

1995

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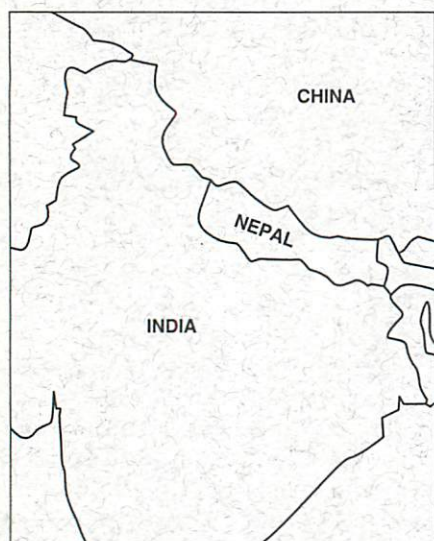
Desai, Samir. "Inspection Panel Responds to Nepal Dam Complaint: First Against World Bank." Human Rights Brief 2, no. 2 (1995): 2, 10.

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Inspection Panel Responds to Nepal Dam Complaint: First Against World Bank

by Samir Desai

The World Bank Inspection Panel recently responded to its first complaint since the Panel's inception in September 1993. (See related stories in *The Human Rights Brief*, Vol. 1, No. 1, at p.4, and Vol. 2, No. 2, at p.4.) Less than two months after the request for an investigation into the World Bank's participation in a proposed dam project in Nepal was registered, the Inspection Panel unanimously recommended that the request be granted.



On October 24, 1994, the Arun Concerned Group (ACG), a Nepalese non-governmental organization representing

local citizens, filed a Request for Inspection with the Panel. The ACG claimed that the World Bank did not comply with its own operational policies and procedures in designing and co-financing a hydroelectric dam in the Arun Valley east of Kathmandu. The Arun III Hydroelectric Project is expected to cost approximately \$800 million and is to be financed by a number of international lenders, including the International Development Association of the World Bank Group.

The Panel unanimously recommended that "apparent violations of policy do exist that require further investigation."

The ACG alleged that the Bank failed to consider less costly alternatives to the dam project and that the cost of the dam, roughly equivalent to twice the annual budget of Nepal, was "completely out of proportion to the size of Nepal's economy" and would exacerbate rather than alleviate the condition of the poor by reducing investment in health and education. The ACG also complained of the project's potential impact on the environment and on resettled and indige-

nous groups in the area. It petitioned the Panel to recommend to the Bank's Executive Directors to investigate the Bank's design and approval of the project prior to implementation of the project.

The three-member Inspection Panel issued a Memorandum to the Executive Directors on December 16, 1994. The Panel concluded that the cost of the project "will have an extensive impact on living conditions throughout the country." In response to the complaint that the Bank did not consider alternatives to the size and scope of the Arun project, the Panel opined that "if a more exhaustive study of alternatives is made, it would enable Bank Management to deal with the numerous negative side effects encountered by this Panel, even if immediate construction of Arun II were the preferred option." The Panel unanimously recommended that "apparent violations of policy do exist that require further investigation."

On February 2, 1995, the Executive Board of the Bank agreed with the Panel and decided to pursue the investigation. Meanwhile, the controversy attached to the project has not subsided. The ACG and the International Rivers Network, an environmental group, have charged that

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the Bank has tried to misrepresent the Panel's findings. A Bank memo, dated December 20, claims that "while the inspection panel had drawn attention in its initial report to the broad issue of alternative means of meeting Nepal's energy needs, it does not recommend further work exploring these alternatives."

Professor Daniel Bradlow of the Washington College of Law (WCL), whose proposal for appointing an ombudsman at the Bank served as a model for the Panel, describes the Panel's report as "diligent and thoughtful," and one that "makes a superb effort to respond to all the issues in the complaint in a very serious and determined way." He encourages affected people and groups representing them to take advantage of the opportuni-

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Education Myths Created by Opponents of Proposition 187

Opponents of Proposition 187 make the specious argument that we do not want an uneducated class of people in the state, even though they are here illegally, because being uneducated means difficulty in getting employment. Why use taxpayers' dollars to educate illegal aliens who are already subject to deportation and arrest and who cannot work under existing federal law? That violates concepts of common sense and good government.

Educators argue that they should not become immigration officers. Agreed. No one is asking teachers to do so. It is reasonable, however, for education personnel to perform the functions within their job descriptions, which includes determining the admissibility of students. Currently, all new school enrollees must establish their residency in the school district and submit immunization records and birth certificates. Ironically, schools usually do not perform such functions with respect to illegal alien children. Therefore, citizens and legal aliens are held to higher standards than illegal immigrants. It is

very simple for school officials, like employers, to ask basic questions regarding citizenship or immigration status. If there is any question, the school need only require the student to produce the necessary verification papers. Any enforcement action is left to the INS and to other law enforcement agencies.

Why use taxpayers' dollars to educate illegal aliens who are already subject to deportation and arrest and who cannot work under existing federal law?

Opponents also argue that if illegal aliens of high school age cannot attend schools, they may become involved in gangs and criminal activity. There seems to be no shortage of gang problems within schools today, so this assertion does not hold water. Also, consider the irony that one existing solution to gang activity in schools is to suspend or expel the violators from schools. Should we expel

citizen offenders but keep illegal alien offenders in school?

Revisiting *Plyler v. Doe*

The K-12 education provisions of Proposition 187 are the vehicle for the courts to re-visit the concept of free public education for illegal aliens. Current federal law, as established by the U.S. Supreme Court in its 5-4 *Plyler v. Doe* decision of 1982, holds that illegal aliens are entitled to free public education. Proposition 187, with its status checks for all enrollees and a provision on the transition of illegal aliens to their home countries, provides the Court with an opportunity to either hold that the California initiative meets the standards of *Plyler*, or to modify or overturn *Plyler* and allow the plan to stand.

With the importance of the issue, it is essential that the Court revisit the issue of free public education of all present and future illegal aliens. By passing Proposition 187, California voters sent a strong message to political leaders that they want to stop illegal immigration and provided a strong catalyst for reasonable and responsible change, not only in California, but throughout the United States. ☹

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that basis alone, any sections of Proposition 187 that contradict federal laws or procedures may wind up being annulled by the courts.

The Risks

Perhaps no single argument against Proposition 187 makes its proponents so uneasy as what their initiative could wind up costing California taxpayers. According to the California legislature's chief analyst, lost federal aid to schools, public hospitals, and clinics could add up to \$15 billion. That made it hard for Proposition 187's proponents to sell it as a tax-saving initiative in the spirit of Proposition 13. So they changed strategy, and conceded that they did not expect 187 to

go into effect right away. They then acknowledged their real goal: pushing the state into what is sure to be a long, costly lawsuit challenging the Supreme Court's *Plyler v. Doe* decision of 1982, which held that immigrant children are entitled to public education. In effect, Proposition 187's authors are gambling with California's tax money in the hope of winning a dubious legal battle. That fight is already well underway: a federal district court in Los Angeles issued a restraining order suspending most of Proposition 187's provisions while the measure is challenged in court, a process most legal experts figure could take a year or more.

And even if Proposition 187's backers win these law suits, what have they really

got to show for it? One need only ponder the divisive campaign waged over 187, with its overtones of hostility against Latinos, Asians, and other state residents who look or sound like "apparent illegal aliens" to get a sense of how difficult ethnic relations could become if the misguided initiative ever is allowed to go fully into effect.

So while Proposition 187 purports to offer a simple answer to a complex phenomenon, it really is no answer at all. Not only will Proposition 187 end illegal immigration, it will drag California into a series of ethnic and legal conflicts that could hurt the state far more than illegal immigration does. ☹

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ties provided by the Panel, and thereby to enhance the Panel's ability to hold the Bank accountable for its development strategies. Professor Bradlow, WCL Professor David Hunter, Senior Attorney at the Center for International Environmental Law, and the Center for Human Rights and Humanitarian Law, have offered their services to assist potential

complainants in filing requests before the Panel.

Professor Hunter applauds the Panel for "an independent and objective review of the claim" and for doing "an excellent job in identifying specific violations and calling into question the fundamental decision to pick [the Arun III] alternative." He believes that an investigation would reveal a "clear violation of Bank

policies." While the Panel "has made a very strong case for inspection," it will not succeed in improving Bank operations unless "the Board and Bank Management take the Panel's ultimate recommendations and findings seriously." ☹

Samir Desai is a WCL LL.M. graduate and former Articles Editor for The Human Rights Brief.