

Summary of Targeted Discussions with Bank Management

By Jean Aden

Introduction

This is a report of informal targeted discussions with World Bank staff on issues and opportunities for updating the Operating Procedures of the Inspection Panel of the World Bank, within the ambit of the Resolution establishing the Panel and its subsequent Clarifications. The Panel's widely distributed newsletter, the *Update*, announced the updating process and solicited comments in June 2011. These discussions were undertaken from August to November 2011, following terms of reference established by the Panel.

These informal targeted discussions represent the Inspection Panel's first systematic outreach to Bank Management and Staff for their inputs and ideas on the Panel's Operating Procedures, which date from 1994. From a pool of approximately 90 Bank Management and Staff with prior experience of one or more Panel cases, 56 Management and Staff were invited to participate in the discussions, of whom 15 declined.

Forty-one World Bank Management and Staff with personal experience of the Panel process were interviewed. Participants in the confidential interviews ranged from Project Team members to Vice-Presidents, across all regions and including non-regional staff. Thirty-four participants were interviewed in face-to-face meetings at Bank Headquarters; another four were interviewed through conference calls to country offices in Africa, Latin America and the Caribbean, South Asia and East Asia and the Pacific; and three participants sent written replies to interview questions. Participants included 26 staff and 15 Management. Management included five Vice-Presidents and two Country Directors. The regional distribution of interviewees generally reflected the distribution of Panel cases by region.

What follows is a literal report of Management responses. To the maximum extent possible, the report reflects Management's own voice. The author's comments and general evaluation are restricted to the Conclusion.

Narrative

Bank Management and Staff acknowledge the benefits of the Panel to the Bank. The Panel process, they say, gives the Board a way to ask complex questions when issues are raised concerning compliance. The Panel does its work and Management responds, which allows the Board to hear a range of views. The process allows the Board to make informed assessments of key issues and how Management can address them. For Management, the Panel process can be a tool to address issues on the ground that it might not capture through its own observations. For Project Teams, the process can create incentives to work more closely with clients and opportunities to obtain better results quickly on the ground. As a result, the Bank receives significant recognition for its

willingness to support the Panel as an independent body, thereby underscoring the Bank’s commitment to transparency and accountability.

However, Management and Staff also cite concerns about the Panel process. The Panel’s interpretation of the Bank’s policies and safeguard rules can be expensive, time-consuming and disruptive. The investigation process can be adversarial and high-pressure, leading in some cases to intensified risk aversion and blockage of lessons learned among Managers and Staff alike. Task Teams’ incentives to help facilitate mitigation of harm to Requesters may not align with incentives to demonstrate compliance with Bank policies. Investigations that extend for over a year after the Request for Inspection can place Project Teams, Requesters and the Panel at a disadvantage.

To address these concerns and better secure the benefits of the Panel process, this discussion focuses on a set of nine potential areas for improving the process (see Figure below):

- improving due diligence at the registration phase;
- clarifying information during the eligibility phase;
- fostering problem-solving;
- speeding up investigations;
- improving transparency and involvement of Requesters in the process;
- supporting effective interaction with Management and other stakeholders;
- promoting corporate learning;
- fact-finding follow-up to the process; and
- increasing public awareness of the process.

This report presents participants’ observations drawn from personal experience of the Panel process in the nine areas, including recommended updates to the process in six of the nine areas.

Summary of Management perspectives

Due diligence at the registration phase

Respondents stated that not all Requests should be registered. There is a widely shared concern that registration of a Request “locks in the bureaucratic machinery, initiates the compliance process, and then you have lost two years.” There should be a less bureaucratic approach and a structured discussion between Management and the Panel before registration, to allow Management to inform the Panel about the project and the Requester. Respondents recommended a collaborative phase in the beginning, where the Panel would offer Management a certain timeframe to fix problems, or make space for a project-level grievance mechanism, and then monitor the results. Some questioned whether delaying registration makes an already slow process longer and more costly to all parties.

Some respondents mentioned instances of no, or virtually no, contact between Requesters and Management before submission of a Request. There were concerns about a lack of definition of prior contact on an operational level, such that the Panel might deal with this requirement arbitrarily. Respondents said the Panel should clarify to Requesters the procedure for filing a complaint, and not allow people to think they can access the Panel without a prior effort to resolve issues beforehand with Management. Requesters should make a good faith effort to engage Management. If a letter to Management and a letter to the Inspection Panel are sent the same day, that is not a good faith effort. There should be a real interest in finding a genuine solution, not just checking something off a list before the Requesters can put the Request in the Panel's hands. There should be more screening of Requests and judging of Requesters before registration.

Respondents recommended that:

Operating Procedures should codify the prior contact requirement.

The methodology or steps used by the Panel to determine requesters' prior contact with Management should be in best practice guidance, not in procedures.

Clarity of information during the eligibility phase

Respondents offered detailed comments on this issue. There is a widely shared view that the Panel frequently determines as eligible cases that Management broadly feels do not have merit and, as a result, ends up pursuing investigations that should never have been registered in the first place. Eligibility criteria need to be clarified. The Panel should ensure that the subject of a Request really resulted in material harm to Requesters, and that the harm is really attributable to the project and to a violation of Bank policies. That people in a project area may be generally unhappy with a project should not determine eligibility.

Regarding the Management Response, Respondents noted that because it is viewed as the only chance to make a case for not conducting an investigation, everyone knows that preparation of the Response is the top priority in the 21-day window following registration of a Request. While one Staff stated that the 21 days were adequate, most had concerns that work on the Management Response is generally time-consuming, expensive, and upsets other projects when Staff are pulled off another project to work on the Response. Under such circumstances a result may be obtained, but the studies may not be very high in quality, or the deadline may not be met. While the 21-day limit is specified in the Resolution that created the Panel, many Staff emphasized that some cases require more time, and the timeframe for the Management Response should be extended.

Respondents recommended that:

Operating Procedures should clarify eligibility criteria.

A best practice note should provide a template or guidance for preparation of a Management Response.

Fostering Management problem-solving

Respondents expressed broad interest in the Panel providing space for Management to address problems raised in a Request, before determining whether to proceed with an investigation. Several cases were mentioned, in which the Panel has deferred the eligibility decision or commencement of an investigation, on the basis of Management taking a proactive approach to work with Government and Requesters to resolve issues raised in a Request, and facilitate agreement on an Action Plan during the eligibility phase. By so doing, the Panel could provide a more graduated response, more in proportion to the urgency and degree of harm involved in issues raised in a given Request.

There was discussion of how problem-solving might be structured. While one Respondent commended the Panel's support of Management's efforts in a particularly complex case, another called for a project-level grievance mechanism, separate from the Panel. This latter Respondent stated that while the Panel's mandate does not include an active problem-solving role, it does have the authority and skills to create a space for Management to prepare Action Plans. This Respondent further stated that direct Panel involvement in supporting opportunities for problem-solving could lead to conflict of interest and blur the Panel's independence.

Respondents provided on-the-ground perspectives on problem-solving during the registration and eligibility phases from three regions:

- Management in one region called for a structured eligibility process, in which the Panel would say to Management, we have visited the case area, here are the key issues. Tell us what you are doing about the issues, and how they could be addressed. An Action Plan could be put in place that might resolve the issues. This kind of communication and collaboration would not affect the Panel's right to investigate later. The Panel could say, we don't think you're taking it seriously enough, or the problem is beyond what Management sees, or we don't think that's an adequate response, and proceed with its investigation;
- In another region, Management proactively begins work on an Action Plan upon receipt of a Request, before the Panel visits the project area. Regional Management goes immediately to the community, asks what's wrong, and offers to facilitate a conversation between the Government and the Requesters. When the Panel arrives, an Action Plan will have been consulted with Government, and should be ready for immediate implementation. Observing that the Panel process can take years, Regional Management says people should not have to wait for resolution. This isn't an adversarial interaction between Management and the Panel, says Management – it's a check and balance;
- In a third region, Management has concerns about making space for problem-solving within the Panel process. That is, there is concern that if Management takes part in problem-solving, this may be viewed as implicit acknowledgement of non-compliance. As a result, Task Team Leaders (TTLs) in this region lack incentives to support problem-solving.

Respondents recommended that:
While maintaining the independence of the Panel, the Operating Procedures should provide for greater use of mediation in the Panel process.

Speeding up investigations

There is widely shared concern about the timeliness of the investigation process. Respondents observe that while the Panel does not appear to adhere to any time schedule during the investigation, it enforces the Management Response and Report and Action Plan deadlines (21 days and 6 weeks respectively) to the day. Accountability should be a two-way street. Projects are often paralyzed during investigations and if there is actual harm, the paralysis and harm may persist until the findings of the investigation are shared. Speeding up the process would be fairer to Requesters, who have had to wait for up to two years for a response from the Panel.

Respondents suggested several ways to make investigations more efficient:

- First, set a timeline for completion of an investigation. While an extension would be possible, there should be a performance standard, such as 10 to 12 months.
- Second, the Panel should focus the investigation on issues raised in the Request, and should not expand the scope of an investigation. Several Respondents observed that where there is a Request about X issue, the Investigation Report frequently says, by the way, there is also this Y issue and you should fix that. Keeping recommendations focused on the Request and fixing problems expeditiously should be the top priority. Sometimes there are issues of poor performance that could be improved, but unless such performance resulted in harm, the Panel should leave it out of the investigation.
- Third, Respondents called for clarity in the Investigation Report about how an action or omission by the Bank caused harm to the Requester.

Respondents further suggested that the Panel should hold discussions with the Task Team during an investigation, and discuss findings with Management before finalizing an Investigation Report. Simplifying the presentation of findings was also recommended.

Respondents recommended that:
A best practice note should set a timeline of 6-12 months for completion of an investigation.

Improving transparency and involvement of Requesters

There is a widely shared concern among Respondents regarding Requesters' access to the Panel's Investigation Report during preparation of the Report and Action Plan, prior to Management's submission of the Report and Action Plan to the Board. As provided under the 1999 Clarification (para. 15), Management should consult with Requesters during preparation of the Report and Action Plan and communicate the nature

and outcomes of the consultation to the Panel, and the Panel should report to the Board on the adequacy of the consultation. However, procedures for Management to communicate the consultation to the Panel and for the Panel to report to the Board are lacking.

Project Teams have access to the Investigation Report during preparation of the Report and Action Plan, but state that they lack authority to share the Investigation Report with Requesters, pending Vice-Presidents' sign-off and Board approval. Management is concerned that if the findings of the Investigation Report and main points of the Action Plan are shared during consultation, Requesters may get the impression that the Action Plan is up for negotiation and should address every point raised in the Request. According to some Managers, people may complain about all sorts of things, and express wishes that may or may not have anything to do with compliance and harm under the project. The purpose of the Action Plan, they say, is to get to compliance and mitigate harm, not meet every expectation.

In at least one case, the Requesters have made access to the Investigation Report a condition of participating in consultations on the Action Plan and, unable to access the Report, have refused to be consulted.

A majority of Respondents on this question said that Requesters should not know the contents of the proposed Action Plan, much less the Investigation Report, before the Board considers these documents. However, a few Respondents stated that they recognized the Requesters' right to know what is being done about the Request they have filed, and suggested ways to balance this right with the necessity to prepare an Action Plan within the six-week timeframe specified in the Resolution that created the Panel:

- One advised against sharing findings of the Investigation Report and the proposed Action Plan with Requesters in advance of the Board's consideration of these documents, because these documents are part of a deliberative process. However, in the interest of transparency, this Respondent felt that Requesters should be informed of the Panel's findings and the provisions of the proposed Action Plan at the same time Management submits the Action Plan to the Board.
- Another Respondent suggested that Management might consider consulting on the Action Plan in creative ways, such as making it a living Action Plan, and providing a framework for making adjustments to the Action Plan after the Investigation Report and Action Plan are made public.

Effective interaction with Management and other stakeholders

There is a widely shared view among Management that the Panel is too distant, that interaction with the Panel tends to be bureaucratic and adversarial, and increased interaction is needed to share case-relevant information. Respondents say that during registration, the fact that the Operating Procedures are arm's length and quite antiseptic precludes substantive engagement. Staff spend time writing the Management Response, but question whether this is the best way to resolve the Request. During protracted Panel investigations, there is little or no communication between Management and the Panel.

At the same time, a few Respondents report good communication with Management and the Project Team, where issues are presented and debated in depth, throughout the Panel process.

One Manager offered a more nuanced view of formal versus informal communication. In this Respondent's region, the Panel and Management know each other, and have productive informal discussions during the Panel process – to a point. However, formal interaction, in which both parties exchange views, while ensuring that the Panel protects its independence, is also essential. This sets limits on both sides. For the Panel, as one of the Bank Group's accountability mechanisms, frequent communication with Management is possible, but at the end of the day, some limits on interaction must be maintained, or the Panel will no longer be considered independent.

Suggestions for improving interaction between the Panel, Management and other stakeholders are as follows:

- Management offered two specific suggestions:
 - allow Management to question the Panel's findings, which are sometimes incorrect; and
 - given that registration of a Request starts the clock in the 21-day Management Response timeframe, the Panel should respect national holidays, seasons and leave in measuring the 21 days.

- Country Office Staff observed that interaction between the Panel and Government can be difficult, because most Governments want the project and resent the Panel “torpedoing” the project, making Government and the Bank look bad, and opening consultation with citizens outside their structure. Country Office Staff urged that the Panel be more understanding of the complex dialogue between Management and the Government, and provide more flexibility to Management. The Panel should be aware that Governments do not understand its purported neutral stance toward Requesters, and believe that the Panel favors the Requesters. Although the Panel process is supposedly internal to the Bank, it is perceived that the process addresses failures of the borrower, albeit indirectly, and impacts both Government counterparts and the Project. Country Office Staff also observed that a lack of shared information about the case going forward is not in anyone's interest, and suggested that information about Panel actions, field visits and contacts with Requesters should be shared with Management and Task Teams.

- Regarding interaction between the Panel and Requesters, one Respondent indicated that the Panel's communication with the Requesters is unstructured, and includes disclosure of information in the Bank's internal documents. Although this perception may be mistaken, it reflects unease on the part of some staff regarding confidentiality of project information.

Respondents recommended that:
A best practice note should:

- *recommend structured discussions between the Panel and the Project Team and/or Management during registration, eligibility and/or investigation phases, to enable the Panel to understand more deeply the context of the project and the Request;*
- *propose that Panel interviews with Bank Staff should no longer be tape-recorded; and*
- *clarify the Panel's independence, accessibility to all stakeholders, and responsibility to give voice to project-affected people.*

Promoting corporate learning

One Respondent reported that selected Panel cases have provided lessons learned at the sectoral level. For example, in an extractive case where mapping was a key issue, sectoral Staff absorbed and are now applying important lessons in community consultation in new projects. In this case, community mapping was a focal point, and lessons in community consultation, governance and land-use planning for the extractive sector were a valuable by-product of the Panel process.

At the corporate level on the other hand, Staff tend to remember the punitive cases, and widely shared fear of recriminatory action affecting careers obscures the richness of potential lessons learned. Several Respondents stated that the Panel needs to address the trade-off between learning and cases perceived by staff as adversarial and litigious, and spoke favorably of the advisory role of the CAO.

Despite these concerns, other Staff recognized that the Panel process contributes to Staff's experience and ability to improve future projects. Staff recommended that the Panel consider creating knowledge products and shorter, crisper case summaries that model what accountability could be.

Respondents recommended that:
Drawing on its large body of cases, the Panel should develop and disseminate knowledge products and short, crisp case summaries that model what accountability could be.

Fact-finding follow-up

Regarding the question whether the Panel should follow up and report on implementation of Management Action Plans after Board approval, Respondents stated that Management has the primary responsibility for monitoring the implementation of the Management Action Plan. Given that the Inspection Panel's role is independent investigation of complaints, there should be no dilution of either role. One Respondent said that if the Board asks the Panel to conduct a follow-up visit to the project area, as has happened several times, the Panel must do so, and report to the Board. But overall, if the Panel were to regularly monitor implementation of the Management Action Plan, that would be mission creep, crossing the line between the accountability role and Management's role in designing, implementing and monitoring projects.

On the other hand, one Project Team member commented that the Team would like to see the Panel return to the project area, to determine whether the Task Team has accomplished the implementation of the Action Plan, and whether implementation has reached a point where the problem has been addressed and can be reported “*accomplished*” or “*resolved*.” Per this Respondent’s suggestion, the Panel could report, for example, “*half-way done*” or 100% done or not done, or needs more work. Another Staff agreed that the Panel should not conduct regular monitoring of Action Plan implementation, but rather, when requested by the Board on a one-off basis, should follow up on implementation, in order to “*keep everybody honest*” and informally assess whether the Panel process has added value.

Increasing public awareness

One Staff noted that Headquarters- and Country Office-based Staff regularly inform local Project Teams about the Panel process. When the Operations Policy and Country Systems (OPCS)¹ provides safeguards training in a borrowing country, information about the Panel is ordinarily part of the training, the message being that the Bank has this body that looks over its shoulder, and a description of safeguards in the Bank is not complete without information on the Panel. To this Respondent’s knowledge, however, neither OPCS nor any other Bank visitor to project areas informs project-affected people of the Panel’s existence, functions or accessibility.

Another Respondent believed that Governments know of the existence of the Panel, but was not sure whether information about the Panel reaches villages. This Respondent observed that generally project-affected people are not comfortable complaining to a project director.

Conclusion

Operating Procedures should be updated as follows: provide for greater use of mediation at the project level prior to or during the Panel process; and clarify eligibility criteria (establishing harm that is attributable to the project and to a violation of Bank policies).

During the registration phase, procedures and prior contact requirements need to be clarified, and Requests should not be registered without proof that the Requesters have made a good faith attempt to resolve the problem before going to the Panel.

During the eligibility phase, Management should be given space to support problem solving without infringing upon the independence of the Panel.

Best practices should include:

- holding structured discussions between the Panel and the Project Team and/or Management during registration, eligibility and/or investigation phases;

¹ The OPCS guides World Bank policy formulation and review and monitors compliance with policies.

- clarifying actions to reinforce the Panel’s independence, accessibility to all stakeholders, and responsibility to give voice to project-affected people;
- providing guidance for preparation of Management Responses;
- ending taping of Panel interviews;
- establishing a tighter timeline for completion of Panel investigations;
- following up on implementation of Action Plans when requested by the Board on a one-off basis, but stopping short of regular monitoring of Action Plans; and
- disseminating knowledge products on lessons learned to a Bank-wide audience.

The overall challenge is to provide some flexibility to Management while maintaining the Panel’s independence during the Panel process. At the registration and eligibility phases of the Panel process, good judgment by the Panel, rather than hard and fast bureaucratic rules, should be the preferred means of carrying out the Panel’s mandate.

Frequency of Suggested Improvements by Topic

