

Problems in Connection with the Efficiency of the World Bank Inspection Panel

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I. Introduction

Today there is an urgent need for measures to control environmental pollution and to conserve resources. Furthermore, there is a need for continued economic growth worldwide. The question of achieving environmental protection and economic growth at the same time is considered to be very problematic. Any theoretical model of sustainable development depends on a solution to this problem.

One of the important attempts to address environmental and economic problems simultaneously is the inclusion of provisions on environmental protection by the international financial institutions into

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their policies and procedures. In order to establish an independent control of the fulfillment of these policies and procedures some institutions have established independent mechanisms. Examples are the International Bank for Reconstruction and Development (IBRD – hereinafter World Bank), the Inter-American Development Bank (IDB), and the Asian Development Bank (ADB). This article analyzes the efficiency of a mechanism established by the World Bank, the World Bank Inspection Panel. This mechanism provides a good example, considering that it was established back in 1993. With the aim of improving the efficiency of the Panel, possible reasons for the several problems which arise in the Panel's practice, are considered.

II. The Inspection Panel: Aims and Jurisdiction

The Inspection Panel created by the Bank's Executive Directors on 22 September 1993 is meant to "complement the responsibilities and functions of the existing systems for quality control in the project preparation and implementation," according to the Bank's President.¹ The Panel has the competence to investigate complaints brought by private parties in borrowing countries alleging that the World Bank has failed to follow its own policies and procedures when designing, appraising and/or implementing Bank financed projects. The purpose is to carry out independent administrative reviews, not to conduct judicial proceedings. It should collect information on matters of complaint, provide an independent assessment and make recommendations to the President and the Executive Directors.² By establishing the Inspection Panel, the Executive Directors took the lead in what has become recognized as a clear advance in the development of international institutions.³ For a financial institution, the Inspection Panel was a complete innovation⁴, an

¹ The World Bank Inspection Panel, Letter from L.T. Preston to the Staff, 24 September 1993.

² I.F.I. Shihata, *The World Bank Inspection Panel: In Practice*, 2000, 954 et seq.

³ A. Umana, "Some Lessons from the Inspection Panel's Experience", in: G. Alfredsson/ R. Ring (eds), *The Inspection Panel of the World Bank: A Different Complaints Procedure*, 2001, 138 et seq.

⁴ R.E. Bissell, "Institutional and Procedural Aspects of the Inspection Panel", in: Alfredsson/ Ring, see note 3, 124 et seq. Following the example of the World Bank, as mentioned, similar Panels have been created by the IDB and the ADB. It is also necessary to note that the Inspection Panel's

unprecedented mechanism.⁵ It was the first mechanism to introduce a non-judicial process to assist in ensuring compliance with the policies and procedures of a global international organization's operational activities, i.e. activities with direct effects on other parties.⁶ The creation of the Panel can be seen as one response to the obstacles of the application of traditional responsibility principles to organizations, especially when development institutions are concerned.⁷ However, the Panel is not a court of law where the responsibility of the World Bank can be invoked.⁸ The mechanism improved the accountability of the Bank Management and staff for the observance of its policies and procedures to enhance quality control in project design, appraisal and implementation. The Resolution establishing the Panel⁹ addresses the situation when inspection is requested by an affected party, but this is only one of three ways of activating the work of the Panel. In addition, at any time, the Board of Executive Directors can instruct the Panel to conduct an inspection. In special cases involving serious alleged violations of World Bank policies and procedures, a single Executive Director can also ask the Panel to conduct an inspection.

When a request for inspection is received by the Inspection Panel the Chairperson of the Panel shall inform the Executive Directors and the President of the Bank promptly. Within 21 days of being notified of a request for inspection, the Management of the Bank shall provide the

institutional coverage is limited to the IBRD and the IDA. It does not currently extend to private sector activities within the IFC and MIGA, for which a special mechanism, a Compliance Adviser-Ombudsman was established in 1998 (see for more information on this issue in: A.G. Gualtieri, "The Environmental Accountability of the World Bank to Non-State Actors: Insights from the Inspection Panel", *BYIL* 72 (2001), 213 et seq.

⁵ I.F.I. Shihata, "The World Bank's Contribution to the Development of International Environmental Law", in: G. Hafner/ G. Loibl et al. (eds), *Liber Amicorum* 1998, 648 et seq.

⁶ Shihata, in: Alfredsson/ Ring, see note 3, 45 et seq.

⁷ M. Hirsch, *The Responsibility of International Organizations towards Third Parties: Some Basic Principles*, 1995.

⁸ S. Schlemmer-Schulte, "The World Bank, its Operations, and its Inspection Panel", *Recht der Internationalen Wirtschaft* 45 (1999), 175 et seq.; Shihata, see note 2, 242.

⁹ Resolution establishing the Inspection Panel (No. 93-10 for the IBRD and 93-6 for IDA) of 22 September 1993, circulated as document No. SecM93-988 (IBRD) and SecM93-313 (IDA). Published in *ILM* 34 (1995), 520 et seq.

Panel with evidence that it has complied, or intends to comply with the Bank's relevant policies and procedures. After receipt of this notification, the Panel must decide whether the request meets the eligibility criteria and on this basis it makes a recommendation to the Board of Executive Directors as to whether the matter should be investigated.¹⁰ If the Board approves the recommendation to investigate, the inspection is carried out by one or more Panel members (the Panel consists of three members of different nationalities from Bank member countries).

After finishing the investigation the Panel sends its findings to the Executive Directors and the President. The report shall consider all relevant facts, and shall conclude with the Panel's findings on whether the Bank has complied with all relevant policies and procedures. Management has six weeks, from receiving the findings, to submit its recommendations to the Executive Directors in response to such findings. Based on the Panel's findings and Bank Management recommendations, the Executive Directors take the final decision on what should be done.

The initial decision of the Executive Directors as to whether to proceed with an inspection, together with copies of the request for inspection and the Panel's recommendation thereon, is made publicly available, as is the final report of the Panel.

According to the Operating Procedures issued in August 1994, the Panel can use a variety of investigatory methods. For example: holding meetings with, or requesting submissions on specific issues from either the affected party, the Bank staff, government officials, or representatives of both local and foreign NGOs; holding public hearings in the project area; visiting project sites or any other reasonable method the Panel considers appropriate for the specific investigation.

As a minimum the affected party must consist of two or more persons with common interests or concerns who live in the borrowing country; the alleged violation of Bank policies resulting in harm must be of a serious character; it must be asserted that the subject matter has been brought to Management's attention and that Management has failed to respond adequately. The matter in the request must not be related to procurement; the loan must still be active, with less than 95 per cent disbursed. If the Panel has previously made a recommendation on

¹⁰ See in this respect S.R. Roos, "The World Bank Inspection Panel in its Seventh Year: An Analysis of its Process, Mandate, and Desirability with Special Reference to the China (Tibet) Case", *Max Planck UNYB* 5 (2001) 473 et seq., available under <http://www.mpil.de/shared/data/pdf/pdfmpunyb/roos_5.pdf>.

the subject matter, the request must assert that there is new evidence or circumstances not known at the time of the previous request.¹¹

The Inspection Panel, is clearly, a significant and praiseworthy step.¹² Panel reports can influence the development of the applicable law by providing significant guidelines on the interpretation and implementation of Bank environmental safeguard policies and procedures. The activity of the Panel enhances transparency in Bank operations.¹³ The Panel's findings disclose the environmental and social consequences of project deficiencies stemming from the Bank's non-compliance with international standards, and generic problems in the project cycle of financed projects. The Panel's activity gives individuals, non-governmental organizations, representing individuals and local communities the opportunity not only to use domestic mechanisms for protection of their rights. Panel reports can also encourage legal developments in different areas of international law, such as institutional, environmental and human rights law. In addition, the Inspection Panel has several other important functions. First of all, the affected party can bring requests prior to the commission of environmental harm, during the preparation and appraisal stages of the project cycle. Second, the Panel's activity lays the ground for greater compliance with the Bank's policies and procedures through both positive measures (for instance the clarification of policies and procedures) and deterrence.¹⁴

The main subject of requests are human rights (for example, rights of indigenous people) and environmental protection.¹⁵ Nevertheless, the question of the efficiency of the Inspection Panel and its ability to

¹¹ 1999 Clarifications; see further the commentary in: The World Bank (ed.), *Accountability at the World Bank: The Inspection Panel 10 Years On*, 2003, 10 et seq.

¹² H.E. Olafur/ R. Crimsson, "Democracy and Human Rights: How We Learn the Hard Way", in: Alfredsson/ Ring, see note 3, 5 et seq.; Shihata, see note 2; Gualtieri, see note 4.

¹³ The main problem in this regard stems from confidentiality considerations – information can be closed because the Bank concedes that the effective functioning of the Bank necessarily requires some derogation from complete openness, cf. Gualtieri, see note 4, 224.

¹⁴ Gualtieri, see note 4, 251.

¹⁵ For example, Request for Inspection – Brazil: Itaparica Resettlement and Irrigation Project, Panel Report and Recommendations, 1997; Request for Inspection – India: NTPC Power Generation Project, Panel Report and Recommendations, 1997; Request for Inspection – India: Ecodevelopment Project, Panel Report and Recommendations, 1998.

achieve its main aims according to its mandate within the framework of the World Bank is a cause of some concern. By analyzing the recent practice of the Panel and results which usually follow its findings, it might be possible to identify several reasons for existing problems.

III. Recent Cases before the Panel

1. India: Coal Sector Environmental and Social Mitigation Project

On 21 June 2001 the Inspection Panel received a request for inspection related to the India: Coal Sector Environmental and Social Mitigation Project (CSESMP). The request concerned the Parej East Mine, owned and operated by Central Coal India Ltd. (CCL), a subsidiary of Coal India Ltd. (GIL), where two villages, Parej and Durukasmar, were affected by mine expansion operations. There were several conflicting assertions and interpretations of the issues, the facts, and compliance with Bank policies and procedures from the Management on the one side and affected people and the Panel on the other. For example, the requesters claimed violation of provisions of Involuntary Resettlement (OD 4.30), Indigenous People (OD 4.20), and Environmental Assessment (OD 4.01). Under the provisions of CCL and the Parej East Resettlement and Rehabilitation Policy, CCL must have offered assistance to Project-Affected Persons (PAPs) to find replacement land. According to the Bank Management, CCL received no requests for such assistance. But according to the PAPs there were some 117 parties who opted for such assistance and 115 who qualified.¹⁶ The requesters also claimed violation of provisions of the Disclosure of Information (BP 17.50). The Panel noted that “while Management ensured that the Sectoral Environmental Impact Assessment, Parej East Environmental Action Plan and Resettlement and Rehabilitation Policy were placed in the Bank’s Public Information Centres in Washington and New Delhi before appraisal, it failed to ensure that the reports were available in Parej East at a public place accessible to affected groups and local NGOs for their review and comment. Not even a summary of their conclusions in a form and language meaningful to the groups being consulted, as required by OD 4.0/BP 17.50. The information being provided in 2001

¹⁶ The Inspection Panel Investigation Report, India: Coal Sector Environmental and Social Mitigation Project, XVI et seq.

was largely technical and inaccessible to project affected people.” The Panel noted, that Bank Management could and should have been aware of this. Then, the Panel noted that “Management’s appraisal of the Parej East RAP was not in compliance with paragraphs 13 and 19 of OD 4.30.”¹⁷

Several environmental questions were also analyzed by the Panel. The requesters’ main environmental concern was the preservation of topsoil and the restoration of the surface for agricultural use. According to the report the Panel was not shown nor did it observe any topsoil conservation during its visit to the Parej East Open Pit. Although requested at the site, no documentation or information on the five year coal sector environmental and social mitigation project mine reclamation program could be provided to the Panel team. The Panel found little evidence that the mine level staff had training and knowledge of soils and reclamation activities at the Parej East site. Mine rehabilitation and closure appears to be handled as a separate matter to mine planning and operation and staff were unable to provide the Panel with evidence that the eventual configuration and rehabilitation of mined areas were being planned.¹⁸ The Panel also noted that the Management must have been aware of the lack of action on reclamation at least since the 1997 report of the Environmental and Social Review Panel, findings that were repeated in their 2000 and 2001 reports. The Management must also have been aware of CCL’s position that it had no intention of reclaiming mined areas for post-mining use.¹⁹ The requesters also had a number of complaints about water quality monitoring commitments. The Management explained that monthly environmental monitoring reports were submitted by the Central Mine Planning and Design Institute on Air and Water Quality as well as noise level. According to the report, the Panel was shown the systems of water cleaning and water quality parameters, which except for manganese levels, were within permissible limits. The requesters complained that sewage from the CCL employee’s colony was discharged into the fields of Lupuntandi. Here the Panel found, “Parej East OCP staff showed the Panel a modern and efficiently operating sewage treatment facility in the mine employees colony. On the other hand, the Prem Nagar settlers showed the Panel a malfunctioning sewage pump station close to their site. Here raw sew-

¹⁷ Ibid., XI et seq.

¹⁸ Ibid., XXII et seq.

¹⁹ Ibid., XXII-XXIII et seq.

age was overflowing and being prevented from contaminating agricultural land by a hand constructed earth berm erected by the villagers.”²⁰

During the investigation the Panel also “found that Management was not in compliance with paragraph 15(c) of OD 4.30 during preparations. The Panel found no evidence to indicate that during appraisal Management ensured that access would be available or that access to the forest beside Pindra would provide people who moved there with equivalent compensation for loss of their access to forest products.”²¹

The Panel found also no evidence and no documentation of meaningful consultations between the Sectoral Environmental Impact Assessment and the Environmental Action Plan with the people of the area and the NGOs in Parej East, as required under OD 4.01.

According to the Bank’s Management’s Response, “Management in the case of Parej East undertook 18 supervision missions.”²² The Environmental and Social Review Panel visited Parej East three times and its reports were reviewed by Bank supervision teams. The Environmental and Social Review Panel’s reporting on specific social issues in Parej East was largely confined to a report on the resistance to relocation in 1997. On that occasion, it recommended that the documentation of resettlement in Parej East should be prepared by an independent “consultant/NGO” as a case study so that other subsidiaries and Coal India Ltd. could understand the lessons learned. Unfortunately, this has not yet been done but, in the Inspection Panel’s view, it should be.²³

According to the 2002 Management Response, CCL had agreed to give follow-up assistance to the PAPs in Parej East who continue to suffer loss of income. In the Panel’s view, it was vital that the Bank took steps to continue to supervise the implementation of the Project after the credit had been formally closed, and the Panel noted with satisfaction the Bank’s intention to do so. This should include post-implementation monitoring and an audit to determine the effectiveness of the social mitigation measures. The Panel also suggested the forming of the Independent Monitoring Committee for Parej East.²⁴

In 2003 the Board discussed the findings of the Inspection Panel’s investigation report and Management’s report and recommendations.

²⁰ Ibid., XXIII-XXIV et seq.

²¹ Ibid., XV et seq.

²² Ibid., 114 et seq.

²³ Ibid., 119 et seq.

²⁴ Ibid., 121-122 et seq.

The Board endorsed the findings of the Panel, while noting that “the project had positively influenced Coal India’s policies on environmental and social issues and that nearly 90 per cent of the project affected persons in the Parej East mine had improved or restored their incomes at the time of project completion.”²⁵ The Board endorsed the Management’s action plan to continue to supervise and monitor the project to ensure that the outstanding issues relating to resettlement and environment are substantially resolved, and to report to the Board on the status of these issues at regular intervals.²⁶ Besides the questions of rehabilitation and compensation of PAPs, the Board noted the importance of the environmental provisions implementation (especially water quality at the resettlement sites and reclamation of mine land for agricultural use).

In 2004 CCL, in cooperation with the Forest Department, hired a number of PAPs to undertake several tasks, including backfilling in mining areas, the plantation of 17,000 trees of different species and development of a drainage system at overburdened dump sites. Water quality monitoring at the resettlement sites takes place periodically. According to the Independent Monitoring Panel, the Bank’s view is that “the regular Bank Supervision missions may suffice to provide the necessary monitoring.”²⁷

2. India: Mumbai Urban Transport Project

On 28 April 2004 the Panel received a request for inspection which related to the Mumbai Urban Transport Project. The request was submitted by members of the United Shop Owners Association, a nongovernmental organization located in the city of Mumbai, India, on their own behalf and on behalf of 180 residents living in the area known as Gazi Nagar in the Kurla West District of Mumbai, related to the same project.²⁸ The objective of the project was to facilitate urban economic growth and improve quality of life by fostering the development of an efficient and sustainable urban transport system including effective in-

²⁵ World Bank News Release No. 2004/30/SAR of 25 July 2003.

²⁶ Minutes of Meeting of the Executive Directors of the Bank and IDA of 22 July 2003.

²⁷ Management Report on Status of Outstanding Issues Following the Inspection Panel Investigation Panel Report No. 24000 and Management’s Response, 10 et seq.

²⁸ India: Mumbai Urban Transport Project, Credit No. 3662.

stitutions to meet the needs of the users in the Mumbai Metropolitan Region and to provide *inter alia* for completing two major East-West road links. The request concerned the proposed construction of one of the East-West connecting roads (the Santa Cruz-Chembur Link Road (SCLR)) within this urban transport system and the proposed resettlement and rehabilitation of affected persons. The requesters claimed that “the Bank violated its policies and procedures on disclosure of information, environmental assessment, involuntary resettlement, project supervision and the rights of the locally affected people to participation and consultation.”²⁹

The Gazi Nagar requesters claimed that it had come to their attention that as a result of the project they were to be relocated to the Mankhurd area, which they alleged was a degraded environment and unsuitable for relocation. According to the requesters, Mankhurd was considered amongst the highest polluted areas in Mumbai and was near a dumping ground spread across 110 hectares of land. They claimed that around 4,000 tons of garbage from Mumbai were dumped daily on this site, spreading many diseases like malaria, asthma, etc. They also claimed that many huge, open drainages pass through this area carrying the city’s waste and drainage water to the nearby creek spreading a bad odor in the area. This situation, they asserted was evidence of the Bank having failed to prevent a violation of their rights under the Bank’s Environmental Assessment and Involuntary Resettlement policies.³⁰

The requesters followed up their request with further correspondence alleging, *inter alia*, that the drains were likely to carry radioactive wastewater from the nearby Bhabha Atomic Research Center. The requesters also alleged that they were at risk from a nuclear explosion from this center. They further referred to the health and environmental hazards from “unbearable fumes from Rashtriya Chemical Fertilizer Co., and the refineries of Hindustan Petroleum, Indian Oil, Bharat Petroleum, Union Carbide ... apart from many other chemical factories there, and microbial and air pollution of the dumping ground badly affecting millions of residents of the nearby localities.”³¹

They claimed that the Mankhurd resettlement site is nearly fifteen kilometers away from Gazi Nagar and the construction and design work on the buildings at the proposed resettlement site were of worst quality. They noted that significant damage would occur due to the

²⁹ Ibid., 9 et seq.

³⁰ Ibid.

³¹ Ibid.

failure to provide income restoration and it would destroy their livelihoods, productive sources, disperse their social, economical network and kin groups. There would be sufficient space available nearby in places such as the Premier colony area, the New Mill area, Swadeshi Mill area, and the Bandra-Kurla Complex area, but that no space was allocated in these places for their convenient relocation. They further claimed that “the Bank failed to supervise the design of the resettlement plan with respect to their livelihoods, traveling distance, education of children and their admissions in respective medium schools, destruction of their source of income, their social, economical network and infrastructure.”³²

According to the Management, living conditions at Mankhurd were expected to be considerably better than conditions to which requesters were currently exposed. The Management stated that “the Mumbai Metropolitan Region Development Authority collected information in addition to the baseline information relating to air, water, flora/fauna, collected as part of the Community Environmental management Plan”³³, and this information did not show that the Mankhurd site was excessively polluted or was at risk of being polluted. It further stated that “the Project has been supervised twelve times since it was approved two years ago.”³⁴ Management also noted that “a series of consultations were held during Project preparation in 2001 and 2002, and representatives of NGOs and Project Affected Persons participated in these consultations, which focused primarily on environment and resettlement issues.”³⁵ Besides, after an exchange of letters between the requesters, the Bank’s New Delhi Office and the Mumbai Metropolitan Region Development Authority, “a constructive meeting was held on July 9, 2004, and a number of specific next steps were agreed upon to address the concerns of the Requesters.”³⁶

According to the Panel’s findings, in projects requiring large-scale resettlement of affected persons, the environmental risks in a proposed resettlement site should be analyzed in the environmental assessment. In this case the Management did not address the issue of environmental assessments for the Project component, but the Panel noted that the de-

³² Ibid., 10 et seq.

³³ Management Response, Annex 1, Item 1, 23 et seq.

³⁴ Management Response, Annex 1, Item 7, 26 et seq.

³⁵ Management Response, Annex 1, Item 3, 24 et seq.

³⁶ The Inspection Panel Report and Recommendation, India: Mumbai Urban Transport Project, see note 28, 21 et seq.

sign of the sub-project component was not finalized by the time of Bank appraisal. It noted further, that this raised concerns about whether the environmental assessment for the selection of the Mankhurd site complies with Bank policy. Moreover, according to the Panel, “the Request, Management’s response, the Panel’s visit to India, interviews with state and Project officials, Bank staff and affected persons, and abundant subsequent correspondence confirmed that there are sharply differing views on the issues raised by the Request.”³⁷

3. Pakistan: National Drainage Program Project

On 10 September 2004, the Inspection Panel received a request for Inspection related to the Pakistan: National Drainage Program Project.³⁸ The requesters raised issues related to the project, in particular to the disposal of saline effluent and to the proposed construction of the National Surface Drainage System (NSDS), a northwards extension of the existing Left Bank Outfall Drain (LBOD) system in the Sindh Province. According to the Inspection Panel, this request may constitute violations by the Bank of various provisions of several operational policies and procedures: Environmental Assessment OD 4.01, Natural Habitats OP 4.04, Indigenous People OD 4.20, Involuntary Resettlement OD 4.30, Management of Cultural Property OPN 11.03.³⁹

The requesters claimed that the saline effluent coming down the drainage system would cause large-scale flooding which would force them to leave their ancestral villages. They claimed that such displacement “is even not considered in project documents even though it will occur due to the consequences of the project outcome.”⁴⁰ The requesters further claimed that the design of the project was faulty and unsustainable because it had not taken into account the social and environmental difficulties inherent in the existing disposal route, and because it had not explored possible alternative routes. They stated that they had raised objections to the feasibility and sustainability of the project, but that “implementing agencies, financiers including the World Bank, and

³⁷ Ibid., 25 et seq.

³⁸ Pakistan: National Drainage Program Project, Credit No. 2999.

³⁹ The Inspection Panel Report and Recommendation, Pakistan: National Drainage Program Project, 11 et seq.

⁴⁰ Ibid., 5 et seq.

the project consultants never listened to them.”⁴¹ They further claimed that the environmental assessment for the project had ignored or underestimated items on the checklist for Bank financed projects. They contended that the effect of the project on marine resources, biodiversity including local coastal plants, animals, critical habitats and protected areas would be entirely negative.

The requesters also claimed that the Bank, by accepting the Drainage Sector Environmental Assessment (DSEA), violated its environmental assessment policy because this assessment focused only on general environmental issues of Pakistan’s drainage sector and did not deal with issues such as coastal ecology, safe disposal of saline effluent into the Arabian Sea, and protection of wetlands. They also claimed that although the Bank’s Environmental Assessment policy clearly requires a Project Environmental Management Plan, after six years there were no such plan. Further they noted that in spite of the Drainage Sector Environmental Assessment proposing a Wetlands Management Plan and a program of monitoring and audit, “nothing has materialized in this regard.”⁴² The requesters stated that the wetlands affected by the project were an important natural habitat because they were part of a migratory route for waterfowl and of nesting grounds for a large number of locally and globally important bird species, including some endangered species such as the Dalmatian Pelican. Two species of marine turtles inhabit the area, including the green turtle and the loggerhead turtle. They claimed that the wetlands, channels, and creeks were also a productive fishery source including several species of commercially valuable shrimps, prawns, and crabs. The interconnected lakes known as “dhands” were the source of livelihood for forty villages of fishermen with a combined population of 12,000 to 15,000. The requesters asserted that two of these “dhands” – the Narreri lagoon and the Jubho lagoon – were internationally recognized sites under the Ramsar Convention. The degradation of these wetlands had already caused severe damage to the ecosystem, habitat, and fish catch, and if the project were implemented according to its present design, the “dhands” would disappear. The requesters also claimed that people from the Mallah tribe were adversely affected by the project. Already, according to the requesters, “the existing faulty operation of the LBOD lead to the inundation of the Mallah villages, causing loss of livelihood and life.”⁴³

⁴¹ Ibid., 6 et seq.

⁴² Ibid., 7 et seq.

⁴³ Ibid., 8 et seq.

Regarding the classification of the project as category B, Management stated that category A would have been more appropriate for the Project.⁴⁴ Regarding the requesters' claim that there is no Environmental Management Plan for the project and no Wetlands Management Plan as envisaged in the Drainage Sector Environmental Assessment, Management responded that the design of the project included preparation of an Environmental Management Plan, and that a water Sector Environmental Management Plan-Framework for Action was developed under the Project in February, 2002.⁴⁵ Management stated that the Bank should now take three specific actions regarding the project: assemble a Panel of Experts to review ecological, hydrological and water quality monitoring data in the LBOD outfall area and propose a course of action; conduct a diagnostic study of livelihood improvements in the area to determine the losses suffered and formulate an assistance program; assist the Government of Pakistan with a Country Water Resources Assistance Strategy and a Strategic Country Environmental Assessment.

Management stated that it believed the project was in compliance with many of the requirements for OD 4.01 (Environmental Assessment), including preparation of a sectoral Environmental Assessment and requirements for screening subprojects. However, Management acknowledged that no report on *ex-post* sampling of ongoing work had yet been prepared to ensure compliance with covenants on screening, nor had the Environmental Management Plan as required by the Project Agreement been implemented. Consultations conducted in the course of producing the Drainage Sector Environmental Assessment appear to have been few, particularly with affected groups. According to the Management the project also failed to comply with the disclosure requirements for BP 17.50 (Disclosure of Information) since the DSEA was not disclosed prior to appraisal at the info shop and no records of disclosure in the country could be located. Management stated that OP

⁴⁴ Ibid., 14-15. Management assigned the Project to category B, rather than A. According to Management the rationale was that "a primary objective was to address environmental issues associated with irrigation" (ibid., 40) and that significant environmental benefits were anticipated. Management notes that "such categorization appears to have reflected a premature balancing of possible adverse effects with positive effects, and a focus on individual infrastructure activities, without regard to their potential cumulative effects" (ibid., 41).

⁴⁵ The Inspection Panel Report and Recommendation, Pakistan: National Drainage Program Project, 15 et seq.

4.04 (Natural Habitats), OD 4.20 (Indigenous People), OD 4.30 (Involuntary Resettlement) and OPN 11.03 (Management of Cultural Property) were not applicable to the project.⁴⁶

As for protection of the two “dhands”, Management responded that the project had not supported other projects that directly affect these “dhands” designated under the Ramsar Convention, but noted that more detailed assessment was required to determine if these sites would be affected by the breaches in the Tidal Link Canal and the collapse of the Cholri Weir.

The requesters claimed that the idea of linking the Kadhan Pateji Outfall Drain with the Shah Samado creek through the Tidal Link passing through the “dhands” was unsound because the Tidal Link prevented water flowing from the Rann of Kutch into the “dhands”. They alleged that the 1989 full Environmental Impact Assessment for the LBOD foresaw that excessive drainage by the Tidal Link would affect the “dhands”, but that no mitigating measures had been taken. Management responded that this claim referred to the closed LBOD Stage 1 project and stated that the design combination of the Tidal Link canal and the Cholri Weir was intended to mitigate adverse effects on the “dhands”, but structural problems and a 1999 cyclone damaged the Tidal Link and the weir. According to Management, this severely hampered the effect of the mitigation measures and it pointed out that the 1989 full Environmental Impact Assessment indicated that the “additional, temporary inflow of drainage water from the Kadhan Pateji Outfall Drain would not have an adverse effect and could offset the loss of water from the Rann of Kutch in wet years.”⁴⁷

The requesters claimed that degradation of the wetlands had caused severe damage to the ecosystem, habitat, and fish catch, especially some commercially important fish species. Management responded that the Tidal Link Fact Finding Mission recommended that no repairs have been done to the storm damage because it was beyond the limits of possible repair. The Mission also recommended a strengthened monitoring program and more data collection and analysis. Management added that “while data collection coordinated by the Water and Power Development Authority of Pakistan has continued ... the strengthened program of monitoring and analysis has not been undertaken as recommended, and as a result, mitigation measures have not been identified and de-

⁴⁶ Ibid., 14 et seq.

⁴⁷ Ibid., 19 et seq.

cided.”⁴⁸ Regarding the lack of consultation, Management, in Annex 9 of the Response, set out in detail the places, dates and names of NGOs consulted.

According to the Panel, the request met all the eligibility criteria and the Panel recommended an investigation of the matters alleged in the request for inspection. The Panel noted the conflicting assertions regarding the relationship between the LBOD Project and the National Drainage Program Project. Management stated that the requesters’ concerns related not to the National Drainage Project but rather to the LBOD Project, which was closed. According to the Panel’s findings, these two projects were closely connected.⁴⁹

In the Panel’s opinion, the contradictions in the assertions of the requesters and Management were substantial and bear close relation to the sources and extent of the harm alleged by the requesters. According to the report, the request, Management’s response, the Panel’s team’s visit to Pakistan, and discussions with project officials and affected persons, confirmed that the differing views on the issues raised by the request cannot be easily reconciled since they involve conflicting assertions and interpretations about the issues, the facts, and compliance with Bank policies and procedures.⁵⁰

4. Columbia: Cartagena Water Supply, Sewerage and Environmental Management Project

On 20 April 2004 the Inspection Panel received a request for inspection related to the Colombia: Cartagena Water Supply, Sewerage and Environmental Management Project.⁵¹ The objectives of the project were to

⁴⁸ Ibid., 20 et seq.

⁴⁹ Ibid., 22 et seq.

⁵⁰ Ibid., 24 et seq. As it was, for example, in the case concerning Pakistan, when regarding the classification of the project as category B, Management confirms that category A would have been more appropriate for the project.

⁵¹ Loan Agreement (Cartagena Water Supply, Sewerage and Environmental Management Project) between the IBRD and Distrito Turístico y Cultural de Cartagena de Indias, Loan No. 4507-CO, 1999; Panel Report and Recommendation on Request for Inspection-Colombia: Cartagena Water Supply, Sewerage and Environmental Management Project, IBRD Loan No. 4507-CO.

improve the water and sewerage services in the territory of the borrower and the sanitary conditions of the borrower's poorest population; facilitate the environmental cleanup of water bodies surrounding the territory of the borrower (Cartagena Bay, Caribbean beaches, and Ciénaga de la Virgen lake), and improve the sustainability of water and sewerage services in the borrower territory through a private sector participation model.⁵²

The project included the following components: expansion of the water supply system, expansion of the sewerage system in the Ciénaga Basin; construction of the main conveyance system of the wastewater to the treatment plant; construction of treatment installations; construction of a submarine outfall for the discharge of the treated effluent to the Caribbean Sea near Punta Canoa; industrial wastewater discharge control; environmental and social component; project management.

The request⁵³ concerned the proposed construction of the submarine outfall mentioned above. According to the Project Appraisal Document, the outfall would be built at Punta Canoa, a village located some 20 km North of Cartagena. The conveyance system would begin with a 72 inch in diameter pipeline to be built from Cartagena to the preliminary treatment works inland from the shore at Punta Canoa. Thereafter, another pipeline would carry the effluent to the shoreline where a submarine outfall would be constructed. The requesters claimed that the proposed submarine outfall to be constructed off the coast of Punta Canoa would pollute the marine environment in the area. They argued that the coastal zone supported fisheries that supply the people of the area with their primary source of food and income. They believed that, as a result of the project, "untreated wastewater" would be discharged into the sea and would contaminate marine life and have a serious and permanent impact on the people's health and livelihood, especially the indigenous people of Punta Canoa, Arroyo de Piedra and Manzanillo whose lives are inextricably linked to the health of the Caribbean Sea. They pointed out that the men and boys of the affected villages fish each morning and evening in the waters close to the end of the proposed outfall. The requesters claimed that biological and chemical contamination would deplete the fish stocks and could have

⁵² Loan Agreement, Schedule 2.

⁵³ Corporation Cartagena Honesta, a local non-governmental organization, submitted the Request on behalf of 125 residents of Punta Canoa, 139 residents of Arroyo de Piedra, 41 Residents of Manzanillo, and 119 residents of Cartagena.

severe human health impacts for fishermen and anyone else exposed to the tainted fish or water. The requesters claimed inter alia that the Bank violated OP 4.01 Environmental Assessment because the environmental assessment carried out by the borrower failed to adequately consider potential damage to human health and the marine environment.⁵⁴

According to the Panel, after its visit to Colombia the request did assert in substance that a serious violation by the Bank of its operational policies and procedures had or was likely to have material adverse effect upon the requesters. The Panel's visit to Colombia and interviews with national, local and project officials confirmed that there were sharply differing views on alternatives for treating and disposing waste, the risks, and the costs involved. However, all parties involved concurred that the provision of water and sanitation services for the poor neighborhoods of Cartagena were an essential undertaking for the city and its citizens. As the request and Management response contained conflicting assertions and interpretations about the issues, the facts and compliance with Bank policies and procedures in the light of the foregoing, it was recommended that an investigation be conducted.

5. Cambodia: Forest Concession Management and Control Pilot Project

On 28 January 2005, the Inspection Panel received a request for inspection, related to the Cambodia: Forest Concession Management and Control Pilot Project (FCMCPP).⁵⁵ The NGO Forum on Cambodia submitted the request on its own behalf and on behalf of affected local communities living in the area. The requesters claimed that the Bank had violated a number of its operational policies. According to them the

⁵⁴ Under OP 4.01 (Environmental Assessment) the Bank requires an environmental assessment by the borrower of proposed projects which are likely to result in adverse environmental impact. For these purposes, the Bank classifies each project into one of four categories, depending on type, location, sensitivity, scale, and nature and magnitude of its potential environmental impact. Also mentioned in the request were OD 4.04 (Natural Habitats); OD 4.07 (Water Resources Management); OD 4.15 (Poverty Reduction); OD 4.20 (Indigenous People); OP/BP 10.02 (Financial Management); OP/BP 10.04 (Economic Evaluation of Investment Operations) and OD 13.05 and OP/BP 13.05 (Project Supervision).

⁵⁵ Cambodia: Forest Concession Management and Control Pilot Project, Credit No. 3365-KH.

Bank did not comply with its policy on Environmental Assessments because it classified the project as a Category B project, rather than Category A. In their view, the project should have been categorized as A because the concession system caused significant adverse environmental impacts, such as immediate degradation and damage to watershed.⁵⁶ Management noted that the decision to classify this project as Category B was correct and appropriate, because a forestry project is typically classified as A when it involves plantation activities or forestry production. Management challenged one of the main allegations in the request – that the Bank had promoted the interest of the logging concessions and the concessionaires – and declared that on the contrary, the project tried to assist the government of Cambodia to regulate the forestry sector in a more effective and equitable way. It was explained that the Cambodian forest concession system was established in 1994 without Bank assistance. However, as it became clear in Cambodia and in the international community that the country needed a transparent and accountable system to control and manage the concession system, the Bank decided to assist the government in this effort. Project funding helped to build capacities within the government for forest crime monitoring and reporting in general and to control illegal logging.⁵⁷ Therefore this project was categorized as B because of its interventions, such as strengthening the capacity of Cambodia and for assisting with forest crime monitoring and reporting.⁵⁸

The request also claimed that Cambodia's indigenous people, notably the Kouy minority were directly affected by the logging concessionaires. The requesters stated that these people live in the forests in the north and northeastern part of the country – the heart of Cambodia's logging concession system. Their livelihood and culture were intrinsically linked to the forests. In the requester's opinion, the Bank seemed not to have identified issues related to indigenous peoples and no indigenous people's plan had ever been formulated.⁵⁹ Acknowledging that the Bank was not in full compliance with OD 4.20, Management responded that the policy was deemed applicable during preparation though no efforts were made to develop policies and plans in ac-

⁵⁶ The Inspection Panel Report and Recommendation, Cambodia: Forest Concession Management and Control Pilot Project, 5 et seq.

⁵⁷ Management Response, Annex 1, Item 1, 25 et seq.

⁵⁸ The Inspection Panel Report and Recommendation, Cambodia: Forest Concession Management and Control Pilot Project, 11 et seq.

⁵⁹ *Ibid.*, 7 et seq.

cordance with OD 4.20. It added that the project approach was to develop, together with and as part of the general consultation process, criteria and guidelines for community engagement in concession areas with local people and admitted that “in hindsight, screening studies and a framework Indigenous Peoples Development Plan, along with more discussion of the issue, would have been more appropriate during project design.”⁶⁰ Management also claimed that “the importance of this issue has been later recognized in Aide Memories in 2003 and 2004, which recommended to revise comprehensive guidelines for community consultations”⁶¹ to include specific provisions for indigenous peoples and the protection of cultural and spiritual resources.⁶²

The requesters on the other hand claimed that “it is not clear what consultation, if any, took place before the project began.”⁶³ The response noted that the Bank consulted NGOs in 1998 when it assisted the Government in the design of the forest planning system and drafting of regulations, guidelines and codes. A workshop with NGOs was also organized in 1999 to discuss forest certification. Management acknowledged that the quality of consultations may have been affected by the presence of high level officials, although it maintains that at the time of the project appraisal there was sufficient information about the social and environmental aspects of the concession management system to design a process to address these aspects.

As to the lack of consultation during the preparation of the environmental and social impact assessments, the response emphasized that the Bank did not finance any activities of the concessionaires. However, the response claimed that such consultations had been conducted because of the Bank’s effort to improve the government’s management and control over the concession system. When according to the response the Bank realized that the concessionaires were not carrying out adequate consultations, the Bank recommended the government to hire

⁶⁰ Ibid., 15 et seq.

⁶¹ Management Response, Annex 1, Item 12, 35 et seq.

⁶² According to the requesters, the Bank had also violated OPN 11.03. the (Management of Cultural Property). Although the six logging concession areas approved under the project contain both spirit forests and sites of archaeological importance that undoubtedly constitute cultural property, no survey of these sites was carried out during project preparation, The Inspection Panel Report and Recommendation, Cambodia: Forest Concession Management and Control Pilot Project, 8 et seq.

⁶³ Ibid., 5 et seq.

an international consultant to prepare a “step by step manual” for community consultations. Furthermore, Management added that the Bank had monitored the consultation process and pointed out its weaknesses to the government. Management stated that consultations with affected communities in each concession area were the responsibility of the concessionaires when they prepared their compartment and annual plans.⁶⁴ Management also believed it was in compliance with OP 4.04 (Natural Habitats) because no degradation of critical habitats has occurred due to the project. It added that no concessions over new areas had been approved because the project and the planning guidelines for existing concessions prevented the issuance of cutting permits before completing the forest management planning process, which required the preparation of several plans.

The response claimed that no cutting permits had been issued to date. With respect to biodiversity issues, the response stated that the Bank had always identified biodiversity concerns. Under the project, the government had adopted guidelines for the management of the forest.⁶⁵ Management also claimed that the project developed guidelines to identify and designate Special Management Areas, which include sacred groves, spirit forests and archeological sites. However, because of inadequate consultations, archeological sites may not yet have been identified. According to the Management, as a step-by-step consultation a manual is under preparation. Cultural resources, to the extent that these are known to local communities, will be considered so that areas of cultural resources will be excluded from commercial logging operations.⁶⁶ In response to the allegation of non-compliance with the Bank policy on forestry, Management reiterated that the project did not finance logging operations, including in areas of high ecological value, nor had the concessionaires received any Bank funds. The response again emphasized that the project had supported activities permitted by OP 4.36 (Forestry), such as inventory and fields control, capacity building and system development.⁶⁷

Management response alleged that “neither the four local communities who submitted the letter nor their representative had previously communicated with the Bank on the specific claims asserted in the let-

⁶⁴ Management Response, Annex 1, Item 12, 32 et seq.

⁶⁵ *Ibid.*, Item 19, 38 et seq.

⁶⁶ *Ibid.*, Item 21, 40 et seq.

⁶⁷ *Ibid.*, Item 14, 36 et seq.

ter.”⁶⁸ However, according to the Panel’s finding, the request provided a list of letters and meetings between the NGO Forum on Cambodia and the Bank, and minutes of meetings between the two. According to the Panel, the Bank had been aware from the outset of concerns from civil society about the project’s adverse effects on villages in concession areas, and that for the last four years numerous complaints about the project, including from people represented in the request for inspection, had been brought to the Bank’s attention.⁶⁹

The Panel noted the importance of undertaking risky projects for economic development and acknowledged that the Bank had been willing to provide financing in difficult situations. The Panel welcomed Management’s willingness to take risks in supporting activities in a complex and controversial area like the forestry sector in Cambodia. In the present request, however, the Panel noted in the allegations that the credit had led to support a system of private logging concessions, which was perceived by many as causing serious harm. The Panel was also not satisfied that a number of remedial actions contained in Management’s response, “would ensure compliance with, *inter alia*, the applicable environmental and indigenous peoples policies.”⁷⁰

IV. Reasons for Existing Problems and Possible Solutions

In 1993 the World Bank established the Inspection Panel in response to a growing public debate over the social and environmental effects of Bank lending. The Panel’s activity should lead not only to environmental and human rights protection during preparation, appraisal and implementation of the projects financed by the Bank, but also to transparency in Bank operations in general. Recognizing sustainable development principles, the Bank must fulfill the related obligations. The Inspection Panel helps to discover problems, involving the failure by the Bank to follow its own policies and procedures.

Nevertheless the above examples demonstrate that despite the existence of the Inspection Panel, the World Bank still does not always follow its policies and procedures. For example, in the case of Pakistan.

⁶⁸ *Ibid.*, 4.

⁶⁹ The Inspection Panel Report and Recommendation, Cambodia: Forest Concession Management and Control Pilot Project, 19 *et seq.*

⁷⁰ *Ibid.*, 20 *et seq.*

After the claim and the Panel's findings, Management confirmed that classification of category A would have been more appropriate for the project, instead of B. This mistake is a serious one, because an environmental assessment depends on the category of the project. Mistakes can be found also, for example, in the case of India: Coal Sector Environmental and Social Mitigation Project, when the Panel saw deficiencies in the appraisal process. Moreover, staff were unable to provide the Panel with evidence that the eventual configuration and rehabilitation of mined areas were being planned. In the case of Cambodia an indigenous people's plan was not foreseen at all.

Further, Management's responses sometimes include inaccurate information. For example, in the case of Cambodia, the Management response alleged that neither the four local communities which submitted the letter nor their representative had previously communicated with the Bank on the specific claims asserted in the letter. However, the Panel was able to confirm that the Bank had been aware from the outset of public concerns about the project's adverse effects on villages in concession areas.⁷¹ Other mistakes of this kind can be found, for example, in the case of India: Coal Sector Environmental and Social Mitigation Project. There, according to the Management response, CCL received no requests for assistance, but according to the Panel's findings, there were 117 parties who opted for such assistance, and 115 who qualified.

All these findings raise questions about the ability of the Management to apply the respective rules at all. One reason may be seen in the fact that in the Bank's view its policies and procedures are flexible guidelines applicable with a certain margin of appreciation, while the Panel's findings prove that these norms require uniform application, especially where environmental protection is concerned. Despite the need for a certain flexibility to accommodate particular circumstances, the application of environmental standards should not be discretionary, and standards, which are contained in binding documents should be treated as such by Bank staff.⁷² The Bank must clarify its policies and procedures, especially in the environmental protection field, where they should not be flexible. These policies and procedures must be clear to be understood and implemented.

Further, under the Resolution, the Panel is supposed to determine whether or not Management has been in compliance with all relevant Bank's policies and procedures and has to make recommendations

⁷¹ Ibid., 19 et seq.

⁷² Gualtieri, see note 4, 245.

whether to proceed with the investigation of a request. But it is not supposed to provide recommendations on the subject itself. This is one major obstacle. Analyzing this or that case for a long time, in much detail, the Panel could easily give very useful recommendations relating to the case at hand. As a consequence problematic issues that have been discussed have only short-term benefits as a result of the added attention brought by filing a Panel claim but this attention does not necessarily translate into long-term sustainable benefits.⁷³ Too often the Panel's recommendations and the subsequent Board decision provide only for a brief period of change. The main reason for this problem is the Panel's mandate, according to which the Panel's remedies are limited.

In connection with the mandate the following must also be noted. The Panel's mandate should be broadened. It should also include a post-investigation control. In this respect it is necessary to underline a possible problem relating to the Management's *ad-hoc* remedial plans. In presenting its remedial action plans to the Panel and the Board just prior to the meetings, or at the same meeting at which the Board addresses the Panel's recommendations for investigation, Management has made it impossible for the Panel and the Board to determine whether the plans do, in fact, address the concerns of the requesters and the findings of the Panel. Besides, given the speed with which these plans are developed, effective consultation seems almost to be precluded. If Management chooses to present a remedial action plan, the Inspection Panel's role must be to assess the consistency of plans with Bank policies, including participation by affected people and adequate consultation and to evaluate Management's supervision of remedial action plans.^{74 75}

Finally the Panel should also have a "preventive" function allowing it to analyze projects that are likely to develop problems during implementation.⁷⁶ That environmental harm should be prevented rather than

⁷³ A. Umana, *The World Bank Inspection Panel: The First Four Years (1994-1998)*, 1998; I. Tjardes, *Das Inspection Panel der Weltbank*, 2003, 178 et seq.

⁷⁴ Umana, see note 3, 133.

⁷⁵ Umana, see note 3. Bissell also mentioned that last-minute introduction of "action plans" interferes with the Panel's work, Bissell, see note 4, 125.

⁷⁶ A. Boyle, "Remedying Harm to International Common Spaces and Resources: Compensation and Other Approaches", in: P. Wetterstein (ed.),

repaired or compensated *ex post* indeed represents a mantra of environmental law, because such harm is often irreversible and difficult to assess in terms of monetary compensation. In such cases the President of the Bank could send projects that are experiencing difficulties or posing particular risks to the Inspection Panel for its further investigation.⁷⁷

Finally a request can at present be brought only by a person affected by the Bank financing project and not by external non-governmental organizations acting on their own behalf. However, there is no doubt today about the existence of public interests which must be protected when environmental protection or the common heritage of mankind are concerned. This is especially true in cases where there is no specific party particularly affected by the project, but rather the project's implementation will lead to general environmental harm. Non-governmental organizations, whether national or international, must have the right to protect public interests, especially in the framework of international organizations.

If the Panel's mandate was broadened in this respect the Panel could work much more effectively.

The proposal that effective compliance with the Bank's policies and procedures requires an additional problem-solving unit within the Bank is no solution. It is suggested that this unit would be responsible for remedying the social and environmental policy violations identified by the Panel and would help to ensure that displaced and aggrieved communities were adequately compensated and assisted to improve their standard of living.⁷⁸ However, a new additional unit would only cause new problems. The Panel would have to communicate not only with Management but also with this unit. Instead, it would be more effective to broaden the Panel's mandate and to give it the powers necessary to carry out these functions itself.

Still the successful solution of all these issues depends on the World Bank's willingness. If the Panel's mandate is not altered, the work of the Inspection Panel will continue to be highly controversial and divisive.

Harm to the Environment: The Right to Compensation and Assessment of Damages, 1997, 83 et seq.

⁷⁷ Umana, see note 3, 137.

⁷⁸ D.L. Clark, "The World Bank and Human Rights: The Need for Greater Accountability", *Harvard Human Rights Journal* 15 (2002), 205 et seq.

