

Summary of Targeted Discussions with External Stakeholders

By Lori Udall

I. Introduction

In June 2011 the Inspection Panel launched a public review process of its internal operating procedures. The review is being conducted within the ambit of the Panel's governing documents (1993 Resolution, and 1996, 1999 Clarifications) and is seeking input from a variety of internal and external stakeholders. This summary paper reflects the views of a set of external stakeholders including requesters, civil society organizations (CSOs), former Panel members, Independent Accountability Mechanism (IAM) peers, and Panel consultants.¹

Methodology for seeking input included requests for input through a questionnaire to a selected group of 165 external stakeholders through targeted group discussions, in person and phone interviews, email exchanges, and written responses. Broader input was also sought in the Panel's June 2011 newsletter. Input was received from 13 requesters from 5 regions, 15 IAM peers from 6 IAMS, 16 CSO representatives from 5 regions, 6 former Panel members from 4 regions and 14 consultants from 5 regions.

Among external stakeholders there is strong support for the Panel's unique role in the Bank that provides an avenue and voice for project affected people to seek an independent investigation of compliance issues and concerns. The Panel is still highly regarded as a state of the art compliance mechanism that provides a model for other IAMs.

- *There is broad support for updating the Panel's operating procedures that many stakeholders suggest are legalistic, complicated, inaccessible and antiquated.* A question presented about the strengths and weaknesses of the Panel procedures and process revealed some of the following insights:

Panel Strengths:

- Panel independence from Bank management;
- Diligence and Integrity of Panel Investigations;
- Solid history of investigative reports;
- State of the art compliance mechanism that provides a model for other IAMS;
- High caliber of Panel members and secretariat;
- The Panel process gives a voice to affected people and leads to greater information disclosure;
- Provides ample opportunity for management to give input and respond.

Panel Weaknesses:

¹ The views presented in this paper reflect inputs received, some of which may fall outside the scope of this review.

- The Panels mandate is too limited (lacks monitoring and advisory functions);
- The Panel lacks the power to make recommendations to suspend projects;
- The Panel's work is not binding on management;
- The 95% rule is far too technical to be in eligibility criteria; Panel Procedures are too legalistic;
- Panel's findings may not lead to an outcome that addresses requesters' needs and concerns;
- Management interference with the Panel process threatens Panel independence; and
- Management drives up costs of the Panel process by involving too many lawyers and too much bureaucracy in its response.

This paper covers nine issue areas including improving public awareness of the Panel, registration phase, eligibility phase, management problems solving, investigation phase, improving transparency and requester's access to the Panel, effective interaction with governments, Management and the Board, promoting corporate learning; and Panel follow-up (when requested by the Board). This paper summarizes key comments and concerns of external stakeholders who have direct experience and involvement with the Panel process.

II. Improving public awareness of the Panel's Availability as an Accountability and Recourse Mechanism

Among most external stakeholder respondents there was a view that the Panel and its operating procedures and process are still not well known or accessible to project affected people. Some stakeholders suggested that if it were not for CSOs and NGOs (both local and international) many requests would not have been filed due to the lack of information in local languages, complexities in the procedures, and the perception of difficulty to access the Panel. CSO respondents were concerned that in the future it will be even more difficult for affected people to access the Panel due to the changing nature of the Bank's portfolio (country systems, PR4, development policy lending, *inter alia*). *CSOs and requesters underscored that Bank management and field offices do not do enough to make the public aware of the Panel in-country as required by the 1996 Clarification.* These respondents' recommended that it is equally management's responsibility to improve public awareness of the Panel.

Respondents' suggestions for improving the Panel's public awareness in borrower countries include:

- Notice Boards and leaflets on the site of WB funded projects;
- more information on the Bank's website and field offices;
- direct contact between the Panel and the requesters before a request is filed;
- the Bank's communication's staff should have regular contact with media and project affected people to disseminate information about the Panel;

- WB field offices should hold an “*Inspection Panel Day*” once a year for the Panel to interact with project beneficiaries and affected people in country; and
- Panel information should be in local languages.
- Environmental Impact Assessments and Project Appraisals should include information about the Panel.

Suggestions for updated procedures: A majority of the respondents stated that the Panel’s communications and outreach strategy or plan should be broadly outlined in its updated procedures. A minority view recommended that outreach and communications should not be in the procedures because the Panel should be flexible when it implements its strategy.

III. Due Diligence and Interaction with Requesters at the Registration Phase

A majority of the respondents stated that registration is an administrative step that should be completed within a set timeframe (5-10 days) after the request comes in to the Panel. This view underscored that prompt registration is “*the spirit and letter of the Resolution*” which directs that once the Panel receives the request it should “*promptly*” inform the Board and the President of the Bank.² These respondents suggested that management problem solving at this stage is clearly inappropriate since there is already a requirement that the requester have tried to solve issues with management prior to filing a request. As one CSO stakeholder stated: “*Waiting to register a request is outrageous. This undermines the transparency and credibility of the Panel process.*” A minority view suggested that stepping back for management to problem solve at this stage was appropriate, but even then it should be publicly acknowledged, and *only* if the requesters agree.

Some requesters and CSOs also recommended that at the registration phase the Panel should have more contact with the requester to determine what is lacking in the request and the Panel should counsel and advise the requesters on the process moving forward and any need for further documentation. Also if it is apparent that the requester did not have prior contact with management then this would be the stage to provide the requester with information about this requirement.

Suggestions for the updated procedures: The Panel should clearly and simply state in the procedures when it will register a request (how many days after receipt) and what registration means in practical terms.

IV. Ensuring Clarity of Information in Describing Findings in Eligibility

There was a variety of stakeholders’ views on the eligibility phase. CSOs and requesters were concerned that the requirements for eligibility are difficult for project affected people to understand and access and stated that the criteria should be explained clearly to requesters.

² World Bank, Resolution Establishing the Inspection Panel, September 22,1993, para 17.

Another group of respondents were concerned with Management's practice of second guessing the Panel in its initial response to a request by challenging eligibility of the requesters. These stakeholders underscore that the Panel Resolution dictates that it is the Panel's authority to determine eligibility of the requesters (and within this to determine if prior contact with management was sufficient). These respondents *recommended strongly* that management and Bank legal counsel adhere to the resolution and not be allowed to comment on eligibility. These stakeholders also strongly suggest that Management "*drives up the cost of the Panel process*" by writing responses that undermine the Panel, comment on eligibility and other issues outside the Resolution.

A majority of respondents felt that there is no need for the Panel to put any more details about how it determines eligibility in the updated procedures. However, it was suggested that it be clarified in the procedures that there are no requirement for requesters to cite policy violations, as per the 1999 Clarification. Respondents also suggested that the Panel needed flexibility in determining eligibility, and that the Panel (if needed) could put this information in a best practice note. A minority of respondents recommended that the Panel clarify how it determines prior contact with management in the procedures.

Suggestions for updated procedures: The requirement for requesters to cite policy violations should be dropped from the procedures because the requirement was dropped in the 1999 Clarification and is not used in practice.

V. Fostering opportunities for Management to address problem solving during the early stages of the Panel Process

The Panel Resolution, Clarification and Panel Operating Procedures are silent on the issue of management or Panel "*problem solving.*" Over the last few years, in special circumstances, the Panel has in practice "*created space*" for management to problem solve if there is a concrete action plan, the requesters want a problem solved by management and the Panel agrees.

There is a broad range of stakeholders opinions on whether the Panel should "*create space*" or slow down the Panel process in order for management to problem solve with requesters either before registration or during eligibility. Some respondents strongly recommended that the Panel process should not be slowed down or interrupted in order for Management to "*fix*" problems. This view underscored that there is nothing in the Panel's Resolution or Clarifications that allows for Management or Panel problem solving and that the Panel should simply adhere to its mandate of compliance review. Other respondents suggested that allowing for problem solving opened the Panel up to "*manipulation by management*" as well as public criticism for lack of transparency. There was also concern that the requesters' main issues would be lost or manipulated in such a problem solving process.

Respondents' opposing views were that as long as the requesters wanted problem solving and there was a clear action plan to fix a problem, then the Panel should create the space

for this to happen. This view also recommended that the Panel needs to be transparent about the process and conditions for this determination to move ahead with problem solving. One respondent stated that a protocol should be developed for discussing requests with management during the early stages of a Panel inspection. **In all instances, there was a widespread view that the requester should be in total agreement with any problem solving plan or the Panel should not proceed.**

Suggestions for the updated procedures: The Panel should include in the procedures the exact conditions or criteria for creating space for management to problem solve, and indicate that it will set a time frame for such activities.

VI. Speeding up the Investigation Process

There is broad agreement among stakeholders that the Panel investigation phase is too long and the Panel should ensure that it is shortened in the future. The lack of updates from the Panel to requesters and other stakeholders during the investigation phase was also raised (this is covered in section VII below), as well as the need to create an internal timeline at the beginning of the investigation phase that could be shared with stakeholders. The fact that requesters do not know how long an investigation phase will last have recently caused frustration in a few cases. Some respondents recommended that if an internal timeline was created; there should be a loophole to lengthen it if needed.

A number of consultants commented on the need for extended site visits, even though they felt the overall phase was too long. These consultants suggested that gathering data in a short period was difficult due to language barriers, ineffectiveness of community meetings or hearings, and stratified communities where stakeholders cannot be properly consulted in a short visit. It was recommended that social scientists, in particular, have more time to meet individuals and smaller groups.

Two consultants commented on the inefficiency of the report writing process during the investigation phase, and made concrete suggestions for improving it (See consultant matrix).

Suggestions for the updated procedures: There should be a general guideline for investigation (i.e. 6 months) with a caveat for extension during difficult cases. The Panel should create a timeline for each request on a case by case basis (indicating time frame for field visits, report writing, etc.) and make it available to requesters and other stakeholders.

VII. Improving Transparency of the Panel Process, including requester access to Panel investigation findings when action plans to address these findings are being developed

There is broad support for increasing transparency of the Panel process generally, and in particular, support for increasing requesters' access to the Panel process, especially during the investigation phase, action plan development and before the Board meeting. There is broad concern that the requesters are not represented at the Board meeting. As

one requester stated: “*We should have access to the Panel’s final report before the Board meeting because everyone is represented [in the Board meeting] except us. If the rules don’t allow the whole report to be released at a minimum the findings and recommendations should be released.*”

In addition, (as required in the 1999 clarification), respondents strongly recommended that management, as a matter of accountability; adequately consult with requesters on any action plan which is designed specifically to respond to issues raised by the requesters. Also required by the clarification, management should communicate to the Panel the outcomes of its consultations on the action plan and the Panel should then regularly report to the Board on the adequacy of the plans.

Stakeholder suggestions for improving requesters’ access to the Panel process:

- Requesters’ should be able to attend board meetings or send a representative to the meeting. This will help clarify for the Board the requesters’ views and allow requesters to understand the Board decision;
- The Panel should send monthly or frequent updates to the requesters during the investigation phase;
- The requesters should be consulted by management on the preparation of the action plan (as required in the 1999 clarification) and there should be an open period for comment on the action plan which must be disclosed to requesters in order to ensure its credibility and viability
- The Panel should fill its mandate to determine whether Management adequately consulted with requesters in developing an action plan;
- The Panel should contract with a trusted independent local consultant who can act as a liaison between the Panel and the requesters during the investigation phase;
- In lieu of releasing the Panel’s report before the Board meeting, the requesters should receive information (a summary) about the contents of the Panel report and Management’s response.
- A summary of management’s initial response to a request should be sent to the requesters so that the Panel’s site visits can be more meaningful.

Suggestion for update procedures: The Panel should lay out generally in the procedures how it will interact with requesters and make information available to requesters during the entire Panel process. The procedures should reflect the 1999 clarification action plan requirements of management and the Panel.

VIII. Promoting Effective Interaction with the WB Board, Management and Governments

There is widespread support for clarifying relationships and improving interaction with the Board, management and governments (interaction with requesters is covered in section VII above). Some respondents suggested there should be guidelines or principles in the procedures for the Panel’s interaction with these stakeholders; others felt this was

more of an interpretive area and the Panel should act on its own sense of protocol. Another view suggested this be a best practice note. There was a sense among some respondents that the current procedures do not provide proper direction for dealing with these stakeholders, and that this often results in confusion.

Suggestions for Improving Interaction with Bank Management and Operations

Staff:

- The Panel should move away from a “*prosecutorial approach*” towards staff, and instead have detailed discussions about issues and create a working atmosphere;
- more discussions with management will reduce the time it takes for management to respond;
- Panel and management should work toward reducing misunderstandings;
- Management should respond to a request instead of “*lawyering up*,” criticizing the Panel, and creating an adversarial process;
- The Panel should meet with the Bank President on a regular basis to brief him on cases and systemic issues; and
- Management should respect the Panel process; stick to the resolution; and resist from questioning eligibility and other decisions that are within the Panel’s jurisdiction.

Suggestions for Improving Interactions with the Board and Governments:

- There should be a set of clear procedures (or best practice) on how the Panel deals with governments and the Board;
- The Panel should meet the Board members on an individual basis to brief them on cases;
- Care should be taken to avoid in-country stakeholders from being confused and irritated by the various stages of the Panel process;
- It must be clarified to governments that the Panel is not in country to challenge their sovereignty or capacity for project implementation.
- The Panel should meet with borrower governments so that they understand the Panel process and field work.

Suggestions for procedures: The Panel should lay out its general guidelines or principles for interaction with all stakeholders in its operating procedures. Minority view: How to deal with stakeholders should be in best practice or guidance notes, and not in procedures.

IX. Promoting Corporate Learning Based on Panel Experiences

There is a general consensus that Bank management and operations are not incorporating lessons learned from Panel requests and experiences. The reasons suggested for this were numerous:

- The Panel is not proactive enough in delivering analysis on systemic issues;

- Management at the highest levels is not proactive in signaling that lesson learned from Panel experiences is a Bank priority;
- There is no staff incentive structure to improve environmental and social quality in projects; and
- aside from reporting, there is no concrete avenue for delivering lessons learned.

There was also some sentiment that it is *Management's responsibility* (and not the Panels') to ensure corporate learning from Panel experiences. There were no recommendations for the updated procedures in this category.

Stakeholder suggestions for improving corporate learning included:

- The Panel should have an advisory capacity like the Compliance Advisor Ombudsman;
- The Panel should produce a series of “*lessons of experience*” volumes and present them in workshops at the Bank;
- The Panel should organize a series of lectures at the World Bank Institute; and
- The Panel should brief the President on a regular basis on emerging systemic issues.

X. Fact-Finding Follow-Up to Investigations to check results on the ground, and invite input from all stakeholders on the effectiveness and outcomes of the process

Many stakeholders suggest that the Panel should have full monitoring capability to bring it up to date with the other IAMs who all have a monitoring mandate. Given that full monitoring is outside the scope of this review, a majority of respondents also recommended that in order to be effective the Panel should follow up (when asked by the Board) by going back to the field to determine what is happening on the ground and if Management's actions plans are being implemented.³ Some respondents stated that the Panel should have a best practice for follow up because this would provide clarity to all stakeholders, and increase the likelihood that the Board would request follow up. All requesters emphasized that Panel follow-up was crucial to ensure action plan implementation and compliance on the ground. Moreover, some of the stakeholders suggested that monitoring or *follow-up by management was not enough* and that there are plenty of case studies where there has been no improvement on the ground by management years after a Panel case has been closed. Only one respondent was opposed to Panel follow-up.

The Panel custom of return visits was seen as a positive development and one that is important for requesters to understand the outcome of the Panel process, the Board's decision and the commitments that Management has made in its action plan.

³ The Board requested Panel follow up in the Mumbai Urban Transport Project and Paraguay/Argentina Reform Project (Yacyreta) requests since the 1999 clarification.

Suggestions for Updated Procedures: The Panel should issue a best practice note for follow-up methodology in cases where the Board requests the Panel to follow up action plans.

The procedures should detail the process for the return visits. Another view suggested the return visit should be a best practice.

XI. Conclusion

There is widespread support among external stakeholders for updating the Panel procedures in order to ensure clarity, and increased requester access and improved understanding of requesters, the Board and Management. There is also support for best practice or guidance notes on a number of issue areas.

Procedure update areas include: communications and outreach, registration; contents of a request (remove policy violations) general timelines for investigations; conditions for problem solving, verifying management consultation with requesters in developing action plans; increasing access for requester; return visits; interaction with governments and the Board.

Best practice areas include: methodology for determining prior contact and other eligibility criteria; integrating consultants into the investigation phase; follow-up methodology; and interaction with Governments and the Board.