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# Amazon Burning and the World Bank: Lessons from the Second World Bank Inspection Panel Claim

By David Hunter<sup>1</sup>

## I. INTRODUCTION

**A** diverse publicity from the Narmada dam controversy<sup>2</sup> and release of an internal World Bank report detailing poor project quality,<sup>3</sup> as well as explicit pressure from several donor governments, led the World Bank to create an independent Inspection Panel in September 1993.<sup>4</sup> The Panel's August 1994 opening marked the first time in the Bank's 50-year history that people harmed by Bank-funded projects could request independent reviews of Bank activities. With the advent of the Panel, the Bank also became the first international institution outside of the European Union to create a mechanism by which citizens could demand accountability without involving their government.

The Panel's mission is to investigate claims filed by affected parties and to review the Bank's compliance with its own policies and procedures. After receiving a claim, the Panel conducts a preliminary assessment, including a review of the claim, and Management's response. Based on this assessment, the Panel recommends to the Executive Directors whether a full inspection is warranted. The Executive Directors retain sole power to authorize a full inspection. For inspections that go forward, the Panel enjoys broad investigatory powers including access to all Bank Management and staff. After the investigation, the Panel issues a report with its recommendations to Bank Management and the Executive Directors. Management is provided six weeks to respond and provide its own recommendations to the Executive Directors, who make all final decisions.<sup>5</sup>

The first claim filed with the Panel alleged violations of environmental assessment, resettlement and other policies in the siting of the controversial Arun III hydroelectric dam in Nepal.<sup>6</sup> Arun III was a 201 megawatt hydroelectric dam with a price tag of nearly a billion dollars. The initial Bank loan would have been for \$175 million. The Panel had just completed a full inspection into the alleged violations when World Bank President James Wolfensohn announced in August, 1995 that the Bank would no longer support the project. Mr. Wolfensohn cited the work of the Inspection Panel as one of the reasons for his decision.

This article describes the PLANAFLORO claim, the second major claim filed with the Panel.<sup>7</sup> The PLANAFLORO claim was filed in June, 1995 by twenty-five Brazilian organizations, representing small farmers, rubber tappers, indigenous communities, rural unions, and environmental and human rights groups affected by

the loan. The claim raises serious issues about Bank oversight, monitoring and implementation, with implications far beyond the PLANAFLORO project.

## II. BACKGROUND TO THE PLANAFLORO CLAIM

The State of Rondonia in western Brazil includes over 20 million hectares of Amazon forest, is rich in biodiversity and is home to several thousand indigenous peoples. In recent years, Rondonia has become a frontier state, as Brazil's development strategy emphasized opening up the Amazon by punching roads into the forest and luring the urban poor to the region with unrealistic promises of wealth. The ensuing cycle of development has created substantial environmental and social problems. The roads are built; colonists, goldminers, and ranchers arrive; the land is cleared, often by fire and planted with export crops; the Amazon's remarkably poor soil is exhausted after a few years; and the colonists, still poor, move deeper into the forest. At the beginning of the 1980s, only 2% of Rondonia was deforested. By the end of the decade, approximately 25% of the state had been burned or otherwise deforested.<sup>8</sup>

In the late 1980's, the burning of the Amazon and the related murder of activist Chico Mendes galvanized international attention on the environmental and social damage occurring in the Amazon, and turned the public eye on the Bank's POLONOROESTE project.<sup>9</sup> POLONOROESTE, widely considered one of the worst ecological disaster ever supported by the Bank, was an infamous road construction project that opened much of Brazil's Amazon to slash-and-burn logging and unsustainable agriculture.<sup>10</sup> Over \$240 million dollars went to paving a major highway (Highway BR 364), and another \$200 million was destined for feeder roads, health programs and rural development. The indigenous populations received \$10 million, in what at the time was considered a unique effort to earmark specific funds for indigenous needs. Still, the project was widely criticized from the beginning, including by consultants and employees of the Bank. The Bank would temporarily suspend financing for the project, and, ultimately, Bank President Barber Conable would admit:

The Bank misread the human, institutional and physical realities of the jungle and the frontier. A road which benefited small farmers also became a highway for logging companies. Protective measures to shelter fragile land and tribal

people were carefully planned. They were not, however, executed with enough vigor. In some cases the dynamics of the frontier got out of control. Polonoroeste teaches many lessons. A basic truth is that ambitious environmental design requires realistic analysis of the enforcement mechanisms in place and in prospect.<sup>11</sup>

Conable's speech was undoubtedly self-serving in that from the beginning the Bank had ignored clear warnings from Bank employees and consultants, as well as NGOs, that the project was poorly designed and environmentally unsound. But Conable's admission also sparked some hope that the Bank may have learned something from POLONOROESTE, and that the damage would not have been in vain.

It was this hope, in part, that led to the Rondonia Natural Resource Management Project (known by its Portuguese acronym PLANAFLORO). The PLANAFLORO project is based on large-scale social and economic "agroecological" zoning, designed in part to intensify logging and agricultural activities in developed areas that could sustain them ecologically, and to demarcate and protect other areas, including indigenous territories and ecological reserves. The PLANAFLORO project eventually received widespread support among environmentalists, rubber tappers, and indigenous peoples, who saw the project as a viable opportunity for implementing sustainable development in the region. After over two years of implementation, however, the indigenous peoples and the rubber tappers had received virtually none of the promised benefits, and these former supporters of the project became vocal critics.

At the center of PLANAFLORO's implementation problems is a lack of political commitment in Brazil to make the changes necessary to establish and then defend the economic and social zoning plans. From the beginning, institutional reform was a major condition of the loan agreement. The promised reforms involved sweeping changes in policies, regulations, and investment programs, so as to provide positive incentives for sustainable development. After the loan was signed, however, Brazil and the state of Rondonia's commitment to these institutional reforms dissolved. Loan proceeds for road construction and other agricultural support flowed, but virtually nothing was done to protect the indigenous lands or ecological reserves.

When confronted with questions about implementation, the Bank typically identified external factors that made it powerless to improve implementation of PLANAFLORO. Commonly cited external factors included: (1) delays in the release of financial resources, especially counterpart funding by State and Federal government agencies; (2) deficiencies in the institutional capacities of executing agencies; and (3) political instability during election periods. Apparently, as in POLONOROESTE, the Bank had once again "misread the human, institutional and physical realities of the jungle and the frontier." The real problem is perhaps even more fundamental to Bank operations. The Bank's overriding culture is one that rewards the approval of loans, regardless of project quality; this approval culture is not well-suited to pressuring recalcitrant borrowers, particularly those as important as Brazil, into making politically unpopular decisions even if they are conditions in loan agreements.

By the middle of 1994, the failed implementation of PLANAFLORO was clear to most NGOs and independent observers. In June 1994, the Rondonia NGO Forum wrote a letter to the Bank President and Executive Directors asking that the Bank cease further disbursement until the government complied with the loan agreement and responded to issues raised by an independent evaluation conducted as part of project monitoring. In response, the Bank sent a mission to the region in August, after which two Aide Memoires were signed: one between the NGOs and the Government of Rondonia, and one between the Government of Rondonia, the Federal Government and the World Bank. The Aide Memoires included several steps that could improve the situation in Rondonia. By June, however, the schedule of implementation had slipped again; in the views of the claimants, the August mission had not resulted in any substantive improvements.

### III. THE PLANAFLORO CLAIM

The PLANAFLORO claim was filed in June 1995 by twenty-five Brazilian organizations representing small farmers, rubber tappers, indigenous communities, rural unions, and environmental and human rights groups affected by the loan. The 80-page claim emphasizes the Bank's failure to supervise implementation of the loan, as well as violations of several Bank policies and directives. The overall goal of the PLANAFLORO claim was to increase accountability and improve implementation of the loan.

At the center of the claim was the allegation that the Bank had failed to supervise adequate implementation of the loan. A number of specific, major deviations from the project design were identified. Examples include the following:

(1) *Failure to adopt an agreement between the Government of Rondonia and the National Institute for Colonization and Land Reform ("INCRA").* INCRA is the federal land agency responsible for promoting development and regularizing land title in the Amazon. The agreement between INCRA and Rondonia, designed to ensure that development policies would be consistent with the PLANAFLORO project, was supposed to be a condition for loan effectiveness. At the time the claim was filed, neither an adequate agreement nor a workplan implementing the agreement had yet been signed. This left INCRA free to promote development and colonization of areas that were supposed to be protected under the terms of the PLANAFLORO project.<sup>12</sup>

(2) *Failure to establish, institutionalize and maintain conservation units.* The Project Agreement provided for the creation of several specific extractive reserves and sustained yield forests. The Agreement also contemplated that the state agencies would be restructured to manage these reserves effectively, and that a system of laws and regulations elaborating standards consistent with the goals of the reserves would be enacted. By the time the claim was filed, the conservation units had not been created, nor had the government of Rondonia taken any major steps toward legally defining "State Extractive Forests" or "State Sustained Yield Forests", two categories of reserves promised in the project agreements. Other conservation units had not been demarcated correctly or were not being maintained against the encroachment of settlers.<sup>13</sup>

(3) *Failure to eliminate perverse development incentives.* According to the project design, the Borrower was to eliminate economic and fiscal incentives that encouraged inefficient resource allocation, non-sustainable private investment and environmental degradation. Revised federal and state investment programs were supposed to reflect land use capabilities and environmental considerations. Although a small rural credit fund was created to promote the goals of the agroecological zoning plans, this was dwarfed by other credit programs and government-sponsored development projects (including new road construction and hydroelectric development aimed at facilitating new settlements). According to the claimants, the government also never instituted the media campaign aimed at explaining the new agroecological zoning plans. Such a campaign was an important part of the project, because it would reduce pressure on the region's resources by reducing the number of migrating settlers.<sup>14</sup>

(4) *Failure to implement an indigenous peoples plan or to ensure protection of indigenous reserves.* According to the Bank's Operational Directive 4.20, the Bank is obligated to conduct an indigenous peoples plan through the informed participation of the indigenous communities. The project documents also contemplated the demarcation of at least five and as many as nineteen indigenous areas, improvements in health care, and other support. Allocations for the indigenous subcomponent were insufficient to conduct these activities, amounting to just under \$4 million; by contrast, the road and river transport component was almost \$57 million.<sup>15</sup>

Although the Borrower government is directly responsible for all of these deviations from the project's design, the claimants argued that at some point the Bank, too, is responsible for ensuring its funding is used for the purposes set forth in the original loan agreements. Brazil's violations of the loan agreements were powerful evidence of the Bank's failure to take its oversight role seriously.

#### IV. THE INSPECTION PANEL PROCESS IN PLANAFLORO

As set forth in the Resolution creating the Inspection Panel and the Panel's Operating Procedures, the Inspection Panel process includes two major stages: a preliminary assessment stage, in which a claim is reviewed to determine whether it is technically eligible and otherwise merits a full inspection, and the inspection stage in which the Panel conducts a full inspection and makes findings. The preliminary stage includes four steps: (1) the request is received and registered by the Panel if it is not frivolous or obviously lacking necessary information; (2) Management responds to the claim within twenty-one days; (3) the Panel has twenty-one days to review the claim, Management's response and any other information; and (4) the Board decides to authorize a full inspection or to reject the claim. Once the board authorizes an inspection, the Panel is allowed to conduct a thorough inspection and make findings about any violations of Bank policies.<sup>16</sup>

The following sections track the chronology of the PLANAFLORO claim as it moved through the preliminary assessment stage. As discussed below, the Inspection Panel process ultimately was cut short by the Board. What should have been a preliminary inquiry

into whether the claim was appropriate became a highly politicized decision over the role of the Bank in monitoring and supervising projects.

#### A. Registration of the Claim.

On June 19, 1995, the Panel registered the claim, or at least most of it. In the notice of registration, the Panel specifically excluded the allegations in the claim relating to procurement matters. Based on Paragraph 14(b) of the Panel Resolution, the Panel ruled that all procurement issues fell outside the Panel's mandate. Paragraph 14(b) of the Resolution forbids:

Complaints against procurement decisions by Bank borrowers from suppliers of goods and services financed or expected to be financed by the Bank under a loan agreement, or from losing tenderers for the supply of any such goods and services, which will continue to be addressed by staff under existing procedures.<sup>17</sup>

The Board thus forbids procurement-related claims brought by suppliers of goods and services or from losing tenderers, because private sector companies that lose in the procurement process have other options for relief available. The Board also feared that the Panel would be flooded by claims if losing parties in the procurement process could trigger a claim.

In the PLANAFLORO claim, however, the claimants were not suppliers of goods and services nor losing tenderers. They were not raising the procurement violations because they had a financial stake in procurement, nor even complaining that the ultimate procurement decisions were right or wrong. Rather, the claimants argued that the Bank's failure to meet the timeline laid out in the Operational Directive on procurement led directly to delays in finalizing the agroecological zoning plans, which in turn allowed the continued exploitation of areas that were supposed to be protected.<sup>18</sup> In the claimants' view, the Bank's apparent efforts to protect the Government of Rondonia from embarrassment over unfair procurement practices violated its own policies and led to delays that threatened the entire project. These allegations raised serious concerns about the Bank's commitment to project quality and to meaningful oversight of project implementation in the face of client-state pressures. A full inspection presumably could have helped to curb such activities in the future.

#### B. Management's Initial Response.

Bank Management's response generally confirmed that the project's implementation had been unacceptable, stating that it "share[d] the frustration with the Project's slow progress."<sup>19</sup> Nonetheless, the Management's response opposed the claim on a wide range of technical and legal issues. Three of the Bank's arguments were specific to how the PLANAFLORO claim was drafted, including that: (1) some parts of the claim failed to identify specific policies or procedures that were violated; (2) some of the allegations were not linked to any specific harm; and (3) some of the identified policies were not in force at the time.

These three relatively technical arguments never played a significant role in the further processing of the claim, primarily because any reasoned reading of the claim showed allegations of a serious pattern of neglect by the Bank in meeting its oversight and management obligations and that this in turn allowed continued destruction of the region's natural resources. The PLANAFLORO claimants included representatives of indigenous peoples and rubber tappers whose livelihoods depend on the conservation of natural resources in the area affected by the PLANAFLORO project.

Although these arguments were never accepted by the Panel, the Bank's opposition to the PLANAFLORO claim on such technical grounds reflected Management's overly legalistic and antagonistic approach to claims. Rather than cooperating to support the Panel in identifying and solving problems raised by affected parties, Bank Management's advocacy-oriented approach could raise substantial barriers for claimants without achieving any substantive purpose. Demanding more specificity than was already included in the 80-page PLANAFLORO claim, for example, would unnecessarily discourage future claimants and narrow the Panel's authority.

Three other arguments by Bank Management raised broader issues of eligibility with potentially major implications for the future of the Panel process.

(1) *Material Adverse Harm.* Management argued that the entire PLANAFLORO claim should be dismissed because there was no material adverse harm to the claimants. According to Management's Response, "the Project does not finance or promote any of the adverse impacts alleged in the Request. In fact, the Project aims at the improvement of the very situations raised in the Request."<sup>20</sup> Bank Management argued that material and adverse harm should be measured against what the situation was before the Bank got involved in this specific project. Management's standard would have excluded all projects where Panel oversight could improve projects and left within the Panel purview only those projects that affirmatively cause damage. The alternative standard, implicitly adopted by the Panel in recommending a full inspection, measured the claimants current situation against what the project was supposed to accomplish if the Bank followed its policies and procedures.

(2) *The Standard of Conduct.* The second major issue raised by Management's response was what standard should be applied by the Panel in overseeing Management's activities. Management argued for a standard based on "negligence or a lack of concern, at least with respect to its discretionary duties. More specifically, Management argued that its decision not to threaten to suspend payments under the loan or to take other steps available to it under the Bank's Operational Directives should not normally be reviewed by the Panel, except where Management was clearly negligent. Management's position suggested that the standard of conduct might be higher than simply whether, in the Panel's opinion, Management followed its own rules or not. Adding a "negligence" factor would add an element of subjectivity to what should otherwise be an objective inquiry into whether Management had followed certain policies or procedures. The more objective standard would comport better with the Panel's fact-finding function.

(3) *The Panel's Role in Ongoing Projects and the Bank/Borrower Relationship.* The third major issue was how much oversight the Panel should have over the Borrower's actions. This proved to be a central concern of Brazil and the Board of Executive Directors. Unlike claims raised before implementation begins (such as the Arun claim), the PLANAFLORO claim raised issues about Brazil's policies and activities with regard to the development of the Amazon region. Although the claim was focused on the Bank's failure to supervise, the evidence of this failure was a long litany of alleged violations of the loan agreement by Brazil. Allowing an international institution, such as the Inspection Panel, to investigate the land-use and development policies of a country raised serious questions of national sovereignty, particularly to the developing country representatives on the Board. Some even suggested that the Panel resembled a "World Court" in which the parties never consented to jurisdiction.

### C. The First Board Review of the Panel Recommendation.

After reviewing Bank Management's response and visiting the project area, the Panel recommended that the Bank's Executive Directors authorize a full inspection. The Panel's recommendation acknowledged:

Management [made a great] effort in providing extensive information and [executed] a fair and realistic assessment of most of the project's difficulties and delays. Nevertheless, the Panel has concluded that such information is not adequate to obviate the need for an investigation. Even though Management has addressed the complaints, the Panel is not convinced that there has been full compliance with the relevant policies and procedures. It is also not convinced, in the instances where Management admits failures, that proposed remedial measures will be adequate for compliance with the relevant policies and procedures.<sup>21</sup>

The Panel's recommendation was very brief and did not provide many details, primarily because the Panel did not want to be accused of having pre-judged the validity of the claim. Indeed, some Executive Directors had reportedly criticized the Panel for providing too much information in their preliminary assessment of the Arun claim.

The Board considered the Panel's recommendation on September 12, 1995. The Board was faced with the difficult choice of embarrassing Brazil, a major client/borrower, or rejecting a strong claim, thus crippling the Panel. The broadly divided Board could not reach consensus on whether to authorize a full inspection, and so it sought a politically acceptable compromise. The Board ultimately postponed any real action, deciding that "before a decision could be made . . . on the Panel's recommendation to investigate the complaints, the Panel should conduct an additional review to further substantiate the materiality of the damages and to establish whether such damages were caused by a deviation from Bank policies and procedures."<sup>22</sup> The Executive Directors decision required the Panel to gather more information regarding the alleged damages and to demonstrate a causal link between this damage and a violation of Bank policies and procedures. In the

meantime, Management was expected to continue its supervisory efforts and to develop a plan for improving implementation.

#### *D. The Panel's Additional Review and Management's Action Plan.*

In light of the Board's request for more information, the Panel conducted an "Additional Review" of the allegations in the PLANAFLORO claim to identify material damage caused by violations of the Bank policies and procedures. The Panel's account demonstrated serious damage from illegal logging, illegal settlements sometimes supported by INCRA, invasions of protected areas, and burning of the forests. For example, the Panel estimated that PLANAFLORO's failure to reduce deforestation resulted in \$32 million in lost commercial value of forests annually. The Panel estimated that just the Uru-eu-wau-wau Reserve lost approximately \$2 million worth of commercial timber during the period of PLANAFLORO implementation. The Additional Review also "further substantiated" the Panel's view that violations of Bank policies and procedures had contributed to continued damage to the claimants. Their findings are worth reviewing:

Critical delays occurred for three years between approval of the Loan and filing of the Request because:

The Bank did not supervise PLANAFLORO effectively and failed to enforce implementation of key actions that were to be the basis of successful execution of the Project.

Supervision of implementation has been weak due to the lack of a permanent presence of Bank Staff in the project area and a rather complacent reaction to repeated defaults on covenants under the Loan.

Shortcomings in supervision are evidenced by the fact that long delayed actions have suddenly become possible since the Request was filed.

Delays in the project have contributed to a breakdown of trust between NGOs and the Bank, making the direct involvement of civil society in any reorientation of the Project important. Some of the remedial measures proposed in the Report regarding NGO participation may, however, result in future alienation of intended Project beneficiaries.

Postponement of a timely reorientation of the Project has substantially delayed achievement of many of PLANAFLORO's objectives and caused continuing damage to the interests of intended beneficiaries.

Now the situation for many intended beneficiaries is by and large worse than two years ago.<sup>23</sup>

On December 20, Bank staff submitted to the Executive Directors a Status Report and Action Plan setting forth its plan for improving implementation. According to the Status Report: "[t]he Project's major achievement has been to help the State place about 60% of its total area off-limits to development, preventing the implementation of roads, settlements, and other public investments in areas which are either unsuitable for agriculture or ecologically

fragile. However, the implementation of PLANAFLORO has been slower than expected."<sup>24</sup> Management's Status Report is detailed and admits that Brazil's institutional and policy framework impedes full implementation of the Project. Based on the belief that the action plan was sufficient to meet the demands of the claim, Bank Management again asked the Board to vote against the full Panel inspection.

In a January 18, 1996 letter to World Bank President James Wolfensohn, the Rondonia NGO Forum complained that the Bank never provided the Action Plan for review nor was it responsive to the specific allegations raised in the claim. The Forum renewed their request for an inspection on behalf of the claimants, stating that: "[a] formal investigation by the Inspection Panel is essential to correct the mistakes in the execution of the PLANAFLORO, and to contribute to a learning process within the World Bank and the Brazilian government on the practical implementation of a new generation of sustainable development projects."<sup>25</sup>

#### *E. The Board's Second Decision.*

Despite the Panel's documentation of damage in the PLANAFLORO project region and the Panel's view that this damage was at least exacerbated by violations of the Bank's policies and procedures, on January 25, 1996 the Bank's Executive Directors denied the Panel authority to investigate the claim. To gain consensus, however, the Board explicitly agreed to review the project in six to nine months, and agreed that it would invite the Panel to participate in that review. In the meantime, the Board supported Management's Action Plan as being sufficient to cure the implementation problems.

Like its first decision, the Board's denial must be viewed as a political compromise having little to do with the merits of the PLANAFLORO claim. The developing country Executive Directors, as well as a few donor country Executive Directors (most notably representing the United Kingdom and France), opposed any continued involvement by the Panel. On the other hand, the remaining donor countries and the Bank President apparently supported some continued involvement of the Panel. Viewed in this light, the decision is diplomatically astute. Bank Management is given another opportunity to improve its oversight; Brazil's embarrassment is minimized; and the Bank can take credit for supporting further review of PLANAFLORO. In fact, the Bank press release was entitled "World Bank Calls for Further Review of PLANAFLORO Project in Brazil."<sup>26</sup> NGOs and the press, by contrast, primarily saw the decision as a rejection of the Panel process and an effort by the Bank to circumvent accountability for the specific allegations raised by the claimants.<sup>27</sup>

## **V. CURRENT STATUS AND FUTURE IMPLICATIONS**

The Executive Directors decision to reject a full inspection, but to "invite the Panel to participate" in a subsequent review of PLANAFLORO's inspection raises many questions about the future of the PLANAFLORO project and the Panel process.

*The PLANAFLORO Project.* The Rondonia NGO Forum expressed its disappointment that a formal investigation was not approved and that the inspection panel process was apparently so politicized. On the other hand, the Forum recognized that the claim and the Board decision opened new possibilities for improving implementation of the project, as long as several conditions were met. For example, the claimants asked to be allowed to negotiate with the Bank over the specific components of the action plan, in order to ensure that their original concerns are addressed. The claimants also sought assurances that the Panel would be given complete freedom and adequate resources to conduct their review of the project in six or nine months.

The Forum's position is consistent with the tenuous, but real, advances made in implementation of PLANAFLORO since the claim was filed in June, 1995. Even according to the claimants, Bank supervision of the project noticeably improved.<sup>28</sup> In addition, the long-awaited agreement between INCRA (the Federal land-use agency) and the government of Rondonia was signed just a few weeks after the claim was filed. According to the Management Status Report, the implementing workplan was also signed in August. More telling, perhaps, is that three extractive reserves, totalling over 330,000 hectares of land, were created by decrees in July and August.<sup>29</sup> At least two of these reserves were specifically named in the loan agreements, but there was no progress in creating them in the two years of implementation prior to the claim being filed. More generally, many of the allegations originally made by the claimants have been confirmed either by the Management's Status Report or the Panel's Additional Review. This does not begin to ensure that real change will occur, but it does validate those individuals and organizations that took the courageous and difficult step to file the claim.

The Panel experience was not all positive for the claimants, however. Filing the claim was expensive, requiring significant financial and human resources. Even more importantly, the PLANAFLORO process took on a life of its own, separate from the demands of the claimants. Unlike a judicial proceeding, the claimants did not necessarily retain control over their claim. These claimants specifically did not ask for the loan to be suspended, but rather wanted inspection and greater supervision to improve implementation. Once the claim was filed, decisions as to whether to suspend a loan or to recommend suspension could have been taken unilaterally by Bank Management or the Panel, respectively. Moreover, current reliance on the action plan in Management's Status Report brings no guarantees that the primary concerns raised in the claim will be adopted. Furthermore, there are no clear procedures for how the Panel will be involved in the future "review" of PLANAFLORO, and there is little guarantee of even minimal public oversight or transparency in the process.

*The Future of the Panel.* In addressing PLANAFLORO and other claims with objectivity and professionalism, the Panel has gained the respect and trust of the NGO community. The Panel is seen as an important opportunity for improving the Bank's performance and accountability. It is also viewed as an important model for similar mechanisms at the regional development banks (both the Asian Development Bank and the InterAmerican Development Bank have adopted similar mechanisms).

Nonetheless, the Executive Director's rejection of the claim undermines the public's confidence in the Panel process. Despite inviting the Panel to review the project at a later date, PLANAFLORO marked the first time that the Board rejected an inspection recommended by the Panel. Discussions among the Executive Directors surrounding the claim revealed how deeply divided the Board is over the Panel. Most telling was the Directors' initial refusal to approve the investigation of the claim, primarily because of fears of embarrassing major clients like Brazil, even when they are violating their loan agreement. Decisions like this, coupled with the antagonistic approach taken to the Panel by some members of the Bank's senior management, could reflect a serious threat to the future of the Panel.

Indeed, during the Executive Directors' first discussion of the PLANAFLORO claim, the Board authorized an early review of the overall experience with the Panel. That process began this February when the Board referred the review of the Panel to the Committee on Development Effectiveness (CODE). CODE is expected to review the Panel's record with an eye toward facilitating a full Board review in August or September. Given the inability of the Board to reach consensus on a full inspection of the PLANAFLORO claim, many observers are concerned that the Board will weaken the Panel's mandate.

Ironically, the Board's review of the Panel could coincide with the further review of the PLANAFLORO claim, as both are expected in or around September. This suggests that the interests of the PLANAFLORO claimants may once again be subjugated to a broader political debate over the future of the Panel.

## NOTES

1. David Hunter is a Senior Attorney at the Center for International Environmental Law and an Adjunct Professor of International and Comparative Environmental Law at the American University's Washington College of Law.
2. See generally, William Fisher, ed., *Toward Sustainable Development? Struggling Over India's Narmada River* (1995). The Inspection Panel is in some ways modelled after the Independent Review Commission established specifically to evaluate the Sardar Sarovar Projects on the Narmada River. See *Sardar Sarovar: The Report of the Independent Review* (Ottawa: Resources Future International, 1992).
3. World Bank, *Effective Implementation: Key to Development Impact-Report of the Portfolio Management Task Force* (Washington, D.C. 1992).
4. For more information on the creation of the World Bank Inspection Panel, see D. Bradlow, *International Organizations and Private Complainants: The Case of the World Bank Inspection Panel*, 34 Va. J. Int'l L. 553 (1994); D. Hunter & L. Udall, *The World Bank's New Inspection Panel, Environment*, Vol. 36, No. 9, at 2 (Nov. 1994); D. Hunter & L. Udall, *The World Bank's New Inspection Panel: Will It Increase Accountability?*, CIEL Issue Brief No. 1 (April, 1994); L. Udall & D. Hunter, *Proposal for an Independent Appeals Commission* (Paper prepared by the Environmental Defense Fund and Center for International Environmental Law, 1993).
5. See, World Bank Inspection Panel, *IBRD Resolution No. 93-10* (Sept. 23, 1993) [hereinafter *Panel Resolution*]; World Bank Inspection Panel, *Operating Procedures* (Aug. 1994) [hereinafter *Panel Operating Procedures*].

6. See, Arun Concerned Group, Request for Inspection (Oct. 24, 1994). Rondonia Natural Resources Management Project (PLANAFLORO). For a discussion, see D. Bradlow, *A Test Case for the World Bank*, 11 Am. U. Int'l L. & Pol'y 195 (1995).
7. In November, 1995, a third claim was filed by Chilean environmentalists and indigenous peoples concerned with construction of the IFC-financed Pangué/Ralco hydroelectric complex on the BioBio River. The claimants alleged that the IFC had violated applicable indigenous peoples and environmental assessment policies, and had failed to supervise implementation of the project properly. The claimants recognized that the Panel did not currently have jurisdiction over IFC-financed projects, but requested in their submission that Mr. Wolfensohn authorize the Panel to investigate the claim anyway and that the IFC board adopt the Panel mechanism in the future. Mr. Wolfensohn subsequently agreed to launch an internal investigation of the claim and to create some accountability mechanism for the IFC. There have been two other claims filed with the Panel that did not raise significant social or environmental issues and were ultimately dismissed.
8. Adrian Cowell, *The Decade of Destruction: The Crusade to Save the Amazon Rain Forest* 131 (1990).
9. For an account of the events surrounding the death of Chico Mendes, see A. Shoumatoff, *The World is Burning: Murdering the Rain Forest* (1990).
10. For information on the POLONOROESTE project, see Cowell, *supra* note 8, at 128-35; B. Rich, *Mortgaging the Earth: The World Bank, Environmental Impoverishment, and the Crisis of Development* 26-28 (1994).
11. Cowell, *supra* note 8, at 131 (quoting World Bank President Barber Conable).
12. *Request for Inspection Submitted to the World Bank Inspection Panel on the Rondonia Natural Resources Management Project*, IPN Request RQ95/3, at 11 - 20 (Porto Velho, June 13, 1995) [hereinafter *PLANAFLORO Claim*].
13. *Id.* at 21-35.
14. *Id.* at 36-40.
15. *Id.* at 41-43; see also World Bank, *Operational Directive 13.05* (Project Supervision); World Bank, *Operational Directive 4.20* (Indigenous Peoples).
16. See *Panel Operating Procedures*, *supra* note 5.
17. *Panel Resolution*, *supra* note 5, at para. 14(b).
18. *PLANAFLORO Claim*, *supra* note 12, at 48-49.
19. Office Memorandum from Gautam S. Kaji, Acting President, Mr. Ernst-Gunther Broder, Chairman, The Inspection Panel, para. 3 (July 19, 1995) [hereinafter *Management Response*].
20. *Id.*, at Annex A, para. 4.
21. World Bank Inspection Panel, Request for Inspection: Rondonia Natural Resources Management Project (Loan No. 3444-BR), *Recommendation of the Inspection Panel*, at para. 11 (INSP/R95-2).
22. International Bank for Reconstruction and Development, *Draft Minutes of Executive Session of Sept. 12, 1995* (Sept. 29, 1995).
23. World Bank Inspection Panel, Request for Inspection of Rondonia Natural Resources Management Project (Loan No. 3444-BR), *Additional Review by the Inspection Panel*, at 26-27 (Dec. 8, 1995) (INSP/R95-2) [hereinafter *Panel's Additional Review*].
24. Country Department I, Latin America and the Caribbean Region, International Bank for Reconstruction and Development, *Rondonia Natural Resources Management Project (Loan 3444-BR): Report on the Status of Implementation* (Dec. 15, 1995) [hereinafter *Management's Status Report*].
25. Letter from Luiz Rodrigues de Oliveira, Executive Secretary, Rondonia Forum of NGOs and Social Movements and Maria Clara Couto Soares, Coordination of the Brazil Network on Multilateral Financial Institutions to Mr. James Wolfensohn, President, World Bank, at 2 (Jan. 19, 1996). Many international organizations supported the Rondonia NGO Forum's renewed request for an inspection. See, e.g., Letter from David Hunter, Center for International Environmental Law on behalf of ten organizations, to Mr. James D. Wolfensohn, President, World Bank (Jan. 23, 1996) (including a signed petition from thirty-nine other organizations from twenty-four countries).
26. See The World Bank News Release No. 96/S37, World Bank Calls for Further Review of PLANAFLORO Project in Brazil (Jan. 25, 1996).
27. See, e.g., *Amazon Project Inquiry Rejected*, Financial Times, at 2 (Jan. 26, 1996); Jim Lobe, *World Bank Rejects NGO Appeal*, InterPress Service (January 25, 1996); Center for International Environmental Law, Press Release: Bank Board of Executive Directors Rejects Inspection Into PLANAFLORO (Jan. 25, 1996).
28. Letter from Forum of NGOs and Social Movements in Rondonia, Brazil, to Mr. Ernst-Gunther Broder, Chairman, The Inspection Panel (Oct. 10, 1995).
29. *Management's Status Report*, *supra* note 24, at Annex F: Detailed Plan of Action for Extractive Reserves.