

REPORT AND RECOMMENDATION

India: NTPC Power Generation Project (Loan 3632-IN)

July 24, 1997

Below is (1) Background information, (2) Discussion, and (3) Recommendation of the Inspection Panel ("Panel") on whether or not there should be an investigation ("Recommendation") into allegations made in the above-referenced Request for Inspection ("Request").

Background

1. On May 1, 1997 the Panel received a Request dated April 25 which alleged violations by Management of policies and procedures of the International Bank for Reconstruction and Development ("Bank") in relation to the National Thermal Power Corporation ("NTPC") Power Generation Project in Singrauli, India, financed by Loan 3632-IN (the "Project"). On May 2, 1997 the Panel notified the Executive Directors and Bank President of receipt of the Request (meaning "Registration" under the Panel's Operating Procedures).¹ On June 3, 1997 the Panel received the Management Response to the Request.
2. A loan supporting the Project was approved by the Bank's Board of Executive Directors in 1993 for an amount of US\$400 million equivalent. The Loan was declared effective in June 1994. The Project was designed to take account of lessons learned from earlier NTPC operations in this area²
3. The Project is located in the Singrauli region of India about 1000 Km southeast of Delhi. Singrauli covers some 2,200 square kilometers spread over two states-- Madhya Pradesh and Uttar Pradesh. The area includes part of the reservoir created by the Rihand dam, which provides for irrigation and a hydro plant generating capacity of 400MW. Thermal power plants based on major coal reserves near the reservoir have a total operating generating capacity currently at 6,360MW. Studies suggest that estimated coal reserves would be sufficient to generate 20,000 MW of power for the next 130 years.

¹ See The Inspection Panel, *Operating Procedures* (August 1994), para.17.

² For a list of earlier NTPC operations, see Response, pg.4, footnote 1.

4. In the Singrauli area NTPC operates several thermal power plants--Singrauli (2000MW), Rihand (1000MW), Vindhyachal (1260MW). The 1993 Project was designed to increase the capacity of each of Vindhyachal and Rihand by 1000MW. The fly ash from the coal used for operating the plants is disposed of in ash dykes. Most of the land needed for the ash dykes had already been acquired by NTPC prior to 1993. An additional 300 ha was to be acquired for new ash dykes. The sites identified entailed the involuntary resettlement of about 370 families--project affected people ("PAPs"). For this reason, and to remedy the environmental situation of those already displaced by the earlier acquisitions, the Project included an Environmental Action Plan (EAP), two Resettlement Action Plans (RAPs) and provision for three Remedial Action Plans (ReAps).

5. The objectives of the Project are to "(i) help improve commercial discipline in the power system through the implementation of new commercial and investment policies; (ii) help NTPC meet its targets for capacity additions through increased mobilization of resources from internal resources, domestic and foreign capital markets as well as from the private sector through joint venture operations; (iii) upgrade environmental performance of NTPC power stations and make its new power stations environmentally more sustainable; and (iv) strengthen environmental management and resettlement and rehabilitation management capability." (para 3, pg. 4 Response)

6. The Project comprises: "(i) support of a five year time-slice of NTPC's least cost investment program of new coal and gas based power; (ii) support of NTPC's program to undertake joint venture operations; and (iii) implementation of an environmental action plan ("EAP") which includes upgrading of existing power stations, training and technical assistance for the strengthening of NTPC environmental and Resettlement & Rehabilitation ("R&R") management." The objectives of the EAP are, inter alia, to "address outstanding R&R issues (within the context of the new corporate R&R policy); and to upgrade NTPC's capability to prepare and execute R&R programs." (para 3 pg. 4 Response)

The Request for Inspection

7. The Request was filed by Ms. Madhu Kohli for thirty-three signatories who live in the Project area (the "Requesters"). The Request claims that the people living in the project area have been, and may potentially be, directly, materially and adversely harmed as a result of the execution of the Project and the Bank's omissions and failures in the preparation and implementation of the project. The Requesters complain specifically that they are being compelled to move from their present rural location without any alternative livelihood like jobs or land or adequate housing³

8. The Requesters believe that such acts and omissions violate various provisions of Bank policies and procedures included in, inter alia, the following:

- Economic Evaluation of Investment Operations (OD 10.04)
- Environmental Assessment (OD 4.01)
- Involuntary Resettlement (OD 4.30)
- Indigenous Peoples (OD 4.20)
- Bank Project Supervision (OD 13.05)

Confidentiality

9. Ms. Kohli submitted original authorization of representation signed by the Requesters, who have requested that their names be made available only to the Panel members, but otherwise remain confidential.

Allegations

10. In short, the Requesters ask for an investigation into their claims in order to resolve the problems of people of Singrauli affected by the Project. They believe that the "actions of the borrower and omissions of the WB" were contrary to its policies and procedures. They also seek the Panel's "intervention for advising the Bank on remedies" to compensate the people affected by the Project for the adverse impacts they have suffered and will suffer due to alleged inadequate social

³ Subsequent to receiving the Response, the Panel received several specific claims in support of the Request (May 27 and June 12, 1997). As these Requests do not raise new issues but provide rather specific examples of the claims made the Request, the Panel-pursuant to para. 14(d) of the Resolution-did not transmit them to Management for a formal separate Response since the issues were already covered in the original Request. On July 18, 1997, the Panel received a "Statement in Support of the Panel Claim Field on Behalf of People Singrauli" from the Delhi forum, which reiterates the urgency of the matter (Copy in Annex 2).

and environmental mitigation measures. The Requesters summarize the main actions they seek as follows:

- The most critical issue to be remedied is the provision of alternative livelihoods acceptable to the people of *past* and present NTPC projects.⁴
- Another priority is the provision and upgrade of basic infrastructure in existing resettlement sites *with involvement and participation of the affected people*.
- The Panel is asked to "further advise the Bank on provision of adequate financial and institutional arrangements to enable the borrower to carry out its commitments in conformity with WB guidelines."
- The Panel should "pressurize the Bank" to make resolution of existing social and environmental impacts a condition for continuing disbursements under the Project. (pg. 22 para 67)

11. The Panel will not deal with some of the Requesters' demands. The Resolution establishing the Panel does not allow it to:

- review actions of the borrower: as expressly stipulated in the Resolution only those of the Bank in violation of its policies and procedures are the subject of this review;
- give "advise" on remedies: this is the role of Management.
- "pressurize" the Bank to take actions or decisions.

Supplementary Information

12. A submission entitled "The Singrauli Experience: A Report of an International NGO Fact-Finding Tour to the World Bank Projects of Singrauli/India" was delivered to the Panel on May 1, 1997.⁵ The report looks at social and environmental impacts of the inter-linked coal and thermal power operations in the Singrauli region. Offered as a background document to the Request, the authors

⁴ Remedial actions for the social and environmental effects of earlier projects are in fact part of the NTPC 1993 Project.

⁵ In accordance with paras. 50 and 51 of the Panel's *Operating Procedures*, "any member of the public may provide the Inspector(s), either directly or through the Executive Secretary, with supplemental information that they believe is relevant to evaluating the Request. " The Berne Declaration, an NGO based in Switzerland, submitted to the Panel (copied to the Executive Directors) the Report attached as Annex 2 which the Panel forwarded to Bank management for their information prior to preparing their Response to the Request.

state that during their 1996 visit they⁶ "encountered disturbing evidence of lacking compensation and economic livelihood, missing participation, lacking infrastructure services, unchecked environmental degradation, and a pervasive atmosphere of intimidation and repression." It concludes that the social and environmental measures of the Project are not being implemented. (Annex 2 of this Report).

Management Response

13. Management considers that it:

(a) has *complied fully* with OD 10.04 on Economic Evaluation of Investment Operations and with OD 4.20 on Indigenous Peoples;

(b) has *complied substantially* with OD 4.30 on Involuntary Resettlement and with OD 13.05 on Bank Supervision;

(c) has *complied partially* with OD 4.01 on Environmental Assessment; and

(d) will implement an Action Program (attached to the Response as Annex A) which is intended to improve substantially the implementation of the Project and consequent results on the ground and so bring the Bank into full compliance with ODs 4.30, 13.05 and 4.01. (See also parts of the text quoted in para 62 of this Report).

Recent Allegations

14. After the Management Response was received the representative of the Requesters claimed that PAPs were forcibly removed from the villages of Judi, Amratali and Churchuria to allow construction of the ash dyke for Vindhyachal. These allegations were countered by reports from NTPC describing the peaceful relocation of PAPs in accordance with a recent Court order which provided for their eviction within 15 days of receiving relevant compensation and other allowances. Bank staff later visited the area and reported the conflicting views of those interviewed. (Annex 4 of this Report)

15. More correspondence from the representative of the Requesters alleged that further, if necessary forcible, evictions from the village of Mithini--to make way for construction of the ash dike for Rihand II--were planned for June 20, 1997.⁷

⁶ Peter Bossard of the Berne Declaration and Dana Clark of the Center for International Environmental Law, Washington, D.C.

⁷ In addition, on June 12, the Panel received a submission in support of the Request from some PAPs. The submission complained that the "project authorities are now anxious to move us out with use of force without any guarantee of an alternative

The Panel informed Management of the allegations. Just prior to June 20 the Bank was informed by NTPC that further relocation from Mithini village would be postponed. The Chairman of NTPC visited the area on June 20, 1997. He informed Bank Management and gave assurances that the situation was calm; that people will not be given a deadline; that shifting will be voluntary and that he has informed the State authorities that police will not be needed in the area.

16. On June 19, NTPC sent Management written declarations from 92 PAPs who shifted from the ash dike area of Vindhychal II (villages of Judi, Uska, Amratali, Churchuria) after May 25, 1997. The translation states that the signatories declare that they "have received the necessary grant/assistance and that they have shifted voluntarily without any pressure whatsoever."

Discussion

Basis

17. The discussion below is based on the Request, the Response, supplemental information furnished by NGOs, and additional information provided by the Requesters, Management and NTPC.

18. In addition, the Panel considered information obtained during Mr. Ernst-Günther Bröder's ("Inspector") visit to New Delhi and the Project area during July 6-13, 1997. Prior to this the Inspector consulted with the Executive Director representing the Government of India. ("GOI"). During his visit the Inspector consulted in New Delhi with officials of the GOI--including Cabinet Secretary, the Additional Secretary of the Ministry of Finance, Joint Secretary of the Ministry of Power, and the Chairman & Managing Director of NTPC. In the Project area the Inspector met with Executive Directors, Senior Management and officials of NTPC; the representative of the Requesters; and--through an independent Hindi language interpreter hired in Delhi--with numerous PAPs in the Project area and local NGO representatives, activists and community leaders. After his visit the Inspector consulted again with the Bank Executive Director representing India.⁸

livelihood." These Requesters "urge our situation to be spot checked by the Panel." "Supportive Claim-Request registration No. RQ/97/2," June 3, 1997, from eight PAPs from the villages of Amratali and Judi.

⁸. The Panel wishes to thank the Executive Director and his office for comments and guidance and for arranging the Inspector's meetings with the officials of the GOI; assistance provided by the Task Manager Mr. Tjaarda Storm Van Leeuwen, staff of the Bank Delhi office for logistical support in Delhi; the management and staff of NTPC for providing logistical support for his trip and during his visit to the Project Area as well as for providing further background information; project affected people or their representatives for their cooperation and openness; and the many individual PAPs who gave the Inspector written statements.

Scope

19. The Request raises the question of whether the Bank has complied with its policy (OD 4.20) on Indigenous Peoples, alleging that no special consideration was given to tribal and ethnic groups in the Singrauli area. The Management Response considers that it has complied with the policy "because the socio-economic surveys carried out before appraisal found that no indigenous people were affected by the new investments in the ash dykes of Rihand II and Vindhyachal II." (pg. 11). The Response further points out that since some NGOs questioned this result at the time, further follow up socio-economic surveys were carried out. According to Management "some of the confusion arose, because about 10% of the PAPs of Vindhyachal I, which is not a Bank financed project, are classified as indigenous people", i.e. tribals. (Response, footnote 25) The Inspector raised the question in the field and in discussions with GOI representatives. They confirmed the information provided in the Management Response. Since the Inspector received no contradictory information during his field visit, the Panel will therefore not further address this allegation.

20. Regarding the other claims, there are contradictory allegations between the Request, Response and other information provided to the Panel, as well as observations in the field. This report will address the claims of harm suffered--allegedly as a result of Bank acts or omissions in violation of its policies and procedures-- in relation to involuntary resettlement and associated environmental issues. Broad questions related to OD 10.04 on Economic Evaluation of Investment Operations cannot be addressed realistically at this late date and will not be discussed, except as they relate to the choice of ash disposal options.

21. The environmental and resettlement aspects of the Project are closely tied together by the technical choice for ash disposal. To build the ash dykes land had to be acquired and people involuntarily resettled. In addition the dykes themselves constitute a potential environmental hazard to the population.

22. The extent of authentic local resident participation in relation to resettlement and rehabilitation (R&R) will be addressed first. In addition, the question of Bank supervision will be reviewed. Finally the adequacy of the remedies proposed by Management in the "Action Program" will be discussed.

Preliminary Evidence of Material Harm and Application of Bank Policies

23. Since the Bank has admitted "shortcomings" in application of the policies on Involuntary Resettlement, Supervision and Environmental Assessment the questions that remain are:

(a) is there preliminary evidence of alleged material harm and

(b) if so, is such harm *prima facie* a result of the Bank's admitted shortcomings in the application of Bank policies and procedures?

Participation

24. Environmental Assessments ("EA").. "provide a formal mechanism...for addressing the concerns of affected groups and local non-governmental organizations (NGOs)." (OD 4.01 & para 2) particularly where involuntary resettlement is to take place. This is made more explicit in OD 4.30 where paras. 7-8 require "community participation". The Requesters claim that the RAPs were prepared without consultation with affected people. The Management Response considers that "meaningful consultation with PAPs took place during the preparation of the RAPs." This issue is of key importance because:

(i) Lack of local consultations and participation in both preparation and implementation of the R&R component of the Project appears, *prima facie*, to be the root cause of past and current problems and complaints, including a reluctance or resistance to relocation.

(ii) The Inspector found the question of what constitutes "local" representation be an important issue on the ground.

25. As far as the preparation phase is concerned, the Response speaks for itself. As for the implementation phase, the Panel considers that a Bank R&R mission report best describes the situation in 1995. The mission--asked *inter alia* to report on why PAPs were unwilling to avail themselves of various options available under the R&R policy--warned that as far as "consultation and participation are concerned, they are very much an NTPC controlled-process... and not representative of the affected community". Suggesting that the communication and credibility between NTPC and the community would improve if meetings were organized in affected villages and resettlement sites with adequate public notice, the report noted that:

"Lack of participative process, communication, sharing of information regarding NTPC policy, entitlements, compensation, the use of petty contracts to influence 'PAP representatives' etc. would mean that it is going to be extremely difficult for

NTPC to convince the PAPs in the ash dyke villages of Vindhyachal and Rihand to move out to be resettled and rehabilitated within NTPC policy framework. This is particularly so when some aspects of the policy such as land-for land are difficult to implement, as the PAPs do not have funds to pay for the land." (para 20)

Meetings with Local NGOs, Activists, Community Leaders

26. All local representatives/activists with whom the Inspector had the opportunity to consult complained that the R&R process was not a participative one. The Inspector's experience was that little had changed since the 1995 observations quoted above. The NTPC organized, in advance of his visit, meetings with local NGOs/activists in Rihand and Vindhyachal. The Panel is concerned that invitees to these meetings were limited to a few local NGOs/activists who appeared to be closely linked to NTPC and that--despite express requests to the contrary--an NTPC official was present.⁹

27. In addition to the above meetings, the Inspector was invited by the representative of the Requesters to a meeting with local NGO representatives/activists in the Singrauli resettlement colony of Chilkadand.

28. At the Vindhyachal meeting several present informed the Inspector they had not been forewarned of his visit; this meant they did not have the chance to organize community meetings with PAPs.¹⁰ In their view this indicated that the Bank was not serious about its policy on *local* participation.

29. Another perception voiced by several NGOs or activists reflected, as stated in the 1995 R&R mission report, "a very strong feeling among the NGOs... that the NTPC is not serious about R&R and that it acts only when it is under pressure from the Bank as a reaction to pressure on it from international NGOs." They still feel that their role as local leaders, representatives or activists is not effective because they do not have international NGO support or direct contact with the Bank, as does the representative of the Requesters. While not in disagreement with the substance of the Request they appeared to resent the fact that the representative was not from Singrauli. The Inspector explained who could file a Request drawing

⁹ The Inspector took the liberty of inviting to such meetings other NGOs activists whom he encountered. In **Rihand** invitees included representatives of five local NGOs. The Inspector invited Ms. Kohli to attend. Invitees at the meeting in **Vindhyahal** included three representatives of the local area NGOs and/or activists. The Inspector invited 11 others encountered earlier in the day as he was driving to villages in the ash dyke area. In addition, the Inspector met privately in Vindhyachal with NGO representatives, at their request.

¹⁰ The claimed that despite assurances from the Bank New Delhi Office ("NDO") they had not been informed in advance of recent World Bank field visits. Staff of the NDO later informed the Inspector that they rely on NTPC to inform local NGOs of missions to the area.

their attention to the Panel documentation he had distributed. He pointed out that there were bound to be different groups, differently affected, in different locations, with different interests in any given project area; and that any such group of people may choose to appoint any individual/s or organization to represent them. The Panel observes that there has clearly been a great deal of local tension, misinformation and misunderstanding surrounding the filing of this Request.

30. Despite reduced trust in the application of the Bank's policy on local participation those present at the Vindhyachal meeting were hopeful that this would change. This underlines the importance they place on continued Bank involvement and the expectations they have of the Bank's intensified commitment to local consultation and participation. NTPC freely admitted that it does not have expertise in this area, that it is learning and is as determined as the Bank to institutionalize this new approach to R&R speedily and effectively into its corporate culture. To illustrate this, in Rihand NTPC invited the Inspector to a presentation by Village Development and Advisory Committee ("VDAC") representatives. The VDACS were formed in an effort to enable "meaningful and effective communication with the affected population and also to involve them in the decisions affecting them." (NTPC documentation)

OD 4.30 on Involuntary Resettlement

OD 4.01 on Environmental Assessment

31. The fundamental objective of OD 4.30 is to ensure that those to be involuntarily resettled are restored at least to their former standard of living or their living standard improved. (para 3 (b)) To achieve this the borrower is required to prepare a resettlement action plan acceptable to the Bank (RAP). In the case of this Project, the situation is complex. Firstly, there are two RAPs prepared in 1993 which apply to those being involuntarily resettled to allow for construction of ash dykes to meet the expanded capacity of the Rihand and Vindhyachal thermal power plants--known as Phase II. Secondly, as noted earlier in this report, the Bank loan is supporting a time-slice of NTPC's power expansion plans. The initial investment in the Rihand and Vindhyachal power plants, as well as the Singrauli one, were made without Bank financing. Therefore there were no RAPs. Under this Project it was agreed to improve the situation of the many people displaced during this first phase. (Phase I). Thus the Project required the preparation and implementation of three Remedial Action Plans ("ReAps").

32. The Requesters claim that the options for resettlement and restoration of livelihood under the RAPs and ReAPs are inadequate.

33. RAPs for the Project were accepted by the Bank in 1993 as "broadly" in

compliance with the Bank policy.

34. Management Response agrees that design and implementation of the RAPs have not been satisfactory explaining that it "had underestimated the practicability of implementing the land for land options and difficulties in carrying out income generating schemes. Accordingly, in the implementation of these RAPs by NTPC significant problems and delays have arisen, reflecting certain shortcomings in design." However, the Response notes that land tenure rights and the R&R options to restore livelihood are in line with OD 4.30.

35. As far as the status of relocation goes, the Response notes that "more than 60% of the PAPs of Vindhyachal II and Rihand II have been resettled and received their compensation packages" (pg. 16). At the time the Response was written that left 40% who have not been resettled some of whom were apparently resisting resettlement.

36. PAPs living in the area deemed necessary for construction of ash dykes for Phase II of Rihand and Vindhyachal fall broadly into two categories: farmers with small holdings who have been in the area for generations and laborers working for them. To meet the objective of OD 4.30, the RAPs provided PAPs with the options of land for land or cash compensation and provision of economic livelihood; for non landowners, a plot for land for a house and employment. Such options were to be provided to each family member aged 18 and over.

37. Of those displaced prior to Bank involvement through acquisition of land for construction of ash dykes for Phase I of Rihand and Vindhyachal as well as the Singrauli thermal plant by 1993 some had relocated to other areas, most had been moved to resettlement colonies (Chilkadand for Singrauli, Punarwas I for Rihand and Najveevan Vihar I for Vindhyachal); and, some continued to farm the acquired land (and employ laborers) as permitted by NTPC until such time as the land was actually needed. There is an important difference between the ReAPs and the Phase II RAPs: compensation and rehabilitation for pre-1993 affected people was offered on a family basis, or to Project Affected Families ("PAFs").

38. While in the field the Inspector observed the very real practical complications - both in terms of understanding and acceptance by PAPs and management of the process-- of implementing Bank R&R policies introduced during a later phase of an ongoing project. The substance of R&R issues raised by the various local NGOs, activists, or community leaders appeared to reflect the difference between treatment of PAPs from Vindhyachal Stages I and II, differences in pre displacement standards of living, occupations, etc.--**but perhaps, most importantly differences in expectations based on alleged promises.**

- As stated above most of the land needed for future expansion of the plants was acquired and compensation paid in the 1980s, NTPC granted PAFs adverse possession--in other words did not require the families to shift (though some did) but allowed them to remain living on and cultivating the land until such time as it was actually needed for construction. The result is NTPC's intended humanitarian approach has created several difficulties once the time came for eviction:
 - Compensation money was spent.
 - Availability of alternate land had diminished.
 - Replacement land prices had risen.
 - Family size has increased.
 - A generation of children have come of age.
 - Those who actually shifted in accordance with the law at the time of acquisition feel penalized when those who stayed now receive extra benefits.
- Benefits under the RAPs are to be applied to *all eligible family members 18 and over*. Those who were involuntarily resettled before 1993 who just got *one benefit per family* and whose children in the meantime are 18 and over feel shortchanged.
- PAPs' expectations of what they would receive were naturally raised by the introduction of new standards causing divisions and tensions through what appears to them arbitrary eligibility for better benefits, and frustrated expectations by those eligible when promises are not met.

39. Underlying these problems is the fact that the 1993 RAPs contained elements, or held out promises to PAPs, that Management admits were unrealistic.

Land for Land

40. The Bank "encourages 'land for land' approaches, [to resettlement] providing replacement land at least equivalent to the land lost. (OD 4.30 para 13). Management states that "in practice, NTPC has not been able to implement the land for land option in the Singrauli area and the main groups of PAPs still resisting resettlement are landowners." (pg. 16). It is understandable that there is resistance from PAPs who feel their lives and livelihoods are disrupted when they

have relied on promises of receiving land for land and then told that is not possible.

41. The Inspector learned from NTPC and the District Collector that no equivalent public land suitable for agriculture was available in 1993 in Madhya Pradesh for resettlement of Vindhyachal II oustees. If this was so, the Panel believes the Bank should have examined the availability of land before insisting on having this option included in the RAPs. This raised expectations and contributes in large part to the resistance to shifting by remaining land-owners.

Resettlement and Rehabilitation Conditions

Resettlement Colonies

42. The Inspector visited two of the remaining households in the Rihand ash dyke area, and what is left of the four remaining villages in the Vindhyachal ash dyke area. To compare conditions he visited the Chilkadand, Punarwas I and II, and Najveevan Vihar resettlement colonies. The contrast is dramatic. Those used to rural space and security in making their livelihood from agriculture are shifted into crowded "colonies" on small plots, many without any income and others, at best, short or uncertain contract jobs. One Bank mission reports a respected local NGO leader as describing the colonies as neither villages nor townships, but still transit camps. Nothing has changed. The Inspector was told that farm laborers were generally better off than before, since they had been, in effect, bonded labor. No PAPs at the sites visited expressly supported or denied this general proposition. To ascertain this would require an investigation.

43. Basic infrastructure in the resettlement colonies appears to have been provided but not maintained. The Inspector was told that this was a State responsibility and that in fact where there has been lack of action, the NTPC has gone beyond what is required of it by providing such facilities in some instances. In the meantime the Inspector noticed that drains are filled with garbage and mud, water pumps not working, etc. Residents complained of a lack of electricity and water. The health center at Najveevan Vihar sports a sign of services offered in English only! There was no evidence of medical supplies, and a temporary doctor was appointed just two months ago. The community center is filled with what looks like construction junk and occupied by an old crippled woman and her son who have not received a plot/house yet. Residents said that the communal facilities had been cleaned just prior to the Inspector's visit and some facilities freshly painted.

44. Chilkadand, the resettlement colony for those displaced by the Singrauli power plant, appeared to be in the worst shape. It is located right beside an NCL mining operation and transportation facilities. Housing appears to be already deteriorating

primarily through blasting in the NCL mine; some of the hand pumps did not work and some are surrounded by blocked drains; water pipes are defective; most of the open drains are filled, as are some streets, with garbage, mud or other debris; street lighting was in need of repair. In this colony land plots were given to families as opposed to each eligible adult, resulting in overcrowding. Residents claimed that they would like to get out of this unbearable environment but were afraid that they would not be rehabilitated any better than the last time.

45. The Inspector was invited to visit villages of unaffected people so as to compare conditions in the colonies with them. There are certainly conditions far worse in India and elsewhere in the world than those in the colonies and there is no doubt that there are villages in the area where people are worse off. However, the yardstick the Panel is asked to use is whether people involuntarily displaced appear at first instance, and without further investigation, to be adversely affected, or harmed by the Project as measured by the standards of the Bank's resettlement policy.

Restoration of Livelihood

46. Apart from complaints about the obvious lack of working infrastructure and maintenance in the colonies, the main individual or group complaints heard by the Inspector either orally or in writing¹¹ on the resettlement and rehabilitation packages included, inter-alia:

inducement to shift upon promise of work contracts was either not honored or honored for a few days to a couple of months; and

expectation of permanent jobs with NTPC which did not materialize;

inducement to shift on promise of a plot of land for a house was not honored; and.

lack of money to build a house.

Income Generation Schemes

47. Management admits it "underestimated the difficulties in carrying out income generating schemes and recognizes that initial design and implementation record needs further evaluation." (pg. 16). In the absence of jobs or a viable land-for-land choice this was the only approach considered. The Inspector observed that existing schemes did not appear to form a basis for successful future income generation.

¹¹ PAPs gave to the Inspectors some 30 letters with over 100 signatures.

The Panel agrees that further evaluation is needed, but is concerned that this will still not meet the needs of Requesters who have agreed to relocate on the grounds that a job would be offered and sustainable income provided only to find themselves deprived of income or livelihood.

Preliminary Evidence of Harm

48. The preliminary impression is that harm has occurred because many PAPs have not been, and may not expect to be restored to at least their previous standard of living whereas OD 4.30 (para 4) in fact calls for "a package aimed at improving...the economic base for those relocated." In addition, most of the displaced population does not appear to be receiving benefits from the Project (for example, electricity) despite this being the express objective of the Bank's resettlement policy (OD 4.30, para 3). As for those who have not yet shifted, given the experience and dashed expectations they see of many who have already shifted, their reluctance to move, can be well understood. The Panel notes that these PAPs are subject to eviction once Court ordered R&R benefits (which appear to go beyond those in the RAPs) are provided. *In relation to this it is worth stressing again that this review is restricted to actions or omissions taken by Bank Management. The single and only question for the Panel in this context is whether the PAPs who have shifted appear to have the equivalent standard of living, or better as required by the Bank R&R policy and whether those who have not yet moved are likely to have the same.* To ascertain the facts of the diverse case specific complaints received by the Panel would require an investigation.

Local Remedies

49. A number of PAPs have taken their R&R problems to the local Courts. Local dispute resolution is a purely sovereign matter beyond the scrutiny of an international mechanism such as the Panel. India's democratic system with its respected independent judiciary allows PAPs to question their R&R treatment.¹²

Supervision of R&R

50. OD 4.30 requires that "arrangements for monitoring implementation of resettlement and evaluating its impact would be developed by the borrower during preparation and used during supervision. Monitoring provides both a warning system for project managers and a channel for the resettlers to make their needs

¹² In addition India has a National Human Rights Commission to which one group of PAPs--represented by Ms. Kohli--submitted a complaint over their treatment by local authorities. The Commission found those particular complaints lacking in merit.

known and their reactions to resettlement execution.... In-house-monitoring by the implementing agency may need to be supplemented by independent monitors to ensure complete and objective information." (§22) The Inspector's observations and other information available provided preliminary evidence of that in supervising the Project, the Bank has:

- Relied on NTPC for information when the implementing agency itself admits that it is a new area for the Corporation and that it is in the process of learning.
- Conducted an insufficient number (every 6 months) of rather brief R&R field visits.
- Relied during field missions on NTPC staff--who might obviously have a conflict of interest--for interpretation from Hindi into English.
- Not set up independent monitors.

51. The recommendations of the 1995 R&R mission report already referred to above do not appear to have been acted on by Bank Management. The Inspector's impression is that the situation on the ground has not changed much from the quite bleak picture of events painted in this report and in the subsequent Berne Declaration report, the June 1997 Bank field report and submission by the Delhi Forum.

52. It may be noted that PAPs in the Vindhyachal area had to resort to the local Courts to obtain an order restraining NTPC from evicting villagers before R&R benefits were provided. The Panel found no evidence of any Bank actions to ensure that required RAP measures were implemented prior to shifting people.

53. Management recognizes problems with the *effectiveness* of its project supervision, as reflected in difficulties in having appropriate remedial action taken to overcome project implementation problems. Had the supervision been effective some of the harm alleged to be suffered by the Requesters may have been avoided.

Conclusion on R&R

54. **Involuntary** resettlement is inherently painful under the best of circumstances. In this instance, the Panel believes it is prima-facie self evident that many of the involuntary displaces affected by this Project have or are likely to have suffered as a result of an alleged failure by the Bank to comply with OD 4.30.

Ash Disposal

55. OD 4.30 (para 3(a)) states that: "Involuntary resettlement should be avoided or minimized where feasible, exploring all viable alternative project designs...." The Requesters question the choice of ash disposal methods: they allege that involuntary resettlement in Vindhyachal and Rihand could have been avoided through upgrading of existing ash dykes and backfilling of ash in existing mines. The Response (pg. 2) states that backfilling of ash in existing open cast mines in the Singrauli were not found to be feasible by Northern Coal fields Ltd. (NCL). It is not stated if the option was technically or economically non-viable, and if the social costs associated with the chosen option were properly accounted for. The decision however to adopt more dykes as an acceptable ash disposal technology was approved by the Bank and this decision did create the need for a large resettlement program with considerable management problems and environmental risks. Under the circumstances it is not quite clear whether there was interagency coordination--i.e. between NTPC and NCL--as provided for by OD 4.01 (para 18)

56. Based on an initial overview of documents, the Panel has reason to doubt that all possible or feasible ash disposal technologies were considered seriously until recently. The Management Response reports that upgrading of "existing ash dikes has been considered and new ash dike management techniques have been introduced." However, a full analysis of alternatives, as required does not appear to have been carried out and the issue is not addressed in the SAR.

Ash Dykes Site Selection

57. As far as site selection for both the thermal power plants and ash dykes are concerned, the Requesters claim that the "inhabitation" and agricultural use of sites was not a criterion. Management states that it is unaware of the criteria used and could not influence site selection for Rihand I and Vindhyachal I since these decisions were made in the early 1980's long before the Bank was involved. Expansion of these existing power stations--for Phase II which is supported by Bank-financing--required selection of additional sites for the construction of further ash dykes: Noting that acquisition of additional land could not be entirely avoided, Management states it was satisfied with the site selection criteria. According to the Response, the decision to change the location of the Rihand II ash dike to Mithini site was an attempt to further minimize resettlement and the impact on agricultural land. (pg. 10) The Panel is unable to comment on this aspect at this point.

Health

58. The ash dykes can create health hazards to the population because of airborne or aqueous emissions of hazardous substances, including trace metals. To assess

these risks it is necessary to conduct both studies of trace metal contaminants as well as health impacts on the population at risk. However, there is no health data base for the population that could be potentially at risk, which makes it impossible to estimate whether the risks are high or damage has taken place.

Supervision of Environmental Aspects

59. The Requesters claim that the Bank has failed to supervise the implementation of the EAP approved in 1993. The Response recognizes that implementation needs to be improved for "some of the environmental projects which have fallen behind schedule." Examples of important environmental impacts that have not been studied, or analyzed only recently, include the fate of heavy metals (other than mercury) such as chromium, arsenic and selenium and others, which could be considered potential ecological or health hazards.

60. In addition, the Requesters claim poor management of disposal systems, which include unattended ash pipe leakages which contaminate drinking water wells, soils and crops. The Response does not deal specifically with any of these issues but in the specific Action Program proposes to reinforce field-based supervision to expedite implementation of the EAP. An update of the status of NTPC's environmental actions, commitments and conditions carried out by the field-based supervision team is expected by the end of July 1997. It is important that the issues raised by the Requesters be considered during this exercise, in particular those that have serious delays.

Remedial Actions

61. Management's remedial actions are laid out in the Action Program attached as Annex A to the Response. There are two parts to the Action Program. One is a "broader action program" for the future; the other is a Project Specific Action Program.

Broader Action Program

62. In the cover memorandum to the Response Management outlines some lessons learned (pp. 1-3) which are quoted here in full:

- "Management shares many of the project specific and more general concerns raised in the Request and has learned several valuable lessons as a result of the intensive reflection undertaken in responding to the Request. Foremost among these lessons is a fuller appreciation of the need for robust processes and associated staff capabilities *to ensure early, up-front and meaningful participation of all project affected communities*

*and their leaders in the design of Bank-assisted projects. Our experience with the Project reinforces the concept that "ownership" at the earliest stage, is a prerequisite for successful implementation, and that it must emanate from all stakeholders including the government, executing agency, and the beneficiaries."*¹³

- "Second, Management is committed to the principle that it is the results on the ground which ultimately count. Project preparation and implementation plans are a means to that end, and not the end itself. *We take very seriously the allegations of the "adequacy" of participatory consultation in preparation and design, and the social cost of delays in the implementation of the Environmental Action Plan (EAP) and the Resettlement Action Plans (RAPs).* Our problematic experience under the Project with income-generation schemes as a core element of a strategy for the restoration of incomes, especially when land for land and permanent jobs with executing agencies are not practicable, has been instructive. We now understand better that several conditions must be satisfied for these plans to be successful. There must be meaningful consultations with beneficiaries and social mobilization of communities; there must be a thorough appreciation of the historical and cultural context in which the plans are to be executed; and there must be solid capacity in place in appropriate agencies to closely monitor, to implement in a timely and coherent manner, and to ensure that the content of the plans are relevant. Therefore, a central feature of the Supervision Strategy for the Project under the Action Program¹⁴ is to bring the Bank into full compliance with the relevant ODs."
- "Third, while not diminishing the import of the shortcoming identified in the design and implementation of the Project, in preparing this Response, Management has renewed its conviction that the broader relationship with NTPC must be kept in the fore. The Project is a time-slice operation; NTPC agreed to a retrofit perspective for environmental and social impacts. In the Request, as well as implementation record for the Project, many of the issues which have surfaced relate to broader business and corporate standards of NTPC. Accordingly, our interaction with NTPC, as with other major corporate partners, has to be managed more with a corporation-wide relationship in view. Given the depth and length of our

¹³ The Action Program in the Response at Annex A, paras. 3(c)(d) and 4(c) are intended to deal with this.

¹⁴ Ibid. paras 3(a) and (b).

relationship with NTPC, we should be more active in dialogue with NTPC on issues across the board; the long-term business strategy and plan in a changing fiscal and financial environment for power generation, notable the entry of private sponsors; the long-term prospects for thermal and alternative technologies; and the environmental and social capabilities which a modern corporation needs to manage effectively in a national and even global context."¹⁵ (emphasis added)

The Cover Memorandum (para 7 pg. 3) adds **General Lessons** which are also quoted below:

- "*...we have been concerned for some time about the human cost in terms of social dislocation and environmental degradation of rapid and somewhat uncontrolled development of the Singrauli area where three major NTPC power stations are located, i.e. Singrauli, Rihand and Vindhyachal. Singrauli is a region which is the responsibility of the governments of the States of Madhya Pradesh and Uttar Pradesh, and therefore above and beyond the jurisdiction of NTPC. While previous attempts to engage the Government of India and the two state governments in developing a comprehensive approach to development of the area has not met with success, we intend to restart the dialogue with all stakeholders in the Singrauli area to identify 'win-win' strategies and programs as part of the Action Program [in Annex A, para. 4(a) of Response]*" (para 6 pg. of Cover memorandum)
- "*In the area of environmental management, we know that India, like many countries, has not addressed the environmental consequences of rapid growth and development. Mitigating the environmental impacts of coal-based thermal power generation in Singrauli and other areas in India is a long-term proposition, which will require both resources for technological improvements as well as sustained institutional commitment and capacities to implement required policies and programs. The proposed Action Program includes a series of activities which will ensure that we fully comply with O.D. 4.01 as well as activity involve a range of stakeholders in finding solutions to the nexus of issues related to the environment and power generation, mining technologies, hazardous waste generation, and the development of institutional management capacity [Annex A, paras. 4 (d), (e), (f). and (g)]*". (Emphases added)

¹⁵ Ibid para. 3(a).

63. The Action Program indicates Management's serious endeavor to mitigate the overall problems in the Singrauli energy sector plus all projects with resettlement components in India in a challenging way. The proposed actions reflect Management's desire to introduce a prudent social and environmental development Program for the future. The Program addresses problems going well beyond those experienced with this particular Project. The Panel assumes that appropriate local participation as well as intensive on-the-spot Bank supervision will contribute to its prospects of successful implementation

64. The broader Action Program proposes a review of all environmental assessments and all resettlement components in the India portfolio. (See Response Annex A & para 4 (a)-(g)) It consists of studies and reviews, some with deadlines, others without. The Panel understands that the past studies to be revisited might also be updated and translated into practical measures.

65. In conclusion, the *broader* Action Program for the future is a comprehensive approach to rectify very complex and difficult problems. In general, if the studies and reviews result in actions to be carried out in close cooperation with directly affected PAPs and NGOs they should help answer the Requesters' concerns regarding the overall past and present situation in Singrauli.

Project Specific Action Program

66. To address the Requesters' specific concerns regarding the current Project, Management states that with respect to "supervision strategy" within the next twelve months the main Bank and NTPC activities are to be, inter-alia:

- implementation of the EAP, with improvements in implementation of some of the environmental projects which have fallen behind schedule; (para 2 (b))
- implementation of the ongoing institutional strengthening, training, and resettlement and rehabilitation programs in accordance with agreed schedules; (para 2 (c))

67. The above activities do not reflect the fact that the RAPs were developed without authentic local participation and therefore may still not be acceptable to local people. They also envisage compliance with agreed schedules; lack provision for review or does not propose initiating actions to alleviate the situation of those PAPs who find they do not have the land for land option or have been induced to shift and find there is no job at the other end.

68. Management recognized that there was no consultation with PAPs in the design of the EAs and RAPs and none is expressly proposed here. The Request and current events suggest dissatisfaction among some PAPs with the original RAP. Some, it appears, are resisting attempts to be relocated. It is apparent they have never been consulted and still are not participating in decisions about their future.

69. The next set of proposals envisages the use of Bank resources for an across the-board review of NTPC corporate operations and business plan, including to "effectively *re-appraise*" NTPC implementation of the current Project. More specifically, such review is designed to, inter alia:

- determine whether Management would agree to an extension of the Closing Date--September 30, 1997--of the current loan (para 3 (I)); and
- pursue a framework for remedial actions with particular reference to social and environmental issues as a basis for *future* operations (emphasis added)

70. The first proposal is time-bound and while not specifically stated would presumably measure performance of the current Project related obligations to bring the operations into full compliance with R&R and environmental polices. The second proposal appears to envisage remedial actions in future operations only.

71. To summarize, the *project specific* Action Program does not address the fundamental question of whether there are current serious problems in the R&R and environmental operations--as alleged by the Requesters and supported by others during the Inspector's field visit.

Conclusions on Proposed Remedial Actions

72. The Response and Action Programs fail to address current problems on the ground. None of the conflicting reports on the situation deny outright the allegations of the Requesters. The numerous problems raised should be mitigated or prevented now instead of waiting for retrospective identification through future reviews/studies and future mitigation activities or remedial actions. This would require identifying the factual source of current R&R problems now so that Management can propose remedial actions based on local solutions as a matter of urgency. The Panel considers that resolution of discrepancies in resettlement and other issues--both past and present--is a prerequisite to implementation of the Action Programs. For this reason the Panel believes it is imperative to conduct an immediate independent investigation of the facts. This is necessary in order to see if there is evidence of the Requesters' allegations of harm; and if so, to identify

whether such harm stems--as the Requesters allege--from acts or omissions of the Bank in violation of, ODs 4.30, 13.05 and 4.01.

73. Any actions need to be taken in the context of the current and inevitable development of large scale open pit coal mining to fuel thermal power plants and consequent ash processing in this area: they are at present vital for India's fight to alleviate poverty and future development. In light of the objectives of OD 4.30 and 4.01, this calls also for close cooperation between NTPC and coal mining activities in the Singrauli area to avoid involuntary resettlement and where this is not possible, to achieve a harmonized resettlement and rehabilitation strategy including practical job opportunities. As emphasized by the President of the Bank, the poor and disadvantaged everywhere do not want charity; they want opportunity. They want partnership. As one local PAP representative privately told the Inspector, he felt very worried about rumors that some NGOs were determined to stop not only Bank involvement, but the Project itself. According to him, and it was the Inspector's impression, local NGOs/activists and PAPs supported continuation of the Project and considered Bank involvement essential. The representative of the Requesters likewise informed the Inspector that Bank support was necessary. The GOI has expressed its desire to support any measures the Bank might propose to achieve better immediate results for those adversely affected in the Singrauli area. The NTPC told the Inspector it hopes to improve R&R for the Singrauli area and make it a model for the country.

Recommendation

74. The Panel rejects some of the Requesters' demands, noted in paragraph 11 of this report, as outside its mandate. In addition, there would appear to be no grounds for an investigation into the allegation of failure to observe OD 4.20 on Indigenous Peoples. However, the Panel believes there is *prima facie* evidence of harm. It is possible that serious violations by the Bank of its policies and procedures may have occurred to a degree beyond those identified by Management in its Response. Therefore the Panel recommends that the Executive Directors authorize--as a matter of urgency--an investigation into the involuntary resettlement and associated aspects of the Project.