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World Bank Reform in the "Post-Policy" Era

13 GEO. INT'L ENVTL. L. REV. 1013 (2001)

13 Geo. Int'l Envtl. L. Rev. 1013

Georgetown International Environmental Law Review

Summer, 2001

LENGTH: 16774 words

NOTE: World Bank Reform in the "Post-Policy" Era

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SUMMARY:
... Finally, the Bank developed a system to encourage proper safeguard policy implementation, and to ensure that there would be a means for recourse when these policies are violated. ... Realistic pre-loan appraisal missions should identify the full costs of safeguard policy compliance for the proposed project, and these costs should be incorporated into the terms of negotiation of the loan agreement. ... Section A explores staff attitudes toward safeguard policy compliance. ... A. STAFF ATTITUDES TOWARD SAFEGUARD POLICY COMPLIANCE ... By the Bank's own account, there was no internal expectation of safeguard policy compliance until recently. ... As expected, when project design results from the culture of approval, and when loan agreements are inadequate, actual safeguard policy compliance at the project implementation stage is predisposed for failure. ... Safeguard policy compliance in the energy sector is no less a concern for the U.S. ... B. DISINCENTIVES FOR SAFEGUARD POLICY COMPLIANCE IN "REORIENTED LENDING" ... Past examples of lending in the environmental sector foreshadow safeguard policy compliance for the "New Bank. ... Staff should be rewarded based on two measurements: safeguard policy compliance and development impacts. ... The judgment of safeguard policy compliance and project impact should involve collaboration between Bank supervisors and those people the project aimed to assist. ...

TEXT:

[*1014] I. INTRODUCTION

Despite the World Bank's mandate of poverty alleviation, Bank operations in developing countries have been criticized for failing to address their mandate and neglecting environmental and social concerns. n1 Although the Bank has adopted safeguard policies to remedy this situation, the Bank has been unable to translate these changes into practice. The Bank's culture of rewarding staff for the volume of loans approved over the quality of loan impact n2 remains in place while the Bank has modified the safeguard standards for these loans, giving those responsible for implementing the safeguard policies little or no incentive to change. n3 Having new policies in place has not made the Bank more responsible. In contrast, these policies have focused attention on the Bank's static internal staff incentive structure, which is an important aspect of the Bank that must change for its mandate to have credibility.

This note is limited to World Bank policy and practice as they relate to the Bank's public institutions. n4 Part I presents the theoretical context, background, and history of Bank operations. Part II examines the goals of the reformers and the recent history of World Bank policy reform. Part III looks at the nature of the new safeguard policies. Part IV examines current trends in the implementation of safeguard policies. Part V discusses why the Bank's internal staff incentive structure is in tension with the policies it is obligated to follow; and finally, Part [*1015] VI discusses the future of World Bank reform in the "post-policy" era by setting out the reform agenda for activists and their governments.

II. THEORETICAL CONTEXT, BACKGROUND, AND HISTORY OF BANK OPERATIONS

This section provides the context, background, and brief history of Bank operations to situate current and future reform efforts. Section A frames the development issue generally. Section B describes the origin of the Bank and discusses how the structure of the Bank is organized to implement its development model.

A. THE DEVELOPMENT DEBATE

Since the late 1980s, the World Bank has operated in accordance with the "Washington Consensus" n5 model of economic development. The Bank and the International Monetary Fund (IMF) were so successful in promoting this model that it became the "dominant paradigm in development thinking." n6 The underlying theory is that neo-liberal n7 policy prescriptions would stimulate foreign investment in developing countries, popularize capitalism, and strengthen national economies. The increased "productive" economic activity and efficiency gains from this system are then intended to trickle down to benefit the country's population as a whole. n8 Structural adjustment programs (SAPs) n9 and large-scale [*1016] development projects n10 are key tools in this process.

In recent years, the Bank has incorporated the concept of "good governance" into its model. The Bank argues that this is an enlightened replacement for the Washington Consensus, while critics argue that its assumptions are flawed and that it operates no differently from neo-liberalism except that it gives lip service to rights language. n11

On the other side of the spectrum from the Washington Consensus, rights-based advocates view development as requiring civil and political rights and welfare for the poor who live in substandard conditions. n12 They reject the Bank's top-down model, instead favoring a participatory approach. n13 Liberal Constitutionalism also fits this paradigm, emphasizing "political pluralism, fair elections, [*1017] a strong and independent judiciary, and an efficient and responsible administration." n14 These qualities are seen as more important than free markets in countries where poverty is endemic due to political corruption and disenfranchisement. This note does not attempt to resolve this lopsided debate; it only attempts to point to the direction that change must take in order to increase the likelihood of the Bank "doing no harm" under its current development model.

B. BACKGROUND ON BANK HISTORY AND OPERATIONS

The World Bank n15 and the IMF were created during the July 1944 conference in Bretton Woods, New Hampshire, as part of a plan to rebuild Europe after World War II. n16 The IMF, designed to provide emergency lending to economies in crisis, and the Bank, with its mandate of poverty alleviation, have worked in tandem to dictate the formula described above. n17 The neo-liberal economic model was stamped, via IMF loans and Bank loans and credits, onto most of Latin and Central America, South and Southeast Asia, and Sub-Saharan Africa, and now returns almost full circle to the Former Soviet states and Eastern Europe.

A Board of twenty-four Executive Directors, composed of donor and borrower government representatives, oversees Bank operations. Weighted voting is determined by each country's shares and capital contribution to the Bank's coffers. For example, the United States, with 16.96% of shares in the Bank, is entitled to 16.49% of total votes on the Board--and represents only itself. n18 Other nations with smaller capital contributions are organized in voting blocks, or constituencies, represented by nineteen Executive Directors elected by the constituency. As an illustration, the Dutch Executive Director votes as a representative of the Netherlands, Armenia, Bulgaria, Cyprus, Georgia, Israel, Moldova, Romania, Bosnia and Herzegovina, the Former Yugoslav Republic of Macedonia, Croatia, and the Ukraine. n19 These counties bundle their voting power together, totaling 4.49% of total votes. China, India, Russia, and Saudi Arabia are single country constituencies who have elected to vote their shares alone. Therefore, with the [*1018] exception of the directors from lone constituencies above and from the United States, France, Germany, Japan, and the United Kingdom, Executive Directors to the Board represent both borrower and donor countries. n20 In total, 181 countries are represented at Board level. This motley crew gives the final approval on all loans and steers the overall lending policies of the institution.

The daily operations of the Bank are run by Bank Management, which is organized into a complex system of five Managing Directors and twenty-five Vice Presidents. The Vice Presidents are in charge of regions (such as East Asia & Pacific), or themes (such as Environmentally & Socially Sustainable Development). The ranks of management consist of numerous other levels, but finally filter down to task managers who are responsible for specific project implementation. n21

III. THE POLICY REFORM ERA: GOALS VERSUS ACHIEVEMENTS

The following section gives a brief synopsis of why the World Bank's activities warrant continuing calls for reform. Section B describes the history of past efforts at Bank reform and gives the context of current reform campaigns. Understanding this history is important to identify past successful strategies and how these strategies can be utilized in the future. Finally, Section C recounts the accomplishments of past reform efforts and describes why Bank reform is not complete.

A. FACTORS MOTIVATING REFORM

The World Bank has earned a poor record in its fifty-year history of financing mass scale development projects. n22 While there are many desperately needed and [*1019] positive World Bank projects, in some cases not only are the poor not receiving relief, but they are in fact harmed by the Bank's modus operandi. Although officially the Bank's "dream" is creating "a world free of poverty," n23 many of the Bank's lending practices have reflected the various interests of borrower and donor governments, not those of the impoverished masses that inhabit developing countries. While borrowers are generally interested in attracting investment, donor governments are motivated by both a sincere desire to alleviate poverty as a reflection of domestic voter sentiment and the pressure from corporate lobby groups to facilitate investment opportunities in the developing world. n24

The World Bank's tremendous influence over the development agendas and economic policies of many borrower countries makes it a logical target for criticism by those with competing epistemologies regarding the requisites for environmental and social protection. World Bank President James Wolfensohn, when recently asked whether he thought the Bank needed reform, replied, "we have been trying to reform the World Bank but from the inside. I would have to say that there is now an absolute focus on the question of poverty. People really care about poverty." n25 Although we should take comfort in the fact that Wolfensohn perceives the focus of his institution to finally reflect the mandate it has had since its inception, his subsequent statement that "we all feel that we have got to be more effective in what we are doing" n26 begs the question: why?

By its own account, only seventy-two percent of the Bank's projects achieved a "satisfactory or better outcome." n27 In contrast, the recent and highly contentious Meltzer Commission Report by the U.S. Congress International Financial Institutions Advisory Commission claims that fifty-five to sixty percent of World Bank-financed operations are failures. n28 Despite these disturbing findings, internal [*1020] incentive structure change is not on the World Bank's agenda as a method of addressing this unacceptable report card. n29 Wolfensohn notes that there "is such a challenge for us all now that I think structural change in the organization is much less important than is cultural change." n30 In other words, the World Bank's current leader views the institution as capable of working with its current incentive structure to effectuate change.

B. IN RETROSPECT: THE POLICY REFORM ERA

Washington, D.C.-based non-governmental organizations (NGOs) began mobilizing against the damage done by World Bank projects in the late 1970s n31 as part of the environmental movement gaining momentum in the United States. n32 As Bruce Rich, a Senior Attorney at the Environmental Defense Fund, observed, by "the end of the 1970s, the World Bank had become an institution where policy pronouncements and rhetoric were largely dissociated from reality." n33 In the early 1980s, environmental NGOs began discovering this "reality" and initiated a campaign focused on rainforest preservation with the World Bank as one of the primary targets. n34 By the mid-1980s, Bank policy reform was on the agenda because NGOs believed that safeguard policies, transparency provisions, and accountability mechanisms would provide a check on the Bank's uncontrolled practices. n35 Although the Bank had issued voluntary *Guidelines on Environmental Developments of Projects* in 1975, n36 it was clear that the Guidelines were optional because of the gross disregard for environmental concerns seen in numerous projects financed since their issuance.

[*1021] The NGO strategy naturally turned toward lobbying the U.S. Congress, the body responsible for allocating the largest single share of funding for the Bank. When Congress threatens this funding, the United States Executive Director to the Bank has leverage to call for Bank reform. NGOs hoped to use congressional leverage through the replenishment process to make the Bank accountable for its lending practices, which they believed would curb the Bank's tendencies to lend, for example, to environmentally damaging large-scale dams, road construction in rainforests, and massive human resettlements.

The NGO strategy proved astoundingly effective, despite diverging agendas and motivations for using congressional replenishment periods as a reform tool. Some "development" NGOs shared the same end goals as the environmental NGOs, but feared placing conditions on Bank funding that could jeopardize assistance for the poor. At the other extreme, some "environmental" NGOs advocated withholding *all* funding to the Bank until the Bank demonstrated greater accountability and policy reform. Congressional replenishments from 1984 through 1999 reflected the level of organization within the NGO community; as the NGOs mobilized their membership and lobbied Congress, greater leverage over the Bank was achieved. n37

In 1993, the "environmental" NGO model of advocacy triumphed. The congressional appropriations committee and the Treasury Department withheld replenishment funds to the International Development Association (IDA)--the portion of the Bank that lends to the poorest of the poor--until the Bank took the recommended steps to create a mechanism for accountability and greater transparency. The Bank responded to threats to its funding by adopting a series of safeguard policies aimed at creating environmental and social policy benchmarks. n38 Finally, the Bank developed a system to encourage proper safeguard policy implementation, and to ensure that there would be a means for recourse when these policies are violated.

Along with the 1993 policy reforms came the Resolution establishing the World Bank Inspection Panel. n39 The Inspection Panel, a quasi-independent, three-member body with rotating appointments, was the first meaningful source of accountability throughout the gargantuan structure of international financial institutions. The Panel's mandate is to investigate allegations of Bank violations of its own policies or procedures that have impacted, or are likely to adversely impact, private citizens. The Panel reports its findings to the Bank's Board of Directors who are empowered to, *inter alia*, halt loan disbursements, cancel [*1022] projects, or provide compensation. The Panel's presence in Bank structure was important to reformers, primarily because the goals of policy reform, from the perspective of NGOs, were not just to have the policies in place, but to give enforceable standards that the Bank was required to follow in its operations.

Although establishment of the Inspection Panel was an essential minimal step in achieving World Bank reform, its presence does not guarantee policy compliance in the manner envisioned on paper. In the six years since its inception, Panel reports have raised awareness about systemic structural problems within the Bank, but it is up to citizen groups and NGOs to take these lessons from the Panel's experience and to use them to urge the Bank to address incentive structure problems head on.

C. ACCOMPLISHMENTS AND CURRENT CHALLENGES

At the behest of the reformers, and via pressure from Congress, n40 the World Bank now has policies that, if followed to the letter, would prevent most of the *immediate* harm now caused by Bank practice in the field. n41 However, that is not [*1023] to say that formal compliance with the present policy structure would remove all cause for Bank critique. Even with full policy compliance, the World Bank would still operate with emphasis on national economic prioritization over community-based solutions to poverty. Full policy compliance would still allow for Bank application of structural adjustment programs (SAPs) that dictate neo-liberal economic reforms. SAPs, representing over a quarter of Bank lending, n42 have been criticized as one of the Bank's most mandate-blind activities. n43 Critics argue that removing barriers to trade and increasing foreign investment in natural resource exploitation often yields profits for multinational corporations (MNCs) that fail to trickle down to indigent nationals. n44 Finally, the critique of the Bank as a creator of Third World debt has accompanied the proposal that grants replacement loans, with emphasis on the poorest of the poor countries, not those already benefiting from private capital flows. n45

That said, greater transparency and accountability *has* had an impact on the types of projects the Bank is willing to fund. The Bank's experience with public relations disasters, such as the China: Western Poverty Reduction Project, n46 has created a more cautious tone when it comes to projects with questionable environmental or social components. Risky projects implicating numerous safeguard policies are now less desirable to Bank Management, n47 but only because of the problems these projects can cause for the Bank's image when there are inevitable instances of noncompliance, not because these projects are seen as inappropriate development choices.

The Bank's internal incentive structure, as discussed below, prevents the institutional learning that should result from past Inspection Panel claims, internal reviews, and media exposes. Lessons are limited to better prevention of NGO and media criticism, instead of a focus on preventing the situations that create the cause for criticism in the first place. Despite practical obstacles, policy [*1024] compliance is still a worthy goal, albeit nearly unattainable. Before examining why full policy compliance is difficult, it is important to understand the policies that the Bank is required to follow.

IV. SAFEGUARD POLICIES: WHAT WOULD IMPLEMENTATION MEAN?

Current Bank safeguard policies are generally acceptable under international environmental and human rights law, and if implemented appropriately, would inhibit the Bank from "doing harm." However, the Bank is not implementing its safeguard policies appropriately and faces accountability from the World Bank Inspection Panel, civil society, and the media for its current failures. Recognizing the inability of the current staff incentive structures to facilitate safeguard policy implementation, the Bank is choosing to weaken its policies to fit its structure instead of changing its structure to fit its policies. Section A discusses fluctuations in the strength of safeguard policies and the weakening of current policies through the Bank's conversion to a new policy and procedure format. It addresses the weakening process with examples of select environmental and social policies. Section B addresses the systematic structural problems with current policies and describes the way the drafting and situation of these policies within the Bank make compliance difficult.

A. THE WEAKENING OF SAFEGUARD POLICIES

Bank policies and procedures have existed in numerous forms in the past twenty-five years. When the Bank reorganized in 1987, policies and procedures that were in the form of Operational Manual Statements (OMSs), later changed to Operational Directives (ODs). n48 The current configuration reflects yet another "conversion" that took place in 1992, from the OD format to the use of binding Operational Policies (OPs) and Bank Procedures (BPs), and non-binding Good Practices (GPs). Over the years, as accountability for policy compliance increased with the addition of the Inspection Panel and transparency requirements, the Bank has weakened the stringency of its social and environmental safeguard policies.

When the Bank first adopted environmental safeguard policies, the policies tended to be comprehensive and demanding. The Bank saw the policies as guiding policies, rather than as binding rules. When civil society began demanding compliance with these policies, the conversion process weakened them in an attempt to make them easier to meet.

The Bank issued its core policy on the environment, OMS 2.36 *Environmental Aspects of Bank Work*, in May 1984, and provided the Bank with a strict [*1025] standard. n49 It required that all potential projects undergo thorough analysis of their potential impacts on the immediate environment and on entire ecosystems. OMS 2.36 required the Bank to follow the precautionary principle with a "25-50 years and more" n50 timeframe when appraising projects for their long-term environmental impacts. Because of the challenges observed above, Bank Management accurately recognized that numerous projects in the Bank's portfolio had no capacity to meet this rigorous standard. Subsequent environmental policies that eventually replaced OMS 2.36 altogether, gave a much more lenient standard for Bank lending. n51 OMS 2.36, paragraph 9, for example, stated that the "Bank . . . will not finance projects that cause severe or irreversible environmental deterioration, including species extinction without mitigation measures acceptable to the Bank" and that it "will not finance projects that unduly compromise the public's health and safety." n52

The precautionary principle is absent from OP 4.01, the current version of the Bank's Environmental Assessment (EA) policy. Instead, OP 4.01's vague standard states that the "Bank does not finance project activities that would contravene such country obligations, as identified during the EA"--country obligations meaning "country environmental studies; national environmental action plans; the country's overall policy framework, national legislation, and institutional capabilities related to the environment and social aspects; and obligations of the country, pertaining to project activities under relevant international environmental treaties and agreements." n53 Hence, if the Bank is operating in a developing country with a poor environmental protection regime, the Bank is free under its own policy to undertake projects that do not conflict with this minimal or non-existent regime. Because the Bank operates frequently in countries with weak environmental capacities and legal frameworks, the Bank's current standard is significantly lower than what was required under the Bank's previous policy, OMS 2.36.

Compliance with current Bank policy on the environment, in theory, is cheaper for the borrower now than it was under OMS 2.36, but most borrower governments still see full compliance with the current version of Bank policy as unreasonably expensive. This sentiment seems understood and accepted throughout Bank Management. Loans go through more smoothly when compliance is not questioned, satisfying the Bank's financiers and getting borrowers the money they need more quickly.

[*1026] Just as environmental policies were weakened in the 1990s, social policies are now being weakened. On March 2, 2001, the UK-based Forest Peoples Program, on behalf of seventy NGOs and individuals from thirty-two countries, submitted a ten-page letter to IMF and World Bank officials demanding an end to the weakening of Bank social and environmental safeguard policies. The letter states:

We have observed that, in the name of "clarity" and "flexibility", the Bank's policies are, as Bank staff put it, being made [Inspection] "panel-proof." In other words, policies are being made so flexible that staff or borrowers can never be accused of having contravened them and therefore never held to account for problems and failures in implementation. Careful examination of safeguard policies undergoing conversion reveals that binding language is being removed and replaced by statements of "process" and expectation rather than "requirements" and preconditions for loan approval. In this way, compliance with once binding social and environmental provisions is now being left to the discretion and willingness of borrowers. n54

An example of the Bank's removal of the binding language is evident in OD 4.30 on Involuntary Resettlement. n55 Two prominent NGOs, the Center for International Environmental Law (CIEL) and the International Rivers Network (IRN), have addressed this issue in a letter to President Wolfensohn and echoed their concern by signing onto the Forest Peoples Programme Letter. n56 The revised version of OD 4.30--July Draft OP 4.21--was released during the debate over the China Project, in which the Bank faced severe criticism for excluding ethnic Tibetans from the project area so that they would not have to be compensated pursuant to the policy. n57 OD 4.30, like the other safeguard policies, was the product of "practical standards [that] emerged from practical lessons in loan operations learnt over several decades." The policy was "established in response to calls from civil society for improved development performance." n58 This origin created an Involuntary Resettlement policy that "treats customary and formal rights as equal in an effort to protect all vulnerable peoples affected by resettlement. OD 4.30 thus makes all displaced peoples eligible for compensation." n59

To avoid having to guarantee equitable distribution of rights under OD 4.30, the new draft policy, OD 4.12, n60 "only acknowledges the rights of [*1027] affected peoples that are recognized by the Borrower's domestic legislation. The draft policy denies 'people without legal title to land' compensation for the adverse affects of resettlement." n61 This new policy, if formally enacted, will adversely impact numerous people who will have recourse neither under Bank policy (the Inspection Panel), nor under domestic law. This is particularly troublesome because the Bank operates in many countries where formal land tenure is controversial and scarce among the poor. Furthermore, the Forest Peoples Programme Letter argues that "this discriminatory approach is also extended to communities whose livelihoods are adversely affected by parks and protected areas who, according to the draft policy, do not have to be consulted until project implementation." In addition, "the draft resettlement policy also fails to address the indirect impacts of resettlement, lacks a proper definition of 'voluntary' relocation and disregards public recommendations for stronger safeguards and 'improved' life quality for the resettled as a minimum standard." n62

A similar critique is offered for OD 4.20 on Indigenous Peoples, n63 which was redrafted on February 6, 2001, into OP 4.10. n64 The draft policy eliminates the notion of universal indigenous rights under the current policy in that it "introduces differential treatment for indigenous peoples according to project type and community location." n65 The proposed policy would also give project managers the mandate to assess whether or not the proposed project will negatively impact indigenous peoples. If a negative impact is found, then a social assessment and Indigenous Peoples Plan (IPP) will be required. n66 Under the revised policy, no independent experts are required to review the project's anticipated impact on indigenous people. According to the Forest Peoples Programme Letter, if implemented, OP 4.10 will violate international human rights standards such as the Convention on the Elimination of All Forms of Racial Discrimination because it "lacks any requirements to secure indigenous land and resource rights." n67

[*1028] B. STRUCTURAL PROBLEMS WITH CURRENT SAFEGUARD POLICIES

Most safeguard policies create duties on the part of the borrower government with supervisory duties reserved for the Bank. This creates structural challenges for implementation because, by definition, the borrower is a developing country with minimal resources available for its share of project financing, let alone resources for environmental assessment and social research. In addition, much of the work required for compliance with safeguard policies must take place prior to the Bank's dispersal of funds in accordance with the loan agreement. OP 4.01 on Environmental Assessment exemplifies this dilemma: the borrower must undertake costly environmental studies and produce satisfactory reports in order to gain loan approval by the Bank's Board of Directors. n68 As a result of this pre-loan requirement, borrower governments have often placed inadequate priority on the quality of the environmental assessment needed. By the time the loan is ready for approval, the Bank's task managers are under tremendous pressure to approve the borrower's preparatory work, and there is a sense that it is "too late" to bring the preparatory work into compliance with Bank policy even when inadequacies are identified. n69

Realistic pre-loan appraisal missions should identify the full costs of safeguard policy compliance for the proposed project, and these costs should be incorporated into the terms of negotiation of the loan agreement. As it stands, however, neither the borrower, nor the Bank, has the incentive to write the full costs of compliance into loan agreements. Although the requirement of full compliance is implied in general provisions of loan agreements, the lack of sufficient and specific budgetary provisions for full compliance creates several serious problems. First, those responsible for implementing Bank policy, at both the borrower and Bank level, are without specific legally binding rules or benchmarks for implementation. Second, civil society has difficulty urging compliance with the loan agreement when the agreement itself is vague or inadequate. Third, it is difficult to seek recourse when safeguard policies are violated.

V. BANK POLICY COMPLIANCE IN PRACTICE: THE CULTURE OF APPROVAL

This Part analyzes the culture of approval and examines examples of it in practice. Section A explores staff attitudes toward safeguard policy compliance. Section B looks at the structural problems with the Bank staff-borrower relationship. Section C explains how inadequate loan agreements contribute to, and allow for, the culture of approval, and Section D concludes with three examples.

[*1029] A. STAFF ATTITUDES TOWARD SAFEGUARD POLICY COMPLIANCE

Safeguard policies did not exist at the Bank's inception because they were inconsistent with Bank structure. Generally, they are burdensome and costly impediments that place checks on an otherwise widely unregulated implementation environment. The costs are great only in the short-term. The long-term costs associated with noncompliance with safeguard policy can include unsustainable development, harm to people, and, monetarily, can be greater than the costs of initial compliance. n70

By the Bank's own account, there was no internal expectation of safeguard policy compliance until recently. Critics argue that even in the current era, "policies are often seen as either discretionary or bothersome by Bank staff." n71 Although safeguard policies have existed in various forms for over a decade, Management admits that "the focus on compliance is an initiative of fairly recent origin, a key part of operational policy reform, which was launched with the articulation of the safeguard policies in late 1997." n72 Management points to this previously lax attitude toward policy compliance to justify why safeguard policy compliance is severely lacking today, even though the reason for noncompliance is mainly structural, not a result of the Bank's "focus."

In an examination of noncompliance with Bank resettlement policy, Jonathan Fox explains:

The dominant system of career incentives discourages task managers from risking conflict with their counterparts in borrowing governments over resettlement issues. The issue is not *whether* task managers should use bargaining power when their priorities differ from their government counterparts, but whether such pressure is worth using for the particular purpose of improving resettlement and rehabilitation performance (original emphasis). n73

Thus, the internal pressures on Bank staff determine the level of protection that affected people will receive, regardless of the safeguard policies on the books. Bank Management recognizes this situation and accommodates it through its [*1030] promotion patterns. Instead of holding Bank staff accountable for their role in policy noncompliance, failures are written off as part of the system, and even those responsible for disaster projects are promoted. n74 Finally, even if Bank staff *are* bothered by policy violations or harmful projects, these same institutional pressures can prevent them from addressing these issues internally.

B. STRUCTURAL PROBLEMS WITH THE BANK STAFF-BORROWER RELATIONSHIP

In a typical project, Bank task managers working on project preparation are under tremendous pressure from their supervisors to have the relevant safeguard policy reports completed prior to Board approval of the loan. In addition, they are under pressure from supervisors to keep on task with their numerous other projects. The task manager has a direct and often sensitive relationship with the borrower. The task manager is responsible for informing the borrower about its future duties under the loan agreement and then working with the borrower to ensure that project design and preparation comport with Bank policy. For example, if the task manager follows Bank policy diligently for a dam construction project, this means, *inter alia*, reviewing the environmental assessment. The EA must have incorporated consultation with potentially affected people into its findings, n75 and the EA, in turn, must reflect this in overall project design. If the EA is unsatisfactory, the task manager, while keeping on schedule to satisfy his or her supervisor, must demand that the borrower make the necessary changes. This comes at additional expense to the borrower who, most likely, had inadequate resources to complete the EA for full compliance in the first place and may not see the value in full policy compliance. n76 The cost of additional EA work is also a disincentive for policy compliance for the task manager whose initial budget will have to cover invitation of environmental consultants, either from Bank or external sources, to review the project.

When an inadequate environmental assessment is presented to the task manager, there is no incentive for the task manager to halt the project's progress and demand compliance. Pursuant to Bank policy, specialists in the Bank's [*1031] Environment Department assist staff in the Bank's regional departments (the "Regions") with EA review before the task manager gives final approval. However, supervisors monitoring the EA process are under the same strain as task managers so that responsibility for EA compliance is dispersed while incentives to approve a faulty EA are reinforced. The same scenario often applies to indigenous peoples' development plans and resettlement policy. After the task manager indicates that the borrower has completed the necessary paperwork, the loan agreement is signed. Thus, the phenomenon of "paper compliance" n77 is perpetuated.

C. INADEQUATE LOAN AGREEMENTS

In order to facilitate policy compliance, loan agreements (signed between the Bank and the borrowing government) should describe the specific safeguard policy provisions that create duties on the part of the borrower. Often, however, noncompliance with Bank safeguard policy is well underway by the time the loan agreement is written and is reflected in the loan agreement by vague provisions such as "the Borrower is expected to comply with all relevant policies and procedures." Such provisions invite further noncompliance because they do not provide the detailed benchmarks necessary for project supervision, monitoring, and evaluation. In addition, the borrower's expectations cannot be firmly determined when the relevant Bank policy provisions are not delineated in the loan agreement. As expected, when project design results from the culture of approval, and when loan agreements are inadequate, actual safeguard policy compliance at the project implementation stage is predisposed for failure.

D. THE CULTURE OF APPROVAL IN PRACTICE

1. The Case of Yacyreta

Early on in the stages of project design, there is often disproportionate focus on technical project outcomes at the expense of project components that are, or should be, in place to provide social and environmental safeguards. An example of this misallocation phenomenon was documented by the Inspection Panel in a report to the World Bank's Board of Directors as a result of a claim filed with the Panel in 1996 regarding the Argentina/Paraguay: Yacyreta Hydroelectric Project. n78

In 1994, it became clear that the environmental and social safeguard policies involved in the Yacyreta Project took a subservient position to construction. As [*1032] Dana Clark, an attorney with the Center for International Environmental Law (CIEL), stated that the dam "was built in a place that made no sense from a hydrological, social, environmental or fiscal point of view, but it was conveniently located on land owned by the dictators who signed the loan agreement." n79 The dam construction was years behind schedule, and when two turbines were completed, the Bank agreed with the borrower that the reservoir should be filled to begin generating electricity to make up for the massive amounts of money lost on the delay. n80 In the twenty years of the Project's life, it has become "more than $ 8 billion over budget. While some of the elite got richer, tens of thousands of people living in the project area have been suffering for decades." n81

Had the Bank followed its policies and procedures in this instance, it would have meant requiring the borrower to complete costly resettlement and environmental mitigation efforts. If fast action to bring the Project up to compliance with safeguard policies was not deemed possible, the Bank was required to withhold its portion of the funding for completion of the dam--a counterintuitive maneuver for an institution driven by streamlined lending. In this instance, the governments of Paraguay and Argentina, private partner investors, and the Inter-American Development Bank, all depended on the Bank to provide its share of the loan so the dam could start producing energy. To halt the process in its tracks and demand compliance with safeguard policies is nearly unimaginable in this context of such countervailing pressures.

Confounding this structural challenge is the role of those responsible for supervising the implementation of safeguard policies. Task managers have the most direct knowledge of the status of compliance with safeguard policies. They, in turn, are responsible for reporting to more senior Bank staff. For task managers to speak up to their Bank supervisors in the Yacyreta case about the need to halt the loan until the Project is brought into compliance would have been an unusual and remarkable feat indeed. Instead, the Bank allowed the Argentine government to promise *future* funding for the resettlement and environmental mitigation efforts, part of which will come from proceeds of the dam's future hydropower generation. As Kay Treakle, Co-Director of the Bank Information Center (BIC), observed:

NGOs had originally objected to the dependency on Argentine counterpart funding for environmental mitigation and resettlement activities because there was a fear that the promised resources would not materialize. In 1995, that fear was confirmed by the Argentine government's refusal to spend another dime on Yacyreta until the project was privatized. Meanwhile, the creation of the [*1033] reservoir led to significant deterioration of the lives of thousands of affected people on both sides of the river. n82

Had the emphasis of the Yacyreta Project been on poverty alleviation, more time and attention would have been given to resettlement and environmental mitigation efforts. Prioritization of poverty alleviation would be in even starker contrast with reality had the Bank's mandate guided assessment of alternative project designs from the outset. With poverty alleviation as the true goal, it is unlikely that the Bank would have funded a project that valued dubious and uneconomical dam financing above local peoples' concerns for their environment and their livelihoods. In the case of Yacyreta, and in many other instances, Bank structure worked against the Bank's own mandate and made compliance with safeguard policies impossible on a practical level.

2. The China Project Continues a Legacy

Widespread noncompliance with safeguard policies persists today despite the perceived safeguards of increased transparency and the Inspection Panel. The most recent example of Bank malfeasance that received widespread media attention was in the context of the China: Western Poverty Reduction Project (the China Project). The Project sought to "alleviate poverty by voluntarily resettling 57,775 poor farmers" n83 from an area in the eastern part of the Qinghai Province to an area 450 kilometers to the west. The farmers in the "Move-Out" zone were struggling with farming an environmentally degraded region. The premise of the Project was to bring poor farmers to the "Move-In" zone where a new dam would be constructed, an existing dam would be renovated, and two canals would be built to provide irrigation. The World Bank funded the Qinghai Component as part of the larger US $ 311 million China Project loan. n84 The loan for the resettlement component was the last loan that the Bank disbursed to China before China graduated to IBRD status and became ineligible for lower interest IDA loans. n85

The China Project implicated almost all of the Bank's safeguard policies. The World Bank Inspection Panel's investigation into the Project found that the Bank had violated seven safeguard policies. n86 A look at noncompliance in the China Project demonstrates that the Bank is often incapable of implementing its own policies and that policy reform has not achieved the reformers' objective of altering Bank practice.

[*1034] Because the China Project was expected to have a significant environmental impact, OD 4.01 on Environmental Assessment applied. OD 4.01 requires, *inter alia*, that an environmental assessment cover the area of influence of the project, and further, that consultations with affected people provide feedback into project design. The Inspection Panel found that the Project had been mischaracterized pursuant to OD 4.01 as a "B" rather than an "A" Project and that, therefore, the Project received minimal environmental analysis as opposed to the "full" environmental assessment required by the "A" categorization. n87 Because of the inaccurate rating, the environmental assessment was conducted inadequately and this, in turn, was reflected in the Project's design and implementation plan.

One example of the detrimental effects of poor project design and preparation is seen through the definition of the project area. The Panel found that "in general, [the project area] excludes a number of small and larger settlements, including Mongol and Tibetan minority settlements visited by the Panel, that will clearly be impacted by the Project." The Panel concluded that "as a result, it appears that significant numbers of people, including members of minority nationalities, have been left out of the environmental and social assessments required by Bank policy (footnote omitted)." n88

Besides the social and political implications of such an omission, n89 the Panel found that "many parts of the Move-in areas have been overlooked or glossed over in the environmental assessment and in other documentation of the Project; consequently many potential environmental effects have not been systematically analyzed. In the Panel's view, compliance with OD 4.01 requires that these areas receive detailed consideration." n90 When project design is geographically under-inclusive and omits large affected populations, those populations do not receive input into the consultation process as required by Bank policy. In addition, the Project does not provide land, resources, and indigenous peoples' development plans that take into consideration their environments when designing mitigation and protection plans. These omissions mean that the Project's budget either did not include funding to implement safeguard policies fully, or that the funding included in the loan was not used appropriately or according to Bank policies and procedures.

The Inspection Panel's mandate is to determine whether or not policies were violated, not to explain *why* they were violated. However, the Panel's Report demonstrates the great disparity between the money, time, and effort required for safeguard policy compliance and the resources actually put forth. The debate about the burden of requiring compliance with safeguard policies erupted [*1035] simultaneously with the Panel's China Report. Bank Management was concerned that the Panel's Report would require too much money to bring the Project into compliance. Furthermore, the more money that Management admitted should be spent on bringing the project into compliance, the greater the Bank's admission that, but for the Inspection Panel claim, the Bank and China would have implemented a project in gross violation of the Bank's own policies. In response to the Panel Report, Management argued that actions to fully respond to the Inspection Panel Report would cost US $ 3.07 million for "Supplemental Environmental Impact Assessment," "Upgraded Social Plans," and "Environmental and Social Team of Experts." n91 The estimated cost for ameliorating the project contrasts sharply not only with the US $ 1.455 million that Management recommended spending in July 1999 when the Inspection Panel request was filed, but also with the absence of *any* additional money that would have been spent on safeguard compliance had the Inspection Panel claim not been filed. n92

Management's complaints to the Board of Directors about the excessive costs of compliance with safeguard policies encapsulate the dilemma. Policy compliance is viewed as excessive, and Bank staff exercise their discretion during project design and implementation accordingly. Instead of striving for compliance at the onset of project design, Bank staff completes the steps necessary for Board approval of the loan, which often allows for incomplete adherence to policy requirements or failure to fully implement policy provisions.

Ultimately, after two days of intense Board meetings while Tibetan protesters chanted outside the Bank, China withdrew the Project and proceeded according to the original Project design without Bank funding or supervision. This incident was very delicate for the Bank's public relations team, which found itself having to explain how a project with seven major policy violations could have gotten past project appraisal and to Board approval without serious internal objection. The Management Response to the Panel's Report addressed this issue and illuminates the internal struggle to retain credibility amidst glaring failure.

Explanations offered for safeguard policy noncompliance in the China case include Bank staff's confusion about interpretation of policy, n93 a shifting of responsibility within the Bank for oversight of environmental compliance due to complicated Bank re-organization, n94 and the fact that China has a long-term relationship with the Bank and has been involved in thirty-one "ongoing agricultural and rural development projects." n95 Instead of excusing noncompliance, these factors highlight the Bank's problematic attitude toward the need to comply at all.

[*1036] The interpretation of Bank policy and procedure has been a point of confusion due to the number of revisions of these policies. As the Inspection Panel found in its Report, "read in their entirety, the Panel feels that the directives cannot possibly be taken to authorize a level of 'interpretation' and 'flexibility' that would permit those who must follow these directives to simply override the portions of the directives that are clearly binding." n96 In other words, policy noncompliance cannot be blamed on ignorance. Nor can a denial of responsibility excuse noncompliance, since at any given point in a project the Bank had procedures in place to ensure that safeguard policies were followed--be the responsibility centralized at environmental and social unit levels within the Bank, or dispersed to regional levels. n97 On the issue of the Bank's special relationship with China, Bank shareholders should look warily at arguments justifying noncompliance on the basis of precedent. This not only belittles the present need for safeguard policy compliance, but calls into question past instances of project implementation where projects were not brought to the attention of the Inspection Panel or the international media but contained similar environmentally and socially challenging components.

One might argue that the policy noncompliance in the China Project described above is anomalous and has received attention only because it is an extreme example. On the contrary, Bank Management initially defended the Project and pointed to it as yet another beneficial project in a series of similar investments. n98 The China case and other documented instances of safeguard policy noncompliance are not anomalous because they were produced from the same institution, with the same incentive structure and staff responsible for implementation, and all faced pressures from the same "culture of approval."

VI. THE BANK'S DYNAMIC POLICY ENVIRONMENT IN A STATIC INCENTIVE STRUCTURE

Not only have Bank policies changed, but the type of Bank lending is changing as well. However, as the Bank attempts to reinvent itself, its incentive structure remains in place and is inadequate to handle the Bank's role as an anti-poverty institution. As Trevor Manuel, South African Minister of Finance and the Honorary Chairman of the Bank and IMF annual meetings in Prague, recently stated, "the World Bank needs reform in two areas: its decisionmaking process and its operations. He said, "The Bank's power structure was designed for another era and in order to work in today's world, the Bank's ownership needs to [*1037] change." n99

In this Part, Section A describes the new image the Bank is trying to portray and how its reorientation of lending priorities may fit with concerns about safeguard policy compliance. Section B demonstrates that the culture of approval that is antithetical to safeguard policy compliance still applies to loans to progressive sectors like the environment, women, health, and education. As a result, Section B finds that the Bank still violates the "do no harm" principle in these contexts.

A. THE "NEW BANK"

In recent years, the Bank has become aware of the need to address its critics and now claims to be a "New Bank." n100 Characteristics of the "New Bank" include a greater focus on country ownership (meaning recognition that "reforms cannot be imposed from the outside but must be 'home grown'"), a long-term integrated approach (meaning that strategies "must address macroeconomic as well as social, environmental and institutional needs"), increased partnership, and a focus on results that works "with civil society to monitor progress." n101 These new characteristics demonstrate the dangerous history as well as current practice of Bank lending because they illustrate the prior absence of these essential characteristics in the Bank's work. Civil society should continue to be wary of such sweeping claims of reform until the record reflects this shift.

A recent *Wall Street Journal* article chronicles the Bank's anachronistic development priorities and comments on the Bank's new "Voices of the Poor" study, "concluding that its antipoverty programs won't help much unless they secure more political power for the poor themselves." n102 This finding complements Trevor Manuel's reform priorities and forms a current critique of Bank practice. The reformers of the 1980s and 1990s fought for policy compliance, but the reformers of the present must turn the focus toward issues of ownership, power, and priorities. As seen above, the Bank is aware that this new wave of reform is on the horizon. The "Voices of the Poor" study contributes to this recognition and makes the shockingly banal conclusion that "the bank should be even more active in ensuring that the poor aren't kept poor by the ruling system in their own countries." n103 For the Bank's Board of Directors, however, this statement is a dangerous admission because borrowing country representatives' [*1038] positions are directly dependent on the strength to the "ruling system" at home. This conflict of interest between the Bank's research arm, which has begun to challenge the Bank's long-held beliefs, and the Board, which is solely empowered to implement these changes, may produce the same failure to make meaningful change that has already resulted at the staff level in the safeguard policy compliance setting.

In September 2000, demonstrations against the World Bank and IMF in Prague elicited a response from the Bank that strangely echoed the concerns of some protesters. *The Washington Post* described the Bank's World Development Report as advancing the argument that "the rich nations that run the World Bank and other international institutions need to place more emphasis on fostering the development of better government institutions in poor countries[,]" citing the examples of the importance of support to "court systems that ensure private property rights and social safety nets that protect the poor from the effect of droughts, wars and financial crises." n104 Ironically, the Bank's promotion of the "Washington Consensus" rapidly opened many developing economies without congruent institutional capacity and social and economic safeguards, exposing them to the risks that left many (particularly in Asia and Russia) vulnerable to the very disasters that the Bank now seeks to address.

In the aftermath of Prague, *The New York Times* accepted Bank rhetoric, portraying the Bank as "successfully repelling the attacks" with their new image as an institution with a "Human Face." n105 In contrast to *The Wall Street Journal's* more critical prognostication, *The New York Times* described the Bank as "changing quickly, largely because of outside pressure" and described the Bank's Report as:

[A] flagship document that--after much internal debate--threw stones at the orthodox temple of development economics by challenging the notion that all loans should aim to stimulate growth. Freeing trade, privatizing government companies and limiting government spending were once seen as main ingredients. n106

Whether the Bank's new policy statements play out in practice will be yet another test of the malleability of the Bank's incentive structure.

If safeguard policies are not appropriately implemented in the traditional context of Bank lending, how might this translate to a potential shift in the Bank's development priorities? Will a shift in lending remove the cause for concern about policy noncompliance altogether? The preliminary question is whether reorientation of investment priorities is possible *at all* beyond the stage of rhetoric at which it currently exists. *The New York Times* states that "Mr. [*1039] Wolfensohn took power five years ago when the bank spent one in five of its aid dollars on electrical infrastructure projects. Today the ratio is 1 in 50." n107 Although it is commendable that there has been a shift away from lending for "electrical infrastructure" projects, in fiscal 1999, the Bank spent U.S. $ 1.215 billion on electric power and energy, mining, and oil and gas projects. A further U.S. $ 726.5 million was spent on "multisector" development projects. n108 Safeguard policy compliance in the energy sector is no less a concern for the U.S. $ 1.215 billion spent last year than for the annual U.S. $ 2.483 billion spent on average from 1990 to 2000. n109 Any reorientation toward health and education should not shift the focus away from policy noncompliance when such critical policies are implicated.

The Bank's Annual Report 2000 suggests that its reorientation efforts are not genuinely aiming to turn the Bank toward its mandate. If it were, the Bank would not still be attempting to justify its investments in sectors that overlap with private sector investment. While developing countries do need investment in energy, they do not need such investment from the World Bank in the form of debt-creating loans. The Bank claims that one of its essential roles in its new era is that of a catalyst to attract private sector investment. Given the small percentage of funding that comes from the Bank in any given large-scale infrastructure project, it is a dubious assertion that this investment is taking place *because of* the Bank's involvement. n110 On the other hand, the Bank does play an essential role in health and education projects where private sector investment is not forthcoming. The Bank also justifies investment in large-scale infrastructure projects, claiming that its social and environmental safeguard policies add a layer of protection that would be absent if the private sector and governments acted alone. The Meltzer Commission's findings that fifty-five to sixty percent of World Bank-supported operations are failures should call this justification into question, along with the stark instances of noncompliance seen in Inspection Panel claims and other World Bank projects that have attracted media attention.

B. DISINCENTIVES FOR SAFEGUARD POLICY COMPLIANCE IN "REORIENTED LENDING"

Now that funding is increasingly geared toward environmental, health, and education projects, is it safe to assume that safeguard policies will be [*1040] implemented more rigorously in this context when they apply? Because the culture of approval exists with every Bank loan, the type of project will not yield greater safeguard policy compliance when those policies are relevant. Past examples of lending in the environmental sector foreshadow safeguard policy compliance for the "New Bank."

An IDA credit and Global Environment Facility (GEF) grant financed the Indian Ecodevelopment Project "to improve park management and village ecodevelopment in seven areas, including the Nagarahole National Park in Karnataka." n111 The project implicated Bank policy on indigenous peoples, involuntary resettlement, and forestry and resulted in a claim submitted to the World Bank Inspection Panel by an Indian NGO on behalf of tribal people living in the Park in 1998. According to the Request for Inspection, n112 the Bank violated its own policy when the Project design omitted tribal people from the core area of the Park, failed to develop indigenous peoples development plans, and failed to consult with relevant tribal groups and NGOs. Each of these omissions took place in the context of a project intended to encourage environmentally sustainable development.

The Panel recommended that the Board authorize a full investigation into the claim based on a finding that there was potential for serious harm as a result of flawed project design. However, the Board disagreed with the Panel and decided that "no investigation was required at that time." n113 Although there is perhaps more at stake when the environmental assessment for a mass-scale hydroelectric dam is botched (OP 4.01) than when ecodevelopment projects are designed, indigenous peoples' development plans (OD 4.20) and resettlement (OD 4.30) are no less important. n114 This example demonstrates that safeguard policy noncompliance is created by Bank structure and is not limited to projects in certain sectors. Rather, potential for noncompliance exists in all lending contexts where Bank staff are encouraged to push loans through to approval quickly and are neither reprimanded for noncompliance nor given incentives to achieve positive project results.

VII. ENTERING THE "POST-POLICY" BANK REFORM ERA

This Part advocates a new reform agenda. Section A examines how the reform effort should proceed and identifies points of leverage. Section B identifies five reforms for the agenda, and Part C questions whether there is room for safeguard policy reform in the current era.

[*1041] A. LOBBYING FOR REFORM: MANDATES AND LEVERAGE

The dual camps of protesters, the reformers and the abolitionists, have at least one common goal: they want the Bank to "do no harm." While the reformers hope to achieve this through changing Bank policy and increasing transparency and accountability, the abolitionists see no hope in the current Bank structure and advocate dismantling the entire World Bank Group. As occurred and is occurring in the policy reform era, the abolitionists have brought attention to the reformer's platform. Protesters at the September 2000 Annual Meetings in Prague mobilized the media and elicited a response from the Bank. While abolitionists are unlikely to see their long-term goal met, even in the distant future, reformers must now decide how to respond to current Bank rhetoric.

Reformers should view the Bank's increasing portfolio reorientation as a positive sign. The Bank's poverty-alleviation mandate is better served as the Bank shifts emphasis from large-scale power sector and infrastructure loans to health, education, and environmental protection credits. However, it is not enough that the Bank alters its lending focus. While the "do no harm" principle is more easily achieved in certain sectors, the Bank must also focus throughout its portfolio on citizen-initiated projects where ownership and determination of project success is locally controlled. The Bank's "Voices of the Poor" study seems to officially ignite this discussion within the Bank, and with continued pressure from civil society, the Bank may be able to gain from the more advanced critique that the NGO community has offered for decades.

Similar to the strategy that proved effective in the policy reform era, reformers should target the Bank at its points of leverage. The next opportunity for influence ends in 2001 when donor governments are expected to agree on IDA-13 replenishments. The United States, as the largest donor to IDA, will gain influence through its power to place conditions on funding. However, a structural reform agenda will require a delicate coordination of circumstances to make its way through Congress and to the Bank's Board of directors. As was the case in 1993, when policy reform was at its peak, NGOs will have to mobilize their membership to lobby Congress with a unified platform. They will have to identify bipartisan congressional representatives willing to sponsor appropriations bills and stand up to corporate lobbies who will strongly oppose structural reforms. If and when reformers gain the floor, the following demands will likely be heard.

B. THE REFORM AGENDA

1. Representation

In order to give greater access to developing countries at Board level, the current system of voting and representation must be unpacked and redistributed. As Ngaire Woods put it, "votes have been allocated in a highly politicized way since the [IMF and World Bank] were created--a fact, in itself posing problems [*1042] for 'good governance' standards of impartiality and transparency." n115 The Bank's Board of directors should adhere to the "one-flag, one-vote" system used by the United Nations as opposed to the current system of "weighted" voting. n116 This more equitable distribution of voting rights could be accomplished by allowing representation of other key stakeholders n117 at the Board level, a group of rotating seats made up of Northern and Southern NGOs, being the most important. Reforming the voting structure of the Bank is a highly charged issue because it involves confronting the political nature of Bank operations. The weight of votes is roughly based on a country's political power n118 --a factor theoretically antithetical to the Bank's view of itself as a non-political entity. n119

In addition, voting "blocks" should be removed so that each country speaks only for itself. Although there is something to be said for funders having the largest say over their money, this undemocratic system of decision-making discriminates against the voices of developing country governments. A further problem is that developing country governments may represent the interests of the governing party, not necessarily the poor, and that by giving them a larger voice in guiding the Bank, this will detract from the goals of the institution. This, however, is a challenge that can be balanced out as the Bank shifts to a local control model.

2. Decentralization

Why should governing bureaucrats in borrowing countries and economists in Washington, DC, make decisions that affect the lives of poor herders in Western China? If the Bank wants to make good on its rhetoric about shifting to a "home grown" approach, Bank headquarters in DC should be scaled down to reflect decentralized decision-making. n120 Ideally, the Bank would work with liaisons on [*1043] a regional or sub-regional level to identify community barriers to poverty alleviation. The Bank would then charge the community n121 with generating its own set of solutions. In turn, the Bank could offer expertise and funding for the community-generated solutions. The role of the Bank's headquarters would be to manage funds, to monitor localized compliance with safeguard policies, and to provide support for regional Bank offices.

3. Hiring

The Bank has an unofficial quota system for hiring so that staff at headquarters in Washington, DC, represent a diversity of nations. However, simply drawing from developed and developing countries does not automatically mean that the interests of the poor will be reflected in project design and implementation. It is the author's opinion that most of the employees at the Bank--no matter their place of origin--come from elite backgrounds and have been trained largely at elite U.S. universities. n122 It seems likely that most have never experienced poverty and acquired their position at the Bank because they had the resources to get an education. It is, therefore, not surprising that staff from developing countries often arrive at the Bank with an "us versus them" mentality stemming from their upbringing in a classist society. n123 This is significant because it creates an air of elitism that is translated, knowingly or unconsciously, to project implementation. n124

Hiring practices at the Bank should be sensitive to this issue and should strive toward inclusion of people who have personal experience with poverty. If the Bank makes significant strides toward decentralization, this should address much of the problem. Drawing on local expertise for project design will harness new talent and experience, replacing the totalitarian-style of lending currently in place.

4. Staff Compensation

Staff should be rewarded based on two measurements: safeguard policy compliance and development impacts. Currently, staff "are rewarded based on moving money out the door and pleasing the client [borrower], not based on the effectiveness of the project." n125 Not only are staff not provided with incentives to adhere to safeguard policies and strive for positive development impacts, but [*1044] there are no repercussions for staff when projects under their control fail or troubling policy violations occur. The judgment of safeguard policy compliance and project impact should involve collaboration between Bank supervisors and those people the project aimed to assist. To avoid the conflict of interest of Bank staff eliciting this information from project-affected people, the Bank should work with independent consultants on *every project*.

In measuring policy compliance, once loan agreements are signed, the consultants should interview a sampling of project-affected people--systematically going through the relevant safeguard policies and checking them against short-term implementation and the apparent long-term results of the project. Consultants should avoid working with local or national officials whose desires to maintain good relations with the Bank may corrupt their ability to assess project compliance with policy.

The difficulty with restructuring staff compensation comes in determining how development impacts or "effectiveness of the project" should be measured. Consultants should conduct this inquiry after the loan disbursement begins, for example, one to two years into implementation of a five-year loan. At that point, they could begin to judge the "development objectives" in project design against the reality on the ground. Local people should be surveyed, with the results forming the basis of the consultant's determination of the appropriate compensation. Removing externalities that would detract from otherwise positive project outcomes would also be important to this system. Because this inquiry is subjective and could easily be susceptible to corrupting influences, this process should follow strict guidelines set out by civil society and the Bank with complete transparency throughout the process. n126

Similar compensation methods should be implemented at management levels as well so that supervisors have incentives to support their staff's commitment to safeguard policy implementation and attention to project goals. Once a new compensation system is in place, staff should be trained with a heavy emphasis on the importance of the safeguard policies, n127 how they should be implemented, and the repercussions if they are not followed. Just as staff should be rewarded based on adherence to policies and development impacts, they should be held accountable for their failures.

[*1045] 5. Accountability

The Bank's accountability must continue to increase so that the institution is forced to answer to taxpayers in donor countries and those affected by Bank lending in the developing world. The Inspection Panel is an important starting point for accountability, but nevertheless needs to be formally freed from its quasi-independent nature and made truly independent in order to give full credibility to the resolution of compliance disputes.

Although the theoretical and practical challenges would be tremendous, the International Court of Justice (ICJ) could establish a division for hearing claims related to the international financial institutions (IFIs). n128 This would require amending the Bank's Articles of Agreement to create liability for Bank policy violations and torts, removal of the Bank's immunity for its conduct, and acceptance of the ICJ's jurisdiction over the Bank. The "IFI division" could then have the independent authority to enforce binding judgments when a Bank's policies or procedures are violated. Similar proposals were offered in 1993 n129 when the Inspection Panel was proposed, but creation of the less-autonomous Inspection Panel precluded further consideration of alternatives. A drawback of using the ICJ as a mechanism is that it lacks the conflict resolution quality found in alternative fora, such as the Ombudsman model. n130 Although conflict resolution should be a primary method of solving World Bank compliance disputes, the teeth of an independent system is a necessary back-up.

C. IS THERE ROOM FOR POLICY REFORM IN THE "POST-POLICY" ERA?

Bank Management recognizes that its safeguard policies are imposed on a structure ill-suited to implement them. However, because those in charge of altering the incentive structure are beneficiaries of the status quo, they are unlikely to change the current Bank configuration and focus on lending over outcomes without sustained external pressure. n131 The new era of Bank reform should focus on demands for structural change, rather than safeguard policy development. Although numerous policy changes such as increased transparency [*1046] and more stringent supervisory, social, and environmental policies are still needed, they should be de-prioritized until structural issues are addressed. Furthermore, the conversion process that weakens safeguard policies, because it threatens the progress of the reform era, must be halted.

VIII. CONCLUSION

As the World Bank attempts to fend off criticism and justify its role in a global world economy, it will also have to address how it plans to meet its mandate of poverty alleviation while adhering to the "do no harm" principle. Bank rhetoric, at least, proves a positive starting point in that lending priorities are being re-evaluated. However, without a committed program of structural reform so that safeguard policies are implemented meaningfully, the Bank's policy proclamations will lack credibility.

Reform in the "post-policy" era will require a clear message from an organized NGO movement. The new structural reform agenda must take priority over further policy reforms, requiring leadership from donor governments as well. Without these components, the Bank will be unable to prevent harm to the environment and those it aims to help.

FOOTNOTES:

n1 *See generally* BRUCE RICH, MORTGAGING THE EARTH: THE WORLD BANK, ENVIRONMENTAL IMPOVERISHMENT, AND THE CRISIS OF DEVELOPMENT (1994); THE STRUGGLE FOR ACCOUNTABILITY: THE WORLD BANK, NGOS, AND GRASSROOTS MOVEMENTS (Jonathan A. Fox & L. David Brown eds., 1998); Daniel Bradlow, *The World Bank, the IMF, and Human Rights*, *6 TRANSNAT'L L. & CONTEMP. PROBS. 47 (1996);* David Fidler, *A Kinder, Gentler System of Capitulations? International Law, Structural Adjustment Policies, and the Standard of Liberal, Globalized Civilization*, *35 TEX. INT'L L. J. 387 (2000).*

n2 These development priorities have led to the Bank's well-documented "culture of approval" that prioritizes pushing loans through quickly to developing country borrowers. The term was first coined in the Wapenhans Report, the conclusion of an internal task force that examined the quality of the Bank's loan portfolio. The task force found that the Bank's culture encouraged staff to lend money and found an institutional bias toward large complex projects rather than smaller projects that more directly help their intended beneficiaries. *Effective Implementation: Key to Development Impact*, R92-125, Nov. 3, 1992 [hereinafter Wapenhans Report]. *See* RICH, *supra* note 1, at 102; THE STRUGGLE FOR ACCOUNTABILITY, *supra* note 1. *See also* O'BRIEN, ET AL., CONTESTING GLOBAL GOVERNANCE: MULTILATERAL ECONOMIC INSTITUTIONS AND GLOBAL SOCIAL MOVEMENTS 117 (2000).

n3 *See* World Bank, *Letter from the Forest Peoples Program to the World Bank and IMF* (Mar. 2, 2001), *at* http://www.bicusa.org/mdbs/wbg/WBsafeguardssignonMarch20011.pdf [hereinafter Forest Peoples Programme Letter] (arguing that "even where operational policies do have adequate safeguard standards, these are often not enforced in Bank-assisted operations. Poor compliance with standards is due to inadequate staff knowledge of policy requirements and a lack of incentives for staff and implementing agencies to adhere to safeguard provisions").

n4 The World Bank Group consists of the International Bank for Reconstruction and Development (IBRD), the International Development Association (IDA), the International Finance Corporation (IFC), the Multilateral Insurance Guarantee Association (MIGA), and the International Centre for Settlement of Investment Disputes (ICSID). The public sector institutions of the Bank are the IBRD and IDA, and are referred to here as "the Bank." See http://www.worldbank.org for an in-depth description.

n5 *See* O'BRIEN, *supra* note 2, at 117. *See also* Charles Gore, *The Rise and Fall of the Washington Consensus as a Paradigm for Developing Countries*, 28 WORLD DEVELOPMENT (2000); Joseph E. Stiglitz, *The World Bank at the Millennium*, 109 ECON. J. F591 (1999). The Bank's economic program is seen as the optimization of the "Washington Consensus," named for U.S., IMF, and World Bank policies developed in Washington, DC. Washington Consensus policies promote the goals of deregulation, liberalization, privatization, and emphasize the private sector over government institutions. While the model has guided Bank and IMF policy for half a century, it has recently come under attack for creating economies that are too open and thus vulnerable to destabilizing shocks. James Gathii, *Human Rights, The World Bank and the Washington Consensus: 1949-1999, in* AMERICAN SOCIETY OF INTERNATIONAL LAW PROCEEDINGS 145 (2000).

n6 Joseph R. Thome, *Heading South But Looking North: Globalization and Law Reform in Latin America*, *2000 WIS. L. REV. 691, 693 (2000).*

n7 As a guiding principle, neo-liberals "welcome the triumph of individual autonomy and the market principle over state power." DAVID HELD ET AL., GLOBAL TRANSFORMATIONS: POLITICS, ECONOMICS AND CULTURE 3 (1999).

n8 *See* S. Guhan, *The World Bank's Lending in South Asia, in* THE WORLD BANK: ITS FIRST HALF CENTURY, VOLUME 2: PERSPECTIVES 379 (Kapur et al. eds., 1997) [hereinafter Kapur Vol. 2] (arguing that the "Bank itself has not undertaken benchmark-cum-impact studies to assess the indirect (or 'trickle-down') effects that its production-oriented projects may have had on sustained poverty reduction where they have been implemented"). *See also* Gore, *supra* note 5, at 789. The alternative, of course, would be to invest directly in communities and support self-sustaining poverty alleviation projects. The Bank has a small portfolio of such projects.

n9 Structural adjustment programs (SAPs) are policy reforms required by borrower governments as criteria for World Bank and IMF loans. General tenets and their associated critiques include:

reduction in public expenditure, which can include cuts in spending for social services;

elimination of subsidies, including those benefiting the poor; restriction of credit availability, including credit for farmers;

privatization of state-owned enterprises, which can lead to concentration of assets; trade liberalization, which can devastate domestic productive capacity and employment;

reorientation of the economy towards export markets, which can provide incentives for 'mining' natural resources;

removal of barriers, that is, 'national treatment' of foreign investment, to the disadvantage of the domestic private sector; and

deregulation of labor markets, which can depress minimum wages.

Carlos A. Heredia, *The World Bank and Poverty, in* LENDING CREDIBILITY: NEW MANDATES AND PARTNERSHIPS FOR THE WORLD BANK 31 (Bosshard et al. eds., 1996).

John Gray traced Washington Consensus policies to the "rational expectations" theories of the University of Chicago, stating that, "these dubious theories have inspired the structural adjustment programmes of the World Bank that, in countries as remote as Mexico and Nigeria, have imposed deep and enduring depressions of real economic activity in the pursuit of fiscal rectitude." John Gray, *The Passing of Social Democracy, in* THE GLOBAL TRANSFORMATIONS READER, 328, 329 (David Held & Anthony McGrew eds., 2000). Held and McGrew present the argument that "in the developing world, SAPs overseen by the IMF and the World Bank severely limit government welfare spending." David Held and Anthony McGrew, *The Great Globalization Debate, in* THE GLOBAL TRANSFORMATIONS READER, 1, 29 (David Held & Anthony McGrew eds., 2000).

n10 Examples include large-scale dams, highways, and mining and oil sector development.

n11 *See* James Gathii, *Good Governance as a Counter Insurgency Agenda to Oppositional Transformative Social Projects in International Law*, *5 BUFF. HUM. RTS. L. REV. 107, 108-109 (1999).* According to Gathii, the good governance agenda recasts the neo-liberal economic policies of the World Bank in the guise of a new lingo compatible with, rather than opposed to, human rights. This conception gives preference to economic policy over human rights, unless these rights can be conceptualized within this economic logic, such as openness in international trade, finance, commerce, and reduced social spending in education and health, for example.

Id. at 121.

n12 *See* Forest Peoples Programme Letter, *supra* note 3, at 4 (advocating the rights-based approach to development and encouraging World Bank policy to reflect the rights-based model). *See also* Gathii, *supra* note 11, at 108.

n13 This view is less coherent because it is an evolving notion of the development solution formed in response to the failures of the Washington Consensus.

n14 Thome, *supra* note 6, at 694.

n15 Note that although the IBRD and IDA are referred to collectively as the World Bank, the IBRD was created during the Bretton Woods Conference and IDA was established in 1960.

n16 *See generally* THE WORLD BANK: ITS FIRST HALF CENTURY, VOLUME 1: HISTORY (Kapur et al. eds., 1997) [hereinafter Kapur Vol. 1] (detailing the impetus and history of the World Bank); RICH, *supra* note 1 (describing the history of the World Bank beginning with the events leading up to the Bretton Woods conference).

n17 *See* OXFAM POLICY DEPARTMENT, A CASE FOR REFORM: FIFTY YEARS OF THE IMF AND WORLD BANK 1-2 (1995) [hereinafter OXFAM POLICY REPORT] (arguing that the "Bretton Woods system was created, with the experience of Germany in the inter-war period fresh in mind, to protect employment and regulate markets without recourse to extreme deflationary policies"). *See also* Stiglitz, *supra* note 5, at F591.

n18 Statement of Subscriptions to Capital Stock and Voting Power, *IBRD Financial Statements: June 30, 2000*, 37 THE WORLD BANK ANNUAL REPORT 2000 (2000), *available at* http://www.worldbank.org/html/extpb/annrep/chair.htm.

n19 *See* http://www.worldbank.org/html/extdr/about/voting/.

n20 The United States, United Kingdom, France, Germany, and Japan are appointed delegates, whereas all other Executive Directors are elected on behalf of their constituencies. *See* Membership in the World Bank Group, *at* http://www.worldbank.org/html/extdr/about/members/.

n21 The references to Bank staff in this article generally refer to task managers.

n22 *See* Frances Seymour, *Overview, in* LENDING CREDIBILITY: NEW MANDATES AND PARTNERSHIPS FOR THE WORLD BANK 9 (Bosshard et al. eds., 1996). Seymour describes "Big Dam Controversies," such as the Kedung Ombo dam and reservoir in Indonesia, that displaced more than 30,000 people between 1985 and 1993. The "Bank's 1994 Project Completion Report concluded that 72 percent of displaced families were worse off than before the resettlement, a particularly troubling statistic in light of the fact that more than half of those families already lived below the poverty line before they were resettled." Similarly, the Sardar Sarovar dam project in India "involved the resettlement of an estimated 240,000 people" and involved enormous implications due to the diversion of water. In 1991, the Bank invited an independent review of the Project, which found that the Bank had failed to "provide adequate supervision to the project." The Report concluded that the "history of environmental aspects of Sadar Sarovar is a history of noncompliance." Under pressure from the backlash to this report, the Bank imposed further conditions on the Project, and India withdrew its request for the loan. *Id.; see also* The Inspection Panel, Investigation Report, The Qinghai Project, A Component of the China: Western Poverty Reduction Project (Credit No. 3255-CHA and Loan No. 4501-CHA), *available at* http://www.worldbank.org/inspection [hereinafter China Report]. For a description of this Project, see Part IV (E), *infra* (describing the grossly inadequate environmental and resettlement plans of the China Western Poverty Reduction Project that was eventually withdrawn by the Chinese government). *See also Request for Inspection Argentina/Paraguay: Yacyreta Hydroelectric Project, Panel Recommendation* (INSP/R96-2) (Dec. 26, 1996) described *infra* Part IV, Section C. The Yacyreta Hydroelectric Project placed resettlement and environmental mitigation as afterthoughts in the project's cycle. Eventually, thousands of people were and continue to be negatively effected by the project. *See also* Bank Information Center, *Problem Project Alert # 2* (Oct., 2000), *at* http://www.bicusa.org/africa/ppa_chad1.htm (relating to the case of the Chad Cameroon Pipeline Project which is a current example of a project whose implementation is inciting human rights violations and great concern about environmental degradation).

n23 *See* the World Bank Group *at* http://www.worldbank.org (last visited Apr. 15, 2001).

n24 Proponents of this argument claim that despite the Bank's minuscule contribution to the overall percentage of FDI, its catalytic role and leadership in development lending make it an important and necessary player in the international economy. Furthermore, multinational corporations that are repeat players with Bank projects, those that profit from the catalytic effect, and those that invest in the developing world independent of Bank actions, all profit from the Structural Adjustment Programs that open economies to investment from abroad.

n25 Spring Meetings Press Conference with James D. Wolfensohn, President, The World Bank Group, Washington, DC (Apr. 12, 2000) *available at* http://www.worldbank.org/html/extdr/extme/jdwts041200.htm [hereinafter Spring Meetings].

n26 *Id.*

n27 World Bank Operations Evaluation Department, *Development Effectiveness at the World Bank: What is the Score?*, 24 OED REACH 1 (Spring 2000).

n28 *Meltzer Commission Report, International Financial Institutions Advisory Commission: Hearing Before the Senate Comm. on Foreign Relations*, 106th Cong. (2000) [hereinafter Meltzer Report].

n29 The twenty-eight percent of World Bank projects deemed less than satisfactory have received their ratings for various reasons. Bank staff responsible for these twenty-eight percent of projects might argue that these results reflect the often unstable environments in which the Bank operates, causing difficulty in implementation of projects in accordance with their original development objectives. While this may be the case, when projects involve environmental and/or social components that fail and receive their unsatisfactory rating for this reason, this is a sign that lending operations must be altered. The Bank's OED Report does not identify the reasons for unsatisfactory ratings. If, within this twenty-eight percent, failed projects are doing harm, the Bank's experience should have prevented the project's undertaking in the first place. Failed environmental and social components of projects (as is argued *infra*, Parts V and VI) are preventable, but only with a change to the incentives for staff for implementing safeguard policies fully.

n30 Spring Meetings, *supra* note 25.

n31 *See* O'BRIEN, *supra* note 5, at 116.

n32 NGOs involved in the World Bank reform movement in the late 1980s and 1990s include, *inter alia*, the Center for International Environmental Law (CIEL), the Bank Information Center (BIC), Friends of the Earth (FoE), the Natural Resources Defense Council (NRDC), Oxfam International, Environmental Defense Fund (EDF), the National Wildlife Federation (NWF), and the Sierra Club. *See* Natalie L. Bridgeman, *Environmental Reform at the World Bank: The IDA Opportunity and Congress* (1998) (unpublished B.A. thesis, Cornell University)(on file with author). *See also* O'Brien, *supra* note 5, at 127.

n33 RICH, *supra* note 1, at 102.

n34 *See* Interview with Chad Dobson, Founder, Bank Information Center, Washington, DC (Apr. 1, 1998).

n35 *See* Robert Wade, *Greening the Bank*, in Kapur Vol. 2, *supra* note 8, at 613.

n36 *Id.* at 633.

n37 *See* Bridgeman, *supra* note 32, at 74.

n38 *See* World Bank Operations Manual, *Environmental Assessment*, OP 4.01; *Natural Habitats*, OP 4.04; *Pest Management*, OP 4.09; *Indigenous Peoples*, OD 4.20; *Involuntary Resettlement*, OD 4.30; *Cultural Property*, OPN 11.03; *Forestry*, OP 4.36; *Safety of Dams*, OP 4.37; *Projects on International Waterways*, OP 7.50; and *Projects in Disputed Areas*, OP 7.60.

n39 World Bank Operations Manual, Annex A, IBRD Resolution No. 93-10/IDA 93-06 (1997).

n40 *But see* O'BRIEN, *supra* note 2, at 118; *cf.* I.F.I. SHIHATA, THE WORLD BANK INSPECTION PANEL: IN PRACTICE 2 (2nd ed. 2000) (providing the view that internal considerations drive Bank reform).

n41 One example is the Chad-Cameroon Petroleum Development and Pipeline Project, a US $ 92.9 million IBRD loan to both Chad and Cameroon. Environmental and human rights groups monitoring the project claim that in Chad,

The development of oil fields [because of the project] in the Southern region already has escalated existing conflicts between the largely Muslim government and Christian/Animist rebels located in the South. In November of 1997 at least 80 people were killed by the government in the Doba oil field region. Then again in March of 1998, according to Amnesty International, another one hundred unarmed civilians were massacred in the same region. Teams from Dames and Moore preparing the Environmental Assessment for the Chad portion could not collect basic data along the pipeline route due to security issues. Furthermore, the only parliamentarian to raise concerns about this project, Mgarlegy Yorongar Le Moiban, was sentenced to three years' imprisonment, though he was released ten months later due to international pressure. Two journalists were also convicted for reporting on Yorongar's speeches. Further human rights violations have been reported by the International Federation of Human Rights since the project's approval, including extra-judiciary executions by the Chadian National Army as well as repression of project critics, and cases of arbitrary arrests, torture, pillages and burned down properties.

Bank Information Center, *supra* note 22. In an "Open Letter to the President of the World Bank Concerning the International Advisory Group" instituted by the Bank to address concern about the Project, "Human Rights Groups, Unions, Environmental Protection and Development NGOs and Peasant Organisations in Chad and Cameroon" assert that

in Chad, the massacres of hundreds of civilians carried out by the Chadian army in the pipeline project area between 1997 and 2000, have never been the object of an investigation. The population of the Doba area continue to face intimidation by the army and the political and administrative authorities, not a climate conducive to free and open discussions on the project.

Center for International Environmental Law, *Letter from CIEL to President Wolfensohn* (Feb. 28, 2001), *at* http://www.ciel.org/iagopenletter.html. Walden Bello, Director of NGO, FOCUS on the Global South, has noted that the Chad-Cameroon Pipeline Project "would seriously damage ecologically sensitive areas like Cameroon's Atlantic Littoral Forest." Walden Bello, *Is Bush Bad News for the World Bank?* (Jan. 2001), *available at* http://www.corpwatch.org/trac/globalization/bretton/index.html. On April 11, 2001, Yorongar, on behalf of 120 residents in Chad filed a claim with the Inspection Panel regarding the Petroleum Development and Pipeline Project (Credit No. 4558-CD), the Management of the Petroleum Economy Project (Credit No. 3316-CD), and the Petroleum Sector Management Capacity-Building Project (Credit No. 3373-CD). The request for inspection alleged violations of World Bank policies regarding environment, cultural property, resettlement, project supervision, and others. *See* http://wbln0018.worldbank.org/IPN/ipnweb.nsf/(webnews3)/ 48D29E3AE8970CDE85256A410070A5AB (last visited May 15, 2001); *See also* World Bank, *Chad-Cameroon Petroleum Development and Pipeline Project, at* http://www.worldbank.org/afr/ccproj/project/pro_overview.htm (official World Bank information on the project).

n42 *See* Heredia, *supra* note 9, at 31.

n43 *See* Oxfam Policy Report, *supra* note 17, at 6-25.

n44 *See* Kay Treakle, *Ecuador: Structural Adjustment and Indigenous and Environmental Resistance, in* Fox, *supra* note 1, at 219.

n45 Meltzer Report, *supra* note 28.

n46 *See* China Report, *supra* note 22.

n47 *See* Fox & Brown, *Introduction, in* Fox, *supra* note 1, at 2. Fox and Brown argue that "controversial projects that the World Bank would probably have funded a decade ago are today much more likely to be vetoed or modified in the design stage." *Id.*

n48 *See* SHIHATA, *supra* note 40, at 41.

n49 *See* I.F.I. SHIHATA, THE WORLD BANK INSPECTION PANEL: IN PRACTICE, 137 (1st ed. 1994). Note that OMS 2.36 is not a current World Bank policy and is not available on the World Bank website.

n50 *Id.*, at 137, where OMS 2.36, para. 7, *Environmental Aspects of Bank Work* is reprinted.

n51 For a rigorous examination of the weakening of Bank environmental policy, *see* Lisa Jordan, *Sustainable Rhetoric vs. Sustainable Development: The Retreat from Sustainability in World Bank Development Policy*, BANK INFORMATION CENTER PAPER (Feb. 1997), *available at* http://www.bicusa.org/publications/rhetoric.htm.

n52 *See* SHIHATA *supra* note 49, at 137 where OMS 2.36, para. 9, *Environmental Aspects of Bank Work* is reprinted.

n53 *See* World Bank Operations Manual, *Environmental Assessments*, OP 4.01 (1999).

n54 Forest Peoples Programme Letter, *supra* note 3, at 2.

n55 *See* World Bank Operations Manual, *Involuntary Resettlement*, OD 4.30 (1990).

n56 *See* Forest Peoples Programme Letter, *supra* note 3, at 2; *see also* Center for International Environmental Law, *CIEL Letter to World Bank President* (Feb. 22, 2001), *at* http://www.ciel.org/wbresttleletter.html.

n57 *See* China Report, *supra* note 22.

n58 Forest Peoples Programme Letter, *supra* note 3, at 5.

n59 *Id.*, at 2.

n60 OP4.12 Involuntary Resettlement, *available at* http://wbln0018.worldbank.org/essd/essd.nsf/81f3f0192ec0edee852567eb0062fb33/1f618861c4bfecd8852567ed004c9e6b? OpenDocument (last visited Apr. 15, 2001).

n61 Forest Peoples Programme Letter, *supra* note 3, at 2.

n62 *Id.*

n63 World Band Operations Manual, *Indigenous People*, OD 4.20 (1991). *See also*, S. Davis, S. Salman & E. Bermudez, *Approach Paper on Revision of OD 4.20 on Indigenous Peoples, available at* http://wbln0018.worldbank.org/essd/essd.nsf/28354584d9d97c29852567cc00780e2a/82c7363c32625cc8852567cc0077f4a9? OpenDocument (describing the Bank's thinking on the conversion process as it relates to indigenous peoples) (last visited Apr. 15, 2001).

n64 OP 4.10 is not publicly available. For the critique, *see* Forest Peoples Programme Letter, *supra* note 3, at 2. *See also* CIEL and IRN letter to World Bank President Wolfensohn regarding Resettlement Policy Draft Revisions Concerns (Feb. 22, 2001) http://www.ciel.org/wbresttleletter.html.

n65 Forest Peoples Programme Letter, *supra* note 3, at 3.

n66 *Id.*

n67 *Id.*

n68 *See* World Bank Operations Manual, *Environmental Assessments*, OP 4.01(1999) ("The borrower is responsible for carrying out the EA").

n69 *See* China Report, *supra* note 22, which provides an example of the result of inadequate prioritizing and funding of environmental assessment.

n70 Forest Peoples Programme Letter, *supra* note 3, at 6.

n71 Dana Clark, Center for International Environmental Law, *Letter to Peter Stephens, Regional Communications Manager, East Asia and the Pacific, World Bank* (Sept. 25, 2000) (on file with author) [hereinafter Clark Letter]. *See also* Forest Peoples Programme Letter, *supra* note 3, at 5 (expressing dismay at learning that "there seems to be a widespread idea in the Bank that the 'rigid' and 'unrealistic' safeguard policies are discouraging governments from borrowing from the World Bank Group").

n72 INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT, MANAGEMENT REPORT AND RECOMMENDATION IN RESPONSE TO THE INSPECTION PANEL INVESTIGATION REPORT, CHINA: WESTERN POVERTY REDUCTION PROJECT, QINGHAI COMPONENT, *Institutional Issues*, 15 (International Development Association INSP/R2000-4/1) (Credit No. 3255-CHA; Loan No. 4501-CHA) (June 19, 2000) [hereinafter the Management Report]. Note that the Management Report, although bound as one report, is divided into three distinct sections - the *Management Report and Recommendation*, the *Background Paper*, and *Institutional Issues* - each with its own page numbers.

n73 Fox, *When Does Reform Policy Influence Practice?, in* Fox, *supra* note 1, at 320.

n74 *See* Clark Letter, *supra* note 71, at 14.

n75 *See* World Bank Operations Manual, OP 4.01 *Environmental Assessment*, para. 15 (1999) ("The borrower is responsible for carrying out the EA"). *See also* SHIHATA, *supra* note 40, at 353.

n76 *See* World Bank Operations Evaluation Department, 1999 Annual Review of Development Effectiveness: Toward a Comprehensive Development Strategy, Lessons and Practices, No. 8 (1999).

Even with a good design for M&E [(monitoring and evaluation)], the Bank's experience shows that success during implementation depends heavily on a sense of ownership by the borrower, adequate capacity in borrower institutions, and sustained interest from the task and project managers throughout the life of the project. Two factors are important here. One is that the borrower's sense of ownership of the project provides a stimulus to transparent management and good information about progress. The other is that *often borrowers doubt the value of adopting what may be costly and time consuming procedures to collect, analyze, and report information*.

Id. (emphasis added).

n77 "Paper compliance" refers to projects in which the Bank follows safeguard procedures on the face of documentation, but below the surface, the project reports are inadequate for policy compliance and procedures required may have been followed superficially or not at all.

n78 *See Request for Inspection - Argentina/Paraguay: Yacyreta Hydroelectric Project, Panel Recommendation* (INSP/R96-2) (Dec. 26, 1996).

n79 Clark Letter, *supra* note 71, at 11.

n80 *See* Kay Treakle, *Accountability at the World Bank: What Does It Take? Lessons from the Yacyreta Hydroelectric Project, Argentina/Paraguay*, BANK INFORMATION CENTER PAPER (Sept. 1998), *available at* http://www.bicusa.org/publications/Yacyreta.htm.

n81 Clark Letter, *supra* note 71, at 12.

n82 Treakle, *supra* note 80.

n83 China Report, *supra* note 22, at xii.

n84 *See Id.* at 6.

n85 Graduating from IDA credit eligibility meant China would now have to borrow at a higher rate.

n86 *See* China Report, *supra* note 22, at 6. The Inspection Panel found that the Bank was in apparent violation of OP 4.01 (*Environmental Assessment*), OP 4.04 (*Natural Habitats*), OD 4.20 (*Indigenous Peoples*), OD 4.30 (*Involuntary Resettlement*), OP 4.09 (*Pest Management*), OP 10.00 (*Investment Lending: Identification to Board Presentation*), and BP 17.50 (*Disclosure of Information*).

n87 China Report, *supra* note 22, at 65.

n88 *Id.* at 25.

n89 Political considerations were not addressed in the Panel's Report since they are outside the scope of the Panel's limited mandate.

n90 China Report, *supra* note 22, at 35.

n91 The Management Report, *supra* note 72, at 6 of *The Management Report and Recommendation*.

n92 *Id.* at 6 of *The Management Report and Recommendation*.

n93 *Id.* at 5 of *Institutional Issues*.

n94 *Id.* at 15-17 of *Institutional Issues*.

n95 *Id.* at 9 of *Background Paper*.

n96 China Report, *supra* note 22, at 20.

n97 The Management Report, *supra* note 72, at 17 of *Institutional Issues*. Note that in May 1998, resources were allocated to "Regional 'environmental and social units, and to the ENV [Environment Department], SDV [Social Development Department], and RDV [Rural Development Department] Anchors, and LEG [Legal Department], to strengthen their review, advisory, and monitoring activities.'"

n98 *Id.* at 11 of *Background Paper*.

n99 WORLD BANK DEVELOPMENT NEWS ARCHIVES, *The World Bank: To Be or Not to Be--AU Forum Talks About the Future of Global Institutions* (Apr. 14, 2000), *available at* http://www.worldbank.org/developmentnews/archives/html/apr10-14-00.htm.

n100 James D. Wolfensohn, *Message from the Chairman of the Board of Executive Directors*, 2 THE WORLD BANK ANNUAL REPORT (2000), *available at* http://www.worldbank.org/html/extpb/annrep/chair.htm.

n101 *Id.*

n102 Michael M. Phillips, *World Bank Rethinks Strategy for Poor*, WALL ST. J., Sept. 13, 2000, at A2.

n103 *Id.*

n104 Steven Pearlstein, *World Bank Rethinks Poverty*, WASH. POST, Sept. 13, 2000, at E1.

n105 Joseph Kahn, *International Lenders' New Image: A Human Face*, N.Y. TIMES, Sept. 26, 2000, at A5.

n106 *Id.*

n107 Kahn, *supra* note 105.

n108 *Projects Approved for IBRD and IDA Assistance in Fiscal 2000, by Purpose July 1, 1999-June 30, 2000*, 152-3 THE WORLD BANK ANNUAL REPORT 2000, *at* http://www.worldbank.org/html/extpb/annrep/chair.htm.

n109 *Id.*

n110 *See* Adam Lerrick, *Whither the World Bank? A Study for the International Financial Institution Advisory Commission* (1999), *available at* http://phantom-x.gsia.cmu.edu/IFIAC/USMDBanksDV.html. Lerrick argues that "the Group's operations equaled a mere 1% of what the private sector supplied" to a group of eleven nations receiving non-aid resources.

n111 SHIHATA, *supra* note 40, at 133.

n112 *See Request for Inspection - India: Ecodevelopment Project*, INSP/SecM98-5, Apr. 3, 1998, *at* http://www.worldbank.org/inspectionpanel.

n113 SHIHATA, *supra* note 40, at 136.

n114 *See* World Bank Operations Manual, http://wbln0018.worldbank.org/Institutional/Manuals/OpManual.nsf/TextTOC1?OpenNavigator&Start=1&Count=30&Expand=2.1 (last visited Apr. 15, 2001).

n115 Ngaire Woods, *The Challenge of Good Governance for the IMF and the World Bank Themselves*, 28 WORLD DEVELOPMENT 823 (2000).

n116 Some argue that the weighted voting system is superior because it forces borrower and donor governments to find compromise positions and understand one another through the process. Similarly, they advocate the United States becoming part of a voting block with borrower government partners. However, giving donor governments their own voice at the table would have the same effect of bringing understanding but at a larger forum where all members can benefit from one another's point of view.

n117 *See id.* at 836 (arguing that simply giving NGOs representation will not be effective unless the Bank more clearly enunciates "what kinds of stakeholders NGOs are representing" and why they deserve a voice).

n118 *See id.* at 829.

n119 The Bank's Articles of Agreement require that it not make decisions based on non-economic calculations.

n120 *See* Christopher Gilbert et al., *Positioning the World Bank*, 109 ECONOMIC J., F621 (1999). "It might even be possible to downsize the Bank to such an extent that it could entirely fit into its newly refurbished H Street building." *Id.* The Bank is more decentralized than it used to be with some 2,500 local staff members, but these staff members lack the decision-making power that still lies with the Headquarters staff that fly in and out of project sites. Furthermore, the staff that have been added in the field have not reduced or replace the staff at Headquarters.

n121 Community is defined as villages, cities, regions or states--as long as they share common challenges to alleviate poverty.

n122 Although I have never met a Bank professional who does not fit this description, this, of course, does not preclude the possibility of my generalization being incorrect. I have found no data on this issue to date.

n123 *See* Clark Letter, *supra* note 71, at 15.

n124 *Id.*

n125 *See id.* at 16.

n126 The process described above has been tackled in various, albeit inadequate, forms by numerous quality assurance and evaluation bodies within the Bank. The Quality Assurance Group (QAG) reports to Management. It is not clear whether the information gathered about a project's safeguard policy compliance (when gathered at all) has any impact on the project itself or the staff responsible for the failures. The Operations Evaluation Department (OED) does assessments of effectiveness, but the assessments take place once the projects are closed. This defeats the purpose of measuring quality and controlling for safeguard policy compliance. Finally, the Board's Committee on Development Effectiveness is also charged with facilitating institutional learning but because of the institutional challenges discussed above, it is similarly ineffective.

n127 A critique of the Bank is that staff are not informed about safeguard policies. They are given neither information about their content, nor the degree to which the policies are binding on operations. *See* Forest Peoples Programme Letter, *supra* note 3, at 6.

n128 IFIs include, *inter alia*, the IMF, World Bank, Asian Development Bank, African Development Bank, and the Inter-American Development Bank.

n129 Rich describes the proposal for an "independent appeals commission" (phrase credited to Lori Udall) that would "be made up of representatives from civil society around the world" and would "have full powers to investigate specific complaints of environmental and human rights abuses in Bank operations, and would have full access to Bank files." This proposal describes a fully independent version of the soon-after created Inspection Panel. *See* RICH, *supra* note 1, at 307.

n130 The private sector funding arm of the World Bank, the International Finance Corporation (IFC), instituted an Ombudsman in 1999, and while the current Ombudsman is supposedly open to hearing complaints from project-affected people, there have already been criticisms that she is non-responsive to allegations about IFC problem projects. This demonstrates that the IFC, just like the IBRD and IDA, need independent accountability mechanisms where non-responsiveness is not an option.

n131 *See* RICH, *supra* note 1, at 302. $