsible for the survey indicate many were surveyed twice. The first time was in September, 1998, when the initial survey shown in Annex 3 was carried out at the request of a consultant engaged by the Task Team Leader to help prepare the Social Assessment. Only 31 herder families were found and interviewed in this first survey (Annex 3). Nevertheless, as a result of this first survey, it was realized that a passageway through the irrigation area would be needed for the transhumant pastoralists. It was also realized that a more complete survey would be needed of all those having leasehold rights within the 'project area' and, later, a second survey (shown in Annex 4) was carried out.⁶⁷

93. Of the 248 households (1,237 persons) in the third group, who are currently farming an irrigated area in Balong township, and whose irrigation system will be expanded and integrated into the new system, 80 households or 32 percent were surveyed. They were surveyed using a questionnaire that is much longer and more detailed than any provided for the Mongol herders (Annex 5). Of the 80 households

⁶⁶ See OD 4.30, *supra* note 59 *in fine*, at §§ 3 (c) (d), 5 (b), 8 and 9.

⁶⁷ A consultant involved in the September, 1998 survey noted that this later second survey might not have been carried out among exactly the same people. The second survey set out to locate the herders who were officially leasing the land to be taken over for the Project. The first survey just tried to find herders who happened to be on that land, but did not directly ask about leasehold rights. This second survey (Annex 3-c) must have been preceded by town meetings and discussions, since it requires answers to such detailed questions as the size of the herder's leased area (measured in *mu*) that the Project will occupy. To have an exact answer, as was shown in the sample survey provided, would have required a project engineer to designate the project boundaries, relative to the leaseholder's boundaries. The boundaries of the proposed irrigation area would be invisible to the pastoralist, and the boundaries of the leaseholder's claim invisible to the project engineer.

surveyed, 57 are Han (71 percent of those surveyed), 17 are Hui (21 percent), 3 are Tibetan (4 percent), and 3 are Tu (4 percent).

94. From these numbers, one can conclude that the largest group of persons involuntarily resettled by this project (i.e., the pastoralists in the second group whose passage through the irrigation site with their herds will be disrupted) received the least consultation, at least as measured by the survey data. Although this group makes up 60 percent of the people and 72 percent of the households to be involuntarily resettled, none (zero percent) of this group was surveyed, using Management's own population estimates and survey data.



Figure 7 Han and Hui farmers at Xinglong, Dulan County. A part of the proposed Project's land, used by 248 households (1,237 persons) for farming, is served by an existing irrigation system. This land will be integrated into the new irrigation systems to be developed as part of the Project

95. One can also conclude that Management failed to consider weighting the surveys by ethnicity, or to assure adequate representation in the survey sample of affected minority groups. This relates to the earlier discussion in Chapter 4 about the boundaries of the project-impacted area. **Most striking is the fact that in the entire Move-in area only three Tibetan households were included in the survey (used here as a proxy measure of public consultation). This is in spite of the fact that the Project occurs in a Tibetan and Mongolian Autonomous Region, and the physical infrastructure for the Project (its supply-canal) passes**

through Tibetan villages that were not included within Management's definition of the "project area."⁶⁸

96. Of course, one could respond that consultation included many meetings and discussions besides the survey, therefore the survey data should not be used as a proxy measure for overall public consultation. Yet in effect, the Management Response *does* imply that the surveys are good proxies for the overall public consultation when it repeatedly makes claims about the will of the population in the Move-in area based upon these surveys. Consider, for example, the claims in Annex 9 of the Management Response that "... a large majority of respondents (97 percent) felt that the project would take adequate steps to mitigate any negative impacts."⁶⁹

97. Given the fact that these issues relate directly to potential inter-ethnic conflict, knowing the overall 9 percent figure for those opposing the influx of migrants (or the 97 percent figure for those who feel the Project will adequately mitigate negative impacts) is less useful than knowing how representative the sample is of the impacted population, and how freely honest responses could be given. Based on the survey methods used and the restricted sampling procedure, one cannot necessarily extrapolate these responses to (all) "the local communities" as implied here in the Response.

98. The above comments refer to the surveys described in the Social Assessment (March 1999), the "Involuntary Resettlement Plan" (dated May 1999), and referenced in the Management Response (July 19, 1999). On October 6, 1999, during the Inspection Team's visit to Beijing, an undated document entitled "*Notes on the Social Assessment for the Qinghai Component, WPRP*" was distributed to the Inspection Team by the Resident Mission China. This document provides population figures for areas surrounding the Project location, including what it calls the "*broader project affected area consisting of five townships*" (that is, the restrictively defined project area of Balong and Zongjia, along with a broader area consisting of Xiangjia, Gouli, and Xiangride). The estimated population of this five-township area is given as 24,210, of whom 49 percent are Han, 24 percent are Mongol, and 12 percent are Tibetan. Hui, Sala, and Tu collectively make up 15 percent of this population but they are not broken down by ethnicity in the document. "*After reviewing the baseline information,*" the Notes state, "*the project SA proceeded further with a sample survey of those living in the five township area.*"

⁶⁸ Apparently defined as the area of the irrigation works but specifically excluding the supply-canal that makes the irrigation-works possible. See Chapter 4.

⁶⁹ See *Management Response*, *supra* note 12, at p. 78.

99. This new survey, not previously reported in other documents, totaled 239 households, representing five percent of the estimated total resident population of the five-township area. This survey, which included 59 Tibetan households in 6 villages within the 5 townships, did not use questionnaires. *"The survey was carried out by ... a Mongol (who) can speak Tibetan; and consisted of four other members. It also received local assistance from county, townships, and villages in the field.... The group carried out the survey through village group meetings and household interviews."*⁷⁰

100. Raw data for this survey has not been obtained and, in any event, would be difficult to compile or check since the survey consisted of meetings at which information on the project was provided and opinions elicited and then written down. From the document distributed, it appears that the Bank has asked a government institute directly involved in the Project to carry out an opinion survey about the Project. In eliciting opinions about the Project, however, the Bank should be very cautious since (a) respondent confidentiality was not being guaranteed and (b) there is an obvious potential conflict of interest when an institute that will directly benefit from a project is asked to carry out an open-ended opinion survey about the project from which it will benefit. This leads to a more general discussion of the adequacy of the survey method and consultation procedures used for this Project.

5.2 The Survey Method: Move-out area.

101. The Social Assessment states that 100 percent of the survey forms distributed were returned, filled out "in valid fashion." The Project Appraisal Document admits, as does the Management Response, that the consultative process *"was not always smooth nor did it fulfill all best practice guidelines. At times during the social assessment process respondent confidentiality was not fully observed, and the data gathering process was less than ideal."*⁷¹ Nonetheless, Management still concluded that *"the will of the move-in host population was adequately expressed."*⁷²

102. The Panel's inquiries in Qinghai Province indicated that the questionnaires were frequently filled out by or in the presence of government officials. In fact, the government research institute that prepared the Social Assessment made no attempt

⁷⁰ AUTHOR UNIDENTIFIED, *Notes on the Social Assessment for the Qinghai Component, WPRP*, date unidentified, at p. 2.

⁷¹ *Management Response*, *supra* note 12, at p. 13.

⁷² *Id.*, *supra* note 71.

to provide confidentiality, since the name of each household head was on each form.⁷³

103. During the Inspection Team's visit to the Move-out areas, it met many people who stated (often using a vocabulary that, according to our interpreters, was unlikely to have been a villager's spontaneous choice of words) that they were desperately poor, wanted to move to Dulan County, and hoped they would be selected soon to move. Many remembered being surveyed, after hearing about the Project at village meetings. Some had heard of, or had seen, a brochure about the Project, but none of these brochures were available in the villages we visited.

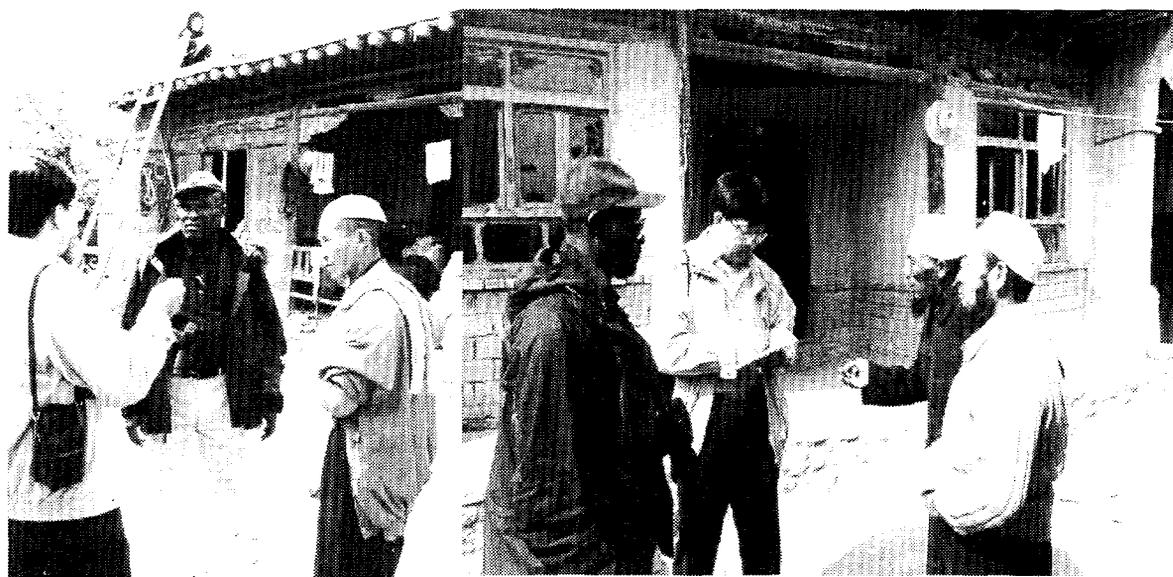


Figure 8a & b. Inspection Panel Member interviewing Hui villagers from house to house. Hashijia Village, Ashinu Township, Hualong County; one of the proposed Move-out villages.

104. Though these farmers' memories may have been selective, they vividly remembered the promise of high-yielding, irrigated land with electricity and schools and hospitals. Most were not informed, however, of the desert conditions, poor saline

⁷³ In fact, the four sample questionnaires provided to the Panel, and shown in Annex 3 of this report, were copies of filled-in questionnaires with names and responses from four individual respondent households. Annex 3 provides English translations only of the survey questions, not those individual responses or the respondent's names. The Panel wishes to thank the Resident Mission China staff for checking our translations of the questionnaires.

soil, and other difficulties they might encounter in the Move-in area. They knew that it was flat and given the steep and rugged terrain on which they *now farmed*, that had a strong appeal. It also became clear that they had not been offered or asked about alternative means of development other than resettlement in a distant location. In short, the "*consultation*" seemed to them to offer two alternatives: either resettle in Dulan County, or stay where they were and get nothing. None could tell us of any other development plans for their villages except resettlement elsewhere. They also felt that, if accepted for resettlement, they could return within two years if they decided they did not want to stay in the new location.

105. As can be seen from the survey questions for the Move-out area in Annex 2, this questionnaire mixes three very different kinds of questions. First, there are questions that ask for the respondent's opinion about the Project. Second, there are those that ask whether the respondent's household would like to participate. (Effectively, answering "yes," on a non-confidential questionnaire would be the only appropriate response for a farmer wishing to keep open the option of applying for resettlement). And, third, there are those apparently designed to gather information for deciding which of those applying should be selected.

106. The first kind of question could best be addressed in a separate survey and one that guaranteed respondent confidentiality. The second and third kinds of question could be considered to constitute a supplement to the application form for the Project (although they also inquire why some people choose not to participate, questions that should also be found in a survey that guaranteed respondent confidentiality). The third set of questions actually includes some detailed questions (e.g. concerning the precise degree of slope of the household's farmland) that may require measurement or estimation by the surveyor, not the respondent.⁷⁴

107. Resettlement was the only development alternative respondents knew was being offered. They were told they could return within two years if they did not like the new irrigated land (with its hospitals, electricity, schools, etc.). It thus makes good sense for any farmer who wants to keep his options open to 'apply' for this program by saying he wishes to participate. (Clearly, this in turn implies that the same farmer should say he has a favorable opinion of the Project.)

108. From the perspective of its visit to the Move-out area, the Panel has no reason to dispute the assertion in the Management Response that these are

⁷⁴ See, e.g., Question 41 in Annex 2.

"desperately poor people in the six move-out counties, anxious for a new chance to improve their living standards."⁷⁵ Yet, the Panel has a very different view of the next sentence of the Response which states, as evidence of this desperate poverty, that "Applications for out-migration have exceeded places in the new villages many times."⁷⁶ The large number of applications seems just as likely to reflect applicants' understanding that there is still a long time before selection will be made, that if selected one can later decline to migrate, and that a person who does resettle in Haixi still has two years to change his mind and return. Furthermore, given the vagaries of the selection process (from the farmer's point of view), and the long time before selection might take place, the details of the resettlement program can all be reconsidered and thought over carefully when and if the applicant is selected.

109. In summary, four points can be made concerning the methods of applying the survey in the Move-out area. First, as mentioned above, the questionnaires are not confidential. All four surveys required the respondent to put his name on the survey.

110. Second, from the internal evidence of the questionnaires themselves, they must have been filled out by someone other than by the individual respondents. More than 25% of the respondents in the Move-out area indicated they were "illiterate or semiliterate".⁷⁷ It is unlikely that non-literate villagers had their surveys filled out by their literate friends or family members. If 1,458 respondents fill out a standardized survey *individually*, at least one of them would normally be expected to have skipped at least one question (accidentally or intentionally), or contradicted himself within a series of related questions. This did not occur.

111. The tracks of the well-trained surveyor are especially visible in the responses to questions like numbers 11 and 12.

| | |
|--|-----|
| 11. Reasons for being <u>not</u> willing to move: | 84 |
| A. Apprehension over being discriminated against | [0] |
| B. Life is not too bad | 28 |
| C. It is tough to leave behind ancestors' land | 13 |
| D. Concerned about lack of friends in a new environment | 3 |
| E. Difficult to adjust | 19 |

⁷⁵ See *Management Response*, *supra* note 12, at p. 13.

⁷⁶ *Id.*, *supra* note 75.

⁷⁷ AUTHOR UNIDENTIFIED, *supra* note 70, Annex 3-a, at question 5.

| | | |
|--|---|------|
| F. | <i>Other:</i> | 21 |
| <i>12 Reasons for being willing to move:</i> | | 1374 |
| A. | <i>Seeking a way out from the present dead-end situation.</i> | 574 |
| B. | <i>Want a change</i> | 117 |
| C. | <i>For the benefit of future generations</i> | 142 |
| D. | <i>Too little land now</i> | 476 |
| E. | <i>Have friends and relatives already in the move-in area</i> | 2 |
| F. | <i>Other:</i> | 63 |

112. In this example, no one who is *not* willing to move can think of more than one reason for that fact; nor can he think of any reasons for wanting to move. Similarly, every person who admits he or she *is* willing to move also has only one reason for being so willing, and cannot think of any reason not to move. This result would be virtually impossible to obtain in a freely distributed and individually filled-out opinion survey.

113. The third point to be made about the survey is the very limited sources of information about the subject-matter of the survey. It is striking: 93% of respondents indicated that they learned of the resettlement from "*government propaganda*."⁷⁸

114. Fourth, an examination of the questions asked, and the context in which they were asked, indicates that opinions and information gathered are likely not reliable because respondents will probably think that this questionnaire could directly influence whether they get selected for the resettlement project. Impoverished farmers, who are being offered no other poverty alleviation program (besides resettlement in Haixi Prefecture), and who have incomplete knowledge of this proposed resettlement program, know that even if they apply they can change their minds later (should they be accepted). As mentioned above, they may also know that the final selection of applicants might not be made for several years. Those who want to keep open the option of migrating, or whose application is pending, cannot answer this survey with information that states they might wish to stay, or with information that reduces their chance of being selected. For all these reasons, a respondent's indication of willingness to (conditionally) participate in the resettlement

⁷⁸ *Id.*, *supra* note 77, Annex 3-a, at question 9.

project, marked on this survey form filled out by or in the presence of officials, may only be evidence of the respondent's practical good judgement in how official survey forms should publicly be filled out. It is not necessarily direct evidence of his desperate poverty. It may serve only as indirect evidence of his desire to resettle.

5.3 The Survey Method: Move-in area.

115. Turning now to the Move-in areas, the hazards of using the methods of consultation discussed above are even greater, because respondents are being asked, without guarantee of confidentiality, whether they would welcome the influx of settlers. The Request for Inspection lists allegations that expressions of disapproval of Han Chinese settlement in traditionally Tibetan-populated areas have been treated as "counter-revolutionary." The Request alleges that such kinds of activities would have been relabeled as actions "endangering state security" under the Criminal Code of 1997. It also cites sections of the code describing criminal behavior with phrases like "damaging national ethnic unity," "attempting to eliminate the unity of the nationalities," and "creating ethnic disputes," etc., and it cites recent convictions in Haixi Prefecture in the Move-in area. While the Panel does not endorse or express any opinion about these allegations, it notes that they were not disputed, or even directly addressed, in the Management Response.

116. **The Management must bear in mind that if there is even a *perception* of potential adverse effects that could result from a truthful statement of opposition to this Bank-financed project, then Bank staff has a responsibility to guarantee confidentiality of the respondent.** This responsibility derives from at least two sources. First, OD 4.20 requires that efforts be made to ensure that indigenous populations suffer no adverse effects from Bank-financed development. In this case, without a guarantee of confidentiality, an honest respondent could already suffer adverse effects even from the Bank-financed Social Assessment that was intended to mitigate adverse effects of a larger proposed project. Second, a responsibility to guarantee respondent confidentiality is also implied by the requirements for "full and informed" consultation in OD 4.20 (esp. par. 8), 4.30, and 4.01, since full and informed consultation is impossible if those consulted even *perceive* that they could be prosecuted for expressing their opposition to, or honest opinions about, a Bank-financed project.

117. The Bank's Project Appraisal Document admits that not only questionnaire-based surveys of this kind, but even qualitative approaches "*often compromise respondent confidentiality. This is a common weakness in assessment techniques*

carried out in China ... usually offset in the initial data gathering stage through the use of structured interviews.”⁷⁹ Yet, in the case of the Qinghai Project, even the structured interviews were not confidential. Those remembered by the villagers with whom the Panel spoke consisted of village meetings with officials present.



Figure 9a. Inspection Panel Member (left) interviewing villager (right) at Chahamao Village, Dulan County.

Figure 9b. A visiting Hui produce-seller at Chahamao Village, being interviewed by the Inspection Panel.

118. Though the Bank seems to have accepted these methods of consultation as an inevitable as well as “*common weakness*” of Chinese assessment techniques, the Inspection Team found that other organizations working in the same province did not accept these methods. Representatives of the Food and Agriculture Organization of the United Nations (FAO) handled this problem by simply insisting, as a requirement of FAO assistance, that their representatives be allowed to carry out independent, confidential village surveys and, the Panel was informed, those conditions were accepted. This was confirmed by a senior Bank official who had formerly done fieldwork in Qinghai for the FAO. The Bank official informed the Panel that when local officials indicated that they expected to attend the interviews with villagers, they were simply told that it was FAO procedure that all such interviews had to be confidential. As a result, the official was allowed to interview villagers with other FAO staff and their own interpreter, while local officials stayed away. The Panel also interviewed an academic researcher who did long-term ethnographic research among Han resettlers in nearby Gansu province. She was also able to carry out surveys, as well as more in-depth interviews guaranteeing respondent confidentiality. She also emphasized that data obtained from village meetings and questionnaires often differ

⁷⁹ See, Project Appraisal Document, *supra* note 41, at p. 102.

significantly from data gathered from more in-depth or long-term studies where a bond of trust had developed implying confidentiality in use of the information.

119. A believable guarantee of respondent confidentiality might have yielded very different results, especially in the Move-in area. The Inspection Team's short field visit, though it recorded many positive comments about the proposed Project, also yielded some disturbing and dramatic examples of what can only be described as a climate of fear, through which some individuals nevertheless managed, at great perceived risk, to express their opposition to this Project.

120. Team members often asked to visit sites without prior notification, or changed itinerary without advance notice, in order to interview Project-affected persons in a more open manner. In addition, some Team members often disengaged themselves from the group in the evenings, in order to interview more people about their opinions of the Project. They found disturbing evidence that many people were clearly afraid to talk about the Project; and many of those who were willing to talk about the Project were strongly opposed to it. During these interviews, those who opposed the Project clearly felt threatened and asked that their identity be kept secret.

121. The Team's attempts to solicit information without officials was sometimes unsuccessful. In many cases in towns within the Move-in area, people met on the streets were friendly and open until the Team member mentioned that he was with the Inspection Panel investigating the proposed Project. At that point, many became quite concerned, said they had to leave immediately, or brusquely said they could not talk. A friendly, talkative, and interested group of people gathered at Xining's Institute of Tibetan Medicine dispersed immediately, with obvious fright, upon hearing why some of the Team members were present. Several people met in this way did ask (through the Team's interpreter) to meet elsewhere, not openly. In some cases, these meetings were successful and at other times they had to be cancelled. Interestingly, at some meetings people expressing strong negative opinions about the Project in private had been present at earlier, tape-recorded public meetings where the Project was praised.

122. Generally, in small villages, people quickly learned of the size and composition of the visiting group. In some of these cases, individuals who openly discussed the Project in negative terms suddenly became aware that government officials were nearby and immediately changed their demeanor. In one village, the few Mongol herders present (most were in the fields with their herds) vocally opposed

the Project.⁸⁰ They stopped speaking suddenly, then quickly left the village, when another small group of herders walked up and started to praise the Project. Later, the Team observed that the second small group of herders had walked back to talk with a senior local official who was waiting outside the village; he was giving them cigarettes as they waited for the Team to finish its visit to the now-deserted village.

123. The Panel obviously did not conduct a scientific sample of opinion during its brief stay in Qinghai. Yet, in the Panel's view, the opinions it found, and the incidents it witnessed indicate the need for far greater efforts to obtain public consultation under adequate conditions, before Management can be said to have met the requirements for public consultation in the Operational Directives. The mere fact that opinions expressed were so strikingly different, and especially the fact that there was a strong perception of risk from those expressing opposition to the Project during the Inspection Team's visit, indicates that methods of public consultation used for this Project have so far been inadequate.

124. There is no indication that the fundamental problems in the survey and consultation process used for this Project have been corrected for the new Pre-Pilot and Pilot Phases that have been added to the plans for this Project as described in Annex 12 of the Management Response.

⁸⁰ These herders, who are outside the Management-designated project area but who feel they will be strongly impacted, argued that there is inadequate pasturage in the region to support such a large increase in population.

Chapter 6

The Consideration of Project Alternatives

125. If there is no alternative there can be no choice. This basic principle was recognized in environmental and social assessment in the 1970s. The purpose of undertaking these assessments is in large part to improve decisions by making appropriate choices, so it follows that careful comparison of realistic alternatives is an important feature of them. Without it, they are seriously flawed.

6.1 Alternatives and ODs 4.01, 4.20 and 4.30

126. The need for alternatives to be considered is clearly recognized and spelled out in the Bank's own policies. Paragraph 4(c) of OD 4.01 states that project-specific EA's should normally cover: *"systematic environmental comparison of alternative investments, sites, technologies and designs."* This is amplified in paragraph 2(f) of Annex B of the OD, which states that the EA report should include the following items: *"(f) Analysis of alternatives. Systematic comparison of the proposed investment design, site, technology and operational alternatives in terms of their potential environmental impacts... For each of the alternatives, the environmental costs and benefits should be quantified to the extent possible, and economic values should be attached where feasible. The basis for the selection of the alternative proposed for the project design must be stated."* (Emphasis added.)

127. To illustrate the importance of alternatives, Task 5 of the Bank's Sample Terms of Reference (TOR) for Environmental Assessment is instructive. It states as follows: *"Describe alternatives that were examined in the course of developing the proposed project and identify other alternatives which would achieve the same objectives. The concept of alternatives extends to siting, design, technology selection, construction techniques and phasing, and operating and maintenance procedures. Compare alternatives in terms of potential environmental impacts; capital and operating costs; suitability under local conditions; and institutional, training, and monitoring requirements. When describing the impacts, indicate which are irreversible or unavoidable and which can be mitigated. To the extent possible, quantify the costs and benefits of each alternative, incorporating the estimated costs*

*of any associated mitigating measures. Include the alternative of not constructing the project, in order to demonstrate environmental conditions without it.”*⁸¹

128. Both ODs 4.20 on indigenous peoples (national minorities) and 4.30 on involuntary resettlement require the examination of specific kinds of alternatives, such as those suggested for the development of separate indigenous people’s development plans for the affected indigenous populations; or the required examination of alternatives to involuntary resettlement. OD 4.30 also states that *“Involuntary resettlement should be avoided or minimized where feasible, exploring all viable alternative project designs.”*⁸²

129. The Bank’s policies and directives simply leave no room for doubt as to the need for a careful and systematic consideration of a number of different types of alternatives, including investment alternatives, alternative sites, alternative project designs, alternative implementation plans. The purpose of considering these alternatives is to ensure that the option supported is the one that will meet the project’s objectives most cost effectively while meeting the Bank’s safeguard policies. If alternatives are not given due consideration, the potential exists for projects to be supported which do not optimize objectives, fail to meet Bank safeguard policies, and do not deliver best value for money.

6.2 Alternatives and the Project Assessments

130. To comply with Bank policies and procedures, therefore, both the Social and Environmental Assessments should include a full evaluation of alternatives. One of the most noticeable and significant weaknesses of the Assessments made available to the Panel is that investment and project alternatives are not systematically compared. From the documentation, it is not possible to deduce whether the Qinghai Project as proposed is the best way for the Bank to meet the Project’s objectives or to ensure that the Bank’s safeguard policies are being respected.

⁸¹ Sample Terms of Reference (TOR) for Environmental Assessment. Environmental Assessment at The World Bank. See, THE WORLD BANK, *Environmental Assessment at the World Bank*, CD-ROM version 1.0 (1999).

⁸²OD 4.30, *supra* note 59 *in fine*, at § 3(a). See, also, §§ 5 (e), 11 (f), 13, 15 (h), 28 (c). Less directly, OD 4.20 on Indigenous Peoples also states in a footnote that “[d]isplacement of indigenous people can be particularly damaging, and special efforts should be made to avoid it.” See OD 4.20, *supra* note 39, at footnote 2.

131. Thus, for all practical purposes the Environmental Assessment avoids consideration of alternatives, both for poverty reduction in the Move-out areas and for Move-in sites. Systematic comparison is not made of the costs and benefits of the poverty reduction options being implemented in Qinghai by other donor agencies, for example, those of the World Food Programme and Australian AID. Nor are the costs and benefits of resettling rural villagers into urban areas, as advocated in the Chinese 10th Five-year programme. There is no systematic analysis of the desirability of converting fragile arid rangelands to permanently irrigated croplands. There is no analysis of different possible implementation alternatives to ensure that maximum benefits accrue to the populations left behind in the Move-out villages.

132. The only analysis of alternatives that was provided to the Inspection Panel is that contained in Annex 2 of Management Response to the Request for Inspection of the Qinghai Project (July 19, 1999). In this *Summary Analysis of Alternatives*, a single paragraph of qualitative comparisons is provided for four development alternatives: No action; Intensification of Agriculture in the Move-out areas; Alternative Employment Schemes in the Move-out areas; and Resettlement.⁸³ Similarly, four possible alternative sites for resettlement are reviewed: Gonghe Basin, East Qaidam Basin, West Qaidam Basin, and North Qaidam Basin. And for the preferred East Qaidam Basin, five water supply options were explored using elementary hydrological computer models.

133. During the on-site inspections in Qinghai Province, the Inspection Team enjoyed the professional cooperation of the Chinese scientists responsible for producing the EA. It was clear from the authors of the EA that they understood the main purpose of their studies to be to assist in the optimal resettlement of around 60,000 people from the Move-out area into Dulan County.

134. The Inspection Team found evidence that within the confines of the selected resettlement area, the Environmental Assessment has contributed to three key decisions. First, the selection of areas with soils suitable for irrigation. Second, a reduction of the overall size of the proposed irrigation area. And, third, questioning the carrying capacity of the proposed irrigation scheme, with the result that the number of persons to be resettled was decreased from over 100,000 to about 60,000 persons. The Assessment also makes recommendations as to the types and extent of monitoring that should take place should the Project be implemented to ensure that salinization of the soil and ground water does not occur. Recommendations for

⁸³ This Annex 'summarises the development and site alternatives that were reviewed by Chinese authorities and discussed with Bank staff as part of the preparation process for the Project.' See *Management Response*, *supra* note 12, Annex 2, at p. 35-41.

ongoing monitoring of ecological parameters are also made.

135. Although the Panel requested a copy of the Terms of Reference (TOR) for the EA on several occasions, both in Washington and Beijing, they had not been received at the time of completion of this Report. It would appear from the above, however, that Bank staff failed to ensure that those responsible for the EA understood their brief to include an examination of alternatives to resettlement, either in the Move-out or Move-in areas. Nor did they make clear their responsibility to examine whether the proposed Project would in fact deliver the anticipated benefits to those left behind in the Move-out areas.

136. With respect to the Social Assessment, it appears that it was also undertaken to determine how best to select and move people from the selected Move-out counties to the defined project area in Haixi Prefecture, where a dam and irrigation system were to be constructed. This seems evident both from the Inspection Team's discussions with the Bank staff responsible for the design of the Social Assessment, and from the Assessment itself. There is no systematic study of *in situ* alternatives to resettlement, or of alternative resettlement sites, or of alternative development plans for the indigenous peoples affected within the Move-in area.

137. A proper social assessment should ask (or at least set its more restricted focus within a context of other studies that ask) "How can we most effectively and sustainably alleviate poverty in Qinghai, with full social and environmental safeguards, and full and informed participation, with the funds available?" This Project's Social Assessment instead effectively just asks, "How can we make this proposed, already-decided dam-building and engineering project work? How should we select and move many tens of thousands of people from the Move-out counties in Haidong and Xining City Prefectures to the proposed irrigation area in Haixi Prefecture, and involuntarily resettle the pastoralists who are there now?" Regardless of how well those responsible carried out the Social Assessment, its effective terms of reference prevent it from considering alternatives to the Project as already defined.⁸⁴

⁸⁴ The Social Assessment of this project per se would not need to address the broadest range of questions, including the analysis of alternative strategies, if it constituted only one of many related studies. If that were the case, the Assessments could simply cite other studies that resolve some of the larger contextual issues and therefore justify the restricted scope of the present study. Unfortunately, however, both the Environmental and Social Assessments lack references to any such broader literature to indicate that adequate analyses of alternative strategies has been carried out, or to indicate how this particular project efficiently fits into an overall poverty alleviation strategy, or how this proposed strategy relates to the very different poverty alleviation strategies being carried out-- often in nearby areas of the same counties -- by other organisations.

138. Why Bank staff permitted the Assessments to be conducted in such a circumscribed and limiting manner is unclear.⁸⁵ Whatever the reasons, **the Panel finds that Management accepted Assessments that do not make any meaningful analysis of realistic project alternatives as required by Bank policy.**⁸⁶

⁸⁵ Despite numerous requests, the Inspection Team could not be provided with a copy of the Terms of Reference for the EA given to the Qinghai Institute for Environmental Science. It appears likely that the Bank did not provide the Qinghai Institute with the Institutional and Advisory Support that was needed for them to complete the EA so as to accord with OD 4.01. The failure of the EA to consider alternatives must thus be attributed to a failure of the Bank to oversee the execution of the EA to ensure that Bank safeguard policies were observed

⁸⁶ The requirements for assessment of social issues within OD 4.01 (Environmental Assessments) could have been met either by including them in the Environmental Assessment or, as in this Project, within a separate Social Assessment. These requirements for the analysis of alternatives are in addition to those found in ODs 4.20 and 4.30.

Part Three

Environmental Compliance

Chapter 7

Environmental Screening of the Qinghai Project

139. One of the most important decisions (perhaps the most crucial) that Management must make concerning environmental assessment on any project is the category of the assessment that will be undertaken. That decision basically determines the scoping of the Terms of Reference (TOR) of the assessment, its breadth and depth, and the time and resources made available to undertake it. As one of the Bank's senior Environmental Advisors stated in an interview: "*Categorization is arguably the most important phase of EA.*" It determines the scoping and "*If you get the scoping [of the terms of reference] wrong, then everything goes wrong.*"

140. In this Chapter, the Panel considers the screening decision that was made from the perspective of both the process and the substance requirements of OD 4.01. The Chapter begins with a brief discussion of the stage in the project cycle that environment should be taken into account. It then considers the Bank's policies on environmental screening. And finally it looks at the decision taken in light of these policies.

7.1 Stage in the Project Cycle

141. The Bank's policy on Environmental Assessment, as embodied in OD 4.01, requires that an assessment should occur "*early in the project cycle and [be] taken into account in project selection, siting, planning and design.*"⁸⁷ In the present context, however, the "project cycle" is extremely difficult to determine. Preliminary investigations of the suitability of the Keri Dam site started around 1989 and that of the suitability of the soils in the Balong area started soon after this. In 1994, both the National and Qinghai Poverty Reduction Plans were formulated and they provided the framework for the present proposals. Some environmental assessment did take place at these early stages and a draft EA was given to the World Bank Technical Mission in February 1998. Ideally, substantial environmental investigations should have taken place concurrently with the early investigations of the then potential dam site and irrigation area.

⁸⁷ OD 4.01, *supra* note 32, at § 2.

142. When the Western Poverty Reduction Project was placed before the World Bank in 1997, it is clear from the information available to the Panel that the basic design of the Qinghai component was already fully developed. Environmental work as required by OD 4.01, in line with the Terms of Reference that were provided by the Consultant employed by the Bank, started soon after Bank acceptance of the Project and, in this sense, was early in the project cycle. But it is evident that such studies were too late to impact on the basic design of the Project and, apart from the reduction in the number of the settlers from over 100,000 to around 60,000, only minor modifications to the Project have been effected.

143. It seems clear from OD 4.01 that borrowers should incorporate environmental considerations into a project early in its history and not wait to start an environmental assessment until after the project has been submitted for Bank financing. Paragraph 3 of OD 4.01 states: *“Like financial, institutional and engineering analyses, EA is part of project preparation and is, therefore, the borrower’s responsibility. Close integration of EA with these aspects of project preparation ensures that (a) environmental considerations are given adequate weight in project selection, siting, and design decisions; and (b) EAs do not delay project processing.”*⁸⁸

144. Some countries have difficulty financing adequate environmental assessments. During interviews with Bank staff, the Panel encountered divergent and contradictory views as to whether it is possible for borrower countries to access donor funds to undertake environmental assessments before projects are submitted for Bank approval. Nonetheless, paragraph 3 of OD 4.01 stands and, of course, if the Bank is not satisfied with any assessment undertaken prior to its involvement in a project, it can always require additional work.

7.2 Environmental Screening: OD 4.01 and Annex E

145. Under OD 4.01, the Task Manager (now Task Team Leader) takes the screening decision, with the concurrence of the Regional Environmental Division (RED, now a Unit). Paragraph 17 of the OD states: *“The TM should screen projects/components at identification to determine the nature and extent of the environmental work required. As a result of the screening, the TM, with the concurrence of the RED, assigns the project to one of the following categories, in accordance with Annex E: **Category A:** A full EA is required. **Category B:** Although a*

⁸⁸ OD 4.01, *supra* note 32, at § 3.

full EA is not required, environmental analysis is required. Category C: No EA or environmental analysis is required."

146. Annex E of the directive provides illustrative lists of the types of projects best classified in Categories "A," "B," and "C." Twelve types of projects are listed for Category A, of which eight are found in the entire Western Poverty Reduction Project and four in the Qinghai component of the project. The four are: "(a) Dams and reservoirs; ... (d) Irrigation, drainage and flood control (large scale); (e) Land clearance and leveling; ... (i) Resettlement and all projects with potentially major impacts on people"⁸⁹

147. The introductory paragraph to this list states that: "A full EA is required if a project is likely to have significant adverse impacts that may be sensitive, irreversible, and diverse. The impacts are likely to be comprehensive, broad, sector-wide, or precedent-setting...." A footnote explains that the term "Sensitivity refers to issues such as impacts that are irreversible, affect vulnerable ethnic minorities, or involve involuntary resettlement."

148. Under OD 4.01, this critical decision is made at a very early stage in the project cycle. Consequently, the OD permits a later revision of the category as new information becomes available. In this regard, paragraph 3 states: "The EA assigned to the project as part of the screening is based on the best judgement and information available at that early stage. If the project is modified or new information becomes available to justify reclassification, the TM should reclassify a proposed project. The reclassification should be done with the concurrence of the RED."

149. Thus, the door is open for a second judgement. During the Panel's interviews, some staff took the view that when there is very little information on a project at the time the initial decision has to be made, and a consequent high degree of uncertainty, practical good sense dictated that it be assigned to the higher category. The decision has operational implications and, if later information warrants, it is far less difficult and more efficient to go from an "A" to a "B" rather than the opposite. Moreover, a downgrading from "A" to "B" would not result in the project being delayed and would avoid add-on costs for later studies or mitigation measures that an upgrading from "B" to "A" would entail. Others disagreed. In their view, while it may be difficult, it was not impossible to re-assign upwards if circumstances so dictated.

⁸⁹ Mineral development (including oil and gas), is also listed.

150. As mentioned in the introduction, the Western Poverty Reduction Project has three components in three separate but adjacent provinces: Gansu, Inner Mongolia, and Qinghai. OD 4.01, however, does not permit the assignment of different categories to these components. Paragraph 2 of Annex E states: *“Dual categories (e.g.A/C) should not be used. For instance, a relatively benign project with a single category A component is a category A project.”* Thus, if it is decided that one component, in this case Qinghai, requires a full assessment and is therefore assigned a Category “A,” the other two components of the Western Poverty Reduction Project must be assigned an “A.” During interviews, some staff took the position that it seemed unfair to burden the entire project with the time and financial costs of an “A” if only one component, Qinghai, may require it. In response, the Panel can only observe that this appears to be what the framers of the OD had in mind; otherwise, the OD could be amended to provide for separate categories where a “project” is to all intents and purposes made up of three distinctly separate projects, or where other circumstances might warrant it.

151. Alternatively, Management could have separated the Qinghai component into a distinct project, separately submitted to the Board for approval. Then the other two components of the Western Poverty Reduction Project, Gansu and Inner Mongolia, may have retained their “B” rating. In this regard, it is interesting to note that, in fact, at the time of the Project Concept Document Review meeting, the Task Team recommended that the project be split into the Qinghai Poverty Reduction Project and the Western Poverty Reduction Project. They argued that although all three project Provinces shared common project development objectives, the design and key interventions of Qinghai were totally different. The requirements for goods and works procurement for a voluntary resettlement project based on a sizable irrigation scheme would also be different. Splitting would ease project implementation and supervision, and the Qinghai project could be supervised jointly with the Gansu Hexi Corridor Project from the China office.⁹⁰ The Country Director who Chaired the PCD meeting acknowledged the merit of splitting Qinghai. He concluded, however, that finding an additional Board slot for China would be a problem so this decision should be deferred to a later date.⁹¹ Later, the Task Team Leader informed the Country Director that the Preparation Assistance Mission had confirmed the recommendation to split the project in two. Trusting that the major stumbling block of finding a Board slot might now be overcome in the interest of the project, he offered to further explain the rationale for splitting during a briefing meeting scheduled with the Country

⁹⁰ PCD Review Meeting Agenda (13 April 1998).

⁹¹ Minutes of PCD Review Meeting (17 April 1998).

Director.⁹² Subsequently, in consideration of the overall IBRD/IDA lending program for the year, a decision was made to retain it as a single project.

152. On the face of it, therefore, it would seem that a straightforward reading of Annex E would lead an environmental professional to classify the project an "A" if it included more than two of the components listed in Annex E, and if one or two of the descriptors in the preamble were found to apply. The Annex does not provide for exceptions on the basis of "*past experience*" or "*precedent*" in the country in question. Nor does it allow for exceptions on the basis of the area of the project relative to the area of the geographic or political jurisdiction involved. Yet, both arguments were advanced by Management in its July 18, 1999 Response.

7.3 Environmental Assessment Procedures: Annex D

153. OD 4.01 also requires that certain procedures be followed for an environmental assessment. Some of these have been noted above. Others are set out mainly in paragraphs 14-16 and in Annex D. As one would expect, they are more detailed and stringent for a Category "A" project than a "B" or "C." An insight into the rather detailed process as mandated by the OD may be found from paragraph 15. It states in part: "*Though EA preparation is the responsibility of the borrower, the Bank's task manager (TM) assists and monitors the EA process, with support from the RED. The borrower and the Bank should agree as early as possible after issuance of the Initial Executive Project Summary (IEPS) [now PCD] on the terms of reference (TOR) or the EA, and on the EA procedures, schedule, and outline. This is because (a) EA preparation should form part of the overall feasibility study or preparation work for the project, so that the EA's findings can be directly integrated into project design; (b) some EAs require substantial time for preparation (see Annex D, paras 6-7); and (c) completion of the EA report is a prerequisite for the departure of the appraisal mission. Major steps in the EA process are outlined in Annex D.*"⁹³

⁹² Project Files (15 June 1998).

⁹³ See, also, OD 4.01, *supra* note 32, at Annex E, §§ 2, 5 (a) (d) (e) (h) (i) (j) (l); and OD 4.30, *supra* note 59, at § 20.

7.4 The Screening Decision: Category “A” or “B”?

154. Under OD 4.01, as noted above, the Task Manager (now Task Team Leader) assigns the project to one of the categories, with the concurrence of the regional environment division (now unit). On January 8, 1998, in the Environmental Data Sheet prepared for the Project, the Task Team Leader assigned the whole Western China Poverty Reduction Project, including the Qinghai component, to a Category “B.”⁹⁴ According to the Data Sheet, the major environmental issues then foreseen were “*salinization of shallow water table; changes in water regime below the dams; fuel wood harvesting and overgrazing arising from resettlement; no involuntary resettlement.*” (Emphasis added.) It was assigned a “B” on the grounds that “*On balance, the project would improve the existing fragile ecology in the poor project counties. Measures to mitigate the negative impacts are known in China and adopted for similar projects. The EA for Qinghai will be comprehensive, focusing on the impact of the resettlement.*”⁹⁵

155. This decision was made before the Task Team Leader, or any other Bank official associated with the decision, had an opportunity to visit the immediate Project site.⁹⁶ It was also made without detailed maps and other basic information being available and, it would appear, without regard to the illustrative examples of Category “A” projects listed in Annex E of OD 4.01.⁹⁷

156. Another, presumably later but undated and unsigned, Environmental Data Sheet appears in the Project Concept Document Package. Containing one additional page of information, it confirms that the “B” category was assigned on January 8, 1998. However, it offers another “*Justification/Rationale for Environmental Category,*” namely that: “*The EA in Qinghai will be more comprehensive [as opposed*

⁹⁴ That was some 13 months after the project entered active status in the Bank’s China portfolio. At the bottom of the data sheet are found the typewritten names of the manager of the East Asian Rural Development Unit, and the acting chief of the newly formed East Asia Regional Environmental Unit. They signed it, however, and may not even have seen it.

⁹⁵ IDA, *Environmental Data Sheet*, annex to the Project Concept Document (PCD) Review Package on China Western Poverty Reduction Project (25 March 1998).

⁹⁶ It should be noted that the East Asian Regional Environment Unit had been created January 1, 1998, only a few days before the Environmental Data Sheet for Western was issued. Since responsibility for environmental matters was in the process of being transferred from Washington to Regional Offices, concurrently with the development of the Western Poverty Reduction Programme, clear lines of accountability for environmental review and overview of this project may not yet have been established.

⁹⁷ The Panel was informed that it is common practice for a Task Team Leader to decide upon an environmental classification more or less on his/her own and leave it until later – perhaps as late as the PCD stage – before involving the regional environmental department in the Project.

to Inner Mongolia and Gansu] focusing on the impact of the land reclamation, resettlement and dam construction.”⁹⁸

157. A month later, in February 1998, at the Task Team Leader's request, an environmental specialist in the East Asia Environment Unit (EASEN) agreed to act as a Peer Reviewer for the project. As Peer Reviewer, he would receive project documents and make comments. Normally, the team would include an environmental contact person, that is the person from the regional environmental unit who would be a member of the project team and receive support from the project budget. In this case, since none was appointed, the Peer Reviewer became the *de facto* EASEN contact person for the project, although budgeted only as peer reviewer.

158. The Peer Reviewer recommended that a consultant with special experience in soils and considerable experience in working on environmentally-related problems in China, including previous Bank experience, be employed to act as the counterpart to the Chinese institutes working on the Environmental Assessment. The Task Team Leader agreed and asked the Consultant to: “*be responsible for the environmental impact assessment aspects of the project in line with OD.4.00 [sic]. His primary task is to review the scope (TOR) of the EA and to assess the work initiated so far and the capacities of the local Environmental Protection Bureau to carry out the work. In particular, the EA in Qinghai requires a thorough understanding of the impact of the storage dams and the resettlement of 100,000 in the project area.*”⁹⁹ According to the Management Response, the Consultant prepared the Terms of Reference between February 20-27, 1998.¹⁰⁰ At the same time, the Peer Reviewer “*instructed*” the Consultant on what the key issues for the EA were, namely, the dam, soils and land reclamation.

159. Between February 8-28, 1998, a Technical Mission, including the Consultant, visited all three provinces involved in the overall project in order to review the preparatory work planned and completed by the provincial governments and give detailed technical comments. During this mission, the Consultant received a first draft of the EA even before he had prepared the terms of reference for it.¹⁰¹ In his note on Qinghai following the Mission, the Consultant mentioned that an

⁹⁸ *Id. supra* note 95.

⁹⁹ Project Files (15 January 1998).

¹⁰⁰ See *Management Response, supra* note 12, Table A9-1, at p. 82. He prepared the terms of reference for the EA but as far as the Panel can determine, they were not cleared by anyone in the Bank.

¹⁰¹ *Memo to Inspection Panel* (24 November 1999).

environmental report outline had also been prepared and forwarded to the National Environmental Protection Agency (NEPA) for their review and comments.

160. Subsequently, on March 13, 1988, the Consultant raised a number of issues with the Peer Reviewer and provided grounds for recommending the re-classification of the Qinghai component as an "A" Category Project in terms of OD 4.01. He stated: *"In accordance with the Bank's OD 4.01 and NEPA [National Environmental Protection Agency] guidelines, this is considered to be a category "A" project. Specific rationale for placing it in this category include: (a) the inclusion of 1 new dam (Keri Dam) and reservoir; (b) the inclusion of a relatively large new irrigation area (approximately 25,300 ha); (c) the reclamation and new land development (approximately 25,300 ha); and (d) the resettlement of about 100,000 people into the project area. This signifies that it requires a full EA, which must be completed and approved by NEPA and the Bank before approval can be given for the commencement of project appraisal. This must include an Environmental Management Plan (EMP). This plan must be integrated into the overall planning process."*¹⁰² [Emphasis added.]

161. The Consultant's report on Qinghai also contains a list of issues that the EA should cover, and a list of some 22 main conclusions and recommendations for further environmental and resettlement work. His report on the other two provinces, however, reveals his agreement that they did not raise environmental issues sufficiently "big" to warrant those components being classified as an "A".

162. The Project Concept Document (PCD) Review Meeting was held on April 14, 1998.¹⁰³ This is a key decision-point in the evolution of a Bank project. It is the first time that the project is looked at as a whole and in some detail by a group beyond the project team, including senior managers. Notification of the meeting and copies of the PCD package, including the Environmental Data Sheet with the "B" classification, was sent out for comment to 35 managers, staff and consultants in the Bank. Written comments, distributed before the meeting, were received from 5 Peer Reviewers, including the reviewer from the regional environmental unit (EASEN). The Project Concept Document records the official justification for the "B" classification as follows: *"The environmental issues in Inner Mongolia and Gansu are relatively minor because of the small scale development schemes. The project would improve the existing fragile ecology in project counties with the introduction of environmentally sustainable development farm technology. The EA in Qinghai will be more comprehensive*

¹⁰² Project Files (2 April 1998).

¹⁰³ See *Management Response*, supra note 12, at p. 42.

*focusing on the impact of the land reclamation, resettlement and dam construction.*¹⁰⁴

163. Before that meeting, on April 2, 1998, the Peer Reviewer commented on the A/B issue, indicating that both he and the Task Team Leader were in agreement that it should be a "B".¹⁰⁵ His memorandum was copied to Management and other peer reviewers, who were thus made aware of the A/B debate.¹⁰⁶ Among other things, the Peer Reviewer felt that the lists in Annex E of OD 4.01 were simply illustrative, to be interpreted in the context of the preamble which, in his view, gave substantive criteria with which to make a judgement, criteria like "*sensitive, irreversible, ...comprehensive, ... or precedent setting.*"¹⁰⁷ He argued that conditions in Qinghai (as he understood them from project documents, and his general knowledge of China (he has never visited the Project area), did not warrant the full environmental assessment that a Category "A" would require. The resettlement of around 60,000 people into a newly developed irrigation tract is something that the Chinese government has much experience with, so the project would not in any sense be "*precedent-setting.*" The environmental and human impacts of the dam-plus-reservoir would be small, and the system as a whole small in scale compared to thousands of other dam-plus-reservoir systems in China. The irrigation tract would yield little runoff; hence impacts outside the tract would not be "*comprehensive.*"

164. The Peer Reviewer had other reasons for retaining a "B." One concerned the dilemma imposed by paragraph 2 of Annex E which, as noted earlier, precludes dual categories (e.g., A/B) in any one project. It was important to avoid imposing the time and costs of an "A" assessment on Inner Mongolia and Gansu where, it was agreed, they were not needed. Another was a strong reluctance to stretch the capacity of the young local environmental institutes, and to impose an extra burden on Bank staff who would be called upon to strengthen their product.¹⁰⁸

¹⁰⁴ Project Files (25 March 1998).

¹⁰⁵ The situation is confused as the Peer Reviewer for the project who was based in the East Asian Environmental Unit was prepared to take responsibility for the decision to assign the project to category "B" status. But from the chronology of the project, it is apparent that the decision had in fact been made before he became involved with the project.

¹⁰⁶ The Peer Reviewer said: "Whether or not this [loss of grazing rights] justifies classifying the entire project as "A" is, in my view, debatable. I would be inclined to call it a "B" but this is something that will need to be discussed with the EASEN contact person." See Project Files (2 April 1998).

¹⁰⁷ Project Files (14 March 1998).

¹⁰⁸ *Id. supra* note 107.

165. Potential impacts on Nature Reserves and related conservation areas were also a factor in Peer Reviewer's judgement. In a key memorandum to the Director of RMC, he attached notes containing his "best shot" at identifying the reserves in the project areas.¹⁰⁹ He tentatively identified "eight in Gansu, four in Inner Mongolia and none in Qinghai." (Emphasis added.) He then notes that "since I don't have a map of the Qinghai development areas, this assessment [on the existence or not of reserve areas in Qinghai] is, to say the least, speculative."¹¹⁰

166. On April 7, 1998, the Consultant sent an email to the Task Team Leader supporting the Peer Reviewer comments. Commenting on this later to the Panel, the Consultant stated that Washington felt that the project should remain a Category "B" largely because of "precedents in China." He "was not prepared to argue."

167. The April 14, 1998, PCD Meeting was chaired by the Director RMC and those attending included the Bank lawyer for the project and three of the peer reviewers, one from an NGO based in Washington. The minutes make no mention of environmental classification.

168. The Peer Reviewer informed the Panel that he has no further record of the Project for the period between April 7, 1998 and December, 1998 when the EAs for the three components arrived. It is not recorded whether the EA procedures, schedule and outline, as well as the TORs, were agreed between the borrower and the Bank after issuance of the PCD (formerly IEPS) as required by paragraph 15 of OD. 4.01. The schedule of environment assessment team activities found in the Management Response makes no mention of these.¹¹¹

169. The EA was prepared in Chinese by the Qinghai Institute of Environmental Science. Various drafts were issued and were presented to the missions that visited Qinghai in 1998 and 1999. An English-language version was submitted to the Bank in October, 1998, and the final report was issued in June, 1999,¹¹² although still dated October, 1998. After the English was edited, the report was sent to the InfoShop on June 2, 1999.¹¹³

170. The Panel was informed that the English language version of the EA is different in structure and scope from the original Chinese version. For example, the

¹⁰⁹ Project Files (4 April 1998).

¹¹⁰ Id. *supra* note 109.

¹¹¹ See *Management Response*, *supra* note 12, Table A9-1, at p. 81-83.

¹¹² See *supra* note 101.

¹¹³ See *Management Response*, *supra* note 12, at p. 85.

table of contents of Chapter 5 that the Inspection Team had translated from the Chinese was substantially different from that of the equivalent chapter of the English-language version. Bank staff questioned on this were either unaware of the differences or explained them on the grounds that the original contained too much detail.¹¹⁴

171. The Project Appraisal Document (PAD) was ready on November 25, 1998, and distributed to 37 people, including four peer reviewers. The Decision Meeting, to move forward to final appraisal, was scheduled for three weeks after the Project Appraisal Document itself was distributed. The Decision Meeting is the last step in the Bank's preparation process at which there is, in principle, flexibility for making more than marginal changes to the project design. The environmental, social and legal clearances, or substantive reasons for withholding clearances, are meant to have been received by the time of, or at, the Decision Meeting.

172. The EAs for the three components of the Western Poverty Reduction Project were received on time. They were reviewed by the Consultant (the same Consultant who had prepared the Terms of Reference, negotiated them with the local institutes, and overseen their implementation.) He advised the Task Team Leader that he approved them – in effect, recommending them for clearance. The Task Team Leader passed them on to the Peer Reviewer.

173. The Decision Meeting was held on December 17, 1998. Some Peer Reviewers advised that all the environmental issues, with one exception, had been addressed. The exception was livestock overstocking, which might cause more erosion of already badly eroded range land in all three provinces, but especially in Gansu and Inner Mongolia.¹¹⁵ In response, the Sector Manager decided to downgrade the Appraisal Mission scheduled for January, 1999, to a Pre-Appraisal Mission. During the course of the Mission, between January, 10-23, it became evident that the livestock issue had been addressed satisfactorily, so the Manager of the East Asia Rural Development Unit upgraded it to an Appraisal Mission in the field. This kept the entire Western Poverty Reduction Project on track for Board presentation before mid-1999. As required by Bank policy, the Task Team presented the documentation for the entire Project, which included the Project Appraisal Document, and draft loan, credit, and project agreements, to the East Asia Country

¹¹⁴ Eg., with long lists of plants and animals, although the Inspection Team felt that this was not the case.

¹¹⁵ **Project Files** (18 December 1998 and 25 January 1998).

Director and Legal Department for clearance and, in the case of the Legal Department, authorization to issue an invitation to negotiate.¹¹⁶

174. The negotiations took place during the week of April 12. There were no substantive issues to be negotiated. The agreed Minutes of Negotiations were signed, and the approval of the Chinese and Provincial Governments was expected by May 10, 1999. Board presentation was anticipated for June 8th. However, shortly after Negotiations, external criticism of the project erupted, starting with publication of the Tibet Information Network (TIN) article on April 27th. This caught the Bank by surprise and triggered an intensive internal review of, among other things, the environmental classification of the project as a "B" rather than an "A."

175. Back in June, 1998, the Regional Vice President, EAPVP had issued a memorandum on "*Compliance with Safeguard Policies*," stating that "*Under the operational policy reform, the Regions will remain fully accountable and responsible for ensuring compliance with safeguard policies.*"¹¹⁷ This marked a change from the situation in the early 1990s, when the central Environment Department did have a formal role in the clearance of Environmental Assessments of "A" projects. Since the mid-1990s, this formal clearance role has fallen away and, by 1998, the consensus was that clearance and accountability for compliance with the safeguard policies should be vested in the region. The Vice President's memo confirmed this.¹¹⁸ While this was the formal position, shortly after the appearance of the TIN article, Management decided to ask several senior experts from the central departments to advise on the classification and compliance.

¹¹⁶ As noted earlier, the regional environment unit (EASEN) had been created on January 1, 1998 and, for much of 1997 and 1998, was in a state of reorganisation. During interviews, the Panel was informed by several senior officials that during this period lines of responsibility were so blurred (and some senior officials were so overloaded), that practically all but the bare minimum quality-control procedures had fallen away.

¹¹⁷ He added that: "*The ESSD Network Anchors (Environment, Social and Rural) in cooperation with LEG and the Regions will be responsible for periodic [Quality Assurance Group]-type auditing of representative samples of projects to identify whether they comply with Bank safeguard policies.*" He added further that: "*The Regions have been instructed to provide dedicated, non-fungible resources to their environment and social units to strengthen their review, advisory and monitoring activities. An adequate level of such dedicated resources is being assigned to EASEN and EASSD for assuring safeguard compliance....*" See EAPVP REGIONAL VICE PRESIDENT, *Memo to Director RMT "Compliance with Safeguard Policies"* (3 June 1998). Attached to it was a separate memorandum from the Managing Directors to Operational Vice Presidents, headed "*Operational Policy Reform: Compliance with Safeguard Policies.*"

¹¹⁸ See EAPVP Regional Vice President, *supra* note 117.

176. One of these experts informed the Panel that from the time that he first saw any documentation related to the Project,¹¹⁹ he had been convinced that the Project should have been classified an "A" on at least eight grounds. In May, he recommended that the Project be immediately reclassified as "A" as this would be preferable to further jeopardizing the Bank's reputation by defending the category "B."

177. Another expert, also brought in for the first time at this late date, felt that the Project should have been classified as Category "A." He advised Management, he told the Panel, that it should simply acknowledge that a "*well-intentioned*" mistake was made. That would do less harm to the Bank's environmental credibility, he felt, than a futile defense of the "B" rating.

178. Another expert took a slightly different view. He advised Management that if the project were to be categorized now, under OP 4.01, it would be an "A." However, he understood that the size of the Project was not out of line with others in the China portfolio and that its categorization as a "B" was consistent with the accepted practice in the Region.

179. A senior official, also with strong credentials in the field, informed the Panel that in his view the Project was quite clearly an "A," whether under the old or new rules. The Region, he felt, was in non-compliance, not with whether or not the Project was categorized (obviously, it was), but with the A/B judgement and, in late May, he so advised Senior Management. Expressing understanding with the position of colleagues who must contract their services to, and are paid in part out of, project budgets, he went on to say that "Frankly, they don't want to bite the hand that feeds them (for cross support) by taking a hardline view."

The Panel's Findings

180. **After reviewing the screening process, the Panel finds that Management's decision to classify the project as a Category "B" was not in compliance with OD 4.01. The justifications for a "B" offered in the Environmental Data Sheet of January 8, 1998, and essentially confirmed by Management at the PCD Meeting of April 14, 1998, are not in accord with the**

¹¹⁹ I.e., after the Request for Inspection and, even then, he was shown not the full EA but only a 22 page summary.

terms and spirit of OD 4.01.¹²⁰ Several components of the Project fall within the illustrative list of Category "A" projects in Annex E, i.e., dams and reservoirs, irrigation and resettlement. And the impacts qualify as "sensitive" in that vulnerable ethnic minorities are affected and involuntary settlement is involved.

181. As noted earlier, paragraph 3 of OD 4.01 provides an open door to a second judgement based on new information. Management was given this opportunity when in March 1998, following a visit to the Move-in area (the first Bank official involved in the decision to visit that area), the Consultant recommended that the Project be reclassified to "A." **In the Panel's view, the initial violation of OD 4.01 was compounded when Management rejected this advice.**

182. Following the outbreak of external criticism at the end of April, 1999, Management had unexpected third opportunity to review the environmental classification which, as just noted, it took. Again, it rejected all internal advice to the contrary and, in its July 18, 1999, Response, chose to support the original rationale for a "B," stating that: *"The project was assigned to environmental screening Category B on the basis of: (a) the overall environmental risks posed by the project; (b) types of development interventions proposed, project location, and the environmental sensitivity of the area; (c) the nature and magnitude of potential impacts and available mitigation measures; and (d) past practice with both the classification and implementation experience of a large number of similar integrated agricultural development projects financed by the Bank in China over the last 10 years."*¹²¹ **For reasons set out above, the Panel finds these arguments unconvincing, and the view that "Bank staff interpreted the policy reasonably in ...categorizing it as category B" cannot be supported.**¹²²

183. The Panel is also concerned about some aspects of the process when compared with those prescribed in paragraphs 14-16 and Annex D of OD 4.01. The initial decision to assign the project a "B" in the Environmental Decision Sheet of January 8, 1998, was based on the very little information then available on

¹²⁰ To recall the stated justifications for a "B" were: *"On balance, the project would improve the existing fragile ecology in the poor project counties. Measures to mitigate the negative impacts are known in China and adopted for similar projects. The EA for Qinghai will be comprehensive, focusing on the impact of the resettlement"*.

¹²¹ See *Management Response*, supra note 12, at p. 18.

¹²² See *Management Response*, supra note 12, at p. 19.

someone's desk in Washington.¹²³ The officials concerned informed the Panel that they had not yet visited the Move-in area, had no first hand experience with it, and did not even have access to a "decent" map, let alone basic information on the environmental and social characteristics of the area. Moreover, at the time, they assumed there would be no involuntary resettlement and no impact on minorities.¹²⁴ The Panel recognizes that, under the OD, the decision had to be taken early in the project cycle. But it can be reviewed and revised in light of new information. The initial decision might take on a different character if Management had reviewed and revised the classification when new information and advise from the Consultant, based on a field visit and some study, became available. But it didn't.

184. As noted earlier, the Panel was informed that it is common practice for a project task team leader to decide on an environmental classification more or less on his/her own, and leave it until later – perhaps as late as the Project Concept Document (PCD) stage – for the regional environmental unit to become involved in looking at the project, including its classification as an "A" or "B". If this is indeed common practice, it leaves much to be desired. The official who must manage a project and ensure that it goes ahead on schedule is often not in the best position to judge whether or not serious questions relating to project safeguards should be allowed to "interfere" with schedules and consume "precious" time and resources. Some form of mandatory third-party review would seem desirable, at the very least.

185. Management rejected the Consultant's advise to reclassify the project to an "A" because of "precedents in China." The Management Response itself cites this as a reason for maintaining the "B" classification rather than revising it to an "A."¹²⁵ As noted earlier, past experience in a country may provide the basis for a certain level of comfort that the work that is required by the ODs will be undertaken successfully. But there is nothing in OD 4.01 to suggest that experience and precedent can or should be a factor in determining what is required by the OD.

186. The Panel was informed that the Consultant was central to setting the Terms of Reference for the EA. He also negotiated them (and the EA process) with the local Qinghai Institute. He then served as the Bank's sole representative to advise and

¹²³ See Environmental Data Sheet for Projects in the IBRD/IDA Lending Program, first draft (8 January 1998).

¹²⁴ As noted earlier, the footnote to the A lists in Annex E state that: "Sensitivity refers to issues such as impacts that are irreversible, affect vulnerable ethnic minorities, or involve involuntary resettlement." See OD 4.01, *supra* note 32, footnote 1 at Annex E.

¹²⁵ For precedents in China, see, e.g., *Management Response*, *supra* note 12, footnote 21 at p. 18.

assist the Institute throughout the preparation of the EA. Finally, he was asked to recommend clearance of the resulting EA. **In the Panel's view, if this is a common practice, it should be seriously examined. It seems devoid of any second, let alone third party checks to ensure the quality of the work done. It would place anyone, however competent, in a series of judge and jury conflicts.**

Chapter 8

The Environmental Assessment of the Qinghai Project

187. “The detail and sophistication of an [environmental] analysis should be commensurate with the expected impacts,” states OD 4.01 in opening the paragraph on what a project-specific assessment should cover.¹²⁶ “Detail and sophistication” are largely determined by the Category to which a project is assigned and, among other things, the categorization of the project should reflect the “expected impacts.”

188. Beyond the question of “detail and sophistication” of an analysis, however, OD 4.01 is quite clear on what a project-specific environmental assessment should normally cover. It mentions six elements: “(a) existing environmental baseline conditions; (b) potential environmental impacts, direct and indirect, including opportunities for environmental enhancement; (c) systematic environmental comparison of alternative investments, sites, technologies, and designs; (d) preventive, mitigatory, and compensatory measures, generally in the form of an environmental mitigation or management plan; (e) environmental management and training; and (f) environmental monitoring.”¹²⁷

189. In the Panel’s view, the Environmental Assessment for the Project fails on several counts in respect of these elements. The following discussion begins with “existing environmental baseline conditions.” It then considers the EA’s treatment of “potential environmental impacts, direct and indirect, including opportunities for environmental enhancement.” The question of the EA’s “systematic environmental comparison of alternative investments, sites, technologies, and designs” has been discussed in Chapter 6.

¹²⁶ See OD 4.01, *supra* note 32, at § 4.

¹²⁷ *Id.*, *supra* note 126.

190. To begin with, however, it would be useful to compare the interpretation of the term “*environment*” as employed in OD 4.01 with the way it appears to have been interpreted for purposes of the Environmental Assessment of the Qinghai Project.

8.1 “Environment”: A Broad or Narrow Interpretation?

191. A well-established principle of Environmental Assessment is that the term “environment” must be broadly interpreted and must include all relevant biophysical and socio-cultural elements. This principle is well set out in OP 4.01, viz. “3. *EA takes into account the natural environment (air, water, and land); human health and safety; social aspects (involuntary resettlement, indigenous peoples, and cultural property); and transboundary and global environmental aspects. EA considers natural and social aspects in an integrated way.*”

192. Although not as clearly stated in the main text of OD 4.01, it is clear from Annex A to OD 4.01 “*Checklist of Potential Issues for an EA*” that a limited definition of the term “environment” is neither intended nor possible. Some twenty issues to be covered in an EA are listed, and among these are Biological Diversity; Cultural Properties; Indigenous Peoples; Induced Development and Other Socio-Cultural Aspects; Land Settlement; Natural Hazards; Wetlands; and Wildlands.

193. The EA submitted to the World Bank in October 1998 adopted a strongly biophysical bias to the environment, even though biological diversity itself receives no more than passing mention.

194. Neither the Environmental nor the separate Social Assessment addresses the topic of induced development, for example. The proposed in-migration to Dulan County will more than double its population and the proposed new towns will each have populations five times as large as Xiangride, the nearest established town to the main irrigation site. But the potential impact of this on the regional economy and on existing commercial, social and political sectors and hierarchies has not been considered. Yet, OD 4.01 lays great stress on the topic of induced development. It warns that: “*Secondary growth of settlements and infrastructure, often referred to as ‘induced development’ (i.e. through newly introduced developments) or ‘boomtown’ effects, can have major indirect environmental impacts, which relatively weak local governments may have difficulty addressing.*”¹²⁸

¹²⁸ See OD 4.01, *supra* note 32, Annex A, at (h).

195. The Panel cannot escape the conclusion that Management adopted a very limited definition of “environment” in the Qinghai Project. As a consequence, the full range of project effects were not analyzed or placed before those responsible for project related decisions.

8.2 Existing Environmental Baseline Conditions

196. In Chapter 4, the Panel discussed the fact that both the Environmental and Social Assessments failed to define adequately the boundaries of the Project area, leaving out whole communities and populations whose lives will be impacted significantly by the Project. Chapter 4 also considered the failure to define the time scales used in the evaluation of the Project. The fact that the Environmental and Social Assessments were very poorly supported by maps was also discussed in Chapter 4.

197. Inadequate and unreliable maps are not the only problem with the documentation. No illustrations are provided in the assessment documents and this makes it very difficult to assimilate the data presented. There are no graphs and charts to illustrate statistical data and there is a complete lack of photographs and diagrams to give the reader much needed understanding and perspective on the landscape, land-use activities and present environmental problems. Illustrative materials of this kind are a necessary part of a properly documented environmental assessment. The Project documentation fails in this regard.

198. Sound scientific practice also requires that sources of scientific data be acknowledged and referenced. The Environmental and Social Assessments are notably lacking in references to original sources even though OD 4.01 Annex B specifically includes these in the Outline of a Project-Specific EA Report.¹²⁹ The absence of such references can call the reliability of an entire assessment into question. It can also lead to enormous confusion as the Inspection Team found in trying to source lists of plant and animal species in the Project areas. The Inspection Team was provided with different lists at different times with no explanation as to why they varied and no indication of the sources of the original data, or whether there were any endangered species involved (see below).

¹²⁹ See OD 4.01, *supra* note 32, at § 2 (j)(ii).

199. The following discussion considers the description and mapping of vegetation in the EA and its inventory of biodiversity, and then looks at its treatment of direct and indirect impacts.

8.2.1 Description and Mapping of Vegetation

200. The Environmental Assessment fails to provide an adequate description and mapping of the vegetation in the Project area. In fact, there is an assumption throughout the EA and much of the other Project documentation that the vegetation in the Move-in area is of no significance. Typical is the statement in the Summary Paper that Management issued in June, 1999, that "*The present settlement area is largely barren of vegetation but has excellent soil. By providing water to support sustainable farming practices, the project will increase crop production without causing harm to the natural surrounds.*"¹³⁰

201. The description that is given of the vegetation of the Move-in areas is quite inadequate. The EA states that "*in Xiangride and Balong it (the vegetation) is mainly xerophytes and super-xerophytes*" and it divides it into alpine, desert and saline, mentioning a few component species of each, plus "*Introduced vegetation*" and "*The present condition of the forest*".¹³¹ No description is given of the structure, composition and distribution of the various plant communities or associations that occur in the region that will be impacted.

202. In the section on *The Ecosystem Quality in the Move-in Area*, the EA comments that: "*The ecosystem ...is fragile. The structure is simple, ground cover is very sparse and the systems lack the ability of self-reestablishment if disturbed. The vegetation is comparatively sparse and species assemblages are simple and have low productivity. The ecosystem stability is poor and it is easily disturbed by activities that result in degeneration. Thus it can be seen that once the ecological system or its structure is damaged or destroyed, the system or its structure may change and not easily recover.*"¹³² No further explanations are given, no reference is made to any experimental studies on the vegetation or its regeneration, and no further discussion is given of the vegetation dynamics.

¹³⁰ IDA/IBRD, *Summary Paper for China Western Poverty Reduction Project* (June 2, 1999)

¹³¹ See EA, *supra* note 42, at p. 26.

¹³² See EA, *supra* note 42, at p.28.

203. No reference is made in the EA to any previously published vegetation or ecological studies of the region, or of the Project areas, although several do exist. While it is probable that the plant communities are widespread in the whole of the Qinghai-Tibetan Plateau, as Management suggests in its July 18, 1999 Response, they are of considerable scientific interest. The GEF-funded Country Study of China's Biodiversity notes that one of China's critical regions for biodiversity conservation adjacent to the Project area is the Plateau and mountain region where Xinjiang, Qinghai and Tibet meet. It states that: *"This is one of the few remnant wilderness areas of the world, and extremely few people enter it. It has the utmost value for scientific research and for the development of tourism. It has been threatened by mining and poaching activities and urgently needs protection."*¹³³ Much the same applies to the general Project area.

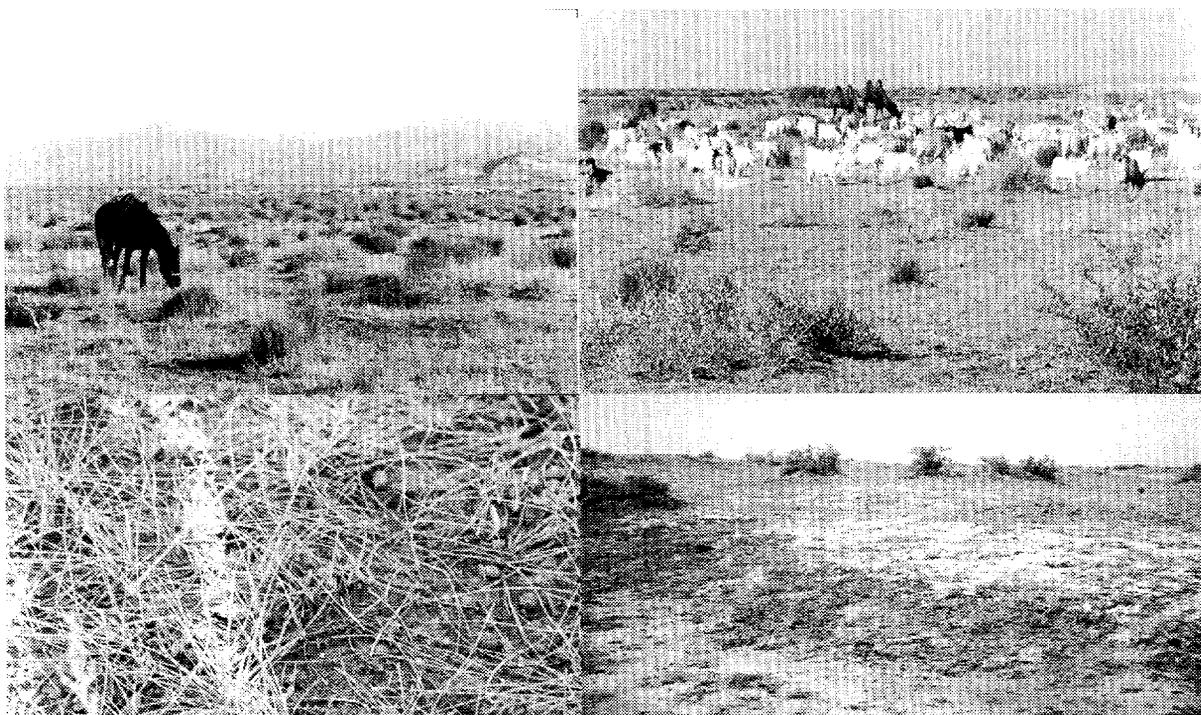


Figure 10a. Horse foraging on dryland vegetation. **Figure 10b.** Varieties of xerophytic (salt-tolerant) plants. **Figure 10c.** Sheep and camels grazing amid xerophytic (salt-tolerant) vegetation. **Figure 10d.** Portion of project area, at the proposed Xiangride-Balong Irrigation Sub-district, showing salt accumulation on the soil surface.

204. In the sketchy account of the Move-out area in the EA, no description whatsoever is given of the vegetation of the various locations. Despite visual

¹³³ ZHANG WEIPING (ed.), *China's Biodiversity: A Country Study*, Beijing: China Environmental Science Press (1998)

evidence to the contrary, all Move-out villages are stereotyped as being situated on barren, highly-eroded, hill slopes. For rehabilitation of these villages to be effective, if people are moved for resettlement, detailed vegetation mapping will be essential to provide a scientific basis for the sustainable technological interventions claimed for the Project.

205. An undated and unreferenced sketch map entitled "*Ecological Status Map of Xiangride Balong Area Agricultural Development of World Bank Loan for Western China*" is the only document with any indication of the vegetation types, and it is totally inadequate for any proper analysis to be made.

206. The Qinghai Project involves a total transformation of the vegetation of some of the Project areas, a substantial impact on others during the construction phases, and a substantial impact on areas that are adjacent to or downstream of the construction areas. Management should therefore have required a proper vegetation survey and map.

207. The Project also involves the large-scale implantation of irrigated farming into a desert area that currently is crossed by nomadic herders during their seasonal migrations (transhumance). It would therefore be reasonable to expect the EA to have included a fairly detailed survey of the various vegetation types and zones and a map of the Project areas indicating what ecosystems are going to be impacted and what the significance of this will be for the nomadic herders. Without this base-line information, it is impossible to judge the potential impacts on plant communities or to plan adequate mitigation measures.

8.2.2. Inventory of Biodiversity and its Conservation Status

208. The information given in the EA on the biodiversity of the Project areas, in the Panel's view, is very sketchy and inadequate, even though "*biological diversity*" is one of the issues that OD 4.01 states should be addressed.¹³⁴ Again, there is an assumption in the EA, and in the PCD and Management Response, that because the area is arid and largely wasteland and desert, little biodiversity is represented. This has not been established in the EA and, certainly for the avifauna, mammals, insects and other animal groups, the lists of species presented are inadequate. In the case of the flowering plants, a few species are listed under the vegetation types.

¹³⁴ See OD 4.01, *supra* note 32, Annex A (b).

Consequently, on its final day in Xining, the Inspection Team asked if there was any further information and it obtained a longer list of some 50 species. The Team was then informed that a list of about 139 species found in the irrigated area plus the townships would be faxed to it on its return to Beijing. That list was duly received: it is anonymous and entitled (in Chinese) "*Plant list of the Project Area and neighboring area in Dulan County.*" It contains 183 species. The species in the list have not been checked against the 1997 International Union for the Conservation of Nature (IUCN) Red List of Threatened Plants¹³⁵ to establish whether any of them are rare, endangered or otherwise threatened nor is any indication given of endemism.

209. Table 3-1 in the EA,¹³⁶ entitled "*The Types, Species and Habitat Characteristics of Wildlife in the Move-in Area,*" lists twelve species, including three mammals, eight birds "*Cygnus etc missing,*" and one amphibian.¹³⁷ Another list of 31 species entitled "*Directory of animals About Xiangride ~ Balong agricultural Development Program [...] in Qinghai Province,*" with their Class of Protection and distribution area, was also provided. Some of these are Tibetan endemics according to the State Environmental Protection Administration.¹³⁸ The EA notes that "*For the species occurring outside the project area, please see Table 3-2.*"¹³⁹ But Table 3-2 is labeled "*Types, Distribution of Species and Habitats of Wildlife in the Project Area.*"¹⁴⁰ On inquiry, the Team was informed that in fact it was a list of birds that occurred in Lake Koruk. The Team found it difficult, even with the additional data obtained in Xining, which supplements that given in the EA, to gain a proper understanding of what diversity occurs in the Project areas or to make an assessment of its distribution, frequency/rarity and conservation status.

210. An exhaustive inventory of biodiversity would not be expected in an EA. It would have been appropriate, however, to search the literature and to reference studies that have already been undertaken, including lists (or at least a reference to them) so that reasonable assessment of the extent, importance and uniqueness (endemism) of the biodiversity, and risks to it, could be made. **In the Panel's view, Management's acceptance of the total absence of data on the biodiversity of the Move-out areas and the inadequate level of data on the Move-in area are a major failing in the EA.**

¹³⁵ See K. S. WALTER & H. GILLET, *1997 IUCN Red List of Threatened Plants*, Cambridge: IUCN (1997).

¹³⁶ See EA, *supra* note 42, at p. 27.

¹³⁷ *Id.*, *supra* note 136.

¹³⁸ ZHANG WEIPING (ed.), *supra* note 133.

¹³⁹ See EA, *supra* note 42, at p. 27.

¹⁴⁰ See EA, *supra* note 42, at p. 28.

8.3 Opportunities for Environmental Enhancement

211. The purpose of environmental and social assessment is not only to prevent negative effects but also to increase benefits to affected communities where possible. Neither the Environmental nor Social Assessments seriously test the statements of anticipated benefits that are made for the Qinghai Project. There is also no evidence of analysis of whether the benefits of the Project could be enhanced by modifications to the Project.

212. The following discussion begins with this question of enhancement, focusing first on existing towns in the Move-in area, second on the Move-out area, and then on nomadic pastoralism. Next, it briefly examines a number of direct and indirect impacts which the EA also failed to consider, including the impacts of the supply canal, new towns and villages, water and sewerage, energy and drilling activities.

8.3.1 Existing Towns and Villages

213. As noted in Chapter 4, the narrow definition of the boundaries of the Qinghai Project in the Move-in area resulted in a large number of people in many communities being left out of the Assessments altogether. The new Towns of Dongba and Tawen ("A" and "B" on Map 2), with populations projected at 22,938 and 26,814 inhabitants will be considerably larger than the existing towns in the resettlement area.¹⁴¹ They will have a significant influence on the economies, trading patterns and socio-political influence of existing service centers like Xiangride, with its population of 9,621 in 1996; Xiangjia, with its 4,835, and Balong, with its 3,696.¹⁴²

214. The interdependence of this region is demonstrable, as the Team found on its visit. As was pointed out in Chapter 4, merchants in Xiangride who were only partially informed of the Project expect it to significantly increase their trade and commerce and to bring in further people and investment to the area. In discussions with the officials concerned with the Social Assessment, it was conceded that

¹⁴¹ See VSIP, *supra* note 47, Table 9-1 at p. 64. It should, however, be noted that the Inspection Team has been unable to obtain detailed information on the structure and relationships between "Natural Villages", "Administrative Villages" and "New Towns" in the resettlement area. It is thus possible that the populations of the new towns themselves may be less than the numbers suggest, due to the population being dispersed amongst villages near to the towns

¹⁴² See EA, *supra* note 42, Table 3-9 at p. 33.

the two proposed new towns could well become the major population centers in the county, acting as poles for new migrants and investments, and that they might well attract tertiary services away from the existing smaller towns. Yet, the EA contains no assessment of the impact of the Qinghai Project on the network of social, commercial and political interactions that exists in Dulan County and Xiangride Township. There is no indication of how these communities and their populations will be affected, for better or worse, by the Project.¹⁴³ Without this assessment, the goal of enhancing Project benefits has no substance or meaning.

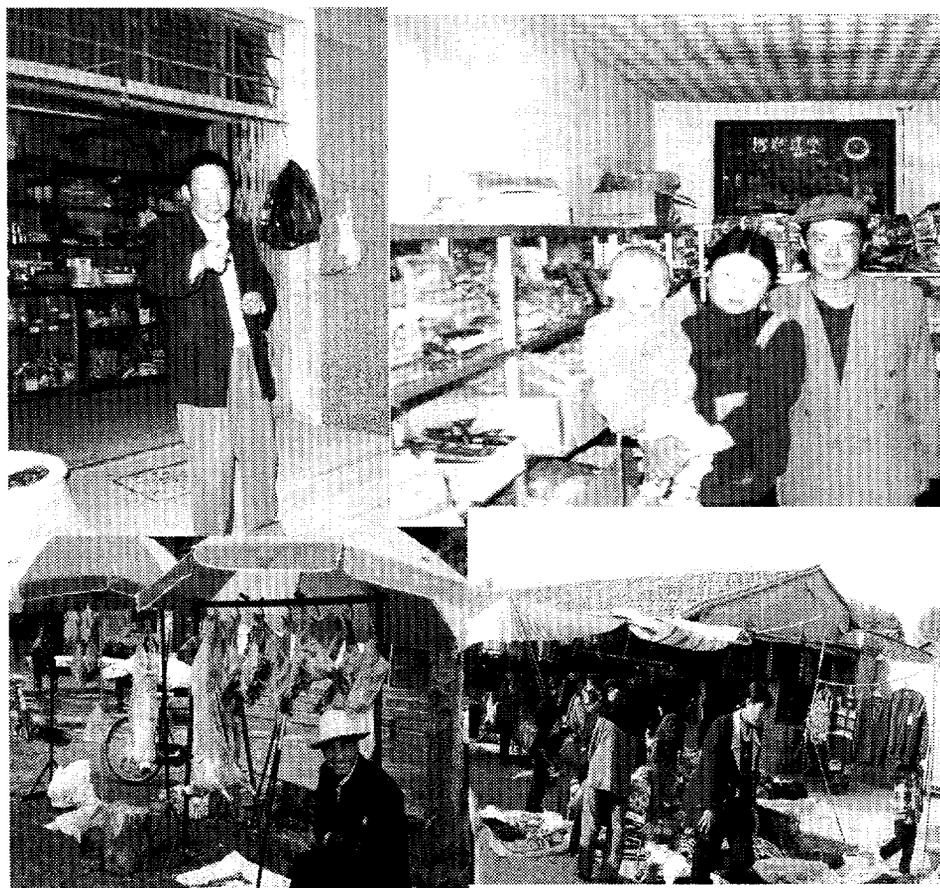


Figure 11. Views in Xiangride town, showing people who told the visiting Inspection Team that the proposed Project will impact them, and probably help their business ventures. **Fig 11a.** Han shopkeeper. **Fig 11b.** Meat-seller. **Fig 11c.** Shop-owning family. **Fig 11d.** Market area.

¹⁴³ Such populations are barely mentioned in the Voluntary Settlement Plan and the consequences are not expanded upon. See VSIP, *supra* note 47.

215. The EA provides no sense of how the population of the new towns (apart from the immigrant farmers) will be supplied with food, where it will be grown during the initial phases of development, and what effects its later production will have on the local economy over the longer term. Apart from hospitals and schools, other services will be needed, but there is no indication of how they will be provided or of how their provision will affect the economies and livelihoods of people in the existing towns and villages.¹⁴⁴

216. Like much of the rest of the EA accepted by Management, the dam, irrigation and resettlement parts of the Qinghai Project are treated as though they were to take place in a regional vacuum. No attempt has been made to project population growth or to estimate how large the induced and floating population will be, or what its ethnic mix will be. Without some sense of this, it is difficult, if not impossible, to adequately plan for the “culturally sensitive” schools, clinics, markets, administrative centers, police stations, and other services that will be needed, and to try to enhance Project benefits to both the existing population and the new migrants. Yet, the Environmental and Social Assessments fail to consider this.

8.3.2 The Move-Out Area

217. The first paragraph of the Project Appraisal Document asserts that the Project will have the following benefits: “*The project would empower poor households in the selected poor counties to raise their incomes, through increased grain and livestock production sufficient to meet the basic needs of food and clothing, and in many cases, also generate a marketable surplus to improve living standards. Establishment of alternative income generation activities in poor rural areas, improvement of rural infrastructure and enhanced access to basic social services such as health and education would also increase the living standards of poor rural households.*”¹⁴⁵

218. While these are without doubt appropriate and laudable aims and every effort must be made to achieve them, it is unfortunate that no indication is given as to how they are going to be achieved – particularly in the Move-out areas. The Project documentation and budget provisions are explicit with respect to the resettlement areas, but are moot with respect to both the plans and levels of financing for improving the living conditions of those remaining behind in the Move-out areas.

¹⁴⁴ See VSIP, *supra* note 47. Table 9-3 on p. 65 lists a series of items such as coal store, drug store, restaurant, grain management office, hotel, local police station etc.

¹⁴⁵ See *Project Appraisal Document*, *supra* note 41 at p. 3.

219. The Project documentation suggests that the rural poor in the Move-out areas will also gain access to electricity and to domestic water from the Project. But details of how this will be achieved are lacking in the documentation. Significant detail for both plans and budget is provided for the resettlement area but no detail is provided for the Move-out areas. From the inquiries made in the Move-out villages visited by the Inspection Team, it was apparent that those villagers interviewed by the Team had not been consulted on their priorities for upgrading of social services and had no expectation that such services were to be provided.

220. There is also a complete lack of documentation on the social and economic implications for a village "moving out" a significant proportion of their most productive and economically active population. While the overall poverty alleviation plan for the Move-out area does refer to infrastructural improvements, the actual positive or negative effects of removing these selected farmers from the Move-out area have not yet been examined. The assumption is made that the reduction in population numbers will almost automatically generate greater *lebensraum* and a better quality of life for villagers remaining in the Move-out villages. But the rationale for this assumption is tenuous and nowhere is it analyzed critically.

221. The assumption that the people remaining behind in the Move-out areas will have access to more arable land has also not been tested. Statements are made that this will be so. But it is also claimed that some presently arable though marginal land will be removed from production and forested to reduce soil erosion. The question of what net balance of additional land will be available for production is not addressed. Nor is the question of how the distribution of that land will result in net positive gains for the remaining farmers.

222. In the Move-out villages visited by the Inspection Team, it was clear that, in most instances, a village would not move in its entirety. Most households interviewed expected some of their active members to resettle, and others to remain. All expected to continue having access to their arable lands. In the villages visited there seemed to be no appreciation of the fact that the intent of resettlement is to reduce the number of mu in the Move-out villages that is at present available for agriculture in order to reforest steep eroded hill slopes.

223. The EA does not describe or analyze the environmental characteristics of the Move-out areas at all. The scale of analysis is coarse and does not indicate the real differences that exist between villages. The impression is created that the area is

homogeneous and that all villages are uniform with respect to the problems they face. Although the Inspection Team visited a relatively small number of the villages in the Move-out area, it was clear that this is not so. On the contrary, substantial differences were found between the villages seen in terms of living conditions, housing, soil erosion, crops grown, facilities available, proximity to schools, distance to urban facilities, etc. **Considerably more detailed analysis of the social and environmental problems of the Move-out villages and of how these will be addressed by the Project are required in order to comply with OD 4.01.**



Figure 12 a, b, c, d:

Views of Xipo Village, Shishan Township, Datong County, one of the Move-out villages. Figure 12d. shows villagers telling the Inspection Team about the poor quality of the soil, lack of water, and poor grain yields.

224. Management recognizes this, at least implicitly. In Annex 11 of its July 18, 1999 Response, Management refers to the *“Supplemental Letters to the Legal Agreements”* that it agreed with the Government of China before Board presentation, and signed on December 30, 1999. In paragraph 7, it states that *“Not later than 3 years after the commencement of the Qinghai Voluntary Settlement Implementation Plan, Qinghai will carry out a study ... to evaluate the environmental and social*

*impacts of the ... Plan ... and to recommend measures to enhance the environmental sustainability of, and the living conditions of the people in these counties. ...*¹⁴⁶ While this is welcome, the Panel would observe that undertaking an environmental and social assessment three years after the commencement of the Project is a bit late, not only in terms of the ODs, but also in terms of any elemental understanding of the purposes of environmental and social assessments. This voluntary resettlement project could have major, long-lasting, and irreversible social impacts. Normally, one does not propose to undertake these assessments three years after a project has started (unless it is to test earlier findings based on new information or unexpected developments); one undertakes them in advance to inform the location and design of a project and, indeed, whether to proceed with it at all. Within the social arena, this is comparable to requiring that the safety of a proposed dam should be studied within three years after it has been built!

8.3.3 Nomadic Pastoralism as an Appropriate Land Use

225. Pastoralism represents the main economy of the Qinghai-Tibetan Plateau but has been subject to major change in recent decades through government interventions aimed at modernizing or fundamentally changing the pastoral way of life.¹⁴⁷ Yet, the EA and other Project documents fail to consider the appropriateness of implanting large-scale irrigated agriculture in this region. The EA does not examine its suitability or viability in comparison with the traditional forms of land use, including agropastoralism, sedentary pastoralism, semi-sedentary pastoralism (semi-nomadism), and migratory pastoralism involving the herding of sheep and other animals. There appears simply to be an assumption that irrigated agriculture is 'a good thing' without consideration of alternatives and relative costs.

226. The Chinese Academy of Sciences has published a five-volume study on sustainable development on the Qinghai Tibetan Plateau and a considerable literature has been published on patterns of land use, grassland degradation, conversion of grazing land into cropland, carrying capacity and optimal intensity of grazing, possible recovery strategies and related topics.¹⁴⁸ Moreover, there is a large

¹⁴⁶ See Supplemental Letter No. 4, in *Management Response*, supra note 12, Annex 11, § 7.

¹⁴⁷ See WU NING, *Impact of Changing Agropastoral Systems on Agrobiodiversity: A Case Study of The Qinghai-Tibetan Plateau*, in T. PARTAP & B. STHAPIT (eds.), *Managing Agrobiodiversity — Farmers' Changing Perspectives and Institutional Responses in the Hindu-Kush-Himalayan Region* (1998), partially available in electronic form at www.icimod.org.sg/focus/agriculture/agrobio4.html

¹⁴⁸ See, e.g., the series of papers by Ning Datong 'An assessment of the economic losses resulting from various forms of environmental degradation in China' *China Environment*. This contains extensive

body of literature that identifies nomadic pastoralism as practised in the Qinghai-Tibetan Plateau as a unique human ecological adaptation. While one would not expect a review of this literature in the EA, it would be appropriate for the issues raised in this literature to be considered as they are highly relevant to the land use and agro-economic development that is at the heart of this Project. At a minimum, a systematic comparison should have been made between the advantages and disadvantages of the area being converted to irrigation farming as opposed to enhancing its potential for nomadic herding.

8.4 Potential Environmental Impacts

8.4.1 The Supply Canals

227. The 29 km canal from the Xiangride river to the Keri Dam and the 56 km supply canal from the Dam to the irrigation area, traverse areas of grassland, halophytic scrub, wasteland and semi-desert that are crossed by nomadic herders and their flocks. Both the canals themselves and the disturbance caused by their construction will have important environmental impacts. Because of their width and depth (they will be concrete lined, trapezoidal, some 2.5 meters wide and two meters deep), they constitute a serious barrier for humans and most animals, including sheep, camels and horses. Without adequate crossing points, the canals will also restrict the movement of settlers between villages and between villages and administrative centers. To allow herders and others to cross the canal, crossings are planned at certain intervals along the length of the canal. In addition, five 50 to 70 m wide transit corridors (so-called pastoral passages) will be provided for herders: three of these will be within the irrigated areas.¹⁴⁹ These transit corridors would, apparently, be fenced and narrow into a funnel where they cross over the canal. PMO officials informed the Inspection Team in the field that there are 289 herder families and 2,411

references to relevant literature. See, also, *Land Resources Production Capability and Population Supporting Capacity in China*. People's University Press, 1991 and see *Grassland degradation in Tibetan regions of China – possible recovery strategies*, a report by the US Embassy, Beijing (1996). See Web Page at <http://www.usembassy-china.org.cn/english/sandt/final3.htm>.

¹⁴⁹ The figures given for the width of these corridors varies in different project documents. In the Management Response a discussion is given of the concern that the land in the transit corridors may not be able to withstand heavy foot and animal traffic and the question of the appropriate width of the corridors is raised. It states that "Based on the current analysis, the preferred solution to the problem will be to increase the design width for the corridors to about 100 meters." See *Management Response*, *supra* note 12, at p. 67.

people affected and 110,000 sheep units involved.¹⁵⁰ It will take one week for all the animals in a herd to pass through the corridor so that the grazing pressure on the vegetation in the corridors and the effect of trampling on the soil are factors that need to be considered.



Figure 13. a, b Members of the Inspection Team with Qinghai provincial authorities, inspecting the site and checking mans of the proposed Xianeride-Balung Irrigation Sub-district. Dulan County.

228. In discussions with the hydraulic engineer and other PMO officials it became evident that Management had not required a feasibility study about the adequacy and effectiveness of the proposed crossings, the transit corridors, and the provision of facilities for sheep to be watered when they come down off the mountain. Furthermore, no assessment had been made of the risks involved in allowing large numbers of animals to pass through a major irrigated area from which they are separated only by some form of fencing (no details are provided). On questioning PMO officers in the field, it was clear that Management had given little thought to the logistics of such crossings. In fact, no consideration had been given to how the herds would be funneled through the irrigated area nor what provision would be made for water for the herds that pass through the transit corridors. In its Response of July 18, 1999 to the Request for Inspection, Management states that the issue of the

¹⁵⁰ A "sheep unit" is a measure used by the PMO to indicate the grazing equivalent of one sheep. Thus the effect of any animal's grazing can be compared to that of other animals by converting to sheep units.

design operation of the transit corridors will need to be studied in more detail during the Pilot Program.¹⁵¹

8.4.2 New Towns and Villages

229. The EA is uninformative about the layout of the new towns and villages, their infrastructure, and the facilities such as water, heat and light that will be provided for the settlers. In fact, the EA pays little attention to the way in which the settlers will live, other than in terms of the agriculture and forestry in which they will engage..

230. The EA is silent on what methods the new towns and villages will use to manage and dispose of their wastes. Similarly, the EA is virtually silent on the impacts of the emissions and wastes on the areas surrounding and downstream from the new towns and villages. To its surprise, the Team found out during the interviews that the Terms of Reference for the EA did not call for any such assessment. When asked if it was normal for an EA to ignore the environmental impacts of new towns with populations around 30,000, let alone new villages, the Consultant said "No." Nor is it in line with the requirements of OD 4.01.

8.4.3 Energy

231. All of the descriptions provided of the climate of Dulan County make mention of the high altitude (over 3000 m), the bitterly cold winter conditions (mean temperature 4 C, winter minimum minus 26 C, summer maximum 32 C), the low rainfall (about 250mm), and the strong westerly winds. There is no natural tree growth and only a 100-day frost-free period for agriculture. In some years, blizzards cause serious loss of livestock. Living conditions are very harsh. The EA of a Project to move about 60,000 migrants into this climate might be expected to give the fullest consideration to their sources of energy and the problems they might face.¹⁵²

232. During the first two years of the Project, it is estimated that some 20,000 tons of coal will be needed each year, but no provision for this essential expenditure appears to have been made in the Project documentation available to the Inspection

¹⁵¹ See *Management Response*, *supra* note 12, at p. 67.

¹⁵² Although the VSIP outlines the energy problems that the migrants might face, the document does not suggest any practical long-term solutions other than provision of solar cookers, firewood saving stoves, and marsh gas ponds. See VSIP, *supra* note 47, Section 13 at p. 80-86.

Team. After the first two years, the supply of coal is to be reduced and settlers are expected to use straw as their main source of heat energy.¹⁵³

233. An electrical power supply will be provided from Dulan Township. The Team was informed that power would be transferred from the 110 KV power line at Xiangride Town to two substations at the two new townships via 126 kilometers of 35KV and 211 kilometers of 10 KV power lines. In addition, 1,238 kilometers of 220 V and 380 V distribution lines would be constructed. This would be financed by the Bank, matched by government counterpart funds.¹⁵⁴

234. While power will be supplied, the EA and other documentation are, at the least, unclear about its use by the new residents to supply their needs. The Project Appraisal Document states: "*To meet similar requirements (power requirements for households, agro-processing, other light industries and mining) in the voluntary resettlement areas in Qinghai, power would be drawn from the proposed 110 kV line at Xiangride Town.*"¹⁵⁵

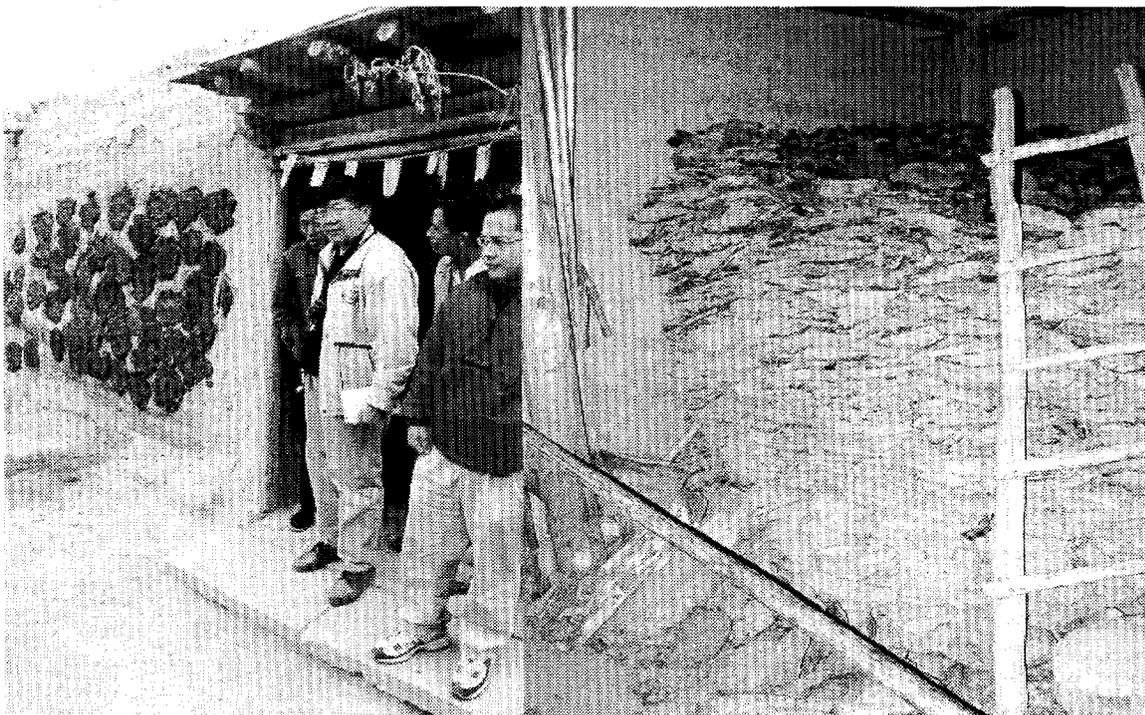


Figure 14a Inspection Team at a house in Heran Village, Galeng Township, Xunhua County. Animal dung being dried (for use as fuel) on outer walls of the house. **Fig 14b** before being stored indoors when dry.

¹⁵³ See VSIP, *supra* note 47 at page 82, Table 13-2.

¹⁵⁴ Executive Vice Governor of People's Government of Qinghai, Letter to the Chairman of the Inspection Panel (11 November 1999).

¹⁵⁵ See *Project Appraisal Document*, *supra* note 41 at p. 65.

235. Inquiries by the Inspection Team, however, revealed that the extent of electricity provision would be two electric light bulbs for poorer households and four electric light bulbs for those that are comparatively better-off. No power points will be provided for heating or for domestic appliances. Regardless of the merits, or otherwise, of this type of electrification, the environmental and social assessments should have examined the implications. The resettlement area has little biomass suitable for fuel. Crops residue and animal dung will not be available for heating until after the settlement is well established. Yet the settlers are expected somehow to heat their homes. At a minimum, the potential advantages as well as the cost implications of electric heating should have been examined.



Figure 15. Drilling rig observed on October 15, 1999, at the site of the proposed Xiangride-Balong Irrigation Sub-district.

8.4.4 Drilling Activities in the Region

236. Extensive exploitation of oil, natural gas and minerals is carried out in part of the Qaidam basin¹⁵⁶ and test drillings have been undertaken near the Project area. The Inspection Team observed a rig on 15 October, 1999, at the edge of the main

¹⁵⁶ THE GLOBLINK ECONOMY & TECHNOLOGY CONSULTING CO. LTD., *Summary of Investment Environment in Qinghai Province, in Guide to China Investment (1997)* available in electronic form at <http://invest.cei.com.hk/hltzhj/qinghai.htm>

Project irrigation area. The senior Chinese official accompanying the Team observed that the rig was drilling for oil. Later, the Team was informed that it was part of a hydrogeological survey being undertaken under the Project, requested both by the Bank and the Government.¹⁵⁷ No mention is made in the EA of the general economic importance of oil and minerals in the Province, or its possible effects on the Project areas, or of any drilling activities in the Region.

237. The Panel finds that the Environmental Assessment of the Qinghai Project is not in compliance with Bank policies as set out in OD 4.01.

¹⁵⁷ PROVINCIAL MANAGEMENT OFFICE, *Note to the Inspection Panel on the Hydro-Geological Survey in the Project Area* (8 November 1999) [translation, original in Chinese].

Chapter 9

Dam Safety, Pest Management and Natural Habitats

9.1 Dam Safety (OP/BP 4.37)

238. The proposed construction of the Keri Dam appears to be in overall compliance with OP/BP 4.37 and Annex B of OD 4.00. It is an off-river regulating reservoir which will have a maximum wall height of 40 m. The location has been well chosen and the design has been assessed by a team of independent experts (from the Qinghai Provincial Water Conservancy Institute), as required under OP/BP 4.37 and Annex B of OD 4.00.



Figure 16. Proposed Keri Dam site being examined by Inspection Panel Team and Qinghai Provincial officials.

239. The environmental impacts on the area to be converted for building the dam are real in terms of loss of 127 ha of sparsely covered semi-desert ecosystem, plus associated land impacted by the construction process, but it is highly unlikely that any unique biodiversity will be lost or adversely affected.

240. One significant and worrying omission from the documentation, however, is a lack of reference to the seismicity of the Project area, and to the fact that two earthquakes of magnitude 7+, equivalent to the 1999 Turkish (Izmit) earthquakes, occurred in Dulan County in 1937 and in 1963.¹⁵⁸ Although the main Balong irrigation settlement is far from the Keri Dam, this is not true for the Keri irrigation sub-district. An assessment of the risk to the Keri irrigated area should the dam fail due to an earthquake should be undertaken in the near future.

9.2 Pest Management (OP 4.09)

241. The use of pesticides forms part of the implementation phase and no detailed comments can therefore be made on this as the exact nature of the pest management proposals are unknown. In general it may be accepted that the extremely harsh and cold winters of the Project area will prevent most agricultural pests from getting out of control. The PAD and the Management Response make it clear that no Bank funds will be used for the procurement of pesticides, but these will be provided by the borrower as counterpart funds for the Project and must therefore be interpreted as part of a Bank-funded project.

242. The statement in the Management Response (p.75) that there are “no reasons to believe that these [pesticides] will represent any off-site risk to animals or humans” is difficult to accept. A risk always exists and there are several well-documented cases of massive damage being caused to wildlife, especially birds, through the field application of pesticides.

243. During the Inspection Team’s visit to China, the problem of increasing population of the different pika species (*Ochotona spp.*) over grazed areas was discussed with Chinese officials. With an increase in rodent numbers, burrows proliferate and the resultant penetration of water into the sub-soil enhances erosion and leads to the “black-beach” phenomenon affecting considerable areas of the

¹⁵⁸ See J. H. WITTKE, *Tibet: A Virtual Field Trip*, Wittke's home page at <http://vishnu.glg.nau.edu/people/jhw/Tibet/Qaidam.html>

Qinghai and Tibetan Plateau. The fact that increased human settlement on the Qinghai-Tibetan plateau carries with it a concomitant need for rodent control at high altitudes was impressed upon the Inspection Team.

244. Although assurances were given to the Inspection Team that an integrated pest management programme would be undertaken for the Qinghai project no details of such a program were provided. The Panel, therefore, is not satisfied that Management is in full compliance with these policies.



Figure 17. Tufts of raised soil indicating pika (rodent) activity, amid salty soil and sparse vegetation. Dulan County. This phenomenon is known as “black beach,” because of its resemblance to a dark-colored shoreline.

9.3 The Conservation of Natural Habitats (OP 4.04)

245. The conservation of natural habitats (i.e. areas where the ecosystem's biological communities are formed largely by native plant and animal species)¹⁵⁹ like other measures that protect and enhance the environment, is regarded by the Bank as essential for long-term sustainable development. This is the subject of the Bank's OP 4.04 on Natural Habitats.

246. In paragraph 4, OP 4.04 states that: “*The Bank does not support projects*

¹⁵⁹ See IBRD/IDA, *Operational Policy 4.04 on Natural Habitats* (September 1995) [hereinafter *OP 4.04*] at Annex A, *Definitions*.

that, in the Bank's opinion, involve the significant conversion or degradation[...] of critical natural habitats." And paragraph 5 makes it clear that the Bank does not support significant conversion of natural habitats where there are feasible alternatives. It states: "*The Bank does not support projects involving the significant conversion of natural habitats unless there are no feasible alternatives for the project and its siting, and comprehensive analysis demonstrates that overall benefits from the project substantially outweigh the environmental costs. If the environmental assessment[...] indicates that a project would significantly convert or degrade natural habitats, the project includes mitigation measures acceptable to the Bank.*"

247. The EA dismisses the ecosystems of the region as "*primitive and inefficient*" and considers that the Project will lead to a great improvement in the overall ecosystem.¹⁶⁰ This view was reflected in the Panel's interviews with several officials who felt that arid zone and desert ecosystems have less importance than, say, forested systems.

248. In its Response, Management rejects claims that the Bank is in contravention of its policy on the grounds of the limited geographical context and the scale of the Project compared with the wide distribution of the ecosystems concerned.¹⁶¹ According to Management, these ecosystems are not considered to be facing a significant threat from agricultural or other developments in Qinghai or China as a whole.

249. This raises the issue of how one determines what is "*significant conversion*," there being no quantitative measure. This may need to be judged on a case-by-case basis but, if so, there is a presumption that whatever judgement is made has to be scientifically based and credible. In practice, there are some working rules of thumb, such as in the old policy,¹⁶² where the threshold, at least for absolute conversions, was suggested to be about 100 square kilometers or 10,000 hectares. The Panel was informed that the biodiversity experts in the Bank lean more toward 5,000 hectares if it is a very large ecosystem to begin with, or in relative terms, if it is more than one percent.

250. The 19,000 ha of land that will be irrigated is spread over a total area of c. 250,000 ha is only part of the picture. To this must be added the other farmland developments (the dam, canals, townships, villages, roads, construction sites, power

¹⁶⁰ See EA, *supra* note 38, at p. 77.

¹⁶¹ See Management Response, *supra* note 11, at p. 21.

¹⁶² See IBRD/IDA, OPN 11.02 on Wildlands.

lines, etc.), which bring the total to 21,444 ha.¹⁶³ Moreover, it would be naive to suppose that the bringing of nearly 60,000 people into the area would not have serious effects on the habitats and wildlife adjacent to the various project areas.

251. The increasing pace and scale of habitat conversion in the Qinghai-Tibetan Plateau requires a broader view to be taken of the fate of the various ecosystems in the Region, not just those in or adjacent to the Project area.

252. The Management Response considered that as a consequence of the considerations noted above *“there was no reason to believe that the affected areas were critical for rare, vulnerable, migratory or endangered species.”* This may be true of plant species. Given the poor knowledge of the other groups of organisms in the area, however, and the almost total lack of information on population sizes and dynamics except for some birds and mammals (no data on these aspects are provided in the EA), it cannot be asserted with confidence for species in these other groups.

253. In fact, the International Crane Foundation, which has worked in China in cooperation with the Government since 1979, has informed the Panel that *“We have every reason to believe that Black-necked Cranes nest in the wetlands that will be impacted by the Qinghai resettlement project. Because this area is so sparsely populated, however, and until now there were no concerns about threats, there is minimal information on cranes. The only information currently available is from two scientific expeditions that passed briefly through the area during fall 1979. Black-necked cranes were observed and local informants told scientists that they bred in the wetlands. One of the expeditions reported over 600 Black-necked Cranes; given the time of the year, we would suggest that these birds were probably either staging in the area just prior to their southward migration, or were migrating through the area..... Given the paucity of information and the potential for wetland degradation if the World Bank decides to go forward with the Dulan County project, we believe that it is critical that a baseline study on Black-necked Cranes be conducted.”*¹⁶⁴

254. **The Panel is of the view that the Project is in contravention of the Bank’s policy, OP 4.04, in regard to the significant conversion of critical natural habitats.**

¹⁶³ See EA, *supra* note 42, at p. 9.

¹⁶⁴ See INTERNATIONAL CRANE FOUNDATION, *Letter to Inspection Panel* (22 December 1999).

Part Four

Social Compliance

Chapter 10

The Qinghai Project and Indigenous Peoples

255. In stating the objective of Bank policy toward indigenous peoples, OD 4.20 could hardly be clearer. It says that: *"The Bank's broad objective towards indigenous people, as for all the people in its member countries, is to ensure that the development process fosters full respect for their dignity, human rights, and cultural uniqueness. More specifically, the objective at the center of this directive is to ensure that indigenous peoples do not suffer adverse effects during the development process, particularly from Bank-financed projects, and that they receive culturally compatible social and economic benefits."*¹⁶⁵

256. While clear in letter and spirit, the achievement of this objective requires an agreed understanding of what constitutes an *"indigenous people"* in any given situation. OD 4.20 recognizes that this is not always easy or clear-cut. It allows Management some flexibility in deciding what groups will be considered *"indigenous"* in any given project and it provides a number of guidelines to assist them.

257. First, it provides a general definition of the terms *"indigenous peoples," "indigenous ethnic minorities," "tribal groups,"* and *"scheduled tribes."* These terms, it says, which all fall under the broad term *"indigenous peoples,...describe social groups with a social and cultural identity distinct from the dominant society that makes them vulnerable to being disadvantaged in the development process. ..."*¹⁶⁶

258. Second, it points out that the constitutions, statutes, and relevant legislation within the country concerned may include *"specific definitional clauses and legal frameworks that provide a preliminary basis for identifying indigenous peoples."*¹⁶⁷

259. Third, recognizing that *"...no single definition can capture their diversity,"* it cites a number of characteristics of *"indigenous people."* They are *"...commonly among the poorest segments of a population. They engage in economic activities that range from shifting agriculture in or near forests to wage labor or even small-scale market-oriented activities. Indigenous peoples can be identified in particular*

¹⁶⁵ See OD 4.20, *supra* note 39, at § 6.

¹⁶⁶ See OD 4.20, *supra* note 39, at § 3.

¹⁶⁷ See OD 4.20, *supra* note 39, at § 4.

geographical areas by the presence in varying degrees of the following characteristics: (a) a close attachment to ancestral territories and to the natural resources in these areas; (b) self-identification and identification by others as members of a distinct cultural group; (c) an indigenous language, often different from the national language; (d) presence of customary social and political institutions; and (e) primarily subsistence-oriented production.¹⁶⁸



Figure 18 A few of Qinghai's ethnically diverse people (L-R). Hui, Mongol, Han, Tibetan.

260. Finally, while allowing judgment in determining the populations to which the policy applies, OD 4.20 urges Task Managers (now Task Team Leaders) to "...make use of specialized anthropological and sociological experts throughout the project cycle."¹⁶⁹

261. Management considers that OD 4.20 applies to anyone who is a member of an officially recognized "national minority." Citing the above-mentioned paragraphs, the Management Response notes that: "In all such Chinese documents, the national minorities are recognized as peoples distinct from the "Han" majority (92 percent of the population), enjoying special legal and administrative protections. In the context of this Project, it is important to note that following this approach, not only Mongols and Tibetans come under the safeguard umbrella of the OD, but also the Hui, Salar,

¹⁶⁸ See OD 4.20, *supra* note 39, at § 5.

¹⁶⁹ *Id.*, *supra* note 168.

and Tu peoples. A judgement as to the degree of adherence to the OD must include the impacts of the Project on all such indigenous peoples.”¹⁷⁰

262. Though much advocacy as well as anthropological literature on indigenous peoples has concentrated on the Americas, a considerable body of recent literature also assesses the concept of “indigenous peoples” within the Asian context.¹⁷¹ The Team explored some of these definitional issues in interviews with Chinese government officials in China, as well as with World Bank staff and consultants, and invited academic experts.

10.1 Indigenous Peoples in the Move-Out Area

263. The Panel inquired in detail about the status of officially recognized minority group members who no longer speak their indigenous language or practice their indigenous religion. This includes many households in the Move-out area that are officially registered as “Tibetan.” During its visit to the Move-out area, the Team met some of these families and found that they had effectively been assimilated in the culture and society of their Han neighbors in the same villages.

264. During its discussions with officials and experts, the Team was informed of many reasons why these “assimilated” households might maintain their official registration as minority ethnic group members. As members of a national minority, for example, they are exempt from the one-child-per-family limit. They are eligible for preferential admission to some schools and for preferential hiring practices. In addition, there are historically many examples of people and families who lose the language and cultural tradition with which they identify and the next generation regains it. (And, of course, there are historically many examples of people who assimilate permanently with the majority culture.)

¹⁷⁰ See Management Response, *supra* note 12, at p. 7.

¹⁷¹ See R.H BARNES, ANDREW GRAY & BENEDICT KINGSBURY, *Indigenous Peoples of Asia*, Monographs and Occasional Papers series, no. 48, Ann Arbor, Michigan: Association for Asian Studies (1995). For English-language discussions of national minority in China see, especially, JUNE TEUFEL DREYER, *Assimilation and Accommodation in China*, in MICHAEL E. BROWN & SUMIT GANGALY (eds.), *Government Policies and Ethnic Relations in Asia and the Pacific*, Cambridge, Mass./London: The MIT Press (1997). See also NICHOLAS TAPP, *Minority Nationality in China: Policy and Practice*, in R.H. Barnes et al., *supra*, at pp. 195-220. See NATIONAL MINORITIES COMMISSION OFFICE, *supra* note 27. For bibliography on the Tibetan minority outside the Tibet Autonomous Region, see STEVEN D. MARSHALL & SUSETTE TERNENT COOKE, *Tibet Outside the TAR: Control, Exploitation and Assimilation, in Development with Chinese Characteristics*. N.p.: The Alliance for Research in Tibet (1996). [CD-ROM]

265. Treating fully assimilated minorities as “Tibetans,” or as other national minorities, might be questioned by some.¹⁷² It would appear, however, that there is effectively no better method for judging “indigenous” status for purposes of OD 4.20 than to equate “indigenous peoples” with “national minority” status as enshrined in the constitution of the People’s Republic of China.¹⁷³



Figure 19. Tibetan Villagers at Heran Village, Galeng Township, Xunhua County; a village in the Move-out area. China’s national minorities are exempted from the one-child-per-family policy.

266. Management points out that the majority of beneficiaries from the Move-out areas are also indigenous peoples (Hui, Salar, and Tu as well as Tibetan and Mongol), and thus they are covered by the same OD 4.20.¹⁷⁴ This is an important

¹⁷² Some Tibetans with whom the Team discussed these issues in Qinghai, for example, said they did not consider such people Tibetan. Late one night, when one member of the Team visited one of Xining’s university dormitories to meet with Tibetan students (alone except for his interpreter), the students said they did not consider such families to be “Tibetan” at all. The Team member recounted his visit to poor Tibetan households in Haidong Prefecture in the Move-out area who no longer spoke Tibetan or practiced any Tibetan traditions and who said they wanted to resettle in Dulan County. One Tibetan student (using “Tulan,” the Tibetan word for Dulan) asserted: “*What you just saw in Haidong is the future of Tulan, if the World Bank funds this project.*” It was impossible to measure how accurate or widespread these sentiments might be.

¹⁷³ For Bank-financed projects, the 55 national minorities officially recognised by the Chinese government are considered “indigenous peoples” for purposes of application of OD 4.20.

¹⁷⁴ See Management Response, *supra* note 12, at p. 11: “*The Project design approach in addressing indigenous peoples issues is thus consistent with the OD’s objectives and in line with the approach*

point with crucial consequences. It means that the overall Voluntary Resettlement Plan itself (insofar as it applies to national minorities in the Move-out areas) must also be examined for compliance with the Indigenous Peoples policy. (See Chapter 11) It also means that Management should have prepared an adequate Indigenous Peoples Development Plan (IPDP) not only for the minorities in the Move-in area, but also for the voluntary resettlers coming from Haidong and Xining City Prefectures.



Figure 20. Monks praying at the Temple in Chahamao Village, Xiangride Township, Dulan Country.

10.2 The Indigenous Peoples Development Plan (IPDP)

267. OD 4.20 is quite clear about Bank policy concerning the preparation of an Indigenous Peoples Development Plan. Paragraph 13 states that: *“For an investment project that affects indigenous peoples, the borrower should prepare an indigenous peoples development plan that is consistent with the Bank’s policy. Any project that affects indigenous peoples is expected to include components or provisions that incorporate such a plan. When the bulk of the direct project*

adopted for comparable projects in China and other countries in which the majority of beneficiaries are indigenous peoples. The decision not to have a separate IPDP did not result in a failure to address issues related to indigenous peoples; on the contrary, a more thorough approach has been to design the whole Project in accordance with OD 4.20.”

beneficiaries are indigenous people, the Bank's concerns would be addressed by the project itself and the provisions of this OD would thus apply to the project in its entirety. ”

268. The prerequisites for an IPDP are dealt with in paragraph 14, which begins with the statement that: *“The key step in project design is the preparation of a culturally appropriate development plan based on full consideration of the options preferred by the indigenous people affected by the project.”*¹⁷⁵

269. Other prerequisites mentioned in paragraph 14 include studies that *“... should make all efforts to anticipate adverse trends likely to be induced by the project and develop the means to avoid or mitigate harm.”* In addition, *“Local patterns of social organization, religious beliefs, and resource use should be taken into account in the plan's design.”* Moreover, *“Successful planning for indigenous peoples frequently requires long lead times, as well as arrangements for extended follow-up.”*¹⁷⁶

270. In addition to the prerequisites for an IPDP, the OD sets out nine components of a plan including *“baseline data,” “land tenure,”* and *“strategy for local participation.”*¹⁷⁷ It also sets out the process to be followed in developing a plan within the framework of the Bank's “project cycle,” including identification, preparation, and appraisal.¹⁷⁸ Each of these will be considered in turn. First, however, the Panel will examine the central question posed by Management's interpretation of paragraph 13: Does the Qinghai Project as a whole constitute the Indigenous Peoples Development Plan (IPDP) required by OD 4.20?

10.3 The Project as an IPDP

271. Management acknowledges that an Indigenous Peoples Development Plan (IPDP) is required for the Qinghai Project. It asserts, however, that the Project as a whole constitutes the IPDP because a majority of the Project's beneficiaries are minorities. This assertion hinges on an interpretation of the last sentence of paragraph 13 quoted above; i.e., *“... When the bulk of the direct project beneficiares are indigenous people, the Bank's concerns would be addressed by the project itself and the provisions of this OD would thus apply to the project in its entirety.”*

¹⁷⁵ See OD 4.20, *supra* note 39, at § 14 (a).

¹⁷⁶ See OD 4.20, *supra* note 39, at § 14 (b), (d) and (g).

¹⁷⁷ See OD 4.20, *supra* note 39, at § 15.

¹⁷⁸ See OD 4.20, *supra* note 39, at §§ 16 to 20.

272. Citing this paragraph, Management contends that "...*The OD provides for a judgment to be made regarding whether or not a self-standing IPDP would be adequate for a particular project in light of its unique circumstances or whether an IPDP approach should be integrated into the whole project.*"¹⁷⁹

273. Management's interpretation of this paragraph requires that careful attention be paid to exactly how the "*bulk of the direct project beneficiaries*" are counted. Management contends that in the overall "project area," the majority of intended beneficiaries (58 percent of those in the Move-out area and 78 percent of those in the Move-in area) are indigenous peoples.¹⁸⁰ Note that these figures assume that the displaced pastoralists in the Move-in area are all "beneficiaries" of the Project. In fact, of course, they are not. Rather, they are adversely affected by the Project. Their so-called "benefits" are merely mitigating compensation for their involuntary displacement. Management's "Involuntary Resettlement Plan" itself, dated May 1999, describes the Project's effects in the Move-in area in terms of "adverse" impacts on the population. Thus while the Management Response, dated July 1999, consistently describes the displaced pastoralists as "beneficiaries" of the Project, the "Involuntary Resettlement Plan" of May 1999 treats them as persons who are "adversely impacted." It notes, for example, that "*About 19,000 hectares ... will be developed for general irrigation works. Almost all of this land is arid, uninhabited, and largely unutilized. In terms of involuntary resettlement-related issues and impacts, however, development or expansion of settlements is expected to adversely affect some 4,000 persons (600 households) from Balong and Zongjia townships.*"¹⁸¹

274. Of course, even if the displaced pastoralists were to be counted among the "adversely affected" rather than the "beneficiaries," Management's interpretation could still apply since ethnic minority resettlers from the Move-out area would still outnumber the ethnic minority pastoralists in the Move-in area. A senior World Bank expert on indigenous peoples provided the Panel with a forceful summary of this interpretation of the OD. Pointing to Management's figure of roughly 60,000 resettlers from the Move-out area, and roughly 4,000 indigenous people in the Move-

¹⁷⁹ See Management Response, *supra* note 12, at p. 10.

¹⁸⁰ See Management Response, *supra* note 12, at p. 10, also Annex 6, Table A.6-1. The Inspection Team was informed that, in the Move-out area, 33,118 of them are minority nationalities and that accounts for 56.67 percent in the Move-out area. In the Move-in area with a total population of 4,600, 3,114 of them are minority nationalities. Add those two together, you are talking about 36,000 minority people accounting for 60 percent in the whole area.

¹⁸¹ See Involuntary Resettlement Plan, *supra* note 56, at pp. 1-2.

in area, the expert concluded rhetorically: “So, in other words, if you wipe out a whole culture because it is only composed of 4,000, that legitimizes the 60,000.”

275. Having acknowledged that OD 4.20 applies to the Move-out area as well as the Move-in area, Management contends that the IPDP approach has been integrated into the entire Project. However, as a result of Management’s choice not to develop self-standing IPDPs for the different minority groups, the cultural uniqueness and needs of some groups, especially those in the Move-in area, seem inadequately to have been addressed. Management essentially contends that since there are many more indigenous farmers among the nearly 60,000 voluntary resettlers from the Move-out area than there are indigenous nomadic pastoralists in the Move-in area, the overall majority of the Project’s “beneficiaries” are indigenous. By this reasoning, even if all the indigenous people in the Move-in area (estimated by Management to number 4,000) are considered *adversely* affected, the Project’s indigenous beneficiaries from the Move-out area still outnumber them.¹⁸²

276. The danger in this approach is that a Bank-financed project could legitimately overwhelm the hopes and aspirations of an indigenous population, so long as the project benefits a larger population of some other indigenous people. And the “project in its entirety” could constitute the “Indigenous Peoples Development Plan” (IPDP) required by the OD since “the bulk of the direct project beneficiaries” would be indigenous people. **The Panel is strongly of the view that this interpretation of the last sentence of paragraph 13 was never intended and should not be allowed to stand.**

277. The Panel has another problem with this interpretation as applied to the Qinghai Project. Management’s figures for the indigenous population, and for the project-affected population, depend on an extremely narrow and deeply flawed definition of the Project’s boundaries. The boundaries used by Management serve to highlight the fact that they can be defined in a way that effectively determines the balance between those who benefit and those who are adversely affected by a project. In this case, Management’s narrow definition of the Project’s boundaries potentially subsumes the rights and cultural uniqueness of the most vulnerable ethnic minorities, in favor of other ethnic minorities who outnumber them as a direct result of the way in which the boundaries are defined.

¹⁸² Though the Management Response often refers to the involuntary resettled persons in the Move-in area as “beneficiaries,” the “Involuntary Resettlement Plan” refers to them as “adversely affected.” Certainly, the majority of their “benefits” from the Project consist of the compensation provided for its adverse effects.

278. After discussing this in Chapter 4, the Panel pointed out that compliance required that the spatial boundaries of the Project be corrected to include all the population directly impacted by the Project, rather than restricting them largely to the proposed irrigation site. If this were done, the overall figures for impacted populations would shift towards the population in the Move-in area. And, among this larger population, it would increase the overall percentage of those who have the status of “*indigenous people*” as well as the number of those who could be considered adversely impacted by the Project.



Figure 21. Tibetan farmers in the Move-out area (Heran Village, Galeng Township, Xunhua County).

279. In the Panel’s view, there is a related problem with the population figures in the Move-out area. Management has stated that the number of applicants from the Move-out areas greatly outnumber the spaces available for resettlers. Nobody, as yet, has been definitely selected to move and the Panel was informed that in due course selections will be made in accordance with a process yet to be determined. When the Panel visited the Move-out areas, most of the village people with whom it spoke understood this. Thus, while national minorities may make up a high percentage of the total applicants for resettlement, the eventual percentage of national minorities could be revised downward if a higher percentage of Han migrants

get selected, or if a higher percentage of Han choose to move and minorities choose to stay. Given the fact that "applicant" status is based on a survey which effectively encourages farmers to keep their options open by applying for resettlement, as discussed in Chapter 5, it is possible that many farmers will not actually choose to move; or they might move and then exercise the option to return. Since Han families often arrived later than other ethnic groups in the Han-minority areas of Haidong or Xining City Prefecture, and were consequently left with the worst land to farm, the percentage of Han who eventually choose to resettle could be higher than the current percentage of Han among the applicants would indicate. In other words, the figures in the Project documents on the ethnic mix of settlers from the Move-out area could change significantly.

280. In the Panel's view, Management's interpretation of this one sentence of paragraph 13 of OD 4.20, cannot be accepted. It is inconsistent with other parts of the OD and especially inconsistent with the objective of Bank policy towards indigenous people, which is "...to ensure that the development process fosters full respect for their dignity, human rights, and cultural uniqueness..." and to "ensure that indigenous peoples do not suffer adverse effects during the development process..., and that they receive culturally compatible social and economic benefits."¹⁸³ **The Panel therefore finds that the Project as a whole does not constitute the IPDP required by OD 4.20, and that separate, free-standing IPDPs are required to bring the Project into compliance with OD 4.20.**¹⁸⁴

10.4 A Separate IPDP for Each Minority

281. The Bank's overall intent in giving special attention to "*indigenous peoples*" derives from the fact that they have a cultural identity and social status that make "*them vulnerable to being disadvantaged in the development process.*"¹⁸⁵ The

¹⁸³ See OD 4.20, *supra* note 39, at § 6.

¹⁸⁴ The Panel would also note that if Management's interpretation of this OD were allowed to stand, it would carry the potential for serious harm to indigenous minority groups affected by other Bank-financed projects. One senior Bank official, writing on this Project, expressed concern that documents should not refer to precedents elsewhere because it could raise the question of compliance in those prior projects: "*The fact that we didn't prepare any IPDPs in past projects opens the possibility that all past projects in similar areas were not in compliance with Bank policy*" Nonetheless, Management states that this interpretation is "*in line with the approach adopted for comparable projects in China and other countries in which the majority of beneficiaries are indigenous peoples*"-- a footnote (15) explains, "*Projects in India and Indonesia in particular.*" The Response also lists the Southwest Poverty Reduction Project (1995 launch), the Gansu-Hexi Corridor project (1996), and the Tarim Basin II project (1998). See *Management Response*, *supra* note 12 at p. 11, footnote 14.

¹⁸⁵ See OD 4.20, *supra* note 39, at § 3.

"indigenous peoples," or national minorities, in the Move-in area, the Hui, Mongol, Tibetan, Tu and Salar, are very different from each other, in their "cultural uniqueness" as well as their "local patterns of social organization, religious beliefs, and resource use."¹⁸⁶ In the Qinghai Project, however, Management has effectively and retroactively lumped together these very different cultures into a single "one-plan-fits-all" IPDP; that is, the "project in its entirety."¹⁸⁷ As just noted, in this IPDP, majority numbers from the Move-out area (i.e., the "bulk of the direct project beneficiaries") can override the rights and aspirations of the ethnic minorities among the minorities in the Move-in area. The application of this interpretation of the OD



Figure 22. Inspection Team interviewing Han, Hui, and Tibetan farmers at Xinglong, Dulan County, about whether separate development plans for each ethnic group would have been preferred.

can easily serve to increase the vulnerability of the *most* vulnerable cultural and ethnic groups, and increase their chances of "...being disadvantaged in the development process."

282. The March 1999 Social Assessment for Qinghai also stresses the importance of recognizing the cultural differences among the minorities. It points out that "Minority herdsmen do not like to see relocated migrants move-in, but they can be relieved of their worries through taking proper measures, e.g. strengthening public security and management." It also raises the risk of ethnic conflict and, in particular

¹⁸⁶ See OD 4.20, *supra* note 39, at §§ 6 and 14 (d).

¹⁸⁷ See Management Response, *supra* note 12, at p. 10.

harm to Tibetan interests. *"The ethnic minorities in the project area include the Tibetans, the Mongols, and the Hui, the Tu, and the Sala people. If the issue of ethnic groups [is] not given sufficient attention, and not handled properly, it will trigger off contradictions and damage the image of the government, affect the socioeconomic development in the move-in areas, and produce negative impact. Therefore great importance should be attached to this issue, and all-round consideration should be given. In particular, the interests of the local Mongol and Tibetan people must not be impaired. Pay particular attention to current sensitive issues, such as public security, establishment of the channels for grazing and fair distribution. These issues need to be consulted and handled in time. Build the move-in areas into ones where people of different nationalities can live in harmony and prosper side by side."* [Emphasis added].

283. Later, in the June, 1999 PAD, following the outbreak of public concern, Management claimed that these issues had been accommodated in the Project design in general, the Local Beneficiary Plan, the VSIP and the RAP.

284. Ethnic minorities in the Move-in area (as well as those from the Move-out area) will have major changes to their subsistence systems: the resettled farmers will shift from dryland to irrigated agriculture; pastoralists in the Move-in area will switch to mixed agriculture and pastoralism. OD 4.20 requires that *"Development activities ... support production systems that are well adapted to the needs and environment of indigenous peoples, and ... help production systems under stress to attain sustainable levels."*¹⁸⁸ This is not something that can be imposed. It requires an open-ended process of extensive consultation with and full participation by the people concerned.

285. The form of "consultation" which Management employed essentially treated each of the different ethnic communities in the Move-out area in the same way. In no case did "consultation" involve bringing people from the same ethnic group together to help envision a development plan for their own minority group.

286. Village meetings and surveys provided opportunities to gather specific suggestions from members of different ethnic minorities in the Move-in area. As a result, some specific modifications and allowances were made within the Project design for separate residential areas, for example, or local-language teaching in schools, diverse religious structures, and corridors through the irrigation site for the

¹⁸⁸ See OD 4.20, *supra* note 39, at § 15.

nomadic pastoralists. Some of these modifications, however, came very late in the planning cycle, long after the resettlement-and-irrigation strategy and locations had been decided. They occurred after Management had decided that the different ethnic groups, many speaking unrelated languages, would be lumped together for purposes of satisfying OD 4.20's requirements for an Indigenous People's Development Plan.

287. Bundling these groups together in a single IPDP, whether that is the "project in its entirety," or a single IPDP for the whole of the Move-in area, effectively denies these very different ethnic groups, especially the numerically weakest and most vulnerable, an opportunity to participate in a process that would ensure that their minority cultural traditions are taken into account in the overall design of the Project. No number of add-on indigenous-culture-boosting activities (bilingual schools, Islamic religious sites, Tibetan pharmacological centers, corridors for nomadic herders) can override the fact that the initial Project design is flawed by this failure to recognize, from the outset, the cultural uniqueness of the separate ethnic minorities involved.

288. During its visit to the Move-in area, the Team raised the question of separate plans with some of the people it met, especially the Tibetans and Mongols. None was aware of the fact that Bank policy allowed for their participation in the design of separate IPDPs to ensure that they did not suffer adverse effects from the Project and, indeed, that they received "...culturally compatible social and economic benefits."¹⁸⁹ When asked if they would like to have participated in such a process, and if they thought other members of their ethnic minority would have cooperated, the answer was almost invariably "yes."

289. In one village, Tibetan residents felt strongly that it would have been a good idea to bring Tibetans together to discuss the Project. They stated that following 1987, the year when their village was populated by mostly Han and Hui farmers moving from Haidong prefecture, Tibetan pastoralists who formerly used the land were scattered into mountainous areas so they are no longer present in the nearby region.¹⁹⁰ They expressed regret that their children were no longer learning Tibetan in this now largely Han-speaking village, and said they hoped that the larger number

¹⁸⁹ This adds a somewhat different perspective to Management's assertion that: "*The Project design reflects the Mongol herders' preferences for mitigation and compensation measures. The Project allows households to establish permanent housing and to gain access to desired services, while some family members continue seasonal migration patterns. This reflects a semi-nomadic lifestyle increasingly common in Qinghai and other pastoralist areas of Central Asia. See Management Response, supra note 12, at p. 8.*

¹⁹⁰ They provided the Panel with a rough estimate of 200 Tibetan pastoralists from this one village who had to move to other pastureland as a result of the Han and Hui settlement.

of Tibetans among settlers from Haidong might help revive the Tibetan language because bilingual schools were part of the project. (They were unaware that many Tibetans in the Move-out areas also no longer speak Tibetan.) Nevertheless, some



Figure 23. Inspection Team visiting Mongolian-language school at Dulan.

opposed the Project on the grounds that they considered this land still “Tibetan and Mongol” land. By contrast, Hui farmers in the same village told the Panel that they did not feel it was necessary to have a plan for Hui that was separate from the plan for the Han farmers with whom they now live in the village.

290. In another instance involving a large nomadic Mongol family, the Team asked various family members whether they would liked to have had separate meetings among Mongols to develop plans specifically for their own ethnic group. They thought this would have been a very good idea, and volunteered several improvements that they would have suggested. First, they insisted that not every part of the Project needed to be designed for particular ethnic groups, giving clinics and hospitals as examples of something that people of all ethnic groups could freely share. But they especially wanted Mongol schools, and mentioned that their religious practices were close to those of Tibetans but very different from those of most settlers. Interestingly, they said it would have been very good if they could just get a little farmland somewhere, not even in the same place where they were now, and still have some good pasture for their herds.



Figure 24 Inspection Team preparing to enter a Mongol yurt at the site of the proposed Xiangride-Balong irrigation district, Dulan County

291. These conversations with villagers, although short and few in number, revealed that some components of this Project (such as Tibetan pharmacological centers or other indigenous health-care providers), which were added retroactively following the April, 1999 outbreak of public concern, might not be the same ones considered highest priority by local people. Though added later as local-culture-enhancing components, they may not have been the ones local people would have suggested if given the opportunity. The Mongol herders' remarks about wanting some farmland somewhere, along with some good pastureland, seem to contrast with the stark choice that the Project had offered them: *either* get arid pastureland elsewhere *or* take the irrigated farm plot at a ratio of 1 to 11.4 equivalency. Politely, deferentially, and in response to a direct question about developing a separate Mongol IPDP, these pastoralists seemed to ask whether they might instead get some *combination* of winter-pasturage and irrigated farmland. Of course, summer pasture range is still open to all; but winter pasturage is in short supply. Perhaps this option (not offered in Project documents) would have allowed them to more easily maintain their nomadic pastoral life with a buffer of agriculture, rather than face the stark choice between being a full-time Project farmer or a full-time pastoralist. The

purpose of developing self-standing IPDPs for each ethnic group, as envisioned in OD 4.20, is precisely to carefully and methodically elicit, record, and assess these kinds of statements, which the Inspection Team received within the first hour of its visit to the site of the proposed irrigation-works.

292. These remarks were recorded within the "project area," as defined by Management. As noted earlier, the Panel feels that the boundaries of the Project area were so narrowly defined that many affected people and communities were left out of the Assessments. When the Inspection Team visited project-affected towns near Xiangride, and Tibetan villages along the proposed supply-canal for the project, all left out of the "project area" as defined by Management, it received a similarly positive response to self-standing IPDPs for each of the ethnic groups. Although the Panel's visit was short, it is satisfied that some, if not all, of the ethnic minorities in the Move-in area would welcome the opportunity to participate in the development of separate IPDPs.

293. **The Panel finds that a serious attempt to prepare separate, free-standing IPDPs for each of the national minorities in the Move-out area is required to bring the Project in to compliance with OD 4.20.**¹⁹¹

10.5 Process Compliance

294. OD 4.20 does more than describe the Bank policies concerning indigenous peoples. It also stipulates the process and procedures to be followed in developing an IPDP within the context of the Bank's "*project cycle*," identification, preparation, appraisal, negotiations, and presentation to the Board.¹⁹² It does this in four short paragraphs, three of which apply to the Qinghai Project at its current stage of development; paragraph 16 on identification, paragraph 17 on preparation, and paragraph 18 on appraisal.

10.5.1 Identification

295. This is the first stage of the Bank's "project cycle," during which projects are identified that "have a high priority, that appear suitable for Bank support, and that the

¹⁹¹ These separate, self-standing IPDPs should at least *attempt* to support existing production systems that are under stress, since those production systems are often integral to the cultures of the minorities who are most vulnerable in the development process. See OD 4.20, *supra* note 39, at paragraph 14 (e).

¹⁹² It also covers implementation, supervision and evaluation, although the Qinghai Project has not reached that stage.

Bank, the government, and the borrower are interested in considering.”¹⁹³ If such a project involves indigenous peoples, the OD insists upon early and extensive investigations into their numbers, location and status. Paragraph 16 is quite clear on this. It states in part that *“During project identification, the borrower should be informed of the Bank's policy for indigenous peoples. The approximate number of potentially affected people and their location should be determined and shown on maps of the project area. The legal status of any affected groups should also be discussed....”*

296. The same paragraph requires that Task Team Leaders *“...should also initiate anthropological studies necessary to identify local needs and preferences...”* and that, in consultation with the REDs, Task Team Leaders *“...should signal indigenous peoples issues and the overall project strategy in the Initial Executive Project Summary (IEPS).”* This refers to the “Initial Executive Project Summary.” It was later superseded by the “Project Concept Document” (PCD), which is prepared for review at the PCD Meeting.¹⁹⁴

297. During November and December of 1997, the Task Team member responsible for social assessment reviewed the socio-economic data then available. Prior to the February Technical Mission, the Task Team Leader provided him with Terms of References which called upon him to review the *“design framework for the irrigation component in Qinghai.”* In doing so, he was to *“review the status of the Social Assessment of the proposed project, including the beneficiary assessment and the role of beneficiaries in project preparation particularly, the minority nationalities. (OD 4.20).”*¹⁹⁵

298. As noted earlier in Chapter 7, the Project Concept Document Meeting is a key decision point in the evolution of a Bank project. It is the first time that the project is looked at as a whole and in some detail by a group beyond the project team, including managers. The Project Concept Document was sent out for comment on March 25, 1998. It states that, *“The leading social issue for the (Western Poverty Reduction) project is the voluntary resettlement of 100,000 poor people in central*

¹⁹³ See WARREN C. BAUM, *The Project Cycle*, Washington DC: IBRD, 9th Ed. (1996).

¹⁹⁴ The designation of documents that must be prepared by the time of the IEPS (=PCD) is also referenced in Annex D par. 1 of OD 4.01 on Environmental Assessments. The change from IEPS to PCD format was codified in a memorandum (Subject: “Simplified Project documentation,” dated 31 July 1997) from Director, Operations Policy and Strategy, to: “Staff Recipients of the Operational Manual.” Projects for which processing had already begun before August 1 could continue under the old documentation. Nevertheless, the OD's requirements for the IEPS are (since 1997) requirements for the PCD.

¹⁹⁵ Project Files (15 January 1998).

Qinghai, comprising diverse nationalities including Han and minority nationalities comprising Mongolian, Tibetan, Hui and Sala."¹⁹⁶ And it instructed "The project preparation teams ... pay particular attention to the diverse minority populations and religious groups." The document stresses that the project must comply with the Bank's Indigenous Peoples policy. The *Project Preparation Plan* states that field surveys and interviews will be carried out by "sociologists fluent in local dialects." The Plan output would be reviewed by Management in September, 1998.

299. The PCD is not clear on whether the preparation was to include minorities in the Move-in area. It appears not because it states that, "*involuntary resettlement does not appear to be a significant issue, although the possibility cannot be ruled out...*" Perhaps for this reason, there is no indication of the "... approximate number of potentially affected people..." no indication of their location "...on maps of the project area," and no discussion of the "... legal status of any affected groups...." This required work had not been undertaken.¹⁹⁷

300. On April 6, 1999, an EASSD social scientist was asked to review the PCD but, in the event, did not present any written comments. The Legal Department's member of the Task Team did comment, however. In a note to Management, Legal warned that the PCD refers to the existence of national minorities affected by the project and stressed the need for compliance with OD 4.20 on Indigenous Peoples. It pointed to three options for achieving this: (1) through the design of the Project, or (2) through the Voluntary and Involuntary Resettlement Plans, or (3) through a separate Plan. The result would need to be reviewed by EASSD and LEGEA.¹⁹⁸ Her comments were distributed widely as an attachment to the Agenda for the PCD meeting.¹⁹⁹

301. The PCD Meeting was held on April 14, 1999, about 15 months after project preparation began on the Bank side. Chaired by the Director, RMC, it was attended by 12 people, including the Task Team Leader and the Legal Counsel. Although the

¹⁹⁶ See PCD, *supra* note 194, at p. 12.

¹⁹⁷ The Bank's rules call for each project to have a Project Information Document (PID) made available at the Bank's Public Information Center at the Project Concept Document stage. The PID for the Western Poverty Reduction Project is dated March 25, 1998. As is required, it is very short (six pages). It makes one reference to "minorities" or "minority nationalities", saying in passing that China's current "absolute poor" comprise "largely minority nationalities". It makes no mention of any minorities (including Tibetans) in the Project. Rather, the beneficiaries are defined only in terms of their poverty and precarious future in the absence of the project.

¹⁹⁸ Project Files (13 April 1998).

¹⁹⁹ See *supra* note 90.

East Asia Social Development Unit(EASSD) had received an invitation, no one from that unit attended.

10.5.2 Preparation

302. After a project has been incorporated in the Bank's program, it enters the preparation phase and an extensive period of close collaboration between the Bank and the eventual borrower begins. *"Formal responsibility for preparation rests with the borrower. ... But experience has shown that the Bank must have an active role ... making sure that borrowers with the capacity and resources to prepare projects themselves understand the Bank's requirements and standards..."*²⁰⁰

303. If indigenous peoples are involved, OD 4.20 is clear about what needs to be done during the preparation phase. It states that, *"If it is agreed in the IEPS (or PCD) meeting that special action is needed, the indigenous peoples development plan or project component should be developed during project preparation..."*²⁰¹ As mentioned above, however, the PCD meeting minutes record no *"special action"* nor discussion of the three possible approaches to indigenous peoples suggested by Legal Counsel.

304. Given a perceived need to act, both paragraphs 16 and 17 set out the types of preparation needed. Paragraph 17 says that, *"As necessary, the Bank should assist the borrower in preparing terms of reference and should provide specialized technical assistance (see para. 12)."*²⁰² *Early involvement of anthropologists and local NGOs with expertise in matters related to indigenous peoples is a useful way to identify mechanisms for effective participation and local development opportunities.*²⁰³ The Task Team included an anthropologist on the staff of the Resident Mission China, though he did not benefit from the support of a designated "peer reviewer." Indeed, unlike the environmental aspects, a peer reviewer was never appointed for the social aspects.

²⁰⁰ See WARREN BAUM, *supra* note 193.

²⁰¹ See OD 4.20, *supra* note 39, at § 17.

²⁰² The paragraph 12 of the OD 4.20 states: *"Technical assistance to develop the borrower's abilities to address issues on indigenous peoples can be provided by the Bank. Technical assistance is normally given within the context of project preparation, but technical assistance may also be needed to strengthen the relevant government institutions or to support development initiatives taken by indigenous people themselves."* See OD 4.20, *supra* note 39 at paragraph 12.

²⁰³ Paragraph 17 of OD 4.20 concludes: *"In a project that involves the land rights of indigenous peoples, the Bank should work with the borrower to clarify the steps needed for putting land tenure on a regular footing as early as possible, since land disputes frequently lead to delays in executing measures that are contingent on proper land titles..."* See OD 4.20 *supra* note 39 at paragraph 17.

305. On May 11, 1998, the Task Team Leader (TTL) distributed the Terms of Reference (TOR) for each member of the forthcoming "Preparation Assistance Mission". The TOR for the anthropologist called on him to "... focus on the scope of the assessments to ensure that the issues related to gender, participation and minority nationalities are fully addressed." He was also to: "i) assess the extent of stakeholder participation in preparation...; ii) ensure that the social assessments reflect the expectations, aspirations and concerns of the target project participants and minority nationalities in particular; and iii) ensure that the social assessments include mitigating measures against potential adverse outcomes of the project on minority nationalities." Again, it is not clear whether the required "focus" was limited to minorities in the Move-out area. The TOR did go on to state, however, that, together with the resettlement specialist on the mission, he was to "review the preparation being made in the move-out areas with particular focus on minority nationality issues."²⁰⁴

306. Although EASSD did not provide written comments before the PCD meeting, following the meeting the Task Team Leader requested comments from a senior expert in the EASSD Unit most familiar with Indigenous Peoples' issues, who had worked in Qinghai on one occasion in an earlier career. In a note entitled "The issue of OD 4.20 [Indigenous Peoples] and its kid leather glove treatment in China," she highlighted two main issues.²⁰⁵ "Since this is a poverty alleviation project," she said, "with highly specific targeted interventions, it could be argued... that the entire project will be beneficial to the ethnic minority nationality peoples. The wrinkle in here is that the Han are in many of the poorest villages in Qinghai and minorities in a Tibetan area. In this case these populations are formed of people displaced during the cultural revolution and sent to rehabilitate themselves or to form part of forced labor gangs. These deserve special attention. In addition, of course, the issue of culturally appropriate interventions is critical to define in a Tibetan context." (Emphasis added.)

307. "The issue of "voluntary" resettlement," she went on, "has a long story behind it in Qinghai already. I would recommend that the history of the policy of "voluntary" resettlement be looked into and to proceed with more than usual caution on this because there are different dimensions that have strong political ramifications. (Emphasis added.) I seem to recall that many of the people are not willing to move out of the area in spite of the desperate need for income improvement. In this region, the whole issue of community-managed grazing rights is intrinsic to their way of life

²⁰⁴ Project Files (11 May 1998).

²⁰⁵ Project Files (14 May 1998).

and this dimension has to be examined together with the entire resettlement package.”

308. Then, she added: “The preparation process for this project should strive to carefully document the following: The nature of the socio-cultural analyses as well as the economic analysis of households and communities; the specific ways in which these analyses contribute to the project’s design and to the definition of culturally appropriate strategies for different populations and ethnic groups; (emphasis added) the kind, manner and extent of the information, consultation, and participation process as it evolves during the course of project preparation. If these areas are all carefully documented and integrated into the design of the project, there should in principle be no problem or question of compliance with OD 4.20.”²⁰⁶ (Emphasis added.)

309. The mention of “Tibetan” in the first paragraph quoted is the first time in Project documents, one and a half years after the Project entered the Bank’s portfolio, that attention is drawn to sensitivities in this area, though the note does not make clear what the sensitivities are. And mention of “Tibetan” is preceded by mention of the plight of the Han Chinese in the region, who find themselves to be “minorities in a Tibetan area” and therefore deserving of “special attention.” Similarly, the memo urged caution on “voluntary” resettlement because “there are different dimensions that have strong political ramifications,” but does not indicate what these political ramifications are and how they might be responded to operationally. Thus, the Task Team was alerted to a sensitive minority issue which was further considered in the Social Assessment. But, as discussed more fully below, there is no record that Management addressed these specific concerns.

310. A 13-member Project Preparation Mission visited Qinghai in late May (May 24-30). The Mission’s Aide Memoire refers to minorities generally and identifies the existence of Tibetans in the Move-in area. It criticizes the fact that the draft voluntary settlement plan and other documents don’t mention the fact that local Mongolian and Tibetan herdsmen in the Move-in area have legal use rights to grassland, and the fact that no plan has been prepared to deal with their potential loss. “Because the impact on the native herdsmen is a critical social issue for the project,” it states, “it is urgently required that the PMO cooperate with local authorities [to] conduct [a] comprehensive investigation of the herdsmen’s realistic situation, including accurate census of people to be affected, their grassland to be requisitioned, and their willingness and

²⁰⁶ Id., supra note 205.

feelings of the change; and make a detailed plan for acceptable arrangement of the herdsmen with their consultation."²⁰⁷ The Aide Memoire goes on to propose that the herdsmen in the Balong part of the Move-in area be treated as "target beneficiaries," claiming that this is in line with OD 4.20. It is interesting to note that at this stage, some eighteen months after the Project entered the Bank's portfolio, Management still views the herdsmen whose grasslands "are to be requisitioned" as beneficiaries rather than as adversely affected people.

311. The next paragraph comments on "*The attitude of the move-in area towards new comers.*" It states that "*The local government officials and herders welcome the 78,000 project target people come to the Balong area. This point is a key point of the project.*" The quality of the consultation process from which this statement presumably derives has been discussed in Chapter 5.

312. The Aide Memoire also recognized that the "*Voluntary Settlement Action Plan*" for the Move-out area needed to be further developed to define culturally appropriate strategies for different populations and ethnic groups. "*In view of the large number of minority nationalities (58.21% of the total population to resettle), this section [of the Voluntary Settlement Action Plan] should be developed as a special annex of minority nationality/local beneficiary participatory development, combining the social and economic investigation and the participatory approach above-mentioned*".²⁰⁸ It also notes that community leaders in seven Move-out counties felt that "*the establishment of the townships in the move-in area should be maintained as [in] the original move-out areas, and adjust them among the natural villages for instance, the similar nationalities should be arranged in one place or multi-nationalities can [be] arranged together.*" Again, it must be noted, the focus is on minority settlers from the Move-out area.

313. Following her comments on May 14, 1998, the EASSD Social Expert heard nothing more until September, 1998, when she was asked to brief an anthropologist about to leave on the Pre-Appraisal Mission. She asked the Task Team Leader to see the Terms of Reference for the Social Assessment and the completed product,

²⁰⁷ IBRD/IDA, *Proposed Western Poverty Reduction Project (Qinghai Component) — Aide Memoire of the Preparation Assistance Mission* (24-30 May 1998).

²⁰⁸ Id. supra note 207, at p. 17. On this proposal to develop the Voluntary Settlement Action Plan as a special annex of minority nationality/beneficiary participatory development "combining the social and economic investigation and the participatory approach", a Bank social scientist knowledgeable with the situation comments, "There is either a conceptual (honest) confusion, or an attempt to ease a potentially troublesome situation by mixing the two issues of minorities and participation. The assumption being that if there is 'participation' then the minority issue might just be dealt with automatically. This is finessing the intention and spirit of OD 4.20.

and asked to be kept informed about the preparation of the Project.²⁰⁹ She reminded him that "...the most problematic and therefore the most critical assessment is the one for Qinghai because of the two safeguard policies you should watch out for: OD 4.20 and OD. 4.30." The Task Team Leader replied almost immediately stating that: "Appraisal is scheduled for first week of January 1999. I plan to issue the PAD [Project Appraisal Document] and other related docs by end of Nov. The timetable for the different milestones is tight, allowing the time allowed by Bank Service Standard. I trust that the SA [Social Assessment] review would not require additional review time." (Emphasis added)²¹⁰

314. The Pre-Appraisal Mission, involving five members of the staff and seven consultants, visited Qinghai between October 17-24. The Aide Memoire noted that a pilot voluntary settlement scheme should be implemented. In referring to the revised "Village Settlement Plan" it is apparent that it included people from both Move-out and Move-in areas. It "is designed for 61,775 (57,775 from eastern Qinghai's selected poor counties, move-out counties; and 4000 herders and poor farmers living in and outside the project area) poor people on 321,600 mu or 21,440 ha in five irrigation sites of the project area." The Mission considered that the "[Village Settlement Plan] is well prepared and has benefited immensely from the experience of Hexi Corridor Project in Gansu."²¹¹ In his Back-to-Office report on the Pre-appraisal Mission, the Task Team Leader says, "The mission has achieved its objectives and the project would be ready for appraisal in January 1999."²¹²

315. Shortly afterwards, the Social Unit's Senior Expert informed the Task Team Leader, Regional Management and Acting Chief of the Social Unit, that she had reviewed the Social Assessments for two of the three project components. While acknowledging that the Social Assessment document was of higher quality than others reviewed in the past, she also pointed to areas "that must be clarified and corrected... While it is asserted that the assessments are based on extensive interviews and stakeholder participation," she said, "there are no specific data from these presented in the text that would permit an examination of the quality of the data

²⁰⁹ Project Files (9 September 1998).

²¹⁰ Project Files (10 September 1998). During the Panel's investigation, senior staff mentioned on several occasions that, whatever the rhetoric, the pressures on Task Team Leaders to produce their projects and sign them off on schedule were such that they simply could not and would not allow the application of safeguard policies to cause delays. Since the officials responsible for safeguards are often a part of their team, and paid in part from the project's budget, they are not in a strong position to argue. This expert was not paid from the project's budget.

²¹¹ IBRD/IDA, *Proposed Western Poverty Reduction Project (Qinghai Component) — Pre-Appraisal Assistance Mission* (17-24 October 1998).

²¹² Project Files (5 November 1998).

and the adequacy of the analysis. It would constitute an improvement in the social assessment if the aggregate data from these interviews (by administrative entity as well as by ethnic group) could be made available as annexes to the social assessment."²¹³ As for future comments, as this was her last day in the East Asia Social Development Unit, she added that "The PAD ... will be issued after I have left ...[and] will have to be reviewed and cleared by another member of the EASSD team. The Social Assessments will be kept in our files."

10.5.3 Appraisal

316. As a project takes shape and studies near completion, it is scheduled for appraisal. This step marks the culmination of the preparatory work.²¹⁴ It is one of the most, if not the most, critical milestones in the development of a project. It is during appraisal that Management undertakes a comprehensive review of all aspects of the project and lays the foundation for implementing it. Management establishes that the required preparations have been undertaken, that Bank safeguard and other policies have been properly applied, that the work is of a satisfactory quality, and that the elements needed for project execution are in place and agreed upon. Appraisal is solely the Bank's responsibility and manifests itself in a decision meeting, a "final" appraisal, and sign off leading to negotiations.

317. When a project involves indigenous peoples, or national minorities, OD 4.20 sets out what Management must attend to during Appraisal. Paragraph 18 states clearly that, "*The plan for the development component for indigenous peoples should be submitted to the Bank along with the project's overall feasibility report, prior to project appraisal.*" Moreover, it charges Management with assuring the quality of the plan, stating that, "*Appraisal should assess the adequacy of the plan, the suitability of policies and legal frameworks, the capabilities of the agencies charged with implementing the plan, and the adequacy of the allocated technical, financial, and social resources. Appraisal teams should be satisfied that indigenous people have participated meaningfully in the development of the plan as described in para.14(a) (also see para. 15(d)).*"²¹⁵ It is particularly important to appraise proposals for regularizing land access and use."

²¹³ Project Files (13 November 1998).

²¹⁴ See WARREN BAUM, *supra* note 193.

²¹⁵ The nature of the consultations with, and meaningful participation by, the minorities in both the Move-in and Move-out areas is discussed in Chapter 5.

318. The Project Appraisal Document (PAD) was ready in late November, 1998, and the Decision Meeting [to move forward to appraisal] was scheduled for three weeks after the PAD itself was distributed. The Decision Meeting for the entire Western Poverty Reduction Project, including the Qinghai component, was held on December 17, 1998. This Decision Meeting is crucial. It is the last step in the Bank's preparation process at which there is, in principle, flexibility for making more than marginal changes to the project design. The environmental, social, and legal clearances should either have been received by this date, or substantive reasons should have been provided indicating why clearance should be withheld.

319. Reflecting the approach taken in project preparation, the PAD continues to treat the 4000 local herders and farmers in the Move-in area as beneficiaries of the Project on the same footing as the nearly 60,000 settlers from the Move-out area. It categorizes the host population in the Move-in area in three groups: *"The largest is the nomadic and sedentary herders of Mongolian and Tibetan ethnic groups... The second ... is the agricultural community of voluntary migrants in the 1980s, ... The third one is composed of mainly Han farmers who settled voluntarily."*

320. The PAD also shows that there were significant differences in the approach to minorities in the Inner Mongolia and Gansu components of the overall project, as compared with those in the Qinghai component. In **Inner Mongolia**, where minority nationalities account for about 14.5 percent of the total population in project areas, Mongolians form the overwhelming majority of the minority nationalities. Here, *"The SA study ... focused on Mongolian nationality, making special research on the Mongolian social organization, economic foundation, productive patterns, household livelihoods, as well as their education in Mongolian, their folk customs and religious beliefs.... In consultation with and participation of herders/farmers, the SA specifically suggested several farm household development models based on animal husbandry and grassland rehabilitation, which are particularly designed for minority herders in line with their ways of life."* In **Gansu**, where the percentage of minority nationalities in the project areas is comparatively lower (5.5 percent), and predominantly Hui in Zhangjiachuan county, six typical villages from three townships in the county were selected *"to make detailed village investigations and villager consultations, so as to design appropriate sub-projects to be undertaken compatibly with Hui socio-cultural context... The SA in Gansu also conducted special village development planning among Hui villages, to develop models based on their preferences."* In Qinghai, in contrast, the Panel has found no evidence that special research of a similar nature was carried out for any specific minority nationality.

321. Coming to compliance with Bank policies, the PAD states in the required section that *"The project is in compliance with i) OD 4.20 on indigenous people with the adoption of a Voluntary Settlement Implementation Plan, designed for predominantly minority nationalities in Qinghai based on a detailed Social Assessment, and for Gansu and Inner Mongolia a project design, which reflects the concerns of minority nationalities as reported in the Social Assessment; ii) OD 4.30 on involuntary resettlement involving 63 households surrendering their leased land for reclamation..."*²¹⁶

322. Thus, the PAD states that compliance with OD 4.20 is through adoption of the VSIP designed for predominantly national minorities in Qinghai *"based on a detailed Social Assessment."* This suggests that, at this point in time, November, 1998, Management considered that these two documents which deal with indigenous peoples issues, taken together, effectively constituted the required IPDP.

323. It is also important to note that this was before the Decision Meeting in December, before the 'final' negotiations in early April, 1999, and before the outbreak of public concern in late April. As will be seen below, during its post-April review, the PAD, including this key paragraph on compliance, was significantly revised. During this period, Management also changed its approach to the IPDP, claiming that, not the above two documents, but the "project as a whole" constituted the required IPDP.

324. When the Voluntary Settlement Implementation Plan (VSIP) for Qinghai arrived in mid-November, the Senior EASSD Social Expert referred to above was no longer there. In consequence, the VSIP, including the RAP, were reviewed by a new expert who had just joined the Unit. Among other things, he queried the "voluntariness" of the resettlement in Qinghai, given that the Bank's OD 4.30 on resettlement applies, strictly speaking, only to involuntary resettlement. Being assured by the Task Team Leader that it was indeed voluntary under the Bank's definition, he advised the Task Team Leader that, *"Document A [the Voluntary Settlement Implementation Plan] is satisfactory and I have no comments to make."*²¹⁷

325. In line with normal practice, the EASSD expert drafted a clearance memorandum for the EASSD Unit Manager to sign. The memorandum concluded, *"EASSD [East Asia Socially Sustainable Development] is pleased to provide clearance for the project to proceed to appraisal. However, the project appraisal cannot be considered complete until the documents (b) and (c) above [the*

²¹⁶ See PAD (1st Version), *supra* note 41, at p. 42.

²¹⁷ Project Files (24 November 1998).

*Implementation Plans for Land Acquisition and Relevant Compensation, for the other two provincial components] are endorsed and found satisfactory by the Bank.*²¹⁸ It was duly signed, just before the Decision Meeting, and sent by the Sector Manager, EASSD to the Sector Manager, EASHN.

326. The Legal Department comments on the PAD were also received the day before the Decision Meeting. They warned that mention of the prison farm should be limited to purely factual matters. “*You might want to explain,*” the note stated, “*why the existence of a nearby prison farm could be controversial.... Has the Bank team truly been able to ascertain that the project won’t benefit the prison farm in any way? Or are we relying on confirmations from the local government?*”²¹⁹ The note made no mention of minority populations or environment.

327. The Legal Department also prepared the draft Project Agreement between the Bank and the three Project Provinces (PP), Schedule 2 (B) of which states that “*Each Project Province shall take all measures necessary to ensure that all persons affected by the Project fully participate in its [design and] (sic) implementation and receive social and economic benefits from its Respective Part of the Project that are compatible with their cultural preferences. To this end, each Project Province shall carry out its Respective Part of the Project in accordance with its Respective Local Beneficiaries Participation Action Plan.*” This section in the Project Agreement was also expanded with specifics for the Qinghai project during the post-April 1999 review.²²⁰

328. The Decision Meeting took place on December 17, 1998. Chaired by the Manager of the East Asia Rural Development Unit, the East Asia Socially Sustainable Development Unit was again not represented.²²¹ As mentioned in Chapter 7, the Environment Peer Reviewer felt that all issues but one had been addressed. The exception was that of potential livestock overstocking. The Sector Manager of the East Asia Rural Development Unit decided therefore to downgrade the Appraisal Mission scheduled for January 1999, to a Pre-Appraisal mission. During the course of the Mission, between January 10-23, it became evident that the livestock issue had been addressed satisfactorily, so the Sector Manager upgraded it to an Appraisal Mission in the field. This kept the project on track for Board presentation before mid-1999.

²¹⁸ Id., *supra* note 217.

²¹⁹ Project Files (16 December 1998).

²²⁰ Draft Project Agreement (3 December 1998).

²²¹ Project Files (18 December 1998).

10.5.4 Negotiations

329. The negotiations began on April 12, in Washington. It seemed that there were no substantive issues outstanding at that time. The negotiations had been scheduled to last a working week, but were substantively over in three and a half days. The draft Agreements were then revised and the Minutes of Negotiations signed by both sides.²²² This then was the Project intended for Board approval.

330. After the outbreak of external criticism that focused on the impact of proposed Project on minority nationalities, at least three different approaches to justifying compliance with OD 4.20 appear in the documents.

331. The final clearance required before a project is presented to the Bank's Board of Executive Directors is from the Statutory Committee. Among others, the Vice-President and General Counsel must sign the Statutory Committee report. After Governmental approval of the negotiated legal agreements was received, Legal Counsel sent the report on May 17, 1999 to the General Counsel for signature with an explanatory cover note. It noted that the Project involves indigenous people in all three provinces for which indigenous people development plans (known as Local Beneficiaries Participation Action Plans) have been prepared and will be implemented under the Project (PA, Schedule 2, Part B. 1).

332. In fact, as noted earlier, separate IPDPs had not been prepared. A few days later after discussion with the Social Development Unit (SDR) and EASES, the Legal Department and SDR proposed another approach to bring the Project into compliance with OD 4.20. *"This approach would basically be to establish that the ethnic minorities concerned are beneficiaries of the project, and as such no indigenous peoples development plan is needed. However, as stipulated under the OD, the Bank's concerns under those circumstances would have to be addressed by the project itself, and the provisions of the OD would need to be applied to the project in its entirety. The question ... to address is whether this is being done under this project, and if the answer is no, how can this be done."*²²³

²²² Following the negotiations, the Task Team Leader returned to his office in the Middle East and North Africa region. On his desk was a message from the Tibet Information Network in London, asking him to ring back. He did. The interview ended with him being informed that an article was planned for Tibet Information Network's newsletter.

²²³ Project Files (21 May 1999).

333. As noted, this is the approach that was finally adopted. Following significant revisions, the statement on compliance for Qinghai in the June 1, 1999 Project Appraisal Document was changed to read the same as it had for Gansu and Inner Mongolia in the November PAD, i.e.: "*The project is in compliance with ... OD 4.20 Indigenous People with a project design that reflects the concerns of minority nationalities as reported in the Social Assessments.*" On the other hand, the revised Project Information Document (PID) -- released to the public in June -- is inconsistent with that statement in that it repeats the November 28 compliance rationale. It says the "*The Project also addresses the provisions of OD 4.20, Indigenous People by adoption of the VSIP, designed for predominantly minority nationalities in Qinghai, based on a detailed Social Assessment.*"

334. In an interview with the Panel, a senior Bank expert on indigenous peoples expressed the opinion that the May 1999 Involuntary Resettlement Plan might serve as an adequate (albeit absolutely minimum) IPDP. The expert was of the view that a separate IPDP is required primarily when indigenous peoples are adversely affected. The Management Response counts the indigenous population of the Move-in area among the Project's "beneficiaries," rather than treating them as adversely affected. However, the Involuntary Resettlement Plan accepts that the indigenous people in the Move-in area are adversely impacted by the Project and therefore require mitigation under the requirements of OD 4.30 as well as an IPDP under the provisions of OD 4.20. Under these circumstances, the expert felt that the separate "Involuntary Resettlement Plan" might both constitute an acceptable IPDP and fulfill the requirements of OD 4.20.

The Panel's Findings

335. As just noted, Management decided that the "project as a whole" was the required IPPD during its post-April, 1999 review and revisions. Treating the project as a whole and, ergo, the project documents as a whole, as the IPDP, has presented the Panel with somewhat of a dilemma. Even more so when one realizes that the totality of the project documents grew significantly after April, 1999, and that Management reflected this larger body of documents in its Response to the Request for Inspection.

336. The steady increase in the totality of documents which pretend to constitute the IPDP presents some problems in assessing compliance. For example, the process outlined in paragraphs 16-18 of OD 4.20 implies that IPDPs should be assessed at time of Appraisal. The same is true of the PAD, VSIP, RAP, etc. In addition, if it is asserted that all project documentation constitutes the IPDP, then all

project documentation should be disclosed in order to elicit full public consultation and proper input into the IPDP itself. There is not, *per se*, a disclosure requirement of any kind in OD 4.20 (unlike, for example, the requirement in OD 4.30 that the Resettlement Action Plan be disclosed). However, paragraph 14 (c) of OD 4.20 does state that local organizations and NGOs, among others, should be involved in the development of the IPDPs.²²⁴ Local organizations, NGOs and other institutions can hardly provide their expertise and skills for development of an evolving IPDP unless the documents that constitute that IPDP are disclosed to them. Thus, even without a specific disclosure requirement, there is an implied requirement to make this information available to relevant institutions if, indeed, all of the documentation together somehow constitutes the required IPDP.

337. Another problem with retroactively viewing the Project as a whole and, ergo, the totality of project documents, as the IPDP, is that many documents required for an IPDP, according to OD 4.20, are still not available. Some simply cannot be prepared at this late stage because they could not benefit from the consultations and participation required to inform them. Too many of the basic decisions have been taken. For example, as noted earlier, paragraph 14 sets out the prerequisites of a successful development plan for indigenous peoples. Paragraph 14 (a) says that *"The key step in project design is the preparation of a culturally appropriate development plan based on full consideration of the options preferred by the indigenous people affected by the project."* (Emphasis added.) Obviously, in this case, the basic structure of the proposed irrigation and development project was decided prior to any public consultation; it was neither based upon, nor did it adequately inquire about let alone consider, options preferred by minority nationalities. Paragraph 14 (b) calls for studies to be made *"... to anticipate adverse trends likely to be induced by the project and develop the means to avoid or mitigate harm."* As spelled out in Chapter 4, the project area was so narrowly defined that it left out large numbers of settlements and people who would be directly affected by the Project. As a result, the assessments failed to address many of the most significant social and environmental impacts, among them the effects of induced development and other trends which could adversely affect minorities in the Move-in area.

²²⁴ See OD 4.20, *supra* note 39, at § 14 (c): "The institutions responsible for government interaction with indigenous peoples should possess the social, technical, and legal skills needed for carrying out the proposed development activities. Implementation arrangements should be kept simple. They should normally involve appropriate existing institutions, local organizations, and nongovernment organizations (NGOs) with expertise in matters relating to indigenous peoples."

338. Project files also show that the Involuntary Resettlement Plan was produced in May, 1999, though the data derives primarily from material within a section of the Implementation Plan for Voluntary Settlement. Additional negotiations with the borrower were also undertaken during this period. A so-called "pre-pilot" phase was added, although the Panel has been unable to find any official reference to "pre-pilot" phases in its search of Bank procedures. In any event, it is difficult to understand how the effects of tiny pilot and pre-pilot resettlement populations in an irrigated patch (or patches) can test the potential effects of the full-scale project in several key areas that should be covered by an adequate IPDP. Two examples of many: the effects of induced development and the effects on nomadic pastoralists.

339. Finally, the Panel wishes to call special attention to the procedures under which a new member of the EASSD Unit, with no background in China and no knowledge of Qinghai, ended up with the responsibility for recommending final clearance of the social components of the Project. In the Panel's view, this should be a matter of general concern.²²⁵ It is true that the EASSD was in the process of reorganization and recruitment at the time. Nonetheless, it is asking too much of any expert, regardless of his or her professional competence. And, as in the case of environmental screening, discussed in Chapter 7, it was unnecessary. The Bank has several social experts, some with well-earned global reputations in the field of indigenous peoples, who could have offered advice and assistance, had the organization been able to take advantage of their presence. Some were brought in after the late April outbreak of public concern, but that was much too late, long after the clearances required by the OD 4.20 had been given.

340. After reviewing the above, the Panel finds that Management's decisions concerning identification, preparation and appraisal were not in compliance with the process and procedures mandated by paragraphs 16-18 of OD 4.20. The reasons for this finding are clearly set out above.

10.7 Status of Haixi Autonomous Prefecture

341. Concern has been expressed about whether the Mongolian and Tibetan Autonomous status of Haixi prefecture would remain viable after this transfer of non-Mongol and non-Tibetan settlers may reduce indigenous populations to less than one-quarter of the total population. There is obviously no Bank policy on the status of

²²⁵ The expert joined the Bank as a consultant on resettlement issues just two months earlier, with a background in anthropology in Southeast Asia.

sub-national boundaries in any member country. However, the autonomous status of this Prefecture might be relevant to OD 4.20 because its loss would constitute an "adverse effect" of the Project on minority nationalities. In this regard, the Request for Inspection raised two issues: (1) "cultural dilution," and whether that should be considered an adverse impact; and (2) the status of Haixi autonomous prefecture.²²⁶

342. At the sub-prefectural level, the closer one gets to the irrigation site, the greater the "diluting" effects of the in-migration of settlers from elsewhere, especially if one focuses on the Tibetan and Mongol populations for whom the autonomous status of this prefecture was created. In Dulan County (the affected county within the prefecture), Tibetan and Mongol ethnic composition decreases from 36.8% before settlement to 20.7% after settlement. In the Project townships themselves (including the Han and Hui-populated irrigated farming areas), Tibetan and Mongol ethnic composition decreases from 59.5% before the settlement to 10.8% after the settlement. Finally, at the Project site itself (the current dryland pasturage as well as the irrigated plots scheduled for upgrading and integration into the Project's irrigation system), the Mongol population will drastically decrease from 69.9% to just 4.5%,. The small Tibetan population at the Project site itself will slightly increase proportionally as a result of the settlement, from 3.5% to 5.8% of the total. From these figures it is clear that the "diluting" effects of the settlement will be more strongly felt the more closely one gets to the irrigation site itself.

343. One of the specific adverse effects mentioned in the Request for Inspection was the possible change in the autonomous status of Haixi Prefecture. During an interview with staff of the National Minorities Institute in Xining, the Inspection Team asked about the possible loss of autonomous status and were assured that it would not happen. Specifically, the question was answered by noting that the population of the Inner Mongolian Autonomous Region was now only 16% Mongolian but its autonomous status had not changed. It might be mentioned, however, that Dreyer's (1997) summary of China's policy toward ethnic minorities notes that territorial

²²⁶ The Request states "ICT and other experts have concerns as to whether the Mongolian and Tibetan Autonomous status of Haixi prefecture will remain viable after this Bank-financed population transfer has reduced indigenous populations to less than one quarter of the total population. The Bank's Summary Paper asserts that it has received a written guarantee from "Qinghai Province" that the autonomous status of Haixi would not be effected by the significant change in demographics brought about by the project. According to the ICT, however, this guarantee cannot be relied upon as it was not issued by the proper authority. It is the National People's Congress and State Council who have the ultimate authority in designating autonomous status. A guarantee from a different political entity, such as Qinghai Province, would be meaningless. In Dulan County itself Tibetans and Mongols together would be outnumbered by Hui, raising further concerns about the future of Mongol and Tibetan autonomous status within the county itself." See supra note 3, at pp. 5-6.

adjustments, and adjustments in autonomous status, have historically been made as China's minorities policies have changed through time. For example, she notes that in 1968 "a portion of Inner Mongolia that contained a large Han majority was transferred to a contiguous province. And at least one minority autonomous prefecture in Yunnan was abolished."²²⁷ However, she notes that during the 1970s, in a period of liberalized policy toward minorities, China also made territorial adjustments that were beneficial to minorities: "The portion of the Inner Mongolian Autonomous Region that had been detached during the Cultural Revolution was returned. An autonomous prefecture that had been abolished during the Cultural Revolution was revived, and several new autonomous areas were created. The autonomous township system, defunct since the Great Leap Forward, was re-created. A fifty-fifth nationality, the Jinuo, was officially recognized."²²⁸

344. Among the Project refinements added after negotiations were re-opened with the Government of China, one of the draft Supplemental Letters to the Legal Agreements addresses this point. Like the other Supplemental Letters, this one (Annex 6) was signed on December 30, 1999 as a representation related to the making of the loan and credit for this Project. Unlike the other Supplemental Letters, however, which were signed by representatives of provincial authorities, this Letter was, according to Management, signed by a representative of the national (not provincial) government. The text reads, in part: "*The Borrower hereby represents to the Association and to the Bank that the implementation of Qinghai's Respective Part of the Project, including the Qinghai Voluntary Settlement Implementation Plan, will not affect the status of Qinghai's Haixi Prefecture as a Mongolian and Tibetan Autonomous Prefecture, and that Haixi Prefecture will continue to maintain this status even after the Qinghai Settlement Beneficiaries move into the Qinghai Settlement Area. The Association and the Bank may rely upon this representation in making the Credit and the Loan for the Project.*"²²⁹

345. This Supplemental Letter does not state for *how long* this status will be maintained after the Bank-financed resettlement takes place and does not address changes in autonomous status that might result from any additional internal population movements indirectly resulting from the Project.

346. As provided in paragraph 15 of the Resolution that established the Panel, the Chairman of the Inspection Panel requested on March 28, 2000 a legal opinion from

²²⁷ See J. T. DREYER, *supra* note 171, at pp. 351-392.

²²⁸ *Id.*, *supra* note 227.

²²⁹ See Supplemental Letter No. 5, annex 11 to the Management Response, *supra* note 12.

the Vice President and General Counsel on the nature and enforceability of the representations contained in this Supplemental letter. The General Counsel issued a legal opinion dated April 19, 2000, where he states that: *"As a legal matter, the Representations constitute a statement by the Borrower of fact or an interpretation of Chinese law. They confirm that, as a matter of Chinese law, the implementation of the Project, including population transfers, will not, in and by itself, alter the status of Haixi Prefecture as a Mongolian and Tibetan Autonomous Prefecture. The Representations further state that the Bank and Association may rely upon this interpretation of Chinese law in making the Loan and Credit."*

347. More Specifically he adds that: *"Should the interpretation of Chinese law prove to have been wrong, the Representations would provide a legal basis for the Bank and the Association to exercise their respective suspension remedies under the provisions of the applicable General Conditions. Pursuant to these provisions, the Bank (or Association) may suspend the right of the Borrower to withdraw the Loan (or Credit) proceeds if "a representation made by the Borrower in or pursuant to the [Loan Agreement] [Development Credit Agreement], or any statement furnished in connection therewith, and intended to be relied upon by the [Bank] [Association] in making the [Loan][Credit], shall have been incorrect in any material respect."* The Representations were provided as a statement furnished in connection with the Loan Agreement and Development Credit Agreement, and were explicitly intended to be relied upon by the Bank in making the loan and the Association in making the Credit. If, as a matter of law, Haixi Prefecture were to lose its status as an autonomous prefecture as a result of the Project, the Representations, which addressed specifically this status, would have been incorrect in material and significant respect. We are therefore satisfied that the representations provide an adequate basis to suspend disbursements and cancel unwithdrawn credit and loan proceeds in the event the Representations prove to have been incorrect in their assessment of the status of Haixi Prefecture as an autonomous prefecture." He concludes that: *"The Management Response to the Request for Inspection therefore correctly states that ' [T]he Supplemental letters to the Legal Agreements... agreed with the Chinese authorities introduced a number of refinements to the Project, including:... [A]ssurances from the Borrower that the administrative status of the Haixi Mongol and Tibetan Autonomous Prefecture will remain unchanged [as a result of the project]."* Finally, he notes that *"The Representations discussed above are to be distinguished, however, from a [contractual undertaking] of the Borrower that the status of Haixi Prefecture will not be altered under any circumstances for reasons that are unrelated to the implementation of the Project. Such a contractual undertaking*

was neither sought nor obtained. No statement has been made in the Management Response to the effect that such a commitment has been sought or obtained.”

348. Annex 6 contains the full text of the Supplemental letter and the General Counsel's legal opinion.

Chapter 11

Involuntary Resettlement

349. *“Development projects that displace people involuntarily generally give rise to severe economic, social, and environmental problems: production systems are dismantled; productive assets and income sources are lost; people are relocated to environments where their productive skills may be less applicable and the competition for resources greater; community structures and social networks are weakened; kin groups are dispersed; and cultural identity, traditional authority, and the potential for mutual help are diminished. Involuntary resettlement may cause severe long-term hardship, impoverishment, and environmental damage unless appropriate measures are carefully planned and carried out.”*²³⁰

350. The Bank’s OD 4.30 on Involuntary Resettlement opens with this stark appreciation of the impact that development projects can have on the people who are involuntarily displaced by them. Given this, the OD states that the first objective of the Bank’s resettlement policy is *“to ensure that the population displaced by a project receives benefits from it.”*²³¹

351. The OD goes on immediately to add that: *“Involuntary resettlement is an integral part of project design and should be dealt with from the earliest stages of project preparation.”*²³² It then spells out a number of policy considerations to be factored into project design. The first two of these are that: *“(a) Involuntary resettlement should be avoided or minimized where feasible, exploring all viable alternative project designs...[and] (b) Where displacement is unavoidable, resettlement plans should be developed. All Involuntary resettlement should be conceived and executed as development programs, with resettlers provided sufficient investment resources and opportunities to share in project benefits.”*²³³ *...Particular attention should be paid to the needs of the poorest groups to be resettled.”*²³⁴

²³⁰ See OD 4.30, *supra* note 59, at § 2.

²³¹ See OD 4.30, *supra* note 59, at § 3.

²³² See OD 4.30, *supra* note 59 at § 3 and 28.

²³³ Specifically, subparagraph (b) goes on to state that “Displaced persons should be (i) compensated for their losses at full replacement cost prior to the actual move; (ii) assisted with the move and supported during the transition period in the resettlement site; and (iii) assisted in their efforts to

352. The Qinghai Project involves two types of resettlement, voluntary and involuntary, and, in assessing compliance, a clear distinction must be made between the two, since OD 4.30 only applies to involuntary resettlement. This Chapter begins with a brief discussion of the "voluntary" vs. "involuntary" nature of the resettlement, focussing initially on the Move-out area. Turning to the Move-in area, the Chapter questions whether the number of people identified by Management to be involuntarily resettled is correct. It then examines the adequacy of the compensation offered to those who were identified and discussed the content of the Involuntary Resettlement Plan. It concludes with a discussion of Process Compliance.

11.1 Voluntary and Involuntary Resettlement: Move-out Area

353. Management contends that the nearly 60,000 migrants from the Move-out area are "voluntary" resettlers and therefore not covered by OD 4.30. In Management's view, OD 4.30 applies only to the 4,000 individuals in the Move-in area considered to be "involuntarily" affected. And, in its view, an adequate Involuntary Resettlement Plan has been prepared to cover them. The elements that now make up this Plan were originally included within the January, 1999 *"Voluntary Resettlement Policy Framework and Action Plan"* and the April, 1999 *"Report on Implementation Plan for Voluntary Migration Resettlement"*. (VSIP). Later, however, following the late April outbreak of public concern, those provisions in the VSIP relating to involuntary resettlement were revised and brought together as a separate annex to the VSIP.

354. During its discussions with people in the Move-out area, the Team was able to confirm that they felt they had a choice whether they could move or not, and most interviewed wanted to move to Haixi Prefecture. When asked to describe the Move-in area, many described it as fertile with irrigation water, and having schools, hospitals, electricity, and other improvements. Most were not informed, however, of the desert climate, poor soils, danger of salinization, and the long start-up time needed before farms would be functioning in the new irrigation areas. Also, when asked, most did not recall being offered any other alternative to improve their condition except for the chance to become a migrant to Haixi. Yet, when pressed on whether they had the choice of staying or leaving, they agreed they had the choice.

improve their former living standards, income earning capacity, and production levels, or at least to restore them." See OD 4.30, *supra* note 59, at § 3.

²³⁴ See OD 4.30, *supra* note 59, at § 3.

355. It is difficult to say whether the choice was an informed one in many instances. In any event, OD 4.30 does not give clear guidance on the quality of full and informed choice that is needed to consider a resettlement as "voluntary." An English translation of a brochure that had been distributed to farmers describing the Project includes one 3-point section on "Risks in Resettlement Areas." Its entire text reads as follows: "1) After moving in, if there is an insufficient supply of fuel, the resettlers might be forced to cut the windbreaks and sand consolidation vegetation in the surrounding areas. This may lead to soil desertification in the cutting areas; 2) If farmland shelter belts or windbreaks are not adequately developed into a system in a timely manner or are destroyed, it will cause soil desertification or will result in a reduction of crop yield in the development area; 3) The accidental break down of the water supply systems and/or irrigation facilities will result in a reduction in agricultural, forestry and livestock production, thus affect the incomes of the resettlers." The text concludes with the note that "The above risks can be avoided by taking certain engineering or other preventive measures."²³⁵

356. Most of the farmers interviewed by the Team understood that they could move back within the first two years. This is important when considering whether the resettlement is "voluntary." The VSIP, however, appears to raise an obstacle to their return. It states that those who do return would have to repay their government subsidy of 850 yuan, and this might be difficult for a poor migrant. The "Notice to Resettlers" clarifies the VSIP in this regard, however. It states that these direct subsidies may be repaid "in cost or in kind."²³⁶ If the resettler decides to move back, the subsidy will be repaid from the added value of the housing constructed in the Move-in area, which will be distributed to others.²³⁷ The Panel is satisfied that it is possible for a resettler to rescind his decision to resettle within the first two years, with the families of the resettlers continuing to farm their land during a transition period. This supports Management's contention that the choice to resettle from the

²³⁵ QINGHAI PROVINCIAL PMO, undated, "Notice to Resettlers (Guide for Resettlement Applicants)", at Section 9, Risks in Resettlement Areas.

²³⁶ It provides: 850 yuan per person, including 240 yuan relocation fee, 500 yuan house construction fee, and 110 yuan fuel fee. These are in addition to the health check-up and subsidies for food and accommodation during the move; including first-year production costs for seeds, fertilizers and agrochemicals as well as exemption from the Land Contracting Fee in the first two years, and some agricultural taxes.

²³⁷ See QINGHAI PROVINCIAL PMO, *supra* note 235, at Section 10, point 12: "In case the resettlers decide to move back to their original homes due to certain reasons such as their being unable to adapt to the living or production conditions in the move-in area, the government will not impose any form of penalty or punishment. All the expenses incurred from moving back will be borne by the resettlers themselves. The government resettlement subsidies for those people shall be repaid from their valuated housing properties in the move-in area, and redistributed to other settlers."

Move-out area is a voluntary one.²³⁸ **Thus, the Panel accepts Management's view that OD 4.30 does not apply to the migrants from the Move-out area.**

11.2 Size of the Involuntarily Resettled Population: Move-in Area

357. OD 4.30 applies to those people adversely affected by the Project either because of their physical displacement from their habitat or place of work or business, or because their livelihood is adversely affected by the Project in the event that they are not being physically displaced. It includes affected people with legal rights, under domestic law, to the asset being taken and/or affected by the Project, as well as those having only physical possession of such assets. This applies regardless of the fact that such possession is deemed to be illegal under the pertinent domestic legislation.²³⁹

358. In Chapter 4, the Panel found that the boundaries of the 'project area' were far too narrowly defined by Management, with the result that some people affected by the Project, including some who belong to minority nationalities, have been left out of the social and environmental assessments of the Project. It seems very likely that the population of persons who will be displaced by the Project is larger than that accounted for in Project documents. There are several reasons for this.

359. According to the Involuntary Resettlement Plan, the population of affected Mongol transhumant pastoralists who will be displaced by the irrigation system numbers 2,411 persons in 289 herder households. Based on population figures recently provided to the Panel, however, it appears that the population of Mongol

²³⁸ The Panel would add one caveat, however. During its short visit to the Move-out area it did stumble upon one case of involuntary resettlement among some families in one Move-out village, Daheigou, which borders on a local nature reserve. A senior Chinese official informed the Panel that a high priority had been given to moving the entire village so that the nature reserve could be expanded. At the same time, some villagers informed the Panel that certain families would have chosen to stay in Daheigou rather than move to Haixi, because they did not have adequate labor in the family to begin a new farm in Haixi. Nevertheless, they decided to move since they could not maintain a viable village on their own. If this information is correct, the provisions of OD 4.30 should be applied to the involuntary resettlement from this village.

²³⁹ In view of paragraphs 3 (e) 11, 14 (c) and 15 of OD 4.30 the term "displacement" has been interpreted by the Legal Department and applied in Bank practice to partial loss of assets, loss or drastic reduction of productive assets or other means of livelihood. Memo from I. Newport to H. Vergin, August 29, 1994, cleared by Mr. Shihata; Memo from Sherif Hassan, LEGOP to All Operational Lawyers, February 6, 1996.

herders currently taking their animals twice yearly through the proposed irrigation site is significantly larger than the 2,411 persons cited above.²⁴⁰

360. In fact, during the Inspection Team's visit to the Project area, information was provided by Qinghai provincial authorities (not previously available in Project documents) on the locations of several Mongol villages along the northern periphery of the proposed irrigation areas (see Map 2). These villages have (according to figures these authorities provided) a total population of 1,827 persons.²⁴¹ The Inspection Team also requested and later received additional information on populations of nomadic Mongol pastoralists in other nearby villages, one of which (Kuxuetu) had been visited by the Inspection Team. Within these villages, "2,396 Mongols out of the 2,576 [total Mongol population] are engaged in livestock production."²⁴² Many of these villages would be well within seasonal "herding distance" for pastoralists. These new documents, obtained during a brief visit to the area, indicate a nearby Mongol pastoralist (or at least livestock-producing) population of 4,223 persons.

361. The May 1999 Involuntary Resettlement Plan makes no provision for anyone being displaced by the construction of the main supply canal for the irrigation system. This is because a policy framework for potential involuntary resettlement due to civil works and construction had already been developed and the exact location of the supply canal had not been determined. This canal involves a 29 km route from the Xiangride river to the Keri Dam and a further 56 km route from the Dam to the irrigation site, all shown on Map 2. It passes through Han, Tibetan, and other villages. When the Inspection Team visited these villages, leaders did not know exactly where it would pass, but wherever it does pass, it can hardly avoid affecting landholdings or land usufruct rights along the route.

362. Unfortunately, the Panel was not made aware of the existence of the Xiaoxiatan Irrigation Sub-District of the Project, just north of the prison farm, prior to its visit to Qinghai.²⁴³ Hence, the Inspection Team did not visit it. The documentation available to the Panel does not indicate whether or not this Sub-District, whose

²⁴⁰ See Involuntary Resettlement Plan, *supra* note 56.

²⁴¹ Wulasitai Village (which was said to have a population of 218 persons); Nuomuhong (183); Hatu (182); Xiatsu (243); Buluoge (173); Tuotuo (191), Keri (392), and, south of the Xinglong and Balong areas, Yarihatu (245) —totalling 1,827 persons in these villages alone. Population figures and map were hand-drawn by officials in Dulan County.

²⁴² Document provided to the Inspection Panel, "Re: Mongols in Xiangjia Township." November 8, 1999. Qinghai Provincial Project Management Office. None of the Mongol village names in this document are the same names as villages listed in the footnote immediately preceding.

²⁴³ The Inspection Team was made aware of it during the long process of creating Map 2.

supply canal will be linked to and fed by the supply canal that serves the prison farm (see Map 2), affects any existing residents, farmers or herders.

363. The Environmental Assessment (EA) did not assess the downstream effects of damming the Xiangride river and diverting the water to irrigation uses. On the face of it, this could have major impacts on the seasonal drainage areas northwest of the Project site, which lead into a wetland used by migratory wildlife and also by many pastoralists. There is no indication that the effects of this diversion on the nomadic pastoral economy was taken into account in determining the number of people affected or the level of compensation offered under the terms of OD 4.30.²⁴⁴ Without an assessment of the downstream effects of the Project, it would have been difficult to do so.

364. This Report cannot substitute for the studies that should have been undertaken either to determine the proper boundaries of the Project, and hence the numbers of people affected or displaced, or to assess the full range of effects on them. **However, it seems that the Project displaces a larger population than that included in the Involuntary Resettlement Plan, and thus it is not in compliance with OD 4.30.**

11.3 Compensation for the Involuntarily Displaced

365. Paragraph 4 of OD 4.30 requires the development of a plan that will assist involuntarily resettled persons with their move, and will provide fair compensation for their loss (whether they lose the land itself, or the use of the land, or other productive resources). It states in part that “...*Displaced persons should be (i) compensated for their losses at full replacement cost prior to the actual move; (ii) assisted with the move and supported during the transition period in the resettlement site; and (iii) assisted in their efforts to improve their former living standards, income earning capacity, and production levels, or at least to restore them. Particular attention should be paid to the needs of the poorest groups to be resettled.*”

366. Referring to the 63 herder households with leasehold rights in the proposed irrigation area, the May 1999 Involuntary Resettlement Plan indicates that the herders

²⁴⁴ See OD 4.30, *supra* note 59, at § 3 (e): “Land, housing, infrastructure, and other compensation should be provided to the adversely affected population, indigenous groups, ethnic minorities, and pastoralists who may have usufruct or customary rights to the land or other resources taken for the project. The absence of legal title to land by such groups should not be a bar to compensation.”

will lose "... 17% of their contracted pastures and only 2.5% of the available pastures." Of these two figures, the important one is the 17 percent of their contracted pastures. Only winter-spring pasture is contracted and, in the life of a nomadic herder, access to winter-spring pastureland is the overriding constraint on his operation. Summer pastures are vast in size, including high-altitude slopes. The critical time when food is scarce and herds must be fed is in winter and early spring.

367. The method of compensation chosen for the herders who are to be involuntarily resettled is "land-for-land." Herders may receive other pastureland in compensation for the land they lose, or they may receive irrigated land. If they choose the latter, they receive one hectare of irrigated land for every 11.4 hectares of contracted grazing land they now have. The Involuntary Resettlement Plan (point 6) explains that: "*Each member of the affected 63 herder households will be provided a 30-year lease for irrigated land to replace their leased grazing lands, which they can use for growing either grain or forage crops. The quantity of replacement land is based on the conservative assumption that irrigated land is 11.4 times more productive than unimproved and rain-fed pastureland.*"²⁴⁵

368. This ratio of 1:11.4 is extraordinarily precise, considering that no scientific basis is given for it, nor is it clear whether the productivity referred to is based on biomass produced or some other measure. In any case, many factors will determine relative productivity, including what crop is cultivated in the irrigated land, the quality of that crop's germ plasm, and the skill of the farmer. Furthermore, the quality and type of pastureland observed in the Move-in area varies considerably.

369. Apparently, all of the herders have chosen to accept allocations of irrigated land, rather than receive compensating pastureland. In the Panel's view, neither choice seems to offer adequate compensation when considered against the Bank's policy just noted above.

370. Concerning pastureland (presumably, winter-spring pastureland), the Inspection Team was unable to determine exactly what pastureland might have been offered, or where it would have been located. Nonetheless, it is difficult to understand how an offer of equivalent winter-spring pastureland could have been a viable one. Some 352 persons in 63 herder households stand to lose a part of the land that is proposed for the irrigation site itself, which is currently leased to them as winter-spring pasturage. Had the herders in this area accepted the offer of

²⁴⁵ See INVOLUNTARY RESETTLEMENT PLAN, *supra* note 56, at Point 6.

pastureland elsewhere equal to the portion of their land taken over for the irrigation site, they presumably would still have maintained their rights to that portion of their land *not* taken over for the site.²⁴⁶ Since winter-spring pastureland adjacent to the irrigation site is fully allocated, the only equivalent land that herders might have been offered would probably have been some considerable distance away. If so, accepting such land in compensation could have required some of them to split their herds between two winter-spring grazing grounds. Also, Project documents do not address the important question of whether still other pastoralists would have to be displaced (and thus also compensated) for these involuntarily resettled pastoralists to have been offered new winter-spring pasturage elsewhere.

371. The offer of equivalent winter-spring pastureland elsewhere does not seem in itself to provide adequate recompense for the nomadic pastoralists with leasehold rights in this area, and indeed it seems that none has yet chosen it. Instead, all seem to have chosen the only other option they were given -- that is, to receive a plot of irrigated land. Under the exchange, a herder receives a plot of irrigated land 1/11.4 the size (that is, 8.77% as large as) his formerly contracted grazing land; i.e., his winter-spring pasture. This is in addition to a house plot, which will be in a village site together with other herders.

372. Adequate baseline data on pastoralism, including the data on land use and inheritance that would allow a proper assessment of the compensation offered, are unfortunately lacking for this Project. OD 4.30 does encourage a careful review of existing land tenure and transfer systems. Under the heading "*Land Tenure, Acquisition, and Transfer*," paragraph 17 states that: "*Resettlement plans should review the main land tenure and transfer systems, including common property and nontitle-based usufruct systems governed by locally recognized land allocation mechanisms. The objective is to treat customary and formal rights as equally as possible in devising compensation rules and procedures. The plan should address the issues raised by the different tenure systems found in a project area, including (a) the compensation eligibility of land-dependent populations; (b) the valuation procedures applicable to different tenure types; and (c) the grievance procedures available for disputes over land acquisition. Plans should contain provisions for conducting land surveys and regularizing land tenure in the earliest stages of project development. Planning should also anticipate the approximate time needed to acquire and transfer land.*"²⁴⁷

²⁴⁶ In addition, they might have other reasons to stay in the Project area, such as access to locally available products, their family and personal contacts, and other reasons of a similar nature.

²⁴⁷ See OD 4.30, *supra* note 59, at § 17.

373. Although envisaged by the OD, it appears that this work was not done. Without the results of this work, it is difficult to assess the adequacy of the compensation offered, not only for the Panel but also, in the first instance, for Management. Indeed, it is difficult to understand how the OD's policy objectives can be achieved without this information. According to objective 3(b), for example, "*Displaced persons should be (iii) assisted in their efforts to improve their former living standards, income earning capacity, and production levels, or at least restore them.*"²⁴⁸ To achieve this, one requires a clear understanding of their "*former living standards, income earning capacity, and production levels.*"

374. No studies are cited in the Project documentation to show that a hectare of irrigated land has 11.4 times greater productivity than "unimproved" land but, even if this is accurate as a measure of forage output, several other factors need to be considered. Management is endorsing the provision of compensation for the loss of one productive system of great antiquity in this region with access to another new and very different productive system. A simple measure of comparative productive potential from irrigated and unimproved pasture, however, cannot fully compensate for the changes and losses the pastoralist may incur.

375. Winter-spring and summer pasture, for example, also allowed herders access to medicinal and other "crops" besides fodder; access to these is reduced when the pastoralist becomes sedentary. This should be factored into the determination of fair compensation. Though plants of special importance to herders may disappear first, the environmental degradation of pastureland nearest the Project could have a more serious impact on their future lives. In fact, this is listed among the "risks" of the Project mentioned in the Guide for Resettlement Applicants distributed in the Move-out area cited earlier.²⁴⁹ It is also listed by Wu as a common impact of programs that settle nomadic pastoralists.²⁵⁰ Payment for loss of an important productive resource currently available to these pastoralists is not included in the compensation package offered to them.

²⁴⁸ Id., *supra* note 247.

²⁴⁹ See QINGHAI PROVINCIAL PMO, *supra* note 235, at Section 9.

²⁵⁰ See WU NING, Impact of Changing Agropastoral Systems on Agrobiodiversity: A Case Study of the Qinghai-Tibetan Plateau in TEJ PARTAP & B. STHAPIT (eds.), *Managing Agrobiodiversity: Farmers' Changing Perspectives and Institutional Responses in the HKH [Hindu Kush-Himalayan] Region*. Kathmandu: International Centre for Integrated Mountain Development, International Plant Genetic Resources Institute (1998) at pp. 115-132, <http://www.icimod.org.sg/focus/agriculture/agrobio4.htm>, at p. 124.

376. During its visit to existing irrigation sites, the Team was informed that farmers must accept a regular reallocation of their holdings of irrigated plots, usually downwards, to accommodate any increase in population that may have occurred in the interval. If this is the case in this Project, the former pastoralist could lose some of the farmland after the expiration of his leases from the government. He could thus also lose the traditional rights of inheritance that he might have had if he had remained a pastoralist. Studies of systems of traditional inheritance in this area (with their own system of enforcement and sharing among families) do not appear to have been required by the Bank, although the OD calls for it. They should be studied and if it is found that there is a loss of long-term family security inherent in this switch to sedentary agriculture, that should also be considered in arriving at fair compensation.

377. Similarly, the existing social organization with its system of "insurance" based on family ties will also be modified, possibly reducing intrafamily support in times of illness or crisis. Wu's 1998 case study of changing agropastoral systems on the Qinghai Plateau is particularly insightful here. He notes that one of the most obvious negative effects of changing from a highly mobile herding system to a semi-sedentary way of life is the breakdown of social structures which previously served as a form of social security within herding communities.²⁵¹ This "insurance" system within the nomadic pastoral society should be studied and, if it is found that it will be disrupted, that should also be factored into compensation.

378. There are other factors to be considered as well. Dryland pastoralists, for example, may get less water per hectare, but the water is free. Even though (like other resettlers) irrigated plot-holders may receive irrigation water free in the first 2 years, they will later be charged for the water; this added cost is not calculated in the 1:11.4 land-for-land compensation formula offered.

379. No information is given on taxation of the land currently used by pastoralists. It may be effectively untaxed. The irrigated plot, however, is subject to taxation. The

²⁵¹ Wu's discussion hints at other forms of cultural loss that can also ensue, which would be difficult to set a price upon for compensation. For example: "*Government thinking is perhaps that it can help secure food and water supplies for pastoralists through settlement in order to improve the output of pastoral products. However, this oversimplifies the diversity of the real situation and undoubtedly neglects some of the diversity in pastoral societies. A nomadic economy requires different strategies for short-term productivity and longer-term insurance. Moreover, pastoralists also use their animals to acquire prestige and influence in their societies and for other purposes. All of these are not strictly justifiable on economic grounds alone. A nomadic society works as an entirety in response to changes in the environment and the availability of resources. Every attempt in which only part of a system is changed will lead to an imbalance in the whole system.*" See WU NING, *supra* note 250, at p.125.

lease is for 30 years, and is exempt from taxes only in the first 3 years. This may be a new cost to the pastoralists who receive the plots and the Panel found no evidence that this has been taken into account in determining the compensation package.

380. Unlike the resettlers from the Move-out area, who may return to their homes within the first two years, the pastoralists who join the Project will no longer have homes to which they can return, should they change their minds. Perhaps they too should be given a similar option or be compensated for the lack of it.



Figure 25 a. Inspection Team Interviewing a Mongol herder (second from right) about the proposed corridors, at site of proposed Xiangride-Balong Irrigation Sub-district, Dulan County. **Fig b.** The Team using a map to try to locate proposed corridors (which had not been charted), with Qinghai provincial authorities, at the site.

381. Finally, at the time of the Team's visit to the irrigation site, many questions remained unanswered about the corridors planned to allow the pastoralists to pass their herds through the irrigation site on their twice yearly transhumant migrations between winter-spring and summer-autumn pastures. Note that all 63 herder households having leasehold rights in the Project's irrigation area, as well as the 248 herder households who pass through the area twice yearly, have been offered irrigated plots. If pastoralists try to maintain a herding "option" for some security against a breakdown of the irrigation system, or a bad year on the irrigated plot, a properly functioning system of corridors through which herds can pass will be essential. The adequacy of this key component of the compensation package had not been thought through at the time of the Inspection Team's visit to Qinghai and cannot be assessed from Project documents.²⁵²

²⁵² See Chapter 8, e.g. §§ 227 and 228.

382. Admittedly, nomadic groups in this region have never been fully self-sufficient, and have always depended upon sedentary agricultural groups and on trade. The Management Response notes that this transformation continues a trend in which pastoralists have become settled agriculturists. Wu's study of pastoralism on the Qinghai Plateau emphasizes that this trend is not purely spontaneous, but is largely the result of centrally planned development strategies. He states that: "*For some decades, highland development strategies in China were not related to the motives and aims of the pastoralists. Interventions focussed on modernising or fundamentally transforming the pastoral way of life. Individual pastoralists have sought to cope with pressures of intervention by such adaptive mechanisms as labour migration, increase in herd size, diversification of pastoral production, and the pursuit of education [. . .] The present crisis derives from unsustainable 'modernisation' such as the pressure to absorb pastoralists into the non-pastoral economy (settlement programmes, wage policies favouring migrant labour, forced commercialisation, a relative drop in the value of pastoral products) and measures that directly deprive pastoralists of their former share in economic and political life (the expansion of farming, restocking programmes, and the destruction of traditional systems of land tenure). The result of these powerful forces is that pastoralism is increasingly being relegated to people too old to change, lacking the skills needed to leave, or too far away from centres of power for anyone yet to care.*"²⁵³

383. In any event, the presence or absence of the trend mentioned by Management, and the disputed causes of it, are hardly relevant from the perspective of OD 4.30, since *these* nomadic pastoralists are *not* yet in fact settled agriculturalists. It is their current productive system and resource-use that are being displaced by the Project and *that* is what must be compensated.

11.4 Contents of the Involuntary Resettlement Plan

384. Under the heading of "Plan Content," OD 4.30 sets out the topics that "should normally" be covered in an involuntary resettlement plan. Paragraph 5 states that: "*The content and level of detail of resettlement plans, which will vary with circumstances, especially the magnitude of resettlement, should normally include a statement of objectives and policies, an executive summary, and provision for the following: (a) organizational responsibilities (para. 6); (b) community participation and*

²⁵³ See WU NING, *supra* note 251, at p.120.

integration with host populations (paras. 7-10); (c) socioeconomic survey (para. 11); (d) legal framework (para. 12); (e) alternative sites and selection (para. 13); (f) valuation of and compensation for lost assets (paras. 14-16); (g) land tenure, acquisition, and transfer (para. 17); (h) access to training, employment, and credit (para. 18); (i) shelter, infrastructure, and social services (para. 19); (j) environmental protection and management (para. 20); and (k) implementation schedule, monitoring, and evaluation (paras. 21-22).” Paragraph 5 concludes that: “Cost estimates should be prepared for these activities, and they should be budgeted and scheduled in coordination with the physical works of the main investment project.”²⁵⁴

385. The brief 7-page May 1999 “Involuntary Resettlement Plan” does not address points (a), (c), (e), (h), or (j) at all; and, as may be expected in a document of this size, it provides only a very cursory review of all other points. Yet, the ODs preceding paragraph 4 states that: *“Where large-scale population displacement is unavoidable, a detailed resettlement plan, timetable, and budget is required.”*²⁵⁵

386. The 7-page “Involuntary Resettlement Plan” is presented to fulfill this requirement. As noted earlier, some of the elements that now make up this Plan were originally included within earlier versions of the Voluntary Settlement Implementation Plan (VSIP). Later, following the late April, 1999 outbreak of public concern, those provisions in the VSIP relating to involuntary resettlement were revised and brought together as a separate document.

387. This 7-page document does not include a budget or a timetable. The absence of a timetable may well be reasonable given the nature of the process. The Plan argues understandably that the Voluntary Settlement Implementation Plan will essentially determine the pace at which the involuntary resettlement plan proceeds.²⁵⁶

²⁵⁴ See OD 4.30, *supra* note 59, at § 5.

²⁵⁵ See OD 4.30, *supra* note 59, at § 4.

²⁵⁶ Specifically, it states that *“The Qinghai VSIP is highly complex and calls for detailed planning and phasing of a multitude of activities. [...] The technical and logistical complexities of the VSIP will be tested through a small pilot program to settle about 200 families in one village. The pilot program [...] will not interfere with current land use patterns of the herders or farmers living in the area, nor will it result in loss of their shelter, productive assets or access to pastures. Irrigation will be through use of ground water and [...] pumps [...] to avoid [...] developing major irrigation works during the pilot phase. [...] Because no resettlement-related activities are to be undertaken until pilot program results are evaluated, it is impossible at present to provide a timetable.”* See INVOLUNTARY RESETTLEMENT PLAN, *supra* note 56, at points 13-15.

388. OD 4.30 suggests that much greater attention should have been paid to community participation, even if the population to be involuntarily resettled were not mostly minority nationalities.²⁵⁷ It also calls for baseline data on the social and cultural institutions of the resettlers and their new hosts.²⁵⁸ It might be noted that the documentation required to develop an IPDP, as required by OD 4.20 (and cross-referenced with OD 4.30), would have also involved much greater public consultation with the Mongol and other herders.

11.5 Process Compliance

389. OD 4.30 not only describes the policies to be followed in dealing with involuntary resettlement. It also stipulates the process and procedures to be followed in developing an involuntary resettlement plan within the context of the Bank's *project cycle*: identification, preparation, appraisal, negotiations and presentation to the Board.

390. This section of OD 4.30 begins at paragraph 27, which states that *"the Regional Vice President should be kept informed of major resettlement issues and his guidance sought where necessary. The Regional Environment Division, the Legal Department, and settlement specialists in Sector Policy and Research should be consulted or included as necessary in peer reviews on involuntary resettlement issues throughout the project cycle."*

11.5.1 Post-Project Identification Stage

391. Prior to the Technical Mission of February, 1998, the Task Team Leader asked the resettlement specialist to review the status of the Social Assessment being conducted. He was also asked to review the *"design framework for the irrigation component in Qinghai...[and to] provide guidance to the Qinghai RAP preparation team."* And he was asked to *"... ensure that the RAP will comply with the Bank's guidelines..."*²⁵⁹

392. Subsequently, the March 1998 Project Concept Document (PCD) mentioned that *"involuntary resettlement does not appear to be a significant issue, although the possibility cannot be ruled out until final alignments for rural roads, pipelines and power lines, and location of rural enterprises have been established. There may be*

²⁵⁷ The Panel has discussed the adequacy of consultation and participation in Chapter 5.

²⁵⁸ See OD 4.30, *supra* note 59, at § 3 (c).

²⁵⁹ Project Files (15 January 1998).

however, a potential issue of compensation for loss of grazing rights, particularly with respect to the irrigation area and the Keri reservoir site in Qinghai. A report would be prepared on this issue.²⁶⁰ OD 4.30 is not ticked off as policy to be complied with in the compliance section (E-8).

393. Commenting on the PCD, the Legal Department raised the possibility that there might also be some involuntary resettlement of the host population in Dulan County because sites would have to be prepared for the incoming settlers. It asked for this to be clarified and then advised on the two possible approaches in OD 4.30 for dealing with involuntary resettlement: (a) if a sector approach is adopted, a resettlement framework laying out the principles and procedures to be applied when developing a RAP for a given subproject would need to be developed before appraisal, and reviewed by EASSD and LEGEA; (b) if a standard investment approach is adopted, the full RAP for the entire operation will need to be prepared before appraisal. The PCD minutes do not record discussion of these issues.²⁶¹

11.5.2 Preparation

394. Paragraph 29 of OD 4.30 requires that during project preparation "*the feasibility of resettlement must be established, a strategy agreed upon, the resettlement plan drafted and budget estimates prepared. The full costs of the resettlement should be identified and included in the total cost of the main investment project, regardless of financing source....*"

395. In May 1998, the Preparation Assistance Mission recognized that compensation for loss of land by Mongolian and Tibetan herdsmen in the Move-in area was not addressed in the "*Voluntary Settlement Action Plan.*" It called for a detailed plan and an acceptable arrangement to be made in consultation with the herdsmen. At the same time, however, Project documents state that they are to be treated as "*target beneficiaries*" of the Project because they would be resettled in a village.²⁶²

²⁶⁰ See Project Concept Document, *supra* note 193, at p.14. The PCD goes on to add that "*Detailed land acquisition plans would be prepared by the PPs, setting out in each case the quantity and quality of the land, the number of villages and people affected, the compensation methods and implementation procedures. In order to minimize the adverse effects caused by land acquisition, a monitoring mechanism and consultation with the affected people would be established.*"

²⁶¹ Project Files (13 April 1998).

²⁶² Project Files (12 June 1998).

396. In November, 1998, at the Pre-Appraisal Stage, the Bank and borrower agreed there should be a pilot for the voluntary resettlement. A detailed plan was prepared for about 200 migrants to be implemented immediately after Appraisal, scheduled for January 1999.²⁶³ The East Asia Social Unit, (EASSD) felt, however, that this timing might be premature.²⁶⁴ Shortly after, as noted earlier, and prior to the December, 1998 Decision Meeting, a new member of the EASSD staff, having been told that all resettlement was voluntary, found the Voluntary Resettlement Plan for Qinghai adequate for Appraisal. He did not review the PAD or SA.

397. It should here be noted that OD 4.30 cross-references with OD 4.20 on Indigenous Peoples and vice-versa, so the two Directives are formally linked.²⁶⁵ These cross-references indicate that a review of compliance for either OD requires a review of compliance with the other, at least in any project that involves *both* involuntary resettlement *and* indigenous people, as the Qinghai Project does. This formal linkage between the ODs was apparently not recognized by the Social Expert charged with assessing the Project's compliance with OD 4.30 prior to the Decision Meeting in December 1998. Only resettlement issues were addressed in this review in November 1998. Yet, this cross-reference indicates that the IPDP required by OD 4.20 should have also been reviewed, at least for purposes of assessing the adequacy of proposed compensation. Of course, a self-standing IPDP did not exist.

11.5.3 Appraisal

398. Paragraph. 30 of OD 4.30 requires that *"a time-bound resettlement plan and budget that conforms to Bank policy is a condition of appraisal for projects involving resettlement, except for sector investment loans..."*

399. The November, 1998, draft Project Appraisal Document (PAD) states that the Project is in compliance with *"OD 4.30 on involuntary resettlement involving 63 households surrendering their leased land for reclamation."*²⁶⁶

²⁶³ Project Files (5 November 1998).

²⁶⁴ Project Files (13 November 1998).

²⁶⁵ Specifically, footnote 2 of OD 4.20 states: *"Displacement of indigenous people can be particularly damaging, and special efforts should be made to avoid it. See OD 4.30, Involuntary Resettlement, for additional policy guidance on resettlement issues involving indigenous people."* Similarly, paragraph 3 (e) of OD 4.30 requires that compensation be provided for *"usufruct or customary rights to the land or other resources taken for the project,"* including compensation to indigenous peoples. See OD 4.20, *supra* note 39.

²⁶⁶ Project Appraisal Document, *supra* note 41, at p. 35.

400. At times, the PAD refers to the 4,000 herders in the Move-in area as voluntary settlers; at other times, it refers to them as "*negatively affected in the absence of mitigation measures.*"²⁶⁷ Reviewing both the PAD and the VSIP, the Legal Department pointed out these inconsistencies, advising that those who are negatively affected should be treated as involuntary resettlers. Observing that this is discussed in the VSIP, the Department stated that this was not adequate for the RAP because it contains no explanation of the principles of compensation or what the herdsmen are to be given that meets these principles. It reminded the Region that RAPs acceptable to the Bank had to be prepared for each of the PPs and that the PAD should reflect this.²⁶⁸ Turning then to the question of possible resettlement for any sub-projects that were to be prepared in the future, the Department reminded the Region that a "*resettlement framework*" had not yet been prepared for Qinghai.²⁶⁹

401. At the December 16, 1998, Decision meeting on the PAD, the Task Team described the 3 categories of herders/farmers in and around the proposed settlement area. "*Only 63 herder households leasing grazing land would surrender part of their current land in exchange for irrigated pasture under the project. The second group of 248 households living [in an abandoned irrigation system] would benefit from the project's irrigation system. For the third group of 289 herder households, the project design has incorporated two passages for their animals and would continue to cross through project area and they would also be eligible for leasing irrigated land.*" The meeting decided that the Task Team would (a) confirm whether the planned compensation for the 63 households was in accordance with OD 4.30 and (b) ensure that the VSIP and PAD are fully consistent.²⁷⁰

402. In January 1999, prior to formal Appraisal, the social expert on the Task Team reviewed the VSIP and RAP. The January, 1999 "*Voluntary Resettlement Policy Framework and Action Plan*" is a brief document, three pages in all (excluding a set of tables) that does not separate out voluntary from involuntary resettlement.²⁷¹ The Legal Department reviewed the Plan and advised that several involuntary resettlement aspects needed to be included or clarified in a revised version being prepared for Negotiations. First, recognizing that the separate "*resettlement framework*" which was prepared for the future rural subprojects also applied to facilities to be built in the settlement sites, she concluded that it could be viewed as

²⁶⁷ Id. *supra* note 266. See also, pp. 7 and 8

²⁶⁸ Project Files (16 December 1998).

²⁶⁹ Id. *supra* note 268.

²⁷⁰ Minutes of Decision Meeting (18 December 1998).

²⁷¹ Qinghai Research Institute of Plateau Geography, *Voluntary Resettlement Policy Framework and Action Plan*, Annex 9 to the Project Implementation Plan, January 1999.

"constituting the principles of compensation for the 4,000 involuntarily resettled people as well." But this would need to be made clear at Negotiations. Second, the plan didn't make clear that 289 households will have protected passageways through the new site so their herds can reach grazing sites. Third, there is no explanation as to why the 248 households were to get less farmland than the voluntary migrant settlers.²⁷²

11.5.4 Negotiations

403. Paragraph 30 of OD 4.30 requires that *"At negotiations, the borrower and the Bank should agree on the resettlement plan. The borrower's obligation to carry it out should be reflected in the legal documents. Other necessary resettlement actions must be covenanted. The [PAD] and the Memorandum and Recommendation of the President should summarize the plan and state that it meets Bank policy requirements."*

404. In March, 1999, the project documents were sent to the Country Director and Legal Department for review and clearance for negotiations. The *Appraisal Completion Note* conveying the documents states that a final report on voluntary and involuntary resettlement will be brought to the Negotiations and that it will reflect comments made and queries raised at the December Appraisal Decision meeting.²⁷³

405. Negotiations took place from April 12 to 16, 1999. The documentation package did not include a separate and adequate Involuntary Resettlement Plan. Sections of the VSIP seem to have constituted the RAP that was part of the Project intended for Board approval until external criticism erupted at the end of April, 1999.²⁷⁴

²⁷² Project Files (11 March 1999).

²⁷³ Later on March 16, the Legal Department issued its authorization to negotiate and cleared the draft loan, credit and project documents.

²⁷⁴ The revised VSIP, dated April 15, 1999 and entitled *"Report on Implementation Plan for Voluntary Migration Resettlement"*, contained three short attachments on involuntary resettlement. Attachment I is called *"Compensation Plan for 63 herders in Moving-in area."* Three pages long (including a table on the situation of the herders), it contained no details about implementation arrangements, timetables and monitoring. As noted earlier Bank policy requires this as a condition of Appraisal. Attachment II entitled *"Policy Framework for Resettlement and Land Acquisition,"* also three pages long, covered possible involuntary resettlement and land acquisition that might arise as a result of the project financing new irrigation systems, roads, water supply, schools, health centers, and rural enterprises in the Qaidam Basin. Attachment III, called *"Outline for Resettlement Action Plan,"* two pages long, dealt with involuntary resettlement arising out of civil works. Other aspects of involuntary resettlement are in the main body of the report, in particular paragraph 10, which deals with *"Compensatory Settlement Plan Move-in Area."*

406. The final clearance required before a project is presented to the Bank's Board of Executive Directors is from the Statutory Committee. The Statutory Committee's Report to the President was prepared on May 17, 1999.

407. After intensive internal review, a separate "*Involuntary Resettlement Plan*" for Qinghai was produced in May 1999. The Plan states that it is impossible at present to provide a resettlement timetable because no resettlement-related activities are to be undertaken until pilot program results are evaluated. This condition is reflected in the revised Qinghai Project Agreement. The Bank's Central Social Development Department (SDV) considered that the revised plan was a considerable improvement and appeared to meet key policy requirements.²⁷⁵

405. A full resettlement plan was not thought necessary since the economic and physical impact is minimal. The timing and cost of resettlement was to be contingent on other project activities and integrated into the larger VSIP.

406. The June 1999 version of the PAD states the Project is in compliance with OD 4.30.²⁷⁶ The Project Information Document, updated in June, 1999, explains that "*A Voluntary Settlement Implementation Plan (VSIP) was prepared for Qinghai . . . in accordance with OD 4.30 Involuntary Resettlement.*"²⁷⁷

The Panel's Findings

407. By failing to have produced the required (that is, an adequate) Involuntary Resettlement Plan, and also failing to have produced adequate Indigenous Peoples Development Plans for the impacted ethnic groups, Management has missed an opportunity to help develop good social and environmental science in Qinghai Province. These studies would also have been an opportunity to gather potentially important information about the economy as well as the cultural and social life of the nomadic pastoralists of the Qinghai Plateau, as well as the other minority nationalities impacted by the Qinghai Project. Much of that information should have come from a serious attempt to incorporate the perspectives of those who will be impacted by this Project into the fundamental design of the Project itself.

²⁷⁵ Project Files (31 May 1999)

²⁷⁶ Project Appraisal Document, *supra* note 41, at p. 42.

²⁷⁷ Project Information Document (1 June 1999) at p. 6.

408 The Panel finds that the Project's current Involuntary Resettlement Plan is not in compliance with the requirements of Bank policy as set out in OD 4.30. The reasons have been dealt with above, among them the inadequate basis for compensation, the form and quality of the consultation,²⁷⁸ the failure to adequately consider project alternatives²⁷⁹ and the narrowly defined boundaries of the "project area," which appear to displace a larger population than included in the Plan. Moreover, no separate involuntary resettlement plan was prepared before appraisal, as required.

²⁷⁸ See Chapter 5.

²⁷⁹ See Chapter 6.

Chapter 12

Disclosure of Information and Other Policies

12.1 Disclosure of Information

410. The timely disclosure of information on evolving projects is designed to provide opportunities for comment on and improvement of Bank projects. The Bank's Disclosure Policy is eloquent on this point. Introducing it in January 1994, the then President Lewis T. Preston said: *"...The sharing of information is essential for effective and sustainable development: it stimulates debate and broadens understanding of development issues, and it facilitates coordination among the many parties involved in development. It serves to strengthen public support for efforts to improve the lives of people in developing countries..."* The policy statement itself notes that: *"...Dissemination of information to local groups affected by the projects supported by the Bank, including nongovernmental organizations, particularly as it will facilitate the participation of those groups in Bank-financed projects, is essential for the effective implementation and sustainability of the projects."* Later, the policy statement adds that *"...there is a presumption in favor of disclosure"*

12.1.1. The Project Information Document

411. When a project is under consideration, Bank policy requires that a Project Information Document (PID) be released on it. Introduced in 1994, it *"...is designed to make project information available to interested parties while a project is still under preparation. The PID provides a brief (initially two-page) factual summary of the main elements of the evolving project..."*

412. The PID is to be made available at the Bank's Public Information Center (now the Infoshop) at the Project Concept Document (PCD) stage. And, in fact, the PID for the Western Poverty Reduction Project bears the same date as the PCD, March 25, 1998. It makes one reference to "minorities" or "minority nationalities", saying in passing that China's current "absolute poor" comprise "largely minority nationalities." There is no mention in the PID of minorities in the Qinghai component of the Project. Rather, the beneficiaries are defined mainly in terms of their poverty and their precarious future in the absence of the project.

12.1.2. The Revised Project Information Document

413. The Bank's policy expects that this initial PID will be updated and expanded periodically as project preparation proceeds. In any event, it is required to be revised before formal project appraisal. This was not done. If further changes are then made, a new version of the PID is prepared.²⁸⁰

414. In this instance, a first revision of the PID was made available at the Bank's Infoshop on May 4, 1999, nearly four months after the Appraisal Mission of January 26, 1999. This first revision is 15 pages long. It contains only one mention of minorities. In defining the "absolute poor" in an all-China context, it says that: "*The absolute poor, comprising largely minority nationalities, reside in mostly remote and inaccessible upland areas with poor natural resource endowments and high population pressure.*" Other than this, it defined the affected people in the overall project simply in terms of their poverty.

415. Following the TIN article²⁸¹, the Public Information Document (PID) was revised a second time and released on June 1, 1999. The June version contained a long, 11 page annex on "Social Aspects" of the project. This revision is the first official public document on the project that contains a description of the Social Assessment preparation, the selection of beneficiaries, measures for land acquisition and compensation, and measures for protecting minority rights. It also tries to answer, at least implicitly, some of the criticisms that were then being advanced concerning the effect of the project on minorities.

12.1.3 Environment-Related Documents

416. Bank Policy 17.50 on Disclosure of Information states that "[*The environmental data sheets prepared as quarterly updates in the Monthly Operational Summary for all projects in the IBRD/IDA lending program are transmitted to the PIC [or Infoshop], through which interested parties may obtain them.*]" This was not done.

²⁸⁰ See IBRD/IDA, Bank Policy 17.50 on Disclosure of Operational Information (September 1993) [*hereinafter* BP 17.50] at § 4: "As an investment project develops, Bank staff update the PID and send the update to the [Public Information Center], through which interested parties may obtain it. For all operations, the PID is updated before the Bank's formal project appraisal; for operations in which major changes are made after appraisal, a final revision of the PID is prepared following appraisal." See, also, IBRD/IDA, China Western Poverty Reduction Project: Project Information Document, Report No. PID6960 (1 June 1999) [*hereinafter* "PID"].

²⁸¹ See Tibet Information Network, *supra* note 7.

417. Although BP 17.50 refers only to the timely disclosure of Environmental Assessments and Analysis, an OPR Memorandum issued on December 2, 1993, reminded staff that, for purposes of disclosure, these documents “*should, whenever relevant, incorporate resettlement plans and indigenous peoples development plans.*”²⁸² Concerning Environmental Analysis, the Bank’s Policy states that: “*If the environmental analysis for an IDA-funded Category B project results in a separate report, (a) before the Bank proceeds to appraisal, the separate report must be made available in the borrowing country at some public place accessible to affected groups and local NGOs and must be submitted to the Bank; and (b) once the separate report is released locally and officially received by the Bank, it is sent to the PIC, through which interested parties may obtain it.*”²⁸³ The same OPR Memorandum provides that “*for a Bank or IDA Category “B” project, the environmental analysis is attached (not summarized in an Annex) to the PID.*”

418. While the policy is clear, the actual rules are not. The EAs should be publicly available in the borrowing country and received by the Bank before the start of project appraisal.²⁸⁴ The timing of their release through the InfoShop, however, is to be made some time “*after it has been released locally and officially submitted to the Bank.*”

419. In its Response to the Request for Inspection, Management agrees that there were shortcomings in the timeliness with which the required documents were sent to the Infoshop. The draft Environmental Assessment on the Qinghai Project was sent to the Bank, evaluated by Bank staff, and made public in the Project area at provincial, prefectural, and county levels in November 1998. An updated version of the EA and the Voluntary Settlement Implementation Plan (VSIP) were presented to the pre-appraisal mission in January, 1999. According to Management, the EA, the VSIP and the Involuntary Resettlement Plan were not sent to the Board of Executive Directors and the Infoshop until June 2, 1999.²⁸⁵

²⁸² See Acting Director, OPR, *Memo to Staff Recipients of the Operational Manual* (2 December 1993). The last paragraph of this Memorandum states that “*These modifications to the Bank’s disclosure procedures will be incorporated into BP 17.50, Disclosure of Operational Information, when it is revised and re-issued.*”

²⁸³ See BP 17.50, *supra* note 280, at § 13.

²⁸⁴ This, at least, is the spirit of BP 17.50, though the text is not precise for the so-called IDA-B projects. Senior Staff have stated that, while the disclosure requirements for “IDA-B” are not clear, the spirit of the policy—though not the letter—would call for 60 days, if not 120 days disclosure before Board approval, or the same as for category A projects. This requirement was clearly not met.

²⁸⁵ Several Washington-based NGOs, however, have officially stated to the Panel that as of June 8, 1999, only an “*incomplete*” set of documents was available to the public through the InfoShop. According to them, this set included an environmental assessment and a five-page “*involuntary resettlement plan*” that was not a plan but “*simply a recitation of what the requirements of policy are.*”

420. It must be added that the lack of timely disclosure of information about this particular Project seems rather unusual. During its interviews, the Panel confirmed that overall the Bank has tried to move beyond the minimum disclosure requirements. It often now sends documents and reports to NGOs in draft form before they are released, and holds informational meetings with NGOs for reviews of upcoming projects. Open disclosure, of course, does not necessarily guarantee that there will be greater agreement with Bank projects. Interested parties may continue to oppose projects, but still projects are often better as a result of their input.

421. As noted in its policy, the Bank has found that timely disclosure, and the opportunity for public comment, can substantively improve a project and will help assure that social and environmental safeguard policies are followed. A reading of the Management Response reveals that the design of the Qinghai Project has been improved, and its social and environmental safeguards have been strengthened, as a result of the publicity and controversy surrounding it since April 1999, and the consequent added attention given to the Project by the Bank's many qualified staff. Perhaps if public disclosure had occurred in a more timely fashion, the project could have been re-thought or improved without the level of controversy that it has attracted.

422. Thus, as Management admits, the Qinghai Project is not in compliance with BP 17.05. And the Panel so finds.

12.2 Investment Lending and Retroactive Financing

423. The September 9, 1999 decision of the Board of Executive Directors asked the Panel to look into compliance by Bank Management with the provisions of O.P./B.P. 10.00 on "*Investment Lending: Identification to Board Presentation*" and O.P./B.P. 12.10 on "*Retroactive Financing*."

12.2.1 Investment Lending

424. Paragraph 1 of O.P./B.P. 10 provides guidance to staff to ensure that the investments financed by the Bank help Borrowers "*make the best use of their*

They also claimed that, in spite of several written and oral requests, they have not received other project documents such as the Voluntary Resettlement Implementation Plan. They claim this is a violation of Bank policy.

resources—natural, financial, and human—to alleviate poverty, protect the environment, and enhance the effectiveness of their public and private sectors. To achieve these goals, the Bank and Borrower need to ensure the quality of projects at entry.”

425. While the O.P. establishes the criteria each investment project must meet to obtain Bank financing, the B.P. establishes a series of processing procedures aimed at assuring that these criteria are met. Since its issuance in June, 1994, B.P. 10.00 has been amended several times, principally by the provisions of a memorandum entitled “*Simplification of Business Processes: Bankwide Guidelines for Major Operational Products*” issued to staff by the Managing Directors in June 1996²⁸⁶ and by Operational Memorandum “*Simplified Project Documentation*” dated July 31, 1997.

426. The criteria established by O.P. 10.00 provides that each project must (a) be consistent with the Bank’s Articles of Agreement, operational policies in force, the Country Assistance Strategy (CAS), and be anchored in country policy/sector analysis; and reflect lessons learned from the Bank’s experience; (b) be economically justified; and (c) contribute to poverty reduction and sustainable economic growth.

427. While the Panel is satisfied that the Project is consistent with the Articles of Agreement and the CAS and is anchored in country policy/sector analysis, this Report shows a number of instances where the Panel feels that operational policies and procedures were not followed, casting doubt as to whether the Project, as it stands, is the best alternative to contribute to poverty reduction and sustainable economic growth, and, thus, economically justified.

428. As to the procedural steps provided by B.P. 10.00, as amended, there is no doubt that there was formal compliance with these requirements, but the substance of certain steps (e.g., the clearance process of the social aspects) could have been handled better.

12.2.2 Retroactive Financing.

429. Paragraph 1 of O.P./B.P. 12.10 provides that retroactive financing is allowed “in exceptional circumstances to facilitate the prompt execution of Bank-financed operations.” The policy provides that up to ten percent of the total Loan or Credit can

²⁸⁶ This document, although mandatory to staff, has never been reflected in a revised BP. The Panel has been informed that one is under preparation.

be made available to cover payments made for up to twelve months before the date of Loan/Credit signature, as may be agreed by Management and the Borrower.

430. The Requesters feared that the pilot phase of the Project, entailing early resettlement of people to the "project area," could have already started even before the Board approved the financing for the Project on June 24, 1999. In fact, at the Pre-Appraisal stage in October 1998, the Bank and the Chinese Government agreed that a pilot phase would begin immediately after Appraisal (scheduled for January, 1999) and that it would be covered by retroactive financing. However, the Panel did not find any evidence of actual advance Project implementation and notes that Management in Paragraph 2.9 of the Response describes a series of conditions to be met by the Borrower prior to disbursements for the Qinghai component. These conditions are set forth in the legal documents for this Project.

431. Thus, in the Panel's view, the Project is in compliance with OP/BP 12.10.

ANNEXES

Annex 1

Key Decision Points of the Qinghai Project

The time line and key decision points in the “project cycle” for the Qinghai component of the Western Poverty Reduction Project is shown below.

| | |
|--|--|
| Project enters active status in Bank’s China portfolio. Task Manager Appointed. Preliminary Discussions Mission (Task Manager alone) | <i>Late 1996</i> <i>Jan./Feb., 1997</i> |
| Provincial project outlines prepared: Project Team assembled (14 members) | <i>June-Aug., 1997</i> |
| Identification Mission (10 members) | <i>Oct. 4-24, 1997</i> |
| Environmental Data Sheet prepared ¹ | <i>Jan. 1998</i> |
| Technical Mission (5 members) | <i>Feb. 8-28, 1998</i> |
| Distribution of Project Concept Document (PCD) (to 35 people) | <i>March, 1998</i> |
| PCD Review Meeting (13 attended) | <i>April 14, 1998</i> |
| Preparation Mission (13 members) | <i>May 24-June 15, 1998</i> |
| Pre-appraisal Mission (12 members) | <i>Oct 3-24, 1998</i> |
| Project Appraisal Document (distributed to 37 people) Decision Meeting (attended by 11 people) | <i>Nov 1998</i> <i>Dec 17, 1998</i> |
| Authorization for Pre-Appraisal Follow-up | <i>Dec. 17, 1998</i> |
| Pre-Appraisal Follow-up Appraisal Mission (10 members) | <i>Jan. 10-26, 1999</i> |
| Appraisal (Pre-Appraisal Follow-up was upgraded to an Appraisal Mission by EAP Regional Management) | <i>Jan. 26, 1999</i> |
| Negotiations | <i>April 12-16,1999</i> |

¹ Environmental peer reviewer appointed from East Asia Environmental and Social Development Unit and environmental consultant contracted.

| | |
|--|---------------------------------------|
| Tibet Information Network article on project published | <i>April 27, 1999</i> |
| Negotiations | <i>May 28, 1999 and June 23, 1999</i> |
| Management Reviews and "Refines" Project Documentation | <i>Late April to mid-July, 1999</i> |
| Request for Inspection by the ICT | <i>June 18, 1999</i> |
| Negotiations Reopened Again | <i>June 23, 1999</i> |
| Board votes and approves the project. with conditions | <i>June 24, 1999</i> |
| Management Responds to Allegations in ICT Request | <i>July 19, 1999</i> |
| Panel Submits its Report on Eligibility to Board, finding Request eligible and recommending an investigation | <i>Aug. 18, 1999</i> |
| Board authorizes Panel to conduct an investigation of project's Qinghai Component | <i>Sept. 9, 1999</i> |

Annex 2

Individual Survey Questionnaire (Move-out Area)

[Note: Sample questionnaire provided to the Inspection Team was from Huang Yuan County, Dahua Township, Bahan Village Committee (Administrative District).]

(Total number of households: 1458)

1. Name of head of household (family, first):
2. Sex:
- | | |
|-----------|--------|
| A. Male | 1443.0 |
| B. Female | 15.0 |
3. Nationality:
- | | |
|-----------------|-------|
| A. Han | 676.0 |
| B. Hui | 297.0 |
| C. Salar | 152.0 |
| D. Tibetan | 117.0 |
| E. Tu | 209.0 |
| F. Other: _____ | 7.0 |
4. Age:
5. Education:
- | | |
|----------------------------------|-------|
| A. College or above | 14.0 |
| B. Community college | 6.0 |
| C. Senior high school | 47.0 |
| D. Junior high school | 406.0 |
| E. Primary school | 603.0 |
| F. Illiterate or semi-illiterate | 382.0 |
6. Health Status:
- | | |
|-------------------------|--------|
| A. Good | 1392.0 |
| B. Blind, deaf, or mute | [0] |
| C. Disabled | [0] |
| D. Mentally retarded | [0] |
| E. Mentally sick | [0] |
| F. TB | 5.0 |
| G. Hepatitis | 4.0 |
| H. Diabetes | 1.0 |
| I. Anemia | [0] |
| J. Heart disease | 13.0 |
| K. Local disease(s) | 8.0 |
| L. Other: _____ | 35.0 |
7. Occupation:
- | | |
|--|--------|
| A. Farmer | 1443.0 |
| B. Worker at a Township or Village Enterprise | 2.0 |
| C. Cadre | 5.0 |
| D. Retiree | 3.0 |
| E. Professional | 3.0 |
| F. Service personnel for catering/ restaurant business | 1.0 |
| G. Full-time student | [0] |
| H. Homemaker | [0] |
| I. Other: _____ | 1.0 |
8. Do you have any technical skills?
- | | |
|-----|--------|
| Yes | 391.0 |
| No | 1067.0 |
- If yes, choose from the following:
- | | |
|------------------------|-------|
| A. Tailor | 42.0 |
| B. Knitting | 11.0 |
| C. Chef | 7.0 |
| D. Carpenter | 65.0 |
| E. Animal raising | 137.0 |
| F. Food processing | 3.0 |
| G. Gardening | 1.0 |
| H. Construction worker | 55.0 |
| I. Blacksmith | 11.0 |
| J. Other: _____ | 59.0 |
9. Are you aware of the news on resettlement?
- | | |
|-----|--------|
| Yes | 1406.0 |
| No | 52.0 |
- If yes, from what source did you learn about resettlement?
- | | |
|--|--------|
| A. Government propaganda | 1314.0 |
| B. Word of mouth from friends or relatives | 42.0 |
| C. Obtained information by self | 38.0 |
| D. Newspapers | 5.0 |
| E. Radio | 3.0 |
| F. Other: _____ | 4.0 |

10. Are you willing to be resettled?
 Willing 1374.0
 Not willing 84.0
11. Reasons for being not willing to move: 84.0
 A. Apprehension over being discriminated against [0]
 B. Life is not too bad 28.0
 C. It is tough to leave behind ancestors' land 13.0
 D. Concerned about lack of friends in a new environment 3.0
 E. Difficulty to adjust: 19.0
 F. Other: ____ 21.0
12. Reasons for being willing to move: 1374.0
 A. Seeking a way out from the present dead-end situation. 574.0
 B. Want a change 117.0
 C. For the benefit of future generations 142.0
 D. Too little land now 476.0
 E. Have friends and relatives already in the move-in area 2.0
 F. Other: ____ 63.0
13. Do you have decision-making power over household finances? (Women only)
 A. Complete power 187.0
 B. Participatory power 1039.0
 C. Partial power 138.0
 D. No power 94.0
14. Do you have a say on family resettlement? (Women only)
 A. Complete say 182.0
 B. Participatory say 1044.0
 C. Partial say 133.0
 D. No say 99.0
15. During 1994-1996, were you ever out of town for more than three consecutive days?
 Yes 1130.0
 No 328.0
- If yes, choose from the following:
 Industry/Commerce (____ days) 32.8
 A. Study/Training (____ days) .8
 B. Official business (____ days) 1.0
 C. Seeking medical treatment (____ days) 3.0
 D. Visiting friends and relative (____ days) 3.1
 E. Other: ____ 8.7
16. Do you contribute to household income? (Women only)
 Yes 488.0
 No 970.0
- If yes, what percentage is your contribution?
 A. Over 50% 46.0
 B. 40-50% 40.0
 C. 30-40% 60.0
 D. 20-30% 129.0
 E. Less than 20% 213.0
17. Do you have any relatives and/or friends who have already moved?
 Yes 249.0
 No 1209.0
- If yes, choose from the following:
 A. Close relative 119.0
 B. Distant relative 58.0
 C. Friends 7.0
 D. Neighbors 65.0
18. Do you have any contact with relatives and/or friends who have already moved?
 Yes 209.0
 No 40.0
- If yes, choose from the following:
 A. Letters 143.0
 B. Phone calls 3.0
 C. Other: ____ 63.0
19. If you were asked to move, what would be the most difficult issues that you would have to handle?
 A. Build a new house 959.0
 B. Fuel 17.0
 C. Drinking water 65.0
 D. Farming tools 56.0
 E. Lack of technical expertise 6.0
 F. Lack of ways and means to become rich 72.0
 G. Lack of food 217.0
 H. Electricity [0]
 I. Health care services 3.0
 J. Kids going to school 13.0
 K. Transportation 16.0
 L. Post and mail services
 M. Other: ____ 34.0
- What would be the most difficult issue?
 What would be the second most difficult issue?
20. Do you have any religious beliefs?
 Yes 720.0
 No 738.0
- If yes, choose from the following:
 A. Buddhism 264.0
 B. Islam 442.0
 C. Christianity 11.0
 D. Other: ____ 3.0

21. Do you regularly attend religious services?
- | | |
|--------------------|-------|
| A. Regularly | 222.0 |
| B. Not regularly | 231.0 |
| C. Once in a while | 132.0 |
| D. Never | 135.0 |
22. Are you affiliated with any organizations? (Women only)
- | | |
|-----|--------|
| Yes | 145.0 |
| No | 1313.0 |
- | | |
|---------------------------|------|
| A. Communist party | 15.0 |
| B. Communist youth league | 75.0 |
| C. Labor union | 4.0 |
| D. Women association | 42.0 |
| E. Other: _____ | 9.0 |
23. Do you hold any positions in the organizations you are affiliated with? (Women only)
- | | |
|-----|-------|
| Yes | 36.0 |
| No | 109.0 |
24. Did you ever participate in the following forms of training during the past five years?
- | | |
|---|-------|
| A. Vocational training | 462.0 |
| B. Basic reading and writing (for illiteracy eradication) | 391.0 |
| C. Other: _____ | 63.0 |
25. Have you been involved in occupations other than farming during the past five years?
- | | |
|-----|-------|
| Yes | 695.0 |
| No | 763.0 |
- If yes, choose from the following:
- | | |
|---|-------|
| A. Processing of agricultural products | 192.0 |
| B. Construction | 131.0 |
| C. Transportation | 55.0 |
| D. Commerce or sales | 23.0 |
| E. Working for a Township or Village Enterprise | 8.0 |
| F. Food for work | 48.0 |
| G. Catering | 2.0 |
| H. Other: _____ | 236.0 |
26. Size of family (number of people):
- | | |
|------------------|-------|
| A. One | 7.0 |
| B. Two | 37.0 |
| C. Three | 173.0 |
| D. Four | 401.0 |
| E. Five | 410.0 |
| F. Six | 210.0 |
| G. More than six | 220.0 |
27. Household categorization:
- | | |
|--------------------------------------|--------|
| A. Farming | 1443.0 |
| B. Semi-farming and semi-non-farming | 7.0 |
| C. Professionals | [0] |
| D. Herders | 4.0 |
| E. Wage earners | 4.0 |
28. Family income for 1995-1996:
- | | |
|------------------------|--------|
| Total: _____ Yuan | 2724.2 |
| Grain: _____ Kilograms | 1312.5 |
- Contributed by:
- | | |
|------------------------------------|--------|
| A. Planting: _____ Yuan | 1798.4 |
| B. Animal raising: _____ Yuan | 253.1 |
| C. Forestry, fishery: _____ Yuan | 20.6 |
| D. Construction: _____ Yuan | 79.9 |
| E. Mining: _____ Yuan | 100.0 |
| F. Commercial catering: _____ Yuan | 13.3 |
| G. Wages and salaries: _____ Yuan | 19.8 |
| H. Subsidy income: _____ Yuan | 9.5 |
| I. Bonus: _____ Yuan | 195.1 |
| J. Other: _____ Yuan | 234.5 |
29. Do you have any school-age children?
- | | |
|-----|-------|
| Yes | 728.0 |
| No | 730.0 |
- If yes, are they in school?
- | | |
|------------------|-------|
| A. In school | 530.0 |
| B. Not in school | 200.0 |
30. Reasons for school-age children not being in school:
- | | |
|---|------|
| A. Children do not want to go to school | 34.0 |
| B. Children help parents with farm work | 9.0 |
| C. School too far away from home | 43.0 |
| D. Physically challenged | 5.0 |
| E. Financial difficulties | 92.0 |
| F. Other: _____ | 17.0 |
31. Do you lease any land?
- | | |
|-----|-------|
| Yes | 785.0 |
| No | 673.0 |
- If yes, choose from the following:
- | | |
|--------------------|-------|
| A. Less than 20 mu | 721.0 |
| B. 20-50 mu | 63.0 |
| C. 50-80 mu | [0] |
| D. 80-100 mu | 1.0 |
| E. Over 100 mu | [0] |
32. Status of savings: (average: 42.7 Yuan)
- | | |
|--------------------|-------|
| A. Have savings | 500.0 |
| B. Have no savings | 958.0 |

33. Major means of production that you own:
- | | |
|----------------------------------|-------|
| A. Four-wheel tractor | 3.0 |
| B. Walking tractor | 101.0 |
| C. Animal-driven cart | 489.0 |
| D. Two-wheel cart | 372.0 |
| E. Water pumping machines | 2.0 |
| F. Seed-spreading machines | 51.0 |
| G. Thresher | [0] |
| H. Stone mill, electric mill | 11.0 |
| I. Vehicles for farming purposes | 5.0 |
34. Livestock that you own:
- | | |
|---------------------------------|-----|
| A. Big animals (How many? ____) | 1.4 |
| Of which: | |
| Donkeys: ____ | 0.3 |
| Horses: ____ | 0.4 |
| B. Pigs: ____ | 0.9 |
| C. Sheep: ____ | 3.9 |
| D. Chicken: ____ | 2.5 |
| E. Rabbits: ____ | 0.1 |
| F. Other: ____ | 0.2 |
35. Grain output per mu during 1995-96:
____ Kilograms 125.5
36. Average annual household expenses in Yuan? 2035.1
- | | |
|---|-------|
| A. Clothing: ____ Yuan | 100.1 |
| B. Food: ____ Yuan | 980.0 |
| C. Transportation: ____ Yuan | 35.7 |
| D. Housing: ____ Yuan | 14.5 |
| E. Fuel: ____ Yuan | 104.8 |
| F. Medical expenses: ____ Yuan | 201.4 |
| G. Recreation/Entertainment: ____ Yuan | 268.7 |
| H. Marriage/Funeral ceremony expenses: ____ Yuan | 131.6 |
| I. Gifts: ____ Yuan | 133.6 |
| J. Other: ____ Yuan | 64.7 |
37. Average annual educational expenses for children (in Yuan)?
- | | |
|--------------------|------|
| Total: | 63.4 |
| A. Tuition | 29.1 |
| B. Textbooks | 26.0 |
| C. Reference books | 1.1 |
| D. School boarding | 3.8 |
| E. Other: ____ | 3.4 |
38. If you were asked to pay out of your own pocket for part of the expenses associated with resettlement, do you feel your family would have the financial capability to do so?
- | | |
|--------|--------|
| A. Yes | 176.0 |
| B. No | 1282.0 |
39. If you were asked to raise part of the funding for resettlement on your own, do you think you could borrow from friends and relatives.
- | | |
|--------|--------|
| A. Yes | 215.0 |
| B. No | 1243.0 |
40. Ownership of consumer durables (How many?):
- | | |
|----------------------------------|-------|
| A. Bikes: ____ | 550.0 |
| B. Watches: ____ | 590.0 |
| C. Radios: ____ | 206.0 |
| D. Tape-recorders: ____ | 277.0 |
| E. Black and white TV sets: ____ | 302.0 |
| F. Color TV sets: ____ | 32.0 |
| G. Motorcycles: ____ | 13.0 |
| H. Sewing machines: ____ | 312.0 |
| I. Washing machines: ____ | 19.0 |
| J. Other: ____ | 33.0 |
41. Arable land ownership by household:
Number of mu: ____ 12.4
- Of which ____ mu fall under the following slope categories:
- | | |
|-------------------------|--------|
| A. Less than 5 degrees | 0.9 mu |
| B. 5-9 degrees | 2.4 mu |
| C. 10-14 degrees | 2.5 mu |
| D. 15-24 degrees | 2.8 mu |
| E. More than 25 degrees | 3.8 mu |
42. Total number of rooms in your house: ____ 7.1
- Of which:
- | | |
|---|-------|
| A. Made out of brick or wood: ____ | 0.5 |
| B. For living purposes: ____ | 4.3 |
| Area of yard: ____ square kilometers | 260.0 |
| C. Number of trees surrounding your house: ____ | 21.5 |

ANNEX 3

Questionnaire for Those Immediately Impacted (Move-In Area)

[Note: Sample questionnaire provided to the Inspection Team was from Dulan County, Balong township, Hatu Village. Sample also has Chinese label: "Attachment Table 2"]

[1] Name:

[2] Sex:

[3] Age:

[4] Nationality:

[5] Education:

[6] Address:

[7] Your attitude towards the project:

Very necessary:

Necessary to some extent:

Lukewarm:

Not necessary:

[8] Will the implementation of the project have any impact on the quality of your life?

Very significant impact:

Rather significant impact:

Not significant impact:

No impact:

[9] Your attitude towards incoming migrants:

Welcome:

Lukewarm:

Not welcome:

[10] Are you willing to participate in all project related activities?

Willing:

Lukewarm:

Not willing:

[11] Your comments and demands on the project:

[12] Reasons for not welcoming incoming migrants:

[13] Do you have any religious beliefs?

Note: Please place "X" on your desired choice. Please select just one choice.

Annex 4

Questionnaire for Herders in the Project Area

Attachment Table 3

[Note: Sample questionnaire provided to the Inspection Team was from Dulan County, Balong Township, Bulege Village. Sample has Chinese label: "Attachment Table 3"]

- | | |
|---|---|
| [1] Form Number: | [12] Your attitude towards migrants coming from another place: Very welcome: Welcome: Not welcome: |
| [2] Size of family: | |
| [3] Name: | |
| [4] Sex: | [13] Are you willing to participate in all project-related activities? Willing: Accepting arrangement made by government: Not willing: |
| [5] Age: | |
| [6] Nationality: | |
| [7] Education: | [14] Are you willing to be settled within the project area? Settlement: Semi-settlement: Not for settlement: |
| [8] Annual per capita net income: | |
| [9] Area of pastureland occupied by project area: | |
| [10] Your attitude towards the project: Very necessary: Necessary: Accepting arrangement made by government: Not necessary: | [15] Are you willing to engage in semi-farming and semi-herding? Willing: Not willing: |
| [11] Will the implementation of the project have any impact on the quality of your life? Life turning better: No change: Life turning for the worse: | [16] Your comments and demands on the project: [17] Reasons for not welcoming migrants: [18] Do you have any religious beliefs? |

Please place "X" on your desired answer. Please just make one choice.

ANNEX 5

Individual Survey Questionnaire (Project Area)

[Note: Sample questionnaire provided to the Inspection Team was from Dulan County, Balong Township, Xinglong Villager Committee (Administrative District).]

- | | |
|---|----------------------------------|
| 1. Name of head of household (Family, First): | (Total number of households: 80) |
| 2. Sex: | |
| A. Male | 80 |
| B. Female | [0] |
| 3. Age: | |
| 4. Nationality: | |
| A. Han | 57 |
| B. Hui | 17 |
| C. Salar | [0] |
| D. Tibetan | 3 |
| E. Tu | 3 |
| F. Other: _____ | [0] |
| 5. Education: | |
| A. College or above | 2 |
| B. Community college | 1 |
| C. Senior high school | 4 |
| D. Junior high school | 34 |
| E. Primary school | 18 |
| F. Illiterate or semi-illiterate | 21 |
| 6. Health status: | |
| A. Good | 72 |
| B. Fair | 7 |
| C. Disabled | 1 |
| D. Suffering from local disease(s) | [0] |
| E. Other: _____ | [0] |
| 7. Occupation before resettlement: | |
| A. Farmer | 78 |
| B. Worker at Township or Village Enterprise | 1 |
| C. Cadre | [0] |
| D. Service personnel in catering business | [0] |
| E. Professional technician | [0] |
| F. Full-time student | [0] |
| G. Other: _____ | 1 |
| 8. Occupation after resettlement: | |
| A. Farmer | 78 |
| B. Worker at Township or Village Enterprise | [0] |
| C. Cadre | [0] |
| D. Service personnel in catering business | [0] |
| E. Professional technician | [0] |
| F. Full-time student | [0] |
| G. Other: _____ | 2 |

9. Do you have any technical skills?
- | | |
|-----|----|
| Yes | 39 |
| No | 41 |
- If yes, choose from the following:
- | | |
|---|-----|
| A. Tailor | 1 |
| B. Knitting | [0] |
| C. Chef | [0] |
| D. Carpenter | 5 |
| E. Animal-raising, crop-planting business | [0] |
| F. Foodstuff processing | [0] |
| G. Horticultural, gardening | [0] |
| H. Construction worker | 9 |
| I. Other | 7 |
| J. Irrigation | [0] |
| K. Farming | 17 |
| L. Forestry | [0] |
10. Do you have decision-making power over household finances? (Women only)
- | | |
|------------------------|----|
| A. Complete power | 2 |
| B. Participatory power | 47 |
| C. Partial power | 27 |
| D. No power | 4 |
11. Do you have decision-making power over family resettlement? (Women only)
- | | |
|------------------------|----|
| A. Complete power | 2 |
| B. Participatory power | 68 |
| C. Partial power | 7 |
| D. No power | 3 |
12. During 1994-1996, were you ever out of town for more than three consecutive days?
- | | |
|-----|----|
| Yes | 72 |
| No | 8 |
- If yes, choose from the following:
- | | |
|--|-----------|
| A. Industry/Commerce (____ days) | 4395 days |
| B. Study/Training (____ days) | 73 days |
| C. Official business (____ days) | 745 days |
| D. Seeking medical treatment (____ days) | 834 days |
| E. Visiting friends or relatives (____ days) | 1887 days |
| F. Other: _____ | 6 days |
13. When did you move in? (All moved in during 1988-1989)
- Year: _____
- Month: _____

14. Reason for move?
- A. Seeking a way out from a dead-end situation 17
 - B. Seeking a change environment 6
 - C. For the benefit of future generations 1
 - D. Too little existing cultivated land 56
 - E. Other: _____ [0]

15. When were you used to the life and production patterns of the move-in area and when did you start to know the production skills?

| | <u>Production</u> | <u>Life</u> | <u>Mastering of Production Skills</u> |
|----------------------|-------------------|-------------|---------------------------------------|
| First year | 50 | 49 | 48 |
| Second year | 19 | 19 | 20 |
| Third year | 8 | 9 | 10 |
| Fourth year | 3 | 2 | 2 |
| Fifth year | [0] | [0] | [0] |
| More than five years | [0] | 1 | [0] |

16. Prior to your resettling, did you have relatives or friends in the move-in area?
- Yes 24
 - No 56

17. Did any of your friends or relatives move in after you had moved in?
- Yes 24
 - No 56

If yes, choose from the following:

- A. Less than five people 6
- B. 6-10 people 11
- C. 11-15 people 4
- D. 16-20 people 1
- E. In excess of 20 people 2

18. Have you ever been back to the move-out area?
- Yes 71
 - No 9

If yes, complete the following:

In what year after moving in?

How many times each year?

How many days each time?

| | | |
|--------|-----------------|-----------------|
| Year 1 | <u>27</u> times | <u>654</u> days |
| Year 2 | <u>36</u> times | <u>857</u> days |
| Year 3 | <u>18</u> times | <u>668</u> days |
| Year 4 | <u>36</u> times | <u>864</u> days |

19. Reasons for returning to move-out area:
- A. Visiting relatives 70
 - B. Attending personal property issues [0]
 - C. Unable to adapt to new environment [0]
 - D. Other: _____ 1

| | |
|---|-----|
| 20. Did you visit the move-in area prior to moving in? | |
| Yes | 19 |
| No | 61 |
| 21. Do you have any religious beliefs? | |
| Yes | 25 |
| No | 55 |
| If yes, choose from the following: | |
| A. Buddhism | 19 |
| B. Islam | 6 |
| C. Christianity | [0] |
| D. Other: _____ | [0] |
| 22. Do you regularly attend religious services? | |
| A. Regularly | 2 |
| B. Not regularly | 2 |
| C. Once in a while | 2 |
| D. Never | [0] |
| 23. Are you affiliated with any organizations? (Women only) | |
| Yes | 6 |
| No | 74 |
| A. Communist party | 1 |
| B. Communist youth league | 3 |
| C. Labour union | [0] |
| D. Women association | 2 |
| E. Other: _____ | [0] |
| 24. Do you hold any position(s) in the organization(s) you are affiliated with? (Women only) | |
| Yes | 3 |
| No | 3 |
| 25. After moving in, did you participate in the following forms of training? | |
| Yes | 46 |
| No | 34 |
| If yes, which? | |
| A. Technical training | 38 |
| B. Illiteracy eradication | 8 |
| C. Other: _____ | [0] |
| 26. Do you contribute to household income? (Women only) | |
| Yes | 74 |
| No | 6 |
| If yes, what percentage? | |
| A. More than 50 percent | 18 |
| B. 40-50 percent | 26 |
| C. 30-40 percent | 14 |
| D. 20-30 percent | 4 |
| E. Less than 20 percent | 12 |

27. Since moving, have you been involved in occupations other than farming?

| | |
|-----|----|
| Yes | 25 |
| No | 55 |

If yes, choose from the following:

| | |
|---|-----|
| A. Processing of agricultural products | [0] |
| B. Construction | 8 |
| C. Transportation | [0] |
| D. Commerce or sales | 5 |
| E. Working for Township or Village Enterprise | [0] |
| F. Food for work | [0] |
| G. Catering or restaurant work | [0] |
| H. Other: _____ | 12 |

28. Where did you first find out about resettlement?

| | |
|--------------------------|-----|
| A. Government propaganda | 52 |
| B. Friends or relatives | 24 |
| C. Self | 4 |
| D. Newspapers | [0] |
| E. Radio | [0] |
| F. Other: _____ | [0] |

29. Size of family (number of people):

| | |
|-------------------------|-----|
| A. One | [0] |
| B. Two | [0] |
| C. Three | 4 |
| D. Four | 18 |
| E. Five | 35 |
| F. Six | 11 |
| G. Seven | 9 |
| H. Eight | 2 |
| I. Eight [sic] | 1 |
| J. Ten or more than ten | [0] |

30. Household categorization:

| | <u>Before move</u> | <u>After move</u> |
|--------------------------------------|--------------------|-------------------|
| A. Farming | 78 | 78 |
| B. Semi-farming and semi-non-farming | 2 | 2 |
| C. Professionals | [0] | [0] |
| D. Herders | [0] | [0] |
| E. Wage earners | [0] | [0] |

31. Type of resettlement:

| | |
|--------------|----|
| A. Planned | 57 |
| B. Unplanned | 23 |

32. Where did you stay immediately after moving?

| | |
|--------------------------------|----|
| A. With friends or relatives | 5 |
| B. Lived in shed | 18 |
| C. Stayed in public housing | 49 |
| D. Moved into self-built house | 3 |
| E. Other: _____ | 5 |

33. Where did you receive help for move-related problems?

| | |
|-----------------|-----|
| A. Government | 7 |
| B. Relatives | 18 |
| C. Neighbors | 5 |
| D. Friends | [0] |
| E. Self | 50 |
| F. Other: _____ | [0] |

34. Resettlement-related difficulties you had to overcome:

| | |
|-------------------------------------|-----|
| A. Build a house | 10 |
| B. Fuel | 2 |
| C. Drinking water | 34 |
| D. Tools for farming and herding | 10 |
| E. Lack of technical expertise | [0] |
| F. Lack of means to increase wealth | 2 |
| G. Lack of grain for the family | 3 |
| H. Electricity usage | 6 |
| I. Medical care services | 7 |
| J. Schooling for children | 4 |
| K. Transportation | [0] |
| L. Post and mail services | [0] |
| M. Other: _____ | 2 |

What was the most difficult issue?

What was the second most difficult issue?

35. Subsidies provided for resettlement:

| | |
|---|-------------------|
| Total amount: _____ Yuan | 1682.10 (average) |
| Out-of-pocket (personal) expenses: _____ Yuan | 122.68 |
| Subsidy received: _____ Yuan | 461.42 |
| Of which? | |
| Build a house: _____ Yuan | 296.30 |
| Moving: _____ Yuan | 165.12 |
| Fuel: _____ Yuan | [0] |
| Electricity: _____ Yuan | [0] |
| Drinking water: _____ Yuan | [0] |
| Farming tools: _____ Yuan | [0] |
| Other: _____ Yuan | [0] |

36. Grain production before and after moving to resettlement area (yield/per mu):

| | |
|-----------------------------------|------------------|
| Year preceding move: _____ kg | 155.75 (average) |
| First year after move: _____ kg | 145.33 |
| Second year after move: _____ kg | 187.71 |
| Fifth year after move: _____ kg | 228.14 |
| Seventh year after move: _____ kg | 259.51 |

37. Income before and after moving:

| | |
|-------------------------------------|-------------------|
| Year preceding move: _____ Yuan | 1322.81 (average) |
| First year after move: _____ Yuan | 1424.46 |
| Second year after move: _____ Yuan | 1997.27 |
| Fifth year after move: _____ Yuan | 2879.00 |
| Seventh year after move: _____ Yuan | 4044.38 |

| | |
|--|--------------------------------|
| 38. Family income during 1995-1996 (Yuan/month): | |
| Total: ___ RMB Yuan | 7111.39 (average) |
| Grain: ___ Kilograms | 5277.08 |
| Contributed by: | |
| A. Crop production: ___ Yuan | 5062.87 |
| B. Animal raising: ___ Yuan | 807.71 |
| C. Forestry, fishery: ___ Yuan | 47.39 |
| D. Construction: ___ Yuan | 547.15 |
| E. Mining: ___ Yuan | [0] |
| F. Commercial catering: ___ Yuan | 280.55 |
| G. Wages and salaries: ___ Yuan | 110.17 |
| H. Subsidy income: ___ Yuan | [0] |
| I. Bonus: ___ Yuan | [0] |
| J. Other: ___ Yuan | 255.55 |
| 39. Do you have any school-age children? | |
| Yes | 65 |
| No | 15 |
| If yes, are they in school? | |
| A. In school | 57 |
| B. Not in school | 8 |
| 40. Reasons for school-age children not being in school: | |
| A. Children do not want to go to school | [0] |
| B. Children help parents with the farm work | 3 |
| C. School too far away from home | 2 |
| D. Sick/Physically challenged | [0] |
| E. Financial difficulties | 1 |
| F. Other: ___ | 2 |
| 41. Status of savings: | (average savings: 2329.4 Yuan) |
| A. Have savings | 53 |
| B. Have no savings | 22 |
| 42. Do you lease land? | |
| Yes | 80 |
| No | [0] |
| If yes, choose from the following: | |
| A. Less than 20 mu | 58 |
| B. 20-50 mu | 22 |
| C. 50-80 mu | [0] |
| D. 80-100 mu | [0] |
| E. More than 100 mu | [0] |

43. What farming equipment do you own:
- | | |
|----------------------------------|-----|
| A. Four-wheel tractor | 1 |
| B. Walking tractor | 49 |
| C. Animal-driven cart | 13 |
| D. Two-wheel cart | 5 |
| E. Water pumping machines | 1 |
| F. Seed-spreading machines | 6 |
| G. Thresher | [0] |
| H. Stone mill, electric mill | [0] |
| I. Vehicles for farming purposes | [0] |
44. Livestock that you own:
- | | |
|--------------------------|-----|
| A. Draught animals: ____ | 38 |
| B. Pigs: ____ | 106 |
| C. Sheep: ____ | 283 |
| D. Other: ____ | [0] |
45. Ownership of consumer durables (How many?):
- | | |
|-----------------------------------|----|
| A. Bikes: ____ | 57 |
| B. Watches: ____ | 21 |
| C. Sewing machines: ____ | 23 |
| D. Radios: ____ | 28 |
| E. Black and white TV sets: ____ | 1 |
| F. Color TV sets: ____ | 3 |
| G. Motorcycles: ____ | 6 |
| H. Major items of furniture: ____ | 95 |
46. Household expenses for 1995-1996?
- | | |
|--|---------|
| A. Clothing: ____ Yuan | 841.24 |
| B. Food: ____ Yuan | 1670.73 |
| C. Housing: ____ Yuan | |
| D. Transportation: ____ Yuan | 306.39 |
| E. Fuel: ____ Yuan | 365.77 |
| F. Medical expenses: ____ Yuan | 992.27 |
| G. Recreation/Entertainment: ____ Yuan | 1.19 |
| H. General gifts: ____ Yuan | 208 |
| I. Marriage/Funeral ceremony expenses: ____ Yuan | [0] |
| J. Other: ____ Yuan | [0] |
47. Average educational expenses for children for 1995-1996?
(total: 288.9 Yuan)
- | | |
|-------------------------------|-------|
| A. Tuition: ____ Yuan | 184.4 |
| B. Textbooks: ____ Yuan | 37.8 |
| C. Reference books: ____ Yuan | 23.1 |
| D. School boarding: ____ Yuan | [0] |
| E. Other: ____ Yuan | 12.1 |

ANNEX 6

Supplemental Letter 5

PEOPLE'S REPUBLIC OF CHINA

December 30, 1999

International Development Association
International Bank for Reconstruction
and Development
1818 H Street NW
Washington D.C. 20433

Re: Credit No. 3255 CHA and Loan No. 4501 CHA
(Western Poverty Reduction Project)
Status of Haixi Prefecture

Ladies and Gentlemen:

We refer to the Development Credit Agreement (the Development Credit Agreement) of even date herewith between the People's Republic of China (the Borrower) and the International Development Association (the Association), the Loan Agreement of same date between the Borrower and International Bank for Reconstruction and Development (the Bank) and the Project Agreement (the Project Agreement) of same date among the Association, the Bank and Gansu Province, Inner Mongolia Autonomous Region and Qinghai Province (Qinghai), all for the Western Poverty Reduction Project (the Project). The terms defined in the Development Credit Agreement shall, wherever used in this letter, have the respective meanings set forth in the Development Credit Agreement.

The Borrower hereby represents to the Association and to the Bank that the implementation of Qinghai's Respective Part of the Project, including the Qinghai Voluntary Settlement Implementation Plan, will not affect the status of Qinghai's Haixi Prefecture as a Mongolian and Tibetan Autonomous Prefecture, and that Haixi Prefecture will continue to maintain this status even after the Qinghai Settlement Beneficiaries move into the Qinghai Settlement Area. The Association and the Bank may rely upon this representation in making the Credit and the Loan for the Project.

Sincerely yours,

PEOPLE'S REPUBLIC OF CHINA

By /s/ Zhu Guangyao
Authorized Representative

THE WORLD BANK/IFC/M.I.G.A.

OFFICE MEMORANDUM

DATE: April 19, 2000

TO: Jim MacNeill, Chairman, Inspection Panel

FROM: Ko-Yung Tung, Vice President and General Counsel, LEGVP ky

EXTENSION: 33701

SUBJECT: **CHINA: Credit No. 3255-CHA, Loan No. 4501-CHA
(Western Poverty Reduction Project)
Request for Legal Opinion**

Reference is made to the Loan Agreement between the People's Republic of China (the Borrower) and the Bank, and the Development Credit Agreement between the Borrower and the Association, both dated December 30, 1999, for the above-captioned Project, to the Memorandum dated August 24, 1999 from the Inspection Panel to the Board, regarding the Request for Inspection of the Project (INSP/R99-6), and to your memorandum dated March 28, 2000 requesting a legal opinion as to whether the representations contained in Letter No. 5, dated December 30, 1999 from the Borrower to the Bank and Association, relating to this Project, constitute a valid, binding and enforceable obligation of the Borrower, and relevant authorities in the Borrower's territory. Specifically, the representations (the "Representations") to which you refer state as follows:

"The Borrower hereby represents to the Association and to the Bank that the implementation of Qinghai's Respective Part of the Project, including the Qinghai Voluntary Settlement Implementation Plan, will not affect the status of Qinghai's Haixi Prefecture as a Mongolian and Tibetan Autonomous Prefecture, and that Haixi Prefecture will continue to maintain this status even after the Qinghai Settlement Beneficiaries move into the Qinghai Settlement Area. The Association and the Bank may rely upon this representation in making the Credit and the Loan for the Project." (Emphasis added.)

As noted in your memorandum, your request for a legal opinion stems from concerns expressed about the project as to whether "the status of Haixi Prefecture as a Mongolian and Tibetan Autonomous Prefecture will remain viable after [the] Bank financed population transfer [under the project] has reduced indigenous populations to less than one quarter of the total population." (emphasis added).¹

¹ See pages 5 and 6 of the Inspection Panel Claim dated June 18, 1999, attached to the Memorandum dated August 24, 1999 from the Inspection Panel to the Board, Request for Inspection: China: Western Poverty Project (Credit No. 3255-CHA; and Loan No. 4501-CHA) (INSP/R99-6, dated August 24, 1999).

As a legal matter, the Representations constitute a statement by the Borrower of fact or an interpretation of Chinese law. They confirm that, as a matter of Chinese law, the implementation of the Project, including population transfers, will not, in and by itself, alter the status of Haixi Prefecture as a Mongolian and Tibetan Autonomous Prefecture. The Representations further state that the Bank and Association may rely upon this interpretation of Chinese law in making the Loan and Credit.

Although the Bank was not required to independently verify the accuracy of the Representations, the Bank nevertheless reviewed the relevant legislation and obtained the advice of legal experts, as well as legal officials of the Borrower. This review and advice revealed that the principal sources of Chinese law relevant to the status of autonomous areas are the Constitution of the People's Republic of China (the "Constitution") and the Law of the People's Republic of China on Regional National Autonomy ("LRNA").

Based upon such advice, we understand as follows:

The Constitution provides that all nationalities in the People's Republic of China are equal and that discrimination against and oppression of any nationality is prohibited.² Both the Constitution and the LRNA provide that regional autonomy is practiced in areas where people of minority nationalities live in concentrated communities.³ Neither the Constitution nor the LRNA indicates a precise level required for an area to become eligible for treatment as an autonomous prefecture, nor does either provide that having been conferred such status, an autonomous prefecture would lose this status if the percentage of the minority population dropped below some certain level.

Under the LRNA, any minority nationality, large or small, may apply to establish an autonomous area, if its members live in a concentrated community.⁴ In granting this status, consideration is given to the local conditions of the minority nationality, including, inter alia, historical background.⁵ The Chinese Commission on Minority Affairs (the "Commission") explained that this provision means that if the minority nationality has historical ties with a particular area, it is more likely to be granted such status.

The LRNA goes on to state that "[O]nce defined, the boundaries of a national autonomous area may not be altered without authorization."⁶ Indeed, if an alteration in status is found to be necessary, specific procedures must be followed before any such alteration could be proposed. These include a proposal by the relevant department of the state organ of the next higher level (in this case the province), which may be submitted to the State Council for approval only after full consultation with the organ of self

² Constitution, Article 4

³ Constitution, Article 4; LRNA, Article 2.

⁴ LRNA, Article 12

⁵ Id., Article 12

⁶ Id., Article 14.

government of the national autonomous area (in this case the prefectural government).⁷ Moreover, the Commission advised the Bank that in practice, once an area has been conferred autonomous status, this status has only rarely been changed. In each case in which the autonomous status was changed, it involved a request by the autonomous area to be upgraded to a municipality (which is not eligible to be treated as an autonomous area) or a request by the minority nationality for the entire community to be moved to another area.⁸ Thus, the Commission advised that mere changes in numbers or concentration of the minority nationality living in the area do not trigger the loss of status as an autonomous area.

The advice provided to the Bank clearly confirmed that, as a matter of Chinese law, the *implementation of the Project*, including resulting population transfers, will *not, in and by itself*, have any *legal* effect on the status of Haixi Prefecture as a Mongolian and Tibetan Autonomous Prefecture, and that Haixi Prefecture will continue to maintain this status even after the Qinghai Settlement Beneficiaries move into the Qinghai Settlement Area. We are satisfied with the advice provided to it on this point of interpretation of Chinese law. Further, we are satisfied that the Representations could be, and were, validly made by the Borrower and may be relied upon by the Bank in making the Loan and by the Association in making the Credit.

Should the interpretation of Chinese law prove to have been wrong, the Representations would provide a legal basis for the Bank and the Association to exercise their respective suspension remedies under the provisions of the applicable General Conditions. Pursuant to these provisions, the Bank (or Association) may suspend the right of the Borrower to withdraw the Loan (or Credit) proceeds if "a representation made by the Borrower in or pursuant to the [Loan Agreement] [Development Credit Agreement], or any statement furnished in connection therewith, and intended to be relied upon by the [Bank] [Association] in making the [Loan][Credit], shall have been incorrect in any material respect."⁹ The Representations were provided as a statement furnished in connection with the Loan Agreement and Development Credit Agreement, and were explicitly intended to be relied upon by the Bank in making the loan and the Association in making the Credit.¹⁰ If, as a matter of law, Haixi Prefecture were to lose its status as an autonomous prefecture as a result of the Project, the Representations, which addressed specifically this status, would have been incorrect in a material and significant respect.

⁷ Id., Article 14

⁸ In one case only, the change in status resulted after the entire minority nationality requested to be repatriated from one province to a region that had been conferred the status of an autonomous region of that particular minority

⁹ General Conditions Applicable to Loans and Guarantee Agreements for Single Currency Loans, dated May 30, 1995 (as amended through December 2, 1997), Section 6.02(i); General Conditions Applicable to Development Credit Agreements, dated January 1, 1985 (as amended through December 2, 1997), Section 6.02(g).

¹⁰ Under Bank policies and practice, Supplemental Letters are normally used to set out "representations made by the borrower, the guarantor, or the beneficiary at the time the loan is made" (OP 7.01, paragraph 11).

We are therefore satisfied that the Representations provide an adequate basis to suspend disbursements and cancel unwithdrawn credit and loan proceeds in the event the Representations prove to have been incorrect in their assessment of the status of Haixi Prefecture as an autonomous prefecture.

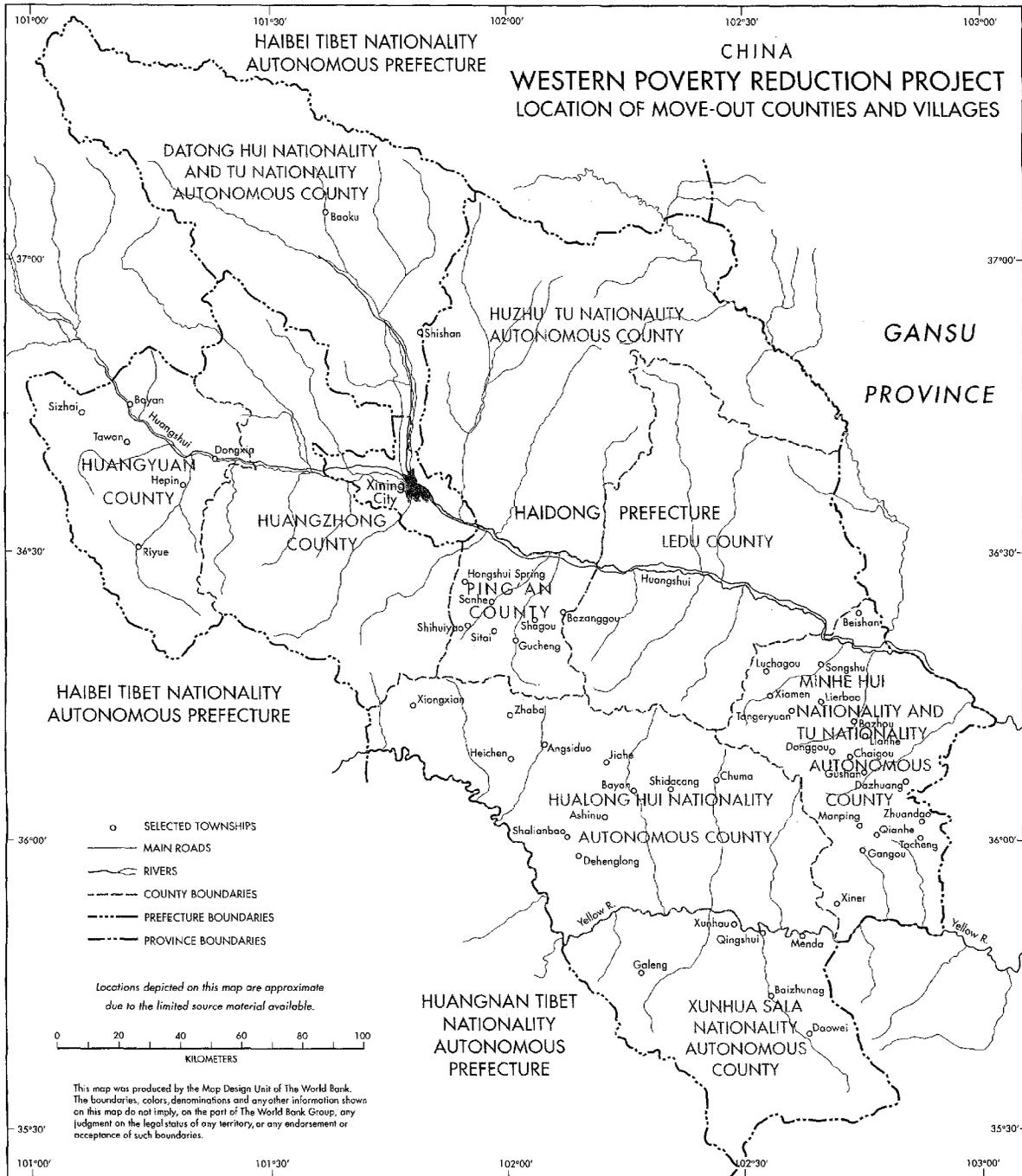
The Management Response to the Request for Inspection therefore correctly states that "[T]he Supplemental letters to the Legal Agreements... agreed with the Chinese authorities introduced a number of refinements to the Project, including: ... [A]ssurances from the Borrower that the administrative status of the Haixi Mongol and Tibetan Autonomous Prefecture will remain unchanged *as a result of the Project.*"¹¹

The Representations discussed above are to be distinguished, however, from a *contractual undertaking* of the Borrower that the status of Haixi Prefecture will not be altered under any circumstances for reasons that are unrelated to the implementation of the Project. Such a contractual undertaking was neither sought nor obtained. No statement has been made in the Management Response to the effect that such a commitment has been sought or obtained.

KYT

cc: Messrs./Mmes. Kassum, Schweitzer, Wilson, Soderstrom, Gopal, DeWitt

¹¹ Management Response attached to the Memorandum dated August 24, 1999 from the Inspection Panel to the Board Request for Inspection: China: Western Poverty Project (Credit No: 3255-CHA, and Loa 4501-CHA) (INSP/R99-6 dated August 24, 1999), page 4



MAP 1

CHINA WESTERN POVERTY REDUCTION PROJECT LOCATION OF MOVE-IN AREAS

