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The World Bank and Non-Governmental Organizations

I. Introduction

The World Bank¹ has long sought to involve non-governmental organizations (NGOs)² in the preparation and implementation of Bank-financed projects. Recently, due to NGOs' increasing importance and influence in development-related issues, the Bank's interaction with NGOs has extended beyond project financing: especially since 1988, this interaction has grown significantly in the Bank's operational and policy areas, very often in projects concerning social issues and the environment. This article discusses the Bank's interaction with NGOs, particularly the legal aspects of Bank-NGO collaboration.

The foundation for the Bank's interaction with international organizations is set forth in article V, section 8, of the International Bank for Reconstruction and Development's (IBRD) Articles of Agreement and in article V, section 4, of the International Development Association's (IDA) Articles of Agreement. These provisions authorize the Bank to cooperate with general international organizations as well as public international organizations that have specialized responsibilities in fields relevant to the Bank's work and call on IDA to cooperate with public international organizations that provide financial and technical assistance to less-developed areas of the world. The Bank has entered into formal cooperation agreements only with the United Nations and some

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1. For the purposes of this article, the "World Bank," or the "Bank," refers to the International Bank for Reconstruction and Development (IBRD) and the International Development Association (IDA) unless the context implies reference to the IBRD only. The International Finance Corporation (IFC), a World Bank affiliate, has similar policies in relation to non-governmental organizations (NGOs). However, the IFC is not the subject of this article.

2. The term "NGO," as used here, is meant to apply to non-profit groups whose primary stated goals are to organize in order to use their cooperative influence to better public welfare, health, and/or the environment. For the purposes of this paper, the term includes local, national, and international organizations.

of its specialized agencies;³ however, the Bank has collaborated informally with international NGOs and, more recently, local NGOs.

The Bank's recognition of NGOs' relevance to Bank activities heightened in the early 1980s and resulted in the 1982 establishment of the NGO-World Bank Committee (the "Committee").⁴ The Committee's initial objectives—to strengthen relations and expand operational cooperation between the Bank and NGOs—focused on developing new approaches to cooperation between the Bank and NGOs, reviewing the instances in which Bank/NGO cooperation had been successful, and suggesting activities that might prove beneficial to both NGOs and the borrowing member countries of the Bank.⁵ In recent years, the Committee's mandate has expanded to include in-depth discussion of Bank development policy issues, such as structural adjustment and participatory development.

A. Evolution of Current Bank-NGO Policy

Prior to 1981, Bank staff occasionally invited NGOs to play various roles in Bank-financed activities in several of the Bank's borrowing member countries.⁶ In 1981 the Bank moved from this *ad hoc* approach in dealing with NGOs to the adoption of specific guidelines to assist Bank staff in making effective use of NGOs within the framework of Bank-financed projects. The Bank issued Operational Policy Note (OPN) 10.05, which took into account other development institutions' current policies with respect to NGOs and included a detailed review of several Bank-financed projects with NGO involvement in previous years.⁷ The OPN identified specific roles that NGOs might play in Bank-financed projects and outlined potential benefits and problems.

The benefits identified in OPN 10.05 included increased access to the intended beneficiaries of Bank-financed projects. For example, without the assistance of local NGOs, the Philippines Urban Projects⁸ imple-

3. In furtherance of these provisions, at different times the Bank has entered into memoranda of understanding with specialized agencies of the United Nations to provide working arrangements on matters of common concern. See, e.g., Memorandum of Understanding (MOU) between the Bank and the Food and Agriculture Organization (FAO), March 30, 1964, and Agreement between the Bank and IFAD, December, 1977.

4. The Committee, which meets yearly, consists at present of senior Bank staff and 26 rotating representatives of NGOs and NGO consortia from developed and developing countries. NGOs are classified in five categories. Every year, five Committee members (one from each category) are replaced by representatives selected by the NGOs themselves.

5. Terms of Reference of the NGO-World Bank Committee, External Affairs Dep't, International Economic Relations Div., World Bank, May 13, 1981.

6. For example, a number of cases prior to 1981 in which the Bank collaborated with NGOs are identified in the Bank's Central Projects Note 10.05, "Involving Non-Governmental Organizations (NGOs) in the Preparation and Implementation of Bank-Financed Projects" (also known as Operational Policy Note 10.05). See pages 3, 4, 5, dated December 31, 1981, and Annex 1, dated May 13, 1981.

7. *Id.*

8. Loan 1272/1282 PH, June 9, 1976.

mentation unit probably would have been confronted by a hostile, uncooperative target group. Another noted benefit involved access to additional resources when unforeseen needs arise: in the Yogyakarata Rural Development Project in Indonesia,⁹ a local NGO managed a project component and used its own transport when other means were unavailable. OPN 10.05 also delineated various problem areas, such as the situation when NGOs' priorities differ from those of other involved parties, leading to differing project objectives.

More importantly, however, OPN 10.05 led to the adoption of guidelines that, for the first time, suggested possible involvement of NGOs in all the project cycle stages of Bank-financed projects—in project identification, design, appraisal/financing, implementation, and evaluation.¹⁰

Another significant step in the Bank's policy on collaboration with NGOs occurred after the appointment of Barber Conable as president of the Bank in 1986. In his address to the Bank/Fund Annual Meeting in September 1988, Conable stated that: "NGOs in many developing countries have enormous potential for flexible and effective action. I have encouraged Bank staff to initiate a broadened dialogue with NGOs . . . [, and] I hope and fully expect that this collaboration will continue and flourish."¹¹

Other senior staff of the Bank have emphasized the need for cooperation between the Bank and NGOs to assist in the development of industrialized-country policies favoring economic progress in developing countries and in the empowerment of poor people to help make their government programs more efficient and effective.¹²

Recent historical and political events have provided further justification for such Bank-NGO cooperation: NGOs are filling gaps left by state and market failures, and increasing pluralism is leading to greater public, and therefore NGO, participation. The Bank and its borrowers are increasingly learning how NGOs, particularly local NGOs in borrowing countries, can make significant contributions to national development.¹³ Further, the emergence of democratic institutions around the

9. Credit No. 946 IND, August 13, 1979.

10. See OPN 10.05, at para. 4. One important issue raised during the process of adopting these guidelines was the sensitivity of borrowing governments to the use of NGOs, particularly those that did not meet with the approval of the borrower concerned. Along this line, one of the main principles communicated in OPN 10.05, which is still true under current directives, was that the Bank should collaborate only with the consent or concurrence of the government concerned.

11. THE WORLD BANK, *THE CONABLE YEARS AT THE WORLD BANK: MAJOR POLICY ADDRESSES OF BARBER B. CONABLE, 1986-1991* 69 (1991).

12. See, e.g., Moeen Qureshi, Senior Vice President (former), Operations, The World Bank, *The World Bank and NGOs: New Approaches*, Remarks before the Washington Chapter of the Society for International Development (April 22, 1988) (on file with author).

13. In 1991, the Bank launched a three-year learning exercise on participatory development, the main aim of which is to explore ways in which the Bank and its borrowers may need to change their *modus operandi* in favor of more participatory

world will inevitably lead to greater room for NGO expression and activity.

B. Current Bank-NGO Interaction

The Bank's increased interest in NGO involvement led to the Bank's adoption in August 1989 of Operational Directive (OD) 14.70,¹⁴ entitled "Involving Nongovernmental Organizations in Bank Supported Activities," which is designed to provide Bank staff with further guidance on collaboration with NGOs. Drawing from OPN 10.05 and the experience gathered from NGOs' involvement at different stages of the project cycle in more than 200 Bank-financed projects,¹⁵ OD 14.70 sets forth the procedures to be followed in the Bank's collaboration with NGOs.

Any interaction with NGOs concerning Bank-financed projects is greatly influenced, as noted earlier,¹⁶ by the fact that the Bank, an inter-governmental organization, which lends only to, or with the guarantee of, a member government, inevitably works with governments in its lending operations. Thus, regardless of the potential benefits of such involvement, the Bank can work directly with NGOs in a borrowing country only in a manner consistent with that government's policies toward the NGOs and with the full knowledge of the government concerned.¹⁷ On the other hand, despite this primary relationship with governments, the Bank has established mechanisms to ensure maximum possible involvement of NGOs in Bank-financed projects.¹⁸ The

approaches to development. A by-product of this exercise will be to learn about more effective collaboration with NGOs. See Robert Picciotto, *Participatory Development: Myths and Dilemmas*, World Bank, July 1992 (WPS 930).

14. The World Bank Operational Manual, Operational Directive 14.70, August 1989.

15. See The World Bank, External Affairs Dep't, International Economic Relations Div. (EXTIE), COOPERATION BETWEEN THE WORLD BANK AND NGOS; 1991 PROGRESS REPORT, (Apr. 1, 1992) [hereinafter 1991 PROGRESS REPORT]. From 1973 until 1988, the Bank was engaged with NGOs in 218 Bank-approved projects. This was equivalent to less than 6% of Bank-approved projects during the same time period. Yet, during the three years between 1989-1991, almost the same number of projects involved NGOs. In fiscal year 1991 alone, the Bank approved an additional 89 projects involving NGOs. This represents about 40% of the 229 projects approved by the Bank's Executive Directors for that year. This also represents a 78% increase over the 50 NGO-associated projects for FY90. In addition, Bank staff has recently identified over 200 upcoming projects with potential NGO involvement.

16. See *supra* note 10.

17. See OD 14.70 para. 1.

18. See generally OD 14.70. In addition, for example, EXTIE regularly publishes an up-to-date list of upcoming projects with potential for NGO participation. EXTIE has also organized two data bases pertaining to NGOs. One contains the listing of geographical and sectoral NGO experience. The other contains NGO profiles consisting of general descriptive information provided by NGOs. These data bases are accessible to all NGOs contributing profiles as well as Bank staff interested in making contact with NGOs.

regional distribution of NGO-associated projects¹⁹ is influenced by two main factors: the existence of a strong and viable NGO sector and government policies towards these NGOs. This distribution shows that the number of such projects has been greatest in Sub-Saharan Africa and least in Europe, a statistic that will inevitably be affected by the development of pluralistic societies in Eastern and Central Europe and the republics of the former Soviet Union.

II. NGO Collaborative Roles in Bank-Supported Activities

The stage at which an NGO becomes involved in a Bank-supported activity depends upon a variety of factors, such as the relationship between the NGO and the borrower government, the type of project involved,²⁰ and the type of NGO.²¹ Under OD 14.70, NGOs may

19. In FY91, Sub-Saharan Africa continued to have the largest share of NGO-associated projects (47%), Asia the second largest share (27%), Latin America and the Caribbean accounting for 15% and Europe, Middle East and North Africa for 11%. A more meaningful distributional picture is provided by comparing the number of NGO-associated projects to the total number of projects approved. Using this analysis, of the Bank-approved projects for FY91, 55% were NGO-associated in Sub-Saharan Africa; 39% in Asia; 22% in Europe, Middle East and North Africa; and 30% in Latin America and the Caribbean. See 1991 PROGRESS REPORT, at 3. Preliminary figures for FY92 show Sub-Saharan Africa still accounting for almost half of all NGO-associated projects (47%), Latin America and Caribbean pulling ahead of South Asia (18% and 13%, respectively), then East Asia with 12%. Europe and Central Asia have increased their share to 6% of the total number while Middle East and North Africa have increased their share to 4% of the total.

20. Of the 314 projects involving NGOs approved between FY73 and FY90, the predominant area of activity has been in agriculture and rural development, where 135 projects have taken place with NGO collaboration. Infrastructure and urban development activities ranked second with 54 projects; population, health, and nutrition ranked third with 42 projects. There were 8 projects during this period categorized solely as environmental projects. Between FY91 and FY92, the only sectors where the actual number of projects approved increased were agricultural/rural development and environment. In the sectors of adjustment, education, and industry/energy, a lower number of projects were approved for FY92.

21. The types of NGOs referred to here are principally private, non-academic organizations, that "pursue activities to relieve suffering, promote the interests of the poor, protect the environment, provide basic social services, or undertake community development." See OD 14.70, para. 2. While there is an uneven distribution of NGO activity across different sectors, there has been an even distribution of activity among three types of NGOs: "grassroots," "intermediary," and "international." For example, of the 314 Bank-financed projects with NGO involvement from FY73-FY90, 134 were with grassroots NGOs, 129 with indigenous intermediaries, and 133 with international NGOs. The one clear pattern, however, is that over time the interaction with international NGOs has diminished after the peak reached between 1973 and 1987. Since then, these NGOs have been the least involved among the three categories. In fiscal year 1991, of 89 NGO-associated projects, the Bank collaborated on 49 projects with grassroots NGOs, 66 with indigenous intermediaries, and 23 projects with international NGOs.

Preliminary figures for FY92 show that of the 66 projects with NGO involvement approved for 1992, the Bank collaborated on 39 projects with grassroots NGOs, 56 with indigenous intermediary NGOs, and 35 with international NGOs. The percentage figures for grassroots and intermediary NGO involvement have remained essentially the same, the principal difference has been the increase in the number of

become involved at all stages of a Bank project, both before and after the project has been approved. These stages, listed in OD 14.70 in the same sequence in which a project proceeds, include such functions as:

- (a) the analysis of development issues,
- (b) project identification,
- (c) project design,
- (d) project financing,
- (e) project implementation, and
- (f) project monitoring and evaluation.

The degree of NGO involvement in those functions has varied. Although NGO involvement in project implementation remains the most common practice, there has been in recent years a shift towards a greater involvement in co-financing, design and monitoring and evaluation. In fiscal year 1991, NGOs provided advice in twenty percent of projects in which they were involved, contributed to project design in nineteen percent, co-financed eleven percent, and assisted with actual implementation in forty-two percent. NGOs also carried out and provided monitoring and evaluation for eight percent of Bank-financed projects in which they participated.²² OD 14.70 also sets out the strengths and weaknesses associated with the involvement of NGOs in Bank-financed projects.²³

A. Analysis and Advice Concerning Development Issues

Many NGOs have been involved in the development of projects proposed for Bank-financing. In particular, they have played a major role assisting governments in the development of sector-wide strategies, culminating in the identification of Bank-financed projects. This role has been especially prominent in the environment sector.²⁴ NGOs are also particularly well-placed to advise on the preparation of programs designed to alleviate the effects of structural adjustment programs on

projects with international NGO involvement, reversing the trend of the previous few years. See FY92 Bank/NGO Preliminary Operational Collaboration Data.

22. 1991 PROGRESS REPORT at 7.

23. OD 14.70 at paras. 6, 7.

24. The World Conservation Union, the World Wildlife Fund, and the World-Wide Fund for Nature on different occasions have assisted governments in adopting country conservation strategies in tandem with the Bank's work with governments on preparing national environmental action plans. NGOs have played significant roles in the preparation of such national environmental action plans, particularly in Africa. A significant number of local and international NGOs participated in the preparation of the Lesotho National Environment Action Plan, which began with an international conference in Lesotho in 1988. In the case of Mauritius, NGOs participated in the Bank missions and are providing assistance to the government in the carrying out of projects identified in the investment program associated with the national plan. In FY91, the Bank funded an NGO in Ecuador responsible for setting up that country's first Environmental Seminar for the Ecuadorian Congress. It is hoped that this project will lead to the adoption of selected new environmental legislation.

the poor and have been instrumental in assisting the Bank in this area.²⁵

B. Project Design

The Bank has employed NGO representatives, under normal Bank guidelines for the hiring of consultants, as well as engaging NGOs as contractors to carry out activities under pre-investment studies financed by the United Nations Development Programme (UNDP), for which the Bank is appointed Executing Agency. The Bank benefits in these instances from the NGOs' valuable understanding of local institutional, technological, and socio-cultural environments. When the Bank does engage an NGO, the Bank enters into an appropriate agreement with the NGO, and the NGO works directly for the Bank to support its staff and assist the government concerned in the development of the proposed project. When an NGO-affiliated individual works alone on a project, the Bank normally employs the individual as a consultant through an exchange of letters.

In a few cases, a potential co-financier has hired an NGO to assist in project development, with the NGO carrying out identification activities parallel to the Bank's.²⁶ Similarly, borrowing governments themselves may hire NGOs directly as consultants at this design stage of the project cycle. The Bank sometimes funds such practices through a project preparation facility.²⁷

One example of NGO collaboration in project design involves a recommendation on the Sabah Land Settlement and Environmental Management Project in Malaysia.²⁸ The Bank's involvement in the preparation of this project, conducted by the country's Federal Land Development Authority (FELDA), helped lay the grounds for future natural resource planning and conservation work in Sabah. The Worldwide Fund for Nature (Malaysia), a major environmental NGO in Malaysia, participated in this effort.

C. Project Financing

International NGOs, such as CARE, the Aga Khan Foundation, World Wildlife Fund and the World Conservation Union, have co-financed various components of Bank-financed projects. The Bank has found, however, that NGOs more often finance activities complementary to a Bank-financed project. One important and precedent-setting example of

25. Examples include the Egypt Social Fund Project and the Sri Lanka Poverty Alleviation Project, both approved in FY91.

26. *See, e.g.*, Forest Resources Management and Development Project, Loan 3179-ZIM, Sept. 27, 1990, where the Canadian International Development Agency (CIDA) appointed an NGO to assist in developing an integrated wildlife and forest grazing management component in Zimbabwe for CIDA financing.

27. Examples include the Cameroon Social Dimensions of Adjustment Project (PPF), Loan 3206-CM, Aug. 1990, and the Togo Grassroots Development Initiatives Project (SSPF), Loan 1993-TO, July 18, 1989.

28. The World Bank President's Report, 1989, Project No. LN 3039 MA. 1989: Report no. P-4852-MA, at 2 (limited circulation).

“complementary” financing involving an NGO concerned a debt-for-nature transaction in Madagascar. In this case, the United States Agency for International Development (AID) and the World Wildlife Fund arranged a debt-for-nature swap transaction with the government of Madagascar to conserve important biological resources in Madagascar in exchange for the reduction of foreign debt owed by Madagascar. Part of the transaction involved the establishment of a new institution to assist in implementing the activities envisaged under the transaction. Through an IDA credit,²⁹ the Bank is providing funds to assist in the construction and equipping of the new institution’s facilities.

In another breakthrough operation approved for financing by the Global Environment Trust Fund (GET), established under the Global Environment Facility (GEF),³⁰ grant funds from the GET will support a trust fund established by the Government of Bhutan, the UNDP, and the World Wildlife Fund to finance activities designed to preserve significant biological resources in Bhutan.

NGOs also provided some financing in the Bank’s first major health sector effort in Pakistan, which involved funding a family health project³¹ with an IDA credit of approximately \$45 million, constituting eighty-three percent of the total cost. This project includes a proposal for Pakistan to make arrangements for parallel financing with the United Kingdom Overseas Development Administration and Save the Children Fund (UK). Unlike earlier projects, the local government in this case readily agreed to interact with NGOs and mechanisms for wider NGO support are evolving.

D. Project Implementation

About fifty-seven percent of Bank-NGO involvement occurs when NGOs act as project implementation entities for borrowing governments.³² For example, NGOs received financing of US \$3 million for the Bank’s first free-standing project to support community-based development projects in Togo.³³ The project establishes a framework for the government to work with local NGOs to implement projects designed and car-

29. See Development Credit Agreement (Environment Project) dated November 19, 1990 between Democratic Republic of Madagascar and International Development Association.

30. For a more detailed description of the GEF, see Ibrahim F. I. Shihata, *The World Bank and the Environment - A Legal Perspective*, in *THE WORLD BANK IN A CHANGING WORLD: SELECTED ESSAYS* 135-80 (1991). The GEF was established in March 1991 as a pilot joint venture among the Bank, the United Nations Environment Programme and the United Nations Development Programme (also referred to in relation to the GEF as Implementing Agencies).

31. Credit No. 2240 PAK, July 8 1991.

32. This figure reflects the functional distribution of NGO activity between FY73 and FY90. See 1991 PROGRESS REPORT, at 7.

33. Credit No. 1993 TO, November 9, 1989. The project began on a pilot scale under the Grassroots Development Initiative and is financed from an IDA credit for the first four years of project implementation (1989-1993). The NGOs and communities are required to meet 30 percent of the costs of their projects in cash or kind.

ried out by the NGOs, with decisions made by a joint NGO-government committee, assisted by the state planning ministry. The development credit agreement includes appropriate covenants to ensure the project's successful implementation. For example, the Bank disbursed the initial advance only after formal approval by IDA of the financing agreement concluded between the government of Togo and the relevant NGOs. The Bank was to disburse subsequent advances only upon presentation by the involved NGOs to the government of satisfactory evidence documenting appropriate use of the prior advance.

Another example of NGO involvement in project implementation is the Bolivia Social Investment Fund project (1991-1994), through which an IDA credit provides funding to eligible NGOs to assist the health and education sectors in Bolivia.³⁴ Through NGOs, the project has already identified hundreds of small-scale sub-projects.³⁵ In the future, under the Social Investment Fund, the Bolivian government will establish a US \$40 million annual grant-financing facility for sub-projects. The Social Investment Fund will collaborate closely with local NGOs to avoid duplication of effort.

NGOs were also involved in project implementation in support of Pakistan's efforts to provide small-scale and micro enterprises with direct access to credit and to assist participating non-governmental credit institutions in supplying funds through sub-loans. The Bank entered into a loan agreement³⁶ with the Pakistani government and, as administrator of grant funds provided by the Netherlands, entered into a grant agreement with Pakistan pursuant to which funds were channeled to participating local NGOs, including the Aga Khan Rural Support Program, the Orangi Pilot Project Society, "Basic Urban Services for Katchi Abadis," and the Alfalah Development Institute. In addition, the Bank simultaneously entered directly into a project agreement³⁷ with the participating NGOs. The project agreement included covenants detailing the procedures, terms, and conditions to be applied by the NGOs in providing credit and covenants requiring sound administrative, financial, and social welfare practices in the NGOs management and operations.

E. Monitoring and Evaluation

With their ability to operate at the "grass roots" level, NGOs can provide ongoing monitoring and evaluation of Bank-supported projects.

34. Credit No. 2127 BO, July 26, 1991.

35. Such socioeconomic development funds financed by the Bank are fast becoming a popular mechanism for borrower governments to channel proceeds from Bank loans and credits to support NGO sub-projects. Under the Bolivia Emergency Social Funds I and II (forerunners to the current project) over 900 NGO sub-projects were financed for a total of about U.S. \$43 million.

36. Loan Agreement (Micro-enterprise Project) between Islamic Republic of Pakistan and the Bank, dated June 28, 1991.

37. Project Agreement (Micro-enterprise Project) involving the World Bank and the above-mentioned four NGOs, dated June 28, 1991.

Depending upon the situation, NGOs may do this work alone, together with the government or a government agency, with a project entity, or with the Bank.

There are only a few examples of such NGO monitoring and evaluation, but the Bank expects greater activity in the future. For example, NGO consultants have provided periodic evaluations on behalf of a borrower during management and technical assistance contracts and service delivery. In the Mali Second Health, Population and Rural Water Supply Project,³⁸ a Belgian NGO monitored the implementation of a health service fee and cost recovery program. Other NGOs involved in this project, such as Medecins du Monde and Medecins sans Frontieres, share responsibility for managing the health services.

In the recently approved IDA credit for the Kenya Fourth Population Project, NGOs played an effective role in generating demand and delivering family planning services.³⁹ Local NGOs are also helping monitor and evaluate the expanding Kenya National Population Program.

In the Uganda Program for the Alleviation of Poverty and the Social Costs of Adjustment (PAPSCA),⁴⁰ NGOs serve on a steering committee established to determine the general orientation of the program, including the review of semi-annual work programs, results of surveys, and studies. PAPSCA's ultimate aim is to improve institutional capacity for social policy planning and monitoring in Uganda.

III. NGOs' Role in Carrying Out Action Required under Bank Directives

A. Indigenous Peoples Directive

In September 1990, the Bank issued Operational Directive 4.20, entitled "Indigenous Peoples," to provide guidance to the Bank's staff and to prospective borrowers on issues arising out of Bank-financed projects that affect such peoples.

The Bank's stated objectives in this directive are "(a) to ensure that indigenous peoples benefit from development projects, and (b) avoid or mitigate potentially adverse effects caused by Bank-assisted activities." Further, OD 4.20 seeks to ensure that indigenous peoples receive culturally compatible social and economic benefits.⁴¹ The directive also expressly recognizes that the issue of how to approach indigenous peoples is "controversial"⁴² and states that the "strategy for addressing the issues pertaining to indigenous peoples must be based on the *informed participation* of the indigenous people themselves."⁴³

38. Credit No. 2217 MLI, May 3, 1991.

39. Credit No. 2110 KE, May 21, 1990.

40. Credit No. 2088 UG, June 29, 1990.

41. The World Bank Operational Manual, Operational Directive 4.20, para. 2, September 1990.

42. *Id.* para. 7.

43. *Id.* para. 8.

In order to ensure such informed participation, OD 4.20 requires that, before proceeding with a project that may affect indigenous peoples, a development plan must be prepared in a manner consistent with Bank policy.⁴⁴ Such an “indigenous peoples’ development plan” must be culturally appropriate and based on full consideration of the options preferred by the indigenous peoples to be affected by the project. Recognizing the key, though by no means exclusive, role of NGOs in voicing the preferences of indigenous peoples, OD 4.20 provides that the institutions responsible for government interaction with indigenous peoples should normally involve NGOs “with expertise in matters relating to indigenous peoples.”⁴⁵ Thus, each development plan must have a “Strategy for Local Participation,” and NGOs should be involved in devising mechanisms that enable local peoples to participate in decision-making. Further, once such mechanisms are in place, NGOs should be invited to assist with the monitoring and evaluation of the development plan. As an efficient way for the project’s management to absorb the perspectives of indigenous beneficiaries, the Bank encourages monitoring by representatives of indigenous peoples’ own organizations.

In some countries, however, it is not clear that indigenous peoples or representative NGOs can readily organize and express their views. For this reason, the development plan should also include an assessment of at least two aspects of the project country’s legal framework: (i) the legal status of indigenous groups, as reflected in the country’s constitution, legislation, and regulations, and (ii) the ability of such groups to obtain access to and effectively use the legal system to defend their rights.⁴⁶

In conclusion, OD 4.20 for the first time expressly provides NGOs with a concrete role in dealing with the prospective borrower on projects involving indigenous peoples.

B. Involuntary Resettlement Directive

When Bank-financed operations contemplate involuntary resettlement, Operational Directive 4.30,⁴⁷ entitled “Involuntary Resettlement,” delineates the policies and procedures a prospective borrower must follow. OD 4.30 states as its guiding policy that involuntary resettlement should be avoided or minimized where feasible and that all viable alternative project designs should be reviewed.⁴⁸ The directive also notes that the experience of NGOs may often be used to ensure that the needs

44. *See id.*, para. 14 (a) (b). These provisions state that a development plan should be “based on full consideration of the options preferred by the indigenous people affected by the project, and anticipate adverse trends likely to be induced by the project in order to develop the means to avoid or mitigate the harm.”

45. *Id.* para. 14(c).

46. *Id.* para. 15(a).

47. The World Bank Operational Manual, Operational Directive 4.30, June 1990.

48. *Id.* Para. 4.30(a).

and interests of communities to be affected by possible resettlement are expressed and taken into account.

Bank consultations with NGOs on resettlement issues proved essential in the Upper Krishna II Irrigation Project in India.⁴⁹ With respect to this project, MYRADA, an Indian NGO contracted by the Karnataka state government, provided essential knowledge of local conditions and contributed to the design of a more socio-culturally sensitive resettlement scheme. MYRADA performed a social survey of the population, assessed relocation potential, and prepared a resettlement plan in cooperation with the government.

C. Dam and Reservoir Projects Directive

The Bank envisions similar collaboration between NGOs and other project participants in dam and reservoir projects. As a result, the operational directive for dam and reservoir projects specifically provides that "Bank staff, too, should consult with NGOs as appropriate, bearing in mind the capacity of NGOs to offer important perspectives on project design, and the need to protect the confidentiality of information shared between the Bank and the borrower."⁵⁰

D. Environmental Assessment Directive

In the early 1970s, the Bank recognized the desirability of incorporating environmental considerations into Bank-financed development projects but addressed the issue mainly on an informal basis until the late 1980s. In October 1989, however, the Bank enacted an operational directive to guide the Bank's staff and prospective borrowers in carrying out environmental assessment and analysis.⁵¹ This directive was revised and reissued by the Bank in September 1991 as Operational Directive 4.01 on Environmental Assessment.

OD 4.01 expressly recognizes the role of local NGOs, providing for consultation with affected groups and local NGOs to have their views fully taken into account in project design and implementation, particularly during the preparation of an Environmental Assessment (EA). OD 4.01 encourages that such consultations take place after an EA category⁵² is assigned to the project and once a draft environmental assessment report has been prepared.⁵³

49. Credit No. 2010 IN, June 16, 1989.

50. The World Bank Operational Manual, Operational Directive 4.00, Annex A, October 1989.

51. The World Bank Operational Manual, Operational Directive 4.01, October 1991.

52. The Operational Directive includes a system of environmental screening with projects categorized as A - full EA required; B - although a full EA is not required, environmental analysis is required; and C - no EA or environmental analysis required. The categorization depends on the nature and extent of the potential environmental impact of a proposed project and the consequent environmental work required. See OD 4.01, Annex E.

53. In particular, OD 4.01 provides that:

OD 4.01 also provides a checklist on community involvement to guide Bank staff in identifying and interviewing community representatives, experts, and NGOs.⁵⁴

IV. Consultations with NGOs on Bank Policies

In a critical development, NGOs have recently begun to discuss with the Bank operational policies of interest. Prior to March 1989, the Bank issued operational guidelines (known as Operational Manual Statements (OMSs)) to be used only by Bank staff and other specifically authorized persons and not to be published, quoted, or cited outside of the Bank. In March 1989 the OMSs were transformed into Operational Directives. At the same time, Bank management decided that although the Bank intended the directives primarily for use within the Bank, the directives might be shared with member countries, specialized United Nations agencies, and other development institutions and interested parties, including NGOs.

This new transparency has led to Bank discussions with NGOs on certain Bank operational policy issues. Thus, after the October 1989 issuance of OD 4.00 and its replacement two years later with OD 4.01, Bank staff held special meetings with NGOs to inform those NGOs of the Bank's new policies and procedures with respect to environmental

In order for meaningful consultations to take place between the borrower and affected groups and local NGOs, it is necessary that the borrower provide relevant information prior to consultations. The information should be provided in a timely manner and in a form that is meaningful for, and accessible to, the groups being consulted. Such information normally includes (a) for the initial consultation, a summary of the project description and objectives, and potential adverse effects of the proposed project; and (b) once the EA report has been prepared, a summary of its conclusions in a form and language meaningful to the groups being consulted. Any consultation should pay particular attention to those issues most likely to affect the people being consulted. In addition, the borrower should make the EA report available at some public place accessible to affected groups and local NGOs for their review and comment.

OD 4.01, para. 21 (Oct. 1991).

To assist Bank staff with OD 4.01, the Bank's Environment Department has published a three volume ENVIRONMENTAL ASSESSMENT SOURCEBOOK. Practical guidance is given to the Bank's task managers and other project staff on two levels of public consultation: (i) with those who would be directly affected by the project, for example, fisherfolk directly downstream from a dam; and (ii) with those who have particular concern, expertise and relevant information regarding the nature, scope, and particulars of potential environmental effects. See *Community Involvement and the role of NGOs in Environmental Assessment*, in ENVIRONMENTAL ASSESSMENT SOURCEBOOK, World Bank Technical Paper No. 139, vol. 1: Policies, Procedures, and Cross-Sectoral Issues, 193 (1991).

54. ENVIRONMENTAL ASSESSMENT SOURCEBOOK, *supra* note 53, at 197. Questions Bank staff should address deal with such issues as sources of the laws governing public participation, whether potentially affected people are aware or informed of a project, local cultural and social values, government/NGO relations, logistics for effective consultation, and follow-up feedback to the community and local NGOs.

assessments and analyses.⁵⁵

In addition, in April 1991 the Bank departed from its traditional practice and invited NGOs to attend a meeting to discuss the Bank's new forest policy *before* its adoption by the Bank's Executive Directors.⁵⁶ The Bank then incorporated NGOs' views into its policy paper.⁵⁷ In May 1992, the Bank undertook similar consultative exercises with NGOs on draft Bank policy papers on energy and water resources.⁵⁸

Today, the Bank invites NGOs to many international conferences and meetings the Bank organizes (for example, the World Conference on Education for All convened in Thailand in March 1990 by the Bank, UNDP, UNESCO, and UNICEF); indeed, the Bank and various NGOs have jointly sponsored several international meetings.⁵⁹

At the annual meetings of the Bank's board of governors, governors representing Bank member countries have stressed the role of NGOs in Bank activities. In addition, the GEF has specially recognized the useful role that NGOs can play, particularly in activities relating to the global environment. The Bank has earmarked specific roles in GEF projects for NGOs, such as advising in project preparation, implementing projects to be financed, and receiving funds under a special NGO grant program (U.S. \$5 million) to be overseen by UNDP.⁶⁰

At the first meeting of GEF Participants in May 1991,⁶¹ the attendees spent considerable time making the proposed GEF procedures applicable to the role of NGOs. The participants determined by consensus that it was inappropriate for NGOs to participate directly in the Participants' Meetings, but that the implementing agencies (World Bank, UNDP, and UNEP) should consult with the NGO community immediately prior to a Participants' Meeting. Through such consultation the implementing agencies would hear NGOs' views on various

55. See THE WORLD BANK AND THE ENVIRONMENT - A PROGRESS REPORT (Fiscal Year 1991) 104 (1992). It should be noted that in recent years NGOs have held meetings concurrently or in parallel with the Bank/Fund Annual Meetings. For its part, the Bank instituted procedures to provide NGO representatives with access to annual meetings upon obtaining clearance from the country representative of the NGO involved. NGO members of the NGO-World Bank Committee are, however, afforded automatic accreditation to attend the Annual Meetings.

56. *Id.* at 104-05.

57. World Bank, Forest Policy Paper (R 91 - 96/1, June 26, 1991). This paper was discussed by the Executive Directors on July 18, 1991 and its recommendations were approved as Bank policy.

58. The effectiveness of this consultative process has been mixed, partly because of scheduling and design problems.

59. An important example is the Consultative Meeting on Conservation of Critical Ecosystems and Economic Development, held in Bangkok in late 1989, sponsored by the Bank and NGOs such as World Resources Institute, World Wildlife Fund, and International Union for Conservation of Nature.

60. See *supra* note 30 and accompanying text.

61. "Participants" refer to countries which have contributed funds to the GEF's Global Environment Trust Fund (GET) or agreed to co-financing arrangement with the GET. They meet semi-annually to review work programs and exchange views on general policies pertaining to the GEF.

aspects of the GEF, notably the technical assistance and investment portfolios to be financed by the GEF. The implementing agencies held the first such consultation prior to the December 1991 Participants' Meeting and then presented a report on this consultation at the Participants' Meeting.⁶² In addition, a small steering committee, composed of NGOs and implementing agencies, has recently been formed to plan the bi-annual consultations as well as provide a means of exchanging information and views.

NGO representatives have gained access to another Bank forum through their participation in an informal meeting with IDA deputies in September 1992, in the context of the discussions on the tenth IDA replenishment. Though this type of Bank-NGO interaction is not likely to be regular (mostly because IDA deputy meetings are not scheduled on a regular basis), this initial encounter was an important step in the Bank's increasing awareness of the valuable contribution which the NGO community can make in improving the effectiveness of IDA projects. Discussion at this informal meeting focused on issues of governance, appropriate criteria for the evaluation of poverty and the social costs of structural adjustment.

V. Special Issue: Disclosure of Information

NGOs have an interest in access to Bank information concerning specific projects similar to the NGOs' interest in the Bank's policy-making process. Environmental NGOs have especially criticized the Bank for restricting access to information that they contend is of interest to the public. The NGOs base their criticism on the contention that the Bank and other multilateral development banks that use public monies to lend for public purposes should be transparent and open to public scrutiny.⁶³ While this criticism emanated originally from NGOs in developed countries, similar complaints have also been made by NGOs in developing countries.

As indicated above, in recent years the Bank has been willing not only to discuss its policies but to make its internal operational directives available to interested groups. The Bank must ensure, however, that it maintains its relationships with borrowing countries at an appropriate level of mutual confidence. Further, the Bank must continue to receive from borrowing countries the information needed for efficient performance of the Bank's work. Bank policy thus seeks an appropriate balance regarding disclosure. OD 14.70⁶⁴ encourages governments and Bank staff to be responsive to NGO requests for information while making

62. See, e.g., Report by the Chairman to the December 1991 Participants' Meeting - Part One: Main Report, Annex 4. Along these lines, the Bank has worked closely with NGOs in developing an investment pipeline of projects under GEF's consideration, consulting with NGOs during 1991 to ascertain their views on those projects.

63. See, e.g., Bruce Rich, *The Emperor's New Clothes: The World Bank and Environmental Reform*, 7 *WORLD POL'Y J.* 305 (1990).

64. OD 14.70, *supra* note 14, paras. 10 and 11.

these requests for information subject to the restrictions in the Bank's Directive on Disclosure of Information.⁶⁵

This Directive indicates a presumption in favor of disclosure, both outside and within the Bank, in the absence of a compelling reason not to disclose. The Directive nonetheless restricts the distribution of some documents, particularly those related to the Bank's decision-making process and those containing confidential information provided to the Bank on the condition of no external disclosure. The Bank bases its policy on documents dealing with Bank decision-making on the assumption that documents are not final while under deliberation by the Bank and decision-makers in borrowing countries. Therefore, the documents should not be made available to third parties before the parties involved have taken definite positions as premature disclosure could undermine the decision-making process. Further, if the documents belong to the Bank, the Bank should be able to assure the authors of their freedom to write their drafts with candor, unhindered by the concern that whatever they write may become public knowledge and adversely affect the Bank's relationship with a borrower. If the documents involved belong to a borrower, the Bank cannot disclose those materials without its approval.

Despite such limits on disclosure, the Bank recently has taken a much more pro-disclosure approach with regard to environmental assessment reports. For example, when an environmental assessment is performed, the Bank expects a prospective borrower to engage the affected people and local NGOs in meaningful consultations.⁶⁶ In addition, the Bank publishes a Monthly Operational Summary (MOS) that not only indicates the category to which each project is assigned for environmental assessment purposes but also includes, in certain cases, a data sheet which is a summary of the project.⁶⁷ Several other environment related directives include provisions on the sharing of information. OD 4.30 on Involuntary Resettlement⁶⁸ provides that systematic information sharing and regular consultations among resettlers, host populations, and local NGOs lead to increased acceptability of resettlement

65. The World Bank, Administrative Manual Statement 1.10, Directive on Disclosure of Information, July 1989.

66. See *supra* notes 50-54 and accompanying text.

67. MOSs are now regularly distributed to some 350 NGOs worldwide. Category A projects (See *supra* note 52 for discussion on the categorization of projects), include a data sheet indicating, *inter alia*, the steps needed to carry out the assessment. The Bank's management issued a note pursuant to which data sheets for Category B and C projects will be available to the public on request. Provided the Bank receives authorization from the borrower, the Bank releases a summary in English of the EA report prepared for Category A projects to the Bank's executive directors and places the full text in the project file which is also available to them. The executive directors receive the summary of this report long before the project's submission to them for financing approval. If a borrower indicates that it is not in a position to authorize such a release, the Bank does not proceed with further work on the project unless senior management decides otherwise "for objective reasons unrelated to the environmental soundness of the project." OD 4.01, para. 22.

68. See *supra* note 47 and accompanying text.

plans. Most projects involving involuntary resettlement or projects which affect indigenous peoples⁶⁹ are classified as Category A projects under OD 4.01 and therefore the resettlement plan and/or indigenous peoples' development plan must be prepared in conjunction with the environmental assessment.

On August 6, 1992, the Bank's executive directors agreed to make environmental assessment reports available to the public at the Bank's headquarters, with the consent of the borrowers concerned. Such consent will be sought as a routine matter and is expected to be regularly obtained under normal circumstances.

Open disclosure policies are also being pursued with respect to projects related to the Global Environmental Facility. As a corollary to the formal consultations with NGOs prior to Participants' Meetings,⁷⁰ all documents prepared specifically for the Participants' Meetings have been made available to NGOs. With respect to specific operations to be financed by the trust funds under the GEF, initial project proposals have been shared with interested parties, including NGOs, in the course of the technical reviews of such projects. Publicly-available GEF documents will be placed on ECONET, an environmental information network used extensively by the NGO community.

During the second GEF Participants' Meeting in April 1992, a request was made for the formulation of an information disclosure policy that would result in greater transparency and accountability. A draft operational directive⁷¹ has been prepared by a Bank working group for submission to the Participants, calling for the disclosure outside the Bank of virtually all documents prepared in connection with GEF projects save those relating to the decision-making processes of the Bank and prospective recipients.

VI. Bank Financing for NGOs

The IBRD, in accordance with its Articles of Agreement, is prohibited from making loans to NGOs without the guarantee of the local government. Funding for NGOs is therefore most likely to be provided through grants. Long-term practice dating back to the 1960s has established the Bank's power to make grants. Though the Articles of Agreement do not explicitly provide this power, common practice has treated grant-making as an implied power of the Bank to the extent that grant-making enables the Bank to serve the purposes set forth in article 1 of its Articles of Agreement, provided the Bank makes such grants out of the Bank's profit or surplus.⁷² While most of the IBRD's grants have been

69. See OD 4.20 on Indigenous Peoples, *supra* note 41.

70. See *supra* note 62 and accompanying text.

71. Draft OD on *Disclosure of Information Under the Global Environment Facility (GEF)*.

72. For more details, see Memorandum of the Vice President and General Counsel to the Executive Directors, dated February 15, 1985 on "The Power of the Bank to Make Grants" (copy on file with the author).

made to its affiliate IDA,⁷³ the Bank has made other grants to many recipients, including NGOs. The Bank has made these grants through its Special Grants Program, which has an annual budget of roughly U.S. \$50 million. The grants have funded such organizations as the Consultative Group on International Agriculture Research (CGIAR), International Planned Parenthood Federation, the Centre for African Studies and various United Nations agencies' special programs.

In addition, in 1983, the Bank established a Small (formerly "External") Grants Program pursuant to which it makes grants to non-profit NGOs and others to support activities that promote discussion and dissemination of information on a broad range of development issues of particular concern to the Bank.⁷⁴ In selecting beneficiary institutions, the Bank takes into account, *inter alia*, whether the activity to be supported furthers the Bank's development objectives, whether the activity involves a distinct contribution reflecting the Bank's comparative advantage, and whether such financial support by the Bank could marshal financial contributions from other donors. The Bank has made small grants under this program to a wide range of NGOs in both developed and developing countries.⁷⁵

VII. Conclusion: Steps for the Future

The improvement in the Bank's interactions with NGOs has been recognized by some commentators who have noted that over the past few years the Bank's review process has become more open and participatory, conditions the commentators see as essential for effective and equitable development.⁷⁶ An example cited is the suspension of Bank financing of the Bapai Dam in Nepal.

73. Suggestions have been made that IDA open a "small projects window" whereby concessional loans could be made available to NGOs to finance small investment projects.

74. A total of U.S. \$400,000 was granted to approximately 40 organizations in FY91. The average grant size is about U.S. \$10,000. The Small Grants Program does *not* finance NGO projects or training programs.

75. Organizations which have received grants include the African Leadership Forum, Overseas Development Council (U.S.), Environmental Problems Foundation of Turkey; and activities supported include workshops on biomass resources, banking for the poor, and private sector contribution to development.

76. See, e.g., Zygmunt J. B. Plater, *Damming the Third World: Multilateral Development Banks, Environmental Diseconomies, and International Reform Pressures on the Lending Process*, 17 DEN. J. INT'L L. & POL'Y 121, 142 (1988). It has been noted that "[f]rom around the world, NGOs and the environment ministers of host countries have reported that World Bank staff and development interests within the particular countries have taken seriously for the first time the arguments, data, and environmental accounting procedures. With respect to the Itaparica Dam project in Brazil, the World Bank "insisted that the 'law of the project' include not only rhetorical promises on the part of the host country that indigenous people would be adequately relocated, . . . but also that enforceable contracts be made with local NGOs so that if relocation efforts were non-existent or inadequate, the persons directly affected would have an immediately available legal remedy in the courts of the host country." *Id.* at 144-45.

On the other hand, some commentators remain highly critical of Bank projects and policies and have indicated that calls by the Bank for greater NGO involvement were only window dressing.⁷⁷ According to one commentator, NGOs have encountered increasing Bank-financed ecological debacles and are disillusioned with the Bank's environmental reform initiatives.⁷⁸ In this critic's view, "[it is ironic that] the limits of the World Bank's reforms are becoming apparent just as the NGOs are succeeding in promoting similar institutional changes in regional development banks like the Inter-American Development Bank (IDB), and even within the [International Monetary Fund] IMF."⁷⁹

The debate over the role of NGOs in the Bank's activities indicates that future success requires continued and increased interaction with NGOs. As part of this process, action by the Bank in this direction includes certain measures which are being pursued at present. In this context, the following steps may be highlighted:

- (a) Bank management and staff actively seek NGO involvement in Bank-financed projects to the extent that there are benefits to be drawn from such an involvement;
- (b) the Bank now pays particular attention to the practice of involving the beneficiaries and potentially adversely affected populations at the earliest possible stage in the design of Bank-financed projects and allows properly constituted local NGOs to play a vital role in this process, especially where this interaction is expressly provided for, e.g., OD 14.70 and the ODs relating to the environment;
- (c) the Bank invites a two-way dialogue with NGOs on issues of shared concern, not only through the NGO-World Bank committee but also through other forms of consultative relations with NGOs in the normal course of Bank operations;
- (d) Bank staff review selected Bank projects that involve NGOs to determine how the Bank-NGO relationship may be further strengthened; and
- (e) the Bank is increasing its efforts to make available information on its policies and operations to NGOs and to the public at large in pursuit of the objectives of transparency and openness which are now emphasized in its dialogue with its borrowing member countries.

77. See, e.g., Rich, *supra* note 63.

78. *Id.* at 309. This article notes the protests by Third World NGOs such as Friends of the Earth in Brazil and the Malaysia-based Asia-Pacific Peoples' Environmental Network (APPEN) alleging that the Tropical Forestry Action Plan (TFAP) co-sponsored by the Bank, FAO, UNDP, and World Resources Institute was not being carried out consistently with its terms and was progressing without any significant consultation with or involvement of NGOs and local communities in tropical forest countries. Similar criticism was raised by NGOs in India concerning the Narmada project.

79. *Id.* at 307.

