

BOARD OF DIRECTORS

Laura Jordán de Conte
Chair

María Angélica Sosa de
Mignone
Vice Chair

Patricia Valdez
Secretary

Agustín Colombo
Treasurer

Fanny Bendersky
Alejandro Inchaurregui
Alicia Lo Giudice
Carmen A. Lapacó
Matilde Mellibovsky
Enrique Oteiza

Martín Abregú
Executive Director

**BOARD OF
INTERNATIONAL
CONSULTANTS**

Alejandro Artucio
A. Cançado Trindade
Alejandro Garro
Cecilia Medina
Juan Méndez
Guillermo O'Donnell
Paulo Sergio Pinheiro
Michael Shifter
Theo Van Boven
José Miguel Vivanco
Lorne Waldman
Coletta Youngers

**BOARD OF NATIONAL
CONSULTANTS**

Susana Albanese
Germán Bidart Campos
Alberto Binder
Gibou R. García Reynoso
Eduardo Grüner
Rodolfo Mattarollo
Gerardo Mazur
Cristina Rivada
Hilda Sábato
Elías Salazar
Leopoldo Schiffrin
Juan Sosa
Fernando Ulloa
Luis Yanes
Eugenio Raúl Zaffaroni

FOUNDING MEMBERS

Emilio F. Mignone
Honorary Chair
Augusto Conte
Alfredo Galleti
Carmen A. Lapacó
Boris Pasik
José F. Westerkamp

CELS

CENTER FOR LEGAL AND SOCIAL STUDIES

Rodríguez Peña 286 – 1st floor ; (1020) Buenos Aires - Argentine Republic
Tel: (54-1-1) 4371-9968/3790 – Fax: (54-1-1) 4375-2075 - E-mail: cels@cels.org.ar

VIOLATION OF PROVISIONS

SAFEGUARDING SOCIAL PROGRAMS -

REQUEST FOR INVESTIGATION

(Pro-Huerta Program)

**SPECIAL STRUCTURAL ADJUSTMENT LOAN (SSAL)
ID #4405-AR (62991)**

Between

THE GOVERNMENT OF THE ARGENTINE REPUBLIC

And

THE WORLD BANK

**Signed November 11, 1998
(US\$2,525,250,000)**

Affiliated with the International Commission of Jurists (Geneva). International League for Human Rights (New York)
Correspondent of the International Federation of Human Rights Leagues (IFHR – Paris)
Member of the World Organization against Torture (Geneva)
Prizes received: LETELIER-MOFFIT (1983); THE ROGER E. JOSEPH PRIZE (1988) and THE HUMAN RIGHTS PRICE
OF LAWYERS COMMITTEE FOR HUMAN RIGHTS (1988)

Mr. Jim MacNeill
Chair
Inspection Panel

Buenos Aires, July 20, 1999

We, Victor Ernesto Abravomich Cosarín, attorney, CPACF registration at page 45, Volume 40, and Martín Abregú, attorney, CPACF registration at page 466, Volume 46, both employed as attorneys by the Center for Legal and Social Studies [*Centro de Estudios Legales y Sociales*], hereinafter “CELS,” a civil association (NGO), representing the beneficiaries of the *Programa de Huertas* (hereinafter called “Pro-Huerta”), who are and will be directly and materially affected by the actions and/or omissions described below, having provided a letter of attorney (original attached hereto as Annex A) authorizing us to exercise such representation and having elected domicile for purposes of the present proceedings at Rodríguez Peña 286, 1st floor, P.O. Box 1020, Buenos Aires, Argentine Republic, do now respectfully bring the following to your attention:

I. PURPOSE

We request that the Inspection Panel (hereinafter “the Panel”) initiate the corresponding investigation and subsequently require the World Bank (hereinafter “the Bank”) to act in a manner consistent with its own lending policies and procedures by instructing the Government of the Argentine Republic to review its budgetary allocations so as to respect the safeguards awarded to social programs within the framework of the Special Structural Adjustment Loan, No. 4405-AR [(63991), hereinafter the “SSAL,” “the Agreement,” and/or “the Loan”], signed on November 11, 1998 by the Government of the Argentine Republic in the amount of US\$2,525,250,000 (two billion five hundred twenty-five million two hundred and fifty thousand US dollars).

The reason for the present request is the failure by the Argentine Government to honor its commitments under the Agreement, as witness the lack of funding for the Program, implemented by the National Institute of Agricultural Technology [*Instituto Nacional de Tecnología Agropecuaria*] (hereinafter “INTA”) and financed through the Department of Social Development [*Secretaría de Desarrollo Social, Presidencia de la Nación*] (hereinafter “SDS”), and the unsuccessful outcome of subsequent approaches to the World Bank’s Argentina, Chile, and Uruguay Country Unit. This failure constitutes a serious violation by Bank management of the terms and conditions on which the Bank’s Executive Directors approved the Loan and of certain of the Bank’s policies and legal procedures, namely: OD 4.15, Poverty Reduction; OD 13.05, Project Supervision; OP/BP

10.70, Project Monitoring and Evaluation; OP/BP 13.40, Suspension of Disbursements, and OP/BP 17.50, Disclosure of Operational Information.

Given the nature (food/nutrition) of the program forming the object of this request, we ask the Panel to treat this as an *urgent matter* and that it urge the Bank to withhold, on a preventive basis, disbursement of this third tranche of the Loan.

II. FACTS

II. 1. Historical Review of the Pro-Huerta Program

In February 1990, the Executive Branch commissioned INTA to prepare a food security program designed to improve the diet of population groups with unsatisfied basic needs [*necesidades básicas insatisfechas* – NBI] (hereinafter the “NBI population” or “NBI individuals”) through small-scale subsistence food production (gardens). On August 3, 1990, the INTA Board of Directors issued Resolution 239 approving the Pro-Huerta Program [*Programa de Promoción de la Autoproducción de Alimentos* – PRO-HUERTA].

The purpose of this Program was to provide the most needy social sectors with a more balanced diet, supplying them with fresh foods of better quality and wider variety, improving the household food budget, promoting community participation in food production, generating appropriate technologies for subsistence gardening, and encouraging small-scale agrofood production systems. It was expected right from the start that Pro-Huerta would be a progressively expanding operation.

Thanks to INTA’s commitment and to the well-organized and disciplined efforts voluntarily performed by the institutions, organizations, and individuals that espoused Pro-Huerta’s objectives and functions, the Program achieved its goal, with an exponential growth in the number of beneficiaries (see II FACTS; II.1. The Pro-Huerta Program – cf. Annexes I and II; Report Submitted to the World Bank’s Argentina, Chile and Uruguay Country Unit on June 11, 1999, attached hereto as Annex B). Despite having reached 2,744,000 beneficiaries, Pro-Huerta was still far from its estimated potential demand of 6,247,000 NBI individuals (see II FACTS; II.1 The Pro-Huerta Program – cf. Annex I; Annex B).

In parallel with the increase in the number of beneficiaries assisted by the Program, the pertinent budgetary allocations were also increased, with US\$11,200,000 earmarked for the 1998 fiscal year (see II FACTS; II.1 The Pro-Huerta Program – cf. Annexes III and IV; Annex B).

Unfortunately, the country's economic situation since the last quarter of 1998 and the need for external financing obliged the National Government to proceed to a restructuring of its services and projects. However, this restructuring should not have resulted, as it did, in a drastic reduction of the allotments for continuation of the social programs in progress, regardless (in the case of food aid) of the nature of the operations concerned.

With the approval of the budget law for the present fiscal year, Law 25.064, the SDS received specific funding for the Program in the amount of US\$4,000,000 (40 percent of the total previously authorized, 32 percent of the total budget) (see II FACTS; II.1. The Pro-Huerta Program – cf. Annexes I and VII; Annex B), providing undeniable evidence of the Government's decision to use social programs as budget deficit adjustment variables. The budget cut also affected other important social programs: the Solidarity Program in Support of Older Persons [*Apoyo Solidario a los Mayores* – ASOMA], the Infant Nutrition Program [*Programa Alimentario Nutricional Infantil*], which, as we shall see below (see II.2. Special Structural Adjustment Loan – SSAL) were, like Pro-Huerta, protected under the Loan.

The situation was compounded by the absence of internal coordination among the various administrative units responsible for financing and implementing the Program. Given its finally authorized allotment, the SDS had to reprogram its institutional policy and make a drastic cut in the number of beneficiaries, dropping a total of 1,700,000 NBI individuals (58.52 percent of the population assisted during fiscal 1998) (see II FACTS; II.1. The Pro-Huerta Program - cf. Annexes IX, X and XI; Annex B).

There being no possibility of finding “reasonable” justification for excluding such a large portion of the target universe (especially when that entire universe is composed of the very poor), and even if this were hypothetically possible, the budgetary allotments historically managed by the SDS for a similar number of beneficiaries were not taken into account (see II FACTS; II.1. The Pro-Huerta Program - cf. Annex III; Annex B) and INTA had to go ahead with its original agenda, even though this would involve suspension of the Program halfway through the year (see II FACTS; II.1. The Pro-Huerta Program - cf. Annexes II and IX, with the amendments proposed in Annexes III and XII; Annex B).

The disagreement arising over the Pro-Huerta timetable resulted in its suspension during the month of March (considerably delaying the 1999 fall-winter activities), and now threatens to paralyze the Program after June (see II FACTS; II.1. The Pro-Huerta Program - cf. Annexes III and IX; Annex B).

As a corollary to the lack of financing mentioned above here and the impossibility, acknowledged by Development Secretary José Figueroa, of continuing with the Program cycle, Pro-Huerta suffered a new reversal in the form of a breakdown of negotiations with the Inter-American Development Bank for an external line of credit to improve the proposed diet through the addition of protein supplements (see II FACTS; II.1. The Pro-Huerta Program; Annex B).

It goes without saying that the facts herein described are indicative of the current precarious situation of a highly productive food-related program which has targeted the most needy sector of the population and made a significant contribution to the control of poverty.

As we shall explain below, the economic crisis and the requirements associated with external financing have today brought the Pro-Huerta program to the brink of extinction.

II.2 Special Structural Adjustment Loan (SSAL)

During 1998, the international financial system was thrown into great disarray. Upheavals in the international financial markets led to a temporary closing of access to external credit, with adverse repercussions on the economic stability of the Argentine Republic (see II FACTS; II.2. Special Structural Adjustment Program - cf. Annex V; Annex B).

With the closing of the markets and disruption of capital flows, the Argentine Republic was unable to finance its deficit and/or refinance its external debt as maturities came due. In order to meet its debt service obligations and avoid a major contraction of its international reserves, which would provoke severe recession and increased unemployment, obliging the Government to take drastic decisions *to the detriment of critical social programs* (see II FACTS; II.2. Special Structural Adjustment Program - cf. Annex V; Annex B), the Argentine Government approached the World Bank with a request for extraordinary assistance.

As a result, negotiations began in September 1998 for the Special Structural Adjustment Loan (SSAL), which, together with the Special Repurchase Facility Support Loan (contingent Repo loan), was intended to support the ongoing efforts of the Argentine Government to transform the country's economy and preserve the economic and social gains achieved thus far, while *mitigating the deleterious effects on vulnerable groups* (see II FACTS; II.2. Special Structural Adjustment Program - cf. Annex V; Annex B).

The Agreement for a three tranche Loan (November 1998, March 1999, and post-June 1999) was signed on November 11, 1998. The purpose of the Loan was to finance implementation of a reform package based on four main objectives, with priority for *safeguarding the continuity of ongoing social safety net programs, which could be vulnerable in times of financial stress, and advancing reforms in health and education* (see II FACTS; II.1. Special Structural Adjustment Program - cf. Annex V; Annex B).

Reflecting the experience and recommendations of the international agencies concerning the use of social programs as the principal adjustment variables in the public sector economic restructuring process, the SSAL sets out in its Sections 2.02 (d) (ii) and 2.02 (e) (ii) the requirements to be met by the national authorities, based on evidence satisfactory to the Bank, prior to any withdrawal of funds (see II FACTS; II.1. Special Structural Adjustment Program - cf. Annex VI; Annex B).¹⁶

As we already informed the Bank, we believe that the Argentine Government has failed to honor its commitments under the Agreement with the Bank, in that it has failed to preserve the continuity/sustainability of the Pro-Huerta program as stipulated in the above-mentioned safeguard provisions (a requirement *sine qua non* for effectiveness of the Loan).

II.3 Submittal of CELS Report to the World Bank

Having learned of the letter of compliance corresponding to disbursement of the third tranche of the Loan [Sections 2.02 (e) (ii) and 3.01 of the SSAL] sent to the Bank by the Argentine Government, CELS submitted the above-mentioned report (hereinafter “the Report”) (Annex B) to the Bank on June 11, 1999, setting out the facts described above (see Annex B).

It was stated in the Report that the Argentine Government’s commitment to maintain its budget for the social programs listed in the Annex to Schedule 3 to the SSAL at an aggregate level equivalent to at least US\$680,000,000 should be interpreted as a corollary to the Bank’s manifest intention to safeguard the sustainability of all ongoing social programs (or at least those listed in the Annex), thereby preventing their use as a budgetary adjustment variable. This means that

¹⁶ The Sections mentioned provide that no funds may be drawn from the accounts opened for the purpose until the Bank shall be satisfied, on the basis of evidence satisfactory to the Bank, that the actions described in Schedules 3 and 4 (respectively) to the Agreement have been taken in form and substance satisfactory to the Bank. Such actions include the Government’s commitment to maintain the 1999 budgetary allocations for the social programs listed in the Annex to Schedule 3 to the SSAL, at an aggregate level equivalent to at least US\$680,000,000 (see II FACTS; II.2. Special Structural Adjustment Program ; footnote - cf. Annex VI; Annex B).

nonperformance of even one of the Government guaranteed operations would prevent the release of subsequent disbursements¹⁷ (see III. COMMENTS; III.1. Interpretation of SSAL Covenants; Annex B).

It was also pointed out that a contrary interpretation would mean giving the Government full discretionality in the allocation of resources among the programs included in the safeguarded package, conditional solely upon the aggregate amount of all the programs not falling below the level stipulated. This would imply a complete lack of interest on the Bank's part in preserving the necessary balance among the different programs of assistance and a total disregard for the broad spectrum of needs of the vulnerable groups. On the other hand, no explanation was given for preparing such a detailed list of protected programs other than that they were all essential (see III. COMMENTS; III.1. Interpretation of SSAL Covenants; Annex B).

The opinion expressed earlier was reinforced by documentation issued by the Bank (paragraphs 13 *et seq.* of Annex V to Annex B) emphasizing the need to prevent curtailment of critical social programs whose effectiveness and scope had been limited by the financial contractions that the Loan was actually intended to prevent (see III. COMMENTS; III.1. Interpretation of SSAL Covenants; Annex B).

Mention was also made of the conclusions reached by the open-ended Working Group on structural adjustment programs and economic, social, and cultural rights, within the framework of the Economic and Social Council (ECOSOC) of the United Nations (UN) (see "Report ...," E/CN.4/1999/51-ECOSOC-UN) which discussed the unpublished version of the study submitted by Dr. Fantu Cheru on the effects of structural adjustment policies on the effective enjoyment of human rights (to be published in E/CN.4/1999/50 – ECOSOC – UN). It was emphasized that "*Structural adjustment programs have had two distinct impacts: at the economic level they have led to a significant erosion of the living standards of the poor*" (our italics and underlining) (see "Report...," E/CN.4/1999/51 - ECOSOC - UN).

CELS found particularly significant the conclusion recognizing "... the urgent need to foster closer cooperation between governments, United Nations bodies and *other international financial institutions, in particular the World Bank and the IMF*" (our italics), Dr. Cheru being charged with overseeing the "...actions

¹⁷ This is the sense that should be given to the Bank's statement in paragraph 17 of Annex V to the Report (Annex B) that the SSAL consists of "... a package of reforms in four main areas: (...) and, most importantly, (d) the reform package also has measures to safeguard current social protection programs, which in a time of financial stress might be vulnerable, and to advance reforms in health and education."

and initiatives being taken by institutional financial institutions (...) with respect to structural adjustment policies and human rights ...” (our italics) (see “Report...,” E/CN.4/1999/51 - ECOSOC - UN).

The above was reaffirmed in the report presented by Mr. Windfuhr during the World Food Summit Plan of Action follow-up meeting at the FAO (Rome, November 18-19, 1998) (UN), which included among the five basic functions to be performed by international organizations that of “respecting, protecting, supporting and promoting (the right to adequate nutrition) in their own policies and programs and by assisting and promoting States’ compliance with their obligations” (our parentheses) (see E/CN.4/1999/45).

In summary, the Report requested postponing disbursement of the third Loan tranche until the Argentine Republic had allocated sufficient funds to continue Pro-Huerta. It was argued that the safeguarding provisions of the SSAL should be interpreted as the Bank’s clear intention to preserve the essential social programs to the fullest extent possible. This was a means of mitigating the erosion of living standards of the vulnerable groups caused by the unstable economic situation and by the structural adjustment process promoted by the Bank itself (see Annexes V and VI to Annex B).

Having submitted the Report on June 9 [*sic – Translator*], CELS received no reply until June 23, when it received a fax containing no mention of any measures to be taken (copy attached hereto as Annex C).

Consequently, in our fax of June 24 (copy attached as Annex D), we reiterated our opinion concerning the serious threat hanging over the Program, and, given the closeness of the disbursement date, we asked to be notified of the measures to be taken by the Bank’s Country Unit. On July 15, still having heard nothing, we resubmitted the above note, this time in person (this note attached as Annex E).

Since to date we have received no reply, we now submit to your Panel the present request for investigation.

III. COMMENTS

III.1. Timeliness of the Request

Pursuant to Article 14 (c) of Resolution IBRD 93-10/IDA 93-06 of September 22, 1993, setting out the scope and bounds of the Panel’s functions, the Panel shall

not hear “requests filed after the Closing Date of the loan financing the project with respect to which the request is filed or after the loan financing the project has been substantially disbursed.”

To our understanding, disbursement of the third tranche of the SSAL (US\$500,000,000) is still outstanding. Given that the Closing Date is December 31, 1999 (see Section 2.03 Annex VI to Annex B), we therefore believe that the present request is appropriately made in both time and form.

And even if the third tranche had already been disbursed by the time these proceedings were instituted, implementation of the Repo facility loan (US\$505,500,000), regarded by the Bank (together with the SSAL) as part of a coordinated multilateral support effort containing special financing provisions (see paragraph 21 of Annex V to Annex B), would still be pending.

In its technical information section, the Loan Agreement provides that Repo loan proceeds will be disbursed only as long as the SSAL is effective. Said effectiveness would be vouched for by an exchange of tranche release reviews and by ongoing supervision of achievement of the respective program goals (see paragraph 21 of Annex V to Annex B).

Consequently, it was established in the Agreement that “[Article 3.01 (a)] The Borrower and the Bank shall from time to time, at the request of either party, exchange views on the progress achieved in carrying out the Program and *the actions specified in Schedules 3 and 4* to this Agreement.”

As we have mentioned, one of the actions covered in those Schedules is signature of the budgetary commitment (US\$680,000,000) for the package of protected social programs (listed in the Annex to Schedule 3), of which Pro-Huerta is one.

Then, even if the loan had been “substantially disbursed,” (see above reference to IBRD/IDA Resolution of September 22, 1993), it would still be necessary to conduct the investigation we are requesting, since this would be fundamental to ensuring satisfactory implementation of the SSAL program, an essential condition for activation of the Repo loan.

Thus the timeliness of the present request is amply demonstrated.

III.2.Omissions of the Bank in Supervising Implementation of the SSAL Agreement

As noted in the Report submitted to the Bank's Country Unit, Sections 2.02 (d) (ii) (C) and 2.02 (e) (ii) (C) make it a condition of withdrawal of funds from the Loan Account that "the Bank shall be satisfied, after an exchange of views as described in Section 3.01 of this Agreement based on evidence satisfactory to the Bank: [...] (C) *that the actions described in schedule 3 (4)¹⁸ of the present Agreement* have been taken in form and substance satisfactory to the Bank ..." (our italics and parenthesis) (see Annex VI to Annex B).

The above-mentioned Schedules 3 and 4 mention, respectively, the actions referring to individual sections of the SSAL Agreement, including the "Human Development Sector Actions" (see Schedules 3 and 4 of Annex VI to Annex B). One such action consists of a commitment by the Argentine Government to maintain its budget for 1999 for the social programs listed in the Annex to Schedule 3 (to which Schedule 4 also refers) at an aggregate level equivalent to at least US\$680,000,000 (see Schedules 3 and 4 to Annex VI to Annex B).

The above-mentioned Annex to Schedule 3 contains a list of social programs to which the Bank has assigned priority in its efforts to reduce poverty, including, in the section listing food and nutrition programs, "Programa de Huertas – PROHUERTA" (see Schedule 3 to Annex VI to Annex B), making that program a requirement *sine qua non* of effective disbursement of the different tranches of the SSAL and/or the Repo loan.

Covenants similar to those contained in the sections mentioned above should be viewed in the context of what Mr. Wolfensohn has called "balanced development,"¹⁹ i.e. the notion that sustainable development involves "... a totality of effort – a balanced economic and social program - ." ²⁰ In his October 1998 address, Mr. Wolfensohn already recognized the need to devise a new concept of development establishing "... objectives to ensure environmental and human sustainability – so essential to the long-term success of development and the future of our shared planet – water, energy, *food security* – issues that must also be dealt with at the global level"²¹ (our italics).

¹⁸ The number in parentheses relates to the text of Section 2.02 (e) (ii) (C), while this (Spanish) translation follows the substantially identical text of Section 2.02 (d) (ii) (C).

¹⁹ cf. "The Other Crisis": address by Mr. James D. Wolfensohn, President of the World Bank Group, to the Board of Governors. Washington, D.C., October 6, 1998.

²⁰ Idem footnote 4.

²¹ Idem footnote 4. Mr. Wolfensohn went on to say: "We have learned, Mr. Chairman, that there is a need for balance. We must consider the financial, the institutional, and the *social*, together. We must learn to have a debate where mathematics will not dominate humanity, where the need for often drastic change can be balanced with protecting the interests of the poor. Only then will we arrive at solutions that are sustainable. [...] We see that in today's global economy countries can move toward a market economy, can privatize, can break up state monopolies, can reduce state subsidies, but if they do not fight corruption and put in place good governance, if they do not introduce social safety nets, if they do not have the social and political consensus for reform, if they do not

Consequently, at the time the Agreement was concluded, there was no doubt in the Bank's mind about the need to provide all its programs with safeguards that would enable it to pursue its goal of reducing poverty while at the same time propagating incentives for development.

While this was regarded as essential for sustainable development projects, it was considered even more vital in the case of other projects embodying structural adjustment programs, because, as noted by the Bank in its Operational Directive 4.15 (see below III.3. Poverty Reduction as a Priority Objective of the Bank), the poorest segments of the population may be adversely affected by the transitional costs of adjustment policies.²² Hence, "Bank-supported adjustment programs, therefore, include measures to protect the most vulnerable from declines in consumption and *social services – with particular attention paid to food and nutritional security – in the context of an agreed public expenditure program*" (our italics) (see paragraph 25; OD 4.15).

The same Operational Directive 4.15 notes that public expenditure is an important issue for all adjustment operations. "Within the overall spending envelope given by the macroeconomic framework, *special efforts should be made to safeguard, and increase* where appropriate, budgetary allocations for basic health, nutrition and education, including programs that benefit the most vulnerable groups among the poor" (such as the NBI population) (our underlining and italics) (see paragraph 24; OD 4.15).

Given the inclusion in the SSAL of a package of protected social programs (those listed in the Annex to Schedule 3 to the Agreement), including the Pro-Huerta program, it is unquestionably the responsibility of the Bank's local office to supervise effective compliance with the conditions for access to the loan proceeds [Sections 2.02 (d) and 2.02 (e) of the Loan Agreement]. The basis for this is found in the above-mentioned Operational Directive, which states: "Given the critical nature of institutions for the success of operations with a strong emphasis on benefiting the poor, the project supervision plan may need a strong institutional focus. Where projects include specific targeting of services to poor people, the monitoring and evaluation system should be used (a) to assess whether these

bring their people with them, their development is endangered and will not last [...] but if they marginalize the poor, if they marginalize women and indigenous minorities, if they do not have a policy of inclusion, their development is endangered and will not last."

²² It is pointed out that a position consistent with that of the Bank, and to which mention was made in the Report, was that expressed by Dr. Fantu Cheru before the UN Commission on Human Rights at its 55th session, during discussion of the "Report of the open-ended Working Group on structural adjustment programs and economic, social and cultural rights on its second session" (Geneva, 1-3 March 1999). The conclusion was that structural adjustment programs "... at the economic level have led to a significant erosion of the living standards of the poor" (see E/CN.4/1999/51).

services are indeed reaching the target group [...] and (b) to identify adjustments to project design that would increase its efficiency and effectiveness in reaching target groups” (see paragraph 42; OD 4.15).

Despite the Bank’s policy of assuring the NBI population of continuity of the vital Pro-Huerta program, and despite the provisions of the Operational Directives instructing the local managers to oversee due compliance with the covenants of the Loan Agreement, the Bank’s regional office ignored the Report submitted to it.

Its only response was to fax a letter to CELS saying that “... *this year’s situation may perhaps be affecting the financing of several government programs, including Pro-Huerta*” and that “The Loan Agreement does not specify the amount of funds to be allocated to each individual program but instead approves an aggregate amount of financing for all programs” (our italics).

It goes without saying that this response (the only one received to date) is far from satisfactory to us.

First, the Panel will agree that if, as the local office says, “*several*” of the Government’s social programs are “*perhaps*” being affected, and if such programs’ continuity is expressly guaranteed, their implementation being a requirement *sine qua non* for authorizing disbursement of the third SSAL tranche and the contingent Repo loan, the Bank should hold up all disbursement until it is fully satisfied that the requirements of Section 2.02 (e) (ii) of the Agreement have been met.

Second, any tendency to regard the country’s present economic vicissitudes as justification for the tightening of funds for social programs should be offset by the recollection that the Loan Agreement was concluded to address those very economic problems, thereby invalidating any argument about its lack of foresight, and that the breach of the protective guarantee (in the case of Pro-Huerta) violates the very reason for the Loan, for which reason it behooves the Bank to make every effort to preserve its continuity.

Lastly, we believe that while it is true that there are no specific distribution guidelines for allocating a specific amount to each one of the protected programs, it is no less true, as noted in the Report submitted for the Bank’s consideration and ratified by Mr. Wolfensohn’s statements, that Bank policy must be interpreted in light of “balanced development,” which means ensuring at least the *continuity of all of the programs considered*.

As claimed in our Report (Annex B) and acknowledged by the Bank (Annex C), the Pro-Huerta program is today in serious difficulties, and it is incumbent upon the Bank's Country Unit to demand its rapid rehabilitation.

This omission on the part of the Bank represents a dereliction of international responsibility given that, echoing the sentiments expressed by the UN Commission on Human Rights (see "Report ..." E/CN.4/1999/51), the Committee on Economic, Social and Cultural Rights concluded in its General Comment No. 12 of May 12, 1999, that: "The food organizations, FAO, WFP and the International Fund for Agricultural Development (IFAD), in conjunction with the United Nations Development Programme (UNDP), UNICEF, the World Bank and the regional development banks, should cooperate more effectively, building on their respective expertise, on the implementation of the right to food at the national level, with due respect to their individual mandates. The *international financial institutions, notably the International Monetary Fund (IMF) and the World Bank, should pay greater attention to the protection of the right to food in their lending policies and credit agreements* and in international measures to deal with the debt crisis. *Care should be taken, in line with the Committee's General Comment No. 2, paragraph 9, to ensure that the right to food is protected*"²³ (our italics) (see E/C.12/1999/5).

In summary, the Bank has not fulfilled its duty to oversee preservation of the Program, which is suffering from serious financial stresses resulting from the ups and downs of both the national and the international economy and from the structural adjustment process promoted by the Bank itself.

It is therefore incumbent on the Panel to remedy such negligence.

III.3. Poverty Reduction as a Bank Objective

The Bank has long maintained that one of its objectives is to strive to eradicate poverty throughout the world. To accomplish this goal, the Bank produced a document summarizing certain basic procedures and guidelines to be followed in the lending process: OD 4.15 of December 1991.

Echoing the World Development Report for 1990, the Bank acknowledged that a sustainable reduction in poverty indexes would require improved access to

²³ The right to adequate food (art. 11): 12/05/99. General Comment No. 12 E/C. 12/1999/5. Committee on Economic, Social and Cultural Rights. Twentieth session. Geneva, 26 April-14 May 1999. "Substantive Issues Arising in the Implementation of the International Covenant on Economic, Social and Cultural Rights."

education, *nutrition*, health care, and other social services (OD 4.15). This approach should also include a social safety net for the poorest and/or most vulnerable segments of society (OD 4.15).

The Bank acknowledged the need to give particular attention to the impact of sectoral policies concerning, *inter alia*, ownership of productive lands, rural credit, *food security*, etc. (OD 4.15). It maintained that if its aim was to sustainably reduce poverty levels, efforts should focus on institutional design and investment in the analysis, design, implementation, and financing of essential programs and projects (OD 4.15). For certain sectors, a cost-benefit analysis should be used to evaluate alternative projects (OD 4.15).

One of the elements regarded as being of vital importance in controlling poverty was the need to link the volume of lending to proven government efforts and commitment to improving social indicators and policies in the areas of education, health, *nutrition*, *food security*, family planning, labor market reform, etc. (OD 4.15).

As noted above, the Bank's OD 4.15 acknowledges that the poorest groups of society could be adversely affected by the transitional costs of implementing adjustment policies. Consequently, any adjustment program financed by the Bank should include measures to protect the most vulnerable from declines in their potential for access to consumption and social services "... - *with particular attention paid to food and nutritional security* - ..." (see paragraph 25: Social Costs of Adjustment; OD 4.15), all within the context of an agreement on the levels of expenditure for such measures. This was the underlying basis for the policy whereby every project should be consistent with the poverty reduction strategy (OD 4.15).

The Bank was forced to recognize that since the NBI population lives at the margin of existence, any risk that could lead to a decline in its living standards would be life threatening (OD 4.15). For this reason, in countries where food aid is prominent in assistance strategies (as we believe is the case of the Argentine Republic), it was essential to provide for the coordination of that aid – including distribution policies – and its integration with the rest of the assistance programs (OD 4.15).

However, given the Bank's attitude to requiring compliance with the safeguard clauses of the SSAL Agreement, the above simply becomes a *petitio principii*. How can the importance assigned by the Bank's internal policies to the package of protected social programs be justified if those programs are then relegated to the background because of a complex economic situation (originally

the very reason for conclusion of the Agreement)? How can a rhetoric that espouses such commendable objectives be reconciled with such a lack of interest in their practical implementation?

If the Bank truly desires to combat poverty, if the policies it proclaims represent a commitment to the international community, then we believe it is essential that the Panel urge the Bank to practice what it preaches and to avoid giving the impression that its Operational Directives are not simply a collection of sophistries.

Moreover, these facts constitute violations of the pertinent provisions and of the following operational policies of the Bank: OD 4.15, Poverty Reduction; OD 13.05, Project Supervision; OP/BP 10.70, Project Monitoring and Evaluation; OP/PB 13.40, Suspension of Disbursements, and OP/BP 17.50, Disclosure of Operational Information.

IV. SUPPORTING DOCUMENTS

- (a) letter of attorney from Pro-Huerta beneficiaries authorizing CELS to represent them in all proceedings before the World Bank's Inspection Panel (Annex A);
- (b) report from CELS submitted on June 9, 1999 to the World Bank's Argentina, Chile and Uruguay Country Unit, describing the threat to continuity of the Pro-Huerta food program (Annex B);
- (c) communication from Ms. Myrna Alexander, Country Unit Director for Argentina, Chile and Uruguay at the World Bank, faxed to CELS headquarters in response to the above Report (Annex C);
- (d) request for report faxed to the Argentina, Chile and Uruguay Country Unit, requesting that CELS be informed of the measures to be taken to address violations by the Argentine Government in connection with the protected Pro-Huerta program (Annex D); and
- (e) renewal of the request for information of June 24, 1999, submitted in person on July 15 at the offices of the World Bank's Argentina, Chile and Uruguay Country Unit (Annex E).

V. URGENCY – PREVENTIVE WITHHOLDING

Since the present case concerns the continuity of a food assistance program (Pro-Huerta), to be discontinued after June 1999 for lack of funds, and given that this program is essential to the subsistence of vulnerable groups (NIB population), we ask that the Panel handle this request as an *urgent matter*.

Likewise, and since compliance with the safeguard clauses of the Agreement constitutes a requirement *sine qua non* for disbursement of the third tranche of the Loan, we ask that the Panel urge the Bank to withhold the funds for said third tranche on a preventive basis until refinancing of the Program is guaranteed.

We authorize Juana Kweitel, Andrea Pochak, María José Guembe, Viviana Krsticevic, Patricia Licciardello, Martín M. Serrano, and Santiago A. López to examine the file forming the basis of the present request, and accept notifications, submit documents, extract items and/or make photocopies and engage in other procedures necessary to the progress of these proceedings.

VII. ANONYMITY

To avoid possible reprisals on the part of the agencies responsible for implementation and/or financing of Pro-Huerta, thereby ensuring inviolability of the food aid that this program supplies to our principals, we ask the Panel to preserve the anonymity of the claimants and of any persons asking to be included in the present claim until such time as the matter is favorably resolved.

VIII. REQUEST

Now therefore, we request:

1. that we, having waived true domicile and elected legal domicile for the purpose of the present proceedings, be accepted as a party to these proceedings;
2. that the Panel accept production of the accompanying documentary evidence and any further evidence offered;
3. that the Panel give favorable consideration to registration of the present request for investigation and take the necessary steps to determine possible noncompliance (omissions) on the part of the Bank;

4. that the Panel handle the present proceedings as an *urgent matter*, urging the Bank to withhold on a preventive basis the funds corresponding to disbursement of the third tranche of the Loan;
5. that the Bank be instructed, in pursuance of its Operational Directive OD 4.15 of December 1991, to comply with the provisions of Sections 2.02 (d) (ii) and 2.02 (e) (ii) of the SSAL Agreement prior to disbursement of the third tranche of the Loan, or, failing that, prior to releasing the proceeds of the contingent Repo loan;
6. that Juana Kweitel, Andrea Pochak, María José Guembe, Viviana Krsticevic, Patricia Licciardello, Martín M. Serrano, and Santiago A. López be authorized to act in these proceedings on the terms set forth above (see VI. AUTHORIZATIONS).
7. lastly, that the anonymity of the principals be respected (see VII. ANONYMITY).

Very truly yours,

Víctor Ernesto Abramovich Cosarín
T° 46, F° 45
CPACF

Martín Abregú
T° 46, F° 466
CPACF