

**Accountability at the World Bank:
What Does It Take?**
*Lessons from the Yacyreta Hydroelectric Project
Argentina/ Paraguay*

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Introduction:

On December 26, 1996, the World Bank's Independent Inspection Panel recommended that the Bank's Board of Executive Directors authorize a full investigation of one of its most notorious development projects — the Yacyreta Hydroelectric Dam, located on the border between Argentina and Paraguay. The recommendation was in support of a claim submitted to the Panel by Sobrevivencia/ Friends of the Earth, a non-governmental organization (NGO) in Paraguay. The claim, which had been filed in September 1996, asserted that the project had “serious impacts on [local people's] standards of living, their economic well-being, and their health”² and that the harm was caused by violations of World Bank and Inter-American Development Bank environmental and resettlement policies, among others. Yacyreta was the sixth claim filed with the World Bank's Inspection Panel since its inception in August, 1994, and the third that the Panel had recommended for an investigation³. The Panel's recommendation was based on a preliminary assessment of the facts of the claim, a review of internal documents, meetings with Bank staff, government officials and the implementing agency in Argentina and Paraguay, and a field visit to the project site and affected communities.

This paper will evaluate the Inspection Panel process at the World Bank⁴. The paper describes why the claim was filed, what happened during the several phases of the 2-year-plus process, and how what had been intended as a procedural process in an international institution turned into a political process involving international NGOs, local grassroots social movements, government officials, Bank staff and the Board of Directors of the world's most powerful development institution. While the Yacyreta project is a colossal

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²Request for Inspection; Sobrevivencia et.al. (September 12, 1996)(Hereinafter referred to as the Request).

³For a comprehensive analysis of the Panel's first 10 claims, and a summary of the claimants' experiences, see Udall, Lori, “The World Bank Inspection Panel: The First Three Years”;(Bank Information Center; October 1997).

⁴The Yacyreta claim was the first filed with the IDB's Independent Investigation Mechanism. For an analysis of the IDB's Mechanism, see Wright, Angus, “Reflections of a Member of the Inter-American Development Bank Inspection Panel”; presented at the 1998 meeting of the Latin American Studies Association, Chicago, Illinois, September 24-26, 1998.

mistake when examined from just about any angle — financial, economic, political, social and environmental — this paper will highlight the Bank’s failures to protect the environment and compensate displaced people in violation of their own policies. I also hope to illustrate how local citizens, with support from international NGOs, have used the Bank’s new accountability mechanism to pressure for justice, accountability and solutions to their problems. The paper will explore several questions: What does it take for citizens to use the Inspection Panel process? What are the obstacles that Bank has constructed to avoid accountability? What are the outcomes of the Panel process from the point of view of the affected people? And finally, is accountability possible? I argue that while the process has been daunting for the claimants, it has had quite positive results particularly because it galvanized local citizens to press for greater political space in Paraguay to assert their rights. However, from the standpoint of accountability at the World Bank, the conclusions are less optimistic.

Background on Yacyreta

One of the largest and most complex construction projects ever undertaken in Latin America, the Yacyreta Hydroelectric Dam straddles the Parana River between Paraguay and Argentina. The dam is a joint project between the two countries that has been under construction since 1983. Downstream from the cities of Encarnacion, Paraguay and Posadas, Argentina, Yacyreta is 83 meters high and 67 kilometers long; if it is ever completed the dam will generate 3100 megawatts of electricity for Argentina. It crosses Yacyreta Island at the Apipe Rapids and has submerged both the island and the rapids in a lake formed when the dam’s 2 spillway gates were closed in 1994. Ultimately, the 250 km long reservoir will cover 1650 square km. Even as international institutions are rethinking the wisdom of generating electricity from such large-scale hydroelectric dams⁵ due to their massive social and environmental impacts and enormous costs, the Yacyreta project is an anachronism to an outmoded development model. Still unfinished after over 15 years of construction, the dam has been called a “monument to corruption” by Argentine President Carlos Menem.

While the Treaty establishing Yacyreta was signed by the two countries in 1973, construction did not get underway until 1983, when the estimated cost of the project was \$1.35 billion.⁶ Since its inception, Yacyreta has been fraught with corruption scandals, gross mismanagement, construction delays, and cost

⁵In 1997, the World Bank and the IUCN created a World Dams Commission to review the development effectiveness of large dams and to develop standards, criteria and guidelines for future decision-making. For more information, see Large Dams: Learning From the Past. Workshop Proceedings, April 11-12, 1997; IUCN and the World Bank. See also McCully, Patrick, Silenced Rivers: The Ecology and Politics of Large Dams; (Zed Books 1996).

⁶The history of the project is much longer. Studies were undertaken in the early part of the century and in 1926, an agreement was signed between the two countries’ ambassadors to the U.S. to begin discussions regarding a dam at the Apipe Rapids. The 1973 Treaty was intended to launch the project but disagreements between Argentina and Paraguay, coupled with design problems, contract bidding wars, financial problems and labor strikes held up progress for 10 years. For a critical history of construction of the Yacyreta dam, see Ribeiro, Gustavo Lins, Transnational Capitalism and Hydropolitics in Argentina: The Yacyreta High Dams (Gainesville: University of Florida, 1994). For an analysis of the project’s impact on the region’s people, and the development of local social movements in response, see Ferradas, Carmen A., Power in the Southern Cone Borderlands: An Anthropology of Development Practice (Bergin and Garvey 1998).

overruns amounting to billions of dollars.⁷ The dam has been a financial black hole. Both the World Bank and the Inter-American Development Bank have loaned over \$1.7 billion to the government of Argentina.⁸ Initial loans covered construction of the main civil works, including the powerhouse, earth dam, navigation, locks, irrigation intake, migratory fish elevators and purchase of turbines. As of 1991, however, construction was about 9 years behind schedule and had come to a standstill because the Argentine government owed some \$300 million to contractors. The estimated cost of the dam had risen to about \$8 billion. In order to finish the dam, the Argentine government requested new loans from the World Bank and Inter-American Development Bank.

By that time, both Banks had adopted strong environmental and resettlement policies, largely as a result of international NGO campaigns that exposed the enormous ecological and social disruption caused by large-scale infrastructure projects — like hydroelectric dams — that were financed by taxpayer dollars through the World Bank and other MDBs⁹. As the World Bank and IDB prepared new loans for Yacyreta during 1991, their policies for the first time required the borrower to prepare an Environmental Impact Assessment (EA) and a Resettlement Plan. Moreover, the policies also required that affected citizens be consulted in the development of the project, and in order to have informed participation, new Bank policies gave citizens the right to have access to relevant information about the project prior to the loans' approval. In this case, since the dam was 85% complete, consultation was to be part of the preparation of the two documents and implementation of the programs, rather than on the pros and cons of the entire project.

By 1992, when the World Bank and IDB loans¹⁰ were being negotiated, construction of the engineering works was 85% complete, while the “complementary works” — including housing for displaced people, parks, schools, sewage treatment facilities and other environmental mitigation measures — were only 15% complete. The EA, which was carried out on a project already nearing completion, nevertheless identified a number of critical environmental and social impacts that would need to be mitigated in order for Argentina to receive the Bank loans. Some of the impacts identified included¹¹:

- C flooding of over 80,000 hectares of land in Paraguay and 29,000 in Argentina, including 30,000 hectares of forest, large and small islands, marshes and grasslands. Ninety eight percent of the land to be flooded was classified as wildland — natural ecosystems which are biologically unique;
- C irreversible disruption of fish biodiversity and fishery resources upon which a sizeable population depend;
- C involuntary resettlement of over 50,000 mostly urban poor people in the two countries, and indigenous Mbya peoples and peasant fisherpeople who had already been relocated far from the river to marginal lands in Paraguay;
- C increased health risks from schistosomiasis, malaria and other diseases;

⁷Current estimates of the costs to complete the project run at \$8 - \$10 billion and it is currently around 11 years behind schedule.

⁸World Bank loans totaled \$895 million; IDB loans totaled \$840 million.

⁹See Wade, Robert, “Greening the World Bank: The Struggle Over the Environment 1970- 1995”, page 611 vol 2, in The World Bank: It's First Half-Century; (Brookings Institute 1997).

¹⁰The World Bank loan was for \$300 million, and the IDB loan was \$130 million.

¹¹These impacts were identified in the Bank's required Environmental Assessment and Resettlement Reports: Informe de Evaluacion Ambiental Proyecto Hidroelectrico Yacyreta (Environmental Assessment for Yacyreta), prepared by Ing. Juan David Quintero Sagre, et. al., May 30, 1992, for Entidad Binacional Yacyreta; and the Plan De Accion Para El Reasentamiento Y Rehabilitacion: Informe Final (Resettlement and Rehabilitation Plan for Yacyreta), prepared by Maria Clara Mejia, April, 1992, for Entidad Binacional Yacyreta.

C severe pollution of the urban waterfront areas and the reservoir generally from untreated sewage, industrial and agricultural wastes.

The Bank loans were predicated on a three-stage plan in order to install turbines and begin electricity generation while conducting the environment and resettlement activities in phases. The reservoir would be filled to 76, 78 and then 83 meters above sea level (masl) over a period of several years. The loan requirements also included a plan that was to ensure implementation and financing of the remainder of the resettlement activities as well as recurring costs of environmental monitoring and mitigation. Bank loans were to cover a part of the estimated \$650 million in environmental and resettlement costs; the remainder was to be supplied by counterpart funds from Argentina and the future sale of electricity.

During 1992 and 1993, NGOs in the region and internationally opposed the two loans on the grounds that the environmental assessment was inadequate, and that both the environmental mitigation and resettlement plans were dependent on an improbable financing arrangement. Chief among the complaints were a lack of baseline data to determine the extent of the biodiversity losses and impacts; inadequate identification of “compensatory reserves” — areas that were supposed to compensate the countries for flooded wildlands; absence of a plan to maintain minimum water flow in a principal branch of the river, the Aña Cua; and an underestimate of the number of people who had the right to compensation and resettlement.

At the time, the cost to date of the project was estimated at between \$4 and \$7 billion and questions were raised by NGOs and the US Government¹² about the precarious economics of the project, and in particular what appeared to be grossly inadequate financing and unrealistic income projections. Critics said that the Bank had not fully justified energy demand in Argentina, and thus the economic rate of return was calculated on faulty assumptions about the future sale of electricity.¹³

An international NGO campaign aimed at lobbying Executive Directors at both Banks to oppose the loan did not succeed, but did compel the World Bank (largely at the urging of the then U.S. Director, Patrick Coady) to include in the loan agreement stronger conditionality, more money for environment and resettlement activities, and promises for rigorous Bank supervision of the project. The IDB also increased the amount of its loan to \$130 million and targeted it for environment and resettlement activities above 76 masl. A specific condition, that would be crucial to the future World Bank Inspection Panel claim, was that before EBY could raise the level of the reservoir to 76 masl, the required environmental mitigation and resettlement measures were to be completed to the satisfaction of the Bank.

Over the next few years, construction of the dam continued though the project persisted in operating behind schedule. Particularly lagging were resettlement and environmental mitigation activities. However, with

¹²Treasury Department and the Environmental Protection Agency.

¹³Later, the Bank’s own Operations Evaluation Department’s “Performance Audit Report (PAR) for Yacyreta” (August 19, 1996) confirmed the NGOs’ concerns about energy demand. The PAR found that “By 1982, the demand for electricity was already lagging 25 percent behind the original forecast and there was no sign pointing to a swift demand recovery.” This demand analysis was made *before* construction began. The PAR goes on to challenge the project’s assumptions about Yacyreta being the least-cost option: “Furthermore, a statement to the press by the Minister of Public Works on November 29, 1982, indicated that Argentina’s gas reserves were very large. Thus, Argentina and the Bank had the opportunity to look at alternatives to Yacyreta even before the start of the major civil works.”(page 32, paragraph 5.6)

two turbines installed, EBY decided to close the spillways in 1994 and to begin generating electricity. Neither the World Bank nor the IDB objected to the decision, even though the required environmental and resettlement actions had not been taken. These included resettlement and compensation for loss of means of livelihood of hundreds of families in urban and rural communities, completion of crucial hydrogeologic studies and the effective establishment of compensatory reserves, among other actions. The decision to close the spillways and create the reservoir at its first stage of 76 masl blatantly violated the loan agreement. Bank staff signed off on the proposal to fill the reservoir apparently based on an agreement that EBY would in fact complete all requirements by 1995.

This promise was eclipsed by the 1995 peso devaluation in Mexico which was followed by a macroeconomic crisis in Argentina. Referred to as the “tequila effect”, the financial crisis caused reductions in public spending, including a complete cut-off of the government’s counterpart funding commitment to Yacyreta. NGOs had originally objected to the dependency on Argentine counterpart funding for environmental mitigation and resettlement activities because there was a fear that the promised resources would not materialize. In 1995, that fear was confirmed by the Argentine government’s refusal to spend another dime on Yacyreta until the project was privatized.¹⁴ Meanwhile, the creation of the reservoir led to significant deterioration of the lives of thousands of affected people on both sides of the river.

The World Bank and IDB Inspection Panel Claims

In September 1996, the environmental NGO Sobrevivencia/ FOE Paraguay submitted a claim to the World Bank Independent Inspection Panel and the first ever claim to the IDB’s Independent Investigation Mechanism. The claim was filed on their own behalf and on behalf of anonymous affected people from Paraguay¹⁵. It was a last resort action by local people to assert their rights after years of frustrated attempts to obtain adequate and timely compensation from EBY. The Yacyreta Resettlement Plan, supported by the Banks, promised housing, schools, sewage treatment facilities, and the restoration of peoples’ livelihoods. The environmental impact mitigation plan asserted that negative impacts on vital fishery resources, water quality and health would be adequately alleviated. Moreover, the losses of critical habitat, unique ecosystems and wildlife (including threatened and endangered species), were to be addressed through the establishment of compensation areas in Paraguay and Argentina. Based on independent environmental and social surveys between 1991 and 1996, which were conducted by Sobrevivencia and the National Commission in Defense of Natural Resources, with interventions from the Environmental Department of the General Attorney’s Office of Paraguay, by 1996 it was clear that the actions required for 76 masl were not being fully implemented. The claim alleged:

“Socio-economic impacts include loss of jobs and livelihood and forced resettlement to smaller homes of poorer quality. Workers in occupations including ceramic making and fishing have lost their resource base. Others, including washerwomen, bakers and pastry makers...have lost customers concerned over the effects of lower water quality on the goods they produce and the

¹⁴Privatization of the operation of Yacyreta would require the approval of both the Argentine and Paraguayan Congresses, however the legislation failed in both.

¹⁵Because of the potential for retaliation, the claim states that “the names of those persons who have authorized Sobrevivencia to represent their interests have been made available only to the World Bank Inspection Panel and are otherwise to remain confidential.” The Panel had previously set the precedent for accepting claims from anonymous citizens in the first claim, the Arun III Hydroelectric Project in Nepal.

services they provide.¹⁶

The claim also cited numerous health problems caused by poor water quality, including increased respiratory infections, diarrhea, rashes, skin and intestinal parasites, nutritional disorders, and stress-related conditions. It asserted that the rising water table, “has also incapacitated sanitation systems and destroyed crops”; and that “untreated sewage is discharged into the lake and instead of being carried downstream it stagnates in the proximity of homes now near that water level.”¹⁷ Irreversible impacts on fish resources, inadequate removal of biomass from the reservoir area, and the failure to establish adequate compensatory reserves were also cited in the claim.

The claim alleged violations of Bank policies on environment, resettlement, wildlands, information disclosure, indigenous peoples and project supervision, among others; and that these violations of policy caused material harm to local people.

The claimants requested several remedies including adequate compensation and retraining for people who had lost their homes and livelihoods; legal establishment and effective protection of compensatory reserves; a halt to privatization of the project unless an evaluation were first conducted of the economics of privatization and of its environmental and social impacts; and maintenance of the reservoir at 76 masl until all necessary environmental and social mitigation measures have been completed.

The Claims Process, Phase 1: The Panel Recommends an Inspection

Management’s Response¹⁸:

Once a claim is filed with the Inspection Panel, the first stage of the process is for Bank management to respond within 21 days of the request, followed by a preliminary review by the Panel¹⁹. Management’s response to Yacyreta was filed with the Panel on October 30, 1996. As is the case with several other claims, management first challenged the eligibility of the claim on several grounds. First, it noted that most of the Bank’s \$300 million loan for Yacyreta had already been “substantially disbursed” at the time of the request, though it acknowledged that a separate loan had been amended to redirect funds toward environmental mitigation and resettlement at Yacyreta²⁰. Thus management took note of the provision of the Panel Resolution that a loan must be under 95% disbursed at the time a claim is filed, but recognized also that there was still at least 25% of the amended loan remaining to be disbursed.

Second, management noted the Panel Resolution requirement that claims must be filed “by an affected

¹⁶Request for Inspection, paragraph 3.

¹⁷Request for Inspection, paragraph 4.

¹⁸The information in this section is based on “Argentina Second Yacyreta Hydroelectric Project Request for Inspection: Management Response”, in Inspection Panel Request for Inspection, Argentina/Paraguay: Yacyreta Hydroelectric Project Panel Report and Recommendation, December 26, 1996 (Hereinafter referred to as Management Response). “Management” refers to the project’s Task Manager, who at the time was Vladimir Jadrijevik, and his project team.

¹⁹World Bank Resolution No. IBRD 93-10, Resolution No. IDA 93-6 “The World Bank Inspection Panel”, September 22, 1993. (Hereinafter referred to as the Resolution.)

²⁰This refers to loan number 2854-AR which was originally an energy sector loan with undisbursed funds, which was amended in 1994 to incorporate provisions relating to the 1992 Yacyreta Loan, number 3520-AR environment and resettlement activities.

party in the territory of the Borrower”²¹. The borrower for Yacyreta is Argentina, “whereas Sobrevivencia and the individuals it claims to represent are all Paraguayan.” Management’s response did acknowledge the “pragmatic interest in applying the Board resolution flexibly on this point”, so did not formally object to Paraguayans bringing the claim²². However, they did object to Sobrevivencia as a legitimate affected party in its own right, “for there is no allegation that the NGO has suffered or will suffer a material adverse effect as a result of alleged Bank policy violations²³.” Management acknowledged that the Resolution allowed Sobrevivencia to file the claim on behalf of locally affected people, so it only partially challenged the NGO’s eligibility. Finally, management maintained that the claimants’ anonymity “imposes serious constraints on Management’s ability to respond fully to the Request, particularly with regard to issues...such as scope of the alleged harms, exhaustion of remedies, seriousness of alleged violations and causation.”²⁴

Apart from questioning eligibility, management also denied that the problems raised in the claim resulted from “any alleged Management violation of the Bank’s policies and procedures.” It asserted that even though reality had changed, the “project made economic sense when conceived” and that “it still makes more sense to complete the project than to stop it.”²⁵

Moreover, management claimed that “all resettlement and environmental mitigation activities required prior to reaching the current reservoir level of 76 masl have been met” but then obliquely notes, “except some pending matters which are being addressed through appropriate financing and supervision.” These measures were ostensibly outlined in a Plan of Action, which the Bank “urged the GOA to agree on” in April 1996²⁶. The management response also contains a point by point rebuttal of the allegations in the claim, disagreeing with the claimants’ allegations on all but two points.

The Panel’s Preliminary Review:

The Inspection Panel Operating Procedures provide for the Panel to undertake a preliminary review to determine whether the claim was filed by an eligible party; it falls within the scope of the panel’s mandate; there is sufficient information that management has “failed to demonstrate that it has followed, or is taking adequate steps to follow the Bank’s policies and procedures”; or if “such failure has had, or threatens to

²¹Resolution, paragraph 12.

²²Management Response, page 1, paragraph 1.2(b).

²³The Resolution states that, “The affected party must demonstrate that its rights or interests have been or are likely to be directly affected by an action or omission of the Bank as a result of a failure of the Bank to follow its operational policies and procedures...”; paragraph 12.

²⁴Management Response, page 2, paragraph 1.2(d).

²⁵Management Response, page 3, paragraph 1.8.

²⁶Management Response, paragraph 3.66. At that time, apparently the Bank threatened the Argentine government with application of remedies in the Loan Agreement if the government did not reach agreement with the Bank regarding compliance. Within two weeks, the government of Argentina agreed to provide the financial resources to complete those actions that were to have been completed prior to raising the elevation of the reservoir to 76 masl. Management’s response claims that, “As of October 15, 1996, implementation of these activities was proceeding satisfactorily and in accordance with the plan agreed with the Bank mission on August 16, 1996.” Management essentially denied that there were problems while at the same time admitting that at least some things had not previously been done.

have, a material or adverse effect”, among other things²⁷. During the review process, the Panel can obtain more information from the claimants and Bank management, and has the right to make a field visit to the project site. This step in the process allows the Panel to ascertain the integrity of the claim, and to determine whether or not to recommend to the Board a full investigation.

In the case of Yacyreta, Panel member Alvaro Umana and the Panel’s Executive Secretary, Eduardo Abbott, traveled to Argentina and Paraguay in early December, 1996. They were accompanied by Dr. Angus Wright, the representative from the IDB’s Investigation Mechanism, who had been asked by IDB President Enrique Iglesias to verify the legitimacy of the claimants. Together they met with Sobrevivencia, affected people, project sponsors, government officials from both countries and Bank staff.

Panel Recommendation:

The Panel’s Recommendation to investigate Yacyreta was submitted to the Bank’s Board of Executive Directors on December 26, 1996. The Panel recognized that the claimants were indeed eligible to file a claim; furthermore, it noted that there was *prima facie* evidence that confirmed “some of the allegations of harm made in the Request” related to loss of livelihood, health risks, water pollution, and resettlement. Importantly, the Recommendation found that the decision to raise the level of the reservoir to 76 masl may have violated Bank policy:

“The Panel observes that both the Resettlement and Environmental policies require an appropriate sequence of actions to prevent harm to both potentially affected populations and the environment. The sequence of actions in this Project...was allowed to slip badly when counterpart funding became unavailable and when an eventual privatization became an option to fund Yacyreta.²⁸”

Moreover, the Panel pointed out that the Bank had accepted violations of the loan agreement, and challenged management’s assertion that the Bank was not required to apply remedies in the event that the borrower did not comply with the terms of the loan. The Recommendation noted that, “according to Bank policy, compliance is not achieved by merely including covenants in Loan Agreements but rather by ensuring that their provisions are implemented in a timely fashion by the borrower and executing agencies.” It went on to cite the 1996 OED Performance Audit Report which made the same point: “the Bank accepted repeated violations of major covenants”.²⁹

The Claims Process, Phase 2: The Ball Moves to the Board’s Court

Once a recommendation is made, the decision whether to go ahead with an investigation rests with the Board of Executive Directors. However there is no provision in either the Panel Resolution, or the Panel Procedures, for the Board to act within a specified time frame. It took a full two months for the Board to decide what to do with the Panel’s recommendation; and during that period it became clear that they were not merely deliberating over the merits of the claim and the arguments put forward by Management and the Panel. Indeed, the process to determine the disposition of the Yacyreta claim had become highly politicized.

²⁷“Operating Procedures” as adopted by the Panel on August 19, 1994. (Hereinafter referred to as Panel Procedures)

²⁸Panel Recommendation, page 6 and 7, paragraphs 26 and 29.

²⁹Panel Recommendation, page 7, paragraphs 29 to 31.

At their first informal meeting to discuss the recommendation in early February 1997, the Board split over whether to approve an inspection, with the Part I (donor) countries in favor and the Part II (borrower) countries opposed. While Board deliberations are confidential, the Directors' positions on Yacyreta were no secret. The Argentine Executive Director, Julio Nogues, launched the strongest attack, mobilizing opposition to the Panel, the claim and the claimants from other borrowing countries. Mr. Nogues' statement at the Board meeting objected to an investigation and accused the Panel of operating outside its own resolution, and of placing the country in a precarious financial situation owing to the recent financial crisis³⁰. He also took issue with the claimants' eligibility because they are Paraguayan. There was also a strong reaction from the Part II countries to the term "investigation", which to some implied wrongdoing. They were concerned especially that the Panel process would focus on the role of the government in causing harm, rather than on the role of the Bank.³¹

However for the first time in a Panel deliberation the donor country Directors unanimously supported the Panel's recommendation. The strongest advocates for an investigation included the U.S., Netherlands and Switzerland. Apparently President Wolfensohn supported an investigation as well, but was searching for a consensus and it was clear that one would not be reached. The Board had split completely between North and South. Given the fact that the Part I countries own more than 50% of the Bank and thus have more than 50% of the votes, *if* a vote had been taken to authorize an inspection, the outcome would have been different. But the Board rarely votes. To do so in the case of Yacyreta may have been seen by some Directors, and certainly by President Wolfensohn, to be too costly for the Bank. The decision about the Panel's recommendation was thus postponed.

During this period, NGOs conducted a vigorous international campaign aimed at lobbying the Executive Directors to support the claim. The main intent was to ensure that the Board understood that the international NGO community was paying close attention to their process and that anything short of a decision to accept the Panel's recommendation would damage the Bank's credibility. Letters supporting the claim were also sent from some members of congress in both Argentina and Paraguay. In a letter from Argentine Senator Mario Anibal Losada to Julio Nogues, the issue of privatization was highlighted:

"It is out of utter disdain that any pending construction be completed or additional projects under the pretext of a possible privatization plan be undertaken, for not only is future funding in danger, but so too are the standards of living and health for the citizens of my district and those that live on Paraguay's border."

Senator Losada included in his letter a copy of a Declaration he authored that was unanimously approved by the Argentine Senate on April 17, 1996, requesting "the important need for these issues to be recognized by international institutions."³²

A letter to Mr Wolfensohn, signed by 26 NGOs from around the world summed up their view of the stakes riding on the Board's decision:

"To deny an inspection of this claim would deny the claimants the fair hearing they seek and would

³⁰Statement to the Board of Directors of the World Bank by Alternate Executive Director from Argentina, Julio Nogues, "Yacyreta Hydroelectric Project, Panel Report and Recommendation", February 5, 1997.

³¹This point of view persisted throughout the rest of the Yacyreta claims process, and became one of the core issues that held up progress during the 1998 Board Review of the Inspection Panel.

³²Senator Losada, who represents the Province of Misiones that is most affected by Yacyreta, later submitted his own request for an inspection to the Panel. The request was incorporated into Sobrevivencia's claim.

undermine the credibility and utility of the Inspection Panel as a forum to which directly affected local people can turn for impartial review. If a claim as strong and compelling as that presented in Yacyreta is turned away by the Board, it may be difficult for NGOs to continue to support the Panel process. We consider the Yacyreta claim to be an important test of both the Inspection Panel process and the Board's commitment to reform.³³

The Board met again in late February. In addition to deliberating over the Panel's Recommendation, the Board heard a presentation from Bank management of a new EBY-generated Action Plan. The Plan had two parts: Plan A addressed those environment and resettlement actions that were to have been completed *prior to* filling the reservoir to level 76 masl and Plan B proposed actions that would be necessary for "continued operation of the reservoir at 76 masl in an environmentally sound manner."³⁴

While it is important to note that effective actions, or remedies, are a desired outcome of the claims process, the Board's acceptance of the Action Plan undermined the Panel process in two important ways. First, it gave management direct access to the Board in order to present their point of view of the claim without making a similar allowance for claimants, who had not seen the Action Plan and were unable to respond to it either in person or in writing. The balance of power in the deliberation thus resided with management. Second, directing the Panel to look at the efficacy of the Action Plan deflected the Panel away from focusing on specific Bank policy violations.

The Board was also unable to reach consensus on the term "investigation", and instead authorized the Panel "to undertake a review of the existing problems of the Yacyreta project in the areas of environment and resettlement and provide an assessment of the adequacy of the Action Plan as agreed between the Bank and the two countries concerned."

NGOs were skeptical about the change in language and what that implied, but hopeful that the process would allow for an honest independent analysis of the Bank's role in Yacyreta and of the new proposals for problem-solving. In a meeting with Bank Vice President for External Relations, Mark Malloch Brown, Bank Information Center and CIEL were told that the Panel process would not be altered by the language; that essentially the Inspectors would have the same access to internal documentation, management, staff and both governments, and would have the opportunity to conduct field visits. Alvaro Umana was appointed the lead Inspector, and was given four months to complete the Panel's work.

The Claims Process, Phase 3: The Panel Opens Space for People Affected by Yacyreta

Once a recommendation for inspection has been approved by the Board, the Panel Procedures' methodology includes "meetings with the Requesters, affected people, Bank staff, government officials" along with project authorities and NGOs. They also include public hearings, site visits, and written and oral testimony. Along with research in the Bank's project files and interviews with Bank staff, field research by the Panel is the most effective means to ensure that all sides of the claim can be understood. The complexities of projects, and the multitude of actors, require the face to face contact in

³³Letter from Dana Clark and David Hunter, Center for International Environmental Law, on behalf of 25 undersigned organizations, to World Bank President James Wolfensohn; January 31, 1997.

³⁴Argentina Second Yacyreta Hydroelectric Project: Management Response to the Request for Inspection Submitted to the Inspection Panel on September 30, 1996 (October 29, 1996).

order to make judgements about the efficacy of claims.

The Panel visited Yacyreta in May and July of 1997, and met with affected people, local community leaders, municipal authorities, as well as government and EBY officials in both countries. The meetings with communities were especially important because it gave affected people the opportunity to speak to officials from the Bank who were there to listen to their problems. While the role of the Panel in field visits is in part to sift fact from fiction, and to look carefully at the reality of the claim's allegations, the obvious independence of the Panel from EBY provided space to citizens to voice their complaints and concerns in an atmosphere devoid of intimidation and disregard.

The news that their claim had been accepted by the Boards of Directors of both the World Bank and IDB was a turning point for the long-neglected affected people. Years of intimidation and a lack of response from government institutions had practically destroyed the organizations of affected communities. The validation of their claims by the two financial institutions, and the presence of the Panel in the field, generated a hope among the community organizations that their joint efforts could make a difference. One immediate consequence of the Panel's visit to the field was that EBY began meeting with community leaders; for some, this was the first time that their complaints had elicited such a response from the Entidad. Moreover, practically all dam-affected groups began organizing within sectors and then formed networks across sectors. The buildup of public pressure had an effect on the government, both locally and nationally, with some officials joining in efforts to form a new organization, the "Association of Municipalities Affected by Yacyreta", to pursue compensation denied by EBY.

The Panel's field visit was not the only catalytic feature of the emerging social movement at Yacyreta, but it gave impetus to community organizing. Their final Report and findings would provide the communities with official confirmation of their claims; the hope was that the claimants could use that Report to pressure EBY and the Banks to open up the process to greater community participation in designing solutions to their problems.

The Claims Process, Phase 4: Shoot the Messenger

The Panel's Report was delivered to the Board on September 16, 1997, almost one year after the claim was filed. The Findings were unequivocal:

"Despite extensive but inconsistent supervision efforts, the Bank has failed to bring the project into compliance with relevant Bank policies and procedures due to a poorly conceived Project design in the first place, compounded by changing standards and regulations over time, EBY bureaucratic procedures and lack of financial resources." Moreover, the report said, "the Panel has found that the Bank has not been able to bring the project into compliance with the ODs (4.01 and 4.20 on Environment and Resettlement) and is not likely to do so until the year 2000³⁵."

In addition to several explicit policy violations cited, the Report found fundamental inadequacies in the Action Plan. It criticized Bank management for failing to consult with locally affected people, and called into question the financing arrangements for completion of the Action Plans and for completion of the dam to 83 masl:

³⁵ "Review of Problems and Assessment of Action Plans, Argentina/ Paraguay: Yacyreta Hydroelectric Project"; The World Bank Inspection Panel (September 16, 1997)(Hereinafter referred to as the Panel Report.)

“The investment required to reach elevation 83 masl has been estimated by Management to be at least \$700 million beyond [that required for execution of] Plans A and B. This however does not take into account the actual costs of remaining expropriations (including thousands of hectares of land), resettlement of urban populations on both sides of the reservoir, and replacement of infrastructure (railroads, ports, airport) which would render the Management’s estimate wholly inaccurate.³⁶”

The report also confirmed problems with resettlement and implementation of environmental actions that Sobrevivencia and local organizations had raised in the claim, and called on the World Bank and IDB to provide “financial and technical assistance to correct the harms that have been identified.”

Despite these findings, the Board’s consideration of the Panel’s Report on Yacyreta was delayed. At the time the Report was submitted, the Board had also been considering two other controversial Inspection Panel claims: The Itaparica Resettlement and Irrigation Project in Brazil and the NTPC Power Generation Project (Singrauli) in India. Both of these claims had been recommended for inspection by the Panel and both had been denied by the Board. A contentious debate among Board members raised a number of serious issues that superceded their consideration of the claims, and which had a polarizing affect on the Board. Moreover management’s use of Action Plans in all three cases added an unanticipated element to the process — e.g. the role of the Panel in reviewing proposed remedies as opposed to searching for policy violations. The discussions of the two new claims along with the Yacyreta report prompted the Board to fundamentally question the role of the Panel. The outcome of the collision of claims was in effect a decision to “shoot the messenger”. President Wolfensohn proposed a Board review of the Inspection Panel.

Meanwhile, NGOs had also begun to worry about the apparent limitations of the Panel process and the lack of independence of the Panel from management. By October of 1997, ten claims had been brought to the Inspection Panel. Of those, the Panel had recommended 5 inspections and the Board had approved only one unconditionally — the first claim regarding the Arun III Hydroelectric Project in Nepal. It became clear that the process was not being implemented as originally envisioned in the Resolution as a result of the numerous obstacles being thrown in the path of the Panel from management and the Board³⁷.

Between September and early December, the Board put a discussion of Yacyreta on hold while they began a review of the Panel. After months of waiting, during which the Inspection Panel’s Report had not been made public officially, the Board finally scheduled a discussion of Yacyreta for December 9, largely because U.S. Director Jan Piercy asserted that the claim should not be linked to a completion of the Panel Review.

Prior to the meeting, Part I Executive Directors had expressed great concern about the findings of the Panel, and were anxious for the Bank to push for immediate resolution of the problems by revising the Action Plans with the participation of the claimants and local communities. They were also concerned about the findings that suggested that the Bank’s economic analysis was flawed. In particular they wanted an analysis of the costs of raising the level of the dam to 83 masl. There was also support for a follow up role for the Panel. However, any hope that the Board would move in the direction of resolving the problems and prescribing remedies were dashed when the Board finally met on December 9. The meeting

³⁶Panel Report, page 5.

³⁷For NGO recommendations for Panel reform, see Op Cit, Udall.

was again contentious and inconclusive, with another split between North and South that resulted in a postponement of final decisions. Instead, the Board thanked the Panel for its report and asked management to report back in six months as to the progress of implementation of the Action Plan. The Board then agreed to revisit the Panel's report in early 1998.

While putting Yacyreta on hold, the Board nevertheless went forward with its review of the Panel. As part of the review, the Panel convinced board members to hear directly from claimants who had actually utilized the mechanism and had practical experience with the process. On February 3, representatives from several of the claims — Yacyreta, Itaparica, and Arun — traveled to Washington to present their experiences to the full Board and to President Wolfensohn. A statement from Madhu Kohli, claimant in the Singrauli case, was also read at the meeting.

Several issues raised by the claimants were common to all of the claims, including a) the tendency of management to submit Action Plans to the Board as a means to undermine the claim; b) the lack of due process for claimants — once claims reached the Board, claimants were excluded from the process and unable to defend their claims directly, or to have access to or comment on the Action Plans; c) the fact that claimants did not receive official information about the disposition of their claim and had to rely on informal communications through NGOs in Washington who had routine access to the Panel and some Executive Directors; and d) the tendency for the Board to avoid issues related to policy violations. On the positive side, they noted that the Panel itself had been extremely fair and had listened to the complaints of local people in ways that Bank staff had never done. Local communities had been empowered by the process and became better organized to assert their rights and to pressure for justice and accountability with local authorities and the Bank. Ultimately, the claimants found the process important for their own attempts to press for solutions in the projects. They were hopeful that the process would increase the accountability of the Bank as a whole.

After the meeting with the Directors, Yacyreta claimant Pedro Arzamendia sent a letter, signed by members of his organization, to President Wolfensohn asking him to come to Yacyreta to see for himself the conditions that people have been living in. The letter requested that the Panel Report be translated into Spanish and that the Action Plans be made available to the public so that the affected communities could understand the Panel's findings and the work that was supposed to be done to solve the persistent environment and resettlement problems cited in the original claim. The letter complained that the Action Plans were created without the participation of the people, and ended, "the communities affected by the Yacyreta Project are waiting anxiously for the decision of the Directors of the World Bank, concerning the actions that the Bank will take in this case."³⁸

The Bank's Response to the Report: "What Findings?"

Arzamendia returned to Encarnacion with the hope that his visit to Washington would result in positive action in Paraguay. Instead, on March 20 an advertisement paid for by EBY appeared in the Paraguayan newspaper *Ultima Hora*, which printed a February 27 letter signed by Isabel Guerrero, World Bank Acting Vice President for Latin America and the Caribbean. Her letter was addressed to Arzamendia, on behalf of President Wolfensohn, and said that,

"the Bank is satisfied with the conclusions of the report which affirm that its policies on

³⁸Letter from Pedro Arzamendia to World Bank President James Wolfensohn, February 1, 1998.

resettlements, environment, community participation, and others were fully respected and applied in the case of Yacyreta." It also said, "We have complete confidence in the institutions and people that work with us to implement the Action Plan agreed to."

The letter, which appeared in several newspapers before being received by Arzamendia or Sobrevivencia (through whom the letter was sent), lied about the findings of the Inspection Panel Report with regard to violations of Bank policy³⁹. And it failed to mention that the Panel found the Action Plan to be inadequate to deal with the problems that remained at the 76 meter level. Both the Guerrero letter and EBY's advertisement gave the impression to the Paraguayan public that this was the Bank's official response to the claim to the Inspection Panel; and that the Bank believed that everything was fine with the project and with EBY.

On April 8, 1998, Sobrevivencia wrote a letter to Mr. Wolfensohn in response to the Guerrero letter, and included quotes from the Inspection Panel report findings in order to set the record straight. The letter to president Wolfensohn said:

"It is incomprehensible to us.... that your name would be attached to affirmations so far from reality — deliberate affirmations by the Entidad Binacional Yacyreta to discredit sincere and honest claims regarding the deprivation of authority to community leaders and municipal authorities who request only the right to just compensation for their communities. Because of the desperation caused by the Yacyreta Dam, thousands of families have resorted to such extreme measures as public hunger strikes and demonstrations that have been violently repressed by EBY."

Sobrevivencia further asserted that Guerrero's letter undermined local democracy in Paraguay; and that Bank policies had continued to be violated, including policies related to participation (in the Action Plan); and access to information (lack of access to the final Panel report). They demanded that a new Action Plan be developed with the peoples' genuine participation and that a retraction in Paraguayan newspapers was needed to counteract the misinformation from the Guerrero letter.

Sobrevivencia received widespread international support in a letter to President Wolfensohn written by the International Rivers Network (IRN) and endorsed by 90 organizations worldwide⁴⁰. According to internal sources, both of these letters never reached President Wolfensohn's desk, and were answered by his regional staff; the same staff who had drafted the Guerrero letter.

Outraged by the lack of response from the Bank, and especially by the fact that the Guerrero letter effectively gave EBY a license to continue to lie about the Inspection Panel findings⁴¹, NGOs felt that the press was the only way to get Mr. Wolfensohn's attention. On May 4, an article in the *Financial Times*, "Row brews over bank role in dam project", was the lead story featured in the Bank's internal daily press file⁴². The article contrasted the Guerrero letter with the Inspection Panel's report, and referred to the

³⁹The Inspection Panel Report found policy violations and inadequacies in the Action Plan. A summary of the findings is included in a letter from Sobrevivencia to President Wolfensohn, dated April 8, 1998. The summary is available from Bank Information Center.

⁴⁰Letter from IRN to President Wolfensohn, April 27, 1998.

⁴¹EBY's official comments on the Inspection Panel were to denounce the Panel members as communists and at one point they asserted that the Panel had been eliminated from the Bank.

⁴²*The Financial Times*, Monday May 4, 1998.

Bank's "apparent attempt to play down a critical report from its international inspection panel." Mr. Wolfensohn was apparently angered by the actions of his staff, and for being kept in the dark about the situation at Yacyreta.

Four days later, Sobrevivencia received the first of several letters from Shahid Javed Burki, Vice President for the LAC region (whom Ms. Guerrero had been acting on behalf of). Mr. Burki said, "Ms. Guerrero's letter... conveyed an *incomplete* description of the Bank Inspection Panel's Report" (emphasis added). NGOs were outraged that the Bank couldn't seem to tell the truth. NGO phone calls to Bank external relations staff and Executive Directors resulted in a second letter from Burki, sent on May 12, making a correction. This time, the line read, "Ms. Guerrero's letter... conveyed an *erroneous* description of the findings of the Bank Inspection Panel's Report" (emphasis added). Mr. Burki also said that the Bank takes the Inspection Panel findings seriously, and in particular that, "the Panel was critical of the Bank's role, and especially of management's decision not to stop disbursements of its loans in the face of non-compliance with agreed Resettlement and Environmental Mitigation Plans." Mr. Burki also noted that the Panel had recommended that the Bank "redouble its efforts to strengthen participation, supervision and institutional capacity under two action plans." He promised to make the Panel report available in Spanish, as well as the EBY Action Plans, and said, "In the meantime, we are confident that meetings with the affected populations and organizations representing them, will continue to take place — as they have taken place over the last year in accordance with the EBY Action Plans."

Burki's comment implies that such meetings with local people are a common and amicable occurrence, but once again, Bank management's interpretation of EBY's behavior is far from reality. Earlier in the year, hundreds of local citizens blocked the road to Encarnacion to protest the squalid conditions in the affected zone, recently exacerbated by abnormal flooding, and to demand a meeting with Joachim Rodriguez, the Paraguayan head of EBY. Riot police paid for by EBY, attacked protestors with lead pipes sending about 20 people to the hospital. A national newspaper, *ABC Color*, reported, "The fact that EBY has financed the transport from Asuncion, as well as the food for the members of the [police]...with the mission to repress those participating in the demonstration against EBY, is a clear symptom of the double standards with which EBY operates. While it states that it is open to dialogue, it masterfully applies dilatory tactics in answering and solving the claims." Six of the protestors camped outside EBY offices and held a hunger strike for four days before Rodriguez would agree to meet with them.

In mid May, World Bank managers directly responsible for overseeing the project met with affected people in Encarnacion. Bank Task Manager William Partridge is quoted in Paraguayan newspapers as having said at that meeting, "Your petitions and requests contain factual errors and a series of false information but apart from this, it is not our role to discuss or agree with solutions in the cities of the different countries." He also said that delays in EBY programs were because of the "lack of participation and support on the part of the population", and that EBY and both governments, "are acting in good faith and are trying to identify satisfactory solutions" in accordance with the World Bank. Newspapers reported that leaders of affected communities, offended by the meeting, announced that they would bring claims to the "ordinary justice" and international organizations "due to the indifference manifested by EBY and the World Bank to their complaints."

Two weeks after Mr. Burki's letter to Sobrevivencia, there was still no translated Inspection Panel Report, no publicly available Action Plan, and no retraction to the Guerrero letter in Paraguayan newspapers. Thus despite bureaucratic pronouncements in Washington, nothing in the field was being done to counteract the original letter. Sobrevivencia's Elias Diaz Peña decided to visit the Bank to try and

understand whether anyone there had any intentions of making the truth known in Paraguay. On May 26, he met with Mr. Burki and Ms. Guerrero, who neither apologized for the letter nor acknowledged that it may have conveyed a mistaken impression about the Panel's findings. Mr. Burki did promise that he would immediately print a retraction; make sure the Panel report was translated by the end of the week, and again promised to make the action plans available. He also agreed with Mr. Diaz Peña's suggestion that Sobrevivencia should help to organize meetings with the affected people in Paraguay during the next mission of the Bank, the week of June 16, which Mr. Burki would head.

The next day, President Wolfensohn agreed to meet with Mr. Diaz Peña. Also present at the meeting were David Hunter (CIEL), Alvaro Umana (chair, Inspection Panel), and Mr. Burki. Mr. Wolfensohn was extremely forthcoming with his concerns about Yacyreta and the fiasco that his staff had been perpetrating. He apologized for the way the Bank had handled the Inspection Panel report and said that he was personally committed to fixing the problems at Yacyreta. He also promised a translation of the report and said that the Action Plans should be participatory. He indicated that he supports the Panel and its findings "100%", and told Mr. Diaz Peña to contact him directly if things did not go well.⁴³

It Just Gets Worse

Not surprisingly, things did not go well. Apparently, Mr. Diaz Peña's visit to Washington was noticed by EBY. On June 3, newspapers, radio and television reports in Paraguay, using the head of EBY as a source, claimed that Sobrevivencia was "boycotting" an emergency World Bank loan to Paraguay for repairing damages from El Niño. Rodriguez called Sobrevivencia unpatriotic, politically motivated, and said they were causing harm to their own people. He also claimed that the upcoming visit of the World Bank Vice President was "due to the fact that positive information was provided by executives of the Bank, who deal with this part of Latin America, and who visited the work zone 20 days ago."

The emergency loan was apparently being negotiated to provide Paraguay with resources to manage extensive flood damage resulting from heavy rain linked to the El Niño phenomenon. Mr. Burki apparently had tried to use that negotiation as a way to force the Paraguayan government into compliance with their obligations at Yacyreta. The effect was that Sobrevivencia, accused of causing the delay in a humanitarian loan that they were not even aware of, had to respond in the national press without any immediate clarification from Mr. Burki.

The Bank's continued misinformation escalated tensions in Paraguay. Worried about further political retaliation and possible human rights abuses in the field, Sobrevivencia, Center for International Environmental Law (CIEL) and Bank Information Center (BIC) sent another letter to Burki on June 4, asserting that the allegations by EBY appeared to have had the World Bank's support, since there had been no retraction printed in the newspaper as yet. The letter expressed the NGOs' concern that such allegations seem to follow a "pattern of members of the Bank or EBY publicly stating that progress under the project is satisfactory to the Bank, and that the problems are being caused by the affected people or their representatives."⁴⁴ The letter also demanded that the Bank immediately publish retractions "in all major Paraguayan newspapers that (a) acknowledges that the letter written by Ms. Guerrero was erroneous and

⁴³Based on conversations with meeting participants.

⁴⁴Letter from Sobrevivencia, CIEL and BIC to Mr. Shahid Javed Burki, regarding Yacyreta/Developments in Paraguay, June 4, 1998.

should not have been published; (b) acknowledges that the World Bank Inspection Panel has found serious problems with the project and the Bank respects the findings of the Panel and is committed to solving the numerous social and environmental problems; and (c) states that Sobrevivencia had nothing to do with the cancellation of funds to Paraguay, and that Mr. Rodriguez' published statements to the contrary are incorrect." A copy of the letter were sent to President Wolfensohn.

While the Bank's external relations department tried to assuage the NGOs that delays were bureaucratic and not intentional, on June 6 the Bank finally took out paid advertisements in several Paraguayan newspapers that included a press statement and the Spanish version of Mr. Burki's May 12 letter to Sobrevivencia. The press statement only partially vindicated Sobrevivencia from having anything to do with the El Niño loan — notably by saying that the loan indeed is going forward and that, "This disputes the information that was published a few days ago in various newspapers, in which the non-governmental organization Sobrevivencia is accused of boycotting this operation. The World Bank is in communication with this organization, in reference to another project, Yacyreta." The press statement explained why Mr. Burki's letter was being reprinted: "to clear up the position of the Bank in respect to certain past difficulties related to the project, and to express the commitment of this institution to implement the environmental and resettlement programs of this project. "

Progress or PR?

In response to President Wolfensohn's instructions to fix the problems at Yacyreta, Mr. Burki led a high-level mission to Paraguay and Argentina between June 18 -19. With him were Maritta Koch-Weser, director of the Regional Environment Sector Management Unit, Country Directors Myrna Alexander and Isabel Guerrero, and Bill Partridge, the Bank's Yacyreta Task Manager. The mission was in the field three days, and went to Asuncion, Encarnacion and Posadas (Argentina). Prior to the mission EBY had lowered the level of the dam, placing many flooded houses well above the water level; local people observed that the water level had been obviously lowered rapidly, and was now lower than at any time since the reservoir was created in 1994. In addition to being a cynical effort to mask the human suffering, lowering the reservoir raised the question of whether the level has been at 76 meters since 1994, which EBY claims, or whether it was in fact higher, which is what the citizens had suspected. Responding to a direct question made in the presence of the World Bank mission, an EBY official said that the level of the reservoir corresponded precisely to 76 masl, and that it has been at that level since the reservoir was filled in 1994. Soon after the Bank mission left, the reservoir was raised back to its regular level.

In preparation for the Bank's visit, EBY had also asked a local mayor to stage an event for the Bank mission whereby the EBY authorities would give out land titles to a newly resettled group. The mayor refused. EBY made other efforts to manipulate the mission, including trying to set up the schedule so that, as in all other Bank missions since 1992, the Bank staff would see only what EBY wanted them to see. These efforts were thwarted, however, by Sobrevivencia's new relationship with President Wolfensohn, to whom they wrote asking that the Bank fulfill their promises to meet with affected people in communities identified by Sobrevivencia.

For the first time, Sobrevivencia and local leaders were given the opportunity to explain to Bank management the reality of their situation. The mission were taken to several neighborhoods where Mr. Burki talked to the affected people. A public meeting in Encarnacion attracted over 1,000 people, many of whom testified about the way their lives have been altered by Yacyreta. At the end of the meeting, Mr. Burki summed up by saying, "I come from one of the poorest countries on earth (Pakistan), and I have

never seen such misery as I have seen here today."

Vice President Burki's report back to the Board of Directors described shock at the misery, poverty, hunger, and complete lack of social services in the dam's area of influence in Paraguay. The mission observed that the situation was probably worse than when the Panel went to the field in 1997, and acknowledged that the reservoir was not being maintained at 76 masl. Indeed, they admitted that thousands of people have been displaced by the reservoir *above* 76 masl:

"Some of the most serious social problems stem from the fact that hundreds, if not thousands of people have been displaced by the seasonal rise of the reservoir waters beyond level 76m, while they may not be considered as eligible project beneficiaries, having not been covered in the census taken in 1990."⁴⁵

This statement confirmed, at least for the Board, that management's response to the claim regarding the existence of impacts above 76 masl was erroneous. The response had asserted that,

"the impacts of increasing the operating level of the reservoir above 76 masl have not yet occurred and are covered by sufficient legal covenants in full compliance with Bank policies."⁴⁶

More importantly, staff acknowledged that families not covered by the resettlement census were nevertheless living in extreme poverty and therefore needed to be included in some type of development plan. They remarked, "To sum up our impression from the Paraguay field visit: we were shocked to see the situation on the ground. More people than the original census of 1990 would suggest, have been touched by the project, and many live in utmost poverty right next to one of the World's grand engineering achievements. So far, because of a legalistic rather than a social welfare approach, their plight is addressed neither by EBY nor by the local Paraguayan Government in a satisfactory way."⁴⁷

Summary

The Inspection Panel Procedures stipulate that "in all cases of a request made by an affected party, the Bank shall, within two weeks of the Executive Directors' consideration of the matter, inform such party of the results of the investigation and action taken in its respect, if any."⁴⁸ In the case of Yacyreta, the results of the investigation have still not been formally acted upon. The Board meeting in June was yet another informal discussion with no conclusions or subsequent actions stipulated by the Board. While NGOs had consistently lobbied for a follow up role for the Panel, primarily to provide an independent monitor of implementation of the Action Plans and public participation activities, as of the time of the Burki Mission, the Panel was not welcome in Paraguay.

The Board informally discussed Yacyreta three times over a year, with no Board-generated outcome. While the Board took no formal action, Bank management have communicated to NGOs that they are supporting the following:

⁴⁵This is from the staff presentation to the Board of Directors of the World Bank on June 23, 1998.

⁴⁶"Management Response to the Request for Inspection Submitted to the Inspection Panel On September 30, 1997"; World Bank (October 29, 1996); as reproduced in "Inspection Panel Request for Inspection Argentina/Paraguay: Yacyreta Hydroelectric Project Panel Report and Recommendation"; World Bank Inspection Panel (December 26, 1996).

⁴⁷Ibid.

⁴⁸Panel Procedures, paragraph 23.

1. EBY is planning to establish two information centers — one on each side of the river — that ostensibly will make available the Action Plans, schedules, updates on progress, information about studies that still need to be done, among other things.
2. The Bank is preparing a new loan to Paraguay to address some social impacts that aren't currently covered by previous loans. NGOs have questioned whether putting Paraguay's citizens in debt to the Bank is a reasonable way for the Bank to solve problems resulting from their own mismanagement of the project.
3. A Center for Citizen Support has also been proposed, but the proposal came from the World Bank and not out of discussions with the affected people about what specifically they need. A counter proposal from the coalition of affected people requested that an independent monitoring panel be established that could monitor and enforce the action plans; the Bank responded that such a panel was beyond the Bank's mandate.
4. A new Independent "Blue Ribbon Panel" has been established by Vice President Burki to determine realistic options for the future final operating height of the dam. The Panel members have been brought in from outside the Bank, and have a range of technical skills. They will look at hydrology, economics, environment and social issues, and will present the Bank and the governments with an independent, technical analysis of the possible scenarios that could be followed to complete the project.

Conclusions: Accountability: What Does it Take?

The Yacyreta claims process has been an enormous challenge for those who initiated the claim, as well as for all of the actors who have tried to move it through the Bank. What are the outcomes of this process? Has the claim resulted in accountability? If institutional accountability is one of the goals of those bringing the claim, the results of Yacyreta are disappointing. However, if the goal of the claim is to trigger problem solving actions, then is the process worth it from the point of view of the claimants? From this perspective, the results are more optimistic. The following are some observations:

1. Institutional accountability remains illusory.

A. There are no incentives for Bank staff to comply with policies, or consequences if they don't:

Without an Inspection Panel, the World Bank and its staff have immunity from accountability — i.e. they are protected from any legal action that might be brought by individual citizens, corporations or governments⁴⁹. But even with an Inspection Panel, accountability is an illusion for several reasons.

Fundamentally, the Bank culture rewards staff for loaning money and convincing governments to borrow for projects, but does not admonish them for causing harm, even if that harm has enormous environmental, social, or economic consequences or result in project failure⁵⁰. The culture also fosters an environment in which Bank staff deflect the blame for failures from themselves to the borrowing governments, (which are often acting on advice and instructions from the Bank). Thus when confronted with problems, Bank staff can simply say, and often do say, "it's the government's fault." Given the historic problems with EBY, it has been easy for Bank staff to accuse the Entidad of failing to implement Bank policies. Indeed, Bank staff have often tried to portray themselves as champions of the people in the face of EBY's obstreperous bureaucracy — claiming that they are putting ample pressure on EBY to move ahead, secure resources and even to consult with affected citizens.

⁴⁹The World Bank's Articles of Agreement.

⁵⁰It should be noted that the Bank itself officially estimates that 33 percent of its projects fail.

The long time horizon of projects like Yacyreta also leads to high staff turnover, resulting in responsibility being avoided. Consequences that are felt today can often be ascribed to decisions taken by someone else years ago. The 1992 World Bank loan has had three task managers in six years. Despite acknowledgment by Bank officials — including President Wolfensohn — and the findings of the Inspection Panel that Yacyreta is a disaster, there still have been no visible consequences for staff responsible for either the fundamental problems of the project, or for lying to the press and public about the findings of the Inspection Panel Report.

Finally, the Inspection Panel Procedures and Resolution do not explicitly call for staff accountability. There are no requirements that link Panel findings to appropriate staff responses. In other words, staff continue to have impunity regardless of what the Panel concludes about violations of Bank policies in projects that they are responsible for.

B. At the level of management and the Board, the claims process is driven by politics not facts.

In a recent workshop in Mexico, former Panel chair Alvaro Umana said, “the only people who have followed the Panel Procedures have been the claimants and the Panel.”

The other actors in the process — management and the Board — have continually undermined and subverted the process in order to avoid accountability. The initial management response to the Yacyreta claim had four basic thrusts: One was to challenge the eligibility of the claimants and of the claim itself. Second, management denied that the problems of the project resulted from policy violations. Third, they asserted that the required actions related to environment and resettlement at 76 masl had been met and that problems with the project alleged in the claim had not occurred. Finally, management issued an Action Plan that appeared to be a response to issues raised in the claim. In other words, after having denied that there were problems, management submitted an Action Plan ostensibly to deal with them because it was politically expedient to do so.

Later, once the Panel’s final report confirming the claim’s allegations was issued, management blatantly lied about its findings to the public, through the letter from Isabel Guerrero to Pedro Arzamendia and in a later field visit by Bank staff to the affected community. Their political motivation could be attributed to an urge to avoid personal accountability by first denying the facts by claiming that problems did not exist, by trying to challenge the claimants’ legitimacy, and then by appearing to be proactively dealing with the problems.

The Board’s internal politics resulted in a North/ South (or donor/ borrower) gridlock from the moment they received the Panel’s recommendation right through to the present. Northern governments took the claim and the Panel’s recommendation seriously. Southern governments rejected both. The Board’s actions in the context of Yacyreta followed three basic streams: One was to focus on semantics, rather than on the facts of the claim. The Board established the term “investigation” when it created the Panel, but the word itself had been politicized. During the first Board discussion of Yacyreta, the Southern Executive Directors asserted that an “investigation” implied wrongdoing and possible corruption, and adamantly objected to the use of the term. The Argentine Director may have had good reason for wanting to avoid an investigation, considering the history of documented and alleged corruption at Yacyreta. The term was so contentious that the Board agreed to a compromise that limited the Terms of Reference to a “review and assessment”. This semantical difference as noted above ultimately had real implications for claimants’ specific concerns.

The second tactic was to divert the discussion away from the merits of the claim by complaining that the Panel did not follow the rules because their investigations raised issues around the role of governments not just of the Bank. (Ironically, it has been management that has consistently assigned blame to governments as they deflected responsibility for problems off of themselves.) Part of the Southern Directors' reactions to the Panel process may be that the findings could result in their governments having to pay for any remedies that might arise from investigations.

Third, Southern governments have tended to act in solidarity. It may be that Southern governments agree informally to support each other in limiting or rejecting Panel recommendations to investigate claims.⁵¹ For example, prior to the first scheduled Board discussion of Yacyreta, the Director for Argentina met with many of the Part II governments ostensibly to garner support for his position that there should be no investigation because a) the claimants were ineligible (because they are Paraguayan and the borrower is Argentina); and b) that the Panel did not follow its own rules and was biased in favor of Paraguay over Argentina, among other things. While the arguments may not have made sense to some, the Part II Directors were inclined to support Argentina in fighting the claim, lest they be the next in line for a claim to the Panel. At the end of the day, the Board abdicated its responsibilities to uphold the policies of the institution, by considering the political consequences of the claim rather than its technical merits.

2. The Board as a whole is unable to assign remedies.

The Board's final role in the Inspection Panel process, as outlined in the Resolution, is to consider the findings of the Panel and to determine whether any action should be taken. Granted, the language in the Resolution is weak and does not actually compel the Board to assign remedies. The *expectation* of the public, however, is that the Board exists to make decisions for the institution. As such, it should not simply hear the findings but address them. In the Yacyreta claim, however, the Board has all but thrown up its hands in determining what should be done about the problems identified by the claimants, confirmed by the Panel, and further affirmed by the Bank's management after Mr. Burki's mission.

On each occasion when the Board had the responsibility to discuss Yacyreta it met informally, came to no conclusions, and delayed any action into the future. While the Panel is the Board's sole link to objective reality, their response to the Panel report was not to take effective action to assign responsibility for problems or mandate adequate remedies, but instead to "shoot the messenger". The Panel's work on Yacyreta, Singrauli and Itaparica prompted the Board to order a review of the Panel, not the projects.

3. The complexity of the process requires the active involvement of an organized, international civil society.

First, the Bank seems impenetrable to most citizens: it is a large and complex institution that is often removed from the communities affected by Bank-financed projects. In the case of Yacyreta, in order for the claims process to be used, local and national citizens needed contact with international NGOs in order to learn that the Inspection Panel was in fact an option for them. In preparing their claim, they also relied on NGOs who understood Bank policies in order to determine which policies applied in the Yacyreta project, and how their experiences may have been a result of violations of those policies.

⁵¹The emergence of a Southern block is a relatively new phenomenon. Claims brought to the Panel from relatively weak countries — e.g. Nepal, Bangladesh and Tanzania — did not generate the same political response as those brought to the larger, more powerful borrowers such as Argentinian, India and Brazil.

Second, as soon as a claim has been accepted by the Panel the claimants are officially left out of the process. While the Panel has always exercised their option of meeting with claimants both in Washington and in country, the claimants do not have formal access to the process. Their only recourse is to engage with international NGOs who can in effect be their advocates in front of Executive Directors and management, and to the international press. In the case of Yacyreta, NGOs in Washington had to relentlessly monitor the progress of the claim in order to keep Sobrevivencia and the local claimants informed. Concerns raised by the claimants were also frequently communicated through informal NGO channels into the Bank.

Third, the politicization of Yacyreta forced the international NGO community to generate enormous pressure on the Board of Directors to approve some form of an investigation. Pressure was also aimed at President Wolfensohn, who understood that to deny an investigation into one of the most well-documented and well-publicized of the Bank's large-scale disasters would create further public relations problems. Without that pressure, the Board would have swept Yacyreta under the rug.

Finally, without an organized international civil society, and especially without advocates in Washington, the claimants would have been completely at the mercy of Bank management's attempts to whitewash the Panel's report in the Paraguayan press. The Guerrero letter lied to the Paraguayan people, yet it took a herculean effort on the part of Sobrevivencia, local citizens and international NGOs to finally get President Wolfensohn's attention. And that occurred only because of an embarrassing article in the *Financial Times*.

The necessity for such an organized civil society is not surprising. The Yacyreta claimants went to great lengths to establish the legitimacy of their claim, following all of the rules and procedures, including many years' worth of field work documenting the dam's problems. When the Panel accepted their claims as valid and worthy of an inspection, the claimants should have been able to rely on the Bank to implement its part of the bargain. Unfortunately, Bank policies and procedures are not necessarily complied with *unless* there are aggressive public interest watchdogs ensuring that those in power implement them.⁵²

But even with policies and watchdogs, both externally and internally, one cannot argue that the claims process has led to accountability. Recent attempts by a coalition of local citizens' organizations, municipal and provincial governments, and NGOs to insert themselves in a process of problem solving with the Banks and EBY have been thwarted by continued lack of access to meaningful participation. A Bank-generated proposal for the citizen's support center was rejected by the coalition because it was felt that the center was inadequate to their needs. An alternative proposal has been rejected by Bank officials. Clearly, due process does not exist at the World Bank, and without more democratic processes to govern the institution, the Bank will continue to have impunity.

4. The Panel Process Fosters Local Citizen Empowerment.

As this paper is written, the coalition of affected peoples' organizations, local municipal authorities and NGOs from Paraguay and Argentina are undertaking a citizen-led evaluation of the Yacyreta project. The

⁵²The recently published history of the World Bank, *The World Bank: Its First Half-Century* (Brookings Institute, 1997) notes that: "in the environment field...in most cases, the Bank has not moved without outside pressure from the major donors/ owners of the Bank or from NGOs. The "logic of discovery" of new facts has played only a minor role." See Robert Wade, "Greening the Bank: The Struggle over the Environment 1970-185"; Chapter 13, pp611-734.

process started with an alternative forum held parallel to an official evaluation meeting, organized by EBY, the IDB and the World Bank on September 24 and 25 in Encarnacion. The coalition decided to boycott the official meeting because it did not provide minimum conditions for effective participation, for an adequate evaluation of resettlement and environmental mitigation, and even less for including corrective proposals from the communities, civil society and local officials. The alternative forum attracted mayors and city council members from 19 municipalities; governors and councils from the Provinces of Itaipua and Misiones, Paraguay; members of parliament; as well as the local community organizations of people affected by Yacyreta. The citizens' groups are launching a more vigorous campaign to obtain accountability and participatory problem solving from EBY and the Banks, by calling for the resignation of the Paraguayan head of EBY, Joachim Rodriguez, and by calling on the Banks to revise the Action Plans with the true participation of the population. Their efforts are also intended to illustrate the ways in which democratic processes can contribute to designing solutions, and to reject the "official" participation process as mere rhetoric.

The outcome of this process remains to be seen. But it implies that citizens have been able to use the Inspection Panel as a way to legitimately challenge the MDBs, EBY, and governments, using the policy and accountability tools that the Banks themselves have made available. The Panel Reports of both the World Bank and IDB confirm that the problems are real and that the responsibility for correcting them lies with all of the official actors. Moreover, the Reports underscore the absolute necessity for effective public participation in order to overcome years of distrust and suspicion that has become the main obstacle to problem solving at Yacyreta. Even though the Banks' Boards have not been able to respond formally to the claim, the citizens have. They are demanding that their voices be heard and that their rights be upheld; and they are beginning a process of creating the solutions to their own problems. The Panel process has empowered citizens affected by Yacyreta and in this sense, has had great success.