PART II

Selected Inspection Panel Cases
As of May 1, 2003, the Panel has, since it was formed in 1993, received 27 formal Requests. Of those Requests, 9 were rejected because they did not meet the eligibility criteria, and 10 were the subject of a full investigation authorized by the Board. The remaining Requests were disposed of before a full investigation. In some cases, the Board disagreed with the Panel’s recommendation that an inspection be conducted. But in a number of other cases, it turned out that an inspection was not necessary because corrective changes were made as a result of the Panel’s initial involvement and Management’s desire to ward off a full formal inspection. Thus, the Panel can have an important influence on how the Bank responds to allegations that it has failed to follow its policies and procedures with respect to a project, even when a full inspection is not recommended or authorized. This chapter discusses some of the cases. Each one should be considered a success story.
Bangladesh: Jamuna Multipurpose Bridge Project

One of the early cases brought before the Panel involved a project for the construction of a 4.8-kilometer bridge over the Jamuna River. This wide, meandering watercourse, which empties into the Ganges River on its way to the Indian Ocean, divides the country in two. The river is constantly shifting its path because of silt accretion and other factors, and thus the efforts to tame it sufficiently to construct a permanent overpass were a major undertaking. The resulting bridge was to be the longest in South Asia and would carry motorized, pedestrian, and railway traffic as well as utility cables. The bridge’s construction was eagerly anticipated as a milestone in the integration of a pipeline and the Bangladesh economy on both sides of the river, particularly by facilitating market access to the less-developed regions in the northwest portion of the country.

In August 1996, the Panel received a Request from a group of individuals who lived on a series of islands (known locally as “chars”) in the middle of the river channel. The Requesters were concerned that the engineering works designed to manage the course of the river would result in increased flooding and erosion of the islands and perhaps even wash away some of their homes entirely. The Requesters claimed that they had been overlooked in the design of the project despite Bank policies that required borrowers to properly assess the environmental impact of a project and its effect on local and indigenous peoples.

As with all the Requests the Panel receives, after first determining that this Request did not contain any obvious grounds for ineligibility, the Panel forwarded it to Bank Management and asked for a prepared Response. The standard procedure is for the Panel to wait for Management’s Response before conducting a preliminary investigation to determine the eligibility of the Requesters and their claims, after which the Panel will
prepare a recommendation to the Board as to whether a formal investigation should be authorized. In this case, however, before the Response had even been delivered to the Panel, Management and the borrower worked together to produce a series of guidelines designed to compensate the char dwellers for any harm they stood to suffer as a result of flooding or erosion caused by the project or indeed because of any other factor. This policy was the first ever adopted in Bangladesh designed to compensate people for such types of losses, and the speed with which the policy was produced, together with its specificity, indicated how concerned Management and the borrower were with the prospect of the Panel’s involvement.

As part of the eligibility assessment, a Panel team went to Bangladesh to meet with the char dwellers and evaluate the eligibility of their claims. The Panel found substantial evidence that the Bank had failed to comply with policies designed to protect parties such as the char dwellers and concluded that the char dwellers had made a strong prima facie case justifying inspection. However, the Panel also acknowledged the erosion and flood policy that Management and the borrower had developed after the Request was filed. The Panel took the view that this set of policies provided a workable response to the Requesters’ claims. Accordingly, the Panel decided that a full investigation would not be necessary at the time, provided that the policies were implemented promptly and that appropriate monitoring was instituted.

The Board agreed with the Panel’s assessment and invited the Panel to participate in the monitoring process by visiting the project site at a later date and meeting with the char dwellers and other interested parties. The Panel did so in the spring of 1998 and reported that, despite some minor difficulties, the policy was being implemented successfully. Char dwellers were being identified and their claims for resettlement and compensation were being heard. The Jamuna bridge project continued to proceed well, and the bridge was opened to traffic with great fanfare in June of that year.
India: NTPC Power Generation Project

The India NTPC project provides another example of how the Panel’s presence resulted in the creation of extensive mechanisms for positive change even though the Panel was not allowed to conduct a full inspection. The project area was in the Singrauli region of Central India (Uttar Pradesh and Madhya Pradesh), a remote area about 1,000 miles away from Delhi. The region was once the home of the famous white tiger, and its Kaimur mountain range was known for its rich biodiversity. Now, however, the region is increasingly becoming the home of heavy industry. At the time the Request was filed in May 1997, the Singrauli region housed six thermal power stations, nine open-cast coal mines, an aluminum extraction project, a pesticide manufacturing industry, several explosive factories, three cement manufacturing units, and hundreds of stone-crushing units. Vast stretches of the Singrauli area were being surveyed for the presence of uranium.

For 2 years before filing her Request in May 1997, Madhu Kohli worked as an independent activist representing a group of small subsistence farmers who were concerned about the environmental impact of an intensive thermal power development program financed by the Bank. Her Request on behalf of these families claimed that the costs of continued development and exploitation of the area were being disproportionately borne by the poor villagers whom she represented, who had been continually displaced to make way for the huge, coal-fired power generating plants. Fly ash from the coal used for operating the plants was to be disposed of in ash dikes or ponds, and additional land was being acquired to accommodate the ash resulting from the increased capacity. These large-scale purchases of land (much of it unused for years) had resulted in deforestation. The Request further alleged that severe mercury and chromium poisoning and dust pollution arose from the plants. Less than 20 percent of the permanent jobs in the industry went to local residents, and almost all of them were jobs requiring little skill.

According to the Request, the borrower agency, NTPC, was completely disregarding the rights of the people it was displacing. Villagers were being forcibly removed from their homes and resettled in urban areas completely unsuited to their mode of living. They were being given lump-sum cash payments in lieu of being provided with permanent jobs or training programs to enable them to maintain their livelihood. The failure to upgrade existing ash ponds or to consider back filling of ash in existing open-cast mines resulted in involuntary resettlements that could have been avoided, as large tracts of land were acquired for new ash ponds.

The Request alleged that the Bank had failed to mitigate similar damage from past projects and did not adequately incorporate those experiences in its management of the current project. The Bank’s continued acquiescence in NTPC’s actions violated its policies on the consideration of investment alternatives, on involuntary resettlement, and on environmental assessments, among other things. People affected by the project had not been kept up to date on Bank field visits and were not permitted to meet with Bank officials without NTPC also being present, which created a climate of intimidation and made it impossible for the Bank to comply with its project supervision policies.

Management’s Response to the Request was unusual in that this case was the first in which Management admitted that the Bank had failed to fully comply with the policies. Management agreed that the Bank’s environmental assessments procedures and steps...
for consultation had not been complied with fully. In its defense, Management stated that resettlement Action Plans had been considered adequate when prepared, but that it had underestimated the practicality of implementing those aspects of the plans that called for alternative land to be offered to displaced people and for assistance in finding new ways for them to earn a living. NTPC had accordingly encountered delays and problems in plan implementation. In addition, Management acknowledged that NTPC’s resettlement policies were inconsistent with the Bank’s policies on the treatment of indigenous people, particularly in reference to land tenure rights.

Management identified two other areas in which NTPC was not fully in compliance with loan covenants: (a) timely implementation of the environmental Action Plan, and (b) timely implementation of the resettlement Action Plans for certain areas. Management asserted that it preferred to exhaust all other methods of persuasion before declaring the borrower in violation of the loan covenants.

Various critics of the Bank took a far less charitable view of Management’s performance. They noted that problems of this sort with NTPC projects had been going on for years, creating a disturbing pattern of forced resettlement and an alarming lack of capacity on the part of NTPC to implement Bank policies with respect to the treatment of local inhabitants, as well as continued environmental devastation. Such critics accused the Bank (a) of pushing loan programs through at an accelerated pace without proper consideration of whether the borrower had made the necessary commitments to fulfilling the relevant covenants and (b) of woefully failing to properly supervise the borrower’s behavior.

As it had done in previous cases, Management attached to its Response a remedial

India: NTPC—Destruction of farmland and ash dike construction.
Requests for Inspection Satisfied before Panel Investigation

Action Plan, which was designed to forestall a full inspection by the Panel. The Action Plan promised to improve project implementation and to bring the Bank into full compliance with its directives on involuntary resettlement, environmental assessment, and project supervision. In particular, Management pledged (a) to improve procedures for community participation in project design and implementation and (b) to identify better strategies for minimizing social dislocation and environmental degradation. Management also promised a review of all environmental assessments and resettlement components in the entire India loan portfolio, reflecting how far the problem had gotten out of hand.

The Panel conducted a preliminary field visit and found prima facie evidence that, if anything, the situation on the ground was even worse than admitted by Management in its Response. Previous reports by the Bank’s field office and other groups had identified deficiencies in the Bank’s monitoring of the project that had not been acted on. The Panel found further evidence of harm based on violations of the Bank’s policies on involuntary resettlement, environmental assessment, and supervision.

The Panel was also troubled that the remedial Action Plans proposed by Management had been developed without local participation, and Management was not proposing that the local people be consulted even now. Nor did the Action Plans address the fundamental question of whether there currently were serious problems in the resettlement plans and the environmental operations as alleged by the Requesters and supported by others during the Panel’s field visit. The Panel strongly believed that the numerous problems raised should be mitigated or prevented at the time instead of waiting for retrospective identification through future reviews and remedial actions. Accordingly, the Panel recommended a full investigation.

Management and NTPC submitted a revised Action Plan to the Board after the Panel’s Eligibility Report had been issued. The revised plan contained features that responded directly to some of the Panel’s concerns. A key aspect of the plan was a proposal to hire an outside consultant to perform a social impact assessment of the resettlement program as it had been implemented to date. The consultant would evaluate how the local villagers had been treated by NTPC until that point and would recommend specific remedial action. The plan also proposed the appointment of a panel of three independent experts to monitor the ongoing implementation of the resettlement program. The experts would mediate between the claims of people affected by the project and NTPC, which, as everyone now realized, had failed to develop the institutional capacity to comply with its obligations to the local community.

In September 1997, the Board met to consider the Panel’s recommendation. The situation had become politicized by that time. The borrower country was extremely reluctant to let the Panel return to the project area, fearing that this would reflect badly on the borrower and that the public would view the visit as an investigation of the borrower’s actions. After some very tense discussion, the Board approved an inspection but limited it to a desk study in Washington, D.C. The Board also approved Management’s revised Action Plan and requested that Management submit follow-up reports on the plan’s implementation.

Meanwhile, the situation in the field had not improved. In November, two NGOs reported forcible resettlements of people in the area, even though NTPC had agreed to a moratorium on such action. (In response to allegations of forced moves in July 1997,
NTPC had submitted a number of affidavits from people affected by the project stating that they had moved voluntarily. Unable to visit the project area to verify the new claims, the Panel moved as quickly as it could to complete its work in Washington, D.C.

The Panel’s report in December 1997 confirmed violations of the three policies referred to earlier and added that the failures appeared more serious than previously assumed. In particular, the Panel focused on the fact that the Bank had not assured itself that the borrower had the necessary initial capacity to carry out plans on resettlement and environmental assessment. The loan had been processed rapidly, and Management had been under extreme pressure to approve it, even though Management had not had time to ensure that a number of essential mechanisms and preconditions were in place or were adequate. Nor did the Bank provide the necessary support to NTPC to strengthen its capacity to carry out its obligations, and much of the project monitoring was based on secondary-source information rather than on ground supervision.

The Board decided to review progress reports on Management’s Action Plan rather than making any immediate decisions on the Panel’s report of the desk study. The Panel was not permitted to participate in this process. Nevertheless, the appointment of outside experts to assist with overcoming the severe problems that had developed in the implementation of the resettlement program was a significant step. Indeed, this was unprecedented, and it is doubtful that the appointments would have occurred without the Panel’s involvement. In a report prepared after the project was finally completed in the spring of 2000, Management acknowledged that attention to involuntary resettlement policies had often been regarded as marginal in comparison to the overall objectives of a project. Management stated that in the future far greater attention would be given to the borrower’s capacity and commitment to implementing those policies.
Brazil: Land Reform Poverty Alleviation Project

For impoverished farmers and laborers struggling to earn a subsistence living in Brazil, the Bank's financing of the Land Reform Poverty Alleviation Project promised to provide loans on favorable terms to enable the farmers to form cooperative associations for buying their own small tracts of land and acquiring the materials necessary to plant and harvest their own crops. These lands would be acquired in the marketplace from willing sellers. The program was intended to be part of Brazil's overall constitutionally mandated agrarian reform program, which also included expropriation of larger farms and other redistributive techniques.

Bank Management was justifiably proud of its involvement in the program, which by most accounts was proceeding successfully. Nevertheless, in April 1997, the Panel received a Request for Inspection from a number of local NGOs and individuals who claimed that they were being adversely affected by the design and implementation of the project and that the Bank had violated various policies on poverty reduction, environmental assessment, and disclosure of information. The Request claimed that borrowers would be unable to repay their loans and that the prices of property sought to be acquired had risen sharply, making their purchase impossible.

In its Response, Management asserted that the loan program was working very well. Land prices had not risen sharply as alleged by the Requesters, and there was no evidence that the project beneficiaries were being harmed. In addition, Management questioned the standing of the Requesters to file the Request and also claimed that the Requesters had a political motivation: their objective was to stop the project and to prevent the expansion of market-based land reform because they favored expropriation as the only legitimate means for redistributing land assets in Brazil. The foundation of this argument, Management noted, centered on a policy choice of the Brazilian government and not on the proper application by the Bank of its own policies and procedures. The Panel agreed with this assessment in general but noted that it provided a useful context for understanding the concerns of the Requesters. Management also stated that since the Request was filed, the terms and conditions of the loans provided under the project had been dramatically improved in favor of the project beneficiaries.

As had become customary, the Panel visited the project area as part of its initial assessment and met with a number of beneficiaries and local officials. The Panel did not find any evidence that project beneficiaries were suffering material harm; on the contrary, the Panel concluded that the project was improving the lives of poor farmers in the region. The Panel did note, however, that certain favorable loan terms had not been fully implemented and were not yet reflected in the existing contracts. The Panel also was uncomfortable with the prospect of expropriated lands being used in the program, fearing that such a practice would encourage unfair profit-taking and other forms of corruption.

Although, because of the improved lending conditions, the Panel did not find sufficient evidence of material harm to justify a full investigation, the mere fact that the Panel visited the project area during its preliminary investigation yielded important results. The Brazilian Ministry of Agrarian Reform confirmed that loan terms would be revised to provide for a low fixed rate rather than a floating rate and that these terms
would be reflected in all existing loan contracts. The Brazilian government and Bank Management also confirmed that lands that could be expropriated under the Agrarian Reform Law would not be purchased under the project. The Panel also reported that project beneficiaries had requested additional working capital and technical assistance to improve agricultural techniques and management skills, and Management later confirmed to the Panel that the requests would be honored.
Argentina: Special Structural Adjustment Loan

In November 1998, the Bank agreed to fund a mammoth US$2.5 billion structural adjustment loan that was designed to help the Republic of Argentina improve its social services infrastructure and the quality of those services, as well as to strengthen the financial sector and improve the regulatory framework. The loan was to be disbursed in three tranches, and one of the conditions for the second tranche was that the borrower’s overall budget for certain social programs would be maintained at a certain level.

In July 1999, the Panel received a Request from an NGO representing beneficiaries of Pro Huerta, a food security program designed to help the poor maintain small vegetable gardens to produce food for their own consumption. The amount of money budgeted for the Pro Huerta program was proposed to be cut by nearly 65 percent. The Requesters believed that, because the Pro Huerta program was specifically included in the loan agreement as one of the programs the Bank felt should be protected, permitting such drastic budget cuts would eviscerate the program and violate the Bank’s policies on poverty reduction. The Requesters acknowledged the Argentine government’s need to restructure its social services but claimed that the restructuring should not result in such a drastic reduction of a program protecting Argentina’s neediest social sectors. The Requesters felt that Argentina was in violation of the “social budget conditions” of the loan, and they wanted the Bank to withhold disbursement of the third tranche.

For its part, Management insisted that it was in compliance with Bank policies and that the borrower was in compliance with loan conditions. Management also claimed that, as a result of its supervision efforts, it had persuaded the borrower to provide, after the Request was filed, an additional US$3 million to the Pro Huerta program, nearly doubling its budget (though total funding for the program was still substantially below levels for the previous year).

After Management had issued its Response, the Panel undertook a field visit. In interviews with officials at the Argentine Ministry of Finance, the Panel members received confirmation that the Pro Huerta budget was to be increased as Management had stated. However, to release the increased funds, the minister of finance was required under Argentine law to send an authorizing instruction to Congress. This step was not taken until after the Panel’s visit reinforced the seriousness of the matter. In addition, the Panel was told during its visit that the Ministry had decided to allocate another US$1.5 million in lottery revenues to the Pro Huerta program.

The Requesters subsequently told the Panel that the total funds allocated to Pro Huerta would be adequate to fund its operations for the current fiscal year. They noted that there seemed to be a renewed level of commitment to maintain the program during the remaining time period of the structural adjustment loan. Because the potential harm claimed by the Requesters appeared to have been averted, the Panel did not recommend a formal investigation. As was the case with Brazil’s Land Reform Poverty Alleviation Project, the mere fact that the Panel had gotten involved seemed to provide the impetus for the parties to take steps to ensure the survival of a key component of the borrower country’s commitment to provide social services to its poorest citizens.