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## World Bank Withdraws from Arun III Project at Inspection Panel's Recommendation

by Alfred Escher

Recently, the new President of the World Bank cancelled the Bank's participation in the Arun III Hydroelectric Project in Nepal after the World Bank Inspection Panel declared that the Bank had violated its own policies concerning indigenous people and environment assessment in approving the project. The Arun III project was the first case brought before the Panel, which began its operations in September 1994 (*See related articles in The Human Rights Brief, Vol. 1, No. 1 at p. 4; Vol. 2, No. 1 at p.4; Vol. 2, No. 2 at p. 2.*)

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capita income in Nepal is \$170, and the annual Nepalese budget is approximately \$500 million. The planned project would produce about 200 megawatts of electricity for consumption mainly in the capital and urban areas. In order to repay the loans, the World Bank required a 100% increase in the electricity tariff for the whole country. The project would have been built by French and Italian companies using unskilled local workers.

The World Bank Inspection Panel found in its formal investigation report that the Nepalese government and the World Bank had not provided for adequate land compensation and resettlement for the local and indigenous people affected by the project. In addition, they had not undertaken an adequate environmental assessment. Thus, the Bank had not complied with its own guidelines concerning the protection of indigenous people and the environment.

## Arun III Complaint Followed Two-Pronged Approach: Inspection Panel and Local Courts

In a speech at the WCL on October 25, 1995, Gopal Siwakoti, WCL LL.M. alumnus, described his role as a local lawyer and member of the Arun Concerned Group (ACG) in the complaint against the Arun III project. The legal attack against the project consisted of a law suit against the Nepalese government filed by ACG in the country's Supreme Court, as well as the complaint before the World Bank Inspection Panel. In the case before the Supreme Court, ACG challenged the government's refusal to provide relevant information about the project. The court ruled that the Nepalese constitution gave ACG the right to receive information of public interest from the government, including information about the project's impact on the environment and on indigenous persons. The court also held that the government must prove that each condition set forth in the World Bank's structural adjustment program complied with the Nepalese constitution.

Siwakoti admitted that the positive outcome of the two petitions was unexpected. According to him, both the lawsuit and the complaint before the Inspection Panel had at least three consequences for Nepal. First of all, they increased awareness among those affected by proposed development projects that individuals have the right to information regarding these projects. This will enable activists to safeguard the rights of indigenous persons and protect the environment more effectively in the future. Next, the Supreme Court's decision requiring that the terms of any loan agreement with the World Bank comply with the Nepalese constitution indirectly brings the Bank's activities within the scope of domestic jurisdiction, although the Bank itself remains immune from domestic lawsuits. Finally, the World Bank and the Nepalese government are now undertaking consultations with the local population regarding smaller, cheaper, and better alternatives to the Arun III project, which was from the beginning a main demand of the ACG.

Since its formation, the Panel has decided a total of four cases, including the Arun II project. In a case alleging expropriation of foreign assets in Ethiopia, the Panel decided not to recommend an investigation because the requester had not exhausted local remedies. In another case involving a power project in Tanzania, the Panel

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found that the requesters had been unsuccessful in the procurement process and thus were not eligible to file a claim. The fourth case, regarding the Rondonia Natural Resources Management Project in Brazil, is still in its

initial stages. The Executive Directors have requested more information before deciding whether or not the Panel should undertake a formal investigation.

Generally speaking, the Panel's procedure consists of the following steps: First, a private group of at least two people adversely affected, or likely to be adversely affected, by a World Bank-financed project in a direct material way must file a request for an investigation. Next, the Panel performs a preliminary review of the request. If the Panel decides the request is meritorious, it may recommend to the Bank's Executive Directors that an investigation be carried out. If the Executive Directors approve this recommendation, the Panel undertakes a formal investigation. Upon completion of the investigation, the Panel submits a report to the Bank's President and Executive Directors. The Executive Directors then decide how to respond to the formal investigation report. They must inform the complainants

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about the Panel's report and subsequent actions taken by the Bank.

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possible. A request for investigation can be filed anytime up to the closing date of the project, i.e. the date on which the last part of the Bank's loan is disbursed. The request can be submitted in any language, although English is preferred. It may be filed at the Bank's headquarters in Washington, DC, or at any regional office. The complaint need not be in any special form, however, using the sample form prepared by the Panel is recommended.

The Panel's proceedings are not the only proof of its effectiveness. According to the Panel members themselves,

the mere existence of the Panel has enhanced Bank staff awareness that they are accountable for the Bank's compliance with its own policies and procedures. Thus, the term "Panel approving approach" has enriched the World Bank's parlance. Furthermore, other multilateral development banks are discussing the establishment of inspection panels.

The success and the effectiveness of the Panel also depends on an adequate flow of information concerning the

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project at issue. The following documents are now available at the Public Information Center of the World Bank, either free or for a standard charge of \$15: original and revised project infor-

mation, environmental assessments, staff appraisal reports, legal agreements between Bank and borrower, and impact studies. *The Human Rights Brief* will also continue to report on the Panel's activities and its further legal development. ☉

For further information, contact:

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## ALUMNUS PROFILE

### Alumnus Works to Change Argentina's Human Rights Policy

by Alexandra Wisotsky

**M**artín Abregu, a 1994 graduate of the WCL LL.M. program, is now Executive Legal Director of the Centro de Estudios Legales y Sociales (CELS) in Buenos Aires, Argentina. CELS is the only organization in Argentina working to develop and change Argentina's institutional policy on human rights. "Although the dictatorship in Argentina ended years ago," said Abregu, "we are still trying to move the country's policy toward a new democratic methodology." CELS publishes an annual report on the state of human rights in Argentina, covering such issues as legal protection, discrimination, and inquiries into the disappearances that occurred during the dictatorship. CELS is also working to improve relations with the Argentine government to change the country's human rights policies. For example, CELS recently held a confer-

ence in conjunction with the Association for the Prevention of Torture, a Swiss NGO, at which members of the current administration discussed proposed improvements in prison conditions.



Martín Abregu (right) with fellow LL.M. alumnus Antonio Maldonado.

Before coming to WCL, Abregu worked as an attorney for CELS. While at WCL, he assisted Professor Claudio Grossman, now Dean of the law school, in his work as member of the Inter-American Commission on Human

Rights. Abregu found this experience invaluable in learning how the Commission functions. He is now applying the knowledge he gained to bring cases before the Commission. It also makes the international law course he teaches

at the University of Buenos Aires more interesting for his students, who value the ability to learn from his experience.

Abregu was also one of the founding editors of *The Human Rights Brief*. Although *The Brief's* readership has expanded, Abregu and his colleagues initially focused on "what former LL.M.s could gain by reading the articles back in their own countries." Through his work on *The Brief* and his studies at WCL, Abregu acquired knowledge and contacts, which he applies in his everyday work with CELS. ☉

Courtesy of The Advocate