

# **The Inspection Panel**

## **Report and Recommendation**

### **On**

### **Requests for Inspection**

#### **India: Mumbai Urban Transport Project (IBRD Loan No. 4665-IN; IDA Credit No. 3662-IN)**

1. On April 28, 2004, the Inspection Panel received a Request for Inspection related to the India: Mumbai Urban Transport Project (the “Project”).<sup>1</sup> This Request (the “First Request”) was submitted by the United Shop Owners Association, a non-governmental organization located in the city of Mumbai, India, on its own behalf and on behalf of 118 residents of Mumbai who claim to be adversely affected by the Project. On April 29, 2004, in accordance with the Resolution establishing the Inspection Panel (the “Resolution”),<sup>2</sup> the Panel notified the Executive Directors and the President of the International Bank for Reconstruction and Development (IBRD) and the International Development Association (IDA)<sup>3</sup> that it had received the Request, which constituted Registration of the Request under the Panel’s *Operating Procedures*.<sup>4</sup> The Panel received Bank Management’s Response to the First Request on May 27, 2004 (the “First Response”).<sup>5</sup>
2. On June 24, 2004, the Panel received a second Request for Inspection (the “Second Request”) dated June 22, 2004, related to the same Project. This Second Request was submitted by three nongovernmental organizations located in the city of Mumbai, India – the Hanuman Welfare Society (HWS), the Gazi Nagar Sudhar Samiti (GNSS) and the Jai Hanuman Rahiwasi Sewa Sangh (JHRSS) – on their own behalf and on behalf of about 350 residents living in the area known as Gazi Nagar in the Kurla West District of Mumbai. On June 29, 2004, in accordance with the Resolution, the Panel notified the Executive Directors and the President of the IBRD and the IDA that it had received the Second Request, which constituted Registration of the Request under the Panel’s *Operating Procedures*.

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<sup>1</sup> The Request was supplemented with a letter addressed to the Executive Secretary of the Panel dated April 27, 2004, confirming the contents of the Request and attaching a copy of a further letter sent to the Bank office in New Delhi dated April 13, 2004 raising the issues contained in the First Request.

<sup>2</sup> IBRD Resolution No. 93-10, IDA Resolution No. 93-6, the Resolution Establishing the Inspection Panel (September 22, 1993).

<sup>3</sup> For the purposes of this Report, the IBRD and IDA are collectively referred to as “the Bank.”

<sup>4</sup> See The Inspection Panel, *Operating Procedures* (August 19, 1994), ¶ 17.

<sup>5</sup> Bank Management Response to Request for Inspection, India: Mumbai Urban Transport Project (IBRD Loan No. 4665-IN; IDA Credit No. 3662-IN) [hereinafter “First Response”].

The Panel received Bank Management's Response (the "Second Response")<sup>6</sup> to the Second Request on July 28, 2004.

3. On June 29, 2004, the Panel submitted to the Executive Directors, along with its Notice of Registration of the Second Request, a memorandum entitled '*India: Mumbai Urban Transportation Project (Loan No. 4665-IN; Credit No. 3662-IN) Simultaneous Processing of Requests for Inspection*' (INSP/R2004-0005). In this memorandum, the Panel recommended that the Board approve the Panel submitting a single Report and Recommendation on whether an investigation of the issues raised in either the First or Second Requests or both is warranted. The Panel concluded that "*while the two Requests are separate and were submitted by different groups of affected people, in substance they raise related issues concerning the same Project, and that, therefore, for reasons of economy and efficiency, they should be processed jointly.*" The Panel's recommendation was approved by the Board on a non-objection basis on July 13, 2004<sup>7</sup>.
4. As provided in paragraph 19 of the Resolution, the purpose of this Report is to determine the eligibility of the Requests and to make a recommendation to the Executive Directors as to whether the Panel should investigate the matters alleged in the Requests.

## **A. The Project**

5. The Requests raise issues related to the India: Mumbai Urban Transport Project, which has been partly financed under IBRD Loan No. 4665-IN and under IDA Credit No. 3662-IN. The objective of the Project is "*to facilitate urban economic growth and improve quality of life by fostering the development of an efficient and sustainable urban transport system including effective institutions to meet the needs of the users in the Mumbai Metropolitan Region (MMR).*"<sup>8</sup>
6. The Project as described in the Project Information Document (PID) includes the following components:<sup>9</sup>
  - (1) Rail transport: aiming to improve the capacity and performance of Mumbai's railway system by establishing a new corporation, procurement of new rolling stock, upgrading existing rolling stock, and improving track capacity and telecommunication systems;
  - (2) Road-based transport: improving the capacity of the municipal government of Mumbai for traffic management, policy, and regulation; supporting

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<sup>6</sup> Bank Management Response to Request for Inspection, India: Mumbai Urban Transport Project (IBRD Loan No. 4665-IN; IDA Credit No. 3662-IN) [hereinafter "Second Response"].

<sup>7</sup> For purposes of this Report, the First Request and the Second Request are sometimes collectively referred to as "the Requests"

<sup>8</sup> Project Appraisal Document (PAD) on a proposed loan in the amount of US\$ 463.0 million and a credit in the amount of SDR62.5million (US\$79.0 million equivalent) to India for the Mumbai Urban Transport Project, May 21, 2002, 3.

<sup>9</sup> Project Information Document (PID), January 16, 2002, 5.

investment in management, signals, and east-west connecting roads and rail grade separations;

- (3) Resettlement and rehabilitation (R&R): constructing or purchasing around 19,000 tenements of 225 square feet each to resettle persons displaced by the Project's main investment components, involving around 5000 transit houses as an interim measure, the acquisition of land for civil works, and payment of compensation for economic losses and other rehabilitation benefits.
7. The Requests concern the proposed construction of one of the east-west connecting roads within the road-based transport component described above and the proposed resettlement and rehabilitation of affected persons.
8. In the road-based transport component, in addition to the larger Jogeshwari-Vikhroli Link Road of 11 kilometers, the Project will develop the Santa Cruz-Chembur Link Road (SCLR), which will be 6 kilometers in length and “ *will reduce congestion and diversion of traffic movements to other congested links*” in the city.<sup>10</sup> The works associated with the construction of the SCLR include approach roads, a major bridge crossing, and junction improvements at each end where the SCLR meets both the Eastern and Western Express Highways (EEH and WEH). The implementing agency for the SCLR is the Mumbai Metropolitan Region Development Authority (MMRDA). The MMRDA ascertained the numbers of Project-Affected Persons (PAPs) and, according to the Project Appraisal Document (PAD), these PAPs will be “ *taken care of under the Project Component 3.*”<sup>11</sup>
9. The MMRDA prepared a Comprehensive Transport Strategy (CTS) in 1994, which established that the investment priority should concentrate, *inter alia*, on improving east-west road links in the Mumbai suburbs. According to the PAD:  
  
*“The scope for considering alternative alignments for individual road sub-projects proposed in the project is limited. The roads have to follow the right of way reserved in the city master plan since in the areas not so reserved building construction has taken place. Nevertheless, where possible alternative alignments and designs of ROB [Road Over Rail Bridges] have been adopted which significantly reduce social impact [sic].”*<sup>12</sup>
10. The Project was classified as Category A for the purposes of EA screening under OP 4.01 – Environmental Assessment, on the basis of the large number of people who require resettlement and rehabilitation. MMRDA prepared a consolidated EA including a Strategic Environmental Assessment and sub-project specific EAs and EMPs. Overall, the Project is expected to involve the resettlement of about 19,000 households or 77,000 people.<sup>13</sup> The Government of Maharashtra (“GoM”)

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<sup>10</sup> PAD, 45.

<sup>11</sup> Id., 45.

<sup>12</sup> Id., 88.

<sup>13</sup> Id., 90.

adopted a Resettlement and Rehabilitation Policy for the Project, then prepared a Resettlement Action Plan (RAP), sub-project specific Resettlement Implementation Plans (RIPs), and a Community Environmental Management Plan (CEMP). In the EA process, Micro-level Environmental Assessments (MLEAs) were prepared for larger sub-projects such as road widening and extension up until 1998.<sup>14</sup> Because of significant changes in the traffic and environmental baselines in Mumbai since then, the MLEAs were later updated.<sup>15</sup>

11. The PAD refers to the necessity for resettlement, stating that “[m]ost of the affected persons are slum dwellers and squatters living in poor and unhealthy housing conditions and lack basic amenities. As a result of project intervention, the affected persons are expected to receive higher standards of alternative houses with improved basic amenities.”<sup>16</sup> The PAD further states, however, that “[l]oss of income and livelihood opportunities is not a major issue in this project since the affected persons will be relocated within a close proximity of the existing locations, thus enabling them to retain the site related opportunities. All those loosing [sic] petty shops and business units will be offered alternative shops to enable them to re-establish their shops.”<sup>17</sup> Because of the large scale of the resettlement, the GoM established an Independent Monitoring Panel (IMP) at the start of the Project whose responsibility it is to ensure that the Bank’s social and environmental safeguards policies are safeguarded<sup>18</sup> and to monitor the implementation of progress of the R&R management programs.

## B. Financing

12. On August 5, 2002, the Bank entered into a Loan Agreement with India (the “Borrower”) providing for a US\$463 million equivalent to finance about 49% of the total Project cost (the “Loan Agreement”).<sup>19</sup> Also, on August 5, 2002, IDA entered into a Development Credit Agreement with India providing for a SDR 62.5 million equivalent ( about US\$79 million) to finance Part C of the Project<sup>20</sup> (the “Credit Agreement”).<sup>21</sup> The closing date for both the loan and the credit is June 30, 2008.<sup>22</sup>
13. Also on August 5, 2002, IBRD and IDA entered into an agreement with the GoM under which the GoM undertook, inter alia, to carry out Parts B and C of the

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<sup>14</sup> Id., 91.

<sup>15</sup> Ibid.

<sup>16</sup> PAD, 96.

<sup>17</sup> Id., 101.

<sup>18</sup> Id., 100.

<sup>19</sup> Loan Agreement (Mumbai Urban Transport Project) between India and International Bank for Reconstruction and Development (IBRD), August 5, 2002, Loan Number 4665-IN [hereinafter “Loan Agreement”].

<sup>20</sup> This refers to the Resettlement and Rehabilitation Component.

<sup>21</sup> Development Credit Agreement (Mumbai Urban Transport Project) between India and International Bank for Reconstruction and Development (IBRD), August 5, 2002, Credit Number 3662-IN [hereinafter “Credit Agreement”].

<sup>22</sup> Loan Agreement Article II §2.03, Credit Agreement, Article II § 2.03.

Project,<sup>23</sup> through State Project Implementation Agencies (PIAs) on terms that include, inter alia, environmental and social safeguards (the “Maharashtra Project Agreement”).

## C. The Requests

### First Request – United Shop Owners Association (USOA)

14. The First Request was submitted by members of the United Shop Owners Association (USOA), a non-governmental organization located in the city of Mumbai, India, on its own behalf and on behalf of 118 residents of Mumbai who claim to be adversely affected by the Project (the “USOA Requesters”).
15. The USOA Requesters are small shop owners whose commercial premises are located in the Kismat Nagar area, Kurla West, in the city of Mumbai. They claim that they were instructed by the implementing agency of the Project, the Mumbai Metropolitan Region Development Authority (MMRDA) to move their commercial structures from their current location to a distant location without consultation and without their consent. They claim that they have suffered “*adverse effect [sic] imposed upon us due to negligence and failure of the Bank to follow its operational policies and procedures with respect to our proper and convenient relocation, eviction and rehabilitation falling under the project namely SCLR being carried out by MMRDA and the State Government of Maharashtra.*”<sup>24</sup>
16. The USOA also claims “*that our rights to participation and consultation were effectively denied and that our attempts to raise our concerns were not successful. In particular, we claim that the failure to provide income restoration would result in significant harm. This failure would destroy our livelihoods, causing us to dismantle our productive sources and cause our supporting networks and kin groups to disperse.*”<sup>25</sup>

### Involuntary Resettlement

17. The USOA Requesters claim that the MMRDA wrote to a local NGO (the Kismat Nagar Welfare Association) on January 30, 2004, directing that their commercial structures be removed from their current location because the structures were affected by the proposed widening of the SCLR.<sup>26</sup> According to the letter from MMRDA enclosed with the Request, the MMRDA has a scheme to relocate the Requesters to a place called Mankhurd.<sup>27</sup> The Requesters object to this, claiming

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<sup>23</sup> Part B is the Road-based Component; Part C is the Resettlement and Rehabilitation Component.

<sup>24</sup> First Request, ¶2.

<sup>25</sup> *Id.*, ¶3.

<sup>26</sup> See copy of letter from MMRDA to Khan dated January 30, 2004, enclosed with the First Request.

<sup>27</sup> *Ibid.*

that Mankhurd is too far (nearly 15 km) from their present location,<sup>28</sup> and that if relocated there, they “*will suffer irreparable damage to their well-established businesses. Hence it will be just and proper if we are either relocated on the open plots of land at [the] Bandra-Kurla Complex or under the nearby slum rehabilitation projects.*”<sup>29</sup>

18. The USOA Requesters claim that the Bank provisions described in OP/BP 4.12 on Involuntary Resettlement<sup>30</sup> are “*totally neglected and violated.*”<sup>31</sup> They allege that the scheme provides that “[e]very P.A.H [Project-Affected Household] *losing a commercial structure shall be eligible for an alternate place of commercial use of equivalent area,*”<sup>32</sup> but the existing Project R&R plan entitles them only to an area of 225 square feet regardless of the actual area of their current premises consumed by the Project.<sup>33</sup> They claim that, unless the actual area of their commercial structures is surveyed, the R&R scheme cannot be properly implemented in “*its true spirit.*”<sup>34</sup> During its eligibility visit the Panel was informed that some of the premises concerned have an area up to about 2000 square feet (e.g. premises used for textile production). According to the Requesters, the MMRDA informed them that shop owners who want extra commercial space will have to pay extra for it, and that they can only have up to a total of 750 square feet. The Requesters argue that the Bank has the responsibility to “*take care of the grievances of the project affected persons*” when financing a Project.<sup>35</sup>

### **Income Restoration**

19. The USOA Requesters claim “*that the failure to provide income restoration would result in significant harm.*”<sup>36</sup> They cite OP/BP 4.12 as follows: “[d]isplaced persons should be assisted in their efforts to improve their livelihood and standard of living or at least to restore them in real terms to pre-displacement levels or to levels prevailing prior to the beginning of project implementation whichever is higher”<sup>37</sup> and allege that this policy has been “*totally neglected and violated.*”<sup>38</sup> This claim follows on from their claim regarding involuntary resettlement and the unsuitability of the proposed relocation site at Mankhurd. Referring to their traditional customers, the Requesters state that “*we say we do not want our business groups and our economic and social networks,*

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<sup>28</sup> First Request, ¶5.

<sup>29</sup> See letter from Requesters to MMRDA dated March 9, 2004, enclosed with the First Request.

<sup>30</sup> Although the USOA Requesters cite policy provisions of OP/BP 4.12, in fact the provisions of OD 4.30 apply to this Project because the Project Concept Review (PCR) took place in 1999, while OP 4.12 applies to Project for which the PCR took place after January 1, 2002. However, both policies’ objectives are substantially the same and their provisions quite similar.

<sup>31</sup> First Request, ¶4.

<sup>32</sup> Ibid.

<sup>33</sup> Ibid.

<sup>34</sup> Ibid.

<sup>35</sup> Id., ¶3.

<sup>36</sup> Ibid.

<sup>37</sup> First Requests, ¶4.

<sup>38</sup> Ibid.

*infrastructures, and kin groups to disperse.”*<sup>39</sup> The Requesters told the Panel during the eligibility visit that relocation under the present scheme would cost them their business and current customers and result in a loss of income.

### **Lack of Consultation**

20. The USOA Requesters claim that their “*rights to participation and consultation were effectively denied.*”<sup>40</sup> They claim that their attempts to raise their concerns were not successful.<sup>41</sup> The letter dated January 30, 2004, from the MMRDA to the Kismat Nagar Welfare Association does not refer to any previous consultations with the Association. In an earlier letter from the Requesters to MMRDA they stated that when the road in front of their shops was closed due to works being undertaken, the responsible persons on the spot failed to give them any detailed information regarding the works.<sup>42</sup> They further stated in the letter “[a]nd whereas as per we are concerned, we, the undersigned are totally unaware of all these activities nor any Governmental/Municipal authority has ever informed us regarding any such kind of work.”<sup>43</sup> On July 22, 2004, the Requesters reiterated that “*we were never consulted or given participation at any stage of project planning or R & R.*”<sup>44</sup>

### **Complaints Raised with the Bank**

21. The Requesters declare that they have raised the matters of their complaint with Bank Management. They state that, “[w]e have complained to the World Bank through several written letters (photocopies enclosed) to various authorities. We also had a meeting with the representative sent by your office, Mr. Sumir Lal, Advisor External Affairs on the 25<sup>th</sup> of March, 2004 at 3.30pm at the MMRDA project office in Bandra-Kurla Complex in the presence of Mr. Shrivardhankar of MMRDA.”<sup>45</sup> Evidence received shows that the USOA Requesters first wrote to the Bank’s Department of Institutional Integrity (INT) on March 9, 2004, to complain about their treatment. After meeting Mr. Sumir Lal of the Bank’s New Delhi office on March 25, 2004, in Mumbai, they wrote to him on March 26, 2004, restating their grievances. They then wrote to the Bank’s office in New Delhi on April 13, 2004, repeating their grievances, and again to the Bank via INT on April 20, 2004. INT passed this letter on to the Panel.

22. The Panel treated the letter as a Request and registered it on April 28, 2004. In it the USOA Requesters asked that an investigation be recommended to the Bank’s

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<sup>39</sup> Letter from USOA Requesters to Panel, July 22, 2004.

<sup>40</sup> First Request, ¶3.

<sup>41</sup> Ibid.

<sup>42</sup> Letter from Requesters to MMRDA Commissioner dated December 8, 2003 and enclosed with the First Request.

<sup>43</sup> Ibid.

<sup>44</sup> Letter from USOA Requesters, July 22, 2004.

<sup>45</sup> First Request, ¶5.

Executive Directors. In a further submission to the Panel dated April 27, 2004,<sup>46</sup> and received by the Panel on May 6, 2004, the Requesters attached a copy of the letter dated April 13, 2004, sent to the Bank office in New Delhi in which they state their grievances with the SCLR Project, list the violations of Bank policy they claim have occurred, and request certain information, compensation, and relocation to the nearest possible open space.

### **Requested Measures**

23. The USOA Requesters ask that as a result of the investigation the following measures be carried out for their benefit:

- (1) that they be provided with proper information regarding the affected portions of their commercial premises by the SCLR sub-project;
- (2) that the widening of the road be restored to its original proposed width of 39.0 meters;
- (3) that their affected structures be relocated to plots of land at Bandra-Kurla Complex;
- (4) that they each be provided with an area of land equivalent to that portion of their structures actually consumed by the Project, and that they be permitted to retain the remaining portions of structures occupied individually.<sup>47</sup>

24. In its Registration of the First Request, the Panel noted that the above claims may constitute violations by the Bank of various provisions of the following operational Policies and Procedures:

OP/BP 4.01	Environmental Assessment
OD 4.30	Involuntary Resettlement
OP/BP 13.05	Project Supervision
World Bank Policy on Disclosure	

### **Second Request - Gazi Nagar**

25. The Second Request was submitted by three nongovernmental organizations located in the city of Mumbai, India – the Hanuman Welfare Society (HWS), the Gazi Nagar Sudhar Samiti (GNSS), and the Jai Hanuman Rahiwasi Sewa Sangh (JHRSS) – on their own behalf and on behalf of about 350 residents living in the area known as Gazi Nagar in the Kurla West district of Mumbai (the “Gazi Nagar Requesters”). As stated in the Project’s documents, the route of the SCLR will cross the Gazi Nagar area.

26. The Gazi Nagar Requesters state that they live in the area of the Project and share common interests, concerns, and grievances due to the Project. They claim that they “*are likely to suffer irreparable harm due to omission[s] and violation[s] by*

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<sup>46</sup> As stated above, the First Request was supplemented with a letter addressed to the Executive Secretary of the Panel dated April 27, 2004, confirming the contents of the First Request.

<sup>47</sup> First Request, ¶6.

*the Bank to comply with its own policies and procedures with respect to the design, appraisal, and implementation of the SCLR project financed by the Bank.*<sup>48</sup>” They refer to the Bank’s policies and procedures on disclosure of information, environmental assessment, involuntary resettlement, and Project supervision and to the rights of the locally affected people “*to participation and consultation.*”

### **Environmental Unsuitability of Proposed Resettlement Site**

27. The Gazi Nagar Requesters claim that it has come to their attention that as a result of the Project they are to be relocated to the Mankhurd area, which they allege is a degraded environment and unsuitable for relocation. According to the Requesters, Mankhurd is “*considered amongst the highest polluted areas in the Mumbai city and it is near [a] dumping ground spread across 110 Hectares of land.*”<sup>49</sup> They claim that around 4000 tons of garbage from Mumbai are dumped daily on this site, “*spreading many diseases like T.B.[sic], Malaria, Asthma, etc.*”<sup>50</sup> They further claim that “*many huge, open drainages pass through this area carrying [the] city’s waste and drainage water to the nearby creek spreading [a] bad odour in the area.*”<sup>51</sup> This situation, they assert, is evidence of the Bank having failed to prevent a violation of their rights under the Bank’s Environmental Assessment and Involuntary Resettlement policies.
28. The Requesters followed up their initial Request with further correspondence alleging, inter alia, that the drains are likely to carry radioactive wastewater from the nearby Bhabha Atomic Research Centre (BARC). The Requesters also allege that they are at risk from a nuclear explosion from the BARC. The Requesters further refer to the health and environmental hazards from “*unbearable fumes from Rashtriya Chemical Fertilizer Co., and the refineries of Hindustan Petroleum, Indian Oil, Bharat Petroleum, Union Carbide...apart from many other chemical factories there, and microbial + air pollution of the dumping ground badly affecting millions of residents of the nearby localities.*”<sup>52</sup>
29. JHRSS, one of the Gazi Nagar Requesters, claims that the construction and design work on the buildings at the proposed resettlement site is “*of worst quality.*”<sup>53</sup> The JHRSS alleges there are no proper gaps between adjacent buildings, “*inviting health related [problems], fire hazards and social troubles to the proposed residents.*”<sup>54</sup> Furthermore, JHRSS claims that they were not told about maintenance charges they must pay for in the resettlement housing, and they say: “*whether we can afford the same or not is under the curtain of suspense.*”<sup>55</sup>

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<sup>48</sup> Second Request, ¶ 3.

<sup>49</sup> Second Request, ¶5.

<sup>50</sup> Ibid.

<sup>51</sup> Ibid.

<sup>52</sup> Email from Gazi Nagar Requesters dated 8/7/04.

<sup>53</sup> Letter from Jai Hanuman Rahiwasi Sewa Sangh to World Bank office in New Delhi dated May 3, 2004 and enclosed with the Second Request.

<sup>54</sup> Ibid.

<sup>55</sup> Ibid.

During the eligibility visit the Panel learned of concerns that some of the PAPs will be unable to enjoy proper access to the upper storeys of the Mankhurd residential building due to their advanced ages and infirmities.

### **Destruction of Livelihood, Dispersal of Kin Groups**

30. The Gazi Nagar Requesters assert that the Mankhurd resettlement site is nearly fifteen kilometers away from Gazi Nagar. They claim that “*significant damage would occur due to [the] failure to provide income restoration and it would destroy our livelihoods, our productive sources, disperse our social, economical network and kin groups.*”<sup>56</sup> The Requesters claim that there is sufficient space available nearby in places such as the Premier colony area, the New Mill area, Swadeshi Mill area, and the Bandra-Kurla Complex area, but that no space was allocated in these places for their convenient relocation. They further claim that the Bank has failed to supervise the design of the resettlement plan “*with respect to our livelihoods, traveling distance, education of children and their admissions in respective medium schools, destruction of our source of income, our social, economical network and infrastructure.*”<sup>57</sup>

### **Lack of Participation and Consultation, Inadequate Disclosure of Information**

31. According to the Gazi Nagar Requesters, their rights to participation and consultation “*were completely denied and no results obtained in our attempts to raise our concerns.*”<sup>58</sup> They also assert that the Bank did not disclose information to them: “[d]ue to negligence by the Bank in disclosure of information and denial of our rights to participation and consultation, we were not able to put forth our such suggestions in the interest of affected public at large to resettle us in the nearby area in accordance with the criteria of the state government to rehabilitate PAPs to the nearest possible open plots of land.”<sup>59</sup> The Requesters state that the public information center “*opened at the instance of World Bank*” is in poor condition and that when they visited they “*always found it vacant with no attendant present to provide any sort of information.*”<sup>60</sup>

32. The Gazi Nagar Requesters also claim that when the design of the proposed bridge was being finalized, they were “*not provided with an opportunity*” to offer their suggestions, and that, if they had been, they would have suggested a different style, which “*would have significantly reduced the number of PAPs,*” and solved “*other problems.*”<sup>61</sup>

### **Complaints Raised with the Bank**

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<sup>56</sup> Second Request ¶4.

<sup>57</sup> Id., ¶7.

<sup>58</sup> Id., ¶4.

<sup>59</sup> Id., ¶7.

<sup>60</sup> Id., ¶10.

<sup>61</sup> Id., ¶6.

33. The Gazi Nagar Requesters assert that they have already made their grievances known to the Government of Maharashtra and to the Government of India, but have received no response. They claim that they have complained to the Bank's office in New Delhi stating their grievances but that the officer responsible *"failed to provide us any satisfactory reply that how and in what manner the policies of the World Bank have been followed."*<sup>62</sup>
34. The Gazi Nagar Requesters claim that *"the above actions/omissions, which are contrary to the above policies or procedures, have materially and adversely affected our rights/interests and request the Inspection Panel to recommend to the Bank's Board of Executive Directors that an investigation of these matters be carried out in order to resolve the problem."*<sup>63</sup>
35. In its Notice of Registration, the Panel noted that the above claims may constitute violations by the Bank of various provisions of the following operational policies and procedures:

OP/BP 4.01	Environmental Assessment
OD 4.30	Involuntary Resettlement
OP/BP 13.05	Project Supervision
World Bank Policy on Disclosure	

#### **D. First Management Response**

36. In the First Response Management emphasizes the context of the Project, pointing out that *"[e]fficient and adequate urban transport is crucial for future economic development of the MMR"* (Mumbai Metropolitan Region).<sup>64</sup> According to Management this Project is the first large project of its kind in an Indian city since the Bombay Urban Transport Project was carried out in the 1970s.<sup>65</sup> In addition, Management addresses in Annex 1 each specific claim raised by the USOA Requesters.
37. The First Response states that the Resettlement and Rehabilitation Policy (R&R Policy) adopted by the GoM on December 12, 2000, is a framework for resettlement for the whole Project *"and covers all people affected, whether by Bank-financed components or not."*<sup>66</sup> Management states that the Bank requested changes to the original R&R Policy to bring it into line with OD 4.30 on Involuntary Resettlement.<sup>67</sup> The First Response indicates that further changes were made to the policy, noting that since April 2004 the R&R component of the Project reckons the numbers of affected houses at 23,000 and the number of

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<sup>62</sup> Second Request, ¶9.

<sup>63</sup> Id., ¶10.

<sup>64</sup> First Response, ¶14.

<sup>65</sup> Ibid.

<sup>66</sup> Id., ¶20. It should be noted that, as a rule, the Bank disburses the proceeds of a loan against expenditures of discrete project components, but its share in the financing of the project is determined on the basis of the total cost of the project and, therefore, its policies and procedures apply to all project components

<sup>67</sup> Ibid.

affected shops at 3,000, or approximately 120,000 people.<sup>68</sup> Prior to this the number of affected households and businesses included in the R&R component was only 19,200. Management attributes the increase to more detailed assessments being carried out and to changes in the scope of certain sub-projects.<sup>69</sup> Management contends that “*resettlement is a crucial factor for successful implementation of the MUTP,*”<sup>70</sup> adding that the Project used an innovative approach to resettlement involving the private sector and NGOs such as the National Slum Dwellers Federation.<sup>71</sup>

38. Management states that, although a detailed Resettlement Action Plan (RAP) was prepared based on the R&R Policy, “[s]ub-project designs were not finalized by the time of Bank appraisal and their impacts could not be determined.”<sup>72</sup> As a result, Management states that specific and separate Resettlement Implementation Plans (RIPs) are required for each sub-project before Bank approval of bid documents. These RIPs, according to Management, must set out in detail the extent of land to be acquired, the impact in terms of resettlement, the sites proposed for resettlement, the role of NGOs, the costs, and the proposed time schedule.<sup>73</sup>
39. Management maintains that implementation of the R&R component has gone well.<sup>74</sup> It acknowledges, though, that unlike relocation of small, household-based shops, middle-sized business relocation poses more complex problems. It states that “*concerning issues raised by the Requesters, the resettlement documents and processes put in place could not have anticipated all the specific issues associated with the relocation of middle-sized businesses.*”<sup>75</sup> Management states that supervision of the resettlement component was “*Delhi-based,*”<sup>76</sup> complemented by assistance from headquarters.

### **Income Restoration**

40. The first set of issues analyzed in Annex 1 relates to the USOA Requesters’ allegations concerning the income restoration scheme established for the MUTP Project. In response to the Requesters’ claim that the Bank’s violation of its policies and procedures on involuntary resettlement and its failure to provide income restoration would result in significant harm to them, destruction of their livelihood, dismantlement of their productive resources, and the dispersal of their

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<sup>68</sup> Id., ¶17.

<sup>69</sup> Ibid.

<sup>70</sup> First Response, ¶18.

<sup>71</sup> Id., ¶19.

<sup>72</sup> Id., ¶21.

<sup>73</sup> Ibid.

<sup>74</sup> Id., ¶22.

<sup>75</sup> Ibid.

<sup>76</sup> First Response, ¶ 24

supporting networks and kin groups, Management states that the April 2002 Resettlement Action Plan (RAP) “describes measures for economic rehabilitation that are consistent with the provisions of the [Resettlement & Rehabilitation] Policy.”<sup>77</sup>

41. Management further responds that in December 2000 the GoM adopted an R & R Policy that contains provisions for Project-affected people and livelihoods.<sup>78</sup> Also, according to Management “all 668 businesses in the SCLR sub-project whose shops are affected by the road improvements are offered alternative shops, in accordance with the provisions in both the RAP and the RIP.”<sup>79</sup> Management also states that shop-owners who lose part or all of their space will receive ownership title to a new shop in the resettlement area in Mankhurd.<sup>80</sup> According to Management those losing only part of their space will be able to continue to operate on the space left in their original location, and the ones that lose their source of livelihood permanently will receive a lump-sum compensation equivalent to a year’s income.<sup>81</sup> Also, according to Management, the needs of medium-sized shopkeepers with specialized premises and strategic locations may not have been sufficiently addressed,<sup>82</sup> and MMRDA is said to be discussing solutions with the shopkeepers. Management states that consultants to MMRDA will carry out a survey to determine whether income restoration was achieved a year after the allotment of alternative shops, and “remedial measures will be undertaken if and as needed.”<sup>83</sup>
42. As stated before, the USOA Requesters expressed concern over the discrepancies between the size of the allocated areas and the stated principle of equivalency in Bank policy, quoting the scheme established for the MUTP Project that “every P.A.H. [Project-Affected Household] losing a commercial structure shall be eligible for an alternate place of commercial use of equivalent area,”<sup>84</sup> Management responds that, according to the resettlement documentation, resettled businesses will receive space of equivalent size up to 225 square feet and the option to pay for additional space up to 750 square feet in addition to receiving title to the newly allocated space.<sup>85</sup> Management argues that the maximum size limit is set because of limited space availability and high land costs in Mumbai.<sup>86</sup> Concerning the survey of the actual area of the USOA Requesters’ shops, Management contends that the NGOs<sup>87</sup> conducted “an on-the-ground survey to measure the size of affected shops... as part of the baseline socio-economic data collected during preparation of the RIP.”<sup>88</sup> Management also states that this

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<sup>77</sup> Id., Annex 1, Item 1, 15. The Policy referred to is that adopted by the GoM in December, 2000.

<sup>78</sup> Id., Annex 1, Item 1, 15.

<sup>79</sup> Ibid.

<sup>80</sup> Ibid.

<sup>81</sup> Ibid.

<sup>82</sup> First Response, Annex 1, Item 1, 15.

<sup>83</sup> Ibid.

<sup>84</sup> First Request ¶4.

<sup>85</sup> First Response, Annex 1, Item 3, 16.

<sup>86</sup> Ibid.

<sup>87</sup> Id., Item 2, 15; see also ¶31 *infra*.

<sup>88</sup> First Response, Annex 1, Item 4, 16.

information was updated in April 2004.<sup>89</sup> Management states that Bank staff are working with MMRDA “to ensure that the shopkeepers’ living standards, income earning capacity, and production levels are restored as required in the Resettlement and Rehabilitation Policy.”<sup>90</sup>

## Relocation

43. In response to the USOA Requesters’ claim that they would be relocated nearly 15 kilometers away, Management acknowledges that “at present, access by road entails traveling a distance of about 15 kilometers.”<sup>91</sup> Management adds, however, that the site at Mankhurd is only 8 kilometers from the current location of the Requesters’ businesses via a pedestrian bridge. Management further adds that once the SCLR is completed in mid-2006, the distance by road would be 8 kilometers as well.<sup>92</sup>
44. The USOA Requesters dispute the choice of Mankhurd as a relocation area, arguing instead for the Bandra-Kurla Complex as the appropriate site. Management argues that the businesses of the Requesters are dealing with commodities or services such as plywood, vehicle parts, repair, scrap metal, plastics.<sup>93</sup> According to Management, these businesses are not what the Bandra-Kurla Complex is intended for and that “property prices in the complex are expected to be too high for these merchants.”<sup>94</sup> Management claims that the Mankhurd relocation site is a settlement for about 5,000 affected families, and that a shopping complex there is currently under construction within the housing area and will be ready for allotment in September/October 2004.<sup>95</sup> Management anticipates that the families living at Mankhurd would substantially rely on the relocated shopkeepers for goods and services.<sup>96</sup>
45. According to Management, the Mankhurd site is located within an urban area and was selected as “one of the best options available to MMRDA, because it has good supporting physical infrastructure and is only about 1 kilometer from the Mankhurd railway station.”<sup>97</sup> Management claims that the shopping complex will contain 239 shops in sizes ranging from 54 to 231 square feet, and that it was first designed to be a two-story building, but the shopkeepers requested that the design be changed to include a ground floor with a ceiling 4 to 5 feet higher.<sup>98</sup> The Requesters also made reference to another relocation site near the Mohammed Estate SRA. Management states that this is a slum area with about 1,100 families and the availability of any additional space there will only be known after the

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<sup>89</sup> Ibid.

<sup>90</sup> Id., Item 3, 16.

<sup>91</sup> Id., Item 5, 17.

<sup>92</sup> Ibid.

<sup>93</sup> Id., Item 6, 17.

<sup>94</sup> Ibid.

<sup>95</sup> First Response, Item 3, 16.

<sup>96</sup> Id., Item 6, 17.

<sup>97</sup> Ibid.

<sup>98</sup> Id., Item 3, 16.

scheme submitted by the slum-dwellers through a developer to SRA is approved.<sup>99</sup> Management also states that *“the proposed scheme is not part of MUTP and, therefore, MMRDA cannot be assured of obtaining space there.”*<sup>100</sup>

### **Road Width**

46. Concerning the USOA Requesters’ demand for the restoration of the road width from 45.7 meters to 39 meters, Management responds that in the initial design of the Project the road width was planned to be 39 meters.<sup>101</sup> Despite this, according to Management, MMRDA informed the Bank in March 2004 of its intention to increase the width up to 45.7 meters in accordance with the city’s development plan, thus avoiding future disruption.<sup>102</sup> According to Management, the Bank has not yet given a non-objection to MMRDA’s proposal but has clarified to MMRDA that *“any resulting, additional resettlement requirements must be undertaken in compliance with the agreed Resettlement and Rehabilitation Policy of the Project and an amendment to the RIP must also be submitted to the Bank for no-objection [sic].”*<sup>103</sup>

### **Consultation and Disclosure of Information**

47. Responding to the USOA Requesters’ claims that their rights to participation and consultation were effectively denied, Management states that *“MMRDA held eight focused meetings between November 2003 and February 2004 with the affected shopkeepers, including the United Shop Owners Association.”*<sup>104</sup> Management adds that between January 20 and January 30, 2004, MMRDA and the shopkeepers exchanged documents on moving back from the affected portions of the shops and the allotment of alternative shops.<sup>105</sup> Management also states that *“consultations are being held on an ongoing basis by SPARC, one of two NGOs engaged by MMRDA...[and that ] PAPs were consulted at the time of household surveys and preparation of the RIPs...Also as part of preparation, consultations were held during which the resettlements and impacts were discussed. Both NGOs and PAPs participated in those consultations.”*<sup>106</sup> Management warns that it *“is aware that the act of consultation itself may raise expectations, while at the same time it cannot ensure that all concerns expressed will be addressed according to the specific wishes of each affected party.”*<sup>107</sup>

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<sup>99</sup> Id., Item 6, 17.

<sup>100</sup> Ibid.

<sup>101</sup> First Response, Item 7, 17.

<sup>102</sup> Ibid.

<sup>103</sup> Ibid. Management responded to this claim in the context of the Bank’s Involuntary Resettlement Policy. However, Management did not mention whether the proposed 45.7m width or any other alternatives to the road width were discussed in the design phase, or any additional environmental impact assessment has been prepared as required under OP 4.01, the Bank’s Environmental Assessment policy applicable to the Project.

<sup>104</sup> Id., Annex 1, Item 2, 15.

<sup>105</sup> Ibid.

<sup>106</sup> Ibid.

<sup>107</sup> First Response, Item 2, 16.

48. Regarding the USOA Requesters' concerns about disclosure of Project information, Management states that resettlement documents related to the SCLR are available at the Public Information Centers (PIC) at MMRDA and Mankhurd.<sup>108</sup> Management adds that as a result of a March 2004 Bank supervision mission, MMRDA established a PIC one kilometer southwest of the USOA Requesters' shops, and a formal invitation was sent to the United Shop Owners Association for the opening of the center. According to Management, the sub-project map, RIP, and other documents are available at the PIC, which is staffed by the Project Management Consultant. Management also adds that "*shopkeepers are encouraged to contact the MMRDA office regarding any questions they may have.*"<sup>109</sup>

### **Supervision**

49. In response to the USOA Requesters' concerns about Bank supervision, Management states that supervision is being carried out regularly "*with a high level interdisciplinary team of Bank staff.*"<sup>110</sup> Management also states that since Board approval of the Project in June 2002, it has carried out five regular supervision missions and six focused technical ones, and specifically a resettlement supervision mission in April 2004 "*to review key resettlement implementation issues.*"<sup>111</sup> Management further states that because of the complex nature of Project's resettlement aspect, the Bank has allocated "*a much higher than average supervision budget.*"<sup>112</sup>

## **E. SECOND MANAGEMENT RESPONSE**

50. On July 28, 2004, Management submitted its response to the Second Request (the "Second Response"). In common with the First Response, Management claims compliance with bank policies and procedures and addresses in a table each specific claim raised by the Gazi Nagar Requesters (Annex 1). It also sets out the background to the Project, and provides details of the loan arrangements, the coordinating agency responsible for the Project, the components of the Project, and its current status. Management states that "*[o]verall, implementation progress, although behind schedule, is currently rated as satisfactory. However, safeguard management performance is rated as unsatisfactory for several reasons.*"<sup>113</sup>

51. Management also states that "*[d]eficiencies in reporting, lack of timely handling of grievances, and inadequate performance of the Independent Monitoring Panel (IMP) have also contributed to the unsatisfactory rating.*"<sup>114</sup> Management

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<sup>108</sup> The PIC at MMRDA is about three kilometers from Kismat Nagar; the PIC at Mankhurd is about 8 kilometers away from Kismat Nagar: First Response, Annex 1, Item 9, 18.

<sup>109</sup> First Response, Annex 1, Item 9, 18.

<sup>110</sup> *Id.*, Item 8, 18.

<sup>111</sup> *Ibid.*

<sup>112</sup> *Ibid.*

<sup>113</sup> Second Response, ¶13.

<sup>114</sup> *Ibid.*

- elaborates on its description of Bank supervision activity in the First Response by listing in Annex 2 of the Second Response the dates of MUTP Bank supervision missions and the key members of each such mission, adding that “[i]n addition to Bank supervision, resettlement implementation is monitored through monthly and quarterly progress reports, and minutes of meetings of the IMP.”<sup>115</sup> Management emphasizes that the Bank has allocated “substantial resources” to the supervision budget, which it claims is double the average for projects in India.<sup>116</sup>
52. As in the First Response, Management maintains that implementation of the R&R component of the Project has generally proceeded well.<sup>117</sup> It claims that “[c]ommunities are being moved as groups to the closest available sites,”<sup>118</sup> arguing that resettlement by community is necessary to allow the affected persons to preserve their social networks.
53. The Second Response describes in detail the grievance process in the Project’s R & R Policy and the RIP.<sup>119</sup> This process places principal responsibility on an NGO (Society for Promotion of Area Resources Centers (SPARC)) for managing the resettlement activity. Where problems arise that cannot be solved by the NGO, they are referred to the MUTP Community Development Officer for further consideration. If a mutually satisfactory outcome is not achieved, the issue is referred to a higher management level. Management states that the process worked effectively during the resettlement of the initial 4,000 households.<sup>120</sup> Despite this, Management adds that supervision missions in April and July 2004 found that the process “required strengthening and revamping.”<sup>121</sup>

### **Environmental and Health Concerns**

54. The first set of issues analyzed in Annex 1 relates to the Gazi Nagar Requesters’ allegations concerning the environmental aspects of the resettlement site. Management states that “living conditions at Mankhurd are expected to be considerably better than conditions to which Requesters are currently exposed.”<sup>122</sup> Management further states that MMRDA collected information in addition to the baseline information relating to air, water, land, and flora/fauna, collected as part of the Community Environmental Management Plan, and that this information did not show that the Mankhurd site “is excessively polluted or is at risk of being polluted.”<sup>123</sup>

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<sup>115</sup> Id., ¶14.

<sup>116</sup> Ibid. The amounts allocated for supervision are: US\$200,000 in FY05, US\$181,000 in FY04, and US\$190,000 in FY03.

<sup>117</sup> Id., ¶23.

<sup>118</sup> Ibid.

<sup>119</sup> Second Response, ¶24.

<sup>120</sup> Ibid.

<sup>121</sup> Ibid.

<sup>122</sup> Id., Annex 1, Item 1, 23.

<sup>123</sup> Ibid.

55. Concerning the Gazi Nagar Requesters' health concerns due to the proximity of a dump and open drains, Management locates the dump at 1.5 to 2km away and down from the resettlement site stating that *"there is dense habitation between the resettlement site and the landfill."*<sup>124</sup> According to Management, the drains, which are 30m from the proposed resettlement site at their closest point, *"carry a mix of storm water, sewage and other waste,"*<sup>125</sup> and the Municipal Corporation of Greater Mumbai (MCGM) is required to clean them once every year before the monsoons. Management also asserts that *"there have been no reports of odor from the drains."*<sup>126</sup>
56. Furthermore, Management states that green lawns and trees will be planted along the banks of the drain to reduce its visibility from the buildings. Also, according to Management, *"a retaining wall will be constructed along the banks of the drain to define the boundary and actions will be taken to prevent erosion."*<sup>127</sup>

### **Alternatives for Highway Design and Resettlement Site**

57. Concerning highway design alternatives, Management states that the present alignment dates back to 1966, and was part of the Development Plan, showing a width of 30m increased to 45m in 1990. According to Management, *"options for alternative alignments were limited."*<sup>128</sup> Concerning the alternative of the J.J. flyover, Management states that such an option would support *"a narrower width of roadway of about 16 m, which is not standard. The SCLR is planned as a minimum six lane divided carriageway; construction based on the design of the J.J. flyover would result in a traffic bottleneck on the SCLR."*<sup>129</sup>
58. As for resettlement site alternatives, Management contends that *"a sub-group was formed in MMRDA with representatives from Government and NGOs to identify various available sites for resettlement."*<sup>130</sup> According to Management, there was limited opportunity for prior consultations with the Project Affected Persons on resettlement sites *"because of the lack of availability of resettlement site options."*<sup>131</sup> As for the sites suggested by the Requesters, Management argues that they were *"found not to be feasible"*<sup>132</sup> for different reasons relating to each of these sites. According to Management the New Mill, Swadeshi Mill, and Premier colony areas, are areas of closed factories and that prevents their use for slum rehabilitation schemes. Also the Bandra-Kurla Complex area is earmarked for an international financial and business center and is not appropriate for resettlement housing. Finally, the vacant government land referred to by the Requesters is reserved for school construction in the Urban Development Plan, and the

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<sup>124</sup> Ibid.

<sup>125</sup> Second Response, Annex 1, 23.

<sup>126</sup> Ibid.

<sup>127</sup> Ibid.,

<sup>128</sup> Id., Item 2, 24.

<sup>129</sup> Ibid.

<sup>130</sup> Id., Item 5, 25.

<sup>131</sup> Second Response, Item 5, 26.

<sup>132</sup> Id., Item 5, 25.

Government has allotted the site to a trust for the construction of a school, rendering it unavailable for resettlement purposes.<sup>133</sup>

### **Income Restoration and Kin Groups**

59. On income restoration, Management asserts that the “*R&R Policy provides that ‘displaced persons are assisted in improving or at least restoring their former living standards, income earning capacity and production levels’.*”<sup>134</sup> Management also states that the “*impact on Gazi Nagar residents is chiefly loss of housing and not loss of jobs or sources of income,*” and that the Project provides “*for a payment equivalent to twelve quarterly rail passes*” in the case of increased distance to the work place from the resettlement site.<sup>135</sup> As for the possibility of people losing site-specific opportunities for supplemental income, Management argues that such opportunities will be replaced by similar ones in the Mankhurd resettlement area, “*given that it is being constructed as an integrated township ... [housing] about 10,000 families,*” that it “*is located in M/East ward, which has a population of more than 400,000 and a large number of thriving commercial enterprises,*” and that it is connected by rail transport and a network of roads.<sup>136</sup> As for the Requesters’ concerns over the disbanding of their kin groups, Management asserts that since “*all SCLR Project Affected Persons are proposed to be resettled at the Mankhurd location, their social and economic network and kin groups will be largely retained in the new location.*”<sup>137</sup>
60. When discussing its supervision efforts in Annex 1 of the Second Response, Management provides further details about the R&R Policy and states that, under the Policy, Project Affected Persons will be assisted to secure admissions to nearby schools and will be provided with guidance about children’s education as part of NGO services and a 225 square feet space will be provided for every 100 households for pre-school purposes; a Community Revolving Fund (operated by the Project Affected Persons with assistance from NGOs) will offer credits/loans for self employment to supplement family incomes to vulnerable groups; the Project will offer a one-time cash supplement equivalent to one year’s income during the transition period should some Project Affected Persons lose their livelihoods permanently; Project Affected Persons from a particular area are to be resettled in one location to enable them to retain their social fabric; the remaining population, if less than 20 percent, will be able to choose whether to resettle along with the affected persons or to remain in the old location; the selected sites are to be provided with infrastructure facilities and open spaces in accordance with the Development Control Regulations of Greater Mumbai and the statutory clearances required from the SRA and MCGM.<sup>138</sup>

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<sup>133</sup> Id., Item 5, 26.

<sup>134</sup> Id., Item 4, 25.

<sup>135</sup> Ibid.

<sup>136</sup> Ibid.

<sup>137</sup> Second Response, Item 4, 25.

<sup>138</sup> Id., Item 7, 26-27.

## Building Construction and Maintenance Charges

61. According to Management, MMRDA reviewed the designs and layouts of Mankhurd, which the Slum Rehabilitation Authority (SRA) then approved as the Development Control Regulation of Greater Mumbai requires. Management also states that the Indian Institution of Technology independently reviewed the plans and made suggestions, which *“were incorporated into the final designs approved by SRA,”*<sup>139</sup> and that *“the gaps between the buildings are in accordance with the provisions applicable to SRA schemes.”*<sup>140</sup> As for the Requesters’ concerns over the maintenance charges, Management asserts that the Project will contribute about 20,000 Rupees (US\$ 450) *“as a one-time grant, which will be placed in a fixed account, the interest on which will be used to subsidize the maintenance charges and taxes.”*<sup>141</sup> Management also recognizes that this information may not have been sufficiently communicated.

## Supervision

62. Management considers that the supervision of resettlement has been regular and intensive, *“through Delhi-based supervision led by the Project co-task team leader, a senior resettlement specialist and environmental specialist, complemented by assistance from headquarters”*<sup>142</sup>. Management states that the Project has been supervised twelve times since it was approved two years ago, and a resettlement specialist has participated in eight supervision missions.<sup>143</sup> According to the Second Response, during the April 2004 supervision mission, Management has identified several issues that needed urgent attention and required follow up, and advised MMRDA about, inter alia, swift transfer of those with three years in transit sites to permanent housing units; establishing cooperatives and completing of other post-resettlement activities in the housing areas; strengthening implementation capacity in MMRDA; improving the dialogue and focusing on problem solving with shopkeepers; and strengthening the grievance redress procedures.<sup>144</sup> Management asserts that the *“July 2004 mission discussed these and related issues with MMRDA, Gazi Nagar Requesters, USOA ... and SPARC”* and *“[b]ased on this dialogue the Bank advised MMRDA and SPARC ... of agreed, additional measures and specific ways to carry out previously identified measures to improve implementation.”*<sup>145</sup>

## Grievance Procedure and Specific Grievances

63. Management contends that *“the Requesters did not use the grievance mechanism available under the Project, possibly because they were insufficiently informed*

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<sup>139</sup> Id., Item 6, 26.

<sup>140</sup> Ibid.

<sup>141</sup> Ibid.

<sup>142</sup> Id., ¶ 25.

<sup>143</sup> Second Response, Item 7, 26.

<sup>144</sup> Id., ¶ 25.

<sup>145</sup> Ibid.

about it.”<sup>146</sup> Management also states that MMRDA did not receive the letters the Requesters wrote to the Government of the State of Maharashtra and to the Government of India. According to Management, and after an exchange of letters between the Requesters, the Bank’s New Delhi Office, and MMRDA, a “constructive meeting” was held on July 9, 2004, “and a number of specific next steps were agreed upon to address the concerns of the Requesters.”<sup>147</sup> Management also states that on July 12, 2004, the Requesters objected to “the first part of the July 9 meeting ... [but] did not describe the second half of the meeting in which agreements were reached.”<sup>148</sup> Management further acknowledges that “consultations as well as communication of the grievance procedures have likely not been adequate and that the grievance mechanism itself needs revamping.”<sup>149</sup>

64. Concerning the Requesters’ grievances relating to the payment for identity photographs, Management asserts that during the July 9, 2004, meeting, “MMRDA clarified that this practice would not continue and that the Project would cover the costs of the photographs; SPARC therefore will no longer need to recoup these costs from Project Affected Persons.”<sup>150</sup> As for the Requesters’ concerns about the Project Information Center, Management agrees with the Requesters and asserts that since July 9, 2004, the PIC has been manned and a register kept, and that it is now open Monday to Saturday from 10 am to 5 pm.<sup>151</sup> Moreover, Management agrees that “certain improvements to the PIC are necessary,” and states that it would be “significantly strengthened through: placement of more relevant information, such as lists of Project Affected Persons, description of the grievance process and better information about the Mankhurd site; and through training of the attendant to enable him/her to answer queries made by the Requesters and others.”<sup>152</sup>

### **Consultation and Participation**

65. Regarding the Requesters’ concerns about consultation and participation, Management states that a series of consultations were held during Project preparation in 2001 and 2002, and representatives of NGOs and Project Affected Persons participated in these consultations, “which focused primarily on environment and resettlement issues.”<sup>153</sup> Management also states that “no specific consultations were conducted to discuss alternatives for alignment or structural design, except consultations for R&R purposes. Public consultations were held as part of the Environmental Assessment of the Project as a whole, wherein all sub-projects proposed in the Project were discussed.”<sup>154</sup> Management further

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<sup>146</sup> Id., Item 8, 27.

<sup>147</sup> Ibid.

<sup>148</sup> Ibid.

<sup>149</sup> Ibid.

<sup>150</sup> Second Response, Item 9, 28.

<sup>151</sup> Id., Item 10, 28.

<sup>152</sup> Ibid.

<sup>153</sup> Id., Item 3, 24.

<sup>154</sup> Id., Item 2, 24.

describes a number of consultation meetings held in preparation of the RAP and RIP up until February 2003, referring to the target audiences, dates, venues, and subject matter of the consultations.

66. Management argues that consultations with Project Affected Persons have also been held on an ongoing basis by SPARC. Management further states that on June 9, 2003, MMRDA organized a meeting at the Mankhurd site, which 125 Project Affected Persons, including about 60 from the SCLR sub-project, attended *“to explain the draft layout/plan, building plans, and proposed site amenities,”* and that the *“feedback from Project Affected Persons was incorporated in the final designs.”*<sup>155</sup> Management also states that it has in the Project files minutes of several meetings held during November 2003 and February 2004 with the SCLR Project Affected Persons, in which the proposed relocation of affected households to the Mankhurd site was discussed. Furthermore, Management states that MMRDA held a meeting on May 28, 2004, *“to explain the progress of construction at the Mankhurd resettlement site, and to discuss the non-feasibility of other sites mentioned by the Requesters, the list of eligible Project Affected Persons, the details of information available in the PICs, and the issue of identity cards [and that] twelve representatives from the three Requester associations participated in this meeting.”*<sup>156</sup>
67. Nevertheless, Management acknowledges that *“documentation of the consultation process overall and the outreach process to the Requesters has not been sufficient”* adding that *“the Bank is working with MMRDA to put in place measures to achieve better outreach, communicate with Project Affected Persons more effectively and strengthen the role of SPARC and supervision by MMRDA in resettlement implementation.”*<sup>157</sup>

### **Disclosure of Information**

68. Concerning the Requesters’ complaints about the lack of disclosure of information, Management asserts that drafts of the RAP have been disclosed in India since October 16, 2001, and in the Bank’s Infoshop on November 9, 2001, and that the final RAP was disclosed in India on April 4, 2002, and in the Infoshop on April 30, 2002. Management further states that the RAP was disclosed in the PICs at the Bank’s New Delhi Office and at those of MMRDA, in Bandra (East) and Mankhurd, along with executive summaries in Hindi and Marathi. Also, according to Management, *“copies of the RIP for the SCLR were disclosed by MMRDA in the then existing PIC offices in April 2003,”* and *“the executive summary of the RIP was placed on MMRDA’s web site under its ‘What is new’ section (www.mmrdamumbai.org).”*<sup>158</sup> Finally, Management asserts that *“further improvements will be made in communication of information to, and consultation with Project Affected Persons.”*<sup>159</sup>

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<sup>155</sup> Id., Item 3, 24.

<sup>156</sup> Second Response, Item 3, 24-25.

<sup>157</sup> Id., Item 3, 25.

<sup>158</sup> Id., Item 11, 28.

<sup>159</sup> Id., Item 11, 29.

## F. ELIGIBILITY

69. The Panel must determine whether the Requests satisfy the eligibility criteria for an Inspection, as set forth in the 1993 Resolution establishing the Panel and the 1999 Clarifications, and recommend whether the matter alleged in the Requests should be investigated.
70. The Panel has reviewed the Requests and Management's Response. The Panel Chairperson, Professor Edith Brown Weiss, together with the Panel's Executive Secretary, Mr. Eduardo Abbott, visited Mumbai and Delhi from June 22 through June 27, 2004. During their visit, the Panel team met with the Requesters, Federal and State government officials, representatives of MMRDA, and local NGOs. The Panel also interviewed World Bank staff responsible for this Project.
71. The Panel is satisfied that the Requests meet all of the eligibility criteria provided in the 1993 Resolution and paragraph 9 of the 1999 Clarifications.
72. During the visit, the Panel confirmed that the Requesters and other signatories of the Requests are legitimate parties under the Resolution to submit a Request for Inspection to the Inspection Panel. They reside in the Borrowers territory, live or have their businesses in areas to be affected by the Project (and or represent people who do ) and have common interests or concerns, as required in paragraph 9(a) of the 1999 Clarifications.
73. The Panel notes that the Requests assert "*in substance that a serious violation by the Bank of its operational policies and procedures has or is likely to have material adverse effect upon the requesters.*" The Requests assert that the Requesters will suffer severe adverse effects from the Project and its proposed resettlement plan and that such effects result from the Bank's failure to follow its operational policies and procedures.
74. The USOA Request states, and the Requesters interviewed by the Panel reiterated, that they believe their commercial enterprises will be moved to a distant area, where they will have less space than previously, that they will be unable to carry out their businesses successfully, and will suffer a very substantial loss of income. They believe that alternative sites were not considered, and claim that they were neither informed about the resettlement plans nor consulted during the design process.
75. The Gazi Nagar Requesters believe, as noted above, that the resettlement site is environmentally unsound and that they will suffer serious health effects from the proximity to open drains, a large municipal waste dump, and possible exposure to radiation. Moreover, they believe that the consideration of alternative sites was inadequate. The Panel notes that in projects requiring large scale resettlement of affected persons the environmental risks in a proposed resettlement site should be analysed in the environmental assessment. In this case Management does not

- address the issue of environmental assessments for this Project component, but notes that the design of the sub-project component was not finalized by the time of Bank appraisal. This raises concerns about whether the environmental assessment for the selection of the Mankhurd site complies with Bank policy.
76. The Gazi Nagar Requesters also claim that there has not been adequate consultation with them or information disseminated to them. The Panel is puzzled by the disagreements between the Requesters and Management concerning the consultation process. The Requesters are also concerned about the disbanding of kin groups, the need for income restoration, the quality of building construction and the maintenance charges for the resettlement buildings. This raises questions about Bank supervision of the way in which the resettlement plans were carried out in this component.
77. In both Requests, the Requesters claim that these actions and effects indicate that Bank Management and staff have not complied with a number of Bank policies and procedures and that the failure to comply has had a very significant adverse effect upon the Requesters rights, as required by paragraph 9 (b) of the 1999 Clarifications.
78. The Panel is satisfied that each Request *“does assert that its subject matter has been brought to Management’s attention and that, in the Requesters’ view, Management has failed to respond adequately demonstrating that it has followed or is taking steps to follow the Bank’s policies and procedures.”* Both Requests claim that the Requesters raised the matters of their complaint with Bank Management, and include evidence of prior correspondence with the Bank.
79. In the First Request, the Requesters stated: *“We have complained to the World Bank through several written letters (photocopies enclosed) to various authorities. We also had a meeting with the representative sent by your office, Mr Sumir Lal, Advisor External Affairs on the 25<sup>th</sup> of March, 2004 at 3.30pm at the MMRDA project office in Bandra-Kurla Complex in the presence of Mr Shrivardhankar of MMRDA.”*<sup>160</sup> Evidence received shows that the Requesters wrote to the Bank’s Department of Institutional Integrity (INT) on March 9, 2004, to Mr Sumir Lal of the Bank’s New Delhi office on March 26, 2004, to the Bank’s office in New Delhi on April 13, 2004, and again to the Bank via INT on April 20, 2004.
80. In the Second Request, the Requesters stated that they have complained to the Bank’s office in New Delhi stating their grievances but that the officer responsible *“failed to provide us any satisfactory reply that how and in what manner the policies of the World Bank have been followed.”*<sup>161</sup> Hence, both Requests meet the requirement of Paragraph 9(c) of the 1999 Clarifications.

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<sup>160</sup> First Request, ¶5.

<sup>161</sup> Second Request, ¶9.

81. The Panel notes that the subject matter of both Requests is not related to procurement, as required by paragraph 9(d) of the 1999 Clarifications.
82. The expected closing date of the related Loan and Credit is June 30, 2008. Only about 6 percent of the IBRD Loan and about 34 percent of the IDA Credit had been disbursed as of the dates the Requests were filed. The Requests therefore satisfy the requirement in paragraph 9(e) of the 1999 Clarifications that the related loan and credit have not been closed or substantially disbursed.
83. Furthermore, the Panel has not previously made a recommendation on the subject matter of the Requests. Therefore, the Requests satisfy paragraph 9(f) of the 1999 Clarifications.
84. The Panel notes that Management Responses - particularly the Second Response - contain a number of actions and agreements that in Management's view would resolve the Requesters' concerns and improve resettlement implementation under the Project.<sup>162</sup> The Second Response, in Table 1, summarizes most of these measures, and in some instances provides specific time frames by which some actions by the Bank or the PIAs should be or should have been taken.<sup>163</sup> The Panel notes that, while these actions and agreements show an intention by Management to comply with certain policies and procedures invoked by the Requesters, they may not be adequate to ensure compliance with, inter alia, the applicable environmental and involuntary resettlement policies, including the need to restore or improve the Requesters living standards, income earning capacity and production levels as a result of the Project's resettlement program.
85. The Panel welcomes Management's positive steps and notes the Project implementation agency's goodwill. However, it cannot be satisfied that the actions and agreements described by Management would, by themselves, demonstrate prima facie compliance with Bank policies and procedures as required by the Resolution. The Panel, therefore, cannot refrain from recommending an investigation on the basis of Management's compliance or likelihood of immediate and certain compliance with Bank operational policies and procedures, which the Requesters claim have been violated by the Bank. In order to ascertain compliance, or lack thereof, the Panel must conduct an appropriate review of all relevant facts and applicable policies and procedures. The Requests, Management's Responses, the Panel's visit to India, interviews with state and Project officials, Bank staff, and affected persons, and abundant subsequent correspondence confirmed that there are sharply differing views on the issues raised by both Requests.
86. The Panel recognizes that the goal of an efficient and sustainable urban transport system for Mumbai is important. It believes that an investigation will clarify

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<sup>162</sup> Second Response, 13, Part V “*Resolving Requesters’ Concerns and Improving Resettlement Implementation*”

<sup>163</sup> Id., 21, Table 1.

important questions regarding the Bank's alleged failure to comply with its policies and procedures, which will benefit this Project and related ones.

## **G. CONCLUSION**

87. The Requests and the Requesters meet the eligibility criteria set forth in the Resolution that established the Inspection Panel and the 1999 Clarifications. The Request and Management Response contain conflicting assertions and interpretations about the issues, the facts, and compliance with Bank policies and procedures.
88. In light of the foregoing, the Panel recommends that an investigation be conducted.