

Report No. 48995-YE

The Inspection Panel 

Report and Recommendation

**Yemen: Institutional Reform
Development Policy Grant
(Grant No. H336-YEM)**

June 18, 2009

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Report and Recommendation On Request for Inspection

YEMEN: Institutional Reform Development Policy Grant (Grant No. H336-YEM)

1. On April 13, 2009, the Inspection Panel received a Request for Inspection (“the Request”) related to the Yemen’s Institutional Reform Development Policy Program (the “Program”), which is supported by Grant No. H336-YEM (the “Grant”). The Request was submitted by Mr. Abdelkader Ali Abdallah and Mr. Yahya Saleh Mohsen, both residents of Sana’a, Yemen, on their behalf and on behalf of the Yemen Observatory for Human Rights, a local Non-Governmental Organization (NGO). The Request claims, *inter alia*, that the Bank failed to comply with principles of transparency and disclosure of information with respect to a Development Policy Operation for institutional reform in Yemen, which they contend will produce negative effects on wages, employment and poverty reduction.
2. The Panel registered the Request on April 20, 2009 and Management submitted its response on May 19, 2009 (the “Management Response”). As provided in paragraph 19 of the 1993 Resolution establishing the Inspection Panel (the “1993 Resolution”),¹ the purpose of this report is to determine the eligibility of the Request and make a recommendation to the Executive Directors as to whether the matters alleged in the Requests should be investigated.

A. THE PROGRAM

3. The Yemen: Institutional Reform Development Policy Grant (IRDPG) has its origins in the 2006-2009 Yemen Country Assistance Strategy (CAS) and was approved by the Board of Directors on December 6, 2007. The Program has two objectives. The first is to bring about investment reforms which will allow Yemen to diversify its economy so that its dependence on oil revenues is reduced. The second objective is to strengthen governance and public finance management by reforming the civil service, procurement systems, and promote oil revenue transparency by having Yemen join the Extractive Industry Transparency Initiative (EITI). These objectives are meant to assist the country reduce poverty, increase growth, and improve public sector governance.

¹ International Development Association (IDA) Resolution 93-6, dated September 22, 1993 (“the 1993 Resolution”).

4. The Grant is aimed at assisting the Government realize discrete components of its medium-term strategy as elaborated in its Development Plan for Poverty Reduction 2006-2010 (DPPR), which is also the country's Poverty Reduction Strategy Paper. DPPR priorities are taken forward in the short term by a National Reform Agenda which focuses on investment climate reform and governance and democratic institutions strengthening. A Matrix of Good Governance Measures (MGGM) developed in 2006 lays out short and medium term activities aimed at realizing specific aspects of the reform agenda.²
5. The IRDPG was conceived after the Government realized that "*supplemental assistance*" would be needed to implement the reforms. The Program "*encourages and rewards key selected actions associated with this recently initiated and dynamic reform effort*".³ The Program Document (PD) states that the IRDPG "*is strategically sequenced as part of an effort to strengthen economic management in anticipation of a subsequent sector wide or programmatic type of operation (e.g. PRSC). The CAS envisions the IR DPG as reinitiating policy-based lending to Yemen and helping to establish the conditions for a subsequent three-part programmatic PRSC, intended to (sic) launch in the third year of the CAS*".⁴
6. The Program's objectives are to be achieved through five components that are "*based on both prior analytical work and extensive dialogue with key Government counterparts, local stakeholders (including members of civil society), country experts, and other donors*".⁵ Each component focuses on a reform agenda identifying a set of actions constituting conditions for first and second tranche releases.
7. The Program components are as follows:
 - a. Component 1- Income Tax Reform: This component supports Government's aim to reduce distortions, eliminate discretionary implementation of taxation, and remove uncertainty for firms operating in Yemen. The two "*prior actions*" for this component are the "*preparation, approval by the Ministry of Finance and submission to Cabinet of a new corporate income tax law*" and "*implementation of the new corporate income tax law*" through the issuance of executive regulations.
 - b. Component 2- Land Titling and Registration Regulatory and Institutional Reform: The prior actions related to this component are the preparation and submission to Parliament of a new Land Registration Law and several

² Program Document, Republic of Yemen: Institutional Reform Development Policy Grant, November 6, 2007, Paragraph 19.

³ Ibid, Paragraph 25.

⁴ Ibid, Paragraph 28.

⁵ Ibid, Paragraph 37.

actions related to the implementation of this law (such as development of implementation regulations, appointment of an independent registrar, and issuance of a Cabinet Decree to clarify the mandate of the General Authority for Lands, Survey and Urban Planning (GALSUP).

- c. Component 3- Strengthening Public Procurement: Believing that sound public procurement is central to Government's ability to "*manage public services in support of private-led growth*", the two prior actions of this component are the approval of executing regulations of the approved Procurement Law and establishment of a Procurement Policy Monitoring Board.
 - d. Component 4- Improving Revenue Transparency: The prior actions of this component are a formal announcement by the government of its adherence to EITI principles and the procedures it will use to achieve these principles, and the publication of independently audited accounts.
 - e. Component 5- Reforming Central Government – Public Administration Reform: This component aims to support public sector administrative reforms initiated by the Government. The prior actions associated with this component are the approval and implementation of the Civil Service Fund program, the implementation of reforms identified in the 2005 Wage Law prior to making any wage increases, and the development of a computerized employee database and a biometric identification system.
8. The set of six prior actions for first tranche release were already achieved at the time of Grant approval. The Operation Policy Matrix (Annex 2) of the Program Document lists all the policy actions to be achieved under the five Program components and their respective tranche release triggers.
 9. The Program Document states that it should have a generally beneficial impact but identifies two potential social safeguard concerns, the first being the "*potential negative impact of land registration for the poor and powerless*"⁶ and the "*land rights of women*"⁷ and the second being whether the reform of the corporate income tax law might adversely impact the poor. However, according to the Program Document, these concerns are allayed by Government's commitment to monitor the impacts of these policies and mitigate them through appropriate safeguards.⁸
 10. The Program Document also mentions potential risks to the environment from some of the policy reforms. The reform of the income tax law might lead to investment in sectors which degrade the environment (such as mining) and land

⁶ Program Document, Republic of Yemen: Institutional Reform Development Policy Grant, November 6, 2007, Paragraph 80.

⁷ Ibid, Paragraph 85.

⁸ Ibid, Paragraph 88.

titling reform may lead to the conversion of agricultural land for industrial use, or development in ecologically fragile areas. However, it is stated that Government's Letter of Development Policy recognizes some of these potential risks and contains a commitment to mitigate them.⁹

11. The Program Document further states that "*through broad consultations, the preparation process [of IRDPG] countered some of the weaknesses in existing participatory processes*".¹⁰

B. FINANCING

12. The Yemen: Institutional Reform Development Policy Grant (IRDPG) is an IDA-financed operation of approximately \$50.73 million comprised of two equal tranches of approximately \$25.47 million. The first tranche was released upon Grant effectiveness after first tranche prior actions (mainly legislative actions) were met, and the second tranche is to be disbursed at the latest 18 months after effectiveness which is the timeframe in which "*agreed upon measures*" and especially second tranche prior actions are expected to be completed. Second tranche prior actions focus explicitly on the implementation of the Program's policy reforms.¹¹ The Grant is scheduled to close on June 30, 2010.

C. THE REQUEST

13. The Request raises three issues related to the Program.
14. The *first* issue concerns disclosure of information. The Requesters state that they have incurred and will probably continue to incur damages "*as a result of the information blackout policy practiced by the World Bank Office in Yemen and its refusal to disclose information*" related to the Program. The Requesters add that pressure from civil society led to the disclosure of the English version of the Program Document but "*the Bank office in Sana'a refused to give [them] a translated copy into Arabic or to cooperate with civil society to get it translated.*"
15. The Requesters say they made a number of phone calls to the Country Office in Sana'a to request the Program Document and list a number of correspondences requesting the Country Office in Sana'a to disclose "*a complete copy of the Institutional Reform Program and its translation.*" They state that they received a copy in English of the Program Document. However, in a subsequent correspondence, the Country Office refused to provide them with an Arabic language translation. According to the Requesters, on January 30, 2008, over

⁹ Program Document, Republic of Yemen: Institutional Reform Development Policy Grant, November 6, 2007, Paragraph 105.

¹⁰ Ibid, Paragraph 36.

¹¹ Ibid, Paragraph 34.

twenty Yemeni organizations addressed the Country Office to confirm their request for a complete copy of the Program in Arabic, but “*receive[d] no response to [their] request and all [their] communications and letters were ignored.*”

16. The *second* issue concerns participation. The Requesters state that the Bank and the Country Office “*violated the principle of partnership which the World Bank adopts and calls for its promotion with civil society,*” and violated the principle of transparency and disclosure of information. They add that the lack of translation is contrary to the principle of information sharing emphasized by the former President of the World Bank in his introduction to the Disclosure Policy of June 2002. They state that the former President “*stressed the significance of information sharing as a substantial factor to achieve sustainable development and to improve transparency and accountability in development.*” They further state that “*he also stressed the significance of information sharing for promoting public support to efforts designed to improve people’s lives in developing countries.*”
17. The *third* issue concerns impacts of the reforms supported by the Grant. The Requesters state “*according to the World Bank, the implementation of the Institutional Reform Program in Yemen will lead to soaring prices and the increased suffering of the poor in the Yemeni society. Poverty rate, currently running around 45% will increase by 9.2% up to a total of 54.2%.*” They add that the Program will reduce wages by 1.6% of the GDP. The Requesters question the reforms proposed by the Program stating that the “*social cost*” of such reforms will be considerable and will result in an “*increase in poverty and unemployment.*” They add that had the Program contents been disclosed earlier, civil society would have been able to contribute by providing recommendations in relation to the adoption of fair tax policies and other options could have been proposed “*to provide resources through anti-corruption measures and the adoption of quality policies to address poverty and unemployment.*”
18. In the Notices of Registration, the Panel noted that the above claims may, *inter alia*, constitute non-compliance by the Bank with various provisions of the following Operational Policies and Procedures:

OP/BP 8.60 Development Policy Lending
World Bank Policy on Disclosure of Information (June 2002)

D. MANAGEMENT RESPONSE

19. On May 19, 2009, Management submitted its Response to the Request for Inspection.¹²

¹² Management Response to Request for Inspection Panel Review of the Yemen; Institutional Reform Development Policy Grant (Grant No. 336; YEM), May 19, 2009.

20. Concerning the disclosure of IRDPG documentation, Management states that it complied with the requirements of applicable Bank policies, since the Program Document was disclosed on the Bank's external website on December 11, 2007, within three working days of Board approval and hard copies of the PD were available in the Bank's Public Information Center in Sana'a.¹³ Management also stated that it was committed to facilitating access by the public to information disclosed by the Bank and has initiated translation of the IRDPG Program Document into Arabic and will provide the translation to the Requesters and other stakeholders within three weeks.¹⁴
21. Concerning participation, Management stated that it agrees with the Requesters on the importance of partnership with stakeholders as a substantial factor to achieve sustainable development and to improve transparency and accountability in development. Management states that it is satisfied that the requirement under OP 8.60 which requires the Bank to "*advise borrowing countries to consult with and engage the participation of key stakeholders*" was met. The Bank highlighted this requirement in a letter to the Government on December 5, 2006.¹⁵ The Bank supported the Government's consultations on the design of the overall policy agenda supported under the IRDPG. It adds that additionally, the Bank engaged in a three-fold set of consultations: i) during IRDPG preparation in December 2006 and March 2007; ii) sectoral consultations for each IRDPG component; and iii) consultations on related activities.¹⁶
22. Concerning the social impact of measures supported under the IRDPG, Management states that the measures supported under the IRDPG are expected to have a positive social and poverty impact.¹⁷ The corporate income tax will reduce exemptions and loopholes and is expected to increase fiscal revenues. The land registration law is expected to strengthen land property rights. The new procurement law is designed to strengthen transparency and competition; experience in other countries indicates that this reduces the incidence of corruption and lowers prices for publicly procured works, goods, and services. The independent audits of oil and gas payments are unlikely to result in any social costs, but may instead increase fiscal revenues that could be used to improve living standards. And the civil service reform is expected to have an overall positive social impact and compensation packages for retrenchments and retirements are generous by international standards.¹⁸
23. Though Management believes that it had made every effort to apply its policies and procedures in the preparation of the IRDPG, it regretted two oversights in document preparation. These are the absence of a description of the IRDPG consultation process in the PD and the late disclosure of the PID in the InfoShop

¹³ Management Response, p. 18 para. 56.

¹⁴ Management Response, p. v para. 8 and p. 21 para. 64.

¹⁵ Management Response, p. 11 para. 37.

¹⁶ Management Response, p. 12 para. 39.

¹⁷ Management Response, p. 19 para. 60.

¹⁸ Management Response, p. 19-20-21 para. 62.

by almost nine months. Management also believes that the Requesters' rights or interests have not been, nor will they be, directly and adversely affected by a failure of the Bank to implement its policies and procedures.¹⁹

24. In addition, Management proposes to pursue and strengthen participation processes in support of reforms in Yemen, to provide a translation of the PD to the Requesters and other interested stakeholders by June 2009, to review and enhance the system to monitor effective compliance with the disclosure policy and translation practices of PIDs, PADs, and PDs within the MNA Region, to continue monitoring the risks associated with the IRDPG in consultation with stakeholders, and to invite the Requesters to meet in May or early June at their convenience with Bank representatives to inform them about plans for the translation and discuss their concerns and ways to strengthen partnerships.²⁰

E. ELIGIBILITY

25. The Panel must determine whether the Request satisfies the eligibility criteria for an Inspection, as set forth in the 1993 Resolution establishing the Panel and the 1999 Clarifications,²¹ and recommend whether the matters alleged in the Requests should be investigated.
26. The Panel has reviewed the Request and Management's Response. A Panel team, comprising of Panel Member Alf Jerve and Operations Officers Serge Selwan and Mishka Zaman visited Sana'a, Yemen, from June 9 through June 12, 2009. During the visit, the Panel team met with signatories of the Request for Inspection, representatives of local Authorities, Bank staff, and civil society organizations.
27. The Panel wishes to express its appreciation to the Yemen Observatory for Human Rights and to officials of the Ministry of Planning and International Cooperation for sharing their views. The Panel also wishes to thank the World Bank Country Office in Sana'a for providing relevant information and assisting with logistical arrangements, and the Task Team Leader for briefing the Panel team on relevant aspects of the Program.
28. During the visit, the Panel confirmed that the Requesters are legitimate parties under the Resolution to submit a Request for Inspection to the Inspection Panel. The Requesters are residents of Sana'a, Yemen, and have common interests and concerns as required by Paragraph 9(a). Also, during the visit, the Panel met with seven civil society organizations that had signed the request for disclosure of

¹⁹ Management Response, p. 23 para. 69.

²⁰ Management Response, p. 22-23 para. 68.

²¹ Conclusions of the Board's Second Review of the Inspection Panel (the "1999 Clarifications"), April 1999.

Program-related documents addressed to the Bank Office in Sana'a. These organizations expressed their support for the request for inspection.

29. The Panel notes that facts stated in the Request "*assert in substance that a serious violation by the Bank of its operational policies and procedures has or is likely to have a material adverse effect upon the requesters*" as required by Paragraph 9(b).
30. The Panel considers that, in the context of consultation, participation, and disclosure of information with regards to Policy lending, the term "*material adverse effect*" includes the lack of opportunity of the Requesters to contribute to the preparation of the operation in question, and the adverse consequences that such lack of opportunity can result in.
31. In that context, the organizations the Panel met during the mission allege that the reforms proposed under the Program lacked credibility because of the manner in which they were put together. They further hoped for "*real participation in reforms because of the impact they would have on the country.*"
32. The civil society organizations the Panel met with in Sanaa confirmed that they were not involved in the consultation process leading to the design of this DPL. The Requesters asserted that "*up until now civil society had been sidelined in consultations, and only during the preparation of the new Country Assistance Strategy and the Disclosure Policy review [in March 2009] had there been good consultations.*" They added that these reforms are viewed as "*one-size fits all, taken from Eastern European cases and the poorest will bear the most burden.*" Furthermore, they stated that they had suggestions on "*other ways to increase revenues*" and to avoid the adverse impact that could result of these reforms.
33. The Requesters asserted that the Bank's refusal to translate the Program Document is an "*obscure*" way of operating that may have caused direct harm to the Yemeni civil society and population. They claimed that the way this operation was prepared did not enable them and other organizations of civil society in Yemen to contribute effectively to its design.
34. The 1999 Clarifications further provide that the Panel shall satisfy itself that the Request "*does assert that the subject matter has been brought to Management's attention and that, in the requester's view, Management has failed to respond adequately demonstrating that it has followed or is taking steps to follow the Bank's policies and procedures*" as set forth in Paragraph 9(c).
35. During the Panel's visit, as stated in the documents attached to the Request, the Requesters reiterated to the Panel the attempts they made to the Bank's Country Office to receive the documents relevant to this Policy Grant. They stated that the initial response of the Bank was positive, and the Bank sent them the document in its original language in English. However, because of their inability to read

English, they requested a translation into Yemen's national language, Arabic. The Country Office responded saying it was "*busy with other commitments*" and finds it difficult to do the translation. Nevertheless, over twenty different organizations petitioned the Country Office to reconsider translating the document, to no avail.

36. The Panel is, therefore, satisfied that the Requesters brought the Request's subject matter to Management's attention, and that the Requesters consider that Management failed to respond adequately.
37. The Panel notes that the subject matter of the Request is not related to procurement, as required by Paragraph 9(d).
38. As stated earlier, the Grant was approved by the IDA Board of Executive Directors on December 6, 2007. The expected closing date of the Grant is June 30, 2010. As of April 13, 2009, \$25.47 million, or 50 percent, of the Grant had been disbursed. Hence, the Request satisfies the requirement in paragraph 9(e) that the related grant is neither closed nor substantially disbursed.²²
39. Additionally, the Panel has not previously made a recommendation on the subject matter of the Request, thereby satisfying paragraph 9(f).

F. OBSERVATIONS

40. The Panel observes that the Requesters raise three main issues in relation to the Bank's obligations as per requirements related to consultation and participation in the relevant Policies (OP 1.00, OP 8.60, and Disclosure of Information).
41. Firstly, the Bank was not forthcoming when the Requesters asked for a copy of the PD in Arabic. Secondly, the Requesters asserted that the preparation process of the IRDPG did not give civil society organizations and other non-governmental stakeholders adequate opportunities to debate and potentially influence the design of the Program supported by the Grant. Thirdly, they allege that the reforms listed in the Program will not be beneficial, arguing that important elements of it are likely to result in increased levels of poverty, with reference in particular to the removal of fuel subsidies and a possible increase in taxes as a result of the proposed income tax reforms.
42. Regarding the *first* issue, the Panel notes that the Bank has taken action and that translation of the PD to Arabic has been carried out. The Requesters confirm receipt of the document on June 8, 2009. It is the view of the Panel, as well as the Requesters, that this issue has been resolved.

²² According to the 1993 Resolution, "[t]his will be deemed to be the case when at least ninety five percent of the loan proceeds have been disbursed." Footnote to §14(c).

43. Regarding the *second* issue, the Panel notes there are sharply differing views of the Requesters and the Management. The Management holds the view that the requirements under OP 8.60 pertaining to consultation were met. The Requesters in meetings argued that the consultation process had been inadequate, and gave preference to organizations that were uncritical of the reform program. The Panel notes that the issues raised in the Request related to participation and consultation are not restricted to the signatories of the Request alone. They were also of interest and concern to the civil society organizations the Panel met during the visit, most of whom were also part of the earlier correspondence with the Bank's Country Office. The Panel, however, recorded satisfaction of the Requesters with the consultation process that took place in March 2009 with regards to other Bank activities.
44. Regarding the *third* issue, the Panel notes that when it met with the Requesters they had just received the Arabic translation of the PD. Although they had earlier expressed an opinion that these reforms could result in harm, they were reluctant to express definitive views on the extent of the potential harm before having had time to carefully review the document.
45. The Panel notes that OP 8.60 requires the Bank to advise the Government to consult and engage with key stakeholders during the development of a DPL, to describe the consultative process and its outcome in the PD, and to make relevant analytical work available to the public as part of the consultation process. It also requires the Bank to analyze consequences on the poor and vulnerable, to summarize this analysis in the PD, and describe how issues identified would be addressed.
46. Furthermore, the Panel observes that the issue of removing fuel subsidies is only indirectly linked to the IRDPG. The Grant Agreement itself does not include any relevant tranche actions (triggers), while the Letter of Development Policy confirms that reductions in fuel subsidies are being planned and will be implemented "*awaiting reforms to strengthen social protection schemes*".²³

G. RECOMMENDATION

47. Regarding the *first* issue raised by the Request, the Panel notes that the translation in Arabic of the PD was provided to the Requesters. Furthermore, the Management Response adequately explains the circumstances of the Bank's actions and omissions in this regard. The Panel therefore, sees no need for an investigation of this matter.

²³ Program Document, Republic of Yemen: Institutional Reform Development Policy Grant, November 6, 2007, Letter of Development Policy, Annex 1 - Current Reform Program in Yemen: Objectives and Progress, p. iv.

48. Regarding the *second* and *third* issues, the Panel notes that the Requesters see them to be linked. Concerning the adequacy of participation and consultation with key stakeholders related to this Program, the Panel would need to conduct an appropriate review of relevant facts and applicable Bank policies and procedures in order to ascertain compliance or lack thereof. This can only be done in the context of an investigation of the points raised in the Request.

49. In view of the foregoing, the Panel recommends that the Board of Executive Directors approves an investigation into the matters raised in the Request for Inspection. Considering that Management has provided a translation into Arabic of the Program Document and thus resolved that issue, the investigation will not focus on this matter.