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February 10, 2005

FROM: Vice President and Corporate Secretary

Inspection Panel

**Argentina: SEGBA V Power Distribution Project
Paraguay: Reform Project for the Water and
Telecommunications Sectors**

**Inspection Panel Review of Management Progress Report on Implementation
of the Management Recommendations and Action Plan,
and Additional Implementation Measures**

1. Attached is a memorandum from the Acting Executive Secretary of the Inspection Panel dated February 7, 2005, transmitting a memorandum to the Executive Directors from the Chairperson of the Inspection Panel entitled "Argentina: SEGBA V Power Distribution Project (Loan No. 2854-AR); Paraguay: Reform Project for the Water and Telecommunications Sectors (Loan No. 3842-PA) - Inspection Panel Review of Management Progress Report on Implementation of the Management Recommendations and Action Plan, and Additional Implementation Measures".

2. Executive Directors discussed the *Management Report and Recommendation in Response to the Inspection Panel Investigation Report - Paraguay: Reform Project for the Water and Telecommunications Sectors (Loan No. 3842-PA); and Argentina - SEGBA V Power Distribution Project (Loan No. 2854-AR)* (INSP/R2004-0003, dated April 21, 2004) and *The Inspection Panel Investigation Report* (INSP/R2004-0001, dated March 1, 2004) at a meeting held on May 6, 2004.

Distribution:

Executive Directors and Alternates
President
Bank Group Senior Management
Vice Presidents, Bank, IFC and MIGA

THE INSPECTION PANEL
OFFICE MEMORANDUM

DATE: February 7, 2005
TO: Mr. Paatii Ofosu-Amaah
FROM: Serge Selwan, Acting Executive Secretary, IPN
EXTENSION: 32762



SUBJECT: **ARGENTINA: SEGBA V Power Distribution Project (Loan No. 2854-AR)
PARAGUAY: Reform Project for the Water and Telecommunications Sectors
(Loan No. 3842-PA) Inspection Panel Review of Management Progress Report
on Implementation of the Management Recommendations and Action Plan,
and Additional Implementation Measures**

Attached for distribution to the Executive Directors and Alternates please find a Memorandum from the Chairperson of the Inspection Panel entitled "Argentina: SEGBA V Power Distribution Project (Loan No. 2854-AR) Paraguay: Reform Project for the Water and Telecommunications Sectors (Loan No. 3842-PA) Inspection Panel Review of Management Progress Report on Implementation of the Management Recommendations and Action Plan, and Additional Implementation Measures"

Attachments

THE WORLD BANK INSPECTION PANEL

INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT
INTERNATIONAL DEVELOPMENT ASSOCIATION

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Edith Brown Weiss
Chairperson

February 7, 2005

MEMORANDUM TO THE EXECUTIVE DIRECTORS AND ALTERNATES

**SUBJECT: Argentina: SEGBA V Power Distribution Project
(Loan No. 2854-AR) Paraguay: Reform Project for the Water and
Telecommunications Sectors (Loan No. 3842-PA)
Inspection Panel Review of Management Progress Report on
Implementation of the Management Recommendations and
Action Plan, and Additional Implementation Measures**

As requested by the Board of Executive Directors on May 6, 2004, the Inspection Panel has prepared the attached review of Management's Progress Report and Additional Implementation Measures to bring the Yacyretá Hydroelectric Project, partially financed by the above referred loans, into compliance with Bank operational policies and procedures.

Since this Project is complex and difficult, the Panel understands that it requires time for Management to make substantial progress in implementing its Action Plan and Additional Implementation Measures. Thus the Panel waited until after the December 2004 Bank Supervision Mission before finalizing its review. The Panel retained two independent consultants to help carry out its review.

The Panel appreciates Management's cooperative approach in the post-investigation period and the consistent efforts by Regional Management and staff to improve procedures on the ground. The Panel notes, however, that a considerable number of costly social and environmental activities have yet to be completed before the water level of the Yacyretá reservoir is raised further.

Argentina and Paraguay agreed on January 5, 2005, to raise the Yacyretá reservoir to its 83masl designed level, which will allow the power plant to operate at full capacity at a time when both countries have increasing electricity needs. The two governments have also developed a Plan de Terminación de Yacyretá (Yacyretá Completion Plan), which spells out in detail the actions necessary to complete the Project, including technical, social and environmental measures. During the last supervision mission, the Bank and the Inter-American Development Bank

commented extensively on the contents of this plan and the institutional arrangement for its implementation. The Panel notes that a number of activities still need Bank support and, most importantly, would benefit from closer supervision and more participation of the Bank's social and urban specialists.

With respect to the Panel's finding regarding the need for an independent, transparent and accurate monitoring of the Yacyretá reservoir water level, Management engaged at its own expense an Argentinean University, in collaboration with a Paraguayan University, to carry out initial monitoring and to develop a system for continuing monitoring in the future. Unfortunately, the results of this monitoring, as posted on the Argentinean University's website, are incomplete and cannot be easily understood by those who consult the website. More importantly, there is still no clear follow up to this initial effort to have a system in place to ensure independent monitoring of the reservoir level.

The Panel also noted uneven progress in implementing the Encarnación sewerage system, a prerequisite to raising the reservoir without causing major urban flooding problems. Construction of the system is advancing, but important concerns remain about the financing of the house connections and coverage of the northern part of the city. While the drawings and plans of the sewerage system have been made public, copies of these plans are not available for review outside of the official office. The Panel also found that the drainage issue in the Arroya Porá resettlement site still needs to be addressed, because while the drainage channel had been completed, the design and quality of the construction was such that the channel was clogged and full of sediment.

As the Panel found in its Investigation Report, one of the main sources of local discontent was an inadequate grievance procedure. Again, the Bank reacted positively and engaged at its own expense a law firm to develop a claim management system. The system is intended to assist the Entidad Binacional Yacyretá (EBY), the implementing entity, in developing a relational database and a typology of claims. Although this is welcome progress, the Panel notes that the new system does not include an independent claim adjudication procedure and that the Requesters and other affected people interviewed by the Panel have not been informed about or consulted during its preparation.

The Panel notes that the social communication program and the situation of the brick makers also suffer from a lack of information, consultation and participation of the affected people in Project implementation. Although a new social communication program is being developed, there seems to have been little or no involvement of area affected people in this process. With respect to the brick makers, those people interviewed by the Panel still do not clearly know whether they have access to clay deposits in EBY's properties, access which Management confirmed before the Board in May 2004.

Finally, with respect to the Additional Measures proposed for affected people who have already been resettled, e.g. the Productive Fund and the Social Investment Fund, the Panel observes that their implementation is still subject to the same problems affecting the execution of many other components of the Yacyretá project, such as implementation delays and cumbersome eligibility criteria and procedures.

Given the complexities of this project and the number of factors that may affect its implementation, the Panel is of the opinion that Management's commitment to the Board to report on a yearly basis may be insufficient for the Board to monitor implementation progress effectively. The Panel observes that semi-annual reports could be more appropriate.

Edith Brown Weiss

PARAGUAY
Reform Project for the Water and Telecommunications Sectors
(Loan No. 3842-PA)

ARGENTINA
SEGBA V Power Distribution Project
(Loan No. 2854-AR)

INSPECTION PANEL REVIEW

of

**Management Progress Report on Implementation of the
Management Recommendations and Action Plan, and
Additional Implementation Measures**

February 7, 2005

Table of Contents

BACKGROUND	3
INSPECTION PANEL REVIEW	4
THE REVIEW PROCESS	4
GENERAL COMMENTS	5
INDEPENDENT MONITORING OF THE RESERVOIR’S WATER LEVEL	7
PANEL REPORT FINDINGS	7
MANAGEMENT ACTION TO BE TAKEN: RESERVOIR LEVEL VERIFICATION	7
PROGRESS DURING 90-DAY PERIOD	7
PANEL’S COMMENTS ON PROGRESS	9
WORKS IN THE RESETTLEMENT SITE ARROYO PORÁ	9
PANEL REPORT FINDINGS	9
MANAGEMENT ACTION TO BE TAKEN: RESETTLEMENT SITES AND CIVIL WORKS	10
PROGRESS DURING 90-DAY PERIOD	10
PANEL’S COMMENTS ON PROGRESS	11
ENCARNACIÓN SEWERAGE SYSTEM	11
PANEL REPORT FINDINGS	11
MANAGEMENT ACTION TO BE TAKEN: SEWERAGE SYSTEM	12
PROGRESS DURING 90-DAY PERIOD	12
PANEL’S COMMENTS ON PROGRESS	13
GRIEVANCE PROCEDURES	13
PANEL REPORT FINDINGS	13
MANAGEMENT ACTION TO BE TAKEN: DISPUTE RESOLUTION / GRIEVANCE PROCEDURES	13
PROGRESS DURING 90-DAY PERIOD	14
PANEL’S COMMENTS ON PROGRESS	14
BRICK MAKERS	16
PANEL REPORT FINDINGS	16
MANAGEMENT ACTION TO BE TAKEN: BRICK MAKERS	16
PROGRESS DURING 90-DAY PERIOD	16
PANEL’S COMMENTS ON PROGRESS	17
SOCIAL COMMUNICATION PROGRAM	17
PANEL REPORT FINDINGS	17
MANAGEMENT ACTION TO BE TAKEN: SOCIAL COMMUNICATION PROGRAM	18
PROGRESS DURING 90-DAY PERIOD	18
PANEL’S COMMENTS ON PROGRESS	19
ADDITIONAL MEASURES REQUESTED BY THE BOARD	19
MANAGEMENT ACTION TO BE TAKEN	19
PROGRESS DURING 90-DAY PERIOD	19
PANEL’S COMMENTS ON PROGRESS	20
SUPERVISION AND MONITORING	21
BANK CIVIL SOCIETY SPECIALIST BASED IN ASUNCIÓN, PARAGUAY	21
PANEL REPORT FINDINGS	21
MANAGEMENT ACTION TO BE TAKEN: LEVEL OF SUPERVISION	22
PROGRESS DURING 90-DAY PERIOD	22
PANEL’S COMMENTS ON PROGRESS	22
ARCHITECT/URBAN PLANNER IN THE PROJECT TEAM	22
PANEL REPORT FINDINGS	22
MANAGEMENT ACTION TO BE TAKEN	22
PROGRESS DURING 90-DAY PERIOD	23
PANEL’S COMMENTS ON PROGRESS	23

Background

1. On May 17, 2002, the Inspection Panel received a Request for Inspection related to the Yacyretá Hydroelectric Project (the Project).
2. The Yacyretá Project is a joint venture between Argentina and Paraguay created in 1973 with the bi-national Treaty of Yacyretá, which set forth the terms of the joint undertaking and created a semi-autonomous bi-national entity, the Entidad Binacional Yacyretá (EBY), to implement the Project. The Project's civil works, constructed on the Parana River, consist of two 40 meters (m) high, five kilometers (km) long, concrete dams and 65 km of embankment dam. The works also include a 1.2 km long powerhouse containing 20 turbines, spillways and a navigation lock. In addition, the Project provides for a large program of infrastructure relocation, population resettlement, and environmental impact mitigation. The dam was designed to be maintained at a level of 83 meters above mean sea level (masl), which would create a reservoir of 1065 square km. In 1994 the reservoir was filled to 76masl, as part of a phased filling plan according to which 83masl would have been reached in 1998. However, a number of resettlement, environmental and complementary civil works activities have yet to be completed. Thus, as of today, the reservoir's water level has not been raised higher than 76masl, and the dam is still operating at 60 percent of its capacity.
3. On August 23, 2002, the Panel submitted its Report and Recommendation to the Board recommending the Board to authorize an investigation of the claims presented in the Request. The Board approved the Panel recommendation on September 9, 2002. The Inspection Panel carried out the investigation and on February 24, 2004, issued its Investigation Report (Inspection Panel Investigation Report Paraguay: Reform Project for the Water and Telecommunication Sectors and Argentina: SEGBA V Power Distribution Project - INSP/RQ02/1 Report No. 27995). On April 6, 2004, Management Report submitted to the Board its Report in Response to the Panel's findings (Report and Recommendations in Response to the Inspection Panel Investigation Report – INSP/R2004-0003).
4. On May 6, 2004, the Board of Executive Directors reviewed the Inspection Panel Investigation Report and Management's Report and Recommendations in Response to the Inspection Panel Investigation Report. During the Board meeting, the Executive Directors approved both Reports and requested from Management a Progress Report and several Additional Measures related to the implementation of this Project.
5. More specifically, the Board:

“approved the management action plan, and welcomed management's decision to provide them with a progress report that will detail what further measures

*will be taken to address problems identified by the Panel. **The Inspection Panel will review management's Action Plan and implementation measures for the Board.** (emphasis added)*

This report, which will be provided within 90 days, will include:

- *Progress made in the implementation of the Bank's action plan and additional measures identified, including social and economic impacts of the project and measures taken with respect to the 2,416 families already relocated and the 6,000 families waiting to be relocated in Paraguay;*
- *Progress on grievance procedures;*
- *What the Inter-American Development Bank (IDB) is doing with respect to Yacyretá, and how the IDB and the Bank have been collaborating on issues identified during the Inspection;*
- *What decisions have been taken with respect to the reservoir's water level, and their potential impacts.¹*

6. On August 6, 2004, Management submitted the Progress Report to the Board of Executive Directors on a non-objection basis for release to the public after August 25, 2004. On August 26, 2004, the Panel informed the Board that, consistent with the Board's decision that the Panel "*will review Management's Action Plan and implementation measures for the Board,*" the Panel would provide the Board with comments on Management's Progress Report.²

Inspection Panel Review

7. This report presents the results of the review that the Panel has conducted as instructed by the Board of Executive Directors.

The Review Process

8. To conduct its review, the Panel met and consulted with Management and the Project Team, reviewed and analyzed Project documentation, consulted with the Requesters and other affected people, and hired two external independent consultants who visited the Project area and assisted the Panel in ascertaining the facts with respect to progress made and the Project's implementation status.
9. During the course of the 90-day period set by the Board for Management's report (from the date of the Board meeting to August 6, 2004), the Panel Team at Management's request, met three times with Management and staff to discuss the Panel findings and outstanding issues, and to be informed of steps being taken to implement Management's Action Plan and the Board's decision.
10. After the Progress Report was submitted, the Panel interviewed several members of the Project Team and requested information from Management about the results of a High Level Meeting (including senior representatives of the

¹ World Bank Inspection Panel Press Release: "Argentina: World Bank Board Discusses Yacyretá Hydroelectric Project," Washington, D.C., May 7, 2004.

² Email from Panel Chairperson to Vice President and Corporate Secretary, August 26, 2004.

Governments of Argentina and Paraguay and senior officials from the Inter American Development Bank (IDB) and the Bank) that took place in Washington DC on September 9 and 10, 2004, of a “Technical Meeting on Updating of Yacyretá Resettlement Action Plan” that took place in Buenos Aires October 4-5, 2004 and of a subsequent supervision mission that took place in the Project area and Buenos Aires on December 13-20, 2004. A further meeting between Management and the Panel took place on January 14, 2005.

11. The Panel also reviewed considerable correspondence, which it received from the Requesters, and additional documentation provided by Management to the Panel, including Management’s Progress Report of August 6, 2004, Aide Memoires and Back to Office Reports related to supervision missions in (July 2004 and December 2004) and meetings with Project stakeholders.
12. As noted above, the Panel retained two independent consultants - Professor Carlos Tucci, an experienced Brazilian hydrologist, who served as the Panel’s consultant on the Investigation and Ms. Sheila Abed Zavala, a well-known Paraguayan attorney. Ms. Abed visited the Project area during late October and early November, and Prof. Carlos Tucci from November 12-13, 2004. Ms. Abed met with staff of the Asunción country office. During their visits to Encarnación, the Panel’s consultants met with Project-affected people and with officials of Entidad Binacional Yacyretá (EBY), made field observations and reviewed additional Project documents collected in the field.

General Comments

13. The Panel wishes to acknowledge, as it did before the Board on May 6, 2004, that many people among Bank Management and Staff have worked hard to “get the Project right.”³ The Panel also expresses its appreciation for Management’s cooperative approach during the post-investigation period and notes the considerable effort Management has made thus far to ensure that the Action Plan included in Management’s April 2004 Report be implemented.
14. The Panel again observes that a number of essential but costly social and environmental activities have yet to be completed as the water level of the Yacyretá reservoir is to be raised further. The Panel notes that in discussions about a one-meter increase to the current water level, Management has insisted that, in accordance with Bank policies and procedures, these measures be taken before raising the level of the reservoir, as provided in the legal documents for the loans supporting the Project.
15. Management’s Action Plan includes measures that, if implemented, will ensure that fundamental social and environmental activities are undertaken before the Yacyretá Project is completed. These include establishing an independent mechanism to monitor the reservoir level; addressing the drainage issues in the Arroyo Porá resettlement sites to prevent flooding of the houses located

³ Statement of Panel Chairperson to the Board on May 6, 2004.

downstream; establishing an independent grievance redress mechanism; updating the resettlement plan (PARR); preparing a Social Communication Program; granting the brick makers continued access to clay in EBY's own properties; building a sewerage and water treatment system in Encarnación and making plans and drawings related to the sewerage system available to affected people. Management also committed to assigning a social specialist to the Bank's country office in Asunción to deal, *inter alia*, with the many social problems related to the execution of the Project.

16. The Panel notes that Management plans to report back to the Board about progress in implementing these measures after one year, which would be in August 2005. According to the Progress Report, “[s]everal specific actions are expected to be completed during that time, including monitorable actions by EBY concerning specific environmental and social issues (particularly the social communications program and the updated PARR); various consultancies (particularly concerning a study of options for an independent grievance mechanism and independent verification of reservoir water levels); and a determination by IDB regarding its ongoing and future involvement in the Project.”⁴ Management also states that EBY and the two governments may take one year or more to complete the necessary steps for affected people to benefit from infrastructure improvements and compensation. It adds that “*there are many implementation variables over which the Bank has no or limited influence. Backtracking, unforeseen events, and thus setbacks and delays, are possible.*”⁵
17. The Panel welcomes Management's plan to report back to the Board about progress made. The Panel also understands that many complex factors may at any time hinder the sound and timely implementation of the environmental and social measures necessary to complete the Project, as the history of this undertaking has long shown. For this reason the Panel once again notes that Bank supervision is a key factor to ensure that implementation proceeds as rapidly as possible. It also notes that, given the complexities of this project and the number of factors that may affect its implementation, Management's commitment to the Board to report on a yearly basis seems insufficient for the Board to monitor implementation progress effectively. The Panel observes that semi-annual reports could be more appropriate.
18. The Panel is aware that rapid implementation of the measures included in the Action Plan – e.g., independent mechanisms for monitoring the water level and redressing grievances - was not feasible within the 90-day period Management proposed in May 2004 for evaluating progress. Since time is needed to obtain substantial improvement, the Panel decided to wait for the completion of the December 2004 Bank supervision mission before finalizing its comments on progress in addressing the Project's outstanding problems.

⁴ Progress Report on Implementation of the Management Recommendations and Action Plan (hereinafter the “Progress Report),” Aug. 6, 2004, 10.

⁵ Ibid.

19. However, there have been considerable delays even in the steps promised. The Panel notes that some proposed measures could have been more readily implemented; their execution still lags behind and has increased the mistrust of the affected people towards both EBY and the Bank – e.g., still pending drainage issues in Arroyo Porá, lack of clarity on whether the brick makers continue to have access to clay, and problems and delays in the dialogue between the Bank’s social expert based in Asuncion and the area’s affected people. The Panel is concerned about the lack of consultation with affected communities in the design of measures that will affect them directly, such as the social communication program and the grievance mechanisms.
20. This report analyzes in detail the progress and the current status of selected outstanding Project issues that the Panel identified in its Investigation Report and Management addressed in the Report and Recommendation in Response to the Panel findings, which includes the related Action Plan. For each issue taken into consideration, the Panel’s findings included in the February 2004 Investigation Report, and the action/measure Management subsequently proposed to address such issue are initially presented. These are followed by an account of the progress in implementing the proposed measure as identified in Management Progress Report submitted to the Board in August 2004, and by the Panel’s comments in relation to such progress and the current status of implementation (as of January 30, 2005).

Independent Monitoring of the Reservoir’s Water Level

Panel Report Findings: The Panel finds that the Yacyretá reservoir is frequently operated under conditions that produce a water level in excess of 76 masl at Encarnación and that this is not consistent with both the loan agreement and the Third Owners Agreement, as amended.⁶

Management Action to be Taken: Reservoir Level Verification Management will urge the Governments of Argentina and Paraguay and EBY to establish a means for independent verification of the reservoir level. Bank staff will monitor this and confirm that the reservoir is operated at 76 masl, in accordance with the Legal Agreements. Management will also request EBY to validate the height-flow rate curves every year.⁷

Progress during 90-day period (May 6, 2004 – August 6, 2004)

21. The Aide Memoire of the July 2004 Bank supervision mission reported that the deadline to establish the independent verification mechanism was October 15, 2004. According to the Management Progress Report dated August 6, 2004, the Bank would contract the University of La Plata, Argentina, (Universidad Nacional de La Plata, UNLP), for a period of five months to “*monitor the*

⁶ *Inspection Panel Investigation Report* (hereinafter the “Investigation Report”), February 24, 2004, ¶167.

⁷ Progress Report, 12.

*reservoir level and to confirm that the reservoir is operated in accordance with the Operational Manual.*⁸ The Report further stated that UNLP has established a team of water resources engineers from the Universidad de Asunción in Paraguay and Universidad de la Plata in Argentina.

22. The contract between the World Bank and the UNLP was signed on August 9, 2004. Annex A of this contract includes the Terms of Reference (TORs) for the consulting services to be provided by UNLP, whose scope is *“to develop an independent verification mechanism of the water level in the Yacyretá reservoir, in the tract Posadas-Encarnación to ascertain whether the Yacyretá Power Plant is operated in accordance with the Legal Agreements concluded between the governments of Argentina and Paraguay, the Yacyretá Bi-national Entity, and the World Bank.”*⁹ The consultant is to collect the data related to the water level and the water flow, which are registered daily by the Argentine and Paraguayan Coast Guards at Corpus, Posadas-Encarnación, the power plant, Restitución and Ituzaingo, and by EBY at the power plant; to analyze the data and to monitor the reservoir water level based on the provisions of the Yacyretá’s Operational Manual for reservoir level 76masl; and to evaluate the overall operation of the reservoir in accordance with the requirements and the restrictions included in the Operational Manual. In coordination with the Argentinean and the Paraguayan Coast Guards the consultant also is to validate the height-flow rate curve at Encarnación-Posadas and at the power plant. The consultant is to present monthly reports and a final report at the end of the contract, whose duration is five months (August 9, 2004-January 8, 2005). These reports are to be published on the Universities’ websites.
23. With respect to the verification mechanism after the Bank’s contract with UNLP has terminated, the Bank’s Progress Report states that EBY has agreed to assume responsibility for financing a similar independent verification mechanism to monitor the water level, no later than the beginning of 2005 (end of above mentioned contract). On September 9 and 10, 2004, the IDB hosted the Fifth High Level Meeting between the governments of Argentina and Paraguay, EBY, the World Bank and the IDB itself. The Aide Memoire of the meeting states that *“EBY has approved a system of verification and dissemination of the reservoir level. In addition, the World Bank has contracted services of universities in Argentina and Paraguay, of recognized professional and scientific hydraulic and hydrological expertise, to start the execution of an independent mechanism to verify and disseminate the level of the Yacyretá reservoir...It was agreed that, starting from January 1, 2005, EBY will continue [operating] this verification mechanism taking into consideration the methodology and the lessons learned with the contract under implementation.”*¹⁰

⁸ Progress Report, ¶ 31.

⁹ Terms of Reference Management provided to the Panel.

¹⁰ Aide Memoire, Reunion de Alto Nivel, (High Level Meeting), September 9-10, 2004 Washington DC.

Panel's Comments on Progress

24. In meetings with the Inspection Panel held in July 2004, Management stated that the data on the level of the reservoir are released by the Argentine and Paraguayan Navy, thus EBY was not to be involved in this process. According to Management, the above-mentioned contract would be first financed by the Bank and then, based on the results; it may be taken over by EBY. This would be a pilot exercise that the Bank would finance and supervise for six or seven months. After this period Management foresaw that if everything went right, the source of financing would not matter because the monitoring would rely on independent universities that have the best expertise in the two countries.
25. The Panel notes that, while the contract between UNLP and the Bank is nearing termination, Management informed the Panel that no specific plan has been defined yet with respect to the future of the independent monitoring mechanism. The Panel observes that the independent mechanism is an important step forward in addressing key issues that the Panel had identified in its investigation report and in restoring the trust of the affected people in EBY and the Banks. Thus, the Panel emphasizes that, although Management could not identify a timeframe to resolve this issue, a solution is promptly needed.
26. According to the contract concluded with the Bank, UNLP was to prepare and publish on the University's website a monthly report on its independent monitoring activity. The Panel found that UNLP posted the data collected from August to November on its Internet page sometime in December 2004. Management also informed the Panel, in a meeting on January 14, 2005, that the analysis of the data collected in November and December had been completed and the resulting report was to be submitted to the Bank in a few weeks.
27. After reviewing the data published on UNLP's website, the Panel notes that the published data are not thorough enough to draw proper conclusions, because the daily mean water level at the power plant and in Posadas for the considered period, and the description of the dam's operational conditions are yet to be made available. In addition, the Panel observes that the information released to the public is very technical and not understandable to a non expert eye. Management itself acknowledged this problem and emphasized that the upcoming report analyzing the data needed to be clear and comprehensible to everyone.

Works in the Resettlement Site Arroyo Porá

Panel Report Findings: The Panel finds that new resettlement construction should have had adequate environmental and social impact assessments. The Panel finds evidence that host populations near resettlement sites are, in some cases, adversely affected by the design and construction of the resettlement sites, or by added burdens on local

infrastructure due to the influx of resettled population. OD 4.30 and OD 4.01 require that such impacts be assessed and mitigated.¹¹

Management Action to be Taken: Resettlement sites and civil works Management will request that EBY update the screening process for non-dam related civil works to include a quality assurance protocol. Bank will continue to monitor engineering supervision and contractor insurance practices and will request improvements, as necessary.

Bank will monitor the system EBY has in place to supervise civil works; request that contracts continue to include required clauses; and, continue to pay careful attention to construction deficiencies.¹²

Progress During 90-day Period

28. Management's Progress Report states that the Bank has assisted EBY in updating the screening procedures (procedures aim at enhancements in design, construction, and quality assurance of remaining civil works at existing and future resettlement sites). The Bank is also committed to ongoing enhanced supervision of the environmental aspects of the resettlement sites and civil works.
29. Regarding specific issues in Arroyo Porá, the Report asserts that the Bank has recommended general improvements in EBY's infrastructure design and implementation procedures and insisted on several occasions that EBY do everything possible to resolve a pending drainage related problem involving several host populations.
30. In the July 2004 meetings with the Panel, Management stated that the Bank was discussing with EBY and the contractors how to fix the various problems, and, according to Management, EBY claimed that the construction would be finished in 6 months. The Bank thought that this was too long a time and tried to reach a different agreement with EBY.
31. In these meetings, Management further stated that the Bank supervision team met, during the July mission, with people living in the Barrios Tacuary and Americas, who claim that they are affected by flooding caused by the constructions in Arroyo Porá. According to Management, some residents of these barrios claimed that the flooding is very frequent, and others that it happened only once nine months ago. The Bank informed the Panel that these people are physically preventing the contractors from bringing their machinery into the work area. According to Management, they asked the Bank to meet three requests in order to allow the construction work to proceed. The three requests were:

- Supply drinking water

¹¹ Investigation Report, ¶ 256.

¹² Progress Report, 12, 13.

- Compensate the washer women of the area
 - Give cash compensation based on how close they live to the ditches that are going to be built.
32. Management stated that EBY started supplying drinking water to the residents six months earlier. Management also noted that the Bank has always discouraged EBY from compensating people for impacts not directly related to the Project because this would set a precedent very difficult to reverse. For this reason, the Bank is not pushing EBY to compensate the washer women. According to the Bank, the people in Barrio Tacuary have no basis for not allowing the construction works to proceed.

Panel's Comments on Progress

33. The Panel's independent consultant found a number of design and construction problems with the solutions proposed for the drainage channel issue in the Arroyo Porá resettlement site, which the Panel identified in its investigation report and which still exists. The consultant visited Arroyo Porá in November 2004 and found that the channel had been completed, but the design and quality of the construction was such that the channel was full of sediment and was clogged. The risk of flooding of the houses located downstream now appears to be greater than before remedial action was taken. Moreover, a new problem has emerged. The diameter of the pipes used is too small for the amount of water flowing in, so new flooding may occur. The Panel notes that, in the Aide Memoire related to the mission conducted in December 2004, Bank staff confirmed the Panel consultant's observations and expressed concern that a resolution of the drainage issue is still pending. They requested EBY to complete the necessary works within 90 days from the date of the Aide Memoire.
34. Management reaffirmed its knowledge of the alleged blocking of the construction in Arroyo Porá by people residing in the downstream neighborhoods in the January 2005 meeting with the Panel. However, neither the Contractor nor the people residing in the downstream neighborhoods reported such events to the Panel's consultants who visited the project area in November 2004.

Encarnación Sewerage System

Panel Report Findings: The Requesters claimed that the sewerage system will not cover some of the resettlement areas. The Panel finds that it is planned that the resettlement areas in question will be linked to the reticulated sewerage system. The Panel notes, however, that confusion may have arisen over the coverage of the wastewater treatment because the detailed drawings of the planned sewerage reticulation system for Encarnación were not publicly available in the EBY information office.¹³

¹³ Investigation Report, ¶ 215.

The Panel also noted “ *with great concern*” that “ *although according to Management the sewerage system has been designed to cover the city of Encarnación, the works describe in the current bidding documents for the construction of the system seem to cover only the southern part of Encarnación (zona sur).*”¹⁴

Importantly, the Panel finds that responsibility for the cost of connection to the sewer system may become a significant source of conflict in the not too distant future. The Panel finds that this issue needs the urgent attention of Bank Management and that an effective means for financing the connection of houses to the sewer network is required, especially for poor communities.¹⁵

Management Action to be taken: Sewerage System

Management will request EBY to make all relevant drawings of sewerage systems, pumping stations, and the wastewater treatment plant, as well as any other non-dam-related civil works, available to the community.

Bank will monitor inclusion of activities to clarify the areas being covered and the proposed time frame for the coverage in EBY’s social communications program. Management will confirm that the sewerage system has been completed prior to the raising of the reservoir level to 78 masl, in accordance with the pertinent provisions of the Legal Agreements, and will urge EBY and the Paraguayan authorities to pursue IDB or other financing for the household connections.

It is expected that actions pertinent to transfer and supervision of the sewerage system in Encarnación will be undertaken by IDB prior to the raising of the reservoir level to 78 masl.¹⁶

Progress During 90-day Period

35. The Progress Report states that the construction of the sewerage system in Encarnación southern zone and the construction of a wastewater treatment plant for the city of Encarnación with IDB funding are underway, with completion tentatively planned for 2006. Management claims that it has urged IDB to finance the construction of the sewerage system in Encarnación’s northern zone, in addition to those parts of the system whose construction is already supported under its existing loan. However, should this financing not materialize, EBY is said to be exploring alternative technical and financial options. The Bank has also insisted that EBY identify the institutional and financial arrangements required for installation of household connections in the southern zone and construction of the sewerage system for the city’s northern zone.

36. Management informed the Panel in July that the Bank agreed with the Panel’s finding that the sewerage network needs to be connected to the houses but that as

¹⁴ Id., ¶ 215.

¹⁵ Id., ¶ 216.

¹⁶ Progress Report, 13-15.

of July the IDB had not included this item in their financing plan. The Aide Memoire of the latest High Level Meeting does not mention this issue.

37. With respect to Management's request that EBY make all relevant drawings of sewerage systems, pumping stations, and the wastewater treatment plant, as well as any other non-dam-related civil works, available to the community, the High Level Meeting's Aide Memoire reads that "*the plans for the sewerage system and other civil works important for the area were made available to the municipality of Encarnación and to the public.*"¹⁷ According to the Requesters, this did not occur before then.

Panel's Comments on Progress

38. The Panel confirms that, as of November 2004, the drawings and plans related to the sewerage system for Encarnación are now available to the public. However, the Panel was also informed that it is not possible to make copies of such documents for a more detailed review by affected parties. The Panel thus observes that meaningful access to the documentation is not yet fully available.
39. With respect to the need to connect the sewerage system to the households, EBY informed the Panel's consultants that the household connections will be included in the construction of the sewage system for the Southern part of Encarnación. However, they confirmed that the construction of the sewerage system for the Northern part is still pending because of a lack of financing sources.
40. In view of the foregoing, the Panel finds that there are a number of issues still to be dealt with regard to Encarnación's sewerage system before raising the level of the reservoir further.

Grievance Procedures

Panel Report Findings: Although the Panel was informed that there were some procedures to rectify any omissions in the 1990 census, the Panel finds that at best these procedures were ad hoc arrangements that allowed some corrections to the census.¹⁸

Most people who felt excluded did not have a clear and objective procedure for bringing their concerns to EBY. The Panel further finds that procedures for correcting the census or other resettlement related omissions and errors are inadequate, and notes that a standard and transparent appeals procedure is not available to affected people.¹⁹

Management Action to be Taken: Dispute resolution / grievance procedures: Bank will oversee a review during the second quarter of 2004 of existing claims against EBY in order to address issues of dissatisfaction, and propose a renewed effort (together with

¹⁷ Aide Memoire, Reunion de Alto Nivel, (High Level Meeting), September 9-10, Washington DC.

¹⁸ Investigation Report, ¶ 248.

¹⁹ Id., ¶ 249.

the IDB) to develop a credible and transparent dispute resolution process. The Bank will continue to work closely with EBY to establish this process as soon as possible. Management will urge EBY (and provide guidance as necessary) to include in the grievance procedures a means for the reception and solution of claims that could emerge from host communities during the resettlement process.²⁰

Progress During 90-day Period

41. In July 2004, Management informed the Panel that both the governments of Argentina and Paraguay agreed that this mechanism is very important for the affected people and the Project. Consultants had been hired to assist EBY to:

- Compile a database of claims filed under different categories of problems from 1995 to date;
- Document the procedures to solve the claims as the current procedure is very informal. The Bank recognized the need to formalize these procedures in a written mode and inform the affected people about their rights, procedural steps required and possible outcomes;
- Improve such procedures to respond to and solve claims. A database will be compiled to collect data/statistic to how efficient EBY is in responding to the complaints.

42. According to the July 2004 supervision mission Aide Memoire, EBY was to prepare by October 15, 2004 a proposal for a grievance redress mechanism that included: (1) redefinition of rules and procedures; (2) a system to manage and to resolve claims considering conciliation methods and (3) issues and procedures that would also be included in the Social Communication Program.

43. The Progress Report stated that the Bank commissioned a study about possible options for independent grievance resolution mechanisms. For this purpose, the Bank retained a lawyer with experience in arbitration, mediation and conciliation. In July, Management told the Panel that the two governments and EBY concurred on the need for an independent grievance mechanism and that the IDB had agreed to finance it. Management Report stated that EBY was setting up a financial reserve fund as part of its Project Completion Plan to finance awards that may come out of these processes.

Panel's Comments on Progress

44. During their November 2004 visit, EBY informed the Panel's consultants that it has approved an internal regulation regarding claims filed by individuals and groups and submitted it to the Bank for review. The Aide Memoire of the Bank December supervision mission states that "*EBY has submitted a procedure to deal with complaints*"²¹ but it does not state whether this procedure is satisfactory to the Bank and gives no other explanation or detail about this new procedure or the review process. Management informed the Panel that the Bank

²⁰ Progress Report, 15.

²¹ Aide Memoire, December 13-20, 2004.

hired a law firm on a consulting basis, Baker & McKenzie, to develop a “*claims response system*”²² Management expected this work, which includes developing a relational database and a typology of claims, detailed analysis of a subset of 200 claims, the preparation of didactic materials and presentations to EBY, to be completed by December 2004. On January 14, 2005, Management informed the Panel that the consultant completed its work and the final report was to be submitted to the Bank within few weeks. (The Aide Memoire of the December mission states that the consultant’s report was to be available by January 17, 2005.) The December 2004 Aide Memoire also states that Management agreed with EBY that the new claim response system be implemented by June 2005.

45. With respect to the creation of an independent redress mechanism, the Aide Memoire of the Bank’s December 2004 mission, states that both EBY and the Bank have supported initial research activities about conflict mediation by two consultants. Management informed the Panel in January 2005 that several options are still being analyzed but no decision has been taken yet. The law firm Baker and McKenzie is also reviewing legal redress mechanism options in Paraguay. According to Management, EBY will evaluate the reports of the consultants and will submit its own comments to Management within 60 days from the date the law firm submitted its report to the Bank.
46. In light of the foregoing, the Panel notes that while important steps are being taken to address these issues, the establishment of an independent and transparent grievance procedure is unfortunately only in the early stages. Important issues need also to be considered, such as the situation of those families who claim that their compensation was inadequate when they had to choose between either accepting nothing for their homes (and acting through the court system), or accepting the EBY offer at the time the water was raised to the 76m level. The Panel notes that in those cases where the owner lodged a protest within a specified period, re-examination of compensation paid should be allowed.
47. In summary, EBY still lacks a clear set of procedures to resolve claims filed by affected people. In addition, the existing procedures are very informal.. EBY employees themselves expressed their distress about this situation with the Panel’s consultant. They claimed that quite often they spend considerable time replying to claims they had already addressed, as clear rules are missing. EBY seems to lack trained personnel on conflict management and resolution. The claims are handled by social workers.
48. The Panel finally observes that, to date, no public discussion or consultation with the affected people has taken place as part of the effort to establish an independent grievance mechanism. The Panel notes that Management is discussing the different options for redressing of grievances with civil society organizations, but also notes that these discussions occurred only on an informal

²² Management Email to the Panel, December 2, 2004.

basis because, Management states, it is EBY's responsibility to solve the claims and/or pay the necessary compensation.

Brick Makers

Panel Report Findings: The Panel found in its visit to the San Pedro site that while families had reestablished their brick making activities, many complained about losses in their income level and about lack of continued access to raw material because the five-year clay supply had ended.²³

Management Action to be Taken: Brick makers Management will request that EBY continue to provide small brick makers with access to clay deposits. Management also will monitor inclusion in EBY's social communications program (to comply with Plan B) of activities to ensure brick makers are aware of the location of clay deposits on EBY-owned property. Medium and large sized industries will continue to have access to clay deposits on the land that EBY owns until the reservoir level is raised.

Management will request EBY and the Paraguayan authorities to meet the 2004 timetable for disbursing benefits under the Productive Fund to the informal workers already identified. Management will also request that EBY make every effort to identify former workers of brick and tile-making industries who did not previously receive compensation for loss of employment due to their informal status and utilize the Productive Fund to provide them with appropriate compensation. Finally, Management will confirm with EBY that the updated PARR component of the Revised EMP includes provisions for employment alternatives for both informal and formal workers who lose their employment due to industry closure or relocation.²⁴

Progress During 90-day Period

49. The Progress Report states that EBY is expected to continue efforts to build and maintain awareness among brick and tile makers of the procedures for access to clay deposits on EBY's property, and the Bank is committed to closely supervising the treatment of brick and tile makers and workers under the updated PARR.
50. The July 2004 mission's Aide Memoire states that the goal is to ensure resolution of problems of *oleros* (brick makers) including: (1) maintain access to clay deposits on EBY-owned property as long as the level of the reservoir allows it and (2) meet the 2004 timetable for disbursing benefits under the Productive Fund to the informal workers already identified. By October 15, 2004, EBY was to submit a document to the Bank where it determines its final decisions with respect to this issue.
51. According to the Requesters, there was no communication with the *oleros* about their continuing free access to clay in EBY's own property, and in any event, two

²³ Investigation Report, ¶ 310.

²⁴ Progress Report, 16.

main problems seem to have been overlooked: the brick makers do not have either the means to extract the clay or to transport it to their work place.

52. With respect to the brick workers who have yet to receive their compensation. Management refers in the Progress Report to the Productive Fund that, according to the Action Plan, would be used to provide the workers with appropriate compensation. However, the progress report does not specifically mention the brick workers. According to Management, the Fund was created by the GOP to support productive projects for people who were affected when the reservoir was filled to 76masl but were not included in the PARR. In addition, problems related to the eligibility criteria for the beneficiaries have thus far delayed the Fund's implementation.

Panel's Comments on Progress

53. The Panel notes that, in spite of Management assurances on this issue, it is still unclear whether the brick makers, whose clay deposits are now underwater, continue to have access to the deposits located in EBY's own property after the 5-year clay supply provided under the PARR has ended. Brick makers interviewed by the Panel's consultants during their November 2004 visit reported that in reality they have no access to such clay deposits. They added that EBY officials accused some brick makers of trespassing EBY's private properties and promised compensation only to those who meet certain requirements. EBY, in turn, states that access to clay deposits has been granted to brick makers from the neighborhood of Pacu Cua and Itapúa. The Panel also observes that, even if access to clay deposits were possible, the brick makers may not have the resources to extract it or transport it to their factories.
54. The Panel found that there is a growing perception of unfairness among brick makers interviewed by the Panel because they do not clearly know whether and who has access to clay deposits. This fact underscores the urgent need for an appropriate Social Communication Program.

Social Communication Program

Panel Report Findings: The Panel also interviewed many people who were extremely confused about the PDA program, its purpose, who was included and when and whether they were supposed to relocate. The Panel finds that under OD 4.30 Management must ensure that affected people are systematically informed and consulted about their options and rights during the preparation and implementation of the PDA program.²⁵

The Panel also finds that there was inadequate effort on the part of the Bank to ensure that the host population was informed and consulted with in planning and carrying out construction of the resettlement sites.²⁶

²⁵ Investigation Report, ¶ 371.

²⁶ Id., ¶ 257.

The Panel finds that the absence of an effective communication strategy has significantly damaged relations between those concerned with implementing the project and the affected civilian population.²⁷

Management Action to be Taken: Social Communication Program Bank will monitor EBY's provision and dissemination of information on the criteria and procedures to be used in order to confirm beneficiary status, as part of its implementation of the social communications program to comply with Plan B.

The Bank will monitor inclusion in EBY's social communications program of specific programs of information and consultation with host populations for planning and carrying out construction in resettlement sites.

The Bank will monitor inclusion in EBY's social communications program of provisions for strengthening the dissemination of information to affected people on the procedures that EBY employs for property appraisals. Moreover, the Bank will assess the adequacy of valuation procedures for the properties that will be expropriated prior to raising the water level further.

The Bank will monitor inclusion of improved plans for dissemination of procedures for property valuation and appeals in EBY's social communications program.

Management will confirm that the social communications program includes information on the resettlement sequence to be incorporated in the PARR component of the Revised EMP.

Management will confirm that EBY implements a social communications program, to comply with Plan B, and will urge EBY to address communication issues under the Urban Creeks Program. The Bank will monitor EBY's implementation of the social communications program, to improve the relations between people implementing the Project and those affected by it.²⁸

Progress During 90-day Period

55. According to the Progress Report, the Bank has assisted EBY in designing a social communications program. A World Bank communication specialist and a consultant worked with EBY in June and July 2004 in order to develop a framework, options, and content for a social communications program to reach all affected groups. EBY has also earmarked resources for the implementation of this social communications program. EBY plans to complete the preparation of the social communications program during the last quarter of 2004. The program is expected to include organizational changes within EBY to facilitate effective management oversight and follow-up. The Bank is committed to ongoing enhanced supervision of the social communications program and its outreach to both the general public and to all affected groups.

²⁷ Id., ¶ 409.

²⁸ Progress Report, 14.

Panel's Comments on Progress

56. The Aide Memoire of the December 2004 mission addresses the draft Social Communication Program that EBY prepared and submitted to the Bank, makes recommendations on how to improve it, and points out a number of shortcomings. However, the Panel notes that no mention is made about the fact that no consultation with, and participation of affected people has taken place for the drafting of the program. Until the Bank supervision mission visited the project area in December, the area people seemed unaware that a social communication program was under preparation. Neither EBY nor the Bank officials had spoken with them about this.

Additional Measures requested by the Board

Management Action to be taken: the progress report will include Progress made in the implementation of the Bank's action plan and additional measures identified, including social and economic impacts of the project and measures taken with respect to the 2,416 families already relocated and the 6,000 families waiting to be relocated in Paraguay.

Progress during 90-day period

Measures for resettled population:

57. The Progress report identifies the additional measures as:

- Fund of US\$3.7million remaining available created by the GOP to support productive projects for people who were affected when the reservoir was filled to 76masl but were not included in the PARR (Productive Fund). Problems in the identification of the beneficiaries are delaying the implementation.
- WB-funded Pilot Community Development Project (PRODECO – US\$9m) makes CDD (community driven development) funds available to communities in three departments, including Itapúa where Yacyretá communities are.
- Fund of US\$500,000 set up by EBY and managed by an NGO to provide CDD-type support to productive projects for resettled families as part of the rehabilitation programs included in the PARR. (Social Investment Fund)
- Bank and IDB have proposed that EBY and local municipalities strengthen their institutional links to better integrate project planning and investments with municipal management.²⁹

Measures for people to be resettled:

58. According to the Progress Report, EBY agreed on a timetable and a methodology for updating the PARR. The process will be integrated with the

²⁹ Progress Report, 6, ¶ 15-20.

social communications program. EBY has also agreed that the methodology for the updated PARR will use up-to-date technology (including a geo-referenced database), techniques and procedures to ascertain the status of the population to be resettled. The PARR will update the Project's socioeconomic baseline information in order to better design different resettlement alternatives and rehabilitation programs for families, businesses and industries being relocated, and programs to better integrate resettled populations with host communities.

59. In addition, during the second semester of 2004, EBY is expected to hire international staff to oversee the preparation and implementation of the updated Resettlement and Rehabilitation Plan. At EBY's request, the Bank plans to provide training by the end of the year to the Governments of Argentina and of Paraguay and to its own staff in developing resettlement and rehabilitation plans.

Panel's Comments on Progress

60. Management has informed the Panel that a technical meeting to discuss the revision of the Yacyretá Action Plan for Resettlement and Rehabilitation took place on October 4-5, 2004, in Buenos Aires, Argentina, which included representatives of the Bank, EBY and the IDB. As already mentioned, a follow-up supervision mission took place in December 2004.
61. With respect to the additional measures proposed for affected people who have been already resettled, the Panel notes that the implementation of both the Productive Fund and the Social Investment Fund unfortunately is still subject to the same problems affecting the execution of many other components of the Yacyretá project, such as implementation delays and cumbersome eligibility criteria and procedures.
62. Management stated that IDB contracted a consultant to review the current status of the PARR and that the consultant presented "*a very critical report of EBY's procedures and the status of their data.*"³⁰ According to Management, based on this report, which the Panel has not had the opportunity to review, a "*set of measures to be completed by EBY*"³¹ were prepared and agreed upon. EBY agreed to revise its data about families eligible for resettlement and rehabilitation on a "household-by household basis without referring to it as a census" because it fears that a new official census would increase the influx of new people moving into the affected area. Management stated also that EBY agreed to unify and geo-reference its database on a digital basis, to strengthen control of the affected areas and to develop "*effective communications with the affected communities before embarking on the household survey.*"³²
63. The Panel has noted several times in its Investigation Report and in this review that communication between EBY and the affected people is inadequate and

³⁰ Email to Inspection Panel, October 26, 2004, Subject: Argentina: Yacyretá Technical Meeting on Resettlement and Rehabilitation Plan, October 4-5, 2004.

³¹ Ibid.

³² Ibid.

hopes that EBY will abide by its commitment to strengthen its dialogue with affected people as soon as possible.

64. The Panel notes that of the three areas of improvement listed for the updated PARR, it is especially of interest that the PARR will include “a geo-referenced database”³³ regarding the status of the population to be resettled. Presumably, this can be checked on regular visits, or even checked in detail from a distance. It is less clear how “updating the Project’s socioeconomic baseline information”³⁴ (a third proposed improvement in the updated PARR) can be done at this point. Retroactively positing the socioeconomic baseline at the start of this Project is somewhat speculative and subject to considerable argument. Studying the current socioeconomic baseline is more direct but arguably irrelevant since the socioeconomic status of every affected person has already been severely affected by the Project. It would be interesting to know which direction this proposed updating will take.
65. The Panel also wonders about the sequence of approval of the proposed updated PARR, in the sequence of activities for completion of the project. Management’s Progress Report states that “Management will confirm that the updated PARR component of the Revised Environmental Management Plan (EMP), when completed, is in full compliance with OD 4.30 and the Legal Agreements, before the reservoir level is raised beyond 78 masl.”³⁵ This implies that current procedures will remain in effect until that time, i.e. up to 78 masl. If 78 masl is measured at Encarnación and the existing PARR will continue to be used until that point, the Panel notes that an additional meter must be vacated.
66. In this context it is important to note that in mid November the Bank has received a request from EBY to raise the water level to 77 masl. The Bank is currently considering this request. Management informed the Panel that, before giving its no-objection, the Bank needs to consider whether the required security band of 1-2 meters is free of homes and other structures that could be subject to flooding in case of fluctuations of the reservoir’s water level. The Panel also observes that other issues need to be urgently addressed as well, in particular the completion of the sewage system of Encarnación.

Supervision and Monitoring

Bank civil society specialist based in Asunción, Paraguay

Panel Report Findings: Panel notes that Bank supervision of the Yacyretá Project’s resettlement and rehabilitation activities did not adapt effectively to this change by using more technical and social expertise to address these problems.³⁶

³³ Progress Report, 5.

³⁴ Ibid.

³⁵ Progress Report, 14.

³⁶ Investigation Report, ¶ 405.

Management Action to be Taken: Level of supervision The Bank has recently upgraded and expanded its Asunción office, and is recruiting a civil society specialist to join in April or May 2004. Among this person's duties will be local supervision of progress implementing the PARR and other Project-related requirements.³⁷

Progress During 90-day Period

67. The Progress Report states that the Bank has hired a civil society specialist based in the Bank's country office in Asunción, Paraguay.

Panel's Comments on Progress

68. In August 2004, the Panel was informed that the role of the civil society specialist had not been defined and that a visit to Encarnación had not taken place. The Panel was also informed that a delegation composed of members of the FEDAYIM, the Requesters, had to go to Asunción to meet with the specialist.

69. In October the Panel's consultant met with the social specialist. The Terms of Reference (TORs) for the position in the Bank's Asunción country office apparently did not specify any specific assignment related to the Yacyretá Project, although the specialist visited the Project area once. On December 2, 2004, however, Management informed the Panel that the TOR for the social specialist calls for spending most or all the time on Yacyretá issues. The second visit of the social specialist to the Encarnación area took place as part of the December supervision mission. On that occasion the specialist met with the Requesters for about 3 hours. The Panel notes the importance of having a social specialist fully engaged in the Yacyretá Project.

Architect/Urban Planner in the Project Team

Panel Report Findings: The Panel points to the need for Management to ensure that the missions have the requisite technical expertise to adequately review the design and construction of urban resettlements and the impact of the resettlement areas on neighboring areas and to the need to ensure that reviews are conducted in an integrated way.³⁸

Management Action to be Taken: The Bank will continue to supervise compliance with the implementation of the PMMA component of the EMP, in accordance with the provisions of the Legal Agreements. To supervise ongoing civil works in Encarnación, an architect/urban planner will be added to the Bank's supervision team.³⁹

³⁷ Progress Report, 17.

³⁸ Investigation Report, ¶ 404.

³⁹ Progress Report, 12.

Progress During 90-day Period

Management Progress Report states that an architect/urban planner with experience in environmental and social assessments joined the Bank Task Team to supervise the Project's infrastructure and housing construction.

Panel's Comments on Progress

70. Management informed the Panel in early December that a staff member architect-urban planner "*has been identified*" and that she will participate in future missions in 2005 "*to review plans for rebuilding downtown Encarnación*" and will "*develop recommendations for the Borrower.*" The Panel notes the urgency of having an architect/urban planner fully involved in the planning for and implementation of actions related to the resettlement of downtown Encarnación.