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Title
Lessons Learned

Permalink
https://escholarship.org/uc/item/2sp227r5

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Publication Date
2003

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Demanding Accountability

Civil-Society Claims and the World Bank Inspection Panel

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ROWMAN & LITTLEFIELD PUBLISHERS, INC.
Lanham • Boulder • New York • Oxford

ROWMAN & LITTLEFIELD PUBLISHERS, INC.

Published in the United States of America
by Rowman & Littlefield Publishers, Inc.
A wholly owned subsidiary of the Rowman & Littlefield Publishing Group, Inc.
4501 Forbes Boulevard, Suite 200, Lanham, Maryland 20706
www.rowmanlittlefield.com

PO Box 317
Oxford
OX2 9RU, UK

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British Library Cataloguing in Publication Information Available

Library of Congress Cataloging-in-Publication Data

Demanding accountability : civil-society claims and the World Bank Inspection Panel / edited by Dana Clark, Jonathan Fox, and Kay Treakle.
p. cm.
Includes bibliographical references and index.
ISBN 0-7425-3310-7 (alk. paper)—ISBN 0-7425-3311-5 (pbk. : alk. paper)
1. World Bank Inspection Panel. 2. Economic development projects—Developing countries—Evaluation. I. Fox, Jonathan, 1954– II. Treakle, Kay. III. Title.
HG3881.5.W57C54 2003
338.91'09172'4—dc21 2003008543

∞™ The paper used in this publication meets the minimum requirements of American National Standard for Information Sciences—Permanence of Paper for Printed Library Materials, ANSI/NISO Z39.48-1992.

Contents

Acknowledgments

First and foremost, we wish to thank our coauthors, whose contributions, in addition to their case study chapters, have included important experiences, perspectives, and insights that have informed considerably our analysis of the Inspection Panel: Victor Abramovich, Richard Bissell, Elías Díaz Peña, Majibul Huq Dulu, David Hunter, Cristián Opaso, Marcos Orellana, Maria Guadalupe Moog Rodrigues, and Aurélio Vianna Jr.

We would also like to thank the guest participants in our June 2001 authors' workshop in Washington, D.C., many of whom commented on early drafts of case study chapters and all of whom helped us to collectively analyze the broader patterns and trends across the claims. These include Soren Ambrose, Delphine Djiraibe, Oronto Douglas, Manuel Fernández de Villegas, Tom Griffiths, Steve Herz, Petr Hlobil, Madhu Kohli, Smitu Kothari, Satoru Matsumoto, Graham Saul, Steve Tullberg, Ka Hsaw Wa, and Nurina Widagdo.

Thanks are also due to Karen Decker, Abigail Parish, and Elizabeth Sweet, dedicated staff from the Bank Information Center who provided extensive support organizing the workshop and made helpful research contributions to the project. In addition, we thank Eric Brewer-Garcia for helping with the workshop, and Riccardo Rivera for checking citations.

The Inspection Panel members and secretariat staff who have shared so much of their time, perspectives, and lessons over the years deserve a special thanks. Eduardo Abbott, Edward Ayensu, Richard Bissell, Ernst-Günther Bröder, Antonia Macedo, Jim MacNeill, Alberto Niño, Maartje Van Putten, and Alvaro Umaña have all enriched our engagement with the claims process, and gave valuable help for our research on specific cases.

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Lessons Learned

Kay Treakle, Jonathan Fox, and Dana Clark

The Inspection Panel has inserted a key political concept into the World Bank's governance model—that the institution must be accountable to the people directly affected by its lending. The Inspection Panel has given increased legitimacy to the claims of local people affected by the World Bank, and it serves as a forum through which their voices have been amplified within the institution. The panel represents the bank's formal acknowledgment of civil-society actors as stakeholders with rights and interests that are affected by the bank's decisions and operations. Thus, an important test of its effectiveness is whether the claims filed have had any impact on the projects they address. The panel has also been a catalyst for broader change at the World Bank. In particular, it has heightened the debate about the bank's commitment to, and effectiveness in, promoting environmentally sustainable development, through the lens of its environmental and social safeguard policies. Another test of the panel's effectiveness, then, is its impact on the institution.

The case studies presented in this book have explored both realms: how the process has affected projects on the ground and whether the panel's case history has changed the way the bank does business. Both of these inquiries help to determine whether the Inspection Panel has led to increased accountability at the World Bank. This chapter draws on lessons from the specific cases profiled in this volume, as well as the entire set of claims, to draw out broad trends that help to determine the panel's impacts.

Claims and the Trends They Reveal

Between 1994 and 2002, twenty-eight claims were submitted to the Inspection Panel. This section reviews broad trends across the claims: what types of projects trigger complaints of environmental and social harm? What Bank policies have been violated? Who brought the claims, and were they assisted by national and/or international NGOs? And how did the powerful react?

What Types of Projects Tend to Trigger Claims?

The bulk of claims filed with the panel—sixteen of twenty-eight—have come from people affected by large infrastructure projects, including six dams (in Nepal, Chile, Argentina/Paraguay, Brazil, Lesotho, and Uganda) and four energy and extractive industry projects (in India, Ecuador, and Chad–Cameroon). In addition, five claims were brought in rural development projects (in Itaparica, Land Reform, and China/Tibet) and three addressed issues related to structural or sectoral adjustment programs (in Bangladesh, Argentina, and Papua New Guinea). Two claims were related to failures in ostensibly positive environmental and social projects (in Brazil and Kenya) and one addressed the negative social side effects of the creation of a protected area (India). Table 11.1 summarizes the types of projects in which claims have been filed.

What Policy Violations Did Claimants Allege?

To be eligible, claimants must assert that they have suffered or are threatened with material harm as a result of violations of bank policies and procedures. The types of projects that cause or threaten the most obvious harm are those that involve high environmental and social risks, such as energy and extractive industry projects, and especially those that involve involuntary resettlement. In many cases, these projects also threaten the lands and livelihoods of indigenous peoples or other vulnerable populations. Such projects also tend to be highly visible and unite project critics, both those directly affected and environmental and human rights advocacy groups.

The bank's environmental and social safeguard policy framework is designed to prevent or mitigate harm to the environment and vulnerable people in bank-financed projects. Not surprisingly, they are the policies most often cited as having been violated (see table 11.2).

Table 11.1. Project Types: Sectors in Which Claims Have Been Filed with the Panel

Inspection Panel Claims Filed	*Rural Development*	*Infrastructure/ Energy/ Extractive Industries*	*Sustainable Development/ Environment/ Protected Areas*	*Structural/ Sectoral Adjustment*
1. Arun III Hydro, Nepal, October 1994		×		
2. Expropriation, Ethiopia, April 1995				
3. Emergency Power VI, Tanzania, May 1995		×		
4. Rondônia Natural Resources Management Project (Planafloro), Brazil, June 1995			×	
5. Biobío (Pangue) Dam, IFC, Chile, November 1995		×		
6. Jamuna Bridge, Bangladesh, August 1996		×		
7. Yacyretá Hydropower, Paraguay–Argentina, September 1996		×		
8. Jute Sector, Bangladesh, November 1996				×
9. Itaparica Resettlement, Brazil, March 1997	×			
10. Singrauli/NTPC 1 India, May 1997		×		
11. Ecodevelopment, India, April 1998			×	
12. Lesotho Highlands Water, South Africa, May 1998		×		
13. Lagos Drainage and Sanitation, Nigeria, June 1998		×		
14. Land Reform, Brazil, December, 1998	×			
15. Lesotho Highlands Diamond, Lesotho, April 1999		×		
16. Itaparica Resettlement, Brazil (second claim), April, 1999	×			
17. China Western Poverty Reduction, June 1999	×			
18. Pro-Huerta, Structural Adjustment, Argentina, July 1999				×
19. Land Reform, Brazil (second claim) September 1999	×			
20. Lake Victoria Environment, Kenya, September 1999			×	
21. Prodeminca, Ecuador, December 1999		×		
22. Singrauli/NTPC 2 India, December 1999		×		
23. Chad–Cameroon Pipeline, Chad, March 2001		×		

(continued)

Table 11.1. Project Types: Sectors in Which Claims Have Been Filed with the Panel (*continued*)

Inspection Panel Claims Filed	*Rural Development*	*Infrastructure/ Energy/ Extractive Industries*	*Sustainable Development/ Environment/ Protected Areas*	*Structural/ Sectoral Adjustment*
24. Coal Sector Project, India, June 2001		X		
25. Bujagali Hydropower, Uganda, July 2001		X		
26. Structural Adjustment, Papua New Guinea, December, 2001				X
27. Yacyretá Hydropower, Paraguay–Argentina (second claim), May 2002		X		
28. Chad–Cameroon Pipeline, Cameroon, September 2002		X		
Total:	5	16	3	3

Sources: World Bank, *Inspection Panel Annual Report 2002* (Washington, D.C.: World Bank, 2002) and chapters 2 through 10, this volume.
Note: IFC = International Finance Corporation; NTPC = National Thermal Power Corporation.

Table 11.2. Allegations of Policy Violations in Inspection Panel Claims

Bank Policy	*Number of Claims in Which Violations Alleged*
Environmental Assessment	15
Project Supervision	14
Involuntary Resettlement	14
Indigenous Peoples	12
Information Disclosure	11
Poverty Reduction	9
Economic Evaluation of Investment Operations	7
Natural Habitats (Wildlands)	6
Forestry	4
Cultural Property	4
Pest Management	2

Source: World Bank, *Inspection Panel Annual Report 2002* (Washington, D.C.: World Bank, 2002). (The *Annual Report* is based on a smaller number of claims than those shown in table 11.2. Here, we are including the second claims for Itaparica, Yacyretá, and the Chad–Cameroon Pipeline.)

However, other policies have also been cited in panel claims. The Supervision Policy has been critically important in many claims, because it clarifies that the bank has a responsibility to ensure that government and project authorities meet the safeguard policy requirements and loan conditions during project implementation. The policy prevents the bank from simply shifting blame for implementation failures, such as inadequate mitigation or compensation measures, to the borrower. Other policy violations that have been cited include Economic Evaluation of Investment Options and Poverty Reduction.

Which Civil-Society Actors Led the Claims?

Some critics of the panel have charged that claims to the Inspection Panel are catalyzed by Northern NGOs, but as table 11.3 shows, exclusively Southern actors have led most claims. In other cases there has been significant support from Northern NGOs, acting in coalition with local and or national partners.

Seventeen claims were generated exclusively by Southern civil-society actors in collaboration with affected people, or Southern private-sector actors; ten were generated through South–North coalitions involving local, national, and international groups; and one was initiated by an international NGO on behalf of local people who lacked the freedom of expression necessary to file a claim on their own.[1]

Table 11.3. Which Civil-Society Actors Led the Claims?*

Inspection Panel Claims Filed	*Exclusively Southern-led*	*South–North Coalition*	*Exclusively Northern-led*
1. Arun III Hydro, Nepal		X	
2. Expropriation, Ethiopia	X		
3. Emergency Power VI, Tanzania	X		
4. Rondônia Natural Resources Management Project (Planafloro), Brazil		X	
5. Biobío (Pangue) Dam, IFC, Chile		X	
6. Jamuna Bridge, Bangladesh	X		
7. Yacyretá Hydropower, Paraguay–Argentina		X	
8. Jute Sector, Bangladesh	X		
9. Itaparica Resettlement, Brazil	X		
10. Singrauli/ NTPC 1 India		X	
11. Ecodevelopment, India	X		
12. Lesotho Highlands Water, Lesotho	X		
13. Lagos Drainage and Sanitation, Nigeria	X		
14. Land Reform, Brazil	X		
15. Lesotho Highlands Diamond	X		
16. Itaparica Resettlement, Brazil (second claim)	X		
17. China Western Poverty Reduction			X
18. Pro-Huerta, Structural Adjustment, Argentina	X		
19. Land Reform, Brazil (second claim)	X		
20. Lake Victoria Environment, Kenya	X		
21. Prodeminca, Ecuador		X	
22. Singrauli/ NTPC 2 India	X		
23. Chad–Cameroon Pipeline, Chad	X		
24. Coal Sector Project, India		X	
25. Bujagali Hydropower, Uganda		X	
26. Structural Adjustment, Papua New Guinea		X	
27. Yacyretá Hydropower, Paraguay–Argentina (second claim)	X		
28. Chad–Cameroon Pipeline, Cameroon		X	
Totals	17	10	1

Sources: Case studies documented in this volume as well as personal communications with claimants, Inspection Panel members, and NGOs that were involved in particular cases.
Note: IFC = International Finance Corporation; NTPC = National Thermal Power Corporation.
* Of the five claims that appear to be brought twice, three are claims that were generated by some of the same claimants (Itaparica, Land Reform, and Yacyretá) and are considered "second claims," while two are claims that were generated by separate claimants on the same project (Singrauli and Chad–Cameroon Pipeline). We refer to Singrauli claims as Singrauli/NTPC 1 and Singrauli/NTPC 2. In the case of the Chad–Cameroon Pipeline, one claim was brought in Chad and the other in Cameroon.

The majority of the South–North coalitions that supported Inspection Panel claims evolved out of international campaigns that had already formed around particular "problem projects" or high-risk lending (Arun, Planafloro, Biobío, Yacyretá, Singrauli, China/Tibet, Cameroon, Bujagali, and Papua New Guinea).[2] In the claims processes that emerged, and in particular in the early claims where campaigns were needed to get board approval for investigations or quasi-investigations, transnational coalitions have been critical. Northern groups such as Bank Information Center, Center for International Environmental Law, Environmental Defense, Friends of the Earth–U.S., and International Rivers Network have played a particularly important role in these coalitions due to their proximity to information and their bank watchdog functions. Indeed, they have helped to inform Southern NGOs and affected people of the potential to use the Inspection Panel as a tactic in their campaign, and have often tracked the claim inside the institution to ensure that claimants were kept informed of the panel process. Together, transnational coalitions have generated international political pressure on decision makers and catalyzed press coverage.

South–North coalitions were especially critical in the context of the Board Second Review of the Panel. As described in chapter 1, Washington-based NGOs sounded the alarm about threats to the panel's independence and mobilized responses from donor governments and NGOs, but the key to reversing the attack on the panel was the testimony of claimants delivered directly to the board.

As noted by Víctor Abramovich, an Argentine human rights lawyer who helped file the Pro-Huerta claim remarked, a key distinction between the roles of Southern and Northern civil-society actors is that "Southern civil society actors bring the cases and Northern civil society actors protect the procedures and the Panel itself."[3]

As information about the panel and its potential became more available,[4] and as the process became more navigable, more claims were generated by local and national actors without the direct support of international experts or the need for high-profile international campaigns (for example, Jamuna, Ecodevelopment, Lesotho Highlands Water, Pro-Huerta, Land Reform, Lake Victoria, Prodeminca). There is still a need for coalitions, though not necessarily transnational ones. Due to the technical nature of the claims process, NGO support to help claimants develop a claim that will withstand the technical requirements continues to be a factor to facilitate the accessibility of the panel to directly affected people.

How Did the Powerful React?

The World Bank

Bringing claims to the Inspection Panel almost inevitably triggers strong reactions from both bank management and the board. As the case studies have shown, the tendency has been for management to respond defensively—denying that they violated any policies, challenging claimants' eligibility, and in some cases, challenging the panel's findings. Before the second review (described in chapter 1), the board accepted the panel's recommendation to investigate only once—in the first claim on the Arun Dam. After that first claim, the board either rejected the panel's recommendation to investigate or limited the panel's terms of reference. Table 11.4 shows how management, the panel, and the board reacted to the claims.

In the vast majority of cases, management responded by denying they had violated any policies and/or contesting the claimants' allegations of harm. In only four cases did management acknowledge some failure to comply with bank policies. This should be contrasted with the fourteen cases in which the panel found evidence that at least some of the claimants' allegations of policy violations were valid.[6]

Management and the bank's legal department also routinely challenged the eligibility of claims.[7] And before the second review, in several claims the board accepted borrower and management-generated "action plans" to preempt investigations (Rondônia, Yacyretá, Itaparica, and Ecodevelopment).

In the Yacyretá case, management took extraordinary steps to subvert the panel findings and avoid accountability by misrepresenting to the Paraguayan public the findings of the panel investigation (which had identified a number of policy violations) in a letter published in Paraguayan newspapers claiming that the panel had found the project to be "satisfactory" to the bank.[8]

Management's aggressive responses and the influence it had on the board undermined the panel's independence and led to a chronic animosity between the panel and management. This tension also played out at the board level. Ibrahim Shihata, then the bank's general counsel, observed that

> An attitude against investigation whenever it could be avoided thus evolved among borrowing countries and created a divisive climate every time the Board had to discuss a Panel recommendation to investigate a complaint. Even when [an] investigation was authorized, the term investigation/ inspection had to be avoided in one case (Yacyretá) and the process had to be limited to inspection at the Bank's headquarters in another (NTPC).[9]

The often-antagonistic relationships between the panel and bank officials, particularly in claims filed before the second review, reflects a predictable resistance to challenges to the status quo. The bank's long-standing culture of impunity has allowed staff, management, and the board to avoid having to answer for the sometimes-disastrous results of their decisions. When the panel started making findings of policy noncompliance, and substantiated the claimants' allegations of harm, the reaction from bank managers and borrowing-

Table 11.4. Management, Panel, and Board Responses to Claims

Inspection Panel Claims Filed	*Bank Management Response*	*Panel Recommendation*	*Board Approves Investigation*
1. Arun III Hydro, Nepal	Deny violations	Yes	Yes
2. Expropriation, Ethiopia	N/A	Not registered[a]	
3. Emergency Power VI, Tanzania	Deny violations	Found ineligible[b]	
4. Rondônia Natural Resources Management Project (Planafloro), Brazil	Acknowledges some failure to comply	Yes	No Asked panel to review progress on project implementation
5. Biobío Dam, IFC, Chile	N/A	Not registered[c]	
6. Jamuna Bridge, Bangladesh	Deny violations	No	
7. Yacyretá Hydropower, Paraguay–Argentina	Deny violations	Yes	Restricted Investigation limited to "review and assessment" of action plan
8. Jute Sector Adjustment, Bangladesh	Deny violations	No	
9. Itaparica Resettlement and Irrigation, Brazil	Deny violations	Yes	No Government action plan
10. Singrauli/ NTPC 1 India	Acknowledges some failure to comply	Yes	Restricted Investigation limited to Washington desk review
11. Ecodevelopment, India	Acknowledges some failures to comply	Yes	No Board agrees to review progress in six months
12. Lesotho Highlands Water, South Africa	Deny violations	Found ineligible[d]	
13. Lagos Drainage and Sanitation, Nigeria	Deny Violations	No	
14. Land Reform, Brazil	Deny Violations	Found ineligible[e]	

(continued)

Table 11.4. Management, Panel, and Board Responses to Claims (*continued*)

Inspection Panel Claims Filed	*Bank Management Response*	*Panel Recommendation*	*Board Approves Investigation*
After the Second Review Inspection Panel Claims[5]			
15. Lesotho Highlands Diamond	Deny violations	Found ineligible[f]	
16. Itaparica, Brazil (second claim)	N/A	Not registered[g]	
17. China Western Poverty Reduction	Acknowledges some failure to comply	Yes	Yes
18. Pro-Huerta, Structural Adjustment, Argentina	Deny violations	No	
19. Land Reform, Brazil (second claim)	Deny violations	Found ineligible[h]	
20. Lake Victoria Environment, Kenya	Deny violations	Yes	Yes
21. Prodeminca, Ecuador	Deny violations	Yes	Yes
22. Singrauli/NTPC 2 India	N/A	Not registered[i]	
23. Chad–Cameroon Pipeline, Chad	Deny violations	Yes	Yes
24. Coal Sector Project, India	Deny violations	Yes	Yes
25. Bujagali Hydropower, Uganda	Deny violations	Yes	Yes
26. Structural Adjustment, Papua New Guinea	Deny violations	No	
27. Yacyretá Hydropower, Paraguay–Argentina (second claim)	Deny violations	Yes	Yes
28. Chad–Cameroon Pipeline, Cameroon	Deny violations	Yes	Yes

Sources: World Bank, *Inspection Panel Annual Report 2002* (Washington, D.C.: World Bank, 2002); case studies for chapters 2 through 10, this volume; and the claims, management responses, and panel reports available at www.worldbank.org/ipn/ipnweb.nsf.

Note: IFC = International Finance Corporation; NTPC = National Thermal Power Corporation.

[a] Ethiopia was not registered by the panel because it found no linkage to acts or omissions by the bank (see www. inspectionpanel.org/summary of all Requests.doc [accessed February 18, 2003].

[b] In Tanzania, the panel found that claimants lacked standing, so the claim was found to be ineligible.

[c] The Biobío claim was inadmissible because the panel does not have jurisdiction over IFC projects.

[d] In the Lesotho Highlands Water case, the panel found no evidence linking complaints of harm to World Bank actions or omissions.

[e] In the first Land Reform claim, the panel found no evidence of harm, and thus it was determined to be ineligible.

[f] In the Lesotho Highlands Diamond claim, the panel found no link between complaints of harm and World Bank actions or omissions.

[g] The second Itaparica case was not registered by the panel, which did not respond to the claimants, who had sent a letter on April 23, 1999, to the president of the bank, the executive directors, and the panel (see Vianna, chapter 7, this volume). The Inspection Panel maintains that it never received a formal complaint; moreover, the claim was filed after the loan was closed.

[h] The panel found that the claim was ineligible because it determined that the claimants had not previously raised concerns with bank management.

[i] The claim was filed after the loan was closed.

country governments was to deny wrongdoing, obstruct the truth, and attempt to discredit the panel's work, while the board, often split along North–South lines, failed to empower the panel to do its job.

Subsequent procedural changes, coupled with growing board acceptance of the panel's role in the bank, have allowed the panel to operate more in keeping with the original intent—to provide the board with an independent perspective on the concerns raised by citizens experiencing negative side effects of bank lending. In every case since the second review, board members have approved panel recommendations for investigations.

Responses to Claims in Country

Bringing claims to the Inspection Panel is a daunting process for most claimants. For some, inviting international scrutiny of problems in projects can be dangerous. Leaders have sometimes been targeted for retribution, or in extreme cases, human rights violations. As described in chapter 8, in the Singrauli project, local people were subject to intimidation from the National Thermal Power Corporation (NTPC), the implementing agency. Madhu Kohli, the representative of the claimants, became a target of project authorities, whose frustration with her leadership role culminated with her being beaten by project contractors in the presence of four officials from the NTPC.[10]

More recently, Ngarledjy Yorongar, a Chadian member of Parliament, was an opposition candidate running for president when he filed a claim on behalf of many of his constituents, who live in the oil-drilling area of the Chad–Cameroon pipeline. At the time of the national elections, Yorongar and five other opposition candidates were imprisoned. Yorongar was beaten and tortured and was released only upon the intervention of World Bank President James Wolfensohn, who placed a telephone call to Chad's President Idriss Deby.[11]

The Panel's Impacts on Projects

A key test of the panel's impact is whether the claimants have been satisfied by the outcome. Through the Inspection Panel process, claimants have sought to receive adequate compensation for being forcibly displaced; to demand implementation of environmental protection and mitigation measures; to have their livelihoods restored; to receive support for social programs; to prevent threatened harm by stopping or delaying potentially destructive projects; and to hold the bank accountable for its role in causing their problems.

The panel does not have the power to issue an injunction, stop a project, or award financial compensation for harm suffered. Rather, the most that the panel can do is produce a public report with the impartial findings of its investigation. It is up to the board, after reviewing the panel's report of its investigation, to announce whether remedial measures will be undertaken. Thus claimants use the process because they anticipate that the bank will take steps to effectively address the problems articulated in their complaint. So what difference did the claim process make? What were the tangible impacts of the claim for those directly affected by the project? To what degree were claimant's goals met? Table 11.5 compares the claimants' objectives to outcomes, and also summarizes the broader impacts of the panel on the institution.

Despite the objectives and expectations of many of the claimants that the panel process will help solve problems, unfortunately there is no guarantee that a claim will lead to improvements at the project level. Ten of the twenty-eight claims filed had (in some cases limited) positive project-level impacts. These include Arun, Planafloro, Jamuna, Yacyretá, Jute Sector, Itaparica, Singrauli 1, Land Reform (first claim), China/Tibet, and Structural Adjustment Argentina. (It should be noted that nine claims were found to be ineligible or were not registered by the panel.)

The panel process has also had some direct, though limited, policy-level impacts. As table 11.5 shows, the Biobío, China/Tibet, and Structural Adjustment Argentina claims resulted in positive institutional changes. Four claims—Planafloro, Yacyretá, Itaparica, and Singrauli 1—aggravated board tensions with the panel (which actually began with Arun), catalyzing the second review. As we note in chapter 1, that review resulted in changes in the panel procedures, some of which were positive (e.g., the agreement by the board to accept panel recommendations for investigation), and some negative (e.g., the definition of the standard of harm, which raised the eligibility bar for claimants). Overall, a total of eleven of the twenty eight claims resulted in some direct impact on the project or the institution more broadly. The following section explores some of the constraints to the panel process that have limited its impact at the project level, and expands on the cumulative impact of the panel on the institution.

Constraints to the Panel Process

The unevenness of satisfactory outcomes on the ground points to a fundamental flaw in the panel's architecture: it is designed to present findings to the board of directors, not to prescribe or oversee the development and implementation of solutions to problems raised by the claimants. Moreover, while the panel's investigations (or reviews) have often confirmed that the harm was caused by bank policy violations, the solutions (action plans) have been proposed by management, which is also responsible for their implementation. This means that

Table 11.5. Impact of the Panel Claims[12]

Inspection Panel Claims Filed	*Claimants' Objectives*	*Outcome at Project Level*	*Broader Bank Institutional Response/Impact*
1. Arun III Hydro, Nepal	Secure adequate compensation; overhaul the energy sector; postpone the project	Loan cancelled, dam stopped, claimants satisfied	Institutional resistance to panel process began
2. Expropriation, Ethiopia	Obtain compensation for expropriated assets	None: claim found ineligible	
3. Emergency Power VI, Tanzania	Challenge decision related to procurement	None: claim found ineligible	
4. Rondônia Natural Resources Management Project (Planafloro), Brazil	Meet sustainable development goals	Partial project reform, including compensation, creation of protected areas, and civil-society legitimacy (power-sharing); may have triggered state government backlash against environmental commitments	Triggered backlash against the "harm" standard, which was changed by board of directors during second review
5. Biobío (Pangue) Dam, Chile	Cancel project	No discernable outcomes on the ground; partial compensation for a group of those affected	Creation of CAO and adoption of social and environmental policies at IFC and MIGA

(continued)

Table 11.5. Impact of the Panel Claims[12] (*continued*)

Inspection Panel Claims Filed	*Claimants' Objectives*	*Outcome at Project Level*	*Broader Bank Institutional Response/Impact*
6. Jamuna Bridge, Bangladesh	Include char people in project planning and compensation	Partial compensation, with high transaction costs for affected people; creation of new, precedent-setting project-level policy for "erosion and flood-affected" people	
7. Yacyretá Hydropower, Paraguay–Argentina	Secure expanded compensation and environmental mitigation; stop increase in reservoir level; stop privatization	Management cover-up of panel findings; reservoir level height has not increased, avoiding displacement of thousands of people; privatization stopped. Still unresolved issues with resettlement, compensation, and mitigation.	Claim fueled borrower backlash against the panel, leading to second review
8. Jute Sector, Bangladesh	Keep jute mills open by bringing loan into compliance with loan agreement to restructure the jute sector	Bank conceded that jute sector reform program, which had been "on hold," was a failure and cancelled loan	
9. Itaparica Resettlement, Brazil	Find solutions to chronic problems of lack of land and livelihoods related to displacement	Board accepted Brazilian government action plan; panel process avoided; cash compensation instead of land for a minority of those affected; divided social organizations; problems remain unresolved	Claim fueled borrower backlash against the panel, leading to second review
10. Singrauli/NTPC 1 India	Secure fair resettlement and rehabilitation and environmental mitigation	Board accepted management action plan, including innovative Independent Monitoring Panel; improved compensation package for 1,200 families out of hundreds of thousands of affected people	Claim fueled borrower backlash against the panel, leading to second review
11. Ecodevelopment, India	Stop evictions of indigenous people from protected area	No evidence of problems being solved; claimants dissatisfied by bank response	

(*continued*)

Table 11.5. Impact of the Panel Claims[12] (*continued*)

Inspection Panel Claims Filed	*Claimants' Objectives*	*Outcome at Project Level*	*Broader Bank Institutional Response/Impact*
12. Lesotho Highlands Water, South Africa	Challenge economic rationale of the project; improve access to water in South Africa townships	No impact, claimants dissatisfied with panel process	
13. Lagos Drainage and Sanitation, Nigeria	Secure fair resettlement, rehabilitation, and compensation	Panel satisfied by management steps to compensate additional people; claimants dissatisfied by panel process and inadequate compensation	
14. Land Reform, Brazil	Stop market-based land reform; continue government expropriation of unproductive land	Interest rates for loans for land reduced; some modifications in project design; bank reowrked National Land Fund, guaranteed not to fund purchase of lands subject to legal; civil-society organizations divided over response; expropriation	
15. Lesotho Highlands Diamond, Lesotho	Unknown	None: claim found ineligible	
16. Itaparica Resettlement, Brazil (second claim)	Request implementation of the unfinished action plan	None: claim not recognized by the panel	
17. China Western Poverty Reduction Project	Block the resettlement component of the project	Board rejected management action plan: China withdrew project; bank financing of resettlement component cancelled; government project scaled back; claimants satisfied	Management expanded internal safeguard compliance efforts
18. Pro Huerta Structural Adjustment, Argentina	Protect funding for food security program for urban poor	Funding restored; claimants satisfied	Affirmed panel's jurisdiction over claims regarding structural adjustment loans
19. Land Reform, Brazil (second claim)	Call attention to deficiencies of response to first claim	None: claim found ineligible by the panel	
20. Lake Victoria Environment, Kenya	Challenge the project design; improve public participation in project design and benefits	Project completed; panel findings about consultation violations moot	Board chastised management for distorting factual data and for challenging panel's findings

(continued)

Table 11.5. Impact of the Panel Claims[12] (*continued*)

Inspection Panel Claims Filed	*Claimants' Objectives*	*Outcome at Project Level*	*Broader Bank Institutional Response/Impact*
21. Prodeminca, Ecuador	Sought to prevent release of mapping data about mineral resources in protected areas to forestall exploitation		
22. Singrauli/ NTPC 2 India	Unknown	None: loan closed before claim was filed	
23. Chad–Cameroon Pipeline, Chad	Delay the project	Claimant arrested and tortured because of his opposition to the project; Wolfensohn intervened to secure release of claimant; project continues	
24. Coal Sector, India	Challenge project design and implementation; extend benefits and rehabilitation to excluded affected people; target remaining funds for restoration of livelihoods and environmental mitigation	Pending	
25. Bujagali Hydropower, Uganda	Reevaluate project justifications, including economic and environmental impacts	Project delayed due to corruption scandals; claimants satisfied (for now)	Project was also submitted to the Compliance Advisor/Ombudsman at IFC
26. Structural Adjustment, Papua New Guinea	Improve governance in forest sector and protection of claimants' forests	Bank disbursed loan; made commitment to address governance problems through new project; claimants not satisfied; governance problems persist	
27. Yacyretá Hydropower, Paraguay–Argentina (second claim)	Improve environmental and social compensation and mitigation	Pending	Investigation pending
28. Chad–Cameroon Pipeline, Cameroon	Improve resettlement, compensation and environmental mitigation	Pending	Investigation pending

Note: NTPC = National Thermal Power Corporation; CAO = Compliance Advisor/Ombudsman; IFC = International Finance Corporation; MIGA = Multilateral Investment Guarantee Agency.

the same bank officials—whose actions or omissions may have caused the claimants' problems—are tasked with resolving the very problems that they have caused. This is particularly ironic given that, as table 11.4 shows, staff and management-generated have frequently denied that problems existed.

The board, which is tasked with announcing what, if any, remedial measures the bank will implement, has explicitly prohibited the panel from having an oversight role in management-generated action plans. Oversight of those plans is left to the board, but the board has abdicated its responsibility; it neither follows up itself, nor requires independent reviews of the implementation of remedies. Thus, the board, bank management, and project authorities (both governmental and private sector) all too often get away with their failures to resolve claimants' problems. One result of this absence of effective solutions has been the resubmission of claims (e.g., Biobío and Yacyretá) as conditions on the ground have worsened. The lack of effective remedies for claimants is one of the most significant weaknesses of the Inspection Panel process.

Claimants have often had to overcome great odds to bring their grievances to the Inspection Panel. Some obstacles are built into the process and present structural constraints—for example, limiting the scope of the panel's jurisdiction or creating eligibility hurdles for potential claimants to clear. Some are more methodological—that is, the way in which the panel operates while conducting claims. Both sets of obstacles can make bringing a claim and receiving relief a challenge for claimants.

The intent of the bank's board and management was to ensure that only locally affected people would have access to the panel, to avoid having a flood of claims submitted as well as to prevent nonrepresentative Northern NGOs from using the process. While it is supposed to be as simple as two people submitting a letter to the panel, in fact the process requires a fair amount of technical knowledge and work on the part of the claimants. In practice, the requirements have made access to the panel difficult for those very people it was established to serve. Richard Bissell has argued that in establishing the panel:

> The Executive Directors stated that they wanted to enfranchise the weakest and most peripheral people in the global financial system, and yet laid out a legalistic blueprint for obtaining access to the Panel. How many people directly affected by Bank-financed projects would be able to obtain, read and understand Bank policy statements? And then understand how to "request an inspection" of a Bank-financed project?[13]

The lack of information for local people, and the technical nature of the process, means that claimants have often relied upon the assistance of experts (e.g., national and/or international NGOs or lawyers).

Another structural constraint is that the panel can't investigate projects in which the loan has been more than 95 percent disbursed, largely because the bank loses its leverage to influence government implementation once it no longer controls the finances. But many problems with projects don't show up until years after funds are disbursed. While the bank's policies apply to a project until the loan is repaid, the panel is not an option for those people who learn about the panel and choose to file a claim too late in the project cycle to meet the requirements for eligibility. For those affected people, there simply is no official recourse.

As noted previously, one of the most important roles of the Inspection Panel is to give voice and standing to affected people. While the panel does play a significant role in bringing local concerns and complaints to the attention of decision makers at the bank, there are constraints to claimants' involvement in the process. As noted by Richard Bissell in chapter 2, once claimants file a request for inspection, they largely lose control of the panel process. Indeed, their only formal point of engagement after filing a claim is to meet with the panel if it comes to the field. There is no opportunity for claimants to comment on management's response, nor do claimants have access to information before significant decisions are made about their claim. Only after the board decides on the panel's recommendation do the claimants have access to management's response. Moreover, there is no right for claimants to appeal either the panel recommendation or the board's decision about how to respond to their claim.

More fundamentally, there is a stark imbalance in access between the two adversarial parties—the claimants and management—once the panel has developed its final report to the board. At that point, management has the opportunity to react and provide recommendations to the board about how to resolve any identified policy violations. The claimants, in contrast, have no right to comment on what remedial measures would be appropriate to bring the project into compliance or rectify the harm that they have suffered.[14] Thus, the board tends to adopt management-generated action plans, ignoring the experience, knowledge, and preferences of the people who triggered the process in the first place.

Finally, the standard of harm excludes people affected by projects where policies may not appear to have been directly violated, but which have negative impacts nonetheless. As noted earlier, claimants are required to link the harm that they experience to violations of specific bank policies.[15] In the claim brought on the Lesotho Highlands Water Project, claimants alleged that Black townships of Johannesburg, South Africa, were negatively affected by the project. The main complaint was the dramatic increase in water prices for what was Africa's largest-ever dam project. The claimants argued that this project, and the bank's technical advice to the South African government, resulted in a distortion of water management policies and placed a disproportionate cost on poor townships.[16] While expressing sympathy, the panel did not recommend an investigation because it determined that the claimants had not made a link between the conditions they complained of and specific bank policy violations:

> There is no doubt, as the Requesters claim, that for reasons of historical neglect, poor communities suffer widespread inequalities in terms of lack of or limited access to water. Water prices have increased and some are unable to afford water sufficient for basic health and hygiene. . . . Conditions are harsh and unsanitary for millions of people in Alexandra, Soweto, and other poorer townships. . . . The Requesters' concerns about the conditions on the ground are valid but there does not appear to be a connection between these conditions and any observance or not by the Bank of its own policies and procedures. Rather, they appear to be a part of the enormous legacy and odious burden of apartheid.[17]

The limited scope of the panel's mandate—to investigate only when there are clear linkages between harm and policy violations—preempts the kinds of issues that the claimants in South Africa were trying to raise in the Lesotho case.

Feedback from some claimants suggests that the panel process has often provided the first opportunity for affected people to engage in a discussion with bank officials about their concerns, needs, and problems. Indeed, a critical role of the panel is to create an atmosphere where claimants and affected people can feel secure. The panel recognized the importance of maintaining the safety of claimants and designed its Operating Procedures to allow claimants to request that the panel keep their names confidential. The panel's mandate to gather information impartially implies that its engagement with claimants should be independent of government or bank officials.

Yet some claimants have been unsatisfied with field visits by the panel. For example, in the first land reform case, the panel was accompanied by bank officials, and in Singrauli, NTPC officials were present during the field visit. The presence of government or bank officials could stifle the free exchange of information with affected people. Claimants have also noted communication problems regarding the panel's field visits, including short notice of visits (Ecodevelopment) or last-minute schedule changes that limited the participation of local people (Jamuna, Lagos, and Singrauli). In Papua New Guinea, the claimants were confused by the panel's decision not to travel to the area where they lived, and believed that this failure to view firsthand the impacts of governance failures on their lands and forests may have contributed to the panel's determination that the claimants had not adequately

demonstrated harm.[18] In Singrauli, claimants felt that the panel did not allow enough time for meetings with affected people. One claimant commented that

> Hope was raised when we came to know that our complaint was being looked into and that someone was coming to visit. But when the Panel came to our village and made a flying visit, we were disappointed. They were there only for about an hour, and there wasn't enough time for us to present what we wanted them to listen to. . . . It looked like a ritual visit. They didn't hear ninety percent of what we had to say.[19]

The panel's visits to the field establish not only the eligibility of the claim, but also the credibility of the process for local people. The methodology that the panel uses in the field is critical to bringing the facts of the cases to light. The panel's field visits can also potentially serve to galvanize claimants and other affected people to articulate their demands and to create momentum for their ongoing organizing efforts and engagement with the bank and their government.

Impact of the Panel on the Institution

The Inspection Panel process has had a profound impact on the World Bank as an institution. There seem to be two distinct directions of change, however. While the bank has moved forward in terms of adopting policies and improving internal structures for compliance, it has also moved backwards in some disturbing ways. In particular, the safeguard policies themselves have come under fire from management and some borrowers who have found numerous ways to undermine the policy framework to avoid the kind of accountability that the panel was intended to foster.

The largest institutional changes may have been at the IFC and MIGA, which adopted environmental and social policies and created the Compliance Advisor and Ombudsman Office (CAO) in 1998 and 1999.[20] Before these changes were made, the IFC and MIGA, which lend to the private sector, were exempt from earlier policy reforms adopted at the public sector arms of the World Bank Group (IBRD and IDA). As described in chapter 6, the international campaign against the Biobío Dam, and the Inspection Panel claim that it generated, included an objective to highlight the need for clear policies and an accountability mechanism in the World Bank's private-sector lending agencies. It is undeniable that the NGO efforts to stop the project succeeded in forcing these two fundamental changes at the IFC and MIGA.

More modest changes in the World Bank (specifically in IBRD and IDA) can also be attributed to the Inspection Panel. Interviews with staff and management suggest that there is the perception in the bank that the panel *has* contributed to better policy compliance on the part of bank staff, in part linked to the internal turmoil and embarrassment that claims can cause. Ian Johnson, vice president for Environmentally and Socially Sustainable Development, noted that

> People are recognizing that the costs of non-compliance are higher than the costs of compliance at the end of the day. An ounce of prevention is worth a pound of cure. It has made quite a big difference. . . . I think there is a genuine desire to do the right thing. If you don't do due diligence, and you get caught, you pay a price.[21]

The panel has also prompted internal restructuring and improvements in transparency. After the China/Tibet controversy raised the reputational costs of noncompliance for the bank, the staff, mandate, and budget of the bank's Quality Assurance and Compliance Unit (QACU)—a team in the Environment Department responsible for oversight of safeguard policy compliance—were significantly expanded. The QACU now oversees coordination of the safeguard policies, trains bank management and borrowers as well as staff, and runs a "Safeguards Help Desk" to assist staff with questions about policies or projects in the portfolio. QACU also advises on high-risk projects that require greater management attention.[22]

New systems have been put in place that are meant to screen bank projects against the policies. The newly instituted Integrated Safeguards Data Sheets now require staff to go on record regarding which, if any, safeguard policies are acknowledged to apply to a specific project under consideration. This means that for the first time since the policies were adopted, information about policy application for each project that the bank is financing is available on the bank's website.[23]

These small steps may contribute to internal compliance by giving bank staff better tools to identify what types of actions should trigger policy application. These changes, however, do not ensure that the policy objectives are actually met. And improved systems have not necessarily led to better accountability. A recent report by the bank's Operations Evaluation Department (OED) found that one internal constraint to the bank's environmental performance has been

> the apparent lack of senior Management commitment to the environment and to IDA environmental policies. This has not only weakened components in country strategies and lending programs, but also led to embarrassing situations in several high-profile projects in which the Inspection Panel and the public have questioned IDA's integrity and the ability to follow its own policies. Senior managers should accept full responsibility for achieving IDA's environmental objectives and hold regional and country managers accountable for their performance in achieving these objectives.[24]

The key question—whether bank management's assertions that there have been actual improvements in policy compliance—remains open. To date there have only been limited studies of compliance improvements, and nothing yet that can definitively affirm whether there has been greater compliance with policies since the panel was created.[25]

Risk Aversion as a Deterrent

One impact of the panel on the bank is that the experiences of panel claims, and the subsequent emphasis on compliance with safeguards, have contributed to certain "allergic reactions" of bank staff to high-risk projects. The threat of a panel claim—or even the potential applicability of safeguard policies—may inhibit bank staff from promoting certain controversial projects. Managing Director Shengman Zhang asserts that "Risk aversion is widespread, among front line managers especially. . . . It comes out in the choice of projects. It looks like staff are avoiding certain types of projects."[26]

Increased risk-averse behavior means that some projects won't make it onto the drawing board because of staff fear of an Inspection Panel claim. Robert Picciotto, former director general for the bank's OED, noted that the panel generates

> a great amount of transaction costs that may be contributing to risk aversion. There is a Vice President here saying no more dams, no more mines, no more forestry. This is very negative. There is an enormous focus on the Inspection Panel and too little focus on the upstream work, or the adaptation of the project instruments to meet social and environmental objectives.[27]

In October 2001, President Wolfensohn requested information regarding risk aversion from increased oversight of the safeguard policies. An OED paper confirmed that bank policies seem to lead to risk aversion, reporting that "There is anecdotal evidence that some managers are discouraging their staff from tackling operations involving safeguard policies."[28] Some observers would view this as a positive, and indeed intended, consequence of the panel and as a logical result of increased accountability. Several interviews with high-level bank officials, however, revealed a view from inside the institution that such risk aversion is bad for business and should be overcome.

From "Policy Conversion" to "Beyond Compliance"

One way to avoid accountability is to change the policy framework. Indeed, as the most frequently cited benchmarks against which the Inspection Panel evaluates claims, the safeguard policies have themselves become a battleground in the struggle for greater accountability. Shortly after the panel was created, the bank embarked on a process to convert its hundreds of pages of bank policies and Operational Directive into a standardized format consisting of three related documents: the Operational Policy (OP) and Bank Practice (BP) documents, which outline mandatory requirements for staff, and the Good Practice (GP) document, which is considered to be merely "guidance" for staff and not actionable through the panel process.[29] Ostensibly the motivation was to make the policies clearer and more operational for bank staff, but, as the senior bank manager initially responsible for the process divulged in an internal memo in 1996, "Our experiences with the Inspection Panel are teaching us that we have to be increasingly careful in setting policy that we are able to implement in practice."[30]

During the ensuing years, the safeguard policies were put through this "conversion" process, and for the most part, NGOs had to fight "hand-to-hand combat" to retain the mandatory language that gave the safeguards their teeth.[31] Bank management's tendency has been to weaken the mandatory language or move important provisions into the Good Practice section of the policy to avoid being accountable to tough standards. Robert Goodland, a former senior environment advisor at the World Bank and one of the original architects of the safeguard policies observed:

> In updating its safeguard policies, not one has been modernized and strengthened commensurate with the deteriorating global environment. Remarkably, several policies have stagnated and others have been gutted. The resettlement policy no longer recognizes the indirect impacts of resettlement. In 2002, the Bank rescinded its commendable decade-long ban on financing logging in tropical forests. The World Bank has lost the social and environmental leadership it had between the 1980s and 1990s.[32]

The weakening of bank policies undermines the jurisdiction of the Inspection Panel, the bank's commitment to sustainable development, and has direct negative effects on the rights of local people. Medha Patkar of the Narmada Bachao Andolan, commenting on the conversion process, observed that "with the new water policy, indigenous peoples policy, and resettlement policy, the Panel's position is weakened."[33] Former panel Chair Jim MacNeill commented on the crucial role of NGOs in maintaining the standards of the policies:

> The safeguard policies are the criteria against which we judge the Bank's performance. If they are rephrased and become vague and without teeth, they won't be used as effectively to judge compliance. The standard will go. If NGOs want to protect the Panel they need to ensure that the policies are not denuded. This is absolutely crucial.[34]

The backsliding on the safeguard policies has recently been overtaken by a new bank initiative to avoid accountability by shifting more responsibility for policy compliance to the borrower. A 2002 strategy paper aims to make the safeguards "more relevant to changing development practices and changing client needs."[35] This paper reflects the bank's growing emphasis on "country ownership" and recommends allowing "more flexibility in how the borrower achieves" development results. The bank argues that such flexibility is needed because "borrowers in the public and private sector generally agree with safeguard principles, but have reservations about the detailed prescriptive requirements that limit their approaches to achieving agreed ends."[36]

While environmental and social impact prevention and mitigation would arguably improve with borrower ownership, a key concern raised by bank critics is that in the process, responsibility for implementation of protection measures will fall to governments (which often lack commitment, capacity, and the political will to accomplish the safeguard policy objectives), while the bank maintains a distant "oversight" function. As Tom Griffiths, an analyst with the U.K.-based Forest Peoples Programme, notes:

> It is highly risky to pass all responsibility for social and environmental issues to borrowers when they still lack the capacity and normative frameworks to address issues effectively. It boils down to the Bank trying to wriggle out of accountability after civil society has tried so hard to pin it down over the last two decades.[37]

Moreover, shifting responsibility for safeguard implementation to borrowers could ultimately undermine the panel's role since its jurisdiction is the bank. While this outcome is not inevitable, it signals that the continuing trend in the institution is to circumscribe the panel rather than use its functions to improve the bank's accountability and development effectiveness.

The Panel's "Net Effect" on Policies

In terms of its impact on the bank, the panel process appears to have had *contradictory* impacts on the social and environmental policy framework. By working to improve future compliance with safeguard policies, bank management focused attention on the internal changes needed to encourage more consistent levels of policy compliance as a direct result of the China/Tibet claim. At the same time, management has continued to pursue its ongoing "conversion" of the safeguard policies into often-weaker standards—a process also motivated in part by the threat of panel claims. Finally, management is now proposing to shift compliance responsibility to borrowers. The "net effect" of these changes in terms of overall social and environmental impact is difficult to predict. Any answer would require extensive independent field-based evaluations of projects launched "before" and "after" these changes.

Impact of the Panel on Accountability Reforms at Other International Financial Institutions

Following the lead of the World Bank, the Inter-American Development Bank (IDB) and the Asian Development Bank (ADB) created inspection mechanisms in 1994 and 1995, respectively. The investigation processes of these regional development banks lack many fundamental guarantees of independence and effectiveness. Neither have a permanent panel, relying instead on ad hoc systems in which they maintain "rosters of experts" from which to choose inspectors in the event that their boards authorize an investigation. The claimants are at a severe disadvantage in these processes, as they lack access to an impartial, independent forum until significant decisions are made by the boards of directors. As of this writing, only a handful of claims have been filed (three at the ADB and four at the IDB).[38]

The experience of the World Bank Inspection Panel has, however, provided valuable lessons in process as well as concepts of accountability. Moreover, growing attention by global civil society to accountability mechanisms at international financial institutions is creating a political imperative for reform. The IDB's Independent Investigation Mechanism has recently been criticized by claimants and NGOs after several claims have revealed the mechanism's appalling lack of transparency and responsiveness.[39] The ADB's Investigation Mechanism was reviewed during 2002 and was reformed in 2003. Both the European Bank for Reconstruction and Development and the Japan Bank for International Cooperation are currently in the process of creating accountability mechanisms, largely in response to civil-society pressure.[40]

Increasing the prospects for accountability at the World Bank has been a slow process of incremental change. Undoubtedly, that change has been brought about by the persistent efforts of civil society and the integrity of the Inspection Panel. The adoption of environmental and social policies, and the creation of the Inspection Panel and CAO to which affected people can appeal, has been the bank's direct response to decades of campaigning by NGOs, grassroots social movements, and affected people demanding that their concerns and interests be addressed and that the bank shoulder some responsibility for solving the problems its lending has caused. As this study has shown, however, project and policy improvements do not always guarantee the substantive project-level outcomes that claimants seek. While the Inspection Panel provides citizens with a tool to raise the profile of their concerns at the highest levels of the bank, civil-society strategies clearly

need to include a variety of additional tools and tactics to move the institution toward effective problem solving and greater accountability.

NOTES

1. See Dana Clark and Kay Treakle, chapter 10, this volume.
2. While the claim in Cameroon related to the Chad–Cameroon Pipeline project did evolve from the international campaign to delay construction and ensure adequate compensation and environmental mitigation, the claim in Chad on the same project was brought by a member of Parliament who filed the claim on behalf of his constituents living in the project area.
3. Víctor Abramovich, personal communication with the authors, Washington, D.C., June 23, 2001.
4. CIEL's "Citizens Guide to the World Bank Inspection Panel" was also widely distributed in English, French, Spanish, and Portuguese to environmental and human rights activists around the world, and is geared for use by communities affected by World Bank–financed projects (see Dana L. Clark, *A Citizen's Guide to the World Bank Inspection Panel* [Washington, D.C.: CIEL, 1999]; available online at www.ciel.org). Over the years, several of the claimants have relied on the *Citizen's Guide* for guidance.
5. See Dana Clark, chapter 1, this volume.
6. See BIC, "Select Inspection Panel Claims: Claimant Allegations of Policy Violations and Panel Findings, or Preliminary Findings Based on *Prima Facie* Evidence," www.bicusa.org, August 2001 [accessed February 23, 2003].
7. For example, management responses to Planafloro, Ethiopia, Tanzania, Yacyretá, and Itaparica contained detailed arguments against an investigation, and in Arun, management's presentation to the board, as well as a separate legal opinion, caused board members to question the claim's eligibility. For a discussion of the problems of bank management's interference in Inspection Panel claims, see Lori Udall, *The World Bank Inspection Panel: A Three-Year Review* (Washington, D.C.: BIC, 1997).
8. See Kay Treakle and Elías Díaz Peña, chapter 4, this volume.
9. Ibrahim F. I. Shihata, *The World Bank Inspection Panel: In Practice* (Oxford: Oxford University Press, 2000), 221.
10. See Dana Clark, chapter 8, this volume.
11. Korinna Horta, "Rhetoric and Reality: Human Rights and the World Bank," *Harvard Human Rights Journal* 227, no. 15 (Spring 2002): 236.
12. For more information about claims not covered in this volume, see the following sources: Inspection Panel reports on investigations, available online at www.worldbank.org/ipn/ipnweb.nsf. For information specific to the India Ecodevelopment Project, see Sanghamitra Mahanty, "Conservation and Development Interventions as Networks: The Case of the India Ecodevelopment Project, Karnataka," *World Development* 30, no. 8 (2002): 1369–86.
13. Richard E. Bissell, "Institutional and Procedural Aspects of the Inspection Panel," in *The Inspection Panel of the World Bank: A Different Complaints Procedure,*

ed. Gudmundur Alfredsson and Rolf Ring (The Hague: Kluwer Law International, 2002), 107–25.

14. See letter from Madhu Kohli to Ernst Günther Bröder, the Inspection Panel, September 24, 1997 (copy on file with authors): "An issue of concern in the Panel process so far has been lack of transparency. The requesters were not given access to the Panel's Report until the Board had voted on it. The Bank Management, however, had access to the Report as is very apparent from the update on the Action Programme."

15. Jonathan Fox, "The World Bank Inspection Panel: Lessons from the First Five Years," *Global Governance* 6 (2000): 279–318.

16. See Patrick Bond, "Lesotho's Water, Johannesburg's Thirst: Communities, Consumers and Mega-Dams," in *Unsustainable South Africa: Environment, Development and Social Protest* (Pietermaritzberg: University of Natal Press; London, Merlin Press, 2002).

17. Inspection Panel, "Lesotho/South Africa: Lesotho Highlands Water Project" (Request 1), August 18, 1998.

18. Damien Ase, CELCOR (Center for Environmental Law and Community Rights), to Edward Ayensu, Inspection Panel, May 23, 2002: "The requesters representatives had to travel all the way from their villages in the project area to meet with the Panel due to the fact that the Panel chose not to visit the Kiunga-Aimbak area. They incurred a lot of costs in the process. The Panel's failure to travel to the project area may have undermined the Panel's ability to understand the issues."

19. Ram Narain Kumari, interview by Dana Clark, Dodhar Resettlement Colony, Singrauli, India, September 8, 2002. Note that although thirty-three of the Singrauli claimants requested that the panel keep their names confidential, over time, their identities were determined by the project authorities and are no longer secret.

20. For more recent information about the effectiveness of the IFC's safeguard policies, see International Finance Corporation, Compliance Advisor Ombudsman, "A Review of IFC's Safeguard Policies: Core Business: Achieving Consistent and Excellent Environmental and Social Outcomes," January 2003. The report is available at www.cao-ombudsman.org [accessed May 27, 2003].

21. Ian Johnson, World Bank vice president for Environmentally Sustainable Development; interview by Dana Clark and Kay Treakle, Washington, D.C., May 2, 2002.

22. Steve Lintner, head of the World Bank Quality Assurance and Compliance Unit; interview by Kay Treakle, Washington, D.C., February 1, 2002. It should be pointed out that Lintner did not think that the expansion of QACU was related to the panel or the China/Tibet claim, but rather to a general trend that "the bank started to emphasize quality."

23. To find the Integrated Safeguards Data Sheets, go to www.worldbank.org, and search for the term "Integrated Safeguards Data Sheets."

24. World Bank, "Environmental Sustainability Issues In IDA 10-12," in *OED IDA Review* (Washington, D.C.: World Bank Operations Evaluation Department, 2001).

25. For an overview of the independent and official evidence on bankwide compliance trends through 1997, see Jonathan Fox and L. David Brown, "Assessing the Impact of NGO Advocacy Campaigns on World Bank Projects and Policies," in *The Struggle for Accountability: The World Bank, NGOs and Grassroots Movements,* ed. Jonathan Fox and L. David Brown (Cambridge: MIT Press, 1998), 485–551.

26. Shengman Zhang, World Bank managing director, interviewed by Kay Treakle, Washington, D.C., June 18, 2002.

27. Robert Picciotto, former director general of the World Bank Operations Evaluation Department, interview by Kay Treakle, Washington, D.C., February 3, 2002.

28. World Bank, Operations Evaluation Department, "Risk Aversion: Safeguards and Post-Conflict Lending," *Lessons and Practices,* October 23, 2001.

29. See BIC, "World Bank Policy Conversion: An Overview," www.bicusa.org/publications/, April 14, 1997 [accessed February 18, 2003].

30. Myrna Alexander, "Conversion of Remaining OD's," World Bank Operations Policy internal memorandum, March 15, 1996 (on file with the authors).

31. Korinna Horta, senior economist, Environmental Defense, personal communication with Kay Treakle, September 2002.

32. Robert Goodland, personal communication with Kay Treakle, February 21, 2003.

33. Medha Patkar, interview by Dana Clark, Badwani, India, September 22, 2002.

34. Jim MacNeill, former chair of the Inspection Panel, interview by Kay Treakle, November 28, 2001.

35. World Bank, "Safeguard Policies: Framework for Improving Development Effectiveness. A Discussion Note" (Environmentally and Socially Sustainable Development and Operations Policy and Country Services), October 7, 2002, paragraph 2.

36. World Bank, "Safeguard Policies: Framework for Improving Development Effectiveness," www.worldbank.org/, October 7, 2002 [accessed February 18, 2003].

37. Tom Griffiths, an analyst with the U.K.-based Forest Peoples Programme, personal communication with Kay Treakle, January 6, 2003. The Forest Peoples Programme has made substantial contributions to the analyses of the safeguard policies during the conversion process. For more information see www.forestpeoples.org; see also letter signed by seventy organizations from thirty-two countries, to Stephen Pickford, World Bank executive director for the United Kingdom, March 2, 2001.

38. For more information on the ADB's Inspection Function, see www.adb.org/inspection, and www.bicusa.org/mdbs/adb/inspectionfunction.htm [accessed February 18, 2003]. For the IDB's Independent Investigation Mechanism, see www.iadb.org/cont/poli/investig/brochure.htm [accessed February 18, 2003].

39. Amy Gray et al. to Enrique Iglesias, February 18, 2003, available online at www.bicusa.org [accessed February 20, 2003].

40. See European Bank for Reconstruction and Development, "Independent Recourse Mechanism at the EBRD," available online at www.ebrd.org ("Inviting Public Comment") [accessed February 20, 2003]. See also "Joint Comments on the EBRD's Proposed Independent Recourse Mechanism," submitted by BIC, CIEL, and Central and Eastern European BankWatch, December 20, 2002, available online at www.bicusa.org [accessed February 20, 2003]. For information on the Japan Bank for International Cooperation proposed guidelines, see www.jbic.go.jp/autocontents/japanese/news/2003/000012/1-3.pdf [accessed February 21, 2003] and www.mekongwatch.org [accessed February 21, 2003].

Concluding Propositions

Jonathan Fox and Kay Treakle

The panel is an experiment in institutional innovation that has become an established presence on the landscape of the World Bank. New claims are investigated through a more streamlined process no longer requiring advocacy campaigns simply to gain the right to an investigation. The panel's investigative process continues to provoke sovereignty concerns from borrowing governments, in spite of the limits of its mandate to focus only on the World Bank's role, but these debates no longer appear to threaten the panel's institutional survival. Though various actors may differ in their assessments of its effectiveness, the legitimacy of the panel's goal of increasing the World Bank's accountability, as well as the legitimacy of an independent investigation process, is no longer in dispute. This chapter concludes with a series of propositions for discussion that emerge from this analysis of the panel process, focusing on the issues of institutional innovation and lessons from its impacts.

The Inspection Panel Creates a Crosscutting Process of Institutional Answerability to Civil Society, Transcending Traditional State-Centered Multilateral Accountability Relationships

Accountability refers to the process of holding actors responsible for their actions. At minimum, accountability involves "answerability" in which actions are held up to standards of behavior or performance. Formally, the World Bank, like other multilateral organizations, is responsible only to its member governments and their representatives that sit on its board of directors. The board created the panel to respond to tensions in its relationship with management, after independent evidence of the bank's politically costly noncompliance with social and environmental policies became too overwhelming to ignore. The panel provides the bank's board with the possibility of third-party verification of concerns expressed by people directly affected by bank operations. The process gives the board discretionary power over whether and how to use this information to redress wrongs or to hold management accountable for policy violations.

Civil-society campaigners promoted an approach to accountability that called for institutional answerability to the people directly affected by bank projects that transcended the bank–nation-state relationship. Two dimensions of the panel process made this *public* answerability possible: the official standing for affected people combined with the commitment to release the panel's findings. The cases analyzed here show that when panel reports publicly verify claims of grassroots critics, they create a new crosscutting accountability relationship, constituting a form of "answerability" of the bank to directly affected communities.[1] When these reports officially recognize institutional failure, they are newsworthy and legitimate the concerns of both external critics and internal bank reformers. This built-in use of "sunshine" to shame the bank has the potential to pressure the board to act when the bank has violated its own standards and can lead to broader policy impacts.

Most Panel Claims Have Been Filed by Directly Affected People and Their Southern Allies, Suggesting That the Process Has Largely Fulfilled Its Goal of Being "Citizen Driven"

The panel process was structured to be used primarily by people who are directly affected by bank-financed projects. This design feature was an attempt to address concerns that Northern NGOs would take advantage of the process to press their agendas on borrowing governments. The requirement of local standing, or local authorization of indirect representation, has had the intended effect. This provision bolstered the legitimacy of the panel process in the face of nationalist backlash from borrowing governments and encouraged Southern organizations to take advantage of the opportunity to make their case directly without governmental or international NGO involvement. This study's review of the sources of leadership in each claim demonstrated that the *majority* of cases so far have been clearly Southern-led (including those brought by private-sector actors) and that most of the rest emerged from coalitions between claimants and their allies from both Southern and Northern NGOs. Only in the exceptional case of the China/Tibet project did outside representatives lead the claim process. This evidence puts the charge that the "Panel process is a tool of Northern NGOs" to rest, and shows the degree to which diverse Southern civil-society actors have tried to engage with the panel.[2]

Panel Claims Have Led to Clear Project- and Policy-Level Impacts on the World Bank

The impacts of panel claims can be understood in terms of two crosscutting dimensions. The first dimension involves the distinction between influence at the project and policy levels. The second dimension involves the distinction between more tangible and less tangible impacts. Table 5 shows tangible project-level impacts in at least ten cases, clear policy impacts in at least three cases, and because of overlap, eleven cases that had direct institutional impacts.

Direct project impacts refers to identifiable changes in the projects that provoked the claims, such as cancellation of the project (as in Arun and China/Tibet), increased compensation for affected people (as in Singrauli), reversal or reform of project decision-making processes (as in Pro-Huerta and Planafloro), or mitigation of project impacts (as in preventing the increase in the reservoir level at Yacyretá).[3] Other effects are direct but less tangible, such as the nominal recognition of rights of a previously excluded social group or a reported sense of empowerment on the part of those filing claims. The Jamuna Bridge case offers a clear example of the distinction between tangible and intangible direct impacts. The material impacts included extremely small amounts of compensation for a subset of those affected, delivered through a bureaucratic process that—in spite of being NGO-run—was discriminatory toward the very people whose rights were being recognized. The spillover effects of the government's first-ever recognition of the char people's rights to compensation are less tangible, but may well be significant in the future.

The second dimension involves the distinction between impacts on the projects themselves as well as impacts on broader policies. In several important cases—notably the Biobío dam—the most tangible impact of the claim took place far from the affected community. The claim directly provoked the establishment of a new environmental and social policy framework at the International Finance Corporation and the Multilateral Investment Guarantee Agency, as well as the creation of an ombudsman/compliance process to address problem projects. Similarly, the China/Tibet case provoked a major reassessment of the bank's internal approach to policy compliance more generally. Less tangible impacts at the institutional level include the staff's reported "risk aversion" as discussed in chapter 11.

The Inspection Panel Process Deploys Transparency in Two Directions at Once, Exposing Cases of Policy Violations to the Public, While Internally Exposing the Responsible Staff to Their Colleagues

The World Bank has long been criticized for its internal incentive structure, which rewards staff more for moving projects and money through the pipeline than for assuring socially and environmentally sustainable outcomes on the ground. Bank management's mantra of "client focus" in the late 1990s encouraged staffers to choose their battles with borrowing governments carefully. In this context, some staff treated full compliance with the bank's safeguard policies as a costly distraction, especially if compliance risked slowing project preparation or created tension with their official counterparts in borrowing governments. In addition, the bank's internal decentralization in the late 1990s weakened its own limited internal checks and balances by undercutting the autonomy of its social and environmental vetting process.[4]

Most discussion of the power of sunshine to inhibit potential violations of safeguard policies focuses on the threat of external exposure, but "internal exposure" may matter as well. The potential reach of external exposure is inherently limited because of the uneven coverage and capacity of independent civil-society watchdog monitoring around the world. As a result, only some unknown fraction of safeguard policy violations are ever exposed.

At the same time, the bank's own internal monitoring is also limited; until recently the institution lacked a mechanism that allowed management to systematically track individual staff compliance with safeguard policies. In addition, because both staff and managers are regularly rotated among different countries and projects, by the time that problems might unfold on the ground—years after a project was launched—those responsible would often have been transferred elsewhere. As a result, from the individual staff or manager's point of view, the costs of compliance with safeguard policies could be higher than the career risks of noncompliance. In response to the China/Tibet panel claim, however, for the first time management created a bank-wide internal oversight mechanism, the Integrated Safeguards Data Sheets, which could potentially detect those individual staff members who fail to comply. The impact of this reform remains to be seen. Bank management also encouraged greater awareness of safeguard policies by encouraging staff training and creating a Safeguards Help Desk. These are necessary but not sufficient conditions for deepening accountability within the institution. The bank still lacks a track record of sanctioning individual staff members for violations of its social and environmental policies.

The threat of exposure used to be limited to denunciations by advocacy groups or occasional criticism in the media. This kind of "sunshine" proved to have very limited shaming power for those staff members and managers

who appear to have been responsible for a disproportionate share of disastrous projects. Indeed, the perpetrators could easily hide behind their official anonymity, since external criticism rarely focused on specific individuals in the bank. The panel process created the first institutional mechanism to question the individuals responsible for implementing the bank's social and environmental standards to find out what went wrong and why.

The panel process thus brings a limited kind of exposure to bear on *individual* staff members. Though rarely, if ever, identified by name in the reports, individuals "hauled up on charges" by the panel are widely known within the institution. The widespread discomfort provoked among staff and management by panel investigations suggests that they fear the loss of prestige associated with being exposed in the eyes of their colleagues for policy violations that embarrass the bank. The panel's use of transparency therefore operates on two levels at once: externally, by potentially validating the concerns of affected people, and internally, by potentially holding actual individuals "answerable" to an unprecedented degree. This threat of internal exposure could therefore be interpreted as adding a limited new dimension to the staff's incentive structure.

While Most Panel Claims Have Focused on Infrastructure Projects, Some Have Broadened the Scope of the Process by Addressing Sustainable Development and Structural Adjustment Projects

Infrastructure projects are the "problem projects" that the safeguard policies were designed to prevent or mitigate, so it is not surprising that they dominate the set of claims. However, claimants have shown that they can use the panel process to improve sustainable development projects (Planafloro) and to bolster social protections in structural adjustment loans (Pro-Huerta). By accepting claims brought against structural and sectoral adjustment loans, the panel accepted the standing of, and legitimated the claims by, affected people that macroeconomic policy can have direct, tangible impacts that cause harm. This precedent opens up new possibilities for civil-society actors to hold the bank accountable both to its poverty alleviation mandate and to the negative consequences of its macroeconomic development model.

The Number of Panel Claims So Far Represents Only a Fraction of Potentially Controversial Projects

The bank has approved thousands of loans since the panel was created. The fraction of those projects that provoked panel claims could lead one to conclude that policy violations are few and far between. However, such a conclusion would be based on the assumption that affected people have full access to relevant information about the bank's impacts on their lives, that they have access to freedom of expression and association, and that they determine that filing an Inspection Panel claim would be worth the considerable time and effort involved.

Are the cases that led to panel claims the exception to the rule or the tip of a much larger iceberg? The panel itself addressed this issue in its report on the China/Tibet claim, pointing to systemic weaknesses in the effective application of safeguard policies. Nevertheless, it is difficult to assess the specific patterns of *bankwide* compliance or noncompliance with safeguard policies without access to still-confidential performance data, not to mention extensive independent field testing.[5]

The panel process so far does reveal some of the key obstacles to filing claims, which could explain why there aren't more claims. For example, many people directly affected by bank-funded projects are not aware that the bank is even involved; those on the receiving end see government bulldozers. In addition, many are not aware that the bank has safeguard policies that grant them some minimal rights and set some standards for institutional behavior. Many are not aware of the panel's existence.

Even for those who have access to this information, the decision to file a panel claim is not one taken lightly. Some affected people may be aware of the panel, but are not convinced of its relative autonomy. Some may be wary of pursuing their campaign on the bank's home turf—its own limited policy framework. Others have ideological objections to formally engaging with an institution they see as illegitimate.

For those without these broader objections, other obstacles are quite real. One practical consideration is that the preparation of a full panel claim—and when needed, a broader support campaign—requires substantial investment of human resources, thus raising the question, "Is it worth it?" In some countries, the risks of backlash from borrowing governments are quite high, ranging from the threat of human rights violations, to political attacks for encouraging external intervention. Then there is the further risk that a panel investigation may not validate the claimants' charges. What if the investigation was flawed or the problems claimants were facing were difficult to link directly to bank policy violations? In these cases, the panel's findings could be used by the bank or the government to claim that they were exonerated and to undermine the legitimacy of their critics (as in the case of Brazil's land reform claims, analyzed in chapter 7 of this volume). In other words, from the potential claimants' point of view, the panel's "third-party verification" capacity could be a two-edged sword. Even in cases where the panel finds policy violations, as noted previously, remedial measures are often inadequate.

The Panel Experience Suggests That Getting a "Foot in the Door" Is Quite Different from Gaining a "Seat at the Table"

The international standing gained by panel claimants can be seen in terms of getting a "foot in the door" of the decision-making process. This image of partial opening is especially appropriate because it leaves the outcome open-ended. The question is whether sustained pressure will open the door even further, whether the door will get stuck, or end up being slammed shut. Whatever happens in any one case, the process may let in some light and help those on the outside to see more clearly what the "powers that be" are doing on the inside.

A "foot in the door" is quite distinct from "a seat at the table," which is an image that also suggests official recognition of standing. But being at the table gives citizens the opportunity to participate in negotiations over how decisions are made.[6] The scope of the panel process, in contrast, is limited to the investigation of the application of the bank's already-defined policies and projects. That is, the size and shape of the door is already determined, and the question is whether and how far the door will actually open in the case of any particular claim. This image would be incomplete without highlighting the insiders who react differently to the opening of the crack. Insider reformists pull the door from within, in synergy with those pushing from outside. Others—especially bank managers, who react defensively most of the time—put their shoulder against the door, trying to prevent those outside from coming in.

Meanwhile, some high-level bank policymakers looking at the scuffles in and around the door take the longer view, designing sophisticated strategies that leave the door open a crack, while redesigning the size and shape of the door itself by revising the safeguard policies. This has underscored the importance of sustained monitoring and advocacy of the bank's policy process by public interest groups. So far, organized public interest advocacy campaigns have influenced this process in some cases—often in the form of partial limits on the degree to which policies were watered down. But stakeholders are still far from having gained the right to a "seat at the table" at which the World Bank makes its important decisions.

Accountability at the World Bank: The Long-Term View

Even the limited prospect of accountability represented by the panel has affected the actions and strategies of different actors within the bank. In spite of the panel's lack of powers of enforcement or restitution, powerful forces have reacted defensively to the prospect of institutional accountability—a clear indicator of weakened impunity.

This study has shown that the panel process sometimes permitted people directly affected by bank projects to use reform policies to shift the balance of power in their favor. This process of using a targeted intervention to turn the weight of the institution against itself can be seen as a kind of "institutional judo." The Inspection Panel process shows how grassroots actors can sometimes oblige global authorities to sit up and officially listen. It remains to be seen to what degree this experience will unleash multiplier effects that can further empower citizens in their ongoing struggles over the role of the World Bank in their societies.

NOTES

1. For a definition of a stakeholder approach to accountability, see Hetty Kovach, Caroline Neligan, and Siman Burall, "Power without Accountability?" in *The Global Accountability Report* (London: One World Trust, 2003).
2. This perception nevertheless persists among some policymakers. For example, the recent *Human Development Report* by the UNDP (United Nations Development Program) (New York: Oxford, 2002) speculates that "judicial-style accountability" reforms such as the Inspection Panel "may end up being shaped more by the desire of industrial country NGOs to garner publicity through confrontations and showdowns, not by quiet measures that more modestly improve the lives of people directly affected by projects" (117). The director of the UNDP previously served as head of public relations for the World Bank.
3. The overall pattern of bank and borrowing-government responses to claims—when they do respond—shows that the most common approach is to promise partial compensation or mitigation, but neither full redress nor sanctions. Specifically, management and borrowing governments promise the board to deal with the problems, often through arrangements in which outcomes on the ground are not subject to independent monitoring. As noted earlier, this puts the solutions in the hands of those responsible for the problems in the first place, eludes the panel's mandate, and shifts the political terrain of struggle back to national and local arenas. In these cases, the outcomes of transnational accountability claims that attempt to bring in international actors to change the local or national balance of power, end up being determined by local and national actors.
4. See Andrés Liebenthal, *Promoting Environmental Sustainability in Development: An Evaluation of the World Bank's Performance* (Washington, D.C.: World Bank Operations Evaluation Department, 2002). This official study confirms much of the independent critique in Bruce Rich's "The World Bank under James Wolfensohn," in *Reinventing the World Bank,* ed. Jonathan R. Pincus and Jeffrey A. Winters (Ithaca: Cornell University Press, 2002), 26–53.
5. Fox and Brown, "Assessing Impact," 485–551.
6. The World Commission on Dams, in contrast, is a very significant example of an institutional innovation in which civil-society actors gained a seat at the table at which decision-making criteria are set, although the World Bank did not accept the new standards proposed in the commission's recommendations.

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