



INTERNATIONAL

*The World Bank's
New Inspection Panel*

David B. Hunter
Lori Udall

overview

This summer, the World Bank took an unprecedented step. It became the first international financial institution to make itself directly accountable to citizens in borrowing countries. As of 1 August—the date the bank's new inspection panel assumed its duties—affected parties can ask the panel to investigate their claims that the bank has failed to follow its own policies, procedures, or loan conditions.

The bank created the three-member panel partly in response to increasing pressure from international nongovernmental organizations (NGOs), the U.S. Congress, and several other donor governments to improve its public accountability, transparency, and project performance. For the past decade, the World Bank has been increasingly criticized for systematic and pervasive problems in its loan portfolio. Of special concern is the lackluster environmental and social record of bank projects and programs. Since the 1960s, the bank has financed a spate of poorly designed, environmentally damaging development projects, including the Sardar Sarovar projects in western India, the Yacyreta water project on the Argentine-Brazilian border, the Pak Mun dam in Thailand, the Polonoroeste project in the Brazilian Amazon, the Transmigration project in Indonesia, and forestry projects in Côte d'Ivoire and Gabon.

In 1992, two bank-sponsored reports highlighted fundamental problems at the

bank. The first was a high-level, independent review of India's Sardar Sarovar projects, headed by Bradford Morse, former administrator of the United Nations Development Programme. The report uncovered widespread failure to implement bank resettlement and environmental policies and loan agreements and to involve local people in the development process.¹ The bank later withdrew funding for the Sardar Sarovar projects, but the issues raised in the report—concerns about the bank's appraisal process, its adherence to operational policies, and its lack of public accountability—remained. The Morse Commission's well-documented investigation and clear analysis bolstered later efforts to create the inspection panel.

Soon after the Morse Commission report was released, an internal review conducted by Willi Wapenhans, a former World Bank vice president, of the bank's loan portfolio was leaked to the public. The Wapenhans report not only criticized the quality of this portfolio but also found that the bank was not enforcing 78 percent of the financial conditions in its loan agreements. Using the bank's own criteria, the report found that 37.5 percent of recently evaluated World Bank projects were unsatisfactory, up from 15 percent in 1981. The report linked the decline in project quality in part to a "pervasive" "culture of approval" for loans, whereby bank staff perceive the appraisal process as merely a "marketing device for securing loan approval."²

This pervasive culture of approval is reflected in the World Bank's apparent willingness to disregard its policies and procedures to promote new loans. For example, despite apparent violations of the bank's policies pertaining to information, resettlement, environmental impact assessment, and indigenous people, bank man-

DAVID B. HUNTER is a senior attorney at the Center for International Environmental Law and an adjunct professor of international and comparative law at American University's Washington College of Law in Washington, D.C. **LORI UDALL** is director of the International River Network's Washington, D.C., office. She was formerly a staff attorney at the Environmental Defense Fund.

agement plans to submit to the board of executive directors for approval in November a proposal for Nepal's massive Arun III hydroelectric project. Meanwhile, the bank has failed to enforce loan conditions on prior loans still in effect on Sardar Sarovar.

World Bank management has repeatedly maintained that the bank is not subject to international human rights norms—nor, presumably, to international environmental standards. In addition, no mechanism exists for enforcing the bank's operational directives, which, though binding on bank staff, are not open to independent scrutiny. Recognition that the bank was essentially a "lawless" institution—accountable to the public only indirectly through its board of executive directors—led to increasing criticism calling for some mechanism to hold the bank accountable for its policies and actions.

The idea for an inspection panel originated as early as 1990, when environmental organizations began advancing specific proposals for an appeals or investigative body to increase the bank's accountability.³ In early 1993, the Center for International Environmental Law and the Environmental Defense Fund drafted a detailed proposal for creating an independent appeals commission at the World Bank.⁴ Although policymakers from several countries and some of the bank's executive directors voiced support for an inspection panel, the most critical pressure came when the U.S. Congress introduced the creation of an inspection panel as one of several key conditions for further funding of the International Development Association, the bank's concessional loan fund.

By the fall of 1993, the adverse publicity that accompanied the release of the Morse Commission and Wapenhans reports and



the explicit pressure brought by Congress forced the World Bank to create the independent inspection panel (as well as to revise its information policy).

The resolution creating the panel established the process for selecting panel members and outlined the panel's structure.⁵ Panel members are elected by the executive directors based on the recommendation of the bank president, a process that does not reflect the principles of transparency, public participation, and public accountability that are at the core of the panel's mandate. The nominating process for the initial panel members was conducted secretly with minimal input from the public. NGOs, donor and borrower countries, and the executive directors submitted more than 100 names of potential candidates to the bank president's office. Yet, neither the public nor the executive directors could obtain a list of names, even after the nominee list was narrowed to less than 15 by top bank management. It was only after complaints from NGOs that the bank released the names to the executive directors. This secrecy surrounding the nominating process

makes it unclear why the nominees were selected and why some names were dropped from the list. In the future, the bank should use reasonable procedures that allow for public input into the nomination process.

Despite the flawed process, the initial members bring considerable development experience to the panel. The three members of the panel are Ernst-Günther Broder from Germany, former president of the European Investment Bank and governor of the European Bank for Reconstruction and Development; Richard Bissel, research fellow at the Overseas Development Council and formerly a senior official with the U.S. Agency for International Development; and Alvaro Umana Quesada, Costa Rica's former Minister of Natural Resources. Broder, the panel's first chairperson, will serve for five years, Quesada for four, and Bissel for three. In addition to the members, the panel is advised and supported by a four-person secretariat, permanently located in the bank's Washington, D.C., headquarters.

The first test of the panel was the adop-

(continued on page 44)

127-29; and Office of Technology Assessment, *Building Energy Efficiency* (Washington, D.C.: U.S. Government Printing Office, 1991), chap. 3.

17. See, for example, World Energy Council, note 16 above, page 129.

18. See Reddy, note 16 above.

19. L. J. Hill, *Energy Price Reform in Developing Countries: Issues and Options*, ORNL-6391 (Oak Ridge, Tenn.: Oak Ridge National Laboratory, August 1987).

20. United States Energy Association, "Getting Down to Business" (Washington, D.C., 1992).

21. See Hill, note 19 above.

22. See World Energy Council, note 16 above, page 132.

23. Office of Technology Assessment, *Energy Efficiency in the Federal Government* (Washington, D.C.: U.S. Government Printing Office, 1991).

24. D. Waddle, R. Penlack, and R. Hansen, "Rural-Based Photovoltaic Systems in the Dominican Republic" (unpublished report to the Office of Photovoltaic Technology, U.S. Department of Energy, Oak Ridge National Laboratory, 1988).

25. T. J. Wilbanks, "Institutional Issues in Capacity-Building for Energy Technology Assessment," *Energy Systems, Environment and Development* (New York: United Nations Center for Science and Technology for Development, 1991), 13-26.

26. See sources listed in note 13 above.

27. RCG/Hagler, Bailey, Inc., and FPL Qualtec, "Costa Rica Load Control Demonstration Project" (report prepared for Instituto Costarricense de Electricidad and the U.S. Agency for International Development) (1989).

28. Office of Energy, U.S. Agency for International Development, *Costa Rica: Power Sector Efficiency Assessment*, tech. vol. (Washington, D.C., June 1991).

29. See Levine et al., note 11 above.

30. H. Geller, American Council for an Energy Efficient Economy (ACEEE), personal communication with the author; and H. Geller, *Efficient Electricity Use: A Development Strategy for Brazil* (Washington, D.C.: ACEEE, 1991).

31. E. Vine and D. Crawley, eds., *State of the Art of Energy Efficiency: Future Directions* (Washington, D.C.: ACEEE, 1991).

32. M. Levine and X. Liu, *Energy Conservation Programs in the People's Republic of China*, LBL-29211 (Berkeley, Calif.: Lawrence Berkeley Laboratory, 1990).

33. Adapted from Wilbanks, note 5 above.

34. See Levine et al., note 11 above.

Overview

(continued from page 3)

tion of operating procedures in August of this year.⁶ In general, the operating procedures clarified the resolution creating the panel in important ways and seem to ensure that the panel will be easy to use, not only for lawyers and organized NGOs but also for less well-organized citizens affected by bank operations. Together, the original resolution and the operating procedures outline the way in which the panel will operate, at least for the first year. To facilitate claims, the operating procedures include a two-page form for requesting inspections and a simplified guide to the basic information required in a claim.⁷

The panel is authorized to receive claims about the bank's failure to comply with its own policies and procedures, including its failure to enforce related loan conditions. Claims can be filed by any affected party—other than a single individual—in the borrower's territory. The affected party's local representative, the bank's board of executive directors, or, in some cases, any one executive director is also eligible to file claims. In an obvious attempt to limit the role of the United States and other donor country NGOs, nonlocal representatives can represent affected parties only in "exceptional cases" where "appropriate representation is not locally available."

Some claims remain beyond the panel's reach: claims about actions of parties for which the bank is not responsible, claims relating to procurement decisions, claims filed after the closing date of the loan or after 95 percent of the loan has been disbursed, and claims addressing matters already heard by the panel unless they are justified by new evidence.

Claims must be in writing and must explain the basic nature of the problem.⁸ Necessary information includes a description of the project; an explanation of how bank policies, procedures, or contractual documents were violated; a description of the claimant's interests harmed by the violation of policies; and a description of the steps taken to have bank staff resolve the violations. If the claim is related to one already submitted to the panel, the request should also specify any new evidence or changed circumstances that justify revisiting the issue. Incomplete or unclear claims may be submitted to a panel member to conduct an initial review. Claimants should also explain the reasons for any gaps in necessary information.

Upon receiving a complete request for inspection that is not clearly outside the scope of the panel's authority, the panel

will register the claim in the panel register, notify the claimant and the executive directors, and forward a copy to bank management, which has 21 days to respond. The panel then has 21 days to review management's response, to seek clarification from management or the claimant, and to make recommendations to the executive directors, who have sole authority to decide whether to investigate. Before submitting its recommendations, the panel can also undertake a preliminary study to gather more information regarding the request. The panel's recommendation must include a clear explanation giving the reasons for the recommendation and copies of the claim, management's response, advice from the bank's legal department, statements of minority views of the panel, and any other relevant information.

For investigations that go forward, the panel has broad investigatory powers, including access to all bank files and staff. One notable limitation is that the borrower country must give its prior consent before any on-site inspection in its territory takes place. The panel will also accept additional information from the original claimant and any third party. After the investigation, the panel will issue a report summarizing all relevant facts and making clear recommendations to management and the executive directors. Management has six weeks to respond and provide its own recommendations to the executive directors. After the executive directors' final decision, the panel is to inform the claimant of the response and make public the panel's report, management's recommendations, and the board's decision.

INDEXING, ABSTRACTING, AND SCANNING SERVICES

Environment is indexed, abstracted, or scanned by *Abridged Readers' Guide*; *AGRICOLA*; *A Matter of Fact*; *Academic Abstracts*; *Applied Social Science & Technology Index*; *Biological and Agricultural Index*; *Book Review Index*; *Current Contents/Agriculture, Biology & Environmental Sciences*; *Ecological Abstracts*; *EH & S Digest*; *Energy Data Base*; *Environment Abstracts*; *ERIC Clearinghouse for Science, Mathematics, and Environmental Education*; *Excerpta Medica*; *Future Survey*; *General Science Index*; *GEODATA*; *Health Source*; *Geographical Abstracts: Human Geography*; *Graphic Arts Abstracts*; *Guide to Social Science & Religion in Periodical Literature*; *Institute of Scientific Information*; *International Bibliography of Book Reviews*; *International Bibliography of Periodical Literature*; *International Development Abstracts*; *Leisure, Recreation, and Tourism Abstracts*; *Magazine Article Summaries*; *Meteorological and Geostrophysical Abstracts*; *NIOSH/TIC*; *Olsen's Agribusiness Report*; *Pollution Abstracts*; *Primary Source*; *Readers' Guide Abstracts*; *Readers' Guide to Periodical Literature*; *Research Alert*; *Reference Update*; *Science Citation Index*; *Scisearch*; *Urban Studies Abstracts*; and *Waterlit Database*.

Next Month
Advertise in



ENVIRONMENT

Contact Raymond M. Rallo
Advertising Director
(202) 296-6267 Ext. 251
FAX (202) 296-5149

Despite the improvements and clarity added to the resolution by the operating procedures, the panel still has four major weaknesses that could limit its independence and effectiveness.

First, the panel's independence could be compromised over time by its unhealthy reliance on the bank that is mandated by the resolution. Panel members are nominated by the bank president, approved by the executive directors, and subject to the requirements of the bank's articles of agreement that demand exclusive loyalty to the bank. Perhaps even more important, no investigation can begin without approval by the executive directors—and, of course, the executive directors make the final decisions. In addition, much of the panel's day-to-day operations could, in effect, be influenced by bank management: The president has the power to recommend salaries for the panel members, and the panel must seek increases in its budget from bank management. The resolution requires only that the budget be "sufficient," but the initial budget of \$1.5 million is barely more than the \$1.2 million cost of the Morse Commission's investigation into the Sardar Sarovar projects.

A second weakness that could diminish the panel's effectiveness is the resolution's unnecessary restrictions on access to the panel. Although the resolution does allow any group of more than one directly affected citizen to file a claim, it unreasonably restricts the types of claims that can be brought before the panel. For example, no requests can be filed after the closing date of the loan or after substantial disbursement, even if legal obligations continue as a result of the loan agreements. The resolution also restricts the claimant's choice of counsel by prohibiting nonlocal representation except in undefined "exceptional circumstances"—another requirement that could discourage the filing of claims.

Third, the panel and the bank are still shielded from public oversight at critical points in the process. For example, the panel's recommendations on whether to investigate a claim, along with the bank management's response, will not be made public until after the executive directors have decided whether to approve a full-scale inspection. Similarly, the final report is released to the claimant and the public only after the directors' final decision. Thus, the public is excluded from the process at the very stage at which additional comment and information concerning panel findings could prove pivotal to the directors' decisions.

Finally, the substantive basis of claims to the panel is very narrow. Originally, NGOs had hoped the inspection panel would have the power to hold bank opera-

tions accountable to international human rights and environmental law, but the final resolution limited the panel's substantive jurisdiction primarily to claims alleging violations of the bank's own operational policies, procedures, and loan agreements. Although the resolution does

some regional banks, including the Inter-American Development Bank, which approved a similar inspection function this July, and the Asian Development Bank, which is currently working on a similar mechanism. But for the inspection panel to have a truly independent and credible

The idea for an inspection panel originated as early as 1990 when environmental organizations began advancing specific proposals for an appeals or investigative body to increase the bank's accountability.

not prohibit the panel from evaluating disputed bank actions in light of international law, there must initially be a violation of bank policies. Perhaps most damaging, the bank is now actively streamlining its operational directives, transforming many of the standards into unenforceable "good practices." These efforts, more than any other developments, could undermine the panel's future effectiveness.

The World Bank originally intended to review the panel after two years of operation, but the operating procedures call for a review within one year. Perhaps just as significant for the panel is its review by the U.S. Congress. In 1993, Congress limited replenishment of the International Development Association to two rather than the usual three years. The third-year authorization is conditioned on proper implementation of the panel and the bank's information policy. This June, Congressman Barney Frank (D-Mass.), chairman of the House Subcommittee on International Development Finance, Trade, and Monetary Policy, held an oversight hearing in which concern over the panel was voiced by several parties. The relative success of the panel is thus at least implicitly linked to funding from the United States. This should help to ensure that the bank provides the panel with the resources and independence it needs to be effective.

By providing for a relatively open and simple process to trigger inspections, the current panel members have shown a desire to make the panel successful. Even before receiving its first claim, the panel has been an important influence on the bank. Bank staff seem more aware of the required operating procedures, and several projects have been reviewed internally to ensure that they do not offer grounds for inspection claims. The panel has also set a precedent for similar investigative bodies at

voice, the World Bank must empower it and respect its recommendations and findings over the long term.

Most important in this regard is the explicit recognition in the operating procedures of the need to conduct preliminary studies before making recommendations on whether to conduct full-scale investigations. Creation of a panel registry and explicit recognition that inspection work plans should be provided to the public also show a desire to make the panel transparent and effective.

NOTES

1. See *Sardar Sarovar: The Report of the Independent Review* (Ottawa: Resources Future International, 1992).
2. See World Bank, *Effective Implementation: Key to Development Impact—Report of the Portfolio Management Task Force* (Washington, D.C., 1992), iii, 12.
3. See E. Christensen, *Green Appeal: A Proposal for an Independent Commission of Inquiry at the World Bank* (Washington, D.C.: Natural Resources Defense Council, 1990); and C. Wold and D. Zaelke, "Establishing an Independent Review Board at the European Bank for Reconstruction and Development: A Model for Improving MDB Decision-making," *Duke Environmental Law and Policy Forum*, vol. 2 (1992), 59ff.
4. L. Udall and D. Hunter, *Proposal for an Independent Appeals Commission* (Washington, D.C.: Environmental Defense Fund and Center for International Environmental Law, 1993).
5. See World Bank Inspection Panel, Resolution No. 93-10, 23 September, 1993.
6. See World Bank Inspection Panel, Operating Procedures (Washington, D.C., 1994).
7. *Ibid.*, at Annex 2 ("Guidance on How to Prepare a Request for Inspection"); and Annex 3 ("Model Form: Request for Inspection").
8. Claims should be submitted by registered or certified mail, or delivered by hand, to the bank's resident representative in the borrowing country or directly to the Office of the Inspection Panel, 1818 H Street, N.W., Washington, D.C. 20433, USA.