

# Contributing Paper

## World Bank Inspection Panel

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## **I. Introduction and Background on the Inspection Panel**

In 1994, the World Bank Executive Board established the Inspection Panel, an appeals mechanism that receives claims from citizens who believe they have been directly harmed by World Bank projects. The Panel was created on the heels of an intense seven year controversy over the Bank funded Sardar Sarovar dam project in western India, which catalyzed NGO lobbying for increased accountability and transparency at the World Bank.<sup>1</sup> According to an independent review (The Morse Commission) of Sardar Sarovar, there was a history of systematic violations of World Bank policies and loan agreements, particularly those relating to environment and resettlement of people. In addition, the Bank was under intense pressure from the U.S. Congress during the replenishment of the International Development Association (IDA), the Bank's "soft loan" window. Congress wanted the Bank to improve its public accountability, and environmental and social record, and was prepared to condition its contribution to IDA on a set of reforms which included an appeals mechanism and an expanded information policy. Inside the Bank, an internal evaluation report (The Wapenhans Report) revealed that 37% of Bank projects were rated "unsatisfactory" and that pressure to lend money overwhelmed all other considerations. The report found poor appraisal practices, failure to properly implement and monitor projects and widespread violations of loan and credit agreements.<sup>2</sup> This report combined with increasing international public protests over destructive mega-projects, led some Bank Executive Directors and high level Bank management to consider new approaches to project oversight, increased transparency, and monitoring. As such, a combination of internal and external pressures led to the Panel's creation.

In addition to increasing transparency and accountability, the Executive Directors cited that one key objective of the Panel would be to ensure that projects were "fully compatible" with World Bank policies and procedures.<sup>3</sup> The Panel is considered by many observers to be precedent-setting in international law and treaty based organizations because it is the first time that private citizens have a vehicle to intervene in the activities of an international organization.<sup>4</sup> The Panel also served as a model for the creation of investigative mechanisms at the Inter-American Bank and the Asian Development Bank.

The Panel's activities are triggered by claims from adversely affected people. Its operations are governed by four documents: a Board Resolution, the Panel's procedures, and two Board directives (issued in 1996 and 1999) which "clarify" the Resolution. The Panel is empowered to receive and investigate Requests for Inspection (hereinafter referred to as "claims") from people directly affected by World Bank projects in cases where the Bank has failed to implement and enforce its own policies, procedures and loan agreements. The claimants must be two or more affected people in a Bank borrowing country, and must show that their rights or interests were (or are about to be) directly, adversely affected by an act or omission of the Bank regarding policy or procedural violations. The claimants must also show that they

brought the violations to the attention of Bank management, and that management did not respond adequately. Claimants can be represented by local non-government organizations (NGOs) in the country where they are located, but can only be represented by international NGOs in exceptional cases. In special cases of serious alleged violations of Bank policies and procedures, an Executive Director of the Bank can also file a claim.

After the claim has been filed, the Panel determines whether the claim is eligible under the Resolution and Panel procedures. If the Panel determines it is eligible, it then registers the claim, and starts a preliminary evaluation. Bank management then sends its response to the claim to the Board and the Panel. The Panel then makes a recommendation to the Board regarding whether there should be a full investigation. The Board then approves or rejects an investigation. *The Panel cannot proceed without Board approval.* If the Panel investigates a claim, it then sends a report with findings to the Board. Then management responds to the report and makes recommendations to the Board on how to improve the project and bring the project into compliance. The Board then makes a decision about how to proceed.

To date, seventeen claims from twelve countries have been filed with the Panel. So far the Panel has recommended an investigation of seven claims, but the Board has authorized only two investigations-- the Arun III Hydroelectric Dam Project in Nepal and the Western Poverty Reduction Project in China (also involving a dam). In two other claims--Yacyreta Hydroelectric Project in Argentina and Paraguay and Singrauli Thermal Power project-- the Board approved a more limited review. In the case of Singrauli, this was limited to a “desk review” and in Yacyreta, the Board approved a “review and assessment” In seven claims, Bank management initially denied there were any violations of Bank policy or procedure (see table 2).

The claims encompass a broad range of claimants, interests and policy violations. A majority of the claims have been filed by local NGOs or activists representing people directly affected by environmental and social policy violations by the Bank. These claims include Arun III, Yacyreta, Biobío, Planaflores, Singrauli, Itaparica Jamuna Bridge, Lagos Drainage and Sanitation. Three claims--Jute Sector, Tanzania Power, and Compensation for Expropriated Foreign Assets in Ethiopia--were filed by private sector interests. Projects that involve the involuntary resettlement of people have always been the most controversial of Bank projects, and the Inspection Panel claims reflect this: nine of the claims filed allege that the Bank violated its policy on involuntary resettlement. NGO complaints regarding violations of the Bank’s environmental policies are also common, and eight claims filed allege violations of the Bank environmental assessment policy. Several of these “environment and resettlement claims” also cite other policy violations. For example, the heart of the Arun III claim was Bank violations of its policy on economic evaluation of investment operations. Also, the Lesotho Highlands Water Project cited violations of the Environmental Policy on Dam and Reservoir Projects, Water Resources and Management and Poverty Reduction.

Six of the claims filed involve large scale controversial dam projects. These are Arun III Hydroelectric Project (Nepal), Pangué (“Biobío”) Dam in Chile, Yacyreta Dam on the Argentina/ Paraguay border, the Itaparica Dam in Brazil, Lesotho Highlands Project in South Africa, and Western Poverty Reduction Project in China. The Panel did not recommend an investigation for Lesotho. The Panel is currently investigating the China project, so it is too early to comment on that investigation in this report. Biobío was considered ineligible by the Panel because the project was financed by the International Finance Corporation (IFC), a commercial arm of the World Bank that is not under the Panel’s purview (see discussion in Section II).

While the Panel investigates, and at times, monitors compliance and implementation of Bank policies and procedures, it is not an enforcement mechanism. Despite this limitation, the Panel’s activities and reports have often had an impact on Bank operations, policy compliance and implementation issues. This paper briefly reviews the Inspection Panel process over the last five years. It explores the current problems and roadblocks to the Panel independence and viability. It will also make recommendations for improvement of the Panel structure. The paper will mainly highlight two cases studies of dam claims-Arun III and Yacyreta—but will also review other claims important to precedent, compliance and implementation. Section two reviews emerging issues from the Panel process, the Panel’s impact on Bank policy, and policy compliance and implementation, and developments related to the Panel’s independence. Section three will review lessons learned and make recommendations about the panel process. This is not an exhaustive review, but an attempt to flag the key issues and problems that have emerged from the Panel process.

### **Quick Reference Guide: How The Inspection Panel Process Works**

The Inspection Panel is a three member independent Panel which is empowered to investigate “Requests for Inspection” (hereinafter referred to as “claims”) from directly affected people regarding Bank violations of its policies and procedures. The process first starts when the Panel receives a written claim. The claimants must show the following:

- The claimants have been or are likely to be adversely affected or harmed by activities related to the design, appraisal or implementation of a Bank financed project or program;
- The harm caused or likely to occur is a result of a failure of the Bank to follow its policies or procedures; and
- The problem was previously presented to Bank management, and management did not adequately respond or failed to take remedial action within a reasonable period.

1) When the Panel receives a claim, it determines eligibility, then sends a copy of the claim to Bank management and asks management to respond within 21 days. The Panel also notifies the Board that a claim has been received.

2) When management sends its response, the Panel weighs evidence both from the claim and management in order to determine whether it wants to recommend an investigation of the alleged policy violations. The Panel may also make a site visit as part of its preliminary review. The panel has 21 days for the preliminary review.

3) Once the Panel decides whether or not it wants to investigate a claim, it sends a recommendation to the Board. The Board meets to decide whether to authorize or reject the recommendation. After the Board decides, the claim, managements’ response and the Panel recommendation are made public.

4) If the Board authorizes an investigation, the Panel proceeds with the investigation. There is no time limit for an investigation.

5) Once the investigation is concluded, the Panel sends its final report and findings to the Board and Bank management. Bank management then has 6 weeks (42 days) to send its recommendations, if any, to the Board, on what action the Bank should take in response to the Panel report and findings. The Board then makes a final decision on what action should be taken, based on the Panel’s final report and management’s recommendations.

6) The Panel’s final report and management’s recommendations are made public within two weeks of the Board’s decision.

## **II. Inspection Panel Review**

### **A. The Panels’ Impact on Bank Policy and Policy Compliance and Implementation**

For years, NGOs, grassroots movements and activists have charged that violations of World Bank policies, procedures, and loan agreements have caused adverse social and environmental impacts among directly affected people in Bank project areas. Policy and loan agreement violations have been at the source of some of the most controversial dam projects--such as Sardar Sarovar (India), Arun III (Nepal), Kedung Ombo (Indonesia), and Pak Mun (Thailand). This section reviews the first five years of the Inspection Panel and explores the Panel's influence on Bank policy and project reform, as well as policy compliance and implementation. It also discusses the Panel's lack of independence from the Bank's board and management which could ultimately impact its credibility and long term viability.

The Panel is-- by the nature of its powers--a limited creature. It is not an enforcement or judicial mechanism, but it has investigative and reporting duties. In practice the Panel has played other roles such as mediator, monitor, reviewer and advisor. The success of the Panel process depends on many actors: the Panel members and staff, the claimants, participation of borrowing government (national, state, and local), Bank management, the Bank Executive Board, NGOs and activists. The activities of all of these stakeholders have impacted the claims process and the Panel's independence.

The Resolution does not provide for the Panel to review or make recommendations on Bank policy, project reform, or other aspects of Bank operations, outside of determining whether policy violations exist, issuing findings or recommending an investigation. In practice, however, the Panel and the process around it has often influenced Bank policy as well as issuing recommendations on project reform. Similarly, while the Panel is not empowered to enforce its recommendations, it has monitored and improved compliance and implementation of policies and procedures. Additionally, in almost every claim, Bank management responded to the claim with an action plan or mitigation plan which often detailed extensive project reform or mitigation, in an attempt to come into compliance with the project. Claims that have resulted in increased policy compliance, implementation or project reform are Arun III, Biobio, Jamuna Bridge, Yacyreta, Jamuna Bridge, and Singrauli.

Arun III set a precedent for Panel activities resulting in compliance with Bank policy and procedures. Arun III was the first claim filed with the Inspection Panel. The Project involved the construction of a 122 kilometer access road and construction of a 68 meter run-of-the-river hydroelectric dam in the Arun Valley in eastern Nepal about 170 km east of Kathmandu. The total cost of the project was around \$1 billion, which is one and one

half times the annual national budget of Nepal. Nepal has a population of 20 million, and with a per capita income of \$180, is considered one of the poorest countries in the world.<sup>5</sup>

A 122 kilometer access road was to be built into a remote undeveloped valley, an area

only accessible by foot. The valley contains unique biological diversity, and some of the last remaining intact forest in the Himalayas. The Arun valley is also home to 450,000 indigenous and rural poor people, many of whom lead a subsistence life without much contact with the outside world. Even though Arun III was the first in a series of three projects, there was no comprehensive environmental assessment for all the projects in the valley. On October 24, 1994, the Arun Concerned Group (AGC), a coalition of Nepalese NGOs, filed the first claim with the Panel. The AGC charged that the World Bank had violated its policies and procedures on environmental assessment, involuntary resettlement, indigenous peoples, energy, economic evaluation of projects, and information disclosure.<sup>6</sup> However, the crux of the Arun III claim was that the project was not economically viable and it was in violation of Bank operational Policy on Economic Evaluation of Investment Options.<sup>7</sup> While the Panel did not investigate the economic issue, the controversy around the claim forced Bank management to re-examine the economics of the project. Ultimately, the Bank decided not to fund the project. Based on the Bank press release the rationale for not funding Arun III was based on three issues: 1) the Government of Nepal lacked institutional capability to implement environmental and social mitigation efforts, 2) the high cost of the project had the potential to “crowd out” important social expenditures, and, 3) commitment from other funders were not firm. Although at the time, the Bank was quick to point out that the role of the Inspection Panel was not to “stop projects” in a sense this was an ideal scenario where a strong local campaign armed with concrete viable alternatives was able to influence the Bank to drop an unsound project before it began. Dropping the project also brought the Bank into compliance with its policies and principles.

In the Jute Sector claim—a project involving the restructuring of the jute sector in Bangladesh-- the Panel did not request an investigation, but it recommended that the Bank closely supervise the adjustment program with regard to financial discipline and suggested a revisiting of the basic program design.<sup>8</sup> The Panel’s involvement in the Jamuna Bridge Project claim resulted in increased public participation and compensation of a large number of people previously excluded. The bridge project over the Jamuna River was affecting a huge number of island dwellers who had originally not been part of the compensation plan.

In Planaflo, there was also some improvement in compliance and implementation of policies after the Panel became involved. The Planaflo Project in Brazil was designed to improve natural resource management, conservation and sustainable development in the Brazilian state of Rondonia, through instituting changes in the policies, regulations and public and private investment programs. The claimants in Planaflo charged that the Bank had violated 10 world bank policies and procedures, and as a result those who were to be the beneficiaries of the project were being harmed.

At the request of the Board, the Panel took on a monitoring and review role in the Planaflo project. The Board twice rejected the Panel’s recommendation to authorize an investigation, but after a fourteen month period during which a Bank action plan was supposed to be implemented, the Panel reviewed the status of the action plan, and commented on policy violations and other aspects of the project. The Panel found

significant progress in the areas of zoning and land regularization and some improvement in supervision of the project. Violations in other parts of the project continued and the Panel recommended restructuring of the project.<sup>9</sup> The Panel's involvement resulted in a restructuring of the project, and participation of civil society increased dramatically.

A significant impact on Bank policy and compliance was brought about by the Panel and claims process around the Pangué dam ("Biobio") project claim. The total Biobio project involves the construction of six hydroelectric dams on the Biobio river in Chile. The first two are the Pangué and Ralco Dams. Construction of the 450 MW Pangué Dam began in 1992, with \$150 million loaned by the International Finance Corporation (IFC), and another \$142 million loaned by European bilateral agencies and commercial banks.<sup>10</sup> The total cost of the Pangué project is \$367 million. The IFC has indicated that it will not fund Ralco. The Pangué Dam has been the subject of intense debate and NGOs have been campaigning on the project inside Chile and internationally since 1992. NGO attention has also focused on the proposed Ralco Dam which environmental and indigenous NGOs believe will destroy large tracts of forest, threaten wildlife, and threaten the culture and livelihood of the Pehuenche Indians.

Under the Resolution, the Inspection Panel does not have jurisdiction to investigate violations of policy related to projects which are financed or guaranteed by the International Finance Corporation or the Multilateral Investment Guarantee Agency (MIGA), the two commercial arms of the Bank. Despite this, in November 1995, Grupo de Accion por el BioBío (GABB) from Chile decided to file a claim with the Panel charging violations of IFC and World Bank policies. GABB filed the claim as a last resort because "all other recourse had failed."<sup>11</sup> GABB filed the claim on behalf of 47 Pehuenche Indians, 197 citizens living in the lower Biobío Basin, 145 people in nearby cities and three Chilean Congressmen. GABB argued that the Panel should have competence to investigate the case and that the Inspection Panel should apply to the IFC, because the IFC is publicly owned, part of the World Bank Group, has a similar Board of Governors and Directors, and is required to follow World Bank policies and directives. The claim catalyzed an unprecedented independent review of an International Finance Corporation (IFC) financed project.<sup>12</sup> The panel sent the claim to Wolfensohn and the Board and suggested that the claim be investigated independently. Wolfensohn hired an independent review team to look at the project over an eight month period. The team found extensive violations of Bank policy. Following the partial release of the report, the controversy and dialogue between NGOs and the Bank on the need for the Inspection Panel's jurisdiction to extend to the IFC ultimately led to the creation of a compliance/ombudsman office which will advise senior management on violations of IFC policies on information, and social and environment issues. The ombudsman will also oversee the Multilateral Investment Guarantee Agency (MIGA). The creation of the ombudsman office earlier this year is an important precedent and step for improving compliance and implementation of environmental and social policies at the IFC/MIGA. However, it is too early to comment on the performance or practice of the office.

## Increasing Public Participation

Public participation and input into the project cycle are at the heart of many of the World Bank environment and social policies. In many cases, the Panel has facilitated increased public input and consultation in problem projects. In several claims, it was only after the claims were filed that the government took the complaints of affected people seriously. Increased public participation and consultation as a result of the Panel process and access to information also have the impact of empowering local communities and NGOs vis-a-vis their governments and local political process to increase scrutiny of projects. According to Arun III claimant Gopal Siwakoti “The filing of the claim made a big turn in the public debate and made significant impacts in favor of the campaign. It significantly changed the dynamics of the debate in Nepal on water resources and energy sector management and [increased] realization for the promotion of alternatives.”<sup>13</sup>

In Yacyreta, the claims process also opened up political space for affected people. According to Kay Treakle of Bank Information Center: “The news that their claim had been accepted by the Boards of Directors of the World Bank... was a turning point for the long neglected affected people. Years of intimidation and lack of response from government institutions had practically destroyed the organizations of affected communities...one immediate consequence of the claim was that EBY (the implementing agency) began meeting with the community. It was catalytic feature of an emerging social movement at Yacyreta.”<sup>14</sup>

Bank management, in addition to responding to claims on issues of compliance, has also issue “action plans” which detail the Bank’s plans for improving compliance, problem solving and project reform. Often the Board would respond to this by asking the Panel to review implementation of the action plans. This has occurred for a majority of the claims. For example, in Planaflo, the Board didn’t approve an investigation, but involved the Panel in reviewing the Bank action plans. The Board also chose a government action plan over a Panel investigation in Itaparica. Many NGOs have criticized the Bank for this because they say the actions plans interfered with the claims process, since the Panel is looking at the action plan rather than project violations. NGOs and claimants have also complained that action plans are drawn up without involvement of the affected people or claimants. Other observers close to the Panel believe that the action plans have helped to improve overall implementation, compliance and scrutiny of projects. The action plan issue was discussed in the second Board review of the Inspection Panel, and resulted in the Board 1999 Directive requiring Bank management to prepare actions plans in consultation with the government and the

affected people. The directive also distinguishes between Bank management’s response to claims and actions plans, and requires the two to be separate documents.

The existence of the Inspection Panel has also created a project monitoring and review role for the Bank Board of Executive Directors which has traditionally left monitoring projects to Bank operations staff. Before the Panel's creation, the only time that the Board "revisited" a specific project (except for reviewing evaluations) was during a controversy over an ongoing project such as Polonoroeste or Sardar Sarovar. This was because affected people and NGOs engaged the Board in a monitoring role when they could not get results from Bank operations staff, or because they asked the Board to call for a suspension. This new Board role in claims processes, while understandably straining relations between the Board and Bank management has, at times, helped to improve project quality and compliance with Bank policies and procedures.

## **B. Barriers to the Panel's Independence and Viability**

### Panel Independence

As claims have worked their way through the panel process, the issue of the Panel's independence has surfaced as the main barrier to Panel effectiveness and credibility. Under the Resolution, the Panel is required to seek Board approval to investigate a claim. The Panel first weighs evidence received both from the claimants and Bank management, and a preliminary field visit. During this time, the Panel determines whether the claimants are eligible and whether there is *prima facie* evidence of policy violations by the Bank. The Panel then sends a recommendation to the Board on whether the claim should be investigated. The Board is supposed to decide within 2-3 weeks whether to authorize an investigation. In practice, this method has proved to be cumbersome and plagued by politics, indecision and delays. Part of the problem is that some Executive Directors have increasingly politicized the process through attempting to block the Panel from investigating claims in certain countries. Even though the Panel only has a mandate to investigate Bank and not country activities, the perception is often that the Panel is investigating the countries actions, thus the standard response is to challenge the claim's eligibility or to prevent the Board from approving the investigation. The Panel process seems to have exacerbated the "north-south" tensions in the Executive Board. Additionally, Bank management continually sends communications to the Board which challenge the claimants eligibility which further delays the process.

The Board decisions on Yacyreta, Arun III, and Itaparica claims provide examples of the delays and politics that can surround Board approval or rejection of an investigation, due to the Panels's lack of independence from the Board and Bank management. The Arun III claim experienced considerable delays in the approval of the investigation. The Panel sent its recommendation to the Board on December 16, 1994, but the Board did not authorize the investigation until February 2, 1995. The Panel had to reiterate its recommendation for investigation again on January 9, 1995 and again on January 20, 1995. In the interim, Bank management sent a status report and updates to the Board and the Panel regarding its alleged compliance with policies.

The Planaflo claim detailed World Bank management's failure to enforce Bank policy and procedures which they alleged have resulted in negligence, mismanagement, inadequate monitoring and harm to the claimants. On August 17, 1995, after a preliminary assessment, the Panel was convinced that the claimants were eligible to file a claim and may have been or were likely to be adversely affected as a result of policy and/or procedural violations.<sup>15</sup> The Panel recommended that the project be investigated. On September 12, 1995, the Board deliberated for five hours on the issue, and then failed to approve the investigation. Instead, the Board asked for more information about the claim, and stated that the Panel should further establish the materiality of damages to the claimants and whether the damages were caused by the Bank's failure to follow its policies and procedures. By December 8, 1995, the Panel issued an additional report which concluded *again* that there was sufficient evidence of harm linked to policy violations which would warrant an investigation. On January 25, 1996, *again* the Board declined to authorize an investigation stating that an investigation would not be advisable because Bank management had already set up an "action plan." From the time the Panel requested the initial investigation to the final Board decision against an investigation, the claimants had waited five months for a decision.<sup>16</sup>

Additionally, the Panel recommended an investigation of the Yacyreta Dam claim (see description below) on December 24, 1996, but the Board did not make a decision until a full two months later. On February 6, 1997, there was an informal Board meeting to discuss whether to authorize a Yacyreta investigation. The meeting was quite contentious, and the Board decided to delay a decision, because there was strong split between Executive Directors representing the Part I (donor country) and Part II (borrower country) regarding whether to authorize an investigation. The decision on whether to authorize became highly politicized after Julio J. Nogues, the Executive Director for Argentina, delivered an extensive statement objecting to an investigation and criticizing the Inspection Panel for what he said was operating outside the Resolution and its own procedures. The meeting ended without any resolution. After an intensive international NGO campaign aimed at the Board, three weeks later, on February 28, 1997 the Board finally authorized a limited "review and assessment". The terms of reference asked the Panel to review problems associated with environment and resettlement and assess the adequacy of management's Action Plan.<sup>17</sup>

Furthermore, in Itaparica, a resettlement project designed to benefit people affected by the Itaparica dam and reservoir, the Board decision was delayed three months, due to objections by the Brazilian Executive Director.

Many claimants and NGOs also note the Board approval process causes the Panel to be hampered by Bank management, who are often second-guessing the Panel and influencing the Board on questions of eligibility and how to proceed with the project. NGOs have proposed that the Panel's independence and credibility would be increased dramatically if the Panel could determine which claims to investigate. In support of their

argument, NGOs have cited examples of Board delays, the hostility of some Board members towards the Panel, and Bank management's ex-parte communications with the Board regarding approval of Panel investigations.<sup>18</sup> On the other side, some Board members have argued that having the Board involved in the initial decision helps with overall Board commitment to the Panel and its operations, and provides important oversight of the Panel. The problem of politicization of claims and Board delay came to a head during the recent Board review of the Panel. Acknowledging the problem, the Board Directive (April 1999) requires that Board will authorize an investigation without making judgement on the merits of the claimants request, and without discussion, except with respect to technical eligibility criteria. This was termed a "gentleman's agreement."<sup>19</sup> Considering the history and politicization of the process, NGOs are highly skeptical that this gentleman's agreement will work. The new process for approval has not been fully tested, but here are positive signs: The Western Poverty Reduction claim (China) was approved by the Board without delay.

### Eligibility of Claimants

A key issue related to the Panel's independence from the Board and Bank management is that of determining eligibility of claimants. The Resolution requires that the *Panel* shall determine whether the claimants meet the eligibility requirements to file a claim. The Resolution provides for management to give evidence that it had complied with or intends to comply with the relevant Bank policies or procedures. Nowhere does the Resolution provide for Bank management to comment on or make decisions on eligibility of claims. Despite this, management and the Bank's Legal Department have repeatedly used the issue of eligibility to attempt to block valid claims and to put up highly technical, legal arguments against claims. These eligibility arguments are usually part of management's response to the claim which is sent both to the Board and the Panel. In Yacyreta, Planaflo, and Itaparica-- management argued in detail against the eligibility of the claim and why it should not be investigated.

The Yacyreta dam is a gigantic hydroelectric project on the Parana River where it forms part of the border between Argentina and Paraguay. The dam is a joint venture between Argentina and Paraguay. The objective of the project is to provide hydroelectric energy to Argentina's grid; the designed final capacity is 3,100 MW. When completed, the dam will be 65 kilometers long and the reservoir will be filled to 83 meters above sea level (asl). The reservoir will inundate approximately 1,650 sq. kilometers, mostly wildlands (approximately 80,000 hectares in Paraguay and 29,000 hectares in Argentina) and cause the displacement of 50,000 people.<sup>20</sup>

According to NGOs and local activists, the Yacyreta project has been fraught with delays, corruption, cost overruns, World Bank policy violations, inter-governmental politics, and lack of financing. The project is now eleven years behind schedule and billions of dollars over budget. The most recent World Bank estimates show that the project will be completed in 2000 (an eleven year delay), at an estimated final cost of \$8.22 billion, a 59% cost overrun.<sup>21</sup> The World Bank and Inter-American Development

Bank has been involved in the project since 1979 and together have provided \$1.7 billion in loans for the project.<sup>22</sup> Construction on the project began in 1983, and except for the turbines, the physical works are nearly complete. However, the required environmental and social mitigation is less than 15% complete.<sup>23</sup>

In September 1996, Sobrevivencia (Friends of the Earth-Paraguay) filed a claim on their own behalf and on behalf of anonymous affected people in Encarnacion, Paraguay. The local claimants remained anonymous in fear of reprisals. The claimants charged that there were violations of policies on Environmental Assessment, Environmental Policy for Dam and Reservoir Projects, Involuntary Resettlement, Indigenous Peoples, Wildlands, Supervision, Cultural Property, and Environmental Aspects of Bank work.

In its response to the Request for Inspection, Bank management denied that there were policy violations, but instead questioned the eligibility of the claimants. Management defended the economics of the project and stated that despite the fact that the economics had changed, it still made more sense to complete the project than stop it. Management also argued that they didn't have to deal with certain environmental and social problems in the claim until the reservoir was higher. Later, management also issued an action plan which would deal with some of the problems raised in the claim.

Despite management's response, the Inspection Panel recommended a full investigation of the Yacyreta claim. The panel conducted a preliminary field study to verify both the eligibility of the claimants and the adequacy of Bank management's response. Regarding eligibility, the Panel was satisfied that the claimant Sobrevivencia represented communities that believed they were adversely affected by the project.

In the Itaparica claim, Bank management and at least one Board member challenged its eligibility. Management argued that the claim was ineligible because 95% of the loan proceeds had been disbursed and the claim was therefore barred under the Resolution. However, both the Panel and the Bank's General Counsel disagreed with management's assessment of eligibility in Itaparica, and found that if the second loan for the project was treated separately, it would not exceed 95%.

These examples underscore the problems the Panel faces in maintaining independence from Bank management in its day-to-day work, as a by-product of the Resolution requiring Board authorization of investigations. Bank management's insistence on challenging eligibility of most claims threatens the Panel's independence and integrity, because the Panel is constantly being second-guessed by management, delaying the panel process, and violating the resolution.

Terms of Reference

Another issue related to Panel independence from the Board and management, as well as to the claimants' access to the Panel process, is one of defining parameters and terms of reference of an investigation. The claims that have been approved for investigation or review have not been investigated as fully as requested by the claimants. In some cases, such as Arun III, the Inspection Panel itself initially narrowed the investigation because of the lack of a mandate or because it did not want to duplicate Bank management efforts. But in others such as Yacyreta, Planaflo, and Singrauli, the Panel process was limited or defined by the Board or Bank management, thus reducing the prospects of critical policy issues being addressed, marginalizing the role of the claimant, and allowing bank management to avoid responsibility and accountability for implementing Bank policies and procedures.

In Arun III, the investigation was narrowed twice, once by the Panel, and once by the Board. The Inspection Panel decided against recommending an investigation of policy violations on information disclosure and economic evaluation of alternatives, but asked for an investigation of policy violations on environmental assessment, involuntary resettlement, and indigenous peoples. At the time, the Arun III claimants did not know of this recommendation to the Board until after the Board had already made a decision. The Board agreed with the Panel on dropping the two policies, and further limited the investigation by asking the Panel to look into only very narrow aspects of the environment, resettlement, and indigenous peoples' policies. The Board decision drew fierce criticism from the claimants and other NGOs. In letters to the Board and President of the World Bank, the claimants charged that the Board and the Panel failed to address the fundamental issues in the claim. When the Panel conducted its investigation of Arun III, the parameters of the investigation were defined by Bank management, rather than the claim, because the Panel was mainly responding to management's proposed "remedial measures" rather than to the issues in the claim.

In Planaflo, the Panel concluded that there was sufficient preliminary evidence of harm linked to policy violations in the claim and recommended an investigation into violations of policies on indigenous peoples, supervision, monitoring and evaluation, accounting and auditing, suspension of disbursements, participation and application of lessons of experience. Although the Board did not authorize an investigation, it asked the Panel to "review" Bank management's Status Report and Plan of Action.<sup>24</sup> The Panel review at this stage was limited to commenting on Bank management's report and making recommendations of project reform, rather than looking at policy violations cited by the claimants. While there were some overlapping issues, for the most part, many of the issues and policy violations listed in the original claim were not addressed.<sup>25</sup> In Yacyreta, although the claimants charged there were violations in ten policies, the Board narrowed the review and assessment to only look at environment and resettlement. The claimants felt that the terms of reference for the Yacyreta review were far too narrow, and that the Panel was unable to address all the issues because their mandate was too limited and a full investigation was not authorized. The process resulted in marginalizing the role of the claimants and the terms of reference being established through Board politics rather than on the merits of the claim.

In Singrauli, a thermal power project in India, the Panel initially narrowed the terms of reference to exclude an investigation of violations of policies on Indigenous Peoples and Economic Evaluation of Investment Operations. Based on its preliminary investigation, the Panel determined there were no indigenous people to be affected by the project, and that broad economic questions “could not be addressed realistically at this late date.”<sup>26</sup> The Panel did recommend a full investigation of violations of policies on Involuntary Resettlement and Environmental Assessment. Although the Board approved a limited review of Singrauli, it severely limited the Panel’s terms of reference by denying the Panel a field visit to the project site or to Delhi, India where the World Bank Regional office is located. Field visits are an essential part of the Panel’s investigation methodology, and are one of the key methods for the Panel to verify facts, figures, and policy violations. Field investigations are also critical for the claimants, since it is usually the only opportunity for them to meet with the Panel, and supply additional evidence or counter arguments put forward by Bank management. By restricting the Panel to a “desk review” in Washington, the Board has effectively excluded the claimants from the Panel process.

The Resolution does not specifically stipulate a role for the Board or management in determining the terms of reference for an investigation. In the absence of this, it would seem that the Panel is in the best position to determine what issues need investigation, particularly after its preliminary review. This would also help to increase the Panel’s independence, as well as increase the power of the claimant.

### Conversion of World Bank Policies

The conversion of World Bank policies is a major trend in the Bank which has run parallel to the establishment and implementation of the Inspection Panel. Even while the Panel was being created, NGOs expressed concern that the conversion of Operational Directives would result in the weakening of mandatory policies and diminish the Panel’s powers. It now appears this concern was well founded. Various NGO critiques of the conversion of the Involuntary Resettlement, Environmental Assessment, Energy and Integrated Pest Management policies reveal that a large portion of mandatory policy is now re-issued as advisory material for staff, which is not under the Panel’s purview. For example, mandatory Operational Directives are being converted into three separate documents: Operational Policies, Bank Procedures, and Good Practices. While the Operational Policies and Bank Procedures are mandatory, Good Practices are advisory in nature and cannot be reviewed by the Panel.

NGOs have cited major problems with the recent revisions of the World Bank’s Resettlement policy. Bank Information Center issued a critique of the new policy which cites the following problems: 1) The preference of land for land exchanges in involuntary resettlement has been dropped, 2) the bulk of protections for displaced people are now left at the discretion of the implementing agency or the Bank task manager, 3) protection for host communities is significantly weakened; 4) mandatory

requirements for environmental impact of resettlement sites was dropped; 5) and socio-economic surveys became optional.

Since a number of the claims already filed have cited violations of many of these environmental and social policies, it is difficult not to conclude that some policy changes are aimed at diminishing the Panel's power and range of operation. However, since many of the policy changes are new or still in draft form, it is difficult to assess the long term impact on project quality and the Panel at this time. The outcome of the policy conversion trend may also depend on the vigilance of NGOs to ensure, through public pressure and their own governments, that key environmental and social policies either remain intact or are converted leaving the bulk of the original policy in the mandatory policies and procedures.

### **III. Towards a More Effective Inspection Panel**

The creation and development of the Inspection Panel has been one of the most important concrete steps for the Bank to increase public accountability and openness in recent years. With the existence of the Panel, there is now a mechanism for people who are adversely affected by Bank projects to request an investigation and independent report. Seventeen claims were filed with the Panel in the last five years, the majority of which were based on environmental and social issues, and long standing policy violations. Some of the claims were from projects that have been the subject of controversy for years, others were from projects where the basic objectives were supported by claimants.

The experience with the Inspection Panel process has been both rewarding and frustrating for claimants. As the various claims worked their way through the Panel process, it became clear that procedural problems prevented the claimants from fully participating in the process. It is also notable that only two investigations and two limited reviews have been approved by the Board. Problems of Panel independence also surfaced during the Board authorization of investigations or reviews and decisions on the parameters of an investigation. After the Board denied investigations of Planaflo, Itaparica, and Eco-development Project in India and severely limited the terms of reference for Yacyreta and Singrauli, some NGOs from borrowing countries expressed serious doubts about the Panel process and the Panel's independence from the Board. In other projects, however, claimants welcomed the opportunity to share their problems with an impartial audience, and some witnessed a positive change both in Bank management's and their own government's attitude after filing a claim. Some claimants also noted improvements in the project quality, and policy implementation and compliance.

The Panel's independence is the most crucial issues to emerge in the last five years. The independence of the Inspection Panel from the Board, Bank management, governments and NGOs should be of critical interest to all parties involved in the process. Increasing the Panel's independence is essential for its long term viability and

credibility, and can be accomplished with relatively minor changes in procedure. A change in the Resolution which gives the Panel authority to determine which claims to investigate, will provide more independence and streamline the process, but will not reduce the Board's ultimate authority as codified in the Resolution. Increasing public and claimant access to the Panel is also essential to the Panel's future, and to increasing compliance and implementation of policies and procedures.

The principle that the Panel should be authorized to make decisions on whether to investigate a claim, by weighing the evidence collected from claimants and from Bank management and acting in accordance with the Panel's governing documents, is a completely workable model. This model is strongly supported by the claimants and activists in Arun III, Yacyreta and Planaflo. If this were implemented, many of the problems of lack of independence currently constraining the Panel would be resolved. There is also precedent for this model inside the Bank. The Operation Evaluation Department (OED), another independent office inside the Bank, conducts evaluations of completed World Bank projects, and while the OED reports to the Board, it does not require or seek Board approval regarding decisions on which projects it evaluates. Once the OED receives a "project completion report" from Bank operations, it makes a determination on whether to conduct an evaluation based on the completion report, project performance, and other factors.<sup>27</sup>

The new "gentleman's agreement" process for approving investigations laid out in the Board April 1999 directive could lead to greater independence, but it is also not clear to what extent it will be honored by the Board members once a claim comes up in their own countries. Only one claim has been approved since that time, so it is too early to comment, except to note that the controversy and politics over claims in the Board is not going to disappear. The pressure to lend money and approve projects (the Approval culture") is also a major incentive for Bank management and the Board to decide against investigations. The current structure will depend on the personal good will of the individual boards members rather than instituting a concrete mechanism for improvement.

## Endnotes

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1. For a history of NGO influence in the creation of the Inspection Panel, see Lori Udall, *The World Bank Inspection Panel: A Three Year Review* (Bank Information Center 1997).
2. Willi Wapenhans, *Report of the Portfolio Management Task Force*, 1992.
3. Alvaro Umana, *The World Bank Inspection Panel, The First Four Years (1994-1998)*.

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4. For a discussion of the Inspection Panel's Impact in International Law see Daniel D. Bradlow and Sabine Schlemmer-Schulte, "The World Bank's New Inspection Panel: A Constructive Step in the Transformation of the International Legal Order," *Heidelberg Journal of Law* (1994): 392-415. See also Daniel D. Bradlow, "International Organizations and Private Complaints: The Case of the World Bank Inspection Panel," *Virginia Journal of International Law* 34, no.3 Spring (1994):555-613. See also Ibrahim F.I. Shihata, The World Bank Inspection Panel, (New York: Oxford University Press, 1994), Chapter 3.

5. Arun Concerned Group, Op Cit.

6. Arun Concerned Group, Request for Inspection, October 24, 1994, page 1-2.

7. Arun Concerned Group, Request for Inspection, October 24, 1994.

8. Inspection Panel Report and Recommendation, Bangladesh: Jute Sector Adjustment Credit, August 6, 1996, page 18.

9. For a review of claims, see Alvaro Umana, *The World Bank Inspection Panel, The First Four Years (1994-1998)*.

10. Biobío Fact Sheet, International Rivers Network, 1996, page 1.

11. GABB, Claim before the Inspection Panel, November 1995.

12. Jay D. Hair, et. Al, *Pangue Hydroelectric Project: An Independent Review of the International Finance Corporation's Compliance with Applicable World Bank Group Environmental and Social Requirements*, (April 4, 1997).

13. Quoted in Lori Udall, Op Cit, pages 22-24.

14. Kay Treakle, *Accountability at the World Bank: What does it take? Lessons from the Yacyreta Hydroelectric Project*, (Bank Information Center).

15. The Inspection Panel Report, (August 1, 1994-July 31, 1996), pages 18-21.

16. Under the Resolution, once the Panel sends it recommendation to the Board, the Board should decide within the "normal distribution period" which is usually 14 days (it may go up to 21 days).

17. Lori Udall, Op Cit, pages 31-36.

18. Issues surrounding the independence of the Panel have been an NGO concern since the Panel's establishment in August 1994. NGOs have asserted that the independence of the Panel from all interested parties--the Board, Bank management, affected people and NGOs--is of

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paramount importance in maintaining public confidence in the credibility of the Panel Process. The experience with the Morse Commission, and its relationship to the Board and Bank management, was illustrative of problems which could arise in the Bank's relationship to an independent body, and thus were the basis of recommendations made by NGOs during the creation of the Panel. Some of these recommendations such as access to all pertinent Bank files were incorporated into the Resolution, but others such as Panel independence to determine which claims to investigate were not.

19. Center for International Environmental Law, Press Release, April 21, 1999.

20. Kay Treakle, Op. Cit.

21. Management Response to the Request for Inspection Submitted to Inspection Panel on September 30, 1996, Argentina, Second Yacyreta Hydroelectric Project, October 29, 1996, page 5.

22. The World Bank committed a total of \$897 million and the IDB committed \$840 million in loans.

23. Sobrevivencia, Request for Inspection, September 12, 1996.

24. Inspection Panel Report, Op Cit., pages 18-20.

25. See Planaflores Claim, Op Cit., and Inspection Panel: Brazil: Rondonia Natural Resources Management Project, Report on Review of Progress in Implementation, March 26, 1997.

26. Inspection Panel Report and Recommendation, NTPC Power Generation Project, July 24, 1997, page 7.

27. Another precedent for using outside counsel occurred during the independent review of the Pangué dam (Biobío), when President Wolfensohn retained a law firm to advise him on whether the independent review should be publicly released.