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To The Executive Secretary, The Inspection Panel

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THE INSPECTION PANEL

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1. We the members of the Officers of Customs and Excise Group Association (OCEGA) herein after called the Association, live and represent others who live in the country known as Pakistan. Our addresses are attached.
2. We have suffered and are likely to suffer more harm as a result of World Bank's policies pursued by the World Bank staff in connection with the execution of the Pakistan Tax Administration Reform Project (TARP) in Pakistan.
3. We are aggrieved by certain aspects of this Project that have caused harm not only to us as a Group but to the national economy of Pakistan as well and is likely to cause further damage if remedial measures are not undertaken by the World Bank.
4. Following is a brief background of our case:

Federal Board of Revenue (FBR) is the premier national tax administration agency in Pakistan. It is responsible for collecting and administering four main federal levies which are income tax, customs duty, federal excise duty and general sales tax. Tax administration is part of the federal civil structure which is known as the Central Superior Services (CSS). CSS consists of twelve so-called 'Occupational Groups' which are governed under certain laws and statutes. Each occupational group maintains a separate seniority of its officers which is based on the merit determined at the time of entry in any given occupational group after qualifying the nation-wide competitive exam conducted by the Federal Public Service Commission. Successful candidates are assigned to various occupational groups of the Central Superior Services on the basis of merit-cum-choice. Two of these twelve occupational groups of the federal civil service fall under the administrative control of the Federal Board of Revenue. These are Customs and Excise Group and Income Tax Group. Customs and Excise Group is responsible for collecting and administering three out of four federal levies, namely customs duties, federal excise duties and the general sales tax which are all indirect taxes, whereas Income Tax Group collects and administers direct taxes, most important being the income tax. This scheme of things has continued till a very recent decision of Government of Pakistan whereby a new

occupational group has been created within the umbrella of the CSS by the name of Inland Revenue Service (IRS) which has been entrusted to collect and administer all domestic federal taxes. This has been done as part of Tax Administration Reform Program (TARP) on the pretext of bringing in functional integration of all domestic taxes.

TARP was launched in 2004 with World Bank's assistance. Its aims and objectives were to fundamentally reform the Central Board of Revenue (CBR), which is now known as Federal Board of Revenue (FBR), and to create a more efficient and effective revenue administration system. Among other things the objectives of the project were "to improve organizational efficiency and effectiveness of revenue administration by creating an autonomous, transparent, and efficient CBR that is organized around functional lines, encourages self assessment and dispenses a fair and equitable process of tax administration. This will include modernizing tax operations for faster and reliable processing of tax returns, increased capacity for record keeping and management of data through effective integration of business processes and information systems. In addition, this will include improvements in staff productivity and morale through adoption of best practice policies for recruitment, training, performance evaluation and compensation."

(Source: World Bank's Project Appraisal Document, Report No. 30374-PK dated November 05, 2004).

According to Project Information Document, this Project was designed around a comprehensive reform strategy that included the following seven components (i) Management and Institutional Development; (ii) Improving Revenue Operations; (iii) Strengthening Revenue Services; (iv) Creating a Tax Compliant Culture; (v) Adopting Responsive IT Systems; (vi) Infrastructure Up-gradation and Development; and, (vii) Project Management and Implementation. Within the Management and Institutional Development the aim was to introduce strategic changes within CBR's organizational structure that would result in the redesigning of CBR headquarters and field formations on a functional basis and integration of all domestic taxes (direct and indirect) along functional lines".

(Source: excerpt from the Project Information Document (PID) Report No. 30640 prepared on November 13, 2004 and approved on December 7, 2004).

A perusal of similar other Project Appraisal Documents and Project Information Documents related with TARP shows that although the functional integration of domestic taxes was envisaged right from the initiation of tax reforms in Pakistan under this project but what was not envisaged was the administrative merger of Customs and Excise Group and Income Tax Group into one cadre and creation of a brand new service group in total disregard to the Constitution of Pakistan and all laws

and statutes that deal with service matters. Under immense pressure from the World Bank staff, Federal Board of Revenue through its Office Order No. 9(3)/2009-M.I dated 12.09.2009 and Government of Pakistan through the Establishment Division's Office Memorandum No.F.6/2/2009-CP.II dated 12.09.2009 have created Inland Revenue Service and have asked, inter-alia, the officers of the existing Customs & Excise Group (CEG) and Income Tax Group (ITG) to submit irrevocable options for inclusion or otherwise in the IRS (copies of these letters are attached as **Annex-I** and **Annex- II**). Those officers of the existing Customs and Excise Group who would not join IRS would become part of a truncated Pakistan Customs Service which will be responsible to collect and administer customs duties only. The above mentioned Office Order and Office Memorandum have contravened the Constitution of Pakistan, the Occupational Groups and Services (Probation, Training & Seniority) Rules, the Federal Public Service Commission Ordinance, 1977, the Civil Servants Act, 1973, Civil Servants (Confirmation) Rules, 1993 and Civil Servant (Appointment, Promotion, Transfer) Rules 1973. Officers of Customs and Excise Group have already filed a law suit before Lahore High Court and the court has issued an order of restraint to Government of Pakistan and to Federal Board of Revenue stopping them from going further ahead till a final judgment on the legality of this issue is announced by the Court (copies of the law suits filed before the Superior Courts and copies of Stay Orders issued by the Courts are attached as **Annex-III** and **Annex-IV**).

It is pertinent to mention that because of wider operational latitude and better chances of horizontal and vertical mobility, traditionally, the Customs & Excise Group has remained amongst top three choices / options of the candidates qualifying the Central Superior Services exam, while Income Tax Group is usually the 5th or 6th choice. Despite being fewer in number the officers of Customs and Excise Group have a proven track record of collecting more revenues than Income Tax Group as the taxes presently being manned and managed by the officers of the Customs and Excise Group constitute more than 60% of the entire national tax collection while direct taxes account for around 40% of the total federal revenues. Moreover a substantial chunk of the 40% revenue collected by Income Tax Group is in fact collected by the officers of CEG in the form of withholding tax at import stage. It is indeed unjust that a service group which is better performing in all respects is being made to suffer the most. By forcing officers of Customs and Excise Group to either join IRS or a truncated Pakistan Customs Service, the experience, knowledge and skills that have been accumulated over a period of decades will be wasted away, which our tax administration can ill afford at this critical juncture.

Furthermore the World Bank team that recently visited Pakistan in October-November 2009, to review progress on TARP recommended in their Aid Memoire to Government of Pakistan to bypass the

parliament and promulgate changes in the national tax system through a Presidential Ordinance as it would avoid the "undesired consequences" if the reform package was to be sent to the parliament (copy of editorial of daily *Business Recorder* is attached as **Annex-V**). It is ironic that the staff of an institution like the World Bank, which is engaged in strengthening democracy in the world, so openly flouts democracy's basic tenets, accepted world-wide: that parliament is supreme. Such sheer disrespect to the sovereignty of the parliament by the World Bank staff should be taken to task. The way TARP has been mishandled in the recent past by a group of consultants has also been criticized by the World Bank staff. A copy of one such email which expresses grave concerns on the lack of understanding on the part of these consultants about issues in Pakistan's tax administration is attached with our complaint (**Annex-VI**). It is thus quite clear that the advice given to Government of Pakistan by people working for the World Bank has caused violation of the law of the land and a violation of principles of merit, justice and parliamentary supremacy by unduly pressurizing the Government of Pakistan to create Inland Revenue Service through a Presidential Ordinance. The deviation from the original action plan of TARP which only envisioned merger of functions of all domestic taxes and not a merger of two service groups into one, has given rise to a huge controversy and legal battles which carry the risk of derailing the whole taxation system of Pakistan.

5. We also believe that some of the required safeguards were not followed before and during the execution of TARP. In support of this view Para II.D.4 of Section II of the of the Integrated Data Sheet (Report No. AC466) prepared/updated on 11/03/2004 pertaining to TARP is reproduced as follows::

"identify the key stakeholders and describe the mechanisms for consultation and disclosure on safeguard policies, with an emphasis on potentially affected people.

This project does not trigger any of the safeguard policies; however, keeping in view the social impact of any of the project activities on lives of the people, stakeholder consultations have been ongoing.

The stakeholders include the following:

(i) Staff of CBR, (ii) Government and agencies and autonomous bodies, (iii) accounting firms and bodies, (iv) tax lawyers, (v) trade associations, (vi) Federal and Provincial Chambers of Commerce, (vii) Private Sector businesses, (viii) individual taxpayers, and (ix) civil society at large. A series of consultations were held with these groups in different parts of the country to inform them about project design and its objectives and receive feedback. Regular consultations are also built-in as part of project design for disseminating information and assessing the impact."

Contrary to what is stated in the above quoted paragraph, voice and concerns of Customs and Excise Group, which is one of the most important stakeholders in the entire reforms process, were never taken into account by the staff of the World Bank that has remained associated with TARP, which is a clear violation of Bank's policy of ensuring social safeguards. The World Bank staff was made aware of our legitimate concerns through several emails that were sent to them but we did not receive any response which again is a violation of para 10 of the World bank's Operational Manual- BP 13.05- Project Supervision document which clearly stipulates that "As appropriate, the TT (Task Team) visits the project sites and facilities to review progress, provide advice, meet with project beneficiaries and stakeholders..." Despite several attempts by the Association to arrange a meeting with the visiting World Bank Task Team to apprise them of our concerns, we did not receive any response from them whatsoever. Copies of some of these emails are attached as **Annex- VII (a-f)**.

6. We the officers of Customs and Excise Group believe that the creation of IRS at the behest of World Bank staff has unduly penalized us as a group and we are being disproportionately disadvantaged. If the new service structure goes ahead as dictated by the World Bank staff, the officers of CEG will lose their operational latitude, promotion and career prospects and it will jeopardize the terms & conditions of their service which are otherwise safeguarded by the Constitution, as well as the rules governing the services of the Federation of Pakistan. As a result of Bank's policies, two service groups within the Federal Board of Revenue namely the Customs & Excise Group and the Income Tax Group are at loggerheads with each other; the vicious cycle of which has the potential to implode our tax machinery. The controversy surrounding the creation of IRS has taken the focus away from the real issues that the tax reforms were aiming to address. What Pakistan cannot afford at this critical stage is the complete break-down of its tax machinery which in turn would seriously impair Government's ability to collect much-needed revenues and to bring economic stability which, needless to say, is closely linked with the overall security and stability of the country.

Let us reassure you that we are not against tax reforms as long as they stay focused on achieving their stated and original objectives of making the tax system more transparent, vibrant and taxpayer friendly. If these objectives can be achieved by merging the functions of all domestic taxes under one hierarchy, as was the original plan, we have always been ready for that as well. It is only the deviation from the original objectives which is being carried out in an arbitrary and conspiratorial manner on the advice of a few consultants who do not comprehend the context and nuances of Pakistan's taxation system that has caused a grave concern for us. Instead of creating "champions of change" within Federal Board of Revenue and bringing in "improvements in staff productivity and morale" which were

among the original objectives of TARP, the misguided policies of the World Bank staff have resulted in a situation where an entire work force is highly disgruntled, demoralized and uncertain. This certainly does not augur well for the continuity and sustainability of the reforms once TARP is over. Because of Bank staff' misguided advice to FBR and to Government of Pakistan, the entire tax machinery in Pakistan is at a standstill. In all 13 Regional Tax Offices and 3 Large Tax Payers Units all over Pakistan, there is an open confrontation and strive between FBR' s management on one side and staff and officers of Customs and Excise Group on the other side. Copies of some of the letters that have been written by senior officers posted in these field offices to FBR Management in Islamabad Headquarters are attached that depict the gravity of the situation and the mess that has been created in our national tax administration.

7. We have complained to the World Bank staff on numerous occasions through emails and have tried to apprise them of ground realities and have requested them to at least listen to our viewpoint but so far we have not received any response from them.

8. We request the Inspection Panel recommend to the World Bank Executive Directors an investigation of the matters be carried out.

9. We **DO NOT** authorize you to disclose our identities.

Signatures: Attached

Date: 12-22-2009

Key Contact Person:

List of Attachments:

1. Signatures of complainants
2. Copies of Writ Petitions filed by officers of Customs and Excise Group before High Courts And Courts' Orders
3. Copy of editorial in the daily, *Business Recorder* dated 11-04-2009.
4. Copies of emails sent to World Bank staff working on TARP
5. Copy of email written by _____ a World Bank staff.

NOTE FROM INSPECTION PANEL

Attachment 5 was removed in the interest of confidentiality.

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