
**Compatibility of agendas between the World Bank Inspection Panel
and Management from a Critical Discourse Analysis perspective:
Three cases over the time**

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ABSTRACT

Formally, the World Bank created the Inspection Panel as an entity independent from the Bank Management, in charge of the accountability of the Bank with its own policies and procedures. This research investigates the possibility of an incompatibility of agendas between the Panel and Management as a likely cause of the Panel's limited effectiveness. Special focus is put on the remedial actions aimed to address the problems caused by the violation of the Bank Operational Policy 4.01 (on environmental assessment). For that purpose, three cases of hydroelectric projects that occurred in different countries (India, Argentina/Paraguay and Uganda) in different moments of the Panel's lifetime are compared. Since tangible evidence of the internal dynamics between the Panel and Management does not exist, their public reports and practices are critically analyzed to uncover such dynamics. Using CDA as the main theoretical and methodological framework and combining it with theories on environmental discourses, power orders and sociological institutionalism, secondary data (the OP 4.01 text and the Panel's and Management's reports on the cases) is qualitatively analyzed in order to reveal the relation between the texts, discourses and social practices related to the remedial actions formulation and the Panel's and Management's agendas. In the three cases both the Panel and Management use the environmental solving and sustainability discourses when formulating their reports in a quite stable way. However, when analyzing together the discourses, the linguistic features and the actual social practices, it is identified a clear incompatibility of the Panel's and Management's agendas (institutional "pathology") that explains very much the origin of the deficiencies of the Inspection Panel process. However, the textual signs of conciliation and grammatical modalities indicate a progressive adaptation of the Panel's and Management's agendas (over the time), as an attempt of these entities and the Bank as a whole to maintain its powerful position as the world largest lending institution. As a result, a viscous circle is generated, which would explain why, even after almost 20 years of existence of the Panel, the appropriateness of the remedial actions still represents a challenge and the sustainability discourse of the World Bank only an abstract concept that is hardly found in reality.

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LIST OF ABBREVIATIONS

BEL:	Bujagali Energy Limited (Case Uganda 2007)
BIU:	Bujagali Implementation Unit (Case Uganda 2007)
EA:	Environmental Assessment
EBY:	Entidad Binacional Yacyretá (Case Argentina/Paraguay 2002)
EIA:	Environmental Impact Assessment
EMP:	Environmental Management Plan (or Plan de Manejo del Medio Ambiente – PMMA)
GoU:	Government of Uganda (Case Uganda 2007)
NBI:	Nile Basin Initiative (Case Uganda 2007)
NEMA:	National Environmental Management Agency (Case Uganda 2007)
NTPC:	National Thermal Power Corporation (Case India 1997)
PAD:	Project Appraisal Document
PARR:	Action Plan for Resettlement and Rehabilitation
R&R:	Resettlement and Rehabilitation
RAP(s):	Resettlement Action Plan
RCDAP:	Resettlement and Community Development Action Plan
RRAP:	Resettlement and Rehabilitation Action Plan, equivalent to PARR
ReAP(s):	Remedial Action Plan
SEA:	Social and Environmental Assessment
SSEA:	Strategic/Sectoral Social and Environmental Assessment
SEAP:	Social and Environmental Action Plan, equivalent to EMP

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CHAPTER I: INTRODUCTION

The Bank, the biggest and most powerful global lending institution, can be conceptualized as a “black box” (from a sociological institutionalism view), given the fact anyone that is not a member of the Bank is able to really see what is occurring inside the World Bank walls. An outsider of the Bank cannot deeply know about – among other things – the internal decision-making processes dynamics and the informal manners in which power relations influence on those processes. This research aims to contribute to “uncover” or “open” the World Bank black box, by critically analyzing and interpreting the words, environmental discourses and practices of the World Bank in order to see what is actually behind them.

Specifically, this study looks at the World Bank Inspection Panel system, which was created by the Bank almost 20 years ago with the formal objective of controlling the compliance of the Bank with its own policies and procedures. Formally, the Bank states that a higher compliance results positive for the Bank as institution, and thus that both the Bank Panel and Bank Management push towards this objective. But what are the real agendas surrounding the Inspection Panel process? The idea of this research is to find out how compatible (or incompatible) actually are the Inspection Panel’s and Management’s agendas, by going beyond the literal interpretation the reports produced by the Panel and Management in the Inspection Panel process. This research makes a critical analysis of texts and discourses they utilize and contrast those texts and discourses with the actual practices they perform.

1.1. PROBLEM DESCRIPTION

1.1.1. THE WORLD BANK INSPECTION PANEL AND THE WORLD BANK MANAGEMENT: CONFLICT OF AGENDAS?

The World Bank created the Inspection Panel, formally, as an entity independent from the Bank Management, in charge of the accountability of the Bank with its own policies and procedures. The Panel process was designed with a down-top approach: it starts when a group of persons complain to the Panel because they feel that the Bank has not complied with its own policies and procedures and that damage has been produced as result of it. The Inspection Panel is the entity in charge of recommending and making the investigation about the case, for the Board to, afterwards, take the decision of what should be done (The World bank Group, 2011).

There exist the possibility of some degree of conflict of agendas between the Inspection Panel – an accountability-minded WB entity – and the Bank Management – a loans-oriented WB entity. The Panel, on one hand, probably has a genuine willingness to effectively control the WB policies and procedures. The Panel's performance has received very good comments from all kind of local, national and international stakeholders. Furthermore, the Panel's members are known by their independence of Bank Management, honesty and social/environmental awareness. On the other hand, as Barkin (2006) points, Management staff is judged by the volume of loans that they make and not by whether the projects are ultimately successful.

1.1.2. DIFFERENT PANEL'S AND MANAGEMENT'S INFLUENCE OVER THE REMEDIAL ACTIONS FORMULATION

In some of the cases, Management formulates a remedial action plan aimed to address the problems – or some of them – generated by non-compliance and harm, for then the Board to decide whether to approve it or not (The World Bank Group, 2011). Studies made by independent researchers (e.g. Clarck et al, 2003 and Nurmukhametova, 2006) as well as self-balances made by the Inspection Panel itself (e.g. The Inspection Panel, 2009) show that, although there have been improvements over the years, there are still some challenges in the Inspection Panel process specially with respect to the formulation, implementation and monitoring of the remedial actions. Many critics have argued that the Panel has so far failed to meet expectations regarding the remedies (Naudé Fourie, 2009). The problems surrounding the remedial actions formulation could be explained by a possible limitation in the extent in which the Inspection Panel get to influence over Management during the remedies formulation. In that sense it is important to consider a possible conflict of agendas between these two World Bank entities and their power to influence over the remedies.

When considering together the possible struggle between the Panel and Management and the still existing deficiencies in the remedial actions formulation, another issue arises: the fact that the remedial actions formulation is a task of the Bank Management, not of the Panel. This would mean that, if there is actually a conflict of agendas between the Panel and Management, the Panel is less able than Bank Management to push its agenda in the remedial actions formulation. That would explain, at least partly, the insufficient appropriateness of the remedies developed.

The mandate of the Panel does not include the provision neither the decision over the remedies to be applied, despite the resolution does not explicitly stop the Panel from engaging in this activity (Naudé Fourie, 2009). The Panel's findings and recommendations (including the recommendations about the remedies to be taken) are not binding on the Bank but they serve only as criteria that Management and Board should take on account. Furthermore, Management is not bound to accept all the Panel's findings, which means that Management is free to reject a finding of 'non-compliance' and to not formulate any remedial action to address that issue. A requester of the case Argentina/Paraguay (1997) stated: "[the Panel's] main weaknesses lie in its lack of direct accessibility to local affected communities and, more important, the fact that the Panel's findings or recommendations are not binding on the Bank" (The Inspection Panel, 2009: 47). It is debatable

whether involving the Inspection Panel in remedial development result positive (it could affect the Panel’s independence), but it remains the only way (though informal and ad hoc) for an objective partnership between the Panel and Management to realize effective remedies: Legal remedies take a long time to be effective, but they are most effective if they are developed with enforcement already in mind, and if there is an objective partnership between courts and political institutions (Naudé Fourie, 2009).

1.1.3. THE PANEL’S AND MANAGEMENT’S REPORTS AS A CAUSE AND EFFECT OF THE STRUGGLE BETWEEN THEM

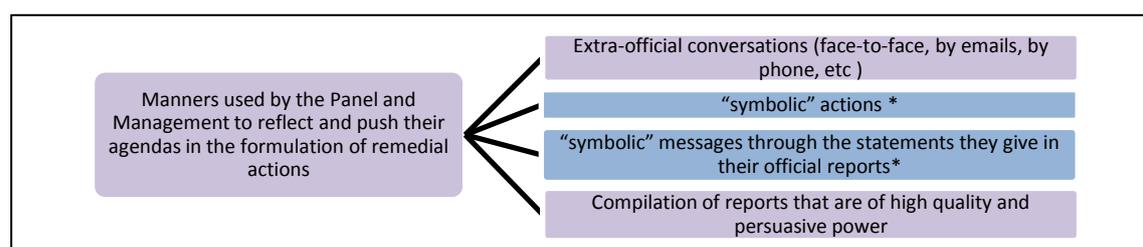
If there is actually a conflict of agendas between the Panel and Management (around the remedial actions), it should be reflected in and shaped by the public reports these two Bank entities produce. Since, the resolution stipulates that the Board considers both the Panel’s investigation report and Management’s recommendations when deciding over the remedies (Naudé Fourie, 2009), the Panel and Management might be indirectly reflecting and pushing their agendas through the discourses and linguistic tools they utilize in their reports during the remedial actions formulation.

The Panel’s and Management’s mutual influence could be occurring in the following ways (see graph 1 below):

- Extra-official conversations, emails and calls occurring inside the walls of the World Bank offices.
- “Symbolic” actions by the Panel and Management that aim to communicate a deep meaning in a subliminal manner.
- The official reports the Panel and Management publish and send to the Board:
 - The Panel and Management probably send to each other “symbolic” messages through the statements they make in the official reports. The use of certain discourses/arguments and linguistic tools might aim to communicate a deep message in an indirect manner.
 - By producing reports of high quality and persuasive power (well-researched and supported by ample and independently verified facts) the Panel exerts pressure on Management to acknowledge failures and to develop high quality remedies (Naudé Fourie, 2009).

The symbolic messages and actions are the issues analyzed in this research, because they are more visible for a researcher that is an outsider of the World Bank. The extra official conversations are more likely to be known only by members of the World Bank that are somehow involved in the Inspection Panel process.

Graph 1: Manners used by the Panel and Management to reflect their agendas in the remedial actions



* The symbolic messages and actions are the issues that were analyzed in this research

1.2. RESEARCH OBJECTIVES AND QUESTIONS

1.2.1. RESEARCH OBJECTIVE AND RELEVANCE

This research looks to find out, through the analysis of texts, discourses and practices, if there is actually a conflict of agendas between the World Bank Inspection Panel and the Bank Management and, if so, how it is affecting the remedial actions formulation. If the Panel's and Management's texts, discourses and practices reveal a conflict of agendas between them, room for further questions would be opened. Is this conflict of agendas a natural "pathology" that is inherent to most big international organizations or is linked to the World Bank's main agenda? Does the limited power that the Bank provide to the Panel over the remedies formulation reveal a hidden purpose of the Bank to have the Panel just as a way to feign full social and environmental responsibility? Has the effectiveness of the remedies formulation got influenced by the differences in power and agendas of the Panel and Management?

Getting real evidences that confirm or dismiss these possibilities is difficult. However, this study helps to solve the above questions by critically interpreting the texts, discourses and practices of the Panel and Management, or in other words by analyzing the "symbolic" messages that the Panel and Management send through their official reports and actions/performance during the remedial actions formulation. In that sense, the General Research Objective (GRO) of this study is **to determine if a conflict of agendas between the World Bank Inspection Panel and the World Bank Management has been present and limiting the contribution of the Panel to the formulation of the Remedial Actions Plans.**

This research, thus, helps to understand why the words and actions of such a controversial institution as the World Bank should not be taken for granted, but they should be, instead, continuously questioned and analytically interpreted. This is the only way to shed light on the real objectives of the World Bank. Furthermore, this research gives more inputs to the long debate that has arisen over the last years about the Bank's role and agenda and thus contributes to give a better base to the understanding and perception that the international community, civil society and the world in general have over the World Bank in general and over the World Bank Inspection Panel. The prestige, stability and progress of the Panel as a truly effective and independent accountability body of the World Bank rely very much on the evolution of this debate relies.

1.2.2. RESEARCH QUESTIONS

The research objective mentioned above will be reached by answering the following General Research Questions (GRQ):

Has a conflict of agendas between the World Bank Inspection Panel and the World Bank Management been present and limiting the contribution of the Panel to the formulation of the remedial actions plans?

This GRQ will be answered through following Specific Research Questions (SRQs):

1. SRQ1: What main discourses and linguistic features has the Panel been utilizing when presenting its findings about the O.P. 4.01 in the official reports it produces and publishes previously to the Remedial Action Plans, and why?
2. SRQ2: What main discourses and linguistic features has Management been utilizing when responding to the Panel's findings about the O.P. 4.01 in the Remedial Action Plans it produces and publishes, and why?
3. SRQ3: At what the extent has Management been acknowledging the Panel's findings and formulating remedial actions about the O.P. 4.01 in the Remedial Action Plans, and why?
4. SRQ 4: Has the appropriateness of the remedial actions resulted hindered by the limited contribution of the Panel to their formulation?

CHAPTER 2: THEORETICAL FRAMEWORK

2.1. OVERVIEW OF THE THEORIES UTILIZED

2.1.1. INTERNATIONAL ORGANIZATIONS FROM A NEOINSTITUTIONALIST VIEW

According to Barkin (2006) institutionalism looks at what happens within the organizations instead of perceiving them as “black boxes” (boxes where it is possible to see what goes in and goes out but not what happens inside). Neoinstitutionalism or sociological institutionalism, in addition, take into consideration that organizations do not function perfectly (in the way they are designed), therefore **it does no limit the analysis to how the organization works in paper**. Rather than taking as starting point the structure and purpose of an organization as defined by outside actors, neoinstitutionalism **looks at the actual organizational dynamics, formal structure, bureaucratic hierarchy, institutional rules, internal politics, political powers, decision-making procedures and financial mechanisms of the organizations, as well as the effects of these broader patterns of behaviour** (by taking principles of bureaucratic politics in political science and the study of institutions in sociology). The author also points at functional institutionalism is one of the ways in which neoinstitutionalism is applied and it examines how rules and procedures shape the behavior of the international organization and its members. Analysts using this approach observe first at the strong commitment of international organizations to their own rules and procedures, which they explain as the result of:

- a) **Bureaucratic empowering mechanisms:** International organizations can operate as independent actors with considerable freedom and little oversight of action thanks to the fact they create their own norms and procedures over time (institutional autonomy), combined with their claims of expertise and impartiality (that they serve the international community and not particular states). The power of the rules and procedures of a specific organization to command how issues are addressed depends in turn on the commitment of that particular organization to these norms, as well as on its relevance in international politics.
- b) **“Pathologies”:** Bureaucratic empowering mechanisms can lead to organizational dysfunction or, in other words, to behaviour that is in disagreement with the organization’s mission, internally contradictory or does not make sense. Large and wide-ranging organizations are likely to have, in some occasions, different parts of them trying to do incompatible things. Also institutions with objectives aimed to both generate profits and improve the social-environmental conditions, are probable to have norms and procedures that

encourage the staff to maximize profits at the same time that discourage them to “distract” themselves addressing social environmental concerns.

Functional institutionalists also look at how **international organizations and bureaucracies have a great commitment at minimum to survive** (self-preserve themselves) and at maximum to grow, which can also be explained with pathologies. International organizations seek for maintaining their existence and, even more, for expanding the range of issues over which they have authority by creating new institutional bodies. For instance, when the system of fixed international exchange rates fell apart in the early 1970s the IMF did not go out of business but instead created a new role for itself based on the concept of conditionality. Most new international organizations have been created by existing international organizations rather than by states: international organizations are not only expanding but also reproducing (Barkin, 2006).

2.1.2. POWER IN INTERNATIONAL ORGANIZATIONS

Barkin (2006) provides a number of ways in which the power of particular states can be expressed in the creation and management of international organizations, from which the ones of interest for this research are the followings:

- **In negotiations (negotiating power):** A win the negotiation to B if B accedes to the preferred outcome of A instead of its own preferred outcome. Negotiating power is difficult to identify: A might have made a concession on some other issue or B might have cared less about this particular issue than A. But on the whole it is clear that some have more overall negotiating power in multilateral forums than others.
- **In the setting of agendas (ability to set the agenda):** The most powerful ones state what gets talked about and what does not. It is more difficult to study than negotiating power because it involves looking at what does not happen (rather than at what does) which is an open-ended question.

Also, the theorization about **power** by Connelly and Smith (2009) states that one of the ways in which power is exerted is by shaping people’s preferences and avoiding them to become aware of the affectation of their interests, so that conflicts between those exercising and those subject to power do not exist. In other words power may be exercised even if those affected by its exercise do not feel and/or do not know they are affected.

2.1.3. TYPES OF ENVIRONMENTAL DISCOURSES

Dryzek (1997) defines discourses as deliberations about environmental policies and politics that are often in conflict. Industrialism is seen, then, as “the long-dominant discourse of industrial society” (Dryzek, 1997:12) that is committed to unlimited growth in goods and services as part of the “good”. In that sense, the author identifies four types of environmental discourses that are against industrialism using a two-dimensional matrix (see table 1).

Table 1: Two-dimensional matrix for classifying environmental discourses¹

		Departure from industrialism	
		Reformist	Radical
Approach to environmental issues	Prosaic	Problem solvers	Survivalists
	Imaginative	Interested in sustainability	Green radical

The horizontal dimension of Dryzek's matrix characterizes the discourse as either reformist or radical in its departure from industrialism (Peeples, 2008). This dimension refers to the degree of change, the degree to which alternatives move away from the conditions created by industrialism, which is defined as the dominant discourse (Tuler, 1998). The vertical dimension of Dryzek's matrix describes whether the discourse is prosaic or imaginative in its approach to environmental issues (Peeples, 2008). Prosaics are the individuals or groups who take the "political-economic chessboard set by industrial society as pretty much given" and see environmental concerns as encountered by the industrial political economy (Dryzek, 1997: 13). Imaginative alternatives, contrarily, "seek to redefine the chessboard" (Dryzek, 1997:13) and treat environmental concerns potentially in harmony to economic ones. In that sense the types of environmental discourses are:

- **Survivalism** is a discourse defined by its attention to limits and carrying capacities. It is radical because perpetual economic growth and power relations are challenged. It is prosaic because solutions are proposed within the constraints of industrialism (e.g., more administrative control and science-based decision-making).
- **Environmental problem solving** is composed by three discourses: administrative rationalism, democratic pragmatism, and economic rationalism. These discourses are prosaic because the economic-political status quo of industrialism is taken as a given. They are considered reformists because the need of some, not too much, pragmatic adjustment (especially via public policy) is established. The three discourses are different depending on the agent in control of environmental policies: experts, "the people" or the market.
- **Sustainability** includes sustainable development and ecological modernization. Both discourses set imaginative methods to "dissolve the conflicts between environmental and economic values that energize the discourses of problem solving and limits" (Tuler, 1998: 66). They are not radical since their multiple images of sustainability do not include notions of limits.
- **Green radicalism** is composed by green romanticism and green rationalism. Both are radical because they reject the basic structure of industrial society and imagine radically different understandings of the environment, human-environment interactions, and human society. They are reflected in diverse ecologically-oriented political and social movements such as social ecology and environmental justice.

¹ Dryzek (1997)

Dryzek also introduces the concept of “ecological democracy” as an “intelligent” approach to dealing with the politics of environmental issues. He maintains that the means of dealing with these problems would require both a “dynamic, structural-level analysis of the liberal capitalist political economy” and the “capacity to facilitate and engage in social learning in an ecological context” (Dryzek, 1997:232).

The main specific theories, practices and institutions defended by the two reformist discourses (environmental problem solving and sustainability) are, according to Dryzek, the followings:

Table 2: Classification of environmental discourses

Types of environmental discourses		Discourses
Environmental problem solving	Administrative rationalism	<ul style="list-style-type: none"> • Environmental impact assessment (EIA) • Professional resource-management bureaucracies • Pollution control agencies: environmental quality-oriented programs and bodies • Regulatory policy instruments: regulations, standards, etc. • Expert advisory commissions: deference to scientific expertise • Rationalistic policy analysis techniques: Environmental and engineering sciences and policy analysis techniques (cost-benefit analysis and risk analysis)
	Democratic pragmatism	<ul style="list-style-type: none"> • Public consultation: Public review and comment about the finished texts of EIA • Dispute resolution: Parties in conflict try to get to an agreement under the auspices of a neutral third party • Policy dialogue: Dispute resolution applied to more general strategic policies • Public enquiries: Specific and visible public forum in which proponents and objectors present depositions and arguments • Right to know legislation: Disclosure of and access to information
	Economic rationalism	<ul style="list-style-type: none"> • Privatizing everything • Market tools
Sustainability	Sustainable development	<ul style="list-style-type: none"> • Concept of “Sustainable development”: Environmental management and economic development could proceed together • Cooperation between several stakeholders (no emphasis on the national state) in pro of the common good • Continue social learning among the diverse actors • Sustainable development indicators
	Ecological modernization	<ul style="list-style-type: none"> • Energy efficiency • Emissions reduction • Garbage reduction • Precautionary principle • Enthusiastic cooperation of industries in efficient and clean production

2.1.4. CRITICAL DISCOURSE ANALYSIS (CDA)²

DISCOURSE THEORY

Discourse can be broadly defined as “a particular way of talking about and understanding the world”. Discourse theory looks to understand the social issues as constructed by discourses, considering that all social phenomena are never finished: meaning is constantly changing and thus there are constant social struggles about definitions of society and identity that have impacts in society. The objective of discourse analysis is, then, to “plot the course of these struggles to fix meaning at all levels of the social”. There are several approaches of discourse analysis, but they share the view that is always through language that people create representations of reality, which in turn are not just reflections of reality but contribute to constructing and giving a meaning to it (Jørgensen and Phillips, 2002).

CRITICAL DISCOURSE ANALYSIS: A THEORY FOR SOCIAL RESEARCH

Critical Discourse Analysis is an approach of discourse analysis that can be applied in social analysis, for instance in the analysis of organizations and institutions (which is precisely the domain of this research), because it presents the following characteristics (Jørgensen and Phillips, 2002):

- Four philosophical assumptions: i) Critically question taken-for-granted knowledge (a particular knowledge should not be treated as objective truth); ii) The different views and representations of the world are historically and culturally specific, iii) A particular knowledge is created through particular social processes/interaction; iii) A particular knowledge leads to particular forms of social action.
- Discourse as practice that shapes the world: Discourses are social practices that create the subject, the social world. Our ways of talking play an active role in creating and changing world, identities and social relations.
- Dualist view of the discursive practice: Actions are concrete, individual and context bound, but they are also institutionalized and socially anchored, and thus tend to patterns of regularity.
- Chance of changes in discursive structures: Though more emphasized in Laclau and Mouffe’s theory, all three perspectives recognize that changes in the discursive structures can occur, that: “[I]n every discursive practice, it is necessary to draw on earlier productions of meaning in order to be understood, but that some elements may also be put together in a new way, bringing about a change in the discursive structures.” (Jørgensen and Phillips, 2002: 139).
- Textual features limiting text interpretation: Textual features limit how texts can be interpreted by its recipients. However people’s capacity to resist to ideologies should not be underestimated.
- Multiple discourses in struggle: Many discourses exist and compete. There is no one discourse that totalizing ideology controls all discourses, all the society. Thus, the subject has different (perhaps contradictory) positions from which to speak.

² With special focus on Norman Fairclough

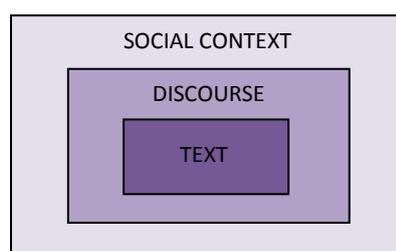
- **Power:** These three approaches in general treat power like Foucault does: as productive rather than as pure compulsion (Jørgensen and Phillips, 2002: 139).

CRITICAL DISCOURSE ANALYSIS (CDA)

CDA, developed by Norman Fairclough and his colleagues, results helpful to explain “how the social world is produced through acts of intersubjective meaning making” and creates a “methodological link between the micro scale of everyday language use and the macro scale of social structure” (Phillips et al, 2008:771-772). CDA creates such a link by treating language use as a form of social practice and by identifying a dialectical and mutual relationship between discourses and social (non-discursive) practices: they mutually shape and constrain each other. In Fairclough’s model (see figure 1) a discourse analysis should focus on the three dimensions that every communicative event (Jørgensen and Phillips, 2002; Phillips et al, 2008):

1. Analysis of the text (speech, writing, visual image or a combination of these), which focuses on studying the formal features or linguistic structure of the text (such as vocabulary, grammar, syntax and sentence coherence) from which discourses and genres are elaborated linguistically.
2. Analysis of the discursive practice (production and consumption of the text), which looks at how already existing discourses and genres are utilized by text authors to create texts and by texts receivers to consume and interpret texts.
3. Analysis of the social practice that the communicative event belongs to, which implies to find out if the discursive practice reproduces or restructures the existing order of discourse and what consequences this has for the broader social practice (the level of social practice).

Graph 2: Fairclough’s three levels of Analysis in Critical Discourse Analysis



Analysis of the linguistic and non-linguistic elements: CDA systematically analyzes the linguistic discursive dimension in relation to the wider social practice of which the discursive practice is part. That way, CDA sees discourses as linguistically mediated representations of the world (Vaara and Tienari, 2008). CDA is characterized by: i) The character of social and cultural processes and structures is partly linguistic-discursive; ii) Discourse is both constitutive and constituted; iii) Language use should be empirically analyzed within its social context; iv) Discourse functions ideologically; and v) Critical research. At the same time, discursive and non-discursive elements are in a dialectical relationship with each other and thus the analysis should not be only of

the texts and talks using linguistic tools but also of the non-discursive elements/mechanisms/moments using different tools of another kind (Jørgensen and Phillips, 2002).

Order of discourse: Discourse plays a role in the struggle within and between fields. “Order of discourse” is defined as a potentially conflictual configuration of discourses within and between social fields. Not only communicative events reproduce orders of discourse, but also language users can change them. In other words, the order of discourse determine the discourses and genres from the ones that are available, but at the same time language users can change the order of discourse by using discourses and genres in new ways or, specially, by importing discourses and genres from other orders of discourse (Jørgensen and Phillips, 2002).

Power, ideology and hegemony: The possibilities for discursive and social changes are limited by power relations that, among other things, determine that not all actors have equal access to different discourses and not all discourses are equally powerful. Critical discourse analysis works with the concept of ideology as a practice and its power as diffuse and discursively organized. It looks at how discursive practices have ideological consequences and to the patterns of dominance between social groups, without underestimating the capability of people for react against ideologies. CDA seeks to demonstrate that certain discourses aim to serve a group’s interests at another group’s expense. The difficulty lies on distinguishing which discourses have consequences for power relations in society, which are the most powerful one and which are not powerful at all, or in other words on differentiating what is ideology and what is not (Jørgensen and Phillips, 2002). Thus, discursive practices can be seen as a highly political act. (Phillips et al, 2008) Hegemony is then not only dominance but also a process of negotiation of power and meanings in which all social groups participate and that leads to a consensus concerning meaning. Also, people are – at certain extent – agents with possibilities of resistance, since the elements that challenge the dominant meanings can be used by people for resistance. Consequently hegemony and consensus are always non-stable, changing and incomplete. In that sense discursive practice is part of a hegemonic struggle that contributes to the reproduction and transformation of the order of discourse of which it is part and thus of the existing power relations (Jørgensen and Phillips, 2002).

Intertextuality and interdiscursivity: According to Fairclough, in order to analyze how social structures are produced, maintained and – mainly – changed over time through discursive practices, the concepts of intertextuality and interdiscursivity need to be considered. Intertextuality refers to the conditions whereby all communicative events utilize earlier events (people using words and phrases that others have used before). It is about how history influences on text and how texts influence history. Manifest intertextuality occurs when texts explicitly draw on other texts, for instance, by citing them. In that sense, an intertextual chain consists in a set of texts in which each text incorporates elements from another text or other texts. Interdiscursivity is a form of intertextuality. Interdiscursivity occurs when different discourses and genres are articulated together in a communicative event. Creative discursive practices – in which discourse types are combined in new and complex ways – are both a result and a driving force of discursive changes (changes in the boundaries within the order of discourse and between different orders of discourse) and thus of socio-cultural changes. On the

other hand conventional discursive practices are a result and a driving force of a stable dominant order of discourse, and thus of a stable dominant social order.

The role of discourse in the constitution of the world: About the relationship between structure and agent, Fairclough's critical discourse analysis distinguishes the discursive practice as one of the dimensions or moments that constitute every social practice. Together, the discursive and non-discursive dimensions of social practices constitute our world. The non-discursive dimensions of the social world function according to different logics from discourses, and should not be studied using discourse analysis. Discourse is referred to text, talk and other semiological systems (like gestures and fashion), and maintains a dialectical relationship with the other moments of a social practice. Discourse as both constitutive and constituted (people and language are in a dialectical relationship). People are not only product of discourse but they also create new hybrid discourses from existing discourses and therefore act as agents of social and cultural change (Jørgensen and Phillips, 2002).

Analytical focus: CDA is not abstract, because it does not restrict to looking at predominant general patterns of discourses but it also makes a linguistic analysis. However, CDA does not make a psychological analysis (Jørgensen and Phillips, 2002).

2.2. APPLICATION OF THE THEORIES TO THIS RESEARCH

The Bank, as an international financial organization, is a hybrid of the standard model of international organizations (since its members are states and aims to address problems of international cooperation) and banks (since it operates at a profit). Thus, there is a big debate about the actual independence and effectiveness of the Panel as the Bank's self-accountability system. Additionally, the matter of what occurs inside this particular organization is limitedly known, especially what occurs inside the World Bank Inspection Panel, a quite recently created body. **The dynamics of the World Bank Inspection Panel can be uncovered with the neoinstitutional approach (specifically, with the functional institutionalism). This approach parts from the idea that the Inspection Panel system does not operate as defined in the paper (or in other words, that it is not perfect) and therefore looks at the actual incentives and power dynamics that exist within the Inspection Panel system and that influences on the negotiation and formulation of the remedial actions³. That way, the idea is to stop the World Bank from being a "black box" whose interior is unknown.**

But what are those incentives and power dynamics that need to be analyzed? When it comes to the incentive the Bank had when creating the Inspection Panel, the Panel is – with no doubts – beneficial for the World Bank. Theoretically, an accountability system helps to build trust and legitimacy, which in turns helps to the growth and the public image of institutions. According to Naudé Fourie (2009), the Panel creates at some extent opportunities for the World Bank to show its commitment to good governance, human rights and the rule of

³ The voting structure of the World Bank was not analyzed since it does not affect decisions over the Inspection Panel process: these decisions are in charge of the Board of 25 Executive Directors, which meet regularly (Barkin, 2006).

law. The author argues that the Bank stands to benefit from the panel's legitimizing effect by committing itself to the Inspection Panel procedure and, importantly, by accepting the outcomes of the Panel's investigation (e.g., by admitting non-compliance) and providing effective remedies to the people affected by the project. Indeed, it is irrefutable that the creation of the Inspection Panel has helped the Bank to improve its institutional image. Indeed, it was in response to the increasing critics that the World Bank created the inspection Panel as a way to address complains of people affected by the Bank's projects (World Bank Group, 2011). The creation of the Panel could be identified then, following the functional institutionalism approach, as a great commitment of the Bank to its own self-preservation as institution and, even more, to its institutional growth (through the creation of a new World Bank body). In that sense there are two possible possibilities. In the first possibility, the World Bank is building trust and legitimacy through a truly effective accountability system, following the logic that the Bank's benefits are higher with a truly better compliance of its policies and procedures. Thus, this possibility implies that Management is interested in an effective accountability. This is the version used by the Bank to explain the creation of the Panel: The Bank affirms that "this accountability [The Inspection Panel process] is crucial to the Bank's relations with its stakeholders. It improves the development effectiveness of investments and it ensures that the institution lives up to its mission of poverty alleviation" (the World Bank Group, 2011).

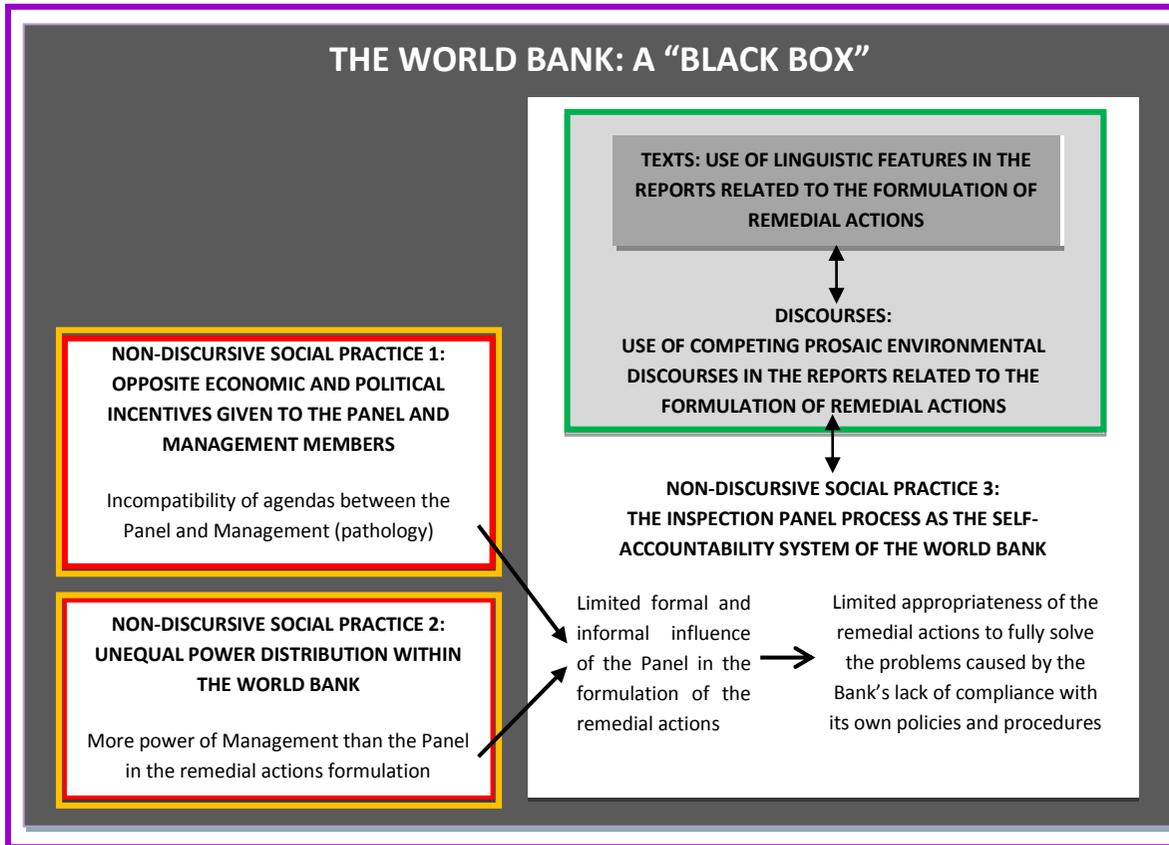
However, there exists also the possibility of some degree of conflict of agendas between the Inspection Panel – an accountability-minded WB entity, given the characteristic of its members – and Management – a loans-oriented WB entity, given the economic incentives their member have to implement the maximum number of projects. In fact, the World Bank is managing its own accountability (through the Inspection Panel) at the same time that promotes loans and grants (through the Board and Management). This can be explained with the concept of "pathologies" (a concept from the neoinstitutionalism approach) which are defined as organizational dysfunctions that result from the bureaucratic structure of international organizations (Barkin, 2006). Pathologies tend to exist in large institutions and thus are very likely to exist within the World Bank, which is the world's largest development lending institution: It has a large number of members, thousands of employees, a large budget, and deal with different kind of issues (Barkin, 2006).

But to uncover the actual incentives and power dynamics occurring within the World Bank Inspection Panel system is not an easy task. No one – except maybe for the members of the Panel and/or Management – have access to all the non-public events and non-public information. **For a regular outsider, or a regular researcher, it is not possible to have access to decision-making processes, informal conversations or internal events occurring informally as part of the Inspection Panel process. For an outsider the only available input for the analysis are the public events and public information the Bank discloses about the Inspection Panel process. Thus, if – under a neoinstitutionalist view – the aim is to uncover the actual dynamics surrounding the Panel's and Management's agendas on the remedial actions formulation, a feasible manner to do so is by conceptualizing and utilizing the public, formal, official information as a material that can tell the researcher much more than what is literally written.**

With that in mind, critical discourse analysis (CDA) results a very useful tool to shed light on the World Bank Inspection Panel when only the public World Bank documents are available. The Panel's and Management's participation in the remedial actions formulation can be analyzed using Fairclough's tridimensional model. There are two non-discursive social practices, and they both are related to political and economic theories: 1) the different economic and political incentives of the Panel and Management (reflected in the incompatibility of agendas between them – a pathology), and 2) the unequal power distribution within the World Bank (reflected in the higher level of power that Management receive over the remedies from the World Bank in comparison to the Panel). These two issues result from the institutional norms of the Bank. In turn, the two non-discursive social practices influence on the remedial actions formulation and the resulting texts (the Panel and Management's reports), which is all part of the social practice of the Inspection Panel process as a self-accountability of the World Bank.

See graph 3 for a schematic view of the analysis made about the Panel's and Management's agendas around the Remedial Action Plans formulation, from a critical discourse analysis. Under the CDA logic, the texts, discourses and the non-discursive social practices are mutually influencing one to each other. In the graph the discursive and non-discursive practices, as well as their interactions, are surrounded by colors representing the theories that were used to analyze them. In the analysis of the discursive practice, the discourses utilized by the Bank were contrasted with the two types of **prosaic environmental discourses** (according to the classification of environmental discourses proposed by Dryzek, 1997): environmental problem solving and sustainability. For the analysis of texts, following the critical discourse analysis approach, the **linguistic characteristics** of the writings of the Panel and Management were described in order to distinguish the interactional control between these two institutional bodies as well as their commitment to their own statements. CDA is also applied for the analysis of the self-accountability system of the Bank as the non discursive (social) practice where the discursive practices take place: the examination will be on the **actions and behaviour of the Panel and Management** before and during the remedies formulation and the **characteristics and effectiveness of the remedies** formulated by the Bank Management will be examined. Finally the relation of all this with the power relations within the Bank will be analyzed utilizing the theories on power in international organizations and the international organizations from a neoinstitutionalist view.

Graph 3: The Panel's and Management's agendas around the Remedial Action Plans formulation seen from a Critical Discourse Analysis perspective



Legend

	International Organizations from a Neoinstitutionalist view
	Power in International Organizations
	Types of environmental discourses
	Critical Discourse Analysis

CHAPTER 3: METHODS

3.1. STUDY DESIGN

To answer the research questions and reach the research objective a **multiple case study design** was used in this research in order to have a deep look of the complexity of the studied phenomenon. The phenomenon studied was **the level of conflict (or, expressed in other terms, the level of compatibility) of agendas existing between the World Bank Inspection Panel and Management in the formulation of remedial action plans**. In that sense the selected cases helped to illustrate and serve as example of the findings about the mentioned phenomenon. At the same time, the selection of more than one case made possible to analyze the World Bank Inspection Panel process as a whole, without limiting the results to one single case.

Regarding that matter, three study-cases were selected:

Table 3: Cases analyzed in this research

Cases	Request received	Request registered	Panel's recommendation	Recommendation approved by the board	Panel's activity	Management's activity
1. India: NTPC Power Generation Project	May 1, 1997	Yes	Investigation	Yes	Eligibility Report and Report on Desk Investigation	Responses to the Request and to the Panel's reports and Remedial Action Program
2. Paraguay/Argentina: Yacretá II - Reform Project for the Water and Telecommunication Sectors, SEGBA V Power Distribution Project	May 17, 2002	Yes	Investigation	Yes	Eligibility Report and Investigation Report	Responses to the Request and to the Panel's reports and Remedial Action Plan
3. Uganda: Private Power Generation Project	March 5, 2007	Yes	Investigation	Yes	Eligibility Report and Investigation	Responses to the Request and to the Panel's reports and Remedial Action Plan

Adapted and actualized from "Accountability at the World Bank: The Inspection Panel at 15 Years" (The Inspection Panel, 2009)

The three cases share some similarities that made them comparable to each other:

- In the three cases Management has formulated a Remedial Action Plan/Program.
- They are cases related to hydropower projects
- In the three cases the O.P. 4.01 (Operational Policy on Environmental Assessment) was one of the policies raised in the requests (see section "Scope of the Research" below)

At the same time, the three cases also present differences between them, which allowed to identify which aspects of the phenomenon occur dependently on the specific context and which ones occur independently on it. The differences between the three cases are listed below:

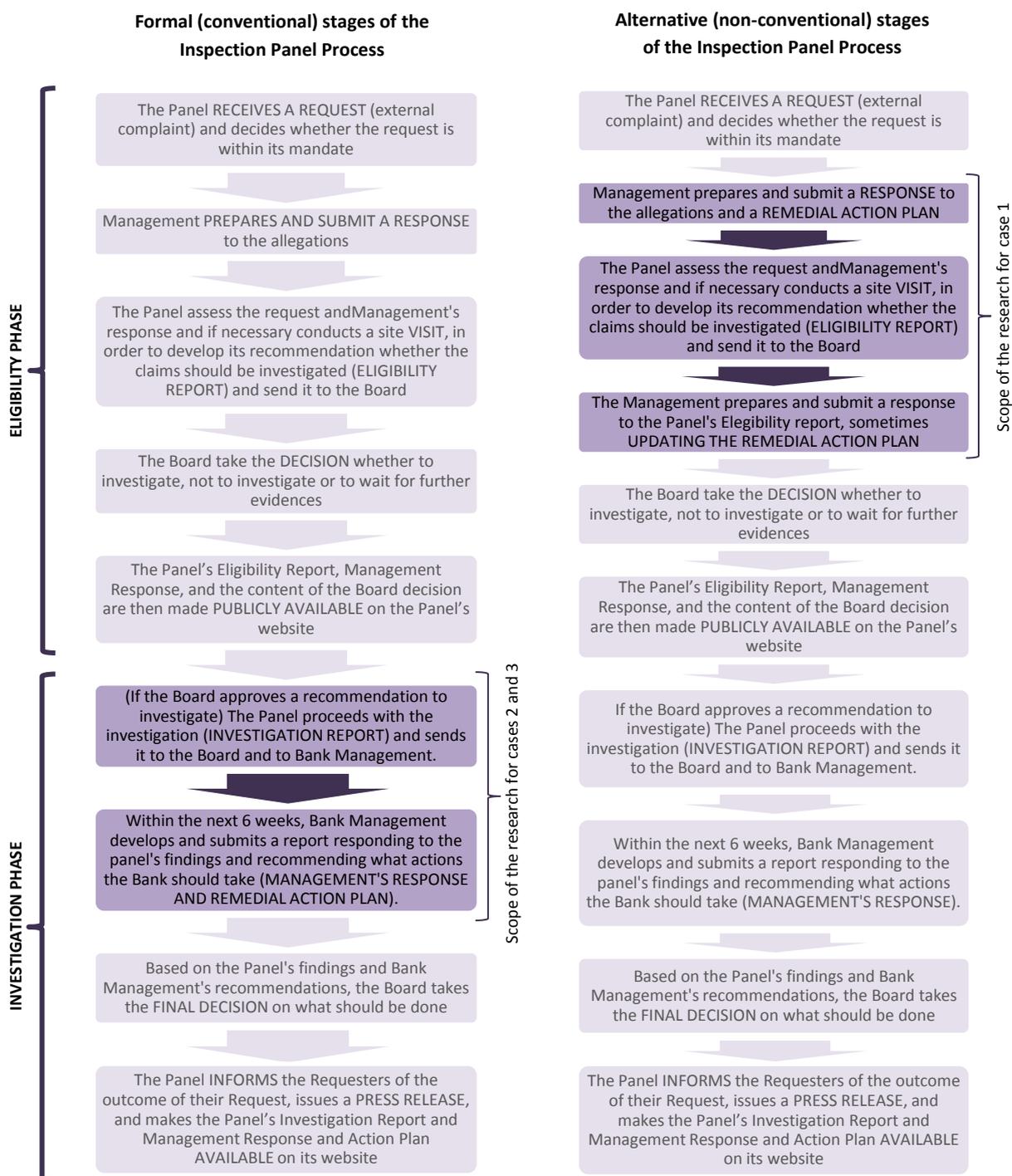
- Each case occurred at three different points in time, over the period of existence of the Panel, and thus in moments in which the Panel had different levels of institutional maturity.
- In the two last cases (Argentina/Paraguay, 2002 and Uganda, 2007) Management developed a Remedial Action Plan because it was requested by the Executive Board of Directors to do so, and as a response to the Investigation Report of the Panel. Contrarily, in the first case (India, 1997) Management formulated a Remedial Action Program at the outset of the formal Panel process: in the very beginning of the process and as a response to the request.

3.2. SCOPE OF THE RESEARCH

First – in line with the institutional approach utilized – this research focused on two stakeholders involved in the Inspection Panel process that are part of the World Bank: the **Inspection Panel and Management** of the World Bank. Those are stakeholders that produce reports and documents that are then published for the general public. The Board and its institutional objectives were not analyzed since the outcomes of the decision-making processes the Board carry on are neither always published nor available in the World Bank's website.

Furthermore, in order to make a deep and rich analysis, this research focused on those activities of the Inspection Panel process that are related to the **formulation of the remedial actions** that the Bank should take in response to the Panel's findings. In that sense, it is important to notice that the resolution that sets the formal Inspection Panel process, stipulates that the Remedial Action Plans should be formulated by Management after and as response to the Panel's Investigation Report (during the investigation phase). This is what occurred in two last selected cases Paraguay/Argentina (2002) and Uganda (2007). However there have been some cases where the Management has proposed remedial actions at the beginning of the process, as a response to the Request of the complainants (during the eligibility phase). This occurred in the first of the three selected cases, India (1997). Therefore the stages of the Inspection Panel process to be analyzed are different for the first case and for the two last cases (see graph 3 below).

Graph 4: Scope of the research of the three cases ⁴



Finally the focus was specifically on remedial actions aimed to solve issues about one of the World Bank's Operational Policies (O.P): **The O.P. 4.01, which is the Bank's policy related to Environmental Assessment** (see annex 1). This O.P. was chosen because, according to the self-balances made by the World Bank, it is one of the O.P. most often raised in requests.

⁴ Stages of the Inspection Panel process are based on information provided in the document "Accountability at the World Bank: The Inspection Panel at 15 years" (The inspection Panel, 2009).

3.3. CRITICAL DISCOURSE ANALYSIS AS METHODOLOGICAL FRAMEWORK

3.3.1. Why critical discourse analysis?

As stated before, the main inputs that are available for an independent researcher that aims to look at the Inspection Panel system are the official documents that the World Bank publishes (through the World Bank website). **If the public texts produced by the Panel and Management constitute the main available data, then they need to be critically analyzed in order to uncover the power orders and internal dynamics Inspection Panel system. Regarding that matter, a technique of qualitative content analysis was chosen to be utilized in this research: discourse analysis.** Discourse analysis provides a methodological framework for the texts to be selected, sampled and analyzed. It explores “the social production of organizational and interorganizational phenomena” (Phillips et al, 2008:770) or, in other words, how organizations and their environments (i.e. broader social contexts) are created and maintained through discourses. Approaches to discourse analysis are a “theoretical and methodological whole”: each contains philosophical principles around how the language influence in the construction of the world, theoretical models, methodological guidelines and analysis techniques (Jørgensen and Phillips, 2002).

Taking on account the specific purposes of this research, **Critical Discourse Analysis (CDA)** was chosen over other discourse analysis approaches, because of the following reasons⁵:

- CDA has a proved **potential to analyze organizations**, organizational strategies and power/legitimacy related processes. Even more interestingly, CDA has significant potential for **strategic management** research, which means that CDA can help to shed light on the discursive practices of the Bank as a strategic manner to influence on the social practices.
- CDA’s concept of **order of discourse** is useful to delimit the research: it allows to analyze the distribution of diverse discourses in a certain domain (in the same field/institution) as well as to explore the relationship between **contingency and permanence within a particular domain**: “areas where all discourses share the same common-sense assumptions are less open to change and more likely to remain stable, whereas areas where different discourses struggle to fix meaning in competing ways are unstable and more open to change” (Jørgensen and Phillips, 2002: 142). The order of discourse analyzed by this study is particularly those **environmental discourses utilized by the World Bank Inspection Panel and Management in the context of the Inspection Panel Process**, specifically within those stages of the process related to the remedies formulation. Contrarily, Laclau and Mouffe’s discourse analysis approach has almost no concept of ideology, following Foucault’s view that “truth, subjects and relations between subjects are created in discourse, and there is no possibility of getting behind the discourse to a ‘truer’ truth” (Jørgensen and Phillips, 2002: 17-18).
- **CDA makes a not too general neither too technical analysis**, as occurs with other approaches. CDA focuses on analyzing texts and, thus, it is not so general as Laclau and Mouffe’s and Foucault’s, which

⁵ Balance based on Jørgensen and Phillips (2002)

examine predominant patterns and aim at a more abstract mapping of the discourses that circulate in society at a particular moment in time or within a specific social domain. Therefore, Laclau and Mouffe's and Foucault's theories would not be suitable to analyze the discursive practices occurring within a specific system (the Inspection Panel process) of a specific institution (the World Bank). At the same time, CDA is not as technical as discursive psychology, which implies a very systematic and empirical analyses of people's language.

- **The professional background of the researcher** made CDA be more suitable to be successfully applied in this research than other approaches. For instance, since discursive psychology practices rhetorical analysis, stems from social psychology and constitute "a sophisticated theory" (Jørgensen and Phillips, 2002: 91), it would be more adequately applied by a professional of the psychological sciences.

3.3.2. Steps for critical discourse analysis applied to this research

Fairclough provides several steps for critical discourse analysis, structuring all components of the research design through his three-dimensional model (the steps below are based on Jørgensen and Phillips, 2002)⁶.

STEP 1: CHOICE OF RESEARCH PROBLEM

CDA aims to help to solve a problem, to the rectification of injustice and inequality in society. The problem treated in this research was the reasons surrounding the limited power of the Panel to influence on the remedial actions. This problem was identified by critics from the international community, civil society and scholars. The discursive and other social dimensions of this problem and the possible obstacles for its solution are analyzed.

STEP 2: FORMULATION OF RESEARCH QUESTIONS

Fairclough's three-dimensional model structured the research questions, ensuring an interdisciplinary analysis of the relations between the discursive practice and the social practice:

- The discursive practice: The production of official reports by the World Bank Inspection Panel and Management, as part of the Inspection Panel process.
- The social practice that the discursive practice is part of (and, thus, that define its character): Self-accountability performed by the World Bank on the compliance of its own policies and procedures in the projects it invests in.
- Other social practices that are in dialectical relationship with the discursive practice: 1) Power relations within the Bank (power of Management than the Panel in the remedial actions formulation), 2) Economic and/or political incentives of the Management members, 3) Economic and/or political incentives of the Panel members. Consequently, economic and political sciences are utilized as the disciplines that study these two social practices of interest.

⁶ Since talk is not used as material in this research, there is no need for transcription, the fourth of the Fairclough's steps for CDA. Also, the last of the Fairclough's steps is not considered in this research, since it has to be with the use of the results of the research.

STEP 3: CHOICE OF MATERIAL

The choice of research material depends on: the research questions, the researcher's knowledge on the relevant material within the social domain or institution of interest, and whether, and how, one can gain access to it. In this case the official publications produced by the World Bank Panel and Management that are related to the remedial actions are relevant for this research (which aims to analyze the discursive practices of the Panel and Management) and are available in the website of the World Bank Inspection Panel.

Data Sources: The source utilized were official documents produced and released by the World Bank Panel and Management. On one hand the text describing the OP 4.01 was utilized (see annex 1), and on the other hand also the reports produced for the selected cases that are related directly or indirectly to the formulation of remedial actions (see table 4 and annex 2).

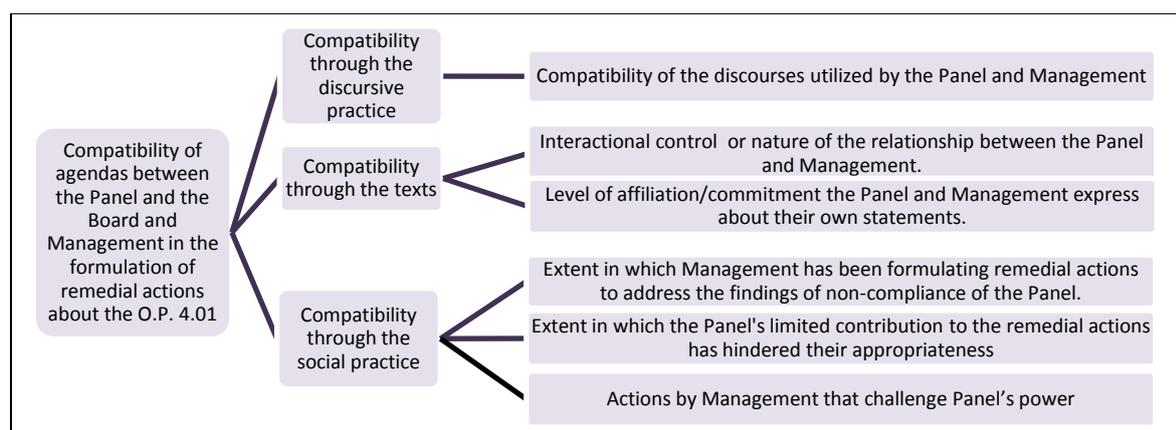
Table 4: Documents to be analyzed for the three cases selected for the research

Points in time	Selected cases	World Bank documents related to the remedial actions of the selected cases
First point in time: 1997	India: NTCP Power Generation Project	<ul style="list-style-type: none"> • Management's First Response: Action Program • Panel's Eligibility Report • Management's Second Response: Update of the Action Program
Second point in time: 2002	Paraguay/Argentina: Yacyretá II - Reform Project for the Water and Telecommunication Sectors, SEGBA V Power Distribution Project)	<ul style="list-style-type: none"> • Panel's Investigation Report • Management Response and Remedial Action Plan
Third Point in time: 2007	Uganda: Private Power Generation (Bujagali) Project	<ul style="list-style-type: none"> • Panel's Investigation Report • Management Response and Remedial Action Plan

Data Collection: The documents produced by the World Bank Panel and Management were collected from the website of the Inspection Panel (www.worldbank.org/inspectionpanel), where they are published. The most relevant extracts of those documents were chosen, based on the criteria of the researcher (see annex 2).

STEP 4: ANALYSIS

Using CDA it was possible to identify and compare the discourses supported by the Panel and Management, as well as the linguistic characteristics of the texts they produce and how is all that related to the social practice. The discursive practice, text and social practice – the three levels of Fairclough's model – were separately analyzed to examine the compatibility agendas between the Panel and Management in the formulation of remedial actions about the O.P. 4.01 (see graph 5). It is important to notice that the analysis of the discursive practice and text was done taking into consideration the length of the fragments that were chosen to be analyzed.

Graph 5: Fairclough's three-dimensional model applied to this research

a) Analysis of discursive practice

How the texts have been produced and consumed by the Panel and Management was analyzed. This can include the study of several aspects, but in this research, the analysis of discursive practice was limited to examine **how many and what environmental discourses the texts utilize (interdiscursivity), and – if several – which one is dominant**⁷. For this purpose the classification of environmental discourses provided by Dryzek (1997) (see section “Theoretical Framework”) was utilized. Taking on account that the World Bank is an institution that clearly and by nature keep on supporting economic growth and development, it is evident that the Bank make use of reformist discourses, not of radical discourses. In that sense, it was identified at what extent the Panel and Management have been utilizing the **environmental problem solving discourses** (administrative rationalism, democratic pragmatism and economic rationalism) and the **sustainability discourses** (sustainable development and ecological modernization).

b) Analysis of text

An analysis was made about how discourses are activated in a text and how it leads to a particular interpretation or, in other words, how texts construct particular versions of reality, social identities and social relations by treating events and social relations in particular ways (e.g. by constructing representations of the reader and the institution itself). Thus, it was analyzed if the text actively constructs particular identities for the speaker and/or the receiver, and which construction of identity was dominant. By analyzing in detail the **linguistic characteristics** of a text using three particular tools (analysis of the grammatical person, of transitivity and of modalities), it was be possible to shed light on the interactional control between the Panel and Management and their affinity with (or their commitment to) their own statements.

Tools utilized for the analysis of linguistic characteristics

⁷ For instance, the use of personification (addressed as ‘you’ and ‘we’) articulates a promotional discourse and simulates a conversational discourse. Also, a ‘corporate advertising’ discourse appears in phrases such as ‘with our reputation’ and in the logo, while a narrative genre is used by talking about a past, current or potential situation. Phrases like ‘with your ambition, energy and expertise’ are part of a personal quality discourse, and ‘teaching excellence and research innovation’, of a management discourse. There can be used discourses traditionally characteristic of certain kind of institutions (educational, health, etc), as well as institutional advertisements such as “Further details are available from the address below” (Phillips and Jorgensen, 2002).

- **Analysis of the grammatical person:** This consist in analyzing which grammatical person predominates, if the first-person and second-person (use of 'we' and 'you') or the third-person ('they').
- **Analysis of transitivity** (a grammatical analysis): It consists in analyzing if there is an emphasis on the responsible agent or in the effect. This entails analyzing if there is utilization of passive (inclusion of the agent, e.g. "50 nurses were sacked yesterday") or active tenses (omission of the agent), and if there is utilization of nominalization (whereby the noun stands for the process, e.g. "there were many dismissals at the hospital").
- **Analysis of modalities:** Speakers use different modalities to express the degree of their affinity with or commitment to their statement. The modality chosen by the speaker influences on social relations, knowledge and meaning systems. For instance categorical, objective modalities reflect and reinforce authority, obligational modalities promote obligations, and subordinate clauses mark the future and open alternatives. Some types of modalities are:
 - **Truth** (e.g. 'It is'): It is a categorical, objective modality. The speakers make an absolutely true and incontrovertible affirmation, committing themselves completely to the statement.
 - **Obligation** (e.g. They/You 'should' do it): The speaker expresses a demand to the receiver.
 - **Subordinate clauses** (e.g. It 'will'): The speakers mark the future.
 - **Emphasis** (e.g. it is 'a lot'; it is 'very much'): The speakers highlight the intensity of the event.
 - **Opinion** (e.g. They/You 'think/believe/consider' it is): It is a subjective modality.
 - **Doubt** (e.g. 'perhaps' it is; it 'may' be): The speaker expresses a limited degree of certainty.
 - **Hedging** (e.g. 'well', it is; it is 'a bit'): The speaker minimizes/moderates a sentence's claim.
 - **Permission** (e.g. They/you 'can' do it): The speaker gives the receiver permission to do something.
- **Analysis of sings of conciliation:** It consists in analyzing the use of formal words and special types of expressions that show certain compatibility of opinions.

Identifying the interactional control between speakers

The interactional control looks at the relationship between speakers, addressing the question of who sets the conversational agenda, and it can be identified using the analysis of the grammatical person, of transitivity and of modalities. In that senses, an institution can construct certain kind of relationship by choosing to use different linguistic features. An impersonal, distanced, unequal, institutional relationship is constructed with:

- The **no personification** of the institution and the reader are not personified, for instance when there is no use of 'you' or 'we'. This is revealed by the analysis of grammatical persons.
- The use of **passive tenses** (omission of the agent) and **nominalization** (noun stands for the process), defined by the analysis of transitivity. Through the analysis of **transitivity** it is possible to examine the relation between subjects/objects and events/processes (between the responsible agent and the

effect), and the ideological consequences of it. Two ways that omit/reduce the responsible agent and emphasize the effect are the utilization of a passive form and the nominalization where the noun stands for the process. Contrarily a way to enhance the responsible agent and omit/reduce the effect is through an active form.

- The use of **obligational modalities**, defined using the analysis of modalities. An intensive use of the modality of obligation (e.g. They/You 'should' do it) contributes to an unequal relationship.
- The use of **signs of conciliation**. Between two or more persons/institutions whose activities are – at least partly – conflictive, the frequent and intense presence of words and expressions that are conciliating could reveal a – at least formally – mutual respect, despite the possible differences between them.⁸

Identifying the level of commitment of the speakers to their own statements

The speakers can have a high or low level of commitment to (or affinity with) their own statements, which can be identified with the analysis of modalities. Some types of modalities show that the speaker has a high commitment to their own statements: the modalities of truth, obligation, subordinate causes and emphasis. On the other hand, the modalities of opinion, doubt, hedging and permission express a low commitment of the speakers to their statement.

c) Analysis of social practice

The relationship between discursive practice and the broader social practice where it is contextualized was analyzed at two levels:

- Exploring the relationship between the discursive practice and its order of discourse, the kind of network of discourses does the discursive practice belong to, and the way discourses are distributed and regulated across texts.
- Mapping the partly non-discursive, social and cultural relations and structures that constitute the wider context of the discursive practice – the social matrix of discourse (e.g. What institutional and economic conditions the discursive practice is subject to?).

That way, the study is political and critical, concluding about the ideological, political consequences of the discursive practice: Does the discursive practice reproduce the order of discourse (thus contributing to the maintenance of the status quo in the social practice) or does it transform it (thus contributing to social change)? Does the discursive practice hide and reinforce unequal power relations in society, or does it challenge them? This is examined by integrating several theories different to discourse analysis (e.g. social, political, economic theories). When put into a broader social context, different texts together can show struggles between different institutions with different social discourses or institutional philosophy, or linked with different sectors of the society.

⁸ The logic of the analysis of signs of conciliation was not found in the bibliography that was reviewed, but it was developed by the researcher.

3.4. WEAKNESSES OF THE RESEARCH

Weakness linked to the topic of the research (the World Bank Inspection Panel)

- **Use of one type of data sources:** This research used information from only one kind of sources: the World Bank's official publications. The fact that there is no triangulation of the data sources made more challenging to have objective results and deep understanding of the phenomenon. As stated above, the World Bank's official texts constitute the main kind of data that is available for an independent researcher, and that is why discourse analysis was utilized to reach the objective of this research. However, using the approach of Critical Discourse Analysis made possible to analyze texts and discourses from their relationship with the social practices, and thus the analysis was not purely linguistic but it also included the study of the actions performed by the Bank and Management.

Relativism inherent to discourse analysis

- **Possible subjective treatment of discourses by the researcher:** Discourse analysis focuses on how some statements are accepted as true and others are not. However, since analysts share many of the taken-for-granted understandings, it is difficult for them to treat discourses as discourses – that is, as socially constructed meaning-systems that could have been different. The position that researchers takes in relation to the field of study influences on what they perceive and present as results.

Weaknesses inherent to CDA:

- First it is difficult to empirically distinguish between the discursive and non-discursive practices. This was solved by basing the distinction on a theoretical and analytical choice rather than an empirical one (to use social theories to map out those parts of the domain study that are not covered by the specific discourse analysis).
- Second, it is difficult to demonstrate and describe the dialectical relationship between the discursive and social practices and the reproduction and transformation of discourses, because the power of discursive practices to change the social order is somehow limited. This problem was reduced by analyzing a range of texts.
- Third, CDA does not make a deep analysis of the social-psychological aspects, neither of the manner in which discourses construct social identities or the relations processes of group formation, the subject and the agency (e.g. questions about subjectification and subjectivity and how much control people have over their use of language).
- Fourth, this research – as most empirical studies – consists of textual analysis, without examining their production and consumption. Therefore, the active role of people in interpretation processes and the different meanings that one same text can have are not analyzed.

Weaknesses linked to time limitations to complete the research:

- **Non-consideration of the specific members at the head of the institution:** This research did not cover the possible influence that specific Panel's and Management's members have over the formulation of the remedial actions and over the Inspection Panel process in general.
- **Non-consideration of the specificities of the context of each case:** Each case occurred in different developing countries, and therefore in different national contexts regarding economy and energy supply/demand. For instance, Uganda is a country with lower levels of human development (Human Development Index – HDI – of 0.420 in 2007, the year of the request) than India (0.437 in 1995, around the year of the request), which in turn has lower levels of human development than Paraguay and Argentina (0.548 and 0.749 respectively in 2000, around the year of the request) (UNDP, 2011). Also, Uganda and India face more challenges regarding power supply than Argentina and Paraguay. This study does not look into these specificities, and therefore does not consider their possible influence on the incentives and power dynamics occurring within the Inspection Panel process.

CHAPTER 4: THE WORLD BANK INSPECTION PANEL

The World Bank is the largest development-oriented lending institution worldwide. The Bank gives loans and grants to the developing and the less developed countries for projects aimed to enhance development. “The Bank is responsible for the project design, appraisal, and evaluation while the borrower (i.e. borrowing state, and its implementing agency) is responsible for the actual implementation of the project – although the Bank has some supervisory responsibilities during implementation” (Naudé Fourie, 2009:4).

4.1. THE INSPECTION PANEL AS PART OF THE WORLD BANK SHIFT

In the last decades there have been increasing voices criticizing the Bank’s performance and the impacts of the projects it financed. The World Bank (WB) appears to have respond to those voices, by shifting from merely focusing on the transfer of capital (e.g. Mehta, 2001) to better address social and environmental issues (Barkin, 2006).

The World Bank Inspection Panel (IP), created by the Bank in 1993, can be seen as part of that shift. The Panel was established with the aim of controlling the compliance of the World Bank policies and procedures: its formal objective is to ensure the accountability of the WB projects by responding to complaints raised by “individual(s), group(s) of people, or organization(s) that believe they are, or may be, affected by projects in a direct and material way and attempting to resolve fairly the issues raised”. The scope of the IP covers requests over projects founded under the International Bank for Reconstruction and Development (IBRD) and the International Development Association (IDA)⁹. The Panel is in charge of several functions such as recommending to the Board whether an investigation about the case should be done or not (using a eligibility criteria), producing the investigation report (to make findings of compliance and/or non-compliance) and, last but not least, calling on the influence of the WB in urging parties to adopt recommendations (The World Bank Group, 2011). The World Bank Inspection Panel is – the World Bank argues – independent from Bank Management. Their members are selected, among other criteria, by their independence from Bank Management, as well as by their honesty, expertise and social/environmental commitment and the Panel reports directly to the Board of Executive Directors (The World Bank Group, 2011).

⁹ The International Bank for Reconstruction and Development (IBRD) and the International Development Association (IDA) are organizations that together provide low-interest loans, interest-free credit and grants to developing countries (Stein, H. 2008)

4.2. REMEDIAL ACTIONS: AN STAGE OF THE INSPECTION PANEL PROCESS BUT NOT A TASK OF THE INSPECTION PANEL MEMBERS

In certain stage of the Inspection Panel process, remedial actions that “ensure that affected people have their full rights under the Bank’s policy on involuntary resettlement” (The Inspection Panel, 2009: 41) are proposed by the Bank Management. The formulation of the remedies is a task performed by Bank Management and the subsequent review and approval of the remedies is a task of the Board of Executive Directors. That way, it is not the Panel but Management – based on the Panel’s findings – the one formally in charge of proposing the Remedial Action Plan, and it is the Board the one in charge of taking the final decision on this respect. In the formal mandate of the Inspection Panel is not included that the Panel should participate in the remedies-related tasks. The Panel’s Investigation Report does not contain specific recommendations for actions that should be taken by Management (Naudé Fourie, 2009).

The formulation of remedial actions is one of the ways to produce changes in the specific case under investigation (changes in the project and benefits for the affected people and the environment) (The Inspection Panel, 2009). Thus, this stage is essential for Panel process’s effectiveness. According to the formal procedure of the Inspection Panel process, Management should formulate the Remedial Action Plans in its response to the Panel’s findings on noncompliance and harm¹⁰, as a response to the Panel’s Investigation Report. However there have been some cases where Management has proposed remedial actions in the very first beginning of the Inspection Panel process: as response to the request itself and before the Panel make any investigation (The World Bank Group, 2011).

4.3. SUCCESS OF THE REMEDIAL ACTIONS: AN IMPORTANT CHALLENGE IN THE INSPECTION PANEL

The Panel has had in general a positive balance and has been improving its performance over the years and has won no insignificant trust and good opinions among the international community and civil society. Positive comments have been made about the Panel and its achievements reached so far, not only from the international community, governments and civil society but also from the “requesters” – people that raised requests appealed to the Panel. The Bank publication that makes a balance of the last 15 years of the

¹⁰ The Board of Executive Directors in the 1999 Clarification asked Management to always: a) develop an Action Plan in response to the Panel’s findings, that be prepared in consultation with Requesters and other affected parties and that be agreed upon with the Borrower, and b) to “communicate to the Panel the nature and outcomes of the consultations with affected parties on the Action Plan” (The Inspection Panel, 2009). There are two aspects in which the Management’s Action Plan is different from the Management’s report to the Board addressing Bank failure and remedial efforts¹⁰: the parties involved and the scope of the Panel’s purview (The World Bank Group, 2011).

Inspection Panel, states that – in some cases – the nature of the Panel’s findings of noncompliance were such that Management took actions to respond to the Panel’s findings even before submitting its Response to the Board or the convening of the Board meeting¹¹.

4.4. THE WORLD BANK INSPECTION PANEL OVER THE YEARS

Between the Panel’s Inception and the 1999 Board Review

In the first years of its existence Management used to adopt practices that jeopardized the Panel’s credibility as a new accountability mechanism. One of the Management’ practices consisted in questioning the eligibility of requests in such a manner that created the impression that the Panel had no authority over Management, and that the Panel’s interpretation of its own mandate was questionable. Also, since 1995 Management started to regularly submit remedial action plans at the outset of the formal Panel process, presenting them as response to the requests and not as response to the Panel’s Investigation Reports, contrary to what the Resolution requires. Curiously, Management did so even in cases where it had denied the validity of the claims or eligibility of the request. This practice was detrimental because (Naudé Fourie, 2009):

- Much of Management’s action plans consisted of steps the borrower had to undertake, thus:
 - Fuelling the already existing borrower’s concerns that the Panel process was manipulated to interfere with their domestic affairs and not to ensure the Bank’s accountability.
 - Making the cases fall outside the Panel’s mandate (which does not include investigating the borrower).
- It was an easy way to avoid the need for a deep investigation by the Panel investigations, in order to elude “uncomfortable political consequences for both the Bank and the borrower”. At the end this practice had the opposite effect: it prolonged the conflict and made the Panel appear as “superfluous”.

After the 1999 Board Review

The 1999 Board Review was significant for the remedial action plans formulation in the sense that it instructed Management to end the practice of submitting action plans as part of their initial response to the Request. Apparently the Review enabled the Panel to affirm its independence, which until then had been under pressure. However Management has continued challenging the Panel’s independence even after the 1999 Board Review, although to a lesser degree in a more “subtle” way (through their formal statements, reports and responses) (Naudé Fourie, 2009).

¹¹ Though it is important to notice that in some of these cases Management had opposed launching an investigation in the earlier eligibility phase (World Bank, 2009)

CHAPTER 5: THREE CASES RELATED TO HYDROPOWER PROJECTS RAISED TO THE INSPECTION PANEL

5.1. CASE INDIA (1997)

The India case can be considered controversial. It occurred in the early years of the Inspection Panel, and thus it was carried on in a context of low credibility of the Panel. In fact, the World Bank Board member representing India blocked the approval of the Panel investigation as a way to show their lack of trust in the Panel as a truly accountability-minded system (Naudé Fourie, 2009). On May 1997 the Panel received a Request from a representative of local people, claiming the occurrence of involuntary resettlement. The Management Response to the Request was submitted to the Panel on June 1997 acknowledging certain policy violations and including corrective actions through a specific and a broader action program. On July 1997 the Panel submitted its Eligibility report to the Board, communicating prima facie evidence of harm and serious violations by the Bank of its policies and procedures and recommending to the Board to authorize urgently an investigation. Management submitted directly to the Board an "Update of the Action Program" (agreed with the Government of India and NTPC) on September 1997 (not only after the Panel's Eligibility report but also just five days prior to the Board decision on an investigation). The Panel therefore did not have the opportunity to review the appropriateness of the "Action Program". On September of 1997 the Board restricted the Panel investigation to a desk study in Washington, D.C. The Panel's Investigation Report concluded that "the Bank's failure to observe its policies and procedures concerning Environmental Assessment (OD 4.01) in the preparation phase appear to be even more grave than observed in the Panel's July Report" (Inspection Panel, 1997). Management response was that the already existent Action Program was going to be followed. Then, the Board instructed Management to take measures in coordination with government officials and to report back to the Board in about six months. Management was also asked to keep the Panel informed for it to separately give its comments on Management's report to the Board (Inspection Panel, 1997; World Bank Management, 1998).

5.2. CASE ARGENTINA/PARAGUAY (2002)

The Argentina/Paraguay case was one of the most controversial cases of the Inspection Panel. It was subject of two requests, the second one of which was raised in 2002 and constitutes the case analyzed in this research. Argentina and Paraguay created the Entidad Binacional Yacyreta (EBY) to implement the Project. The Project consisted of three dams, a long powerhouse and 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 maximum water level is 76 masl, and the dam is still operating at 60 percent of its capacity. On May 2002, the Inspection Panel received a Request for Inspection related to the Yacyretá Hydroelectric Project (the Project). On August 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 2002. On February 2004 the Inspection Panel issued its Investigation Report and on April 2004, Management Report submitted a Response to the Panel's findings. The Board of Executive Directors approved the reports of both the Panel and Management and requested from Management a Progress Report and several Additional Measures related to the implementation of this Project. On August 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 February 2005 the Panel, consistent with the Board's decision, provided the Board with comments on Management's Progress Report (The Inspection Panel, 2005).

5.3. CASE UGANDA (2007)

The Private Power Generation Project, commonly known as Bujagali Hydropower Project, consists of the construction of the Bujagali hydropower plant on the Nile River near the Bujagali Falls. It is designed to provide an increase of 250 MW of power generation capacity to the national grid in Uganda. The Project originated a risk of inundation of the Bujagali Falls and other natural habitats that have a high cultural and religious value for local people, and of displacement and resettlement of people from their lands. In March 2007, the Inspection Panel received a Request for the project from the Ugandan National Association of Professional Environmentalists (NAPE) and other local organizations and individuals (The Inspection Panel, 2008). The Project was a "Public-Private Partnership between private sponsors and the Government of Uganda (GoU) that is supported by private lenders and multilateral and bilateral development agencies (...). A separate request relating to this Project was submitted to the independent recourse mechanism (IRM) of the African Development Bank (AfDB). The Panel and the IRM collaborated by sharing experts and conducting a joint field mission. The conclusions of the Panel and the IRM are, however, independent and based on different applicable policies." (The Inspection Panel, 2008: xi)

CHAPTER 6: COMPATIBILITY OF AGENDAS REFLECTED IN THE USE OF DISCOURSES

The extent in which the agendas of the World Bank Inspection Panel and the World Bank Management are compatible with each other can be evidenced in the level of compatibility of the discourses utilized by the Panel and Management, which is analyzed in this chapter.

The discussions made in this chapter are based on:

- The text describing the World Bank Operational Policy (OP) 4.01 (on environmental assessment)
- The texts produced by the Inspection Panel and Bank Management that led – directly or indirectly – to the formulation of remedial actions related to the O.P. 4.01.

See annex 1 for the complete text describing the World Bank OP 4.01. See annex 2 for the compilation of the selected fragments, and annex 3 for the specific fragments that evidence the discourses used by the Panel and Management. In the tables 5 and 6 an overview of the discourses used by the Panel and Management in the three analyzed cases is showed.

6.1. SIMULTANEOUS USE OF TWO DISCOURSES: “ENVIRONMENTAL SOLVING” AND “SUSTAINABILITY”

The Panel’s and Management’s discourses, with respect to the degree of proposed changes, are **both reformist discourses** (the changes they propose are just soft and do not take society too much apart from industrialism). With respect to the approach to environmental issues the Panel’s and management’s discourses are **both prosaic and imaginative discourses**: they are prosaic because they propose measures that fit in with the industrial political economy and that consider economic interest in opposition to the environmental ones, but they are also imaginative because they affirm that the economic, social and environmental interests can be potentially in harmony. Therefore, in general it is possible to say that the Panel and Management have used both the **“environmental problem solving”** discourse (a reformist prosaic discourse) and **“sustainability”** discourse (a reformist imaginative discourse).

More specifically, the Panel and Management follow mainly two of the three types of the environmental problem solving discourse: the **administrative rationalism and the democratic pragmatism**¹², which is not surprising since, according to Dryzek (1997), democratic pragmatism discourse appeared to fulfill the gaps of the administrative rationalistic discourse. Democracy has nowadays become fashionable as administration has now a not very high popularity, as result of the diminishing effectiveness of the administrative rationalism to solve the most complex and difficult problems.

With respect to the sustainability discourse is a very abstract concept, highly used by the Bank Panel and Management but that it is hardly found in the practice. Contrarily, the essence of the **administrative rationalism and the democratic pragmatism** discourses is not so much found in the form of speeches but in the actual practices and actions (in the development of policies, institutions and methodologies). Indeed, is in the practices and actions promoted by the Panel and Management through their reports where these discourses becomes evident. Many of the elements that characterize the administrative rationalism and democratic pragmatism discourse result visible **in the actual content of the Operational Policy 4.01 (on Environmental Assessment) established by the World Bank**, which is the basic criteria that guides the whole World Bank Inspection Panel process. These discourses can be easily identified in the components of the OP 4.01, in the approaches and methodologies found in the Panel's eligibility and investigation reports and in Management's responses and remedial actions, and in the bureaucratic nature of the World Bank, Inspection Panel and Management as institutional bodies.

However, it is important to notice that, even though both the environmental problem solving and sustainability discourses have been used by the Panel and Management, it is possible to perceive in the texts a **clear predominance of the environmental problem solving discourse over the sustainability one**.

Furthermore, there is a soft difference in how the Panel and Management have been using the sustainability and environmental problem solving discourses over the time (along the three cases): The Panel started elaborating quite equally the environmental solving and sustainability discourses to back its statements (though always with predomination of the environmental problem solving discourses), but **over the time the Panel started increasing the predominance of environmental problem solving discourse over the sustainability discourse**. With the Bank Management occurred more or less the opposite. Management started using much more intensively the environmental problem solving discourse than the sustainability discourse, but **over the time Management started to utilize more frequently the sustainability discourse**. Thus, additionally to the fact that the Panel and Management have been using at the same time both the environmental problem solving and sustainability discourses, they also **have been reaching a higher balance in the extent they use each one of those discourses**.

¹² According to the classification of environmental discourses made by Dryzek (1997), as showed in he section "Theoretical Framework"

6.1.1. DEGREE OF THE CHANGES PROPOSED: A REFORMIST, NOT RADICAL, DISCOURSE

In general, it is very evident that both the Panel and Management have been utilizing environmental discourses that fit in within the “**reformist**” discourse (according to the categorization of environmental discourse made by Dryzek, 1997) that characterizes the World Bank. In coherence with the World Bank institutional philosophy – a global lending body – the Panel’s and Management’s discourses do not go very far away from the conditions created by industrialism, defending non-drastic changes. In that sense, the Panel and Management’s discourses **are compatible** one to each other since they both talk about **soft changes** that do not take them too much apart from the industrialist and capitalist system.

The main evidence of the reformist discourse used by the Panel and Management is that they both acknowledge the need to address environmental concerns not because of a consciousness on the wilderness or landscape conservation, but because they follow the logic that **a strategic and long-term use of the renewable natural resources (in this case, water) is necessary to keep on development under the capitalist system**. In the three cases, the Inspection Panel process, the operational policy on environmental assessment and the proposed remedial actions are presented as steps/measures that need to be taken in order to generate hydro energy in a proper manner, which means to exploit the natural water sources taking on account the social and environmental issues. The Panel and Management **never questioned in any of the cases the need to exploit the water sources to generate hydropower**.

The Panel and Bank stated that important economic profits and development can result from the use of water for hydropower generation. Thus, both the Panel and Management share the view that using natural resources is important to keep on the development of a society, though under the current capitalist system. For instance, both the Panel and Management expressed in their reports the crucial need of more generation of energy for the development of Uganda:

- *“Energy is a crucial input to Uganda’s development, and hydropower is an important option for meeting the country’s power needs. With less than 10 percent of the population connected to electricity, a long-term investment program is required in the energy sector to realize the country’s development aspirations. (...) The current Project is the largest private sector investment in East Africa, and will provide stable baseload power which is needed to grow the economy and expand access to electricity.” (Management Report, case Uganda 2007)*
- *“Uganda is facing a serious power supply crisis. The Panel wishes to place on record that it considers energy a crucial factor in Uganda’s development.” (introduction of the executive summary, Inspection Panel’s Investigation Report, case Uganda 2007)*
- *“In closing, the Panel would like to emphasize that energy is a crucial factor in Uganda’s development.” (closing of the executive summary, Inspection Panel’s Investigation Report, case Uganda 2007)*

Furthermore both the Panel and Management always mention the economic contribution of the specific projects that were subject of the request. For example, in the case Argentina/Paraguay, both the Panel and Management present the Yacretá Hydroelectric Project as a “multi-billion US dollar hydroelectric facility”.

6.1.2. APPROACH TO ENVIRONMENTAL ISSUES: A BOTH PROSAIC AND IMAGINATIVE DISCOURSE

The discourses used by the Panel and Management are similar also in their approach to environmental issues: they are **at the same time “prosaic” and “imaginative”** (according to the classification of environmental discourses of Dryzek, 1997) **which is somehow self-contradictory**.

On one hand, the Panel and Management have a (reformist) **imaginative** discourse, in the sense that they both state continuously that, through imaginative measures, environmental concerns do not have to be in opposition to the economic ones, but that they can be in harmony.

On the other hand, the Panel and Management also use a (reformist) **prosaic** discourse. The Panel and Management perceive environmental problems as caused by the established industrial political economy, and thus they treat environmental concerns as in opposition to the economic ones. Furthermore the remedial actions proposed by the Panel and Management to address the social-environmental problems are not imaginative, but just measures that have been defined by and in industrialism. Since this is a reformist prosaic discourse, it should fit in the category of “environmental problem solving” discourse. For instance, the need to control the effects that hydropower plants can have on the environment and society through environmental assessments, entails that development can be in conflict with social and environmental issues, which goes in line with a prosaic way of thinking. Specifically this is evidenced in that both Panel and Management talk about **negative environmental and social impacts** of hydroelectric project. Another example is found in the case Argentina/Paraguay (2002), where the Panel made indirectly clear that if the financial position of the project is weak, the environmental issues become a non-priority cost: *“The **project’s financial position can critically affect the environmental management** (emphasis added) thus harming the environment and people.”*

6.2. THE ADMINISTRATIVE RATIONALISM DISCOURSE

Below, an explanation of how the 6 components of the administrative rationalism discourse becomes evident in the prosaic practices and actions the Panel and Management (and the Bank in general) defend and promote belong to, is showed.

a) Environmental Impact Assessment

Environmental impact assessments entail the need to make an expert assessment that identify and analyze the potential impacts of a project. The environmental impact assessment is clearly defended and used by both the Panel and Management. The Bank as a whole has the environmental assessment tool as a mandatory norm. The World Bank Operational Policy 4.01 (see annex 1) has environmental impact assessment as one of its main components.

*“Depending on the project, a range of instruments can be used to satisfy the Bank’s EA requirement: **environmental impact assessment (EIA), regional or sectoral EA, strategic environmental and social assessment (SESA), (...)**” (All emphasis added, paragraph 7 of the text describing the OP 4.01)*

The issue with this tool is that during the decision-making processes, there appear “intents of forcing environmental values and scientific means for the calculation of the project’s effect on them into the decision calculus” (Dryzek, 1997:68).

b) Professional Resource Management Bureaucracies

Administrative rationalism is strongly evidenced in the support given by the Panel and Management – and the World Bank in general – to the environmental management bureaucracies. Natural resource management has existed for longer time than environmental policy, but is especially likely to exist in large institutions that treat diverse issues, such as the World Bank. The Bank supports management of natural resources, which is reflected in its OP 4.01, followed by the Panel and Management:

*“EA instruments: Depending on the project, a range of instruments can be used to satisfy the Bank’s EA requirement: environmental impact assessment (EIA), regional or sectoral EA, strategic environmental and social assessment (SESA), environmental audit, hazard or risk assessment, **environmental management plan (EMP) and environmental** (emphasis added) and social management framework (ESMF).”*
(Paragraph 7 of the text describing the OP 4.01, see annex 1)

Moreover, the compliance of the about management of the water sources and many of the measures Management formulated were aimed to strength the national environmental management and administrative bodies of India, Argentine/Uruguay and Uganda. Dryzek (1997) argues that natural resource management bureaucracies are older especially in countries that are rich in natural resources, which is precisely the case of India, Argentina/Paraguay and Uganda.

Also, some of the remedial actions formulated by Management were related to national natural resource management bodies. For instance, in the case Uganda (2007), one of the proposed remedies was:

“In the course of normal supervision, Management will follow up on coordination arrangements of the MEMD (Ministry of Energy and Minerals Development) Project Inter-Agency Coordination Committee” (Management Report, case Uganda, 2007)

c) Pollution Control Agencies

The World Bank’s OP 4.01, followed by the Inspection Panel and Bank Management, explicitly includes the concept of environmental management:

*“The panel (...) advises the borrower specifically on (...) **development of environmental management capacity** (emphasis added).” (End note 8 of the text describing the OP 4.01, see annex 1)*

Moreover, some of the measures Management formulated were related to national environmental management and administrative bodies. For instance, in the case Uganda (2007), one of the remedial actions proposed by Management was:

“Management will follow up on NEMA’s (National Environmental Management Agency) commitment to establish a Project Monitoring Committee, and follow up on strengthening the capacity of BEL and BIU’s Environmental and Social unit.” (Management Report, case Uganda, 2007)

d) Regulatory Policy Instruments

First and foremost, the World Bank’s approach to address social-environmental issues is evident in the existence of policies and procedures that regulate the Management’s social and environmental performance. In this specific case, the OP 4.01 is the regulation that demands to the Bank to make an environmental assessment of all projects of significant dimensions. The resolution of the OP 4.01 is introduced in the following manner:

“The Bank requires environmental assessment (EA) of projects (emphasis added) proposed for Bank financing to help ensure that they are environmentally sound and sustainable, and thus to improve decision making.” (Text describing the OP 4.01, see annex 1)

Through the OP 4.01, the Bank standardizes the environmental assessment procedures for example by setting standards (e.g. national and/or international standards/regulations). This reflected also in the content of the OP 4.01, where it is stated that:

*“For Category B projects that are not in environmentally sensitive areas and that present well-defined and well-understood issues of narrow scope, the Bank may accept alternative approaches for meeting EA requirements: for example, environmentally sound design criteria, siting criteria, or **pollution standards for small-scale industrial plants or rural works**; environmentally sound siting criteria, **construction standards**, or inspection procedures for housing projects; or environmentally sound operating procedures for road rehabilitation projects.”*

(All emphasis added, End note 13 of the text describing the OP 4.01, see annex 1)

A slight difference can be distinguished between the Panel and Management, regarding the use of and support to regulatory policy instruments. **For the Panel, its main guiding regulatory policy instrument in the three cases has been the World Bank OP 4.01, while Management has backed their statements using not only the OP 4.01 but also the national and international regulations and standards.** Management’s discourse is heavily backed by national and international regulations and standards, while the Panel’s judgment criteria is based directly on the stipulations of the OP 4.01 without mentioning national or international regulations. Management in several occasions used arguments related to environmental regulations to back their compliance with the OP 4.01. For instance:

- *“Design standards (emphasis added) are based on technically sound national and/or international practices” (Management Report, case Argentina/Paraguay, 2002)*
- *“EBY’s standards of due diligence on non-dam civil works have improved throughout the 1990s. (...) Management has ensured that EBY put in place the following engineering and construction procedures: (i) civil works contracts with clauses (...); (ii) **supervision engineers control quality and enforce standards**; and (iii) requirements for contractors to fix any deficiencies up to one year after construction ends.” (All emphasis added, Management Report, case Argentina/Paraguay, 2002)*
- *“[The assessments] were prepared in accordance with **Paraguayan regulations (emphasis added)**”. (Management Report, case Argentina/Paraguay, 2002)*
- *“The Project will establish and/or strengthen regional and national institutions that regulate, monitor and enforce sustainable utilization of natural resources and **environmental standards (emphasis added)**. Mechanisms for resolving.” (Management Report, case Uganda, 2007)*

- “[T]he World Bank has provided financial support through the Environmental Management and Capacity Building Project to NEMA for capacity building in **environmental legislation/regulations** (emphasis added)”. (Management Report, case Uganda, 2007)

At the end, as Dryzek (1997) noted, **the ultimately decisive factor is not the content of the regulation itself, but the interpretation of the policy-makers (in this case the Panel and Management) around the existing legislation.** This can be observed in the Panel’s and Management’s reports, specifically in all those occasions where the Panel found that backed findings of non-compliance with arguments related to the OP 4.01, and the Management does not acknowledge those findings of non compliance using arguments related to the OP 4.01 and national and international regulations.

e) Expert Advisory Commissions

In general the logic of experts (for example, experts in environmental and hydrology sciences) being in charge of the social-environmental concerns is strongly attached to the discourse of the World Bank as a whole, including the Panel and the Bank Management. Usually the expertise of the work teams is highlighted in combination with their independency. According to Dryzek (1997), the expertise legitimates administrative rationalism. Having that on mind, it is interesting how the World Bank and the Inspection Panel process intensively make use of experts and highlight it. To begin with, **the OP 4.01 states more than once the need to have experts** performing the environmental assessment-related activities:

- “The borrower is responsible for carrying out the EA. **For Category A projects, the borrower retains independent EA experts not affiliated with the project to carry out the EA. For Category A projects that are highly risky or contentious or that involve serious and multidimensional environmental concerns, the borrower should normally also engage an advisory panel of independent, internationally recognized environmental specialists to advise on all aspects of the project relevant to the EA.**” (All emphasis added, Paragraph 4 of the text describing the OP 4.01, see annex 1)
- “The Bank appraises and, if necessary, includes in the SIL [sector investment loans] components to **strengthen, the capabilities of the coordinating entity or the implementing institution to (a) screen subprojects, (b) obtain the necessary expertise to carry out EA, (c) review all findings and results of EA for individual subprojects, (d) ensure implementation of mitigation measures (including, where applicable, an EMP), and (e) monitor environmental conditions during project implementation. If the Bank is not satisfied that adequate capacity exists for carrying out EA, all Category A subprojects and, as appropriate, Category B subprojects--including any EA reports--are subject to prior review and approval by the Bank.**” (All emphasis added, Paragraph 9 of the text describing the OP 4.01, see annex 1)

That is why the requests to the Inspection Panel process can also treat complains about non-compliance with these expertise-related requirements or the OP 4.01, as it occurs in the case Uganda (2007):

*“As the project is contentious and involves complex multidimensional environmental concerns, **appointment of an environmental panel of international experts is warranted and the lack of such a panel is not in compliance with OP 4.01.**”* (All emphasis added, Inspection Panel’s Investigation Report, case Uganda (2007).

The Panel and Management continuously emphasize the expertise, experience and prestige of their own professional teams. On one hand, the Panel emphasizes – especially in the two last cases, Argentina/Paraguay (2002) and Uganda (2007) – the expertise of the Panel chairperson, secretary or inspector in charge of elaborating the investigations on the cases. **The Panel does so in order to back and legitimate its findings of both compliance and non-compliance.** For instance:

- To back a finding of non-compliance: *“This report concludes the Panel’s investigation into the matters alleged in the Request for Inspection submitted to the Panel in May 2002. The current **Panel’s chairperson, Ms. Edith Brown Weiss, led the investigation. Three expert consultants on environmental, hydrological and social issues assisted the Panel in its undertaking** (emphasis added).”* (Inspection Panel’s Investigation Report, Case Argentina/Paraguay, 2002)
- To back a finding of compliance: *“The **Panel’s hydrology expert concluded that the hydrologic data sets** (emphasis added) used in Project design constitute a reliable data series and its variability over time is a natural condition, which can be observed in other hydrologic series of different parts of the world, when the hydrologic series is long enough.”* (Inspection Panel’s Investigation Report, Case Uganda, 2007)

On the other hand, the Bank Management also highlights the expertise of its own staff and of the consultants that are in charge of the environmental assessments and the remedial actions, **in order to back their compliance with the requirements of the OP 4.01**, as showed in the following example:

- *“In view of the Project’s history and its crucial importance to Uganda, Management at the outset has established enhanced due diligence for both Project preparation and supervision. This includes **assignment of experienced staff with the necessary range of expertise, as well as recruitment of highly qualified consultants** for specific tasks such as the financial analysis, economic analysis, hydrology review, etc.”* (Management Report, Case Uganda, 2007)
- *“On this basis, and **following advice from several academic and local cultural experts** (emphasis added), as well as feedback from more than 60 consultations with spiritual leaders, local officials, and other PAPs, the Project proceeded with the selection of Bujagali, with the knowledge that the cultural and spiritual aspects were sufficiently taken into account in its site selection.”* (Management Report, Case Uganda, 2007)

f) Rationalistic Policy Analysis techniques

There is a strong trend of the World Bank, including both the Panel and Management, towards rationalistic policy analysis techniques. This is **evidenced first in the OP 4.01 itself, which explicitly states the need for a risk analysis and indirectly demands a cost-benefit analysis:**

- *“EA is a process whose breadth, depth, and type of analysis depend on the nature, scale, and potential environmental impact of the proposed project. **EA evaluates a project’s potential environmental risks and impacts** in its area of influence”* (All emphasis added, paragraph 2 of the text describing the OP 4.01)
- *“Depending on the project, a range of instruments can be used to satisfy the Bank’s EA requirement: environmental impact assessment (EIA), regional or sectoral EA, strategic environmental and social assessment (SESA), environmental audit, **hazard or risk assessment**, environmental management plan (EMP) and environmental and social management framework (ESMF).”* (All emphasis added, paragraph 7 of the text describing the OP 4.01)
- *“[F]or a Category A project **examines the project’s potential negative and positive environmental impacts, compares them with those of feasible alternatives** (including the “without project” situation (...))”* (All emphasis added, paragraph 8 of the text describing the OP 4.01)

Moreover, and as a result of the content of the OP 4.01, many of the policy making-related statements of the Panel and Management, in their texts, are based on those rationalistic techniques. It is important to notice that **these techniques were much more frequently and directly pointed in the texts produced in the case Uganda (2007)** by the Panel and Management.

General mention of the need to avoid “social and environmental costs”:

- *[A]s this Report shows, energy production requires considerable care in order to ensure that social, economic and environmental aspects are properly considered, in line with Bank policy, to adhere to sound development practices and **avoid situations where costs, including social and environmental costs, outweigh the benefits expected from what are usually sizable investments.***” (all emphasis added, Inspection Panel’s Investigation Report, case Uganda 2007)
- *The Private Power Generation (Bujagali) Project is aimed at providing the capacity needed to **overcome the supply constraints in a least-cost and environmentally and socially sustainable manner.***” (all emphasis added, Management Report, case Uganda 2007)

Statements made around a specific issue that involved the consideration of “social and environmental costs”:

- *“The Panel is concerned (...) that the analysis unduly narrowed its consideration of alternatives [of project configurations of Bujagali] on the basis of a priori judgments rather than exploring all technically feasible options, including those that would not involve flooding the Bujagali falls and thus have **lower social and environmental costs**, and laying them out in a systematic way along with their **economic, social and environmental benefits and costs**, so that judgments on optimal alternatives could be made with a full understanding of the trade-offs involved. This is not consistent with OP 4.01’s provisions that feasible alternatives should be explored systematically to meet the basic Project objectives while **avoiding the social and environmental costs associated with flooding the Bujagali Falls.**”* (All emphasis added, Inspection Panel’s Investigation Report)
- *“The key considerations in the comparison [of alternative options at, and around, the Bujagali] are the potential power output of the different schemes, their financial costs and their relative environmental and socio-economic implications.’ A review of this report was undertaken in connection with the **Economic Analysis of the new Project.**”* (all emphasis added, Management Report, case Uganda 2007)

6.3. THE DEMOCRATIC PRAGMATISM DISCOURSE

Democratic Pragmatism consists in a problem solving – within the liberal capitalist democracy structure – that should be interactive, flexible and involve many voices and cooperation between diverse different perspectives. As long as there is a plurality of perspectives, wider public in problem solving is not necessary: the degree of democratic participation is limited by the amount found in liberal democracies, which is why there is an essential congruence between the rationality in problem solving and democratic values (Dryzek, 1997). This congruence between administrative rationalism and democratic pragmatism can be found in the Bank, in the discursive practices around the remedies formulation. Democratic pragmatism is the version of democracy that dominates the world currently and, evidently, the World Bank (together with the Bank Inspection Panel and Bank Management) is not the exception: Four of the five institutions and practices that compose the democratic pragmatism discourse are present in the three Inspection Panel cases¹³. Consultation, public enquires.

¹³ Policy dialogue is not present in any of the three cases because policy dialogue refers to alternative dispute resolution (ADR) around the agreement and implementation of more general/strategic policy issues, which does not occur in specific claims such as the ones raised to the Panel.

a) Consultation and public enquiries

The environmental assessment set by the World Bank OP 4.01 calls for opportunities for **public participation (public comment of the documents produced) and public enquires (tangible forums that allow proponents and objectors to make depositions and arguments)**¹⁴. Consequently, environmental assessment in the World Bank, at least formally, can be linked not only with an administrative rationalism discourse but also with a democratic pragmatism discourse. Regarding that matter, the text describing the OP 4.01 states that consultation to groups must be done in at least two moments: “shortly after environmental screening and before the terms of reference for the EA are finalized”, which corresponds to the definition of public enquires, and “once a draft EA report is prepared”, which corresponds to the definition of consultation:

*“For all Category A and B projects proposed for IBRD or IDA financing, during the EA process, the **borrower consults project-affected groups and local nongovernmental organizations (NGOs)** (emphasis added) about the project’s environmental aspects and takes their views into account. The borrower initiates such consultations as early as possible. For Category A projects, the borrower consults these groups **at least twice: (a) shortly after environmental screening and before the terms of reference for the EA are finalized; and (b) once a draft EA report is prepared** (emphasis added). In addition, the borrower consults with such groups throughout project implementation as necessary to address EA-related issues that affect them” (all emphasis added, see Annex 1)*

Consultation is one of the issues of the OP 4.01 that are more frequently raised in the requests, and it was present in the three cases analyzed in this research. Therefore, the Panel and Management make statements about consultation. With respect to how these discourses are present in the texts, the Panel usually refers to consultation as a step that has not been fully accomplished by Management (to back its findings of non-compliance), as showed in the examples below.

In the case India consultation was an especially significant issue in the request. Only in the case India (1997) Management acknowledged the Panel’s finding of non-compliance related to public consultation by contrasting it with the requirements of the OP 4.01:

*“Management (...) recognizes that the **procedures and steps for consultation on the EAs specified in the OD were not followed** (emphasis added). Management accepted these omissions, because the further development of the Singrauli area had been part of a public debate in India and the projects formed part of India’s Eighth Plan approved by Parliament.” (Management Report, case India 1997)*

In the three cases Management mentioned the issue of public consultation in order to deny Panel’s finding of non-compliance that were directly (in the case India 1997) or indirectly (in the cases Argentina/Paraguay 2002 and Uganda 2007) related to public consultation. In the examples showed below, it is possible to notice how the arguments presented by Management is much more detailed in the last case (Uganda 2007) than in the first two cases (India 1997 and Argentina/Paraguay 2002, where Management simply talked about “extensive” consultation:

- *“**Extensive consultation** (emphasis added) was also initiated with concerned corporations, government agencies, Non-Governmental Organizations (NGOs), and project-affected people and communities regarding the Panel Report and Recommendation. (Management Report, case India 1997)*

¹⁴ According to the definitions provided by Dryzek (1997)

- “EBY designed a Master Plan for Urban Environmental Management for Encarnación. This Master Plan was developed under Bank supervision and involved **extensive public consultation** (emphasis added).” (Management Report, case Argentina/Paraguay 2002)
- “During the **Third Stakeholder Consultation in 1999**, the Project Steering Committee retained the criterion “impacts on historical and religious sites.” (...) [T]he analysis of alternatives took into consideration the traditional practices and the value attached to ‘unseen, free moving, spiritual forces associated with ancestors (personal spirit forces) or with nature (impersonal spirit forces)’ (RCDAP, pages 95-96). This was evident in the **appeasement ceremony, facilitated by AES, and which took place in August 1998, with the spiritual leader, Nabamba Bujagali, who found the Project to be ‘culturally acceptable’**. On this basis, and following advice from several academic and local cultural experts, as well as **feedback from more than 60 consultations with spiritual leaders, local officials, and other PAPs**, the Project proceeded with the selection of Bujagali, with the knowledge that the cultural and spiritual aspects were sufficiently taken into account in its site selection.” (All emphasis added, Management Report, case Uganda 2007)

Moreover, Management highlighted that a participatory approach would be used also in the remedial action plan implementation:

*“Terms of reference for work of XIDAS would be **prepared jointly including discussions with the affected population, concerned NGOS, and other stakeholders** (emphasis added).” (Management Report, case India 1997)*

In the case India (1997), the Panel argued about consultation in a specially direct and extensive manner:

OD 4.01 is useful “particularly where involuntary resettlement is to take place” and is “of key importance” because: i) “Lack of local consultations and participation in both preparation and implementation of the R&R component of the Project appears, prima facie, to be the root cause of past and current problems and complaints, including a reluctance or resistance to relocation; ii) The Inspector found the question of what constitutes “local” representation be an important issue on the ground. As far as the preparation phase is concerned, the [Management] Response speaks for itself (...): ‘Lack of participative process, communication, sharing of information regarding NTPC policy, entitlements, compensation, the use of petty contracts to influence PAP representatives’, etc. would mean that it is going to be extremely difficult for NTPC to convince PAPs in the ash dyke villages of Vindhayachal and Rihand to move out to be resettled and rehabilitated within NTPC policy framework. (...) The Panel observes that there has clearly been a great deal of local tension, misinformation and misunderstanding surrounding the filing of this request.” (Inspection Panel’s Eligibility Report, case India 1997)

Also in the case India (1997) – the only analyzed case where the Panel formulated its report after and as response to the Management’s remedial action plan – the Panel made an explicit demand to the Bank Management with respect to the remedial action plan. The Panel demanded Management to carry out the remedial action plan in consultation to, participation of and cooperation with diverse stakeholders especially those from the civil society:

“The Panel assumes that appropriate local participation as well as intensive on-the-spot Bank supervision will contribute to its prospects of successful implementation. (...) In general, if the studies and reviews result in actions to be carried out in close cooperation with directly affected PAPs and NGOs they should help answer the Requesters’ concerns”. (Inspection Panel’s Eligibility Report, case India, 1997)

Finally in all the cases the Panel emphasized in its reports that the Panel carried out the investigations in a participative manner, consulting to diverse stakeholders about the issues raised in the requests. For instance, in Argentina/Paraguay (2002):

“This report concludes the Panel’s investigation into the matters alleged in the Request for Inspection submitted to the Panel in May 2002. The current Panel’s chairperson, Ms. Edith Brown Weiss, led the investigation. Three expert consultants on environmental, hydrological and social issues assisted the Panel in its undertaking. (...). During its investigation the Panel interviewed Bank staff in Washington, D.C., visited

the project area on four occasions, met with the Requesters and other project affected people throughout the area, and met with local and national authorities in both Argentina and Paraguay as well as with EBY officials. The Panel also identified and carefully reviewed relevant project documents that the Requesters, Bank staff, Inter-American Development Bank (IDB) staff, EBY officials and other sources provided to the Panel.” (Panel’s Investigation Report, case Argentina/Paraguay 2002)

b) Right-to-know legislation

The approach of environmental assessment followed by the Bank includes right to know legislation. The right-to-know-legislation is constituted by the **World Bank Operational Policy 4.01** (on Environmental Assessment) of the World Bank (see annex 1). The OP 4.01 explicitly demands to the Bank to ensure appropriate disclosure of information, establishing it as requisite for achieving effective and democratic public participation and consultation processes during the environmental assessments:

*“For meaningful consultations between the borrower and project-affected groups and local NGOs on all Category A and B projects proposed for IBRD or IDA financing, the **borrower provides relevant material in a timely manner prior to consultation and in a form and language that are understandable and accessible to the groups being consulted.**” (All emphasis added, text describing the OP 4.01, see Annex 1)*

In the three cases, the issue of information disclosure and information sharing appear as an issue in the requests for non-compliance of the OP 4.01. In the case India (1997) the Panel commented quite extensively about the disclosure of the SSEA, though without obtaining a very large response from Management on that matter:

“[T]he [Management] Response speaks for itself (...): ‘Lack of participative process, communication, sharing of information regarding NTPC policy, entitlements, compensation, the use of petty contracts to influence PAP representatives’, etc. would mean that it is going to be extremely difficult for NTPC to convince PAPs in the ash dyke villages of Vindhayachal and Rihand to move out to be resettled and rehabilitated within NTPC policy framework. (...) The Panel observes that there has clearly been a great deal of local tension, misinformation and misunderstanding surrounding the filing of this request.”
(Inspection Panel’s Eligibility Report, case India 1997)

But is in the case **Uganda (2007)** where the issue of information disclosure is more extensively commented by both the Panel and Management, as can be noticed in the texts written by the Panel and Management on the issues “Disclosure of Project Documentation” and “Potential Impact of the Project on Lake Victoria” (see in annex 2 the table “comments about the issues raised in the request and the remedial actions to address them – case Uganda (2007)”). Moreover, in the Bank Management report corresponding to this case, Management made the following general comment:

“Management will follow up on specific stakeholder commitments through implementation of a proposed Action Plan, including (...) disclosure of the reports prepared by the Independent Panel of Social and Environmental Experts.” (Management Report, case Uganda 2007)

c) Dispute resolution

The World Bank Inspection Panel process itself is a dispute resolution system: it brings parties to a dispute together under the auspices of a neutral “third” party, often a professional mediator. However, even though the Inspection Panel was created as an entity independent from the Bank Management, it still is a World Bank entity and thus it does not fully constitute a third party. Since this dispute resolution system was created by the

Bank and by resolution of the Board, both the Panel and Management – entities part of the Bank – formally show themselves as completely agree with it by complying with their role in the Inspection Panel process, by carrying on the tasks they are in charge of.

However, in a limited number of occasions, the Panel commented about dispute resolution issues referring to the case itself. For instance, in the case India (1997), the Panel stated in its Eligibility Report that:

“Resolution of discrepancies in resettlement and other issues – both past and present – is a prerequisite to implementation of the action programs.” (Inspection Panel’s Eligibility Report, case India, 1997)

However, despite the unquestionable predominance of the environmental solving, the World Bank Inspection Panel and Management utilized the sustainability discourse in their texts.

6.4. THE SUSTAINABILITY DISCOURSE

The sustainability discourse (a reformist imaginative discourse) states that with imaginative measures human beings can have it all: economic growth, social wellbeing and a healthy environment, which are mutually reinforcing aspects (they need one to each other). Sustainability is based on the thought that economic growth is necessary, and that environmental and social issues need to be taken into consideration when promoting this economic growth, in order to ensure that the needs of the present and future generations be satisfied.

Use of the concept “sustainability”

It is unquestionable that the sustainability discourse is present in the reports produced by both the World Bank Inspection Panel and Management in the three cases.

The incorporation of the term “sustainable development” (environmental management and economic development are mutually reinforcing) by the Bank came together with its efforts to improve its environmental image, after being long criticized for the significant environmental damages caused by the projects the Bank financed (the construction of large dams is precisely a kind of project that have raised important protests). **This is reflected in the text of the OP 4.01:**

*“The Bank requires environmental assessment (EA) of projects proposed for Bank financing to help ensure that they are environmentally sound and **sustainable** (emphasis added), and thus to improve decision making.”* (Text describing the OP 4.01)

Given sustainable development is emerging as a dominant discourse and helps institutions to win credibility among the general public, many actors **define sustainable development and utilize it in their discourse in such a way that result favorable for them** (Dryzek, 1997). “Sustainable development” is a flexible term and its meaning varies across institutions: as an important concept it is politically contested. The World Bank, as an international lending organization that in general seeks to keep on the current capitalist system, should not be

an exception to this. The texts produced by the Panel and Management reveal a particular concept of sustainable development. **The definition of sustainable development managed by the Bank is such that does not diverge too much from the environmental problem solving discourse:** 1) The Bank manages the concept of “sustainable development” in general terms in such a way any World Bank project that try to be environmental friendly and socially fair can be called “sustainable”, 2) The Bank’s conceptualization of cooperation consist in the experts, project managers and environmental managers counting with the cooperation of the civil society therefore maintaining somehow the vertical relation among stakeholders that characterize the administrative rationalism, and 3) the Bank’s conceptualization of the terms of environmental disputes and their dissolution of some long-standing conflicts are imaginative enough to fit in within an elastic definition of sustainable development (e.g. calls for cooperation among diverse stakeholders), but not so much so that they still fit in within the traditional structure and functioning of the capitalist and bureaucratic industrialism.

That way, the Panel and Management – as entities that are part of the World Bank and that act in terms of the OP 4.01 – utilize an elastic Bank’s definition of “sustainable development” in their discursive practices. However, the extent in which the sustainability discourse is actually materialized in the social practices of the Panel and Management around the remedies formulation is debatable. As stated above, the sustainability discourse is much more abstract than the environmental problem solving discourse, and thus it was not found in the actual practices, methodologies and institutions surrounding the World Bank Inspection Panel and Management. Instead, the sustainability discourse in the three cases was found in the texts produced by both the Panel and Management, who have been continuously mentioning the term “sustainability” in all their reports, by positioning themselves and the Bank in favor of “sustainable development” and “sustainable use (of natural resources)”. The use of the sustainability discourse by both the Panel and Management during the three cases is showed in table 5 (see the exact fragments that reflect those discourses in annex 3). It is important to notice that in some cases the sustainable development discourse was utilized explicitly and other times was put in the texts in terms of, for instance, compatibility between the Bank and the civil society and government.

Table 5: Sustainability discourses that appear in the Inspection Panel’s and Management’s reports

Cases	Discourses used by the Panel in its reports	Discourses used by Management in its reports
Case India (1997)	<ul style="list-style-type: none"> Local people, many NGOs/activists and government want the Bank involvement Compatibility between the Bank and the civil society and government 	<ul style="list-style-type: none"> Compatibility between environmental protection and the Bank (**)
Case Argentina / Paraguay (2002)	<ul style="list-style-type: none"> Compatibility between environmental protection and the Bank (**) 	<ul style="list-style-type: none"> Resettlement can have positive impacts (**) Negative impacts can be positive (**) Negative impacts can be negligible (**)
Case Uganda (2007)	<ul style="list-style-type: none"> Sustainability (**) Compatibility between environmental protection and the Bank (**) 	<ul style="list-style-type: none"> Measures that minimize negative impacts (**) Negative impacts can be positive (**)

In the case Uganda (2007), for example, both the Panel and Management positioned themselves and the Bank explicitly in favor of “sustainable development”. The Panel expresses that efforts need to be put towards

sustainable development, not without clarifying afterwards that sustainable development is a very challenging and complex mission:

*“As this investigation shows, generating energy for development in a way that is **economically efficient, socially equitable and environmentally sustainable is hugely complex and one of the major sustainable development challenges of today** (emphasis added)”*
(Panel’s Investigation Report, case Uganda (2007))

Management stresses the importance of supporting:

*“**[S]ustainable use of Lake Victoria** (emphasis added), including water use, biodiversity, fisheries, water quality, watershed management, tourism, transportation, and other issues.”* (Management’s Report, case Uganda 2007)

Management also expresses the need of an environmentally and socially sustainable production of hydroenergy:

*“The Private Power Generation (Bujagali) Project is aimed at providing the capacity needed to overcome the supply constraints in a **least-cost and environmentally and socially sustainable manner** (emphasis added).”* (Management’s report, case Uganda 2007)

It is worth to mention that in the texts produced by the Panel and Management the sustainability discourse is found mostly in the introductory and concluding sections of the Panel’s and Management’s reports are the ones that contain more general opinions and formal comments. This is due to the fact that the introductory and concluding sections of the reports communicate the philosophy of the writer, while the body of the reports communicates the actual practices and actions performed by the Bank. Thus the introductory and concluding sections reflect more the sustainable development discourse – which is the abstract concept that the World Bank as institution affirms to follow – and the body of the reports reflects more the administrative rationalism and the democratic pragmatism discourses – which are discourses reflected more easily in the actual practice.

Other manifestations of the sustainability discourse

The sustainability discourse can be at some extent taken to the practice through three elements:

- Continue social learning among diverse actors
- Cooperation between several stakeholders in pro of the common good (de-emphasizing of the national state actors)
- Use of sustainable development indicators

Continue social learning among diverse actors – an element that is characteristic of the sustainability discourse – is promoted by the both the Bank Panel and Management, though not explicitly through the analyzed texts but because the Panel and Management formally share the Bank’s view that the Inspection Panel process is a way for the Bank to improve its performance in the compliance of the Bank’s operational policies and procedures. However, so far, the actual improvement of the Bank in this matter has not been significant, given the still large quantity of requests raised to the Inspection Panel on environmental assessment in hydroelectric projects.

With respect to the cooperation between several stakeholders in pro of the common good and the consequent de-emphasizing of the national state actors was explicitly defended only by the Inspection Panel and only in the first case, where the Panel called for *“close cooperation between NTPC and coal mining activities in the Singrauli area”*.

Finally the use of sustainable development indicators is missing in all the statements, comments and measures contained in the Panel’s and Management’s reports.

That way, it is clear that the Panel and Management share the discourse of “sustainable development” only as an abstract concept that they refer to in their reports. However, **the sustainability discourse is absent in the few elements that would make this concept reach somehow the practice.**

In the following table the main discourses used by the Panel and Management **explicitly in the texts they produced** are listed. The symbol (*) indicates those discourses that correspond to the environmental solving discourse, while the symbol (**) indicates those discourse that correspond to the sustainability discourses.

Table 6: Main discourses used by the World Bank Inspection Panel in their reports

PURPOSE	INDIA (1997) Panel's discourses when commenting its findings on the eligibility of the request and Management's response and remedial actions	ARGENTINA/PARAGUAY (2002) Panel's discourses when presenting its findings on the issues	UGANDA (2002) Panel's discourses when presenting its findings on the issues
ACKNOWLEDGING: I) GOOD PERFORMANCE II) COMPLIANCE FINDINGS	<ul style="list-style-type: none"> • Environmental and impact assessment (*) • Local people, many NGOs/activists and government want the Bank involvement (**) • Compatibility between the Bank and the civil society and government (**) 	<ul style="list-style-type: none"> • Environmental and impact assessment (*) • Consistency with / reference to the requirements of OP 4.01 (*) 	<ul style="list-style-type: none"> • Environmental and impact assessment (*) • Consistency with / reference to the requirements of OP 4.01 • Systematic analysis (*) • Expertise (*)
BACKING: I) NEED FOR COMPLIANCE II) NON-COMPLIANCE FINDINGS	<ul style="list-style-type: none"> • Environmental and impact assessment (*) • Consistency with / reference to the requirements of OP 4.01 (*) • Expertise (*) • Management (*) • Environmental risks (*) • Consultation / Participative approach (*) • Sufficient evidence (*) • Compatibility between environmental protection and development (**) • On-the-spot Bank supervision (*) • Deadlines (*) • Resolution of discrepancies (*) • Large projects (*) • Compensation (*) • Practical measures (**) • Urgency (**) • Cooperation (**) 	<ul style="list-style-type: none"> • Environmental and impact assessment (*) • Consistency with / reference to the requirements of OP 4.01 • Management (*) • Limitations for financing environmental and social management exist (*) • Compatibility between environmental protection and the Bank (**) • Safeguards (**) 	<ul style="list-style-type: none"> • Environmental and impact assessment (*): <ul style="list-style-type: none"> ○ Capacity building ○ Mitigation measures ○ Area of influence ○ Clear and transparent governance ○ Consideration of cultural and spiritual values • Consistency with / reference to the requirements of OP 4.01 (*) • Expertise (*) • Complexity (*) • Sufficiency evidence (*) • Social-environmental costs (*) • Sustainability (**) • Compatibility between environmental protection and the Bank (**) • Use of the environmental resources (*) (**)

Table 7: Main discourses used by the World Bank Management in their reports

PURPOSE	INDIA (1997): Management's discourses when responding to the request and formulating the remedial actions	ARGENTINA/PARAGUAY (2002): Management's discourses when responding to the Panel's findings on the issues	UGANDA (2007): Management's discourses when responding to the Panel's findings on the issues
ACKNOWLEDGING OMISSIONS	<ul style="list-style-type: none"> • Environmental and impact assessment (*) • Development pathway is debatable (*) 	<ul style="list-style-type: none"> • Environmental and impact assessment (*) 	<ul style="list-style-type: none"> • Environmental and impact assessment (*) • Consistency with / reference to the Panel's report (*) • Panel's criteria (*) • Efficiency of EA (*) • Qualitative VS qualitative terms (*) • Sustainability (*) • Environmental Management (*)
DEFENDING PERFORMANCE AND REMEDIAL ACTIONS	<ul style="list-style-type: none"> • Environmental and impact assessment (*) • Management's opinion (*) • Expertise (*) • Consultation / Participative approach (*) • Compatibility between environmental protection and the Bank (**) • Practical measures (**) 	<ul style="list-style-type: none"> • Environmental and impact assessment (*): <ul style="list-style-type: none"> ○ Screening • Consistency with / reference to (*): <ul style="list-style-type: none"> ○ Requirements of OP 4.01. • Expertise: (*) <ul style="list-style-type: none"> ○ International consultants ○ Competence of the environmental management ○ Technically sound national and/or international practices • Consultation / Participative approach (*) • Limitations for financing environmental and social management exist (*) • National/International regulations and standards. (*) • Management (*): Evaluation protocol • Strengthening of Bank supervision (*) • Environmental and social mitigation measures (*) • Emerging understanding of the OD 4.01 when it had been just recently introduced (*) • Resettlement sites issues are related less to environmental assessment than to construction supervision and maintenance (*) • Contracts with clauses (*) • Requirements for contractors (*) • Improvement of the borrower (**) • Resettlement can have positive impacts (**) • Negative impacts can be positive (**) • Negative impacts can be negligible (**) 	<ul style="list-style-type: none"> • Environmental and impact assessment (*) <ul style="list-style-type: none"> ○ Scope of EA ○ Contribution of EA to development • Consistency with / reference to (*): <ul style="list-style-type: none"> ○ SSEA ○ Requirements of OP 4.01. ○ Private sector projects and timing of key elements ○ Management's undertakings ○ 2002 Action Plan ○ Panel's reports ○ Resettlement and Community Development Action Plan RCDAP ○ Inception Report • National/International regulations and standards: Global best practice (*) • Expertise (*) • Management (*) • Consultation / Participative approach (*) • Limitations for financing environmental and social management exist (*) • Environmental Management (*) • Scope of the project (*) • Not highly quantitative terms to facilitate communication to stakeholders • Multi-criteria (*) • Already ongoing activities with the same purpose (*) • Availability of information (*) • Technical issues (*) • Uncertainties (*) • Risks (*) • Use of Environmental Resources (*) • Sustainability (*) • Complexity (*) • Environmental Management (*) • Compensation (*) • Measures that minimize negative impacts (**) • Negative impacts can be positive (**) • Use of the environmental resources (*) (**)

CHAPTER 7: COMPATIBILITY OF AGENDAS REFLECTED IN THE LINGUISTIC FEATURES OF TEXTS

The compatibility of agendas between the World Bank Inspection Panel and Management can be reflected as well in the texts they produce, specifically in the linguistic features they use to make their statements. In that sense, linguistic features can give a light on the compatibility of agendas of the Panel and Management by showing the kind of relationship that exists between them:

- The interactional control or relationship between the Panel and Management
- The affinity of the Panel and Management with (or their commitment to) their statements

The discussions made in this chapter are based on the compilation of texts produced by the Inspection Panel and Bank Management around the O.P. 4.01 (on environmental assessment). The compilation of the selected fragments is showed in annex 2.

7.1. ANALYSIS OF LINGUISTIC CHARACTERISTICS

The linguistic characteristics analyzed are the grammatical person utilized (third, first or second person), the tense utilized (passive or active tenses), the modalities utilized and the formal diplomatic expressions utilized. Details about these findings are given below.

7.1.1. ANALYSIS OF THE GRAMMATICAL PERSON: NO PERSONIFICATION

In general, both the Panel and Bank Management have been using **almost exclusively the third person** when referring to themselves and about the other. Therefore, there is no personification of themselves or the other. This can be appreciated in the examples showed in the following table:

Table 8: Examples of utilization of the third person by the Panel and Management

Case	By the Panel	By Management ¹⁵
India (1997)	<i>"The Panel (emphasis added) assumes that appropriate local participation as well as intensive on-the-spot Bank supervision will contribute to its prospects of successful implementation"</i> ¹⁶	<i>"In reference to OD 4.01 (...) Management (emphasis added) considers that it has partially complied with this OD".</i>
Argentina / Paraguay (2002)	<i>"[T]he Panel (emphasis added) finds that there was no evaluation of the consequences of the provision of reticulated water and sewerage facilities to resettlement sites in Encarnación (...)"</i> ¹⁷	<i>"Management (emphasis added) acknowledges the finding of compliance by the Panel."</i>
Uganda (2007)	<i>"The Panel (emphasis added) notes that the Project Sponsor contracted international consultants to prepare the required SEA (...)"</i> ¹⁸	<i>"Management (emphasis added) launched the SSEA prior to finalization of the preparation of the new Project."</i>

7.1.2. ANALYSIS OF TRANSITIVITY: SLIGHT TREND TO OMIT / REDUCE THE RESPONSIBLE AGENT AND EMPHASIZE THE EFFECT

From the analysis it was found that, even though both passive and active tenses are utilized more by the Panel than by the Bank Management, in general the **passive tenses clearly predominates over the active tenses**, though the intensity in which they appear is inconstant over the time.

Both the Panel and Management have been mixing the passive tenses (grammatical constructions that emphasize the action and not actor/responsible) and active tenses (grammatical constructions that emphasize the actor/responsible and not the action). However, generally speaking, the passive tenses are used much more frequently than the active ones. In all the three cases, most of the many times the Panel communicated situations of inadequate performance by Management without mentioning explicitly that Management was the responsible of those deficiencies and highlighting only to the effect:

- *"The Response and Action Programs fail to address current problems on the ground."* (Inspection Panel's Eligibility Report, Case India, 1997)
- *"There are many examples of inappropriate road and drainage design in the proposed resettlement areas which could have been avoided through proper environmental assessments and stronger Bank supervision."* (Inspection Panel's Investigation Report, Case Argentina/Paraguay, 2002)
- *"The fact that the Environmental management plan is not an integral part of the SEA that has been disclosed is a deficiency. This is not in compliance with OP 4.01"* (Inspection Panel's Investigation Report, Case Uganda, 2007)

Nevertheless it is possible to find some occasions, where the Panel expressed findings of non-compliance using the active tense with expression such as **"The Bank's failure in..."**, **"the Bank failed in..."** or **"Management did not comply with..."**. Overall, the active tenses are scarcer in the Bank Management's reports than in the Panel's reports. In the case India (1997), the few active tenses that appeared in the Panel-produced documents were not strong statements noticing Bank's failures, but instead they were neutral statements referred not to mistakes but to decisions made by the Bank or statements declaring the Bank's efforts to solve the problems:

¹⁵ Management Response: Action Program

¹⁶ Panel's Eligibility Report

¹⁷ Panel's Investigation Report

¹⁸ Panel's Investigation Report

- *“The decision (...) to adopt more dykes as an acceptable ash disposal technology was approved **by the Bank** (emphasis added) and this decision did create the need for a large resettlement program with considerable management problems and environmental risks.”* (Inspection Panel’s Eligibility Report, case India 1997)
- *“The Action Program indicates **Management’s** (emphasis added) serious endeavour to mitigate the overall problems in the Singrauli energy sector plus all projects with resettlement components in India in a challenging way.”* (Inspection Panel’s Eligibility Report, case India 1997)

It was mainly in the second case (Argentina/Paraguay, 2002) where they used the active tenses more often. However, the active tenses were used to acknowledge compliance of Management with the Bank’s policies and procedures, and when they were used to directly attribute to the Bank/Management responsibility over the problems they were used in combination with passive tenses, thus neutralizing the mention of the responsible agent (the Bank Management). Some examples are showed below:

Use of active tenses to acknowledge compliance of Management with the Bank’s policies and procedures:

- *“Before bringing the Second Yacyretá Project to the Board for approval in 1992, **the Bank** (emphasis added) had a full environmental assessment prepared” including an Environmental Management Plan (PMMA or EMP) and an Action Plan for Resettlement and Rehabilitation (PARR or RRAP). “**The Bank** (emphasis added) thus met the requirement of OD 4.01 at that time.”* (All emphasis added, Inspection Panel’s Investigation Report, case Argentina/Paraguay 2002)

Combined use of active and passive tenses to refer to the Bank/Management responsibility over problems:

- *“[The EA] are very inadequate (passive tense). They do not comply with the requirements of OD 4.01. The range of **environmental matters** addressed is limited (passive tense); **alternative resettlement sites** are not considered (passive tense); few **mitigation** measures are suggested (passive tense), and **affected parties** were not consulted (passive tense). (...) If the Bank did not require environmental assessments for the provision of infrastructure in Encarnación, as it appeared to the Panel throughout its research, **Management** did not comply with OD 4.01 (active tense). If **the assessments**, which were prepared by EBY consultants are intended to constitute the required assessments, as Management now contends, they are highly inadequate (passive tense). Thus, **Management** is not in compliance with OD 4.01 with respect to the Encarnación portion of [Reform Project for the Water and Telecommunications Sectors and SEGBA V] (active tense).”* (All emphasis added, Inspection Panel’s Investigation Report, case Argentina/Paraguay 2002)
- *“**The EA** (...) was inadequate in several respects in its consideration of urban and peri-urban environments (passive tense). (...) **The EA** did not adequately consider the effects of population growth on Encarnación, or the effects of the resettlement developments on the city’s infrastructure (passive tense). (...) **The safeguards** to assess the implications for water supply, sewers, and urban drainage (...) were by-passed (passive tense). (...) **Management’s failure** (...) is not in compliance with OD 4.30 as well as OD 4.01.”* (All emphasis added, Inspection Panel’s Investigation Report, case Argentina/Paraguay 2002)

7.1.3. ANALYSIS OF SIGNS OF CONCILIATION

In the three cases the texts produced by the Panel and Management include formal words, expressions and sentences aimed to show a very high mutual deference from one to the other (see tables below). From the analysis, it was found that both the Panel and Management have **noticeably increased the frequency in the use of signs of conciliation over the time**, as noticed in the tables below.

In a considerable number of occasions, and progressively more over the time (along the three cases), the Panel stated that it “**understands**” difficulties or external factors/circumstances that may have tramped the compliance of the O.P. 4.01, that it “**appreciates**” or “**acknowledges**” the efforts of Management or the Bank in general, or that it considers the remedies proposed by Management as appropriate. Also, over the time the Bank Management has been increasingly indicating that appreciates the Panel’s findings and considers them important. Management has also progressively acknowledging with deference some parts of the Panel’s findings of non-compliance. Especially in the two last cases, Management emphasized that it shared the opinion of the Panel. In all the three cases it is possible to notice how Management explicitly acknowledged Panel’s opinions by making reference to them (e.g. “**As the Panel notes...**”, “**Management agrees with the Panel that...**”) and affirmed that Management reports and proposed actions aim to address the Panel’s findings.

Table 9: Signs of conciliation in the case India (1997)

Panel’s Investigation Report	Management’s Report
<p><i>“The Action Program indicates Management’s serious endeavour to mitigate the overall problems in the Singrauli energy sector plus all projects with resettlement components in India in a challenging way.”</i></p> <p><i>“In conclusion, the Broader Action Program for the future is a comprehensive approach to rectify very complex and difficult problems”.</i></p>	<p><i>“The mission included members of the 1995 Resettlement and Rehabilitation (R&R) mission whose report was referred to in the Panel’s Report.”</i></p> <p><i>“A review of the Project and of NTPC performance was aimed “to address further the concerns raised in the Panel Report and Recommendation”.</i></p>

Table: Signs of conciliation in the case Argentina/Paraguay (2002)

Panel’s Investigation Report	Management’s Report
<p>The EA contains the section “Analysis of Alternatives”. <i>“Given the history of the project before the bank become involved, the Assessment understandably does not examine the full suite of possible project alternatives.</i></p> <p><i>On February 24, 2004, the Panel issued its report outlining the findings of the investigation. Management appreciates the Panel’s thorough presentation of its findings.”</i></p> <p><i>“Management acknowledges the Panel’s recommendations, finds them constructive, and believes that the proposed Action Plan responds to the issues raised in the Panel’s Report. Management is committed to applying its policies and procedures in full and will make every effort to pursue its mission statement in the context of the Project.”</i></p> <p><i>“The environmental screening process for phase two of the Yacyretá Project and for the Asunción Sewerage project was appropriate.”</i></p> <p><i>“Before bringing the Second Yacyretá Project to the Board for approval in 1992, the Bank had a full environmental assessment prepared. An Environmental Management Plan (PMMA or EMP) as well as an Action Plan for Resettlement and Rehabilitation (PAR or RRAP) accompanied the assessment. The Panel finds that the Bank thus met the requirement of OD 4.01 at that time.”</i></p>	<p><i>“Management shares this concern.”</i></p> <p><i>“Management acknowledges the finding of compliance by the Panel.” (four times)</i></p> <p><i>“Management acknowledges that prior to 1995, more could have been done in the care and documentation of the screening process followed.”</i></p> <p><i>“Management acknowledges that these resettlement site documents cannot be considered EAs as the term EA is defined by OD 4.01.”</i></p> <p><i>“The reservoir’s environmental management is competent, as the Panel’s report acknowledges.”</i></p> <p><i>“Management acknowledges that the EA did not assess induced effects and the effects of resettlement sites on the overall urban system”</i></p> <p><i>“Management acknowledges these issues noted by the Panel.</i></p> <p><i>“Management acknowledges these points.”</i></p>

Table 10: Signs of conciliation in the case Uganda (2007)

Panel's Investigation Report	Management's Report
<p><i>"The Project has appropriately been classified as category "A", the category for projects with the most serious level of impacts. This complies with OP 4.01."</i></p> <p><i>"The Panel acknowledges that the necessary studies have been conducted and disclosed, albeit independently, and considered by Management and referred to specifically in the PAD. However, the failure to disclose the SSEA or its relevant parts as an integral part of the Bujagali Hydropower Project's documentation in a timely manner is not consistent with OP 4.01."</i></p> <p><i>Based on its review of relevant research studies, the Panel observes that the status of the fish species inhabiting both Lake Victoria and the Victoria Nile is disputed and that ongoing research is desirable. However, significant effort has been devoted to study these fish in the reaches of the Victoria Nile that will be affected by the Bujagali Hydropower Project.</i></p> <p><i>(...) The Panel consequently finds Bank Management acted consistently with the provisions of OP 4.01 and OP 4.04 in so far as these relate to assessment of the likely consequences of the Bujagali Hydropower Project on fish stocks in the Upper Victoria Nile and Lake Victoria.</i></p> <p><i>"The Panel finds that Management has complied with the procedures set forth in OP 4.37."</i></p> <p><i>"The Panel's hydrology expert concluded that the hydrologic data sets used in Project design constitute a reliable data series and its variability over time is a natural condition, which can be observed in other hydrologic series of different parts of the world, when the hydrologic series is long enough. The Panel finds that this provides an appropriate baseline for analysis of environmental and economic issues, in compliance with OP 4.01."</i></p> <p><i>"The Panel finds that the possible effect of climate change on hydropower projects on the Victoria Nile has been seriously considered in the SSEA. This analysis meets the requirements of OP 4.01. As noted above, however, the SSEA was not properly disclosed as a Project document"</i></p>	<p><i>"On August 29, 2008, the Panel issued its report outlining the findings of the investigation. This report responds to the findings of the Panel. (...) Management believes that the Bank is making every effort to apply its policies and procedures and to pursue its mission statement in the context of the project. Management notes the Panel's findings and is committed to fulfilling the Management Action Plan described above and to supervise and monitor the implementation of environmental and social policies and procedures. Management believes that the proposed Action Plan addresses the Panel's concerns.</i></p> <p><i>Management acknowledges the Panel's finding Management acknowledges that the SSEA was not disclosed as an integral part of the Project's documentation. The circumstances of the first Bujagali project (which was not completed) led to 'reports from one project/program being used to fulfill the requirements of another project' as the Panel notes in (...) its current Investigation Report. While this situation may not have been anticipated by the drafters of OP 4.01, who envisioned a single borrower with responsibility for all EA documents, Management agrees with the Panel's view (...) that "in the interests of efficiency, an EA may, in principle, refer to and/or incorporate, as appropriate, other relevant studies."</i></p> <p><i>Management also agrees with the Panel that presentation of the Project to stakeholders (e.g., in the Executive Summary of the SEA) could have been strengthened in ways such as those suggested by the Panel ('clear statement and graphic showing the inter-relationships and entire suite of documents that constitute the studies making up the SEA'). However, the approach taken in the Project documentation is consistent with the requirements of OP 4.01.</i></p> <p><i>Management acknowledges the Panel's finding of compliance with OP 4.37 regarding the safety of dams.</i></p> <p><i>Management acknowledges the Panel's finding of compliance with OP 4.01 regarding the appropriateness of hydrological data series used in the Project.</i></p> <p><i>Management acknowledges the critical importance of sustainable management of Lake Victoria (including water usage (e.g., energy, water supply, etc.), fisheries management, pollution control, tourism, transport, and many other interrelated issues), and is supporting collaborative efforts by the EAC in the context of the LVEMP.</i></p> <p><i>Management acknowledges that there are two opposing views of the Project's potential impact on Lake Victoria. Project opponents contend that as demand continues to rise, it could add to pressure for over-abstraction of Lake Victoria, since</i></p> <p><i>Management acknowledges the Panel's finding of compliance regarding the consideration in the SSEA of the possible effect of climate change on hydropower projects on the Victoria Nile. Management agrees that the PAD's language might have been more appropriately moderated"</i></p>

From the tables, it is possible to see that in the case India (1997) Management simply expressed that Management's report was to respond to the issues raised in the Panel's report and referenced the Panel's findings, while in the cases Argentina/Paraguay (2002) and Uganda (2007) Management explicitly mentioned the high accuracy of the Panel's findings and comments. In the following examples, it is possible to notice how Management's signs of respect to the Panel became more significant over the time (over the three analyzed cases):

Case India (1997)

- *The remedial action aimed to solve environmental assessment-related issues was aimed “[T]o address further the concerns raised in the Panel Report and Recommendation”.* (All emphasis added, Updated Project-Specific Action Program, case India 1997)
- *“For continuity, the mission [held by Management to make a more detailed Specific Action Program] included members of the 1995 Resettlement and Rehabilitation (R&R) mission whose report was referred to in the Panel’s Report. Extensive consultation was also initiated with concerned corporations, government agencies, Non-Governmental Organizations (NGOs), and project-affected people and communities regarding the Panel Report and Recommendation.”* (All emphasis added, Management’s Updated Action Program, case India 1997)

Case Argentina/Paraguay (2002)

- *“On February 24, 2004, the Panel issued its report outlining the findings of the investigation. Management appreciates the Panel’s thorough presentation of its findings.”* (All emphasis added, introduction of the executive summary of the Management Report, case Argentina/Paraguay 2002)
- *“Management acknowledges the Panel’s recommendations, finds them constructive, and believes that the proposed Action Plan responds to the issues raised in the Panel’s Report. Management is committed to applying its policies and procedures in full and will make every effort to pursue its mission statement in the context of the Project.”* (All emphasis added, conclusion of the executive summary of the Management Report, emphasis added, introduction of the executive summary of the Management Report, case Argentina/Paraguay 2002)

Case Uganda (2007)

- *“The presentation of the Project to stakeholders (...) could have been strengthened in ways such as those suggested by the Panel.”* (All emphasis added, Management Report, case Uganda 2007)
- *“On August 29, 2008, the Panel issued its report outlining the findings of the investigation. This report responds to the findings of the Panel.”* (All emphasis added, Introduction of Management Report, case Uganda 2007)
- *“Management believes that the Bank is making every effort to apply its policies and procedures and to pursue its mission statement in the context of the Project. Management notes the Panel’s findings and is committed to fulfilling the Management Action Plan described above and to supervise and monitor the implementation of environmental and social policies and procedures. Management believes that the proposed Action Plan addresses the Panel’s concerns. Management plans to report to the Board on the progress of its proposed Action Plan a year from now.”* (All emphasis added, Conclusion of Management Report, case Uganda 2007).

7.1.4. ANALYSIS OF MODALITY

The modality of truth (which present the statements as objective truth) has been the most predominant in the texts of both the Panel and Management, constantly along the three analyzed cases. That way, both the Panel has constantly made affirmations presenting them as an objective truth. A very common way the Panel and Management have to do so is by starting sentences with “The Panel/Management finds/notes...”, observed in the three cases.

Additionally, the modalities of obligation and permission were utilized only by the Panel, not by Management: The Panel used significantly both modalities in the first case (India 1997) and in the last case

(Uganda 2007), and only the modality of obligation in the last case. The Panel used the modalities of permission and obligation **for suggesting the Bank Management to improve its performance or to take appropriate measures to take**. Management does not utilize the modalities of obligation or permission to propose remedial actions to the Board, despite the fact the remedial actions described by Management are by definition proposals that need to pass through the approval of the Board.

Not the Panel, but only the Bank Management utilized significantly the modality of subordinate clauses. This modality is the one used by Management to present the remedial actions to be implemented to address the issues raised in the request. For instance:

- *“Together, these [the seven specific activities that conforms the Broader Action Plan] constitute a body of work and experience which **will** (emphasis added) be directly relevant to the project-specific solutions being developed under the Action Program” (Management report, case India 1997)*
- *“Management **will** (emphasis added) request that EBY update the screening process (...) and that include a quality assurance protocol to evaluate the environmental conditions and the quality of the civil works in the resettlement sites. The Bank **will** (emphasis added) continue to monitor engineering supervision and contractor insurance practices and will request improvements, as necessary.” (Management report, case Argentina/Paraguay 2002)*
- *“Management **will** (emphasis added) follow up on NEMA’s commitment to establish a Project Monitoring Committee, and follow up on strengthening the capacity of BEL and BIU’s Environmental and Social unit. In the course of normal supervision, Management **will** (emphasis added) follow up on coordination arrangements of the MEMD Project Inter-Agency Coordination Committee.” (Management report, case Uganda 2007)*

Additionally, **the Bank Management has used the modality of subordinate clauses to present its arguments more convincingly**. For instance, in the case Uganda (2007) Management backed that it had complied with the OP 4.01 in the following manner:

*“Management believes it has adequately described the current hydro operating regime, the Government’s efforts to return to the Agreed Curve operating regime, and the benefits that the Bujagali Project **will** bring through more efficient use of water for hydropower generation.” (Management report, case Uganda 2007)*

With respect to the modality of emphasis, the **Panel significantly decreased the use of modality of emphasis along the cases**, while Management never used until the last case. The only visible occasion where Management has used this type of modality was in the case Uganda (2007):

“Management acknowledges the critical importance of sustainable management of Lake Victoria” (Management report, case Uganda 2007)

The modality of opinion is highly used by Management in all the three cases, usually to deny some of the Panel’s findings of non-compliance. For instance, in the case Uganda (2007) Management said the following about the environmental management plan:

*“Management **believes** (emphasis added) that the approach taken – framework EMPs in the EA document, followed by detailed EMPs once contractors were selected – fulfills the intent of OP 4.01 and is consistent with global best practice.” (Management Report, case Uganda 2007)*

Contrarily, the Panel used the modality of opinion significantly only in the first case, probably because the eligibility reports are aimed – by definition – to provide only preliminary findings because it is not a deep investigation. Since in the case India (1997) the Panel's text that was analyzed was the eligibility report, only in this case it is possible to find a more extensive use of these modalities.

Only in the last case both the Panel and Management utilized significantly the modality of doubt. Thus, in the last case it is evident that the Panel and Management expressed a limited degree of certainty when commenting about the issues raised in the request and about the remedial actions to be implemented. However, also in the first case the Panel used this modality in a quantity of occasions, which is also due to the preliminary character of the findings communicated in the Eligibility Reports.

The use of the modality of doubt in the case India (1997) was used by the Panel to express both the need to make a deeper investigation of the issues raised in the request and the need to improve the remedial action plan proposed by Management in its first response, as showed in the following examples:

- To express the need to make a deeper investigation of the issues raised in the request: “[T]he Panel **believes** there is **prima facie** evidence of harm. It is **possible** that serious violations by the Bank of its policies and procedures **may** have occurred to a degree beyond those identified by Management in its Response.” (All emphasis added)
- To express the need to improve the remedial action plan proposed by Management in its first response: “The Panel understands that the past studies to be revisited **might** (emphasis added) also be updated and translated into practical measures.”

The modality of doubt was utilized by Management mainly to minimize the existing or potential social-environmental problems resulted from the project. For instance:

- “Management (...) notes recent evidence suggesting that financial sustainability of effective environmental management **may be** more robust than previously apparent.” (Management Report, case Argentina/Paraguay 2002)
- “Any potential additional impacts that **might** be negative were expected to be negligible” (Management Report, case Argentina/Paraguay 2002)
- “On the other hand, a geographical concentration of multiple options **might** affect the regional socio-economic dynamic and therefore will generate some impacts that **may** accumulate in time and space” (SSEA Section 14.7.2).” (Management Report, case Uganda 2007)
- “[T]he SSEA identified the following potential environmental impacts: Virtually no change in flow regime as (...) changes in flow regime (...); possible slight reduction in sediment and nutrient flow would lead to improved water quality; virtually no change in evaporation/ evapotranspiration rates (...).” (Management Report, case Uganda 2007)

Finally, the **modality of hedging is only utilized by Management and only in the last case (Uganda, 2007) with the purpose of making the negative impacts of the project appear less significant.** For instance:

- “Possible **slight** reduction in sediment and nutrient flow would lead to improved water quality”
- “**Some** localized loss of habitat”

The following tables show all the fragments of texts that contain the most evident modalities utilized by the Panel and Management in the three cases (all emphasis in the fragments were added). The tables does not show all the fragments containing the modality of truth because this modality was found almost in all parts of

the text, and thus only an example of the use of this modality by the Panel and Management was shown for each case.

Table 11: Modalities used by the World Bank Inspection Panel and Management in the case India (1997)

Panel's Investigation Report	Management's Report
<p>Truth e.g. "The Response and Action Programs fail to address current problems on the ground"</p> <p>Emphasis "This would require identifying the factual source of current R&R problems now so that Management can propose remedial actions based on local solutions as a matter of urgency." "[T]he Panel recommends that the Executive Directors authorize – as a matter of urgency – an investigation into the involuntary resettlement and associated of the aspects." "The Response and Action Programs fail to address current problems on the ground. None of the conflicting reports on the situation deny outright the allegations of the Requesters. The numerous problems raised should be mitigated or prevented now instead of waiting for retrospective identification through future reviews/studies and future mitigation activities or remedial actions." Remedial actions "are at present vital for India's fight to alleviate poverty and future development." OD 4.01 is useful "particularly where involuntary resettlement is to take place" and is "of key importance" "The Panel observes that there has clearly been a great deal of local tension, misinformation and misunderstanding surrounding the filing of this request." "The decision (...) to adopt more dykes as an acceptable ash disposal technology was approved by the Bank and this decision did create the need for a large resettlement program with considerable management problems and environmental risks."</p> <p>Obligation "The numerous problems raised should be mitigated or prevented now instead of waiting for retrospective identification through future reviews/studies and future mitigation activities or remedial actions." "[T]he Panel believes it is imperative to conduct an immediate independent investigation of the facts. This is necessary in order to see if there is evidence of the Requesters' allegations of harm; and if so, to identify whether such harm stems (...) from acts or omissions of the Bank in violation of ODs (...) 4.01." "Any actions need to be taken in the context of the current and inevitable development of large scale open pit coal mining to fuel thermal power plants and consequent ash processing in this area"</p> <p>Permission "In general, if the studies and reviews result in actions to be carried out in close cooperation with directly affected PAPs and NGOs they should help answer the Requesters' concerns regarding the overall past and present situation in Singrauli." "The Panel understands that the past studies to be revisited might also be updated and translated into practical measures." "The Panel assumes that appropriate local participation as well as intensive on-the-spot Bank supervision will contribute to its prospects of successful implementation." "This would require identifying the factual source of current R&R problems now so that Management can propose remedial actions based on local solutions as a matter of urgency." "In light of the objectives of OD (...) 4.01, this calls also for close cooperation between NTPC and coal mining activities in the Singrauli area to avoid involuntary resettlement and where this is not possible, to achieve a harmonized resettlement and rehabilitation strategy including practical job opportunities"</p> <p>Opinion "[T]he Panel believes there is prima facie evidence of harm. It is possible that serious violations by the Bank of its policies and procedures may have occurred to a degree beyond those identified by Management in its Response." "The Panel considers that resolution of discrepancies in resettlement and</p>	<p>Truth e.g. "Induced development and other sociocultural aspects were addressed in the project specific EAs and the related Environmental Study of the Singrauli area"</p> <p>Emphasis "Lack of participative process, communication, sharing of information regarding NTPC policy, entitlements, compensation, the use of petty contracts to influence PAP representatives', etc. would mean that it is going to be extremely difficult for NTPC to convince PAPs in the ash dyke villages of Vindhayachal and Rihand to move out to be resettled and rehabilitated within NTPC policy framework." "The task will be carried out "with urgent attention to finding practical solutions to immediate problems facing those who have not yet received their full entitlements under RAPs or ReAPs of the Project."</p> <p>Subordinate clauses "Together, these [the seven specific activities that conforms the Broader Action Plan] constitute a body of work and experience which will be directly relevant to the project-specific solutions being developed under the Action Program" "The objective (...) will be to assess the extent to which the project has been successful in resettling and rehabilitating project-affected people/project-affected families. The study will recommend remedial actions in accordance with the R&R policy to be considered by NTPC in consultation with the Bank and other stakeholders, and will be an input into the modification of the ReAPs and RAPs" and "to ensure that they represent realistic and implementable plans." "XIDAS will scope out the terms of reference and detailed work program following discussions with the affected population, concerned NGOs, and other stakeholders. The task will be carried out "with urgent attention to finding practical solutions to immediate problems facing those who have not yet received their full entitlements under RAPs or ReAPs of the Project."</p> <p>Opinion "Management considers that it has partially complied with this OD (...). Management considers that access to information has been adequate after the initial problems were corrected." "The Environment Department considered the analysis, findings, and recommendations of this study to be sufficiently significant not only for India but Bank-wide and has recommended wider dissemination. A workshop is scheduled in the Bank in mid-September."</p>

Panel's Investigation Report	Management's Report
<p><i>other issues – both past and present – is a prerequisite to implementation of the Action Programs. For this reason, the Panel believes it is imperative to conduct an immediate independent investigation of the facts. This is necessary in order to see if there is evidence of the Requesters' allegations of harm; and if so, to identify whether such harm stems (...) from acts or omissions of the Bank in violation of ODs (...) 4.01."</i></p> <p>Doubt <i>"[T]he Panel believes there is prima facie evidence of harm. It is possible that serious violations by the Bank of its policies and procedures may have occurred to a degree beyond those identified by Management in its Response." <i>"Lack of local consultations and participation in both preparation and implementation of the R&R component of the Project appears, prima facie, to be the root cause of past and current problems and complaints, including a reluctance or resistance to relocation."</i></i></p>	

Table: Modalities used by the World Bank Inspection Panel and Management in the case Argentina/Paraguay (2002)

Panel's Investigation Report	Management's Report
<p>Truth <i>"The Panel finds that the EA for the Second Yacyretá Project was inadequate in several respects in its consideration of urban and peri-urban environments"</i></p> <p>Subordinate clauses <i>"The Panel finds that (...) the project's financial position and that both the natural environment and project-affected people will suffer additional harm if the project's environmental management practices deteriorate."</i></p> <p>Emphasis <i>"The Panel has reviewed the Assessments and finds that they are very inadequate" <i>"The Panel finds that the future environmental management of the Yacyretá Project is critically threatened" <i>"The EA does realistically consider alternatives for other aspects of the project."</i></i></i></p>	<p>Truth e.g. <i>"The new infrastructure (...) benefited the host population as well as those resettled."</i></p> <p>Subordinate clauses <i>"Management will request that EBY update the screening process (...) and that include a quality assurance protocol to evaluate the environmental conditions and the quality of the civil works in the resettlement sites. The Bank will continue to monitor engineering supervision and contractor insurance practices and will request improvements, as necessary." <i>"Through its supervision, the Bank will continue to monitor closely compliance with the Legal Agreements (Section 2.23 of the Project Agreement), including the environmental and social mitigation measures, and will ensure that EBY is apprised of its findings, with a view to improving EBY's capacity to maintain adequate environmental management practices for the Project over the long term." <i>"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."</i></i></i></p> <p>Opinion <i>"[Management] also believes that design and quality issues in the resettlement sites are related less to environmental assessment than to construction supervision and maintenance." <i>"It is likely that as part of the broader reforms taking place in the energy sector in Argentina, the price for power paid by the Government of Argentina to EBY will rise from its current low level to one closer to the price paid precrisis. If so, the recurring cost of the PMMA will fall from the current 4 percent of annual revenues to approximately 1 percent" <i>"The new infrastructure (...) benefited the host population as well as those resettled. Any potential additional impacts that might be negative were expected to be negligible." <i>"Management (...) notes recent evidence suggesting that financial sustainability of effective environmental management may be more robust than previously apparent."</i></i></i></i></p>

Table 12: Modalities used by the World Bank Inspection Panel and Management in the case Uganda (2007)

Panel's Investigation Report	Management's Report
<p>Truth <i>"The Panel finds that the future environmental management of the Yacireta Project is critically threatened"</i></p> <p>Emphasis <i>"The Panel is concerned, however, that the analysis unduly narrowed its consideration of alternatives on the basis of a priori judgments rather than exploring all technically feasible options, including those that would not involve flooding the Bujagali falls and thus have lower social and environmental costs, and laying them out in a systematic way along with their economic, social and environmental benefits and costs, so that judgments on optimal alternatives could be made with a full understanding of the trade-offs involved."</i></p> <p>Subordinate clauses <i>"[S]ignificant effort has been devoted to study these fish in the reaches of the Victoria Nile that will be affected by the Bujagali Hydropower Project."</i></p> <p>Obligation <i>"[T]he economic and financial aspects of the options should become the determining factor in selecting the preferred option." Management performance "is not consistent with OP 4.01's provisions that feasible alternatives should be explored systematically to meet the basic Project objectives"</i></p> <p>Opinion <i>"Uganda is facing a serious power supply crisis. The Panel wishes to place on record that it considers energy a crucial factor in Uganda's development."</i></p> <p>Doubt <i>"The Project would inundate Bujagali Falls and other natural habitats, which are sites of cultural and religious significance to a large community of people, and involve displacement and resettlement of people and families from their lands." "The Panel consequently finds Bank Management acted consistently with the provisions of OP 4.01 and OP 4.04 in so far as these relate to assessment of the likely consequences of the Bujagali Hydropower Project on fish stocks in the Upper Victoria Nile and Lake Victoria." "The Panel finds that the possible effect of climate change on hydropower projects on the Victoria Nile has been seriously considered in the SSEA." "The lack of proper consideration of cultural and spiritual matters in this comparison had important consequences, in that it appears to have led to the conclusion that there was little difference between the Bujagali and Karuma sites." "Management non-compliance with the OP 4.01 may have led to inadequate consideration of alternatives that met Project objectives while avoiding the social and environmental costs associated with flooding the Bujagali Falls."</i></p>	<p>Truth e.g. <i>"[T]he approach taken in the Project documentation is consistent with the requirements of OP 4.01".</i></p> <p>Emphasis <i>"[S]ome socio-economic impacts of hydropower options (...) are generally quite local and do not really generate cumulative effects" "Management acknowledges the critical importance of sustainable management of Lake Victoria"</i></p> <p>Subordinate clauses <i>"Management will follow up on specific stakeholder commitments through implementation of a proposed Action Plan" "Management notes that as a run-of-river facility downstream of Nalubaale and Kiira, Bujagali will have no control over releases from Lake Victoria. Nonetheless, the SEA reviewed the cumulative impacts of the Project in the Victoria Nile Basin, and thus the area of influence of this Project was correctly identified as including the Nalubaale/Kiira dam structure" "The PoE will review environmental and social issues related to the transmission and hydropower generation components of the Project " "With respect to the Victoria Nile Basin, "the only significant negative cumulative socio-economic impact in this region (...) will be on aesthetics and tourism concerns. In contrast, it should be taken into account that a more reliable supply of energy will improve infrastructure and services, an essential factor to attract tourism and promote economic growth. (...) In the entire region, it is the only project with involuntary resettlement and thus the impact will not cumulate with other options proposed". "[A] geographical concentration of multiple options might affect the regional socio-economic dynamic and therefore will generate some impacts that may accumulate in time and space". "the benefits that the Bujagali Project will bring through more efficient use of water for hydropower generation" "Uganda will be increasingly reliant on Nile-based hydropower. As Management has explained above, the Bujagali dam itself will not result in greater abstraction from Lake Victoria. By more efficiently using the water for both hydropower facilities through a joint operating regime of water flows, such pressure will be lessened. Furthermore, ongoing planned investments in new generation, including thermal power, along with regional interconnections, will allow the GoU to stay ahead of demand and thus reduce reliance on the Nile for power generation." "Management believes that with ongoing support from the GoU, private sector, and donors, investment plans can be realized, which will support maintenance of water releases on the Nile that are consistent with the Agreed Curve." "[T]he Project will establish and/or strengthen regional and national institutions that regulate, monitor and enforce sustainable utilization of natural resources and environmental standards. Mechanisms for resolving disputes over natural resources management and environmental impacts will also be developed." "Management will follow up on NEMA's commitment to establish a Project Monitoring Committee, and follow up on strengthening the capacity of BEL and BIU's Environmental and Social unit. In the course of normal supervision, Management will follow up on coordination arrangements of the MEMD Project Inter-Agency Coordination Committee" "BEL will review the PoE's reports and disclose them by the end of 2008." "In the course of normal supervision, Management will follow up on GoU's commitment to disclose the Lake Victoria hydrological (water releases) information and make it available to the EAC. The LVEMP II under preparation will also address a broad range of environmental issues affecting Lake Victoria."</i></p> <p>Opinion <i>"Management believes that the Bank is making every effort to apply its policies and procedures and to pursue its mission statement in the context of the project." "Management believes that the proposed Action Plan addresses the Panel's concerns." "Management first wishes to clarify that the Karuma project is (...) not located between Lake Victoria and Lake Kyoga." "Management believes that in both cases [SEA and SSEA], suitable qualitative and quantitative methodology was applied to take account of potentially significant cumulative impacts of past and potential future projects"</i></p>

	<p>on the Nile River in Uganda.”</p> <p>“Management believes that the cumulative effects assessment was carried out within a strategic social and environmental framework for existing and future hydropower development in the Victoria Nile Basin, and thus with an eye to facilitating decision-making on the timing and selection of the next project for development.”</p> <p>“Management believes that the approach taken – framework EMPs in the EA document, followed by detailed EMPs once contractors were selected – fulfills the intent of OP 4.01 and is consistent with global best practice.”</p> <p>“Management considers the complement of specialists to be adequate.”</p> <p>“Management believes it has adequately described the current hydro operating regime, the Government’s efforts to return to the Agreed Curve operating regime, and the benefits that the Bujagali Project will bring through more efficient use of water for hydropower generation.”</p> <p>“Management also believes that it has properly assessed the area of influence of the Project on Lake Victoria.”</p> <p>Management believes that with ongoing support from the GoU, private sector, and donors, investment plans can be realized.”</p> <p>Management considers that the present configuration with the Kalagala Offset provides a more environmentally sound development option for the Victoria Nile.”</p> <p>Doubt</p> <p>“[A] geographical concentration of multiple options might affect the regional socio-economic dynamic and therefore will generate some impacts that may accumulate in time and space”.</p> <p>“It is unknown, based on currently available data and information, whether cumulative effects on health and educational services or on cultural/spiritual sites might be identified. It seems unlikely that there are cumulative effects on white-water rafting, as these activities are not believed to have been commercially available at the time of Kiira’s approval.”</p> <p>“The circumstances of the first Bujagali project (which was not completed) led to ‘reports from one project/program being used to fulfil the requirements of another project’ (...) [T]his situation may not have been anticipated by the drafters of OP 4.01.”</p> <p>“Management agrees with the Panel’s view (...) that “in the interests of efficiency, an EA may, in principle, refer to and/or incorporate, as appropriate, other relevant studies.”</p> <p>“Management acknowledges the Panel’s finding of compliance regarding the consideration in the SSEA of the possible effect of climate change on hydropower projects on the Victoria Nile.”</p> <p>“Management agrees that the PAD’s language might have been more appropriately moderated”</p> <p>“The SEA describes the alternative configurations considered for the Project. These included options which might have preserved the Bujagali Falls. However, these were rejected on technical, environmental, and social grounds.”</p> <p>“[T]he SSEA identified the following potential environmental impacts: Virtually no change in flow regime as (...) changes in flow regime (...); possible slight reduction in sediment and nutrient flow would lead to improved water quality; virtually no change in evaporation/ evapotranspiration rates (...).”</p> <p>Hedging</p> <p>“Some disruption of the natural flow regime over an ~8-kilometer stretch of the Nile downstream”</p> <p>“[T]he SSEA identified the following potential environmental impacts: (...) possible slight reduction in sediment and nutrient flow would lead to improved water quality; (...) some localized loss of habitat.”</p>
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7.2. RELATIONSHIP BETWEEN THE PANEL AND MANAGEMENT AND THEIR COMMITMENT TO THEIR OWN STATEMENTS

7.2.1. INTERACTIONAL CONTROL BETWEEN THE PANEL AND MANAGEMENT

Generally speaking, through the analysis of the grammatical person utilized, the analysis of transitivity and the analysis of modalities, it is possible to say that the texts reveal and contribute to an impersonal, distanced, unequal, institutional relationship between the Inspection Panel and the Bank Management.

First, the permanent use of the grammatical third person suggests an impersonal and very formal relationship between the Panel and Management. Second, the predominant use of passive grammatical forms and nominalizations (much more frequently than the use of active grammatical forms) exposes and shapes to an impersonal relationship between the Panel and Management. Third, the quite frequent use of the modality of permission by the Panel – at the same frequency as the modality of obligation – by the Panel to make suggestions to Management, reveals and contributes to the fact that **Panel has less power than Management in the formulation of the remedial actions.**

Additionally, the fact that the signs of conciliation have been increasingly been used by both the Panel and Management, indicates an **increasing mutual deference between them.** This can be reflecting the progressive balance that the Panel and Management have been reaching over the time. When analyzing the texts of the last cases it is possible to find that the signs of formal mutual respect between the Panel and Management become more frequent along the three analyzed cases. These words and sentences do not make a significant difference in the content of the report, which leads to think that the **Panel and Management's signs of mutual respect are mere signs of diplomacy and are made with a strategic purpose.**

It is possible to deduce that the Panel and Management show signs of mutual deference as strategy. The Panel and Management made conciliating statements to each other usually preliminarily to other statements that were that had the purpose of contradicting the other's statement. For example, the Panel's conciliating statements were usually made before statements aimed to commit Management to effective actions or to affirm deficiencies by the Management's performance, as showed in the following examples:

- *"The Action Program indicates **Management's serious endeavour** to mitigate the overall problems in the Singrauli energy sector plus all projects with resettlement components in India in a challenging way. (...) **The Panel assumes** that appropriate local participation as well as intensive on-the-spot Bank supervision will contribute to its prospects of successful implementation"* (All emphasis added, Inspection Panel's Eligibility Report, case India 1997)
- *"Given the history of the project before the bank become involved, the Assessment **understandably** does not examine the full suite of possible project alternatives, such as the siting of the dam, **but** it does realistically consider alternatives for other aspects of the project."* (All emphasis added, Inspection Panel's Investigation Report, case Argentina/Paraguay 2002)
- *"The Panel **acknowledges** that the necessary studies have been conducted and disclosed, albeit independently, and considered by Management and referred to specifically in the PAD. **However,** the failure to disclose the SSEA or its relevant parts as an integral*

part of the Bujagali Hydropower Project's documentation in a timely manner is not consistent with OP 4.01." (All emphasis added, Inspection Panel's Investigation Report, case Uganda 2007)

In the same way, the Bank Management in the two last cases "noted" or "acknowledged" the Panel's findings of non-compliance, just before presenting arguments that backed that Management had in fact complied with the OP 4.01. This is evident in the examples showed below:

- *"Management **acknowledges** these issues noted by the Panel. It **also** believes that design and quality issues in the resettlement sites are related less to environmental assessment than to construction supervision and maintenance."* (All emphasis added, Management Report, case Argentina/Paraguay 2002)
- *"Management **agrees** with the Panel that presentation of the Project to stakeholders (e.g., in the Executive Summary of the SEA) could have been strengthened in ways such as those suggested by the Panel (...). **However**, the approach taken in the Project documentation is consistent with the requirements of OP 4.01."* (All emphasis added, Management Report, case Uganda 2007)

The signs of respect the Panel and Management show to each other are possibly aimed to make their own findings and demands be openly received by Management. In the particular case of Management, diplomacy results useful also to explicitly show to the general public that Management has respect and a compatible agenda with a social-conscious and environmental-friendly institution such as the Panel, something that help Management to increase its own credibility and the Bank's credibility in general.

7.2.2. COMMITMENT OF THE SPEAKERS TO THEIR STATEMENTS

Certain linguistic modalities can be deliberately utilized in the official texts to highlight or minimize certain information, revealing the level of commitment of the speakers to their own statements. In general, it was found that **there is a high but decreasing commitment of the Panel and Management to their own statements, though the** Panel shows a slightly higher commitment to its statements than the Management.

The Panel and Management have continued expressing its findings as objective and unquestionable facts, therefore giving strength and credibility of the results of its investigations. However, in general, it is possible to say that at the beginning (in the first case) both the Panel and Management utilized predominantly modalities that express a high commitment to the statement (truth, subordinate clauses, emphasis and/or obligation). **It was progressively over the time (along the three cases) that they started reducing some of the modalities that express a very high commitment to the statement (emphasis and/or obligation), and increasing the use of modalities that express a low commitment to the statement (opinion and/or doubt).** This might be an expression of the progressive attempt of both the Panel and Management to stand for its own statements at the same time that show **respect to the other**. This could reflect that the Panel has won credibility and respect within the Bank over the years, despite its low formal power over the formulation over the remedial actions. Additionally, it could be evidence that **the Panel and Management have been reaching a balance** over the years with respect to their agendas, and thus that changes in the social practice (the formulation of remedial actions and their appropriateness) might be occurring less intensively in the last years.

CHAPTER 8: COMPATIBILITY OF AGENDAS REFLECTED IN THE ACCOUNTABILITY-ORIENTED REMEDIES

The extent in which the agendas of the World Bank Inspection Panel and the World Bank Management are compatible with each other can be evidenced in the practice of formulation of remedies as part of the Inspection Panel accountability process. Regarding that matter, the compatibility of agendas between the Panel and Management can be analyzed from:

- The extent in which the Management has been acknowledging the Panel's findings.
- The extent in which Management has been formulating remedies to address the findings of non-compliance of the Panel.
- Actions by Management that challenge Panel's power

The discussions made in this chapter are based on the compilation of texts produced by the Inspection Panel and Bank Management around the O.P. 4.01 (on environmental assessment). The compilation of the selected fragments is showed in annex 2.

8.1. MANAGEMENT: ACKNOWLEDGING THE PANEL'S FINDINGS OF NON-COMPLIANCE?

One of the main remaining challenges regarding the success of the remedial action plans/programs is about the **effective and full inclusion by the Management of the Panel's findings when formulating the remedial actions**. Thus, it is important to examine first at what extent the Bank Management has been acknowledging the Panel's findings of non-compliance. The pressure that the Panel exerts over the management through the reports it produces previously to the Management's remedial actions plans, and the actual power and effectiveness of this pressure is reflected in the extent in which the Management acknowledges the Panel's findings of non-compliance, that means, the extent in which Management acknowledges its own failures. Independent research in the Panel's first decade (e.g. Bridgeman, 2008) found that a significant number of findings of non-compliance remain are not addressed with any remedial action and that there exist "*large discrepancies between findings of noncompliance and Management's proposed actions*" (Inspection Panel, 2009: 41).

From the analysis of the linguistic features and discourses utilized by the Panel, it can be said that the Panel does not hesitate to point that Management has not complied with the OP 4.01. However, when examining the documents produced by Management, it is also clear that Management does not hesitate to differ from and challenge the results of the investigations made by the Panel, without acknowledging many of the Panel’s findings of non-compliance. Over the years (constantly along the three cases), Management has not been acknowledging findings of non-compliance made by the Panel. This can be noticed in the following table:

Table 13: Acknowledgements and non-acknowledgements by Management of the Panel’s findings on the OP 4.01 – Case India (1997)

Issues related to the OP 4.01 (Environmental Assessment)	Management’s Response to the issues	Panel’s comments on issues and on Management’s Action Program
General Environmental Assessment (associated to R&R problems)	Considers it has partially complied with O.D. 4.01	Expresses the view that there is prima facie evidence of harm and that an investigation should be carried on urgently. Acknowledges Management’s efforts. States that Management’s Response, Broader Action Plan and (original) Project-Specific Action Program fail to address problems, and that some actions have deadlines and others do not. Emphasizes that remedial actions should be carried on with participation, consultation and supervision, and that the Broader Action Plan should be updated and translated into practical measures.
Local consultation and participation	Acknowledges	States that it is important to investigate and explains why
Access to information	Does not acknowledge	States that it is important to investigate and explains why
Insufficient criteria for site selection	Does not acknowledge	States it is unable to comment on this respect
Consideration of socio-cultural aspects	Does not acknowledge	No comment
Interagency coordination	Does not acknowledge	States that it is important to investigate and explains why
Overall Environmental Assessment	Acknowledges 1 issue raised in the request that the Panel considered important to investigate (on local consultation and participation) Does not acknowledge the 4 other issues	3 issues important to investigate 2 issues not commented

Table 14: Acknowledgements and non-acknowledgements by Management of the Panel’s findings on the OP 4.01 – Case Argentina/Paraguay (2002)

Issues / Sub-issues related to the OP 4.01 (Environmental Assessment)	Panel’s findings on issues	Management’s Response on the Panel’s findings
Environmental Screening	Compliance	Acknowledges compliance
Preparation of environmental assessments for the Second Yacyretá	Compliance	Acknowledges compliance
Consideration of Alternatives	Compliance	Acknowledges compliance
Consideration of the Biophysical Environment: Currently	Compliance	Acknowledges compliance
Preparation of environmental assessments for the resettlement sites	Non-compliance	Shortly acknowledges some Panel’s statements. Extensively justifies and minimizes non-compliance.
Consideration of the Biophysical Environment: Future	Non-compliance	Shortly acknowledges some Panel’s statements. Extensively justifies and minimizes non-compliance.
Consideration of Urban and Peri-urban Environments	General	Shortly acknowledges some Panel’s statements. Extensively justifies and minimizes non-compliance.
	Roads and road networks.	Shortly acknowledges some Panel’s statements. Extensively justifies and minimizes non-compliance.
	Water supply, sewerage and sanitation, urban drainage	Shortly acknowledges some Panel’s statements. Extensively justifies and minimizes non-compliance.
	Implications of Non-compliance with Environmental Safeguard Policies	No comment
Overall Environmental Assessment	4 findings of compliance 3 non-compliance	Acknowledges all the 4 findings of compliance Acknowledges all the 3 findings of non-compliance but only at a limited extent, justifying performance, defending compliance and/or no commenting on one of the specific sub-issues

Table 15: Acknowledgements and non-acknowledgements by Management of the Panel's findings on the OP 4.01 – Case Uganda (2007)

Thematic fields	Issues related to Environmental Assessment (OD 4.01)	Panel's findings on issues	Management's response on the Panel's findings
Environmental Issues	General adequacy of the Social and Environmental Assessments	Compliance	Acknowledges compliance
	Environmental Management Plan	Non-compliance	Does not acknowledge, and explains why
	Capacity building	Non-compliance	Does not acknowledge, and explains why
	Independent Panel of Experts (PoE)	Non-Compliance	Does not acknowledge, and explains why. Shortly acknowledges one of the Panel's statements.
	Disclosure of Project Documentation	Non-compliance (acknowledging the Bank's appropriate performance)	Does not acknowledge, and explains why. Shortly acknowledges some of the Panel's statements.
	Cumulative Impacts of Bujagali and Existing and Future Hydro Projects Cumulative Impacts of Transmission Lines	Non-compliance	Does not acknowledge, and explains why. Minimization of negative effects and maximization of positive effects
	Environmental Impacts on Fisheries and Aquatic Systems	Compliance	No comment
	Safety of Dams	Compliance	Acknowledges compliance
Hydrological and Climate Change Risks	Appropriateness of Hydrological Data Series used in Project Design	Compliance	Acknowledges compliance
	Potential Impact of the Project on Lake Victoria	Non-compliance	Does not acknowledge, and explains why. Recognizes importance of environmental sustainability
	Climate Change Risks	1 compliance 1 non-compliance	Acknowledges compliance No comment on non-compliance
Environmental analysis of alternatives	Hydro-power Location Alternatives within Uganda	Non-compliance	Does not acknowledge, and explains why.
	Alternative Project Configurations at Bujagali	1 Non-compliance (acknowledging the Bank's appropriate performance)	Does not acknowledge, and explains why.
Overall Environmental Assessment		4 findings of compliance 8 findings of non-compliance 1 finding of partial compliance	Acknowledges all the findings of compliance Does not acknowledge/comment any of the findings of non-compliance

What can be also noticed from the analyzed texts (see annex 2) is that Management has been progressively over the time trying harder to increase the level of detail of its own comments, in order to better back and explain why it does not acknowledge the Panel's findings of non compliance or to give reasons/justifications to its performance. Regarding that matter, in the three cases but specially in the last ones, Management intends very often to reduce its responsibility over the affectation suffered by the local people, by attributing the delays and difficulties to comply with the Bank policies and procedures to external factors and procurement aspects. For instance, in the case Argentina/Paraguay (2002) Management's final conclusion in its Report and Recommendation:

"The reservoir was raised to 76 masl in 1994, but the phased reservoir filling did not progress as planned and not all elements of the Resettlement and Environmental Management Plan (EMP) were completed by EBY. The principal reason for the delay was the 1995 financial crisis in Argentina, which in turn placed constraints on EBY's resources. As a result, EBY was unable to complete important works and land purchases. In addition administrative bottlenecks, primarily procurement-related, contributed to the delay. Although operation at 76 masl was supposed to be a short-term transitional situation, it has lasted a decade, up to the present." (Management Report, case Argentina/Paraguay 2002)

In the same report, as well as in the three of the analyzed cases, Management also states that much of the project constitutes positive outcomes:

“A great deal has transpired in the thirty-one years since the launching of the Project, including much that is positive. First, despite lengthy delays, the hydroelectric facility itself is well-constructed and has operated relatively efficiently, although only at 60 percent of capacity. From a technical perspective, the accomplishments of the partnership between Argentina and Paraguay are impressive. Second, the power facility has provided the foundation for increased commercial activity and improved living conditions for thousands of people in the surrounding area. The Project has also contributed positively by improving services and municipal infrastructure, as well as housing, especially for low- income families.” (Management Report, case Argentina/Paraguay 2002)

8.2. MANAGEMENT: FORMULATING APPROPRIATE REMEDIAL ACTIONS TO ADDRESS THE FINDINGS OF NON-COMPLIANCE OF THE PANEL?

The examination of the remedies proposed by the Bank Management in the three cases leads to confirm what has been argued by some authors previously: that **the remedies appropriateness has indeed not improved significantly over the years**. In the three analyzed cases the main deficiencies perceived are the followings:

- Not all the Panel’s findings of non-compliance (or findings of necessary to investigate, as occurs in the first case, India 1997) are addressed with any kind of action
- Not all the proposed remedies are new actions, but many of them consist in continuing with already ongoing actions
- Not all the proposed remedies are actions that the Bank need to undertake, but many of them consist in actions that commit not to the Bank but to the borrower (the national state, company or institution in charge of the hydropower plant). The participation of the Bank in this kind of actions is reduced to supervise or help the borrower in these actions.
- Many of the proposed remedies do not have deadlines.

An overview of the Panel’s and Management’s attitudes and positions as active participants of the Inspection Panel process is showed in the following tables.

Table 16: Summary of remedies proposed for the findings of necessary to investigate / non-compliance – Overview of the three cases

Case	Comments on the Panel on the issues	Management comment to the Panel-addressed issues	Management Remedial Actions
India (1997)	3 issues important to investigate	<ul style="list-style-type: none"> Acknowledged 1 issue raised in the request that the Panel considered important to investigate (on local consultation and participation) Did not acknowledge the 2 other issues 	<ul style="list-style-type: none"> All the 2 actions are new actions <ul style="list-style-type: none"> 1 of those 2 refers to a borrower's action. All the 5 issues finding are addressed by the same 2 actions. <ul style="list-style-type: none"> Any of those 5 is addressed only with actions referred to ongoing actions and/or to the borrower.
Argentina / Paraguay (2002)	3 findings of non-compliance	<ul style="list-style-type: none"> Acknowledged all the 3 findings of non-compliance but only at a limited extent, justifying performance, defending compliance and/or no commenting on one of the specific sub-issues 	<ul style="list-style-type: none"> 3 of the 6 actions are new actions <ul style="list-style-type: none"> 2 of those 3 refer to a borrower's action. All the 3 non-compliance are addressed with some kind of action (though one of the specific sub-issues is not addressed with any action). <ul style="list-style-type: none"> 2 of those 3 are addressed only with actions referred to ongoing actions and/or to the borrower.
Uganda (2007)	9 findings of non-compliance	<ul style="list-style-type: none"> Did not acknowledge 8 of the 9 findings of non-compliance, and did not comment the remaining one. 	<ul style="list-style-type: none"> 6 of the 7 actions are new actions <ul style="list-style-type: none"> 3 of those 6 refer to a borrower's action. 5 of the 9 non-compliance findings are addressed with some kind of action. <ul style="list-style-type: none"> 4 of those 5 are addressed only with actions referred to ongoing actions and/or to the borrower.

Table 17: Summary of remedies proposed for the findings of necessary to investigate – Case India (1997)

Issues related to the OP 4.01 (Environmental Assessment)	Management's Response to the issues	Management's Action Program
Local consultation and participation	Acknowledges	<ul style="list-style-type: none"> New action referred to reviewing quality and effectiveness of environmental assessments New action referred to help the borrower to undertake and impact assessment
Access to information	Does not acknowledge	
Interagency coordination	Does not acknowledge	
Overall Environmental Assessment	<p>Acknowledged 1 issue raised in the request that the Panel considered important to investigate (on local consultation and participation)</p> <p>Did not acknowledge the 2 other issues raised in the request that the Panel considered important to investigate (on local consultation and participation)</p>	<ul style="list-style-type: none"> All the 2 actions are new actions <ul style="list-style-type: none"> 1 of those 2 refers to a borrower's action. All the 3 issues finding are addressed by the same 2 actions. <ul style="list-style-type: none"> Any of those 3 issues is addressed only with actions referred to ongoing actions and/or to the borrower.

Table 18: Summary of remedies proposed for the findings of non-compliance – Case Argentina/Paraguay (2002)

Issues / Sub-issues related to the OP 4.01 (Environmental Assessment)		Management's Response on the Panel's findings	Management Remedial Action Plan
Preparation of environmental assessments for the resettlement sites		Shortly acknowledges some Panel's statements. Extensively justifies and minimizes non-compliance.	1 repeated new action referred to the borrower: request EBY to update the screening process 1 already ongoing activity: monitor/supervise engineering supervision
Consideration of the Biophysical Environment: Future		Shortly acknowledges some Panel's statements. Extensively justifies and minimizes non-compliance.	1 already ongoing activity referred to the borrower: monitor/supervise compliance 1 new action referred to the borrower: ensure EBY's management capacity
Consideration of Urban and Peri-urban Environments	General	Shortly acknowledges some Panel's statements. Extensively justifies and minimizes non-compliance.	1 already ongoing activity referred to the borrower: monitor/supervise compliance 1 new action: hire one architect/urban planner for supervision of civil works
	Roads and road networks.	Shortly acknowledges some Panel's statements. Extensively justifies and minimizes non-compliance.	1 repeated new action referred to the borrower: request EBY to update the screening process
	Water supply, sewerage and sanitation, urban drainage	Shortly acknowledges some Panel's statements. Extensively justifies and minimizes non-compliance.	1 repeated new action referred to the borrower: request EBY to update the screening process
	Implications of Non-compliance with Environmental Safeguard Policies	No comment	No action
Overall Environmental Assessment		Acknowledged all the 3 findings of non-compliance but only at a limited extent, justifying performance, defending compliance and/or no commenting on one of the specific sub-issues	<ul style="list-style-type: none"> • 3 of the 6 actions are new actions <ul style="list-style-type: none"> ○ 2 of those 3 refer to a borrower's action. • All the 3 non-compliance are addressed with some kind of action (though one of the specific sub-issues is not addressed with any action). <ul style="list-style-type: none"> ○ 2 of those 3 are addressed only with actions referred to ongoing actions and/or to the borrower.

Table 19: Summary of remedies proposed for the findings of non-compliance – Case Uganda (2007)

Thematic fields	Issues related to Environmental Assessment (OD 4.01)	Management's response on the Panel's findings	Management Remedial Action Plan
Environmental Issues	Environmental Management Plan	Does not acknowledge, and explains why	No action
	Capacity building	Does not acknowledge, and explains why	1 new action referred to the borrower: follow up on NEMA's commitment to establish a Project Monitoring Committee. 2 new actions referred to the borrower: follow up on strengthening the capacity of BEL and BIU and on coordinating arrangements of Inter-Agency Coordination Committee.
	Independent Panel of Experts (PoE)	Does not acknowledge, and explains why. Shortly acknowledges one of the Panel's statements.	1 new action referred to the borrower: review and disclose the PoE's reports by the end of 2008.
	Disclosure of Project Documentation	Does not acknowledge, and explains why. Shortly acknowledges some of the Panel's statements.	No action
	Cumulative Impacts of Bujagali and Existing and Future Hydro Projects Cumulative Impacts of Transmission Lines	Does not acknowledge, and explains why. Minimization of negative effects and maximization of positive effects	No action
Hydrological and Climate Change Risks	Potential Impact of the Project on Lake Victoria	Does not acknowledge, and explains why. Recognizes importance of environmental sustainability	1 repeated new action referred to ongoing borrower's activities: follow up on GoU's commitment to disclose information. 1 new action: address environmental issues through the LVEMP II.
	Climate Change Risks	No comment on non-compliance	1 repeated new action referred to the borrower: follow up on GoU's commitment to disclose information 1 repeated new action: address environmental issues through the LVEMP II
Environmental analysis of alternatives	Hydro-power Location Alternatives within Uganda	Does not acknowledge, and explains why.	No action
	Alternative Project Configurations at Bujagali	Does not acknowledge, and explains why. Acknowledges one of the Bank's statements.	1 already ongoing activity: Ongoing supervision
Overall Environmental Assessment		Did not acknowledge 8 of the 9 findings of non-compliance, and did not comment the remaining one.	<ul style="list-style-type: none"> • 6 of the 7 actions are new actions <ul style="list-style-type: none"> ○ 3 of those 6 refer to a borrower's action. • 5 of the 9 non-compliance findings are addressed with some kind of action. <ul style="list-style-type: none"> ○ 4 of those 5 are addressed only with actions referred to ongoing actions and/or to the borrower.

8.3. THE PANEL'S INFLUENCE OVER THE APPROPRIATENESS OF THE REMEDIAL ACTION PLANS

According to Naudé Fourie (2009), the Panel indirectly points to the Board potentially required remedies by analyzing in its investigation reports the root causes of non-compliance. *“By **compiling investigation reports that are high in quality and in ‘persuasive power’** (e.g., a well-researched report that is supplemented by ample supportive evidence and independently verified facts), the Panel arguably places more pressure on Bank management to acknowledge failures and to come up with remedial action plans that are, in turn, of high quality (e.g., consisting of quantifiable action steps, of which the implementation can be monitored effectively)”* (Naudé Fourie, 2009: 275-276).

Regarding that matter, it is also important to notice that in some occasions **the Panel has directly put pressure on the Management to improve the quality of the remedial action plans**. In some cases the Panel has commented favourably about the actions proposed by Management, but in other cases the Panel *“has expressed to the Board its concerns that the Management Response was vague in its proposals or otherwise did not adequately respond to the Panel’s findings”* (Inspection Panel, 2009: 41).

Finally, it is also important to take on account the analysis made by Nurmukhametova (2006) and Naudé Fourie (2009):

- Since the Panel does not make recommendations about the issues themselves, it cannot contribute with useful recommendations that it could easily make with the knowledge it acquires when analyzing in detail each single case for long periods of time. Consequently, some problematic issues that got attention due to the claim do not necessarily translate into long-term benefits. Since the Panel’s remedies are limited to a brief period of time, the Panel’s recommendations and the subsequent Board decision provide only for a brief period of change (Nurmukhametova, 2006).
- Since the Panel does not include a post-investigation control (and taking on account that the Management presents its Response and Remedial Action Plans late), it is difficult for the Panel to assess the effectiveness and consistency of the Management’s remedial action plans – including adequate participation by and consultation to the affected people – and to evaluate the Management’s supervision of these plans. Thus some of these plans lack of effectiveness and consistency (Nurmukhametova, 2006).
- Since “Bank management is not bound to accept all the Panel’s findings, which means that Management is free to reject a finding of ‘non-compliance’ and to refrain from formulating any remedial action on that particular point” (Naudé Fourie, 2009: 275), the independence, expertise and social-environmental awareness that characterize the Panel members and the Panel’s Investigation Reports is not necessarily reflected in the remedies recommended by Bank Management to the Board.

Finally, it is logical to think that, since it is the Board and not the Panel who takes the final decisions about the proposed remedies (the Panel does not exert a binding voting power in decision-making processes about the remedies), the **independence, expertise and social-environmental awareness that characterize the Panel members** and the Panel's Investigation Reports cannot be reflected in the approval of the remedies.

Given the range of arguments presented above, **it is possible to conclude that, in general, the fact that the Panel's influence on the formulation of the remedies to be applied is limited (specially the formal kind of influence) has been an important factor that have largely obstructed the formulation of appropriate and effective remedial actions.**

8.4. ACTIONS BY MANAGEMENT THAT CHALLENGE THE PANEL'S POWER

Submitting Remedial Action Plans immediately after and as a response to the request itself

When the formal steps designed for the inspection Panel process are correctly followed, the remedial actions are formulated as a response to the Panel's investigation report (in those cases where the Board orders the Panel to make an investigation of the case). However, in some occasions Management has presented a proposal of remedial actions as a response to the same request (immediately after the request has been raised), though this way of proceeding is not in line with the formal Panel process.

Even though the case India (1997) occurred in the earlier years of the Panel's existence, Management did not explicitly challenge the requests' eligibility by questioning the Panel's authority over Management and interpretation of its own mandate, as it did in many of the earlier cases. In fact, as showed above, Management in its report expressed in certain occasions an explicit deference to the Panel's Eligibility Report.

However, in the case India (1997) Management submitted the remedial action plan immediately after and as response to the request (a practice that was quite common in the earlier years of the Inspection Panel): **Management, therefore, did not respect the stipulations of the resolution that says that the remedial action plans should be formulated after and as a response to the Inspection Panel's Investigation Report.** Regarding that matter, this practice could be interpreted as an **effort of the World Bank Management to evade an investigation by the Panel**, which possibly contributed to prolong the conflict between these two World Bank entities and to make the Panel appear as no necessary.

What is more, this practice made **impossible for the remedial action plan for the case India (1997) to be formulated counting with the Inspection Panel's findings (in the investigation Report) as input, something that diminished the role and power of the Panel not only in the remedies formulation but in the case in general.** It is worth to notice that in the case India (1997), even though the Board approved afterwards the

Panel's recommendation to carry on an investigation on the case, the Management's response to the Panel's Investigation Report was that the remedial action plan was not going to be changed – of course, accompanied with formal words of diplomacy.

Formulating remedies designed to be in charge of the borrower

Moreover, in the three cases many of the **remedial actions that the Management formulated were designed to be in charge of the borrower (instead of the Bank)**. This practice probably had the effect of increasing **borrower's concerns about the Inspection Panel process**: that the Inspection Panel process was meant to investigate or interfere with the borrower and not to hold the Bank accountable.

This practice possibly also **reduced the Panel's power of influence over the remedial action plan formulation**, since the Panel's mandate does not include investigating the borrower.

CHAPTER 9: CONCLUSIONS

This research parted from an initial question: is the creation and existence of the World Bank Inspection Panel compatible with the World Bank Management agenda?

Two possibilities were pointed: 1) that the Bank is genuinely willing to and interested in ensuring an effective accountability system through the Inspection Panel and appropriate remedial actions, since that goes in line with their objectives as institution, and 2) that the Inspection Panel has an accountability-minded agenda that is in opposition to the Management's capitalist agenda. These possibilities were examined from a critical discourse analysis perspective, which focuses on the discourses, the grammatical characteristics of texts and the social (non-discursive) practices.

From there the main question arises: Is the level of compatibility (or incompatibility) of agendas between the Panel and Management influencing on the appropriateness of the remedial actions formulated within the Inspection Panel process? How can this be revealed through and influence on the discursive and social practices of these two institutions?

The answer, from a discourse analysis perspective and under a neoinstitutionalist approach, would be the following: **there is an incompatibility of agendas between the Panel and Management, but this incompatibility has been becoming less significant over the years.** How this answer was reached, is explained below. Finally, spaces for further research are suggested.

9.1. Examining the first possibility: What discursive and non-discursive elements indicate that the Inspection Panel's and Management's agendas are compatible to each other?

When examining the first possibility, the discursive and social (non-discursive) practices were analyzed. With respect to the discursive practices, the main fact that supported this first possibility is that both the Panel and Management utilize in their reports the same kind of discourses: the environmental problem solving discourse – administrative rationalism and democratic pragmatism – and the sustainability discourse – the sustainable development discourse. All the elements of the administrative rationalism discourse can be found in the texts of both the Inspection Panel and Management: Environmental impact assessment, professional resource-management bureaucracies, pollution control agencies, regulatory policy instruments, expert advisory commissions and rationalistic policy analysis techniques. In the same way, almost all the components of the

democratic pragmatism discourse are utilized by the two World Bank entities: public consultation, dispute resolution, public enquiries and right to know legislation. Finally, both the Panel and Management have been trying to emphasize in their texts the seek for a more “sustainable development”.

With respect to the texts, the two World Bank entities have been textually confronting to each other progressively less over the time and, instead, a **rise in the textual signs of conciliation** can be observed. In fact when the Panel and Management have made statements that somehow were communicating a wrong performance of the other, many of the times they do it using passive tenses. This means that they prefer to make those **statements without the need to emphasize the agent that is responsible of the problem**, but instead highlighting the effect. All this facts may mean that the Panel and management have been finding a common ground (at least regarding the remedial actions formulation related to hydroelectric projects and the OP 4.01).

With respect to the social practices, one aspect that would support the possibility that the Management is genuinely interested in contributing to an effective accountability system and formulating appropriate remedial actions, is that the Bank is a **development agency**, more than merely a Bank, that focuses on **microeconomic development projects**. The Bank has won reputation of being willing to take social-environmental considerations given its focus on microeconomic growth in developing countries. Additionally, when critics against the World Bank’s agenda and lending projects were inevitably rising over the last two decades, **the Bank responded to the increasing protests**: it modified its definition of development, changed its policies to reflect social and environmental concerns and made clear efforts to improve its social-environmental performance, including the creation of new mechanisms specially dedicated to social-environmental purposes (Barkin, 2006). Is also important to consider that – given how underdeveloped the international rule of law still is – **the Inspection Panel procedure is reasonably well-developed**, taking on account that the lack of legally enforceable remedies for individuals occurs not only in the Bank but in many international institutions, because it is a problem caused directly by the privileges and immunities granted to officials for all acts undertaken in the course of their official activities (Naudé Fourie, 2009).

All these are aspects – arising from both the discursive and non-discursive practices – opened a real possibility that the Bank’s legitimization is based on a certainly independent and effective accountability system that lead to real improvements in the projects and in the World Bank itself. But, if this possibility was true, it would be very difficult to explain why the remedial actions are not being so appropriately formulated. In general, it is very improbable that the limited influence of the Panel on the Remedial Action Plans/Programs be caused by insufficient institutional capacities, since the very high financial and technical capability of the World Bank is unquestionable. Then is when the second possibility comes to place.

9.2. Examining the second possibility: What discursive and non-discursive elements indicate that the Inspection Panel's and Management's agendas are incompatible to each other?

An alternative possibility was tested: the existence of a conflict of agendas between the World Bank Inspection Panel and the World Bank Management, or in other words the possibility of a *pathology* within the World Bank. Under this possibility, on one hand the Inspection Panel has genuine intentions to improve the compliance of the World Bank with its own policies and procedures, given its independence from the Bank Management and the honesty and social/environmental awareness of its members. On the other hand, the Bank Management is an entity whose main interest reflects the World Bank's main interest: persevere with the capitalist global system and generate profits from the natural resources. One of the main reasons why the Bank Management has neoliberalism and economic profits as its main agenda is that, as Barkin (2006) points, Management staff are judged by the volume of loans that they make and not by whether the projects are ultimately successful. To test this second possibility, the discursive and social (non-discursive practices) were analyzed.

With respect to the discursive practices, it is necessary to notice that the **sustainability discourse** – which can be considered as the “advertisement discourse” or the “marketing discourse” of the World Bank, given the positive effect on the Bank's global image – **is a very abstract and flexible discourse that hardly leads to actual changes**. In that sense, it is important to notice that the sustainability discourse in the Bank Management has not led to very significant improvements in the compliance of the Bank with its own policies and procedures and, even less, in the quality of the environment: **Despite the fact the existence of the OP 4.01, the creation of Inspection Panel almost 20 years ago and the utilization of the term “sustainable development” in all the reports, the construction of large dams for hydroelectric projects continue being a frequent reason for protests by the civil society and a frequent subject for claims to the Panel**. Additionally, the fact that both the Panel and Management use the environmental problem discourse is probably not result of a high compatibility of agendas, but result of the environmental problem discourse that is inherent to the World Bank and to its operational policy 4.01. The administrative rationalism and democratic pragmatism solving discourses are based mainly on the content of the OP 4.01, which sets the rules that the Inspection Panel has to ensure the Bank comply. Since the texts of both the Panel and Management are formulated around the set of issues that constitutes the OP 4.01 it is logical to find these environmental problem solving discourses in most of the parts of the reports they produce. Furthermore, the fact that the Panel's reports and the Bank Management's reports mix the sustainability discourse with the environmental problem solving discourse (administrative rationalism and democratic pragmatism), and the fact that only the environmental problem solving discourse but not the sustainability discourse can be found in the actual practices and methodologies of the Inspection Panel, does not indicate great level of coherence in the discourse of the Inspection Panel process as a whole. In fact, the mixed used of these two different kind of discourse, by itself, indicates a contradiction between the actual practice of the World Bank (where the administrative rationalism and democratic pragmatism are

embedded) and the words and speeches of the World Bank (which theoretically indicate an effort of the bank towards a “sustainable development”).

When it comes to the linguistic features of the texts produced by the Panel and Management, the predominance of the third (grammatical) person and passive tenses (rather than active tenses) indicate an **impersonal, distanced and institutional relationship** between the Inspection Panel and the Bank Management. Also the quite frequent use by the Panel of the modality of permission (in which the Panel gives suggestions but not demands to Management) is a clear sign of an **unequal relationship**: the Panel’s power to decide over the remedies is less than the Management’s. This kind of cold relationship is hardly found between two institutions that share common agendas and equal power over them. With respect to the mutual signs of conciliation, even though they are frequent in all the cases, the fact that the Panel and Management make these signs often just before contradicting the other’s statement indicates that **many times the signs of conciliation are not a sign of compatibility between the Panel and Management but a strategy that both entities use for their statements be better received and treated as more objective**.

Regarding the non-discursive practices, a first factor that helps to confirm this possibility is the fact that the resolution creating the Inspection Panel does not formally ask the Panel to contribute to a crucial part of the Inspection Panel process power over: the remedies formulation. The remedies effectiveness keep facing big challenges, and the Panel could make a great contribution to the remedial actions appropriateness, but the one in charge of formulating the remedial action plans is the Bank Management. Thus, **the unequal distribution of power within the World Bank is probably due to the fact the Bank created the Panel mainly as a way to improve its image and maintain its position as the world premier development lending institution more than to fully hold it accountable**. The Panel existence is – and that is an unquestionable fact – an inherent product of a World Bank decision and thus it is connected to the World Bank agenda. This possibility is attached to another one: In other words it is possible that the Panel be a way for the Bank to improve its accountability just enough for the improvements to be noticeable to the eyes of the rest (with a cosmetic purpose), without giving the Panel too much power and thus without improving the Bank’s accountability too exaggeratedly so that the Bank does not get distracted from its main objective: keep on its neoliberal agenda.

Also, when analyzing this second possibility it is necessary to take on account the power the Bank gives to the Panel and Management in the remedies formulation. The Panel’s power could at the present be higher than in the beginning of its existence, but its power over the Remedial Actions Plans/Programs is still limited if compared to Bank Management’s power. Under a realistic view, the World Bank is essentially an international lending organization and it is designed to make lending-related decisions based very much on an economic criteria. The World Bank plays an important role legitimizing a certain model of development in contemporary international politics, model that has become the standard against which developing countries are compared (Barkin, 2006). In that sense Bank may be more interested in giving more power to Management than to the Panel, since Management is the one that contributes to generate big quantities of money though the projects it promotes and administrates, profits that go partly to the Bank.

Regarding that matter, the theorization about power by Connelly and Smith (2009), could be easily applied to the nature of the creation of Inspection Panel by the World Bank. The existence of the Panel make the world feel that the (social, environmental, economic, cultural, etc) issues are finally being taken on account by the Bank, when in fact the remedial actions are in many cases not reflecting an important part of the Panel's findings. Indeed, Robert Wade (2002) perceives American legitimacy and hegemony over the Bank is constrained mainly by its need to structure and operate in such a way that it appears as if it is operating according to its own rules. This goes in line with the Gramscian view of hegemony in which "The construction of institutionalized rules that gave the illusion of mutual benefit to all partners has increasingly allowed economists to dominate the operational and research domain of the Bank. Mainstream economic theory (...) has provided an important legitimizing veneer for the realizations of US priorities inside the World Bank" (Stein, 2008: 6). At the end, the five largest shareholders, France, Germany, Japan, the United Kingdom and the United States appoint an executive director (while other member countries are represented by 20 executive directors) (World Bank Group, 2011), thus these are the five most powerful stakeholders when it comes to any decision to be taken on the Inspection Panel process, including the approval of the formulated Remedial Action Plans.

Summarizing, when analyzing the use of common discourses and textual signs of respect to the other's statements and contrasting them with the reality, it is confirmed that those discursive practices and textual signs are made very much just as signs of mere diplomacy and as a strategy to better position their own statements within the accountability system of the World Bank (i.e. within the Inspection Panel process).

9.3. Gluing both possibilities: What discursive and non-discursive elements indicate that the Inspection Panel's and Management's agendas are losing incompatibility over the time?

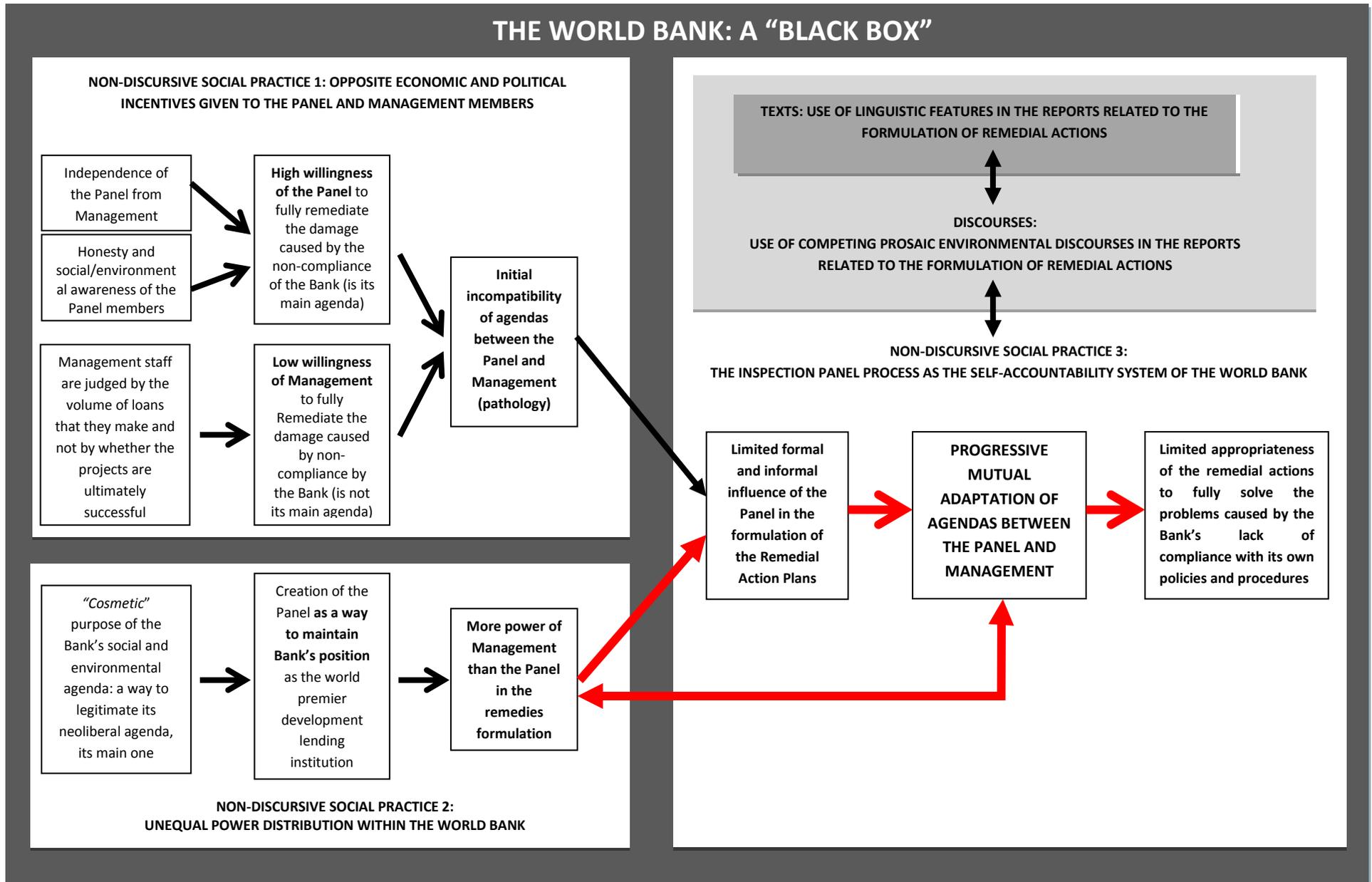
But the reality is even more complex than all that: Both possibilities are correct. The main point here is that, in coherence with the neoinstitutionalist approach and the critical discourse analysis view, **in order to survive over the time the World Bank as an institution cannot be static over the time and neither can be the Inspection Panel process. The real existence of pathologies within the World Bank – between the Bank Inspection Panel and the Bank Management – push them to look for their own survival.** Since the World Bank seeks (without any doubt) for contributing to the maintenance of the neoliberalism as hegemony (as the unquestionable "order of discourse"), but at the same time it also needs the approval of a global civil society that demands more and more the nowadays fashionable discourse of "sustainable development", **the Bank gives to both entities enough power for them to be able to survive: that way the Bank ensures that Management continue reaching its neoliberal purpose and that the Panel reaching the legitimacy purpose.** Consequently, since both the Panel and Management know that the existence and the agenda of the other is inevitable and inherent to the World Bank as a whole, **they started over the years to moderate the way they transmit their discourses: that way both entities can survive.**

The main fact that indicates that there has been occurring an evolution is not so much found in the discourses of the Panel and Management: **the discourses have remained quite stable along the three examined cases, because the discourses constitute the *structural functioning* (in the case of the environmental solving discourses) and the *international face of the World Bank* (in the case of the sustainability discourse).** Instead, the progressive evolution of the Panel and Management is better evidenced in the grammatical features of the texts, specifically in the noticeably increasing signs of conciliation and in the grammatical modalities utilized. Regarding that matter, both the Panel and Management have – **very noticeably – increased the frequency in the use of signs of conciliation over the time.** At the same time, the Panel and Management, while maintaining the use of modalities that make their statements keep appearing as objective truth, they also have been **progressively reducing the use of modalities that express a specially high commitment to the statement (emphasis and/or obligation) and increasing the use of modalities that express a low commitment to the statement (opinion and/or doubt).**

But how is all this reflected in the social practice? **The main evidence in the practice of the growing compatibility of discursive practices between the Panel and Management is precisely that there is not any significant change in the environmental and social conditions.** Hence, a vicious circle is distinguished: the need of the Bank to improve its international image led to the creation of the Panel process which originated a pathology within the World Bank. This pathology together with the need to preserve both the Panel and Management led to these entities to find a more balance discursive practice through the texts they produce. The more neutral tone of the most recent reports of both the Panel and Management neutralize the power of the Inspection Panel and make no possible for the Inspection Panel to actually make significant changes in the practice: the remedial actions are not appropriate enough to effectively address the problems caused by the non-compliance of the Bank. That way, cases of non-compliance of the World Bank with its operational policy 4.01 continue occurring and the remedies proposed by Management do not sufficiently reflect the formal environmental-conscious agenda of the Inspection Panel.

In the following graph the issues pointed above are schematically summarized: the relation between the power relations and evolution of the compatibility of agendas between the Panel and Management, and how these factors get together with the discursive and non discursive practices surrounding the formulation of remedies to finally originate a vicious circle (highlighted in the graph with the red arrows) that generates a constant limited appropriateness of the remedial actions.

Graph 6: Relation between the compatibilities of agendas between the World Bank Inspection Panel and Management and the appropriateness of the proposed remedial actions



9.4. Recommendations for further research

First, it would be interesting and necessary to **investigate further on the role of the Panel not only in the formulation but also in the review, monitoring and evaluation of the remedial action plans**. The Board has requested the inspection panel to be involved in the remedies design - by reviewing the management remedial action plan – and/or enforcement - by monitoring the implementation of the remedial action plan by the Management). For instance, in the case Yacretrá II (2002), the Board asked the Panel to review Management's Action Plan and implementation measures (World Bank Inspection Panel, 2005). The Panel has got to sometimes be formally involved in the remedial aspects, perhaps by establishing its credibility with the Board through the high quality of its investigations, through which the Panel creates an incentive for the Board to request its participation in the remedies (Naudé Fourie, 2009).

Also, it would be necessary to **examine more deeply how does the specific context of each case influence on the discursive and power dynamics** occurring between the Panel and Management. For example, the three cases analyzed in this research occurred in three specific national contexts regarding economy, development, water resources and energy supply/demand. This kind of factors should be analyzed in further research.

Furthermore, it would be necessary to **study how the specific members that conform the Inspection Panel and Management influence on the dynamics between around the remedial actions**. It is theoretically known that in vertical institutional structures, such as the World Bank's, the influence of the "heads" of the institutions can define and even change – at some extent – some trends and patterns.

Moreover, it would be interesting to investigate **the extent in which the conclusions of this research can vary depending on the type of projects and depending on the type of environmental issue involved (on the World Bank operational policy that is subject for request)**. In this research three cases on hydroelectric projects and involving the issue of environmental assessment were chosen, and thus these factors were not taken on account when explaining the differences between the cases.

Last but not least, **other critical discourse analysis approaches should be applied** in order to analyze the dynamics between the Panel and Management emphasizing on other aspects. For example, Laclau and Mouffe's theory would be interesting to more generally examine the discourses circulating in the society about the World Bank Inspection Panel, what is influencing on those discourses and what effects do those discourses have. In the same way, discursive psychology could give a more rhetorical and detailed analysis of the Inspection Panel's and Management's agendas around the remedial action formulation.

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ANNEXES

ANNEX 1: OP 4.01 - ENVIRONMENTAL ASSESSMENT¹⁹

<p><i>These policies were prepared for use by World Bank staff and are not necessarily a complete treatment of the subject.</i></p>	<p>OP 4.01 January, 1999</p>
<p><i>This Operational Policy statement was updated in February 2011 to clarify the use of framework instruments and to add strategic environmental and social assessment (SESA) to the list of available instruments. It was previously revised in March 2007 to reflect the issuance of OP/BP 8.00, Rapid Response to Crises and Emergencies, and in August 2004 to ensure consistency with the requirements of OP/BP 8.60. Questions on this policy may be addressed to <u>OPCS Quality Assurance and Compliance (OPCQC)</u>.</i></p> <p><i>Note: OP and BP 4.01 together replace OMS 2.36, Environmental Aspects of Bank Work; OD 4.00, Annex A, Environmental Assessment; OD 4.00, Annex B, Environmental Policy for Dam and Reservoir Projects; OD 4.01, Environmental Assessment; and the following Operational Memoranda: Environmental Assessments: Instructions to Staff on the Handling of the Borrower's Consultations with Affected Groups and Relevant Local NGOs, 4/10/90; Environmental Assessments: Instructions to Staff on the Release of Environmental Assessments to Executive Directors, 11/21/90; and Release of Environmental Assessments to Executive Directors, 2/20/91. Additional information related to these statements is provided in the Environmental Assessment Sourcebook (Washington, D.C.: World Bank, 1991) and subsequent updates available from the Environment Sector Board, and in the Pollution Prevention and Abatement Handbook.¹ Other Bank statements that relate to the environment include OP/BP 4.02, Environmental Action Plans; OP/BP 4.04, Natural Habitats; OP 4.07, Water Resources Management; OP 4.09, Pest Management; OP/BP 4.10, Indigenous Peoples; OP/BP 4.11, Physical Cultural Resources; OP/BP 4.12, Involuntary Resettlement; OP/BP 4.36, Forests; and OP/BP 10.04, Economic Evaluation of Investment Operations. These OP and BP cover all projects for which a PID is first issued after March 1, 1998. Questions may be addressed to the Chair, Environment Sector Board.</i></p>	
<p>Revised February 2011</p>	
<ol style="list-style-type: none"> 1. The Bank² requires environmental assessment (EA) of projects proposed for Bank financing to help ensure that they are environmentally sound and sustainable, and thus to improve decision making. 2. EA is a process whose breadth, depth, and type of analysis depend on the nature, scale, and potential environmental impact of the proposed project. EA evaluates a project's potential environmental risks and impacts in its area of influence;³ examines project alternatives; identifies ways of improving project selection, siting, planning, design, and implementation by preventing, minimizing, mitigating, or compensating for adverse environmental impacts and enhancing positive impacts; and includes the process of mitigating and managing adverse environmental impacts throughout project implementation. The Bank favors preventive measures over mitigatory or compensatory measures, whenever feasible. 3. EA takes into account the natural environment (air, water, and land); human health and safety; social aspects (involuntary resettlement, indigenous peoples, and physical cultural resources);⁴ and transboundary and global environmental aspects.⁵ EA considers natural and social aspects in an integrated way. It also takes into account the variations in project and country conditions; the findings of country environmental studies; national environmental action plans; the country's overall policy framework, national legislation, and institutional capabilities related to the environment and social aspects; and obligations of the country, pertaining to project activities, under relevant international environmental treaties and agreements. The Bank does not finance project activities that would contravene such country obligations, as identified during the EA. EA is initiated as early as possible in project processing and is integrated closely with the economic, financial, institutional, social, and technical analyzes of a proposed project. 4. The borrower is responsible for carrying out the EA. For Category A projects,⁶ the borrower retains independent EA experts not affiliated with the project to carry out the EA.⁷ For Category A projects that are highly risky or contentious or that involve serious and multidimensional environmental concerns, the borrower should normally also engage an advisory panel of independent, internationally recognized environmental specialists to advise on all aspects of the project relevant to the EA.⁸ The role of the advisory panel depends on the degree to which project preparation has progressed, and on the extent and quality of any EA work completed, at the time the Bank begins to consider the project. 5. The Bank advises the borrower on the Bank's EA requirements. The Bank reviews the findings and recommendations of the EA to determine whether they provide an adequate basis for processing the project for Bank financing. When the borrower has completed or partially completed EA work prior to the Bank's involvement in a project, the Bank reviews the EA to ensure its consistency with this policy. The Bank may, if appropriate, require additional EA work, including public consultation and disclosure. 6. The Pollution Prevention and Abatement Handbook⁹ describes pollution prevention and abatement measures and emission levels that are normally acceptable to the Bank. However, taking into account borrower country legislation and local conditions, the EA may recommend alternative emission levels and approaches to pollution prevention and abatement for the project. The EA report must provide full and detailed justification for the levels and approaches chosen for the particular project or site. 	
<p>EA Instruments</p>	
<p>7. Depending on the project, a range of instruments can be used to satisfy the Bank's EA requirement: environmental impact assessment (EIA), regional or sectoral EA, strategic environmental and social assessment (SESA), environmental audit, hazard or risk assessment, environmental management plan (EMP) and environmental and social management framework (ESMF).¹⁰ EA applies one or more of these instruments, or elements of them, as appropriate. When the project is likely to have sectoral or regional impacts, sectoral or regional EA is required.¹¹</p>	
<p>Environmental Screening</p>	
<p>8. The Bank undertakes environmental screening of each proposed project to determine the appropriate extent and type of EA. The Bank classifies the proposed project into one of four categories, depending on the type, location, sensitivity, and scale of the project and the nature and magnitude of its potential environmental impacts.</p> <p>(a) Category A: A proposed project is classified as Category A if it is likely to have significant adverse environmental impacts that are sensitive,¹² diverse, or unprecedented. These impacts may affect an area broader than the sites or facilities subject to physical works. EA for a Category A project examines the project's potential negative and positive environmental impacts, compares them with those of feasible alternatives (including the "without project" situation), and recommends any measures needed to prevent, minimize, mitigate, or</p>	

¹⁹ The World Bank Group (2011)

compensate for adverse impacts and improve environmental performance. For a Category A project, the borrower is responsible for preparing a report, normally an EIA (or a suitably comprehensive regional or sectoral EA) that includes, as necessary, elements of the other instruments referred to in para. 7.

(b) **Category B:** A proposed project is classified as Category B if its potential adverse environmental impacts on human populations or environmentally important areas—including wetlands, forests, grasslands, and other natural habitats—are less adverse than those of Category A projects. These impacts are site-specific; few if any of them are irreversible; and in most cases mitigatory measures can be designed more readily than for Category A projects. The scope of EA for a Category B project may vary from project to project, but it is narrower than that of Category A EA. Like Category A EA, it examines the project's potential negative and positive environmental impacts and recommends any measures needed to prevent, minimize, mitigate, or compensate for adverse impacts and improve environmental performance. The findings and results of Category B EA are described in the project documentation (Project Appraisal Document and Project Information Document).¹³

(c) **Category C:** A proposed project is classified as Category C if it is likely to have minimal or no adverse environmental impacts. Beyond screening, no further EA action is required for a Category C project.

(d) **Category FI:** A proposed project is classified as Category FI if it involves investment of Bank funds through a financial intermediary, in subprojects that may result in adverse environmental impacts.

EA for Special Project Types

Sector Investment Lending

9. For sector investment loans (SILs),¹⁴ during the preparation of each proposed subproject, the project coordinating entity or implementing institution carries out appropriate EA according to country requirements and the requirements of this policy.¹⁵ The Bank appraises and, if necessary, includes in the SIL components to strengthen, the capabilities of the coordinating entity or the implementing institution to (a) screen subprojects, (b) obtain the necessary expertise to carry out EA, (c) review all findings and results of EA for individual subprojects, (d) ensure implementation of mitigation measures (including, where applicable, an EMP), and (e) monitor environmental conditions during project implementation.¹⁶ If the Bank is not satisfied that adequate capacity exists for carrying out EA, all Category A subprojects and, as appropriate, Category B subprojects—including any EA reports—are subject to prior review and approval by the Bank.

Financial Intermediary Lending

10. For a financial intermediary (FI) operation, the Bank requires that each FI screen proposed subprojects and ensure that subborrowers carry out appropriate EA for each subproject. Before approving a subproject, the FI verifies (through its own staff, outside experts, or existing environmental institutions) that the subproject meets the environmental requirements of appropriate national and local authorities and is consistent with this OP and other applicable environmental policies of the Bank.¹⁷

11. In appraising a proposed FI operation, the Bank reviews the adequacy of country environmental requirements relevant to the project and the proposed EA arrangements for subprojects, including the mechanisms and responsibilities for environmental screening and review of EA results. When necessary, the Bank ensures that the project includes components to strengthen such EA arrangements. For FI operations expected to have Category A subprojects, prior to the Bank's appraisal each identified participating FI provides to the Bank a written assessment of the institutional mechanisms (including, as necessary, identification of measures to strengthen capacity) for its subproject EA work.¹⁸ If the Bank is not satisfied that adequate capacity exists for carrying out EA, all Category A subprojects and, as appropriate, Category B subprojects—including EA reports—are subject to prior review and approval by the Bank.¹⁹

Emergency Operations under OP 8.00

12. The policy set out in OP 4.01 normally applies to emergency operations processed under OP/BP 8.00, Rapid Response to Crises and Emergencies. However, when compliance with any requirement of this policy would prevent the effective and timely achievement of the objectives of an emergency operation, the Bank may exempt the project from such a requirement. The justification for any such exemption is recorded in the loan documents. In all cases, however, the Bank requires that (a) the extent to which the emergency was precipitated or exacerbated by inappropriate environmental practices be determined as part of the preparation of such projects, and (b) any necessary corrective measures be built into either the emergency operation or a future lending operation.

Institutional Capacity

13. When the borrower has inadequate legal or technical capacity to carry out key EA-related functions (such as review of EA, environmental monitoring, inspections, or management of mitigatory measures) for a proposed project, the project includes components to strengthen that capacity.

Public Consultation

14. For all Category A and B projects proposed for IBRD or IDA financing, during the EA process, the borrower consults project-affected groups and local nongovernmental organizations (NGOs) about the project's environmental aspects and takes their views into account.²⁰ The borrower initiates such consultations as early as possible. For Category A projects, the borrower consults these groups at least twice: (a) shortly after environmental screening and before the terms of reference for the EA are finalized; and (b) once a draft EA report is prepared. In addition, the borrower consults with such groups throughout project implementation as necessary to address EA-related issues that affect them.²¹

Disclosure

15. For meaningful consultations between the borrower and project-affected groups and local NGOs on all Category A and B projects proposed for IBRD or IDA financing, the borrower provides relevant material in a timely manner prior to consultation and in a form and language that are understandable and accessible to the groups being consulted.

16. For a Category A project, the borrower provides for the initial consultation a summary of the proposed project's objectives, description, and potential impacts; for consultation after the draft EA report is prepared, the borrower provides a summary of the EA's conclusions. In addition, for a Category A project, the borrower makes the draft EA report available at a public place accessible to project-affected groups and local NGOs. For SILs and FI operations, the borrower/FI ensures that EA reports for Category A subprojects are made available in a public place accessible to affected groups and local NGOs.

17. Any separate Category B report for a project proposed for IDA financing is made available to project-affected groups and local NGOs. Public availability in the borrowing country and official receipt by the Bank of Category A reports for projects proposed for IBRD or IDA financing, and of any Category B EA report for projects proposed for IDA funding, are prerequisites to Bank appraisal of these projects.

18. Once the borrower officially transmits the Category A EA report to the Bank, the Bank distributes the summary (in English) to the executive directors (EDs) and makes the report available through its InfoShop. Once the borrower officially transmits any separate Category B EA report to the Bank, the Bank makes it available through its InfoShop.²² If the borrower objects to the Bank's releasing an EA report through the World Bank InfoShop, Bank staff (a) do not continue processing an IDA project, or (b) for an IBRD project, submit the issue of further processing to the EDs.

Implementation

19. During project implementation, the borrower reports on (a) compliance with measures agreed with the Bank on the basis of the findings and results of the EA, including implementation of any EMP, as set out in the project documents; (b) the status of mitigatory measures; and (c) the findings of monitoring programs. The Bank bases supervision of the project's environmental aspects on the findings and recommendations of the EA, including measures set out in the legal agreements, any EMP, and other project documents.²³

1. The 1998 Pollution Prevention and Abatement Handbook is being updated. For complete reference, consult the World Bank Group Environmental Health and Safety Guidelines. The EHS Guidelines are intended as living documents and may be amended and supplemented from time to time. Please check the website [<http://www.ifc.org/ifcext/enviro.nsf/Content/EnvironmentalGuidelines>] for the most recent version.
2. "Bank" includes IBRD and IDA; "EA" refers to the entire process set out in OP/BP 4.01; "loans" includes IDA credits and IDA grants; "borrower" includes, for guarantee operations, a private or public project sponsor receiving from another financial institution a loan guaranteed by the Bank; and "project" covers all operations financed by Bank loans or guarantees except development policy lending (for which the environmental provisions are set out in OP/BP 8.60, **Development Policy Lending**, and also includes projects under adaptable lending-adaptable program loans (APLs) and learning and innovation loans (LILs)-and projects and components funded under the Global Environment Facility. The project is described in Schedule 2 to the Loan/Credit Agreement. This policy applies to all components of the project, regardless of the source of financing
3. For definitions, see Annex A. The area of influence for any project is determined with the advice of environmental specialists and set out in the EA terms of reference.
4. See OP/BP 4.12, Involuntary Resettlement; OP/BP 4.10, Indigenous Peoples; and OP/BP 4.11, **Physical Cultural Resources**.
5. Global environmental issues include climate change, ozone-depleting substances, pollution of international waters, and adverse impacts on biodiversity.
6. For screening, see para. 8.
7. EA is closely integrated with the project's economic, financial, institutional, social, and technical analyzes to ensure that (a) environmental considerations are given adequate weight in project selection, siting, and design decisions; and (b) EA does not delay project processing. However, the borrower ensures that when individuals or entities are engaged to carry out EA activities, any conflict of interest is avoided. For example, when an independent EA is required, it is not carried out by the consultants hired to prepare the engineering design.
8. The panel (which is different from the dam safety panel required under OP/BP 4.37, Safety of Dams) advises the borrower specifically on the following aspects: (a) the terms of reference for the EA, (b) key issues and methods for preparing the EA, (c) recommendations and findings of the EA, (d) implementation of the EA's recommendations, and (e) development of environmental management capacity.
9. See footnote 1.
10. These terms are defined in Annex A.
11. Annexes Guidance on the use of sectoral and regional EA is available in EA Sourcebook Updates 4 and 15.
12. A potential impact is considered "sensitive" if it may be irreversible (e.g., lead to loss of a major natural habitat) or raise issues covered by OP 4.04, Natural Habitats; OP/BP 4.10, Indigenous Peoples; OP/BP 4.11, **Physical Cultural Resources** or OP 4.12, Involuntary Resettlement.
13. When the screening process determines, or national legislation requires, that any of the environmental issues identified warrant special attention, the findings and results of Category B EA may be set out in a separate report. Depending on the type of project and the nature and magnitude of the impacts, this report may include, for example, a limited environmental impact assessment, an environmental mitigation or management plan, an environmental audit, or a hazard assessment. For Category B projects that are not in environmentally sensitive areas and that present well-defined and well-understood issues of narrow scope, the Bank may accept alternative approaches for meeting EA requirements: for example, environmentally sound design criteria, siting criteria, or pollution standards for small-scale industrial plants or rural works; environmentally sound siting criteria, construction standards, or inspection procedures for housing projects; or environmentally sound operating procedures for road rehabilitation projects.
14. SILs normally involve the preparation and implementation of annual investment plans or subprojects as time slice activities over the course of the project.
15. In addition, if there are sectorwide issues that cannot be addressed through individual subproject EAs (and particularly if the SIL is likely to include Category A subprojects), the borrower may be required to carry out sectoral EA before the Bank appraises the SIL.
16. Where, pursuant to regulatory requirements or contractual arrangements acceptable to the Bank, any of these review functions are carried out by an entity other than the coordinating entity or implementing institution, the Bank appraises such alternative arrangements; however, the borrower/coordinating entity/implementing institution remains ultimately responsible for ensuring that subprojects meet Bank requirements.
17. The requirements for FI operations are derived from the EA process and are consistent with the provisions of para. 6 of this OP. The EA process takes into account the type of finance being considered, the nature and scale of anticipated subprojects, and the environmental requirements of the jurisdiction in which subprojects will be located.
18. Any FI included in the project after appraisal complies with the same requirement as a condition of its participation.
19. The criteria for prior review of Category B subprojects, which are based on such factors as type or size of the subproject and the EA capacity of the financial intermediary, are set out in the legal agreements for the project.
20. For the Bank's approach to NGOs, see GP 14.70, Involving Nongovernmental Organizations in Bank-Supported Activities.
21. For projects with major social components, consultations are also required by other Bank policies--for example, OP/BP 4.10, Indigenous Peoples, and OP/BP 4.12, Involuntary Resettlement.
22. For a further discussion of the Bank's disclosure procedures, see The World Bank Policy on Disclosure of Information. Specific requirements for disclosure of resettlement plans and indigenous peoples development plans are set out in OP/BP 4.10, **Indigenous Peoples**, and OP/BP 4.12, Involuntary Resettlement.
23. See OP/BP 13.05, Project Supervision.

ANNEX 2: ANALYZED FRAGMENTS OF THE TEXTS PRODUCED BY THE INSPECTION PANEL AND MANAGEMENT

Analyzed texts of the case India (1997)

Relevant comments in the introductory and concluding sections

Management's first and second Report: Introductory and Concluding sections	Management's Eligibility Report: Introductory and Concluding sections
<p>"The purpose of this Memorandum is to provide the Executive Directors with the detailed Project-Specific Action Program. (...) Bank missions visited the Singrauli area, including a mission led by the Country Director for India, now based in Delhi. For continuity, the mission included members of the 1995 Resettlement and Rehabilitation (R&R) mission whose report was referred to in the Panel's Report. Extensive consultation was also initiated with concerned corporations, government agencies, Non-Governmental Organizations (NGOs), and project-affected people and communities regarding the Panel Report and Recommendation. These discussions included the Cabinet Secretary of the Government of India (GOI) during his visit to Washington, and senior officials of the Ministry of Finance, Ministry of Environment and Forestry, Ministry of Coal, Ministry of Power, Governments of the states of Uttar Pradesh and Mahdy Pradesh, Local Authorities of the Singrauli region, Coal India Limited, NTPC officials at corporate headquarters, and plant managers in the Singrauli region and their R&R staff." (Updated Remedial Action Program)</p>	<p>"The discussion is based on the Request, the Response, supplemental information furnished by NGOs, and additional information provided by the Requesters, Management and NTPC. In addition, the Panel considered information obtained during Mr. Ernst-Gunther Broder's ("Inspector") visit New Delhi and the Project area during July 6-13, 1997. Prior to this the Inspector consulted with the Executive Directors representing the Government of India ("GOI"). During his visit the Inspector consulted in New Dehli with officials of the GOI – including Cabinet Secretary, the Additional Secretary of the Ministry of Finance, Joint Secretary of the Ministry of Power, and the Chairman & Managing Director of NTPC. In the Project area the inspector met with Executive Directors, Senior Management and officials of NTPC; the representative of the requesters and (...) with numerous PAPs in the project area and local NGO representatives, activists and community leaders. After his visit the Inspector consulted again with the Bank Executive Director representing India." (Eligibility Report)</p>

Relevant comments about the issues raised in the request and the remedial actions to address them

Issues related to Environmental Assessment (OD 4.01)	Management's first report: Response to the issues raised in the Request	Management's first and second report: Remedial Actions	Panel's Eligibility Report: comments on the issues and on Management's first report
<p>General</p>	<p>In reference to OD 4.01 (Environmental Assessment), (...) Management considers that it has partially complied with this OD (...).</p>	<p>BROADER ACTION PROGRAM (in the first Management's report)</p> <p>It proposes a "review of all environmental assessment and all resettlement components in the India portfolio"²⁰</p> <p>The first of the seven actions that conforms it refers to the O.D. 4.01: "complete by End of August 1997, a review of the quality and implementation performance of Environmental Assessments for all environment Category "A" and "B" rated projects in the India portfolio." This study was planned to "focus" on the "quality and effectiveness" of EAs and EMPs, was "carried out by the environmental specialist staff in the New Delhi Office with assistance from respective Task Managers and local consultants", and was completed in August 1997 and the draft report has been "circulated"²¹.</p> <p>(ORIGINAL) PROJECT-SPECIFIC ACTION PROGRAM²² (in the first Management's report):</p> <p>It included to carry on "an across the-Board review of NTPC corporate operations</p>	<p>ABOUT THE NEED OF AN INVESTIGATION:</p> <p>"The Panel rejects some of the Requesters' demands, noted in paragraph 11 of this report, as outside its mandate. (...) However, the Panel believes there is prima facie evidence of harm. It is possible that serious violations by the Bank of its policies and procedures may have occurred to a degree beyond those identified by Management in its Response. Therefore the Panel recommends that the Executive Directors authorize – as a matter of urgency – an investigation into the involuntary resettlement and associated of the aspects."</p> <p>ABOUT THE MANAGEMENT'S BROADER ACTION PROGRAM:</p> <p>"The Action Program indicates Management's serious endeavour to mitigate the overall problems in the Singrauli energy sector plus all projects with resettlement components in India in a challenging way. (...) The Panel assumes that appropriate local participation as well as intensive on-the-spot Bank supervision will contribute to its prospects of successful implementation. (...) [The broader Action Program] consists of studies and reviews, some with deadlines, other without. The Panel understands that the past studies to be revisited might also be updated and translated into practical measures. In</p>

²⁰ Information taken from the Panel's Eligibility Report (July, 1997), because the document corresponding to the First Management Response was not full published in the Inspection Panel Website: does not include the annex with the Broader Action Program

²¹ Information taken from the document "Management Response: Update of the Action Program" (September, 1997), because the document corresponding to the First Management Response was not full published in the Inspection Panel Website: does not include the annex with the Broader Action Program

²² Information taken from the Panel's Eligibility Report (July, 1997), because the document corresponding to the First Management Response was not full published in the Inspection Panel Website: does not include the annex with the Project-Specific Action Program

Issues related to Environmental Assessment (OD 4.01)	Management's first report: Response to the issues raised in the Request	Management's first and second report: Remedial Actions	Panel's Eligibility Report: comments on the issues and on Management's first report
		<p>and business plan, including to 'effectively re-appraise' NTPC implementation of the current Project (...) Such review is designed to inter alia:</p> <p>i) Determine whether Management would agree to an extension of the closing date (...) of the current loan.</p> <p>ii) Pursue a framework for remedial action with particular reference to social and environmental issues as a basis for future operations."</p> <p>MANAGEMENT'S UPDATED REMEDIAL ACTION PROGRAM (in the second Management's report)</p> <p>"PROGRESS-TO-DATE IN IMPLEMENTING THE BROADER ACTION PROGRAM: "Together, these [the seven specific activities that conforms the Broader Action Plan] constitute a body of work and experience which will be directly relevant to the project-specific solutions being developed under the Action Program" "The Environment Department considered the analysis, findings, and recommendations of this study to be sufficiently significant not only for India but Bank-wide and has recommended wider dissemination. A workshop is scheduled in the Bank in mid-September."</p> <p>UPDATED (DETAILED) PROJECT-SPECIFIC ACTION PROGRAM: One of the actions to address "current R&R problems" was specifically about "Consultation and Impact Assessment". This action consisted in assisting NTPC to "undertake an impact assessment of the implementation of the R&R programs which formed part of the project, identify problem areas, and advise on solutions. (...) The objective (...) will be to assess the extent to which the project has been successful in resettling and rehabilitating project-affected people/project-affected families. The study will recommend remedial actions in accordance with the R&R policy to be considered by NTPC in consultation with the Bank and other stakeholders, and will be an input into the modification of the ReAPs and RAPs" and "to ensure that they represent realistic and implementable plans." XIDAS, "an independent development institute, with experience in social research and rural extension work", was agreed to be in charge of this task. "Terms of reference for work of XIDAS would be prepared by NTPC and Management (...) in consultation with XIDAS. For its part, XIDAS will scope out the terms of reference and detailed work program following discussions with the affected population, concerned NGOs, and other stakeholders. The task will be carried out "with urgent attention to finding practical solutions to immediate problems facing those who have not yet received their full entitlements under RAPs or ReAPs of the Project." This action was part also of another component of the remedial plan, a review of the Project and of NTPC performance, which is aimed "[T]o address further the concerns raised in the Panel Report and Recommendation".</p>	<p>conclusion, the Broader Action Program for the future is a comprehensive approach to rectify very complex and difficult problems. In general, if the studies and reviews result in actions to be carried out in close cooperation with directly affected PAPs and NGOs they should help answer the Requesters' concerns regarding the overall past and present situation in Singrauli."</p> <p>ABOUT THE MANAGEMENT'S PROJECT-SPECIFIC ACTION PROGRAM: "The project specific Action program does not address the fundamental question of whether there are current serious problems in the R&R and environmental operations – as alleged by the Requester and supported by others during the Inspector's field visit."</p> <p>ABOUT THE MANAGEMENT'S REMEDIAL ACTIONS IN GENERAL: "The Response and Action Programs fail to address current problems on the ground. None of the conflicting reports on the situation deny outright the allegations of the Requesters. The numerous problems raised should be mitigated or prevented now instead of waiting for retrospective identification through future reviews/studies and future mitigation activities or remedial actions. This would require identifying the factual source of current R&R problems now so that Management can propose remedial actions based on local solutions as a matter of urgency. The Panel considers that resolution of discrepancies in resettlement and other issues – both past and present – is a prerequisite to implementation of the Action Programs. For this reason, the Panel believes it is imperative to conduct an immediate independent investigation of the facts. This is necessary in order to see if there is evidence of the Requesters' allegations of harm; and if so, to identify whether such harm stems (...) from acts or omissions of the Bank in violation of ODs (...) 4.01. Any actions need to be taken in the context of the current and inevitable development of large scale open pit coal mining to fuel thermal power plants and consequent ash processing in this area: they are at present vital for India's fight to alleviate poverty and future development. In light of the objectives of OD (...) 4.01, this calls also for close cooperation between NTPC and coal mining activities in the Singrauli area to avoid involuntary resettlement and where this is not possible, to achieve a harmonized resettlement and rehabilitation strategy including practical job opportunities. As emphasized by the President of the Bank, the poor and disadvantaged everywhere do not want charity; they want opportunity. They want partnership. As one local PAP representative privately told the Inspector, he felt worried about rumours that some NGOs were determined to stop not only Bank involvement, but the project itself. According to him, and it was the Inspector's impression, local NGOs/activists and PAPs supported continuation of the Project and considered Bank involvement essential. The representative of the requesters likewise informed the Inspector that Bank support was necessary. The GOI has expressed its desire to support any measures the Bank might propose to achieve better immediate results for those adversely affected in the Singrauli area. The NTPC told the Inspector it how to improve R&R for the Singrauli area and make it a model for the country."</p>
<p>Consultation and participation in the R&R preparation and implementation</p>	<p>Management (...) recognizes that the procedures and steps for consultation on the EAs specified in the OD were not followed. Management accepted these omissions, because the further</p>		<p>"Environmental Assessments ('EA') 'provide a formal mechanism... for addressing the concerns of affected groups and local non-governmental organizations (NGOs).' (OD. 4.01 & para 2), particularly where involuntary resettlement is to take place." OD 4.01 is useful "particularly where involuntary resettlement is to take place" and is "of key importance" because:</p>

Issues related to Environmental Assessment (OD 4.01)	Management's first report: Response to the issues raised in the Request	Management's first and second report: Remedial Actions	Panel's Eligibility Report: comments on the issues and on Management's first report
	<p>development of the Singrauli area had been part of a public debate in India and the projects formed part of India's Eighth Plan approved by Parliament.</p>		<p>" i) Lack of local consultations and participation in both preparation and implementation of the R&R component of the Project appears, prima facie, to be the root cause of past and current problems and complaints, including a reluctance or resistance to relocation. ii) The Inspector found the question of what constitutes "local" representation be an important issue on the ground. As far as the preparation phase is concerned, the [Management] Response speaks for itself (...): 'Lack of participative process, communication, sharing of information regarding NTPC policy, entitlements, compensation, the use of petty contracts to influence PAP representatives', etc. would mean that it is going to be extremely difficult for NTPC to convince PAPs in the ash dyke villages of Vindhayachal and Rihand to move out to be resettled and rehabilitated within NTPC policy framework. (...) The Panel observes that there has clearly been a great deal of local tension, misinformation and misunderstanding surrounding the filing of this request."</p>
<p>Access to information in the R&R preparation and implementation</p>	<p>Management considers that access to information has been adequate after the initial problems were corrected.</p>		
<p>The inhabitation and agricultural use of sites was not a criterion for site selection</p>	<p>Management does not know what criteria were used for site selection in the early 1980's, which was well before the Bank decided to support the Vindhayachal II and Rihand II projects, but it was satisfied with the selection criteria used for the selection of the sites for the ash dikes.</p>		<p>The Panel is unable to comment on this aspect at this point.</p>
<p>Induced development and other socio-cultural aspects of the project that should have been addressed in the EA</p>	<p>Induced development and other sociocultural aspects were addressed in the project specific EAs and the related Environmental Study of the Singrauli area.</p>		<p>(No comment)</p>
<p>Inter-Agency coordination and alternatives for fly ash disposal</p>			<p>"The decision (...) to adopt more dykes as an acceptable ash disposal technology was approved by the Bank and this decision did create the need for a large resettlement program with considerable management problems and environmental risks. (...) [I]t is not quite clear whether there was interagency coordination – i.e. between NTPC and NCL – as provided by OD 4.01 (para 18)."</p>

Analyzed texts of the case Argentina/Paraguay (2002)

Relevant comments in the introductory and concluding sections

Panel's Investigation Report: Introductory and Concluding sections	Management's Report: Introductory and Concluding sections
<p>"This report concludes the Panel's investigation into the matters alleged in the Request for Inspection submitted to the Panel in May 2002. The current Panel's chairperson, Ms. Edith Brown Weiss, led the investigation. Three expert consultants on environmental, hydrological and social issues assisted the Panel in its undertaking. This report examines the merits of the claims presented in the Request. It also considers Management's response to the claims. During its investigation the Panel interviewed Bank staff in Washington, D.C., visited the project area on four occasions, met with the Requesters and other project affected people throughout the area, and met with local and national authorities in both Argentina and Paraguay as well as with EBY officials. The Panel also identified and carefully reviewed relevant project documents that the Requesters, Bank staff, Inter-American Development Bank (IDB) staff, EBY officials and other sources provided to the Panel."</p>	<ul style="list-style-type: none"> • "On February 24, 2004, the Panel issued its report outlining the findings of the investigation. Management appreciates the Panel's thorough presentation of its findings." • "Management acknowledges the Panel's recommendations, finds them constructive, and believes that the proposed Action Plan responds to the issues raised in the Panel's Report." • Management is committed to applying its policies and procedures in full and will make every effort to pursue its mission statement in the context of the Project."

Relevant comments about the issues raised in the request and the remedial actions to address them

Issues related to Environmental Assessment (OD 4.01)	Panel's Investigation Report: Findings on the issues	Management's Report: Comment to the Panel's findings on the issues	Management's Report: Remedial Actions
Environmental Screening	<p>"The environmental screening process for phase two of the Yacyretá Project and for the Asunción Sewerage project was appropriate."</p>	<p>"Management acknowledges the finding of compliance by the Panel."</p>	<p>"No action required"</p>
Preparation of environmental assessments for the Second Yacyretá	<p>"Before bringing the Second Yacyretá Project to the Board for approval in 1992, the Bank had a full environmental assessment prepared. An Environmental Management Plan (PMMMA or EMP) as well as an Action Plan for Resettlement and Rehabilitation (PAR or RRAP) accompanied the assessment. The Panel finds that the Bank thus met the requirement of OD 4.01 at that time."</p>	<p>"Management acknowledges the finding of compliance by the Panel."</p>	<p>"No action required"</p>
Consideration of Alternatives	<p>"With respect to the consideration of alternatives the Environmental Assessment for the Second Yacyretá Hydroelectric Project is in compliance with OD 4.01." The EA contains the section "Analysis of Alternatives". "Given the history of the project before the bank become involved, the Assessment understandably does not examine the full suite of possible project alternatives, such as the siting of the dam, but it does realistically consider alternatives for other aspects of the project."</p>	<p>"Management acknowledges the finding of compliance by the Panel."</p>	<p>"No action required"</p>
Consideration of the Biophysical Environment: Currently	<p>"Consistent with OD 4.01, the EA discussed a number of biophysical parameters. Biophysical environment affected by Yacyretá dam and reservoir is being managed competently and initial environmental problems that arose when the reservoir was first filled have been satisfactorily resolved."</p>	<p>"Management acknowledges the finding of compliance by the Panel"</p>	<p>"No action required"</p>

Issues related to Environmental Assessment (OD 4.01)	Panel's Investigation Report: Findings on the issues	Management's Report: Comment to the Panel's findings on the issues	Management's Report: Remedial Actions
<p>Preparation of environmental assessments for the resettlement sites</p>	<p>"During most of its investigation, it appeared to the Panel that Management had not provided for the preparation of these environmental assessments. However, in November 2003 Management provided to the Panel environmental assessments that were prepared by EBY consultants as evidence that the proper environmental assessments had been undertaken. The Panel has reviewed the Assessments and finds that they are very inadequate. They do not comply with the requirements of OD 4.01. The range of environmental matters addressed is limited; alternative resettlement sites are not considered; few mitigation measures are suggested, and affected parties were not consulted. The safeguard envisioned to be in place through OD 4.01 has therefore failed." (...) If the Bank did not require environmental assessments for the provision of infrastructure in Encarnación, as it appeared to the Panel throughout its research, Management did not comply with OD 4.01. If the assessments, which were prepared by EBY consultants are intended to constitute the required assessments, as Management now contends, they are highly inadequate. Thus, Management is not in compliance with OD 4.01 with respect to the Encarnación portion of [Reform Project for the Water and Telecommunications Sectors and SEGBA V]."</p>	<p>"EBY's judgment at the time [Prior to 1995], with which the Bank concurred, was that resettlement-related environmental impacts were not considered significant and, therefore, were not assessed. Nevertheless, Management acknowledges that prior to 1995, more could have been done in the care and documentation of the screening process followed." "[The assessments] were prepared in accordance with Paraguayan regulations. Management acknowledges that these resettlement site documents cannot be considered EAs as the term EA is defined by OD 4.01. In 1995, EBY improved its screening procedures for non-dam related civil works (e.g.). The Bank provided its no-objection to the updated PMMA in June 2001. EBY's standards of due diligence on non-dam civil works have improved throughout the 1990s. (...) Management has ensured that EBY put in place the following engineering and construction procedures: (i) civil works contracts with clauses (...); (ii) supervision engineers control quality and enforce standards; and (iii) requirements for contractors to fix any deficiencies up to one year after construction ends."</p>	<p>"Management will request that EBY update the screening process (...) and that include a quality assurance protocol to evaluate the environmental conditions and the quality of the civil works in the resettlement sites. The Bank will continue to monitor engineering supervision and contractor insurance practices and will request improvements, as necessary."</p>
<p>Consideration of the Biophysical Environment: Future</p>	<p>"The Panel finds that the future environmental management of the Yacyretá Project is critically threatened (...) and that the project's financial position and that both the natural environment and project-affected people will suffer additional harm if the project's environmental management practices deteriorate."</p>	<p>"Management shares this concern, but also notes recent evidence suggesting that financial sustainability of effective environmental management may be more robust than previously apparent. For example, in 2003, despite the fact that EBY's annual revenue fell a third below 2002 revenues due to the decline in energy prices in Argentina, EBY was nevertheless able to finance the required environment-related recurrent costs adequately. The reservoir's environmental management is competent, as the Panel's report acknowledges. Also, the cost associated with future implementation of the PMAA is not expected to be an issue. It is likely that as part of the broader reforms taking place in the energy sector in Argentina, the price for power paid by the Government of Argentina to EBY will rise from its current low level to one closer to the price paid precrisis. If so, the recurring cost of the PMMA will fall from the current 4 percent of annual revenues to approximately 1 percent."</p>	<p>"Through its supervision, the Bank will continue to monitor closely compliance with the Legal Agreements (Section 2.23 of the Project Agreement), including the environmental and social mitigation measures, and will ensure that EBY is apprised of its findings, with a view to improving EBY's capacity to maintain adequate environmental management practices for the Project over the long term."</p>
<p>Consideration of Urban and Peri-urban Environments: General</p>	<p>"The Panel finds that the EA for the Second Yacyretá Project was inadequate in several respects in its consideration of urban and peri-urban environments. The EA did not adequately consider the effects of population growth on Encarnación, or the effects of the resettlement developments on the city's infrastructure. The Panel finds that the safeguards to assess the implications for water supply, sewers, and urban drainage (...) were by-passed. Thus, Management is not in compliance with the requirements of OD 4.01. More generally, the Panel finds that Management's failure to assess the impact of the resettlement sites on the overall urban system is not in compliance with (...) OD 4.01. "[H]owever, (...) in the context of the PDA, Management has advised EBY to co-ordinate resettlement in urban development plans." Environmental and social assessments "should have anticipated" the effects on villages above the level of flooding associated with movements of population, including effects on their economies and livelihoods of their people."</p>	<p>"Management acknowledges that the EA did not assess induced effects and the effects of resettlement sites on the overall urban system. It is also important to note that the resettlement process has had several significant positive impacts. People were moved out of high-risk flood-prone areas into areas constructed with new, more hygienic infrastructure. The new infrastructure (...) benefited the host population as well as those resettled. Any potential additional impacts that might be negative were expected to be negligible. All of these considerations were taken into account by Bank staff at the time, along with the emerging understanding of OD 4.01, which had just recently been introduced (in 1991), and of how it should be applied in resettlement situations. With respect to population growth, the design of the Encarnación</p>	<p>"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."</p>

Issues related to Environmental Assessment (OD 4.01)	Panel's Investigation Report: Findings on the issues	Management's Report: Comment to the Panel's findings on the issues	Management's Report: Remedial Actions
		<p>sewerage system and wastewater treatment plant (...) was based on a 25-year population forecast that took all urban growth factors into account, including the significant induced impacts of the international bridge from Posadas.</p> <p>In 1999, as part of the updating of the PMMA component of the EMP, EBY designed a Master Plan for Urban Environmental Management for Encarnación. This Master Plan was developed under Bank supervision and involved extensive public consultation. It includes programs to deal with water quality, urban watershed management, management of areas to be flooded, health and mosquito control in lateral bays, the impact of resettlement sites on host populations, and alternatives for transport issues in new resettlement sites like Arroyo Porá. The updated PMMA (which includes the Master Plan), has guided urban improvements in Encarnación since then."</p>	
<p>Consideration of Urban and Peri-urban Environments: Roads and road networks.</p>	<p>"There are many examples of inappropriate road and drainage design in the proposed resettlement areas which could have been avoided through proper environmental assessments and stronger Bank supervision."</p>	<p>"Management acknowledges these issues noted by the Panel. It also believes that design and quality issues in the resettlement sites are related less to environmental assessment than to construction supervision and maintenance.</p> <p>Design standards for streets and drainage are based on technically sound national practices, which include cobblestone street designs (i.e., streets with cobblestones placed in sand beds) and surface storm water drainage based on lateral drains and box culverts.</p> <p>The screening process (...) was used to assess the potential impacts of roads and drainage, including in Arroyo Porá and Carmen de Paraná. In order to better address quality issues arising from infrastructure design, construction, and/or maintenance, Bank supervision was strengthened and quality problems have been rectified and/or brought to EBY's attention for resolution."</p>	<p>"As described for "Preparation of environmental Assessments – resettlement sites" above: Management will request that EBY update the screening process (...) and that include a quality assurance protocol to evaluate the environmental conditions and the quality of the civil works in the resettlement sites."</p>
<p>Consideration of Urban and Peri-urban Environments: Water supply, sewerage and sanitation, urban drainage.</p>	<p>"[T]he Panel finds that there was no evaluation of the consequences of the provision of reticulated water and sewerage facilities to resettlement sites in Encarnación, nor was there provision for either drainage to accommodate the discharge or adequate storm water drainage. The Panel finds that the safeguards to assess the implications for water supply, sewers, and urban drainage, which ought to have been in place via OD 4.01, were by-passed. Management is not in compliance with the requirement of OD 4.01."</p>	<p>"Management acknowledges these points. (...) [T]he design standards for water supply, sanitation, and urban drainage are based on technically sound national and international practice.</p> <p>After 1995, the screening process (...) was used under Bank supervision, EBY developed and implemented improved design and construction standards, as well as environmental specifications, to handle the identified impacts. To design the wastewater treatment plant, a consulting engineering firm applied international practice, and a full EA and analysis of alternatives were carried out. In addition, the Bank contracted a separate international consultant to review the designs and the adequacy of the wastewater treatment site."</p>	<p>"As described for "Preparation of environmental Assessments – resettlement sites" above: Management will request that EBY update the screening process (...) and that include a quality assurance protocol to evaluate the environmental conditions and the quality of the civil works in the resettlement sites."</p>
<p>Consideration of Urban and Peri-urban Environments: Implications of Non-compliance with Environmental Safeguard Policies.</p>	<p>"In part as a consequence of the Bank's failure to observe its safeguard policy on environmental assessment, affected persons are dissatisfied with the Bank's resettlement schemes, the resettlement schemes have given rise to problems of storm-water run-off and overloading of sewerage lines, and the limited resources of the local municipal authorities are being taxed. This is a situation which neither Bank staff, project proponents, or affected persons desire or with which they are satisfied. This Project demonstrates that taking short-cuts with the Bank's safeguard policies is counterproductive for all concerned."</p>	<p>(Not included in the Management Report)</p>	<p>(Not included in the Management Report)</p>

Analyzed texts of the case Uganda (2007)

Relevant comments in the introductory and concluding sections

Panel's Investigation Report: Introductory and Concluding sections	Management's Report: Introductory and Concluding sections
<ul style="list-style-type: none"> • "The Project would inundate Bujagali Falls and other natural habitats, which are sites of cultural and religious significance to a large community of people, and involve displacement and resettlement of people and families from their lands." • "Uganda is facing a serious power supply crisis. The Panel wishes to place on record that it considers energy a crucial factor in Uganda's development. however, as this Report shows, energy production requires considerable care in order to ensure that social, economic and environmental aspects are properly considered, in line with Bank policy, to adhere to sound development practices and avoid situations where costs, including social and environmental costs, outweigh the benefits expected from what are usually sizable investments."²³ • "In closing, the Panel would like to emphasize that energy is a crucial factor in Uganda's development. As this investigation shows, generating energy for development in a way that is economically efficient, socially equitable and environmentally sustainable is hugely complex and one of the major sustainable development challenges of today." • "The results of the Panel's investigation illuminate some of these complexities in the Bujagali Project." 	<ul style="list-style-type: none"> • "On August 29, 2008, the Panel issued its report outlining the findings of the investigation. This report responds to the findings of the Panel. (...) The Private Power Generation (Bujagali) Project is aimed at providing the capacity needed to overcome the supply constraints in a least-cost and environmentally and socially sustainable manner." • "Energy is a crucial input to Uganda's development, and hydropower is an important option for meeting the country's power needs. With less than 10 percent of the population connected to electricity, a long-term investment program is required in the energy sector to realize the country's development aspirations." • "The current Project is the largest private sector investment in East Africa, and will provide stable baseload power which is needed to grow the economy and expand access to electricity." • In view of the Project's history and its crucial importance to Uganda, Management at the outset has established enhanced due diligence for both Project preparation and supervision. This includes assignment of experienced staff with the necessary range of expertise, as well as recruitment of highly qualified consultants for specific tasks such as the financial analysis, economic analysis, hydrology review, etc." • "Management will follow up on specific stakeholder commitments through implementation of a proposed Action Plan, including establishment of a project monitoring committee, implementation of a management plan for cultural resources, and disclosure of the reports prepared by the Independent Panel of Social and Environmental Experts. Table 3 presents key elements of the supervision program, covering, for example, the socio-economic survey, annual updates of the Community Development Action Plan, and afforestation activities. Management plans to report to the Board on the progress of its proposed Action Plan a year from now." • "Management believes that the Bank is making every effort to apply its policies and procedures and to pursue its mission statement in the context of the project. Management notes the Panel's findings and is committed to fulfilling the Management Action Plan described above and to supervise and monitor the implementation of environmental and social policies and procedures. Management believes that the proposed Action Plan addresses the Panel's concerns. Management plans to report to the Board on the progress of its proposed Action Plan a year from now."

Relevant comments about the issues raised in the request and the remedial actions to address them

Issues related to Environmental Assessment (OD 4.01)	Panel's Investigation Report: Findings on the issues	Management's Report: Comment to the Panel's findings on the issues	Management's Report: Remedial Actions
Environmental Issues	<p>General adequacy of the Social and Environmental Assessments</p> <p>"The Panel notes that the Project Sponsor contracted international consultants to prepare the required SEA for the Bujagali Hydropower and Bujagali Interconnection Project with appropriate input from Bank Management. The Project has appropriately been classified as category "A", the category for projects with the most serious level of impacts. This complies with OP 4.01."</p>	<p>Management acknowledges the Panel's finding (...).</p>	
	<p>Environmental Management Plan</p> <p>"The fact that the Environmental Management Plan is not an integral part of the SEA that has been disclosed is a deficiency. This is not in compliance with OP 4.01"</p>	<p>Management notes that detailed EMPs are not included in the SEAs; however, this is consistent with the approach taken in private sector projects and with the timing of key planning elements. In large private sector infrastructure projects, the SEA report contains a comprehensive framework EMP. A detailed EMP can only be prepared when the EPC contractors, who have the main responsibility for environmental management, have been selected and the contract signed (in December 2007 for BEL).</p> <p>At the time of SEA preparation, in December 2006, BEL, the Project sponsor, had not yet selected the EPC contractor for the hydropower project, nor had UETCL selected the contractor for the transmission line component. The December 2006 SEA included comprehensive framework EMPs, called Social and Environmental Action Plans (SEAPs) in this case; the</p>	<p>No action is planned beyond ongoing supervision.</p>

²³ This paragraph is again repeated in the Summary Report of the Panel's Investigation Report: "Right at the outset, the Panel wishes to go on record that it considers energy a crucial factor in Uganda's development. The findings of this Report do not dispute this fact but show that energy production requires considerable care in order to ensure that social, economic and environmental aspects are properly considered, in line with bank policy, to achieve sound development practices and avoid situations where costs, including social and environmental costs, outweigh the benefits expected from what are usually sizable investments."

Issues related to Environmental Assessment (OD 4.01)	Panel's Investigation Report: Findings on the issues	Management's Report: Comment to the Panel's findings on the issues	Management's Report: Remedial Actions
		<p>details of management, mitigation, and monitoring actions were to be subsequently reviewed and updated by the EPC contractors and subject to review. The SEAPs also included estimated budgets for planned implementation and capacity building measures. Once the EPC contractors were engaged contractually, they worked in parallel with BEL to develop detailed SEAPs. These were reviewed and found acceptable by World Bank Group staff and NEMA. Management believes that the approach taken – framework EMPs in the EA document, followed by detailed EMPs once contractors were selected – fulfills the intent of OP 4.01 and is consistent with global best practice.</p>	
<p>Capacity building</p>	<p>"This requirement [part of OP 4.01] to support needed capacity building, which is important in the implementation of the social and environmental aspects, has not been complied with in this Project"</p>	<p>Management has assessed and adequately accounted for NEMA's capacity building needs through another Bank-supported operation. BEL and UETCL have recruited qualified staff to ensure they have satisfactory social and environmental capacity. These actions meet the capacity building needs identified at the concept stage of the Project. A stand-alone partial-risk guarantee will normally not provide financing for environmental and social management capacity building. However, since 1994, the World Bank has provided financial support through the Environmental Management and Capacity Building Project to NEMA for capacity building in environmental legislation/regulations and in environmental and social management. This program continues to perform satisfactorily, and the Board has recently approved Additional Financing to deepen its positive impact. While a stand-alone technical assistance project had been anticipated in 2002, given the ongoing technical and operational support to NEMA, further strengthening of the agency in the context of the Bujagali Project was not required. Capacity building for the MEMD and other energy sector stakeholders is also being financed through Bank-supported operations such as the Power Sector Development Operation and the Energy for Rural Transformation Program. Moreover, through the Nile Basin Initiative, Uganda and its riparian partners are receiving considerable support for capacity building, for example through the Shared Vision Program, the Nile Transboundary Environment Action Project and the Confidence Building and Stakeholder Involvement Project. BEL has hired a highly qualified Ugandan environmental and social manager, who is supported by one professional environmental manager, one social manager and 10 field environmental/social staff. UETCL also has a professional environmental and social management team of 12 staff in the office and 16 staff in the field. The EPC contractor has its own environmental manager. Management considers the complement of specialists to be adequate.</p>	<p>Management will follow up on NEMA's commitment to establish a Project Monitoring Committee, and follow up on strengthening the capacity of BEL and BIU's Environmental and Social unit. In the course of normal supervision, Management will follow up on coordination arrangements of the MEMD Project Inter-Agency Coordination Committee</p>
<p>Independent Panel of Experts (PoE)</p>	<p>"As the project is contentious and involves complex multidimensional environmental concerns, appointment of an environmental panel of international experts is warranted and the lack of such a panel is not in compliance with OP 4.01."</p>	<p>An Environment and Social Independent Panel of Experts was established in 2006 for the current Project. It follows a similar panel that served for the first Bujagali project. This satisfies the requirements of OP 4.01. For the first Bujagali project, a three-member independent Environmental and Social Panel of Experts was convened by AESNP in November 1997 and its first report was submitted in February 1998. This panel reviewed the EIA, and submitted its fifth and last report on February 26, 1999. For the second Bujagali Project, BEL set up a two-member Independent Panel of Experts (PoE) in 2006 (prior to submission of the Request) composed of an environmental and a social specialist. The Terms of Reference for the Panel of Experts was disclosed as part (Appendix G.4) of the SEA (December 2006). There was a delay in the appointment of the PoE by the World Bank Group. The PoE completed its first visit to the Project site immediately after the SEA was submitted, in January 2007 and has provided timely and welcome reviews, inputs and advice to the Project team. It is expected to provide advice on and oversight of the implementation of the SEA and conduct 'public and agency consultation activities and make recommendations on how the Bujagali project should proceed;' in addition, it will 'review environmental and social issues related to the transmission and hydropower generation components of the Project.'</p>	<p>BEL will review the PoE's reports and disclose them by the end of 2008.</p>
<p>Disclosure of Project Documentation</p>	<p>"The Panel acknowledges that the necessary studies have been conducted and disclosed, albeit independently, and considered by Management and referred to specifically in the PAD. However, the failure to disclose the SSEA or its relevant parts as an integral part of the Bujagali Hydropower Project's documentation in a timely manner is not consistent with OP 4.01."</p>	<p>Management acknowledges that the SSEA was not disclosed as an integral part of the Project's documentation. The circumstances of the first Bujagali project (which was not completed) led to 'reports from one project/program being used to fulfil the requirements of another project' as the Panel notes in (...) its current Investigation Report. While this situation may not have been anticipated by the drafters of OP 4.01, who envisioned a single borrower with responsibility for all EA documents, Management agrees with the Panel's view (...) that "in the interests of efficiency, an EA may, in principle, refer to and/or incorporate, as appropriate, other relevant studies." Management also agrees with the Panel that presentation of the Project to stakeholders (e.g., in the Executive Summary of the SEA) could have been strengthened in ways such as those suggested by the Panel ('clear statement and graphic showing the inter-relationships and entire suite of documents that constitute the studies making up the SEA'). However, the approach taken in the Project documentation is consistent with the requirements of OP 4.01. Management completed a freestanding SSEA of Power Development Options in conformance with the Action Plan found in</p>	<p>No action is planned</p>

Issues related to Environmental Assessment (OD 4.01)	Panel's Investigation Report: Findings on the issues	Management's Report: Comment to the Panel's findings on the issues	Management's Report: Remedial Actions
		<p><i>the Management Report in response to the Inspection Panel investigation of the first Bujagali project (2002). This study is regional in scope and extends well beyond Bujagali, and thus was disclosed under the NBI, consistent with Management's undertakings as explained in the 2002 Action Plan. References to the SSEA have been included in key Bujagali documents as well as on the Bujagali website. Hence, the documents were properly cross-referenced and publicly available, with ample time for public review and comment.</i></p> <p><i>Having taken the findings and recommendations of the first Inspection Panel report into account, Management launched the SSEA prior to finalization of the preparation of the new Project. The SSEA offers an overview analysis of major regional power development options and regional transmission interconnections in the Nile Equatorial Lakes Region in Eastern Africa. It also provides a solid foundation for planning the development of the region's power sectors until 2020.</i></p> <p><i>The Bujagali Project is only one of the many options considered in the SSEA. Since the SSEA is a planning tool and linked to all planned power projects in the region, it would not be logical to consider the SSEA only as an integral part of the Bujagali safeguard documents suite. However, reference to the SSEA has been made in the Bujagali safeguards documents and in the Integrated Safeguard Data Sheet.</i></p> <p><i>It is worth noting that World Bank Group staff met with the Requesters in Uganda in March 2007, shortly before the Request was submitted to the Inspection Panel, and specifically described the suite of sectoral and Project documents and where each of their key concerns was addressed.</i></p>	
<p>Cumulative Impacts</p>	<p><i>"The analyzes in the SSEA (...) provide a systematic examination of the potential consequences of the Nalubaale and Kiira facilities, the Bujagali Project, and the planned Karuma project all being situated on the Victoria Nile between Lake Victoria and Lake Kyoga. (...) [T]he Panel finds that the analyzes are not sufficiently backed by evidence and include opinions rather than careful fact-based examinations of the additive effects of impacts from present and foreseeable projects.</i></p> <p><i>(...)The Panel finds that neither the SSEA nor the SEA has addressed the cumulative effects of the existing and planned projects in a meaningful way. This is not in compliance with OP 4.01.</i></p> <p><i>(...) The Panel finds that the failure to consider mitigation measures, which would reduce social and environmental impacts of the transmission line, does not comply with OP 4.01 and OP 4.12.</i></p>	<p><i>Management first wishes to clarify that the Karuma project is (...) not located between Lake Victoria and Lake Kyoga. (...) Management believes that in both cases [SEA and SSEA], suitable qualitative and quantitative methodology was applied to take account of potentially significant cumulative impacts of past and potential future projects on the Nile River in Uganda.</i></p> <p><i>(...) [T]he SEA consultants examined all previous reports including that of ESG International (ESG 2000). To ensure that the methodology was not highly quantitative or statistical in nature, and that it was easy to convey to a variety of stakeholders, the SEA adapted the "Limits of Acceptable Change" approach to cumulative effects assessment, which requires a clear definition of spatial and temporal boundaries. It also requires selection of key criteria that reflect people's social, economic, and environmental priorities for the study area.</i></p> <p><i>For this Project, the study area was the existing development in the Victoria Nile Basin in Uganda, with a 20-year planning horizon, including existing hydropower facilities. (...) A Kalagala scheme was not included as the Kalagala Offset agreed by the GoU to offset the residual impacts of the Bujagali Project precludes such development there.</i></p> <p><i>Overall, the significant and positive cumulative effects of Bujagali have been determined (...). Project cumulative impacts of a negative nature include:</i></p> <ul style="list-style-type: none"> <i>• Relocation of people with compensation</i> <i>• Aesthetic impacts with the potential for enhanced tourism;</i> <i>• Some disruption of the natural flow regime over an ~8-kilometer stretch of the Nile downstream with associated impacts: on aquatic organisms and communities (also potentially positive if productivity of reservoir increased); and on (...) fishers (also potentially positive if increased productivity in reservoir is reflected in fishers' catches</i> <i>• Losses of wildlife populations and habitats, as well as agricultural lands, due to inundation of terrestrial habitats.</i> <p><i>It is unknown, based on currently available data and information, whether cumulative effects on health and educational services or on cultural/spiritual sites might be identified. It seems unlikely that there are cumulative effects on white-water rafting, as these activities are not believed to have been commercially available at the time of Kiira's approval. The cumulative effects of transmission system infrastructure associated with the Bujagali Project are addressed in the companion SEA.</i></p> <p><i>"the SSEA has been completed, including a Cumulative Impacts Assessment. This analysis was undertaken on a basin or sub-region basis depending on the groupings of options which would potentially lead to cumulative impacts. (...) For some projects (...) very little information was available. The analysis of cumulative impacts in the SSEA provides basic qualitative information on cumulative impact issues (...). With respect to the Victoria Nile Basin, including the Bujagali and Karuma options, the SSEA identified the following potential environmental impacts:</i></p> <ul style="list-style-type: none"> <i>• Virtually no change in flow regime as (...) changes in flow regime (...) would be absorbed by Lake Victoria;</i> <i>• Possible slight reduction in sediment and nutrient flow would lead to improved water quality;</i> <i>• Virtually no change in evaporation/ evapotranspiration rates; and</i> 	

Issues related to Environmental Assessment (OD 4.01)	Panel's Investigation Report: Findings on the issues	Management's Report: Comment to the Panel's findings on the issues	Management's Report: Remedial Actions	
		<p>• Some localized loss of habitat. "[S]ome socio-economic impacts of hydropower options (...) are generally quite local and do not really generate cumulative effects (...). On the other hand, a geographical concentration of multiple options might affect the regional socio-economic dynamic and therefore will generate some impacts that may accumulate in time and space". With respect to the Victoria Nile Basin, "the only significant negative cumulative socio-economic impact in this region (...) will be on aesthetics and tourism concerns. In contrast, it should be taken into account that a more reliable supply of energy will improve infrastructure and services, an essential factor to attract tourism and promote economic growth. (...) In the entire region, it is the only project with involuntary resettlement and thus the impact will not cumulate with other options proposed". Management believes that the cumulative effects assessment was carried out within a strategic social and environmental framework for existing and future hydropower development in the Victoria Nile Basin, and thus with an eye to facilitating decision-making on the timing and selection of the next project for development.</p>		
	<p>Based on its review of relevant research studies, the Panel observes that the status of the fish species inhabiting both Lake Victoria and the Victoria Nile is disputed and that ongoing research is desirable. However, significant effort has been devoted to study these fish in the reaches of the Victoria Nile that will be affected by the Bujagali Hydropower Project. (...) The Panel consequently finds Bank Management acted consistently with the provisions of OP 4.01 and OP 4.04 in so far as these relate to assessment of the likely consequences of the Bujagali Hydropower Project on fish stocks in the Upper Victoria Nile and Lake Victoria.</p>			
	<p>Safety of Dams</p>	<p>"The Panel finds that Management has complied with the procedures set forth in OP 4.37."</p>	<p>Management acknowledges the Panel's finding of compliance with OP 4.37 regarding the safety of dams.</p>	<p>No action is planned.</p>
<p>Hydrological and Climate Change Risks</p>	<p>Appropriateness of Hydrological Data Series used in Project Design</p>	<p>"The Panel's hydrology expert concluded that the hydrologic data sets used in Project design constitute a reliable data series and its variability over time is a natural condition, which can be observed in other hydrologic series of different parts of the world, when the hydrologic series is long enough. The Panel finds that this provides an appropriate baseline for analysis of environmental and economic issues, in compliance with OP 4.01."</p>	<p>Management acknowledges the Panel's finding of compliance with OP 4.01 regarding the appropriateness of hydrological data series used in the Project.</p>	<p>No action is planned</p>
	<p>Potential Impact of the Project on Lake Victoria</p>	<p>"The Panel notes the importance of assessing such a situation and extending the area of influence of the Project to Lake Victoria. (...) [T]he Panel finds that the SEA analysis did not comply with OP 4.01 in defining the area of influence of the Project because the Project impacts on the changing levels of Lake Victoria were not assessed. (...) [T]he Panel notes the importance of making the structure for governance of water releases from Lake Victoria clear and transparent to all stakeholders.</p>	<p>Management notes that as a run-of-river facility downstream of Nalubaale and Kiira, Bujagali will have no control over releases from Lake Victoria. Nonetheless, the SEA reviewed the cumulative impacts of the Project in the Victoria Nile Basin, and thus the area of influence of this Project was correctly identified as including the Nalubaale/Kiira dam structure. Moreover, Management acknowledges the critical importance of sustainable management of Lake Victoria (including water usage (e.g., energy, water supply, etc.), fisheries management, pollution control, tourism, transport, and many other interrelated issues), and is supporting collaborative efforts by the EAC in the context of the LVEMP. Management believes it has adequately described the current hydro operating regime, the Government's efforts to return to the Agreed Curve operating regime, and the benefits that the Bujagali Project will bring through more efficient use of water for hydropower generation. The Project does not create an incremental draw on Lake Victoria: it reuses the water released for the operation of the Nalubaale/Kiira dam complex. With the joint operation of the existing hydropower facilities and the proposed Project, the same energy output generated by Nalubaale and Kiira in 2007 would only require 45 percent of the current water release from Lake Victoria (see PAD, paragraph 123). Furthermore, the GoU is taking a number of measures to diversify power supply, including procuring permanent thermal generation capacity, adopting demand side management measures, as well as accelerating mini-hydro and co-generation prospects in the short term, and geothermal prospects in the long term (see PAD, page 24).</p>	<p>In the course of normal supervision, Management will follow up on GoU's commitment to disclose the Lake Victoria hydrological (water releases) information and make it available to the EAC. The LVEMP II under preparation will also address a broad range of environmental issues affecting Lake Victoria.</p>

Issues related to Environmental Assessment (OD 4.01)	Panel's Investigation Report: Findings on the issues	Management's Report: Comment to the Panel's findings on the issues	Management's Remedial Actions Report:
		<p>Management also believes that it has properly assessed the area of influence of the Project on Lake Victoria. This includes an assessment of the hydrology of the Victoria Nile and hydrological risks (PAD, paragraphs 118-131 and Annex 10), along with the potential effects of climate change on the long-term viability of the Bujagali Project (PAD, paragraph 160 and Annex 15, paragraphs 100-102).</p> <p>Management acknowledges that there are two opposing views of the Project's potential impact on Lake Victoria. Project opponents contend that as demand continues to rise, it could add to pressure for over-abstraction of Lake Victoria, since Uganda will be increasingly reliant on Nile-based hydropower. As Management has explained above, the Bujagali dam itself will not result in greater abstraction from Lake Victoria. By more efficiently using the water for both hydropower facilities through a joint operating regime of water flows, such pressure will be lessened. Furthermore, ongoing planned investments in new generation, including thermal power, along with regional interconnections, will allow the GoU to stay ahead of demand and thus reduce reliance on the Nile for power generation.</p> <p>On balance, Management believes that with ongoing support from the GoU, private sector, and donors, investment plans can be realized, which will support maintenance of water releases on the Nile that are consistent with the Agreed Curve. In particular, the GoU, Bank and other donors are establishing a Sector Wide Approach to support the investment plan and stay ahead of demand growth. In addition, should demand growth be lower than expected, as the Panel suggests (see paragraph 254 of the Panel's Investigation Report), the pressure would be reduced. Moreover, over-abstraction would be less of an issue if climate predictions prove correct, and the water inflows to Lake Victoria are higher than today.</p> <p>Nevertheless, Management stresses the importance of supporting sustainable use of Lake Victoria, including water use, biodiversity, fisheries, water quality, watershed management, tourism, transportation, and other issues. This complex web of issues cannot be resolved on the basis of a single hydropower project. For this reason, the Bank is supporting the LVEMP II, one objective of which is to strengthen regional and national institutions for coordination of sustainable management of the transboundary Lake Victoria Basin resources, including establishing suitable and inclusive governance structures for water usage. To accomplish this, the Project will establish and/or strengthen regional and national institutions that regulate, monitor and enforce sustainable utilization of natural resources and environmental standards. Mechanisms for resolving disputes over natural resources management and environmental impacts will also be developed.</p>	
	<p>Climate Change Risks</p> <p>"The Panel finds that the possible effect of climate change on hydropower projects on the Victoria Nile has been seriously considered in the SSEA. This analysis meets the requirements of OP 4.01. As noted above, however, the SSEA was not properly disclosed as a Project document"</p>	<p>Management acknowledges the Panel's finding of compliance regarding the consideration in the SSEA of the possible effect of climate change on hydropower projects on the Victoria Nile. Management agrees that the PAD's language might have been more appropriately moderated</p>	<p>See Action under Item above: In the course of normal supervision, Management will follow up on GoU's commitment to disclose the Lake Victoria hydrological (water releases) information and make it available to the EAC. The LVEMP II under preparation will also address a broad range of environmental issues affecting Lake Victoria.</p>
<p>Environmental analysis alternatives of</p>	<p>Hydro-power Location Alternatives within Uganda</p> <p>"The Panel finds that Management did not ensure that cultural and spiritual matters were properly considered when comparing the Bujagali and Karuma alternatives, as required by OP 4.01. This is especially relevant in light of the significant cultural and spiritual importance of the Bujagali Falls to the Busoga people. The lack of proper consideration of cultural and spiritual matters in this comparison had important consequences, in that it appears to have led to the conclusion that there was little difference between the Bujagali and Karuma sites and that therefore the economic and financial aspects of the options should become the determining factor in selecting</p>	<p>The Project took into account the cultural and spiritual values associated with Bujagali Falls and treated these as part of the assessment of Project location and anticipated impacts, as noted in Appendix J of the SSEA. During the Third Stakeholder Consultation in 1999, the Project Steering Committee retained the criterion "impacts on historical and religious sites." Although this was not measured in quantitative terms, the analysis of alternatives took into consideration the traditional practices and the value attached to 'unseen, free moving, spiritual forces associated with ancestors (personal spirit forces) or with nature (impersonal spirit forces)' (RCDAP, pages 95-96). This was evident in the appeasement ceremony, facilitated by AES, and which took place in August 1998, with the spiritual leader, Nabamba Bujagali, who found the Project to be 'culturally acceptable'. On this basis, and following advice from several academic and local cultural experts, as well as feedback from more than 60 consultations with spiritual leaders, local officials, and other PAPs, the Project proceeded with the selection of Bujagali, with the knowledge that the cultural and spiritual aspects were sufficiently taken into account in its site selection."</p>	<p>No further action is required.</p>

Issues related to Environmental Assessment (OD 4.01)	Panel's Investigation Report: Findings on the issues	Management's Report: Comment to the Panel's findings on the issues	Management's Report: Remedial Actions
<p>Alternative Project Configurations at Bujagali</p>	<p><i>the preferred option."</i></p>		
	<p>"The Panel notes that a range of alternatives have been considered in these studies. The Panel is concerned, however, that the analysis unduly narrowed its consideration of alternatives on the basis of a priori judgments rather than exploring all technically feasible options, including those that would not involve flooding the Bujagali falls and thus have lower social and environmental costs, and laying them out in a systematic way along with their economic, social and environmental benefits and costs, so that judgments on optimal alternatives could be made with a full understanding of the trade-offs involved. This is not consistent with OP 4.01's provisions that feasible alternatives should be explored systematically to meet the basic Project objectives, and may have led to inadequate consideration of alternatives that met Project objectives while avoiding the social and environmental costs associated with flooding the Bujagali Falls."</p>	<p><i>The SEA describes the alternative configurations considered for the Project. These included options which might have preserved the Bujagali Falls. However, these were rejected on technical, environmental, and social grounds. The selected alternative includes an environmental offset (Kalagala). This conforms with the requirements of OP 4.01.</i></p> <p><i>Section 4.4, page 184 of the main SEA Report for the hydropower plant (December 2006) provides the details of the configurations studied. The Inception Report (WS Atkins, 1998) and scope of work for the EIA included a requirement that alternative options at, and around, the Bujagali site also be investigated. The objective of the study was to "compare and evaluate options that have been developed for Bujagali, in order to provide the rationale for the selection of the preferred scheme. The key considerations in the comparison are the potential power output of the different schemes, their financial costs and their relative environmental and socio-economic implications." A review of this report was undertaken in connection with the Economic Analysis of the new Project.</i></p> <p><i>Five configurations for the dam had previously been considered by the engineering firm Acres in 1990 in connection with the feasibility of expanding the Owen Falls power station at: Kyabirwa Falls; Bujagali Falls (the "B1 Configuration"); Buyala Falls (two alignments); and Busowoko Falls. These configurations were re-examined and costed during the Economic Analysis performed for the new Project. In addition, two further configurations were identified, one a diversion canal at Bujagali to avoid the inundation of Bujagali Falls (the "B2" configuration); and the other at Busowoko Falls with a lower full supply level, again to preserve the falls and the river downstream to Dumbbell Island.</i></p> <p><i>As the above summary indicates, these configuration studies included alternatives to preserve Bujagali Falls. The diversion canal and lower supply levels that were considered were rejected on technical (lower power output, increased construction time) and on environmental, social and economic grounds.</i></p> <p><i>Management considers that the present configuration with the Kalagala Offset provides a more environmentally sound development option for the Victoria Nile. Instead of two additional dams on a short stretch of the river, only one additional dam (Bujagali dam) will be built, which allows for alternative environmentally sound development on that stretch of the Victoria Nile.</i></p>	<p><i>No action is planned beyond ongoing supervision</i></p>

ANNEX 3: FRAGMENTS OF THE TEXTS EVIDENCING THE DISCOURSES UTILIZED BY THE INSPECTION PANEL AND MANAGEMENT

Main discourses used by the World Bank Inspection Panel

PURPOSE	INDIA (1997) Panel's discourses when commenting its findings on the eligibility of the request and Management's response and remedial actions	ARGENTINA/PARAGUAY (2002) Panel's discourses when presenting its findings on the issues	UGANDA (2002) Panel's discourses when presenting its findings on the issues
<p>ACKNOWLEDGING:</p> <p>i) GOOD PERFORMANCE</p> <p>ii) COMPLIANCE FINDINGS</p>	<ul style="list-style-type: none"> • Environmental and impact assessment • i) Local people, many NGOs/activists and government want the Bank involvement and ii) Compatibility between the Bank and the civil society and government: "As emphasized by the President of the Bank, the poor and disadvantaged everywhere do not want charity; they want opportunity. They want partnership. As one local PAP representative privately told the Inspector, he felt worried about rumours that some NGOs were determined to stop not only Bank involvement, but the project itself. According to him, and it was the Inspector's impression, local NGOs/activists and PAPs supported continuation of the Project and considered Bank involvement essential. The representative of the requesters likewise informed the Inspector that Bank support was necessary. The GOI has expressed its desire to support any measures the Bank might propose to achieve better immediate results for those adversely affected in the Singrauli area. The NTPC told the Inspector it how to improve R&R for the Singrauli area and make it a model for the country." 	<ul style="list-style-type: none"> • Environmental and impact assessment • Consistency with the requirements of OP 4.01: e.g. "Before bringing the Second Yacyretá Project to the Board for approval in 1992, the Bank had a full environmental assessment prepared. An Environmental Management Plan (PMMA or EMP) as well as an Action Plan for Resettlement and Rehabilitation (PARR or RRAP) accompanied the assessment. The Panel finds that the Bank thus met the requirement of OD 4.01 at that time." 	<ul style="list-style-type: none"> • Environmental and impact assessment • Consistency with the requirements of OP 4.01: e.g. "Project has appropriately been classified as category "A", the category for projects with the most serious level of impacts. This complies with OP 4.01." • Systematic analysis: "The analyzes in the SSEA (...) provide a systematic examination of the potential consequences of the Nalubaale and Kiira facilities, the Bujagali Project, and the planned Karuma project all being situated on the Victoria Nile between Lake Victoria and Lake Kyoga." • Expertise: i) "The Panel's hydrology expert concluded that the hydrologic data sets used in Project design constitute a reliable data series and its variability over time is a natural condition, which can be observed in other hydrologic series of different parts of the world, when the hydrologic series is long enough." ii) "The Panel notes that the Project Sponsor contracted international consultants to prepare the required SEA for the Bujagali Hydropower and Bujagali Interconnection Project with appropriate input from Bank Management."
<p>BACKING:</p> <p>i) NEED FOR COMPLIANCE</p> <p>ii) NON-COMPLIANCE FINDINGS</p>	<ul style="list-style-type: none"> • Environmental and impact assessment: e.g. i) OD 4.01 is useful "particularly where involuntary resettlement is to take place" and is "of key importance". ii) "The numerous problems raised should be mitigated or prevented now instead of waiting for retrospective identification through future reviews/studies and future mitigation activities or remedial actions." • Consistency with the requirements of OP 4.01: e.g. "In light of the objectives of OD (...) 4.01" and "as provided by OD 4.01 (para 18)". • i) Expertise and ii) Management: "The discussion is based on the Request, the Response, supplemental information furnished by NGOs, and additional information provided by the Requesters, Management and NTPC. In addition, the Panel considered information obtained during Mr. Ernst-Gunther Broder's ("Inspector") visit New Delhi and the Project area during July 6-13, 1997. Prior to this the Inspector consulted with the Executive Directors representing the Government of India ("GOI"). During his visit the Inspector consulted in New Delhi with officials of the GOI – including Cabinet Secretary, the Additional Secretary of the Ministry of Finance, Joint Secretary of the Ministry of Power, and the Chairman & Managing Director of NTPC. In the Project area the inspector met with Executive Directors, Senior Management and officials of NTPC; the representative of the requesters and (...) with numerous PAPs in the project area and local NGO representatives, activists and community 	<ul style="list-style-type: none"> • Environmental and impact assessment: e.g. i) Environmental and social assessments "should have anticipated" the effects on villages above the level of flooding associated with movements of population, including effects on their economies and livelihoods of their people. ii) e.g. "The safeguard envisioned to be in place through OD 4.01 has therefore failed. (...) The Panel finds that the safeguards to assess the implications for water supply, sewers, and urban drainage (...) were by-passed." • Consistency with the requirements of OP 4.01: "The range of environmental matters addressed is limited; alternative resettlement sites are not considered; few mitigation measures are suggested, and affected parties were not consulted." • i) Expertise: "This report concludes the Panel's investigation into the matters alleged in the Request for Inspection submitted to the Panel in May 2002. The current Panel's chairperson, Ms. Edith Brown Weiss, led the investigation. Three expert consultants on environmental, hydrological and social issues assisted the Panel in its undertaking. This report examines the merits of the claims presented in the Request. It 	<ul style="list-style-type: none"> • Environmental and impact assessment <ul style="list-style-type: none"> ○ Capacity building: "This requirement [part of OP 4.01] to support needed capacity building, which is important in the implementation of the social and environmental aspects, has not been complied with in this Project" ○ Mitigation measures: "The Panel finds that the failure to consider mitigation measures, which would reduce social and environmental impacts of the transmission line, does not comply with OP 4.01" ○ Area of influence: "The Panel notes the importance of assessing such a situation and extending the area of influence of the Project to Lake Victoria." ○ Clear and transparent governance: "[T]he Panel notes the importance of making the structure for governance of water releases from Lake Victoria clear and transparent to all stakeholders." ○ Consideration of cultural and spiritual values: i) The consideration of cultural and spiritual values "is especially relevant in light of the significant cultural and spiritual importance of the Bujagali Falls to the Busoga people. The lack of proper consideration of cultural and spiritual matters in this comparison had important consequences, in that it appears to have led to the conclusion that there was little difference between the Bujagali and Karuma sites

PURPOSE	INDIA (1997) Panel's discourses when commenting its findings on the eligibility of the request and Management's response and remedial actions	ARGENTINA/PARAGUAY (2002) Panel's discourses when presenting its findings on the issues	UGANDA (2002) Panel's discourses when presenting its findings on the issues
	<p>leaders. After his visit the Inspector consulted again with the Bank Executive Director representing India.”</p> <ul style="list-style-type: none"> • i) Management and ii) environmental risks: “The decision (...) to adopt more dykes as an acceptable ash disposal technology was approved by the Bank and this decision did create the need for a large resettlement program with considerable management problems and environmental risks. • Consultation / participative approach: i) OD 4.01 is useful “particularly where involuntary resettlement is to take place” and is “of key importance” because: i) Lack of local consultations and participation in both preparation and implementation of the R&R component of the Project appears, <i>prima facie</i>, to be the root cause of past and current problems and complaints, including a reluctance or resistance to relocation; ii) The Inspector found the question of what constitutes “local” representation be an important issue on the ground. As far as the preparation phase is concerned, the [Management] Response speaks for itself (...): ‘Lack of participative process, communication, sharing of information regarding NTPC policy, entitlements, compensation, the use of petty contracts to influence PAP representatives’, etc. would mean that it is going to be extremely difficult for NTPC to convince PAPs in the ash dyke villages of Vinhayachal and Rihand to move out to be resettled and rehabilitated within NTPC policy framework. (...) The Panel observes that there has clearly been a great deal of local tension, misinformation and misunderstanding surrounding the filing of this request.”. ii) “The Panel assumes that appropriate local participation as well as intensive on-the-spot Bank supervision will contribute to its prospects of successful implementation.” iii) “In general, if the studies and reviews result in actions to be carried out in close cooperation with directly affected PAPs and NGOs they should help answer the Requesters’ concerns”. iii) “Lack of local consultations and participation in both preparation and implementation of the R&R component of the Project appears, <i>prima facie</i>, to be the root cause of past and current problems and complaints, including a reluctance or resistance to relocation.” • Sufficient evidence <ul style="list-style-type: none"> ○ “The Inspector found the question of what constitutes ‘local’ representation be an important issue on the ground” ○ [I]t is not quite clear whether there was interagency coordination – i.e. between NTPC and NCL.” • Deadlines: The broader Action Program “consists of studies and reviews, some with deadlines, other without.” • Resolution of discrepancies: “Resolution of discrepancies in resettlement and other issues – both past and present – is a prerequisite to implementation of the action programs.” 	<p>also considers Management’s response to the claims. During its investigation the Panel interviewed Bank staff in Washington, D.C., visited the project area on four occasions, met with the Requesters and other project affected people throughout the area, and met with local and national authorities in both Argentina and Paraguay as well as with EBY officials. The Panel also identified and carefully reviewed relevant project documents that the Requesters, Bank staff, Inter-American Development Bank (IDB) staff, EBY officials and other sources provided to the Panel.”</p> <ul style="list-style-type: none"> • i) Management and ii) Limitations for financing environmental and social management exist: “The future environmental management of the Yacyretá Project is critically threatened (...) by <u>the project’s financial position</u>” and “both the natural environment and project-affected people will suffer additional harm if the project’s environmental management practices deteriorate.” • Compatibility between environmental protection and the Bank: i) Social and environmental problems are a situation which neither Bank staff, project proponents, or affected persons desire or with which they are satisfied. ii) This project demonstrate that taking short-cuts with the Bank’s safeguard policies is counterproductive for all concerned 	<p>and that therefore the economic and financial aspects of the options should become the determining factor in selecting the preferred option.” ii) “The Project would inundate Bujagali Falls and other natural habitats, which are sites of cultural and religious significance to a large community of people, and involve displacement and resettlement of people and families from their lands.”</p> <ul style="list-style-type: none"> • Consistency with the requirements of OP 4.01: e.g. “The Panel finds that neither the SSEA nor the SEA has addressed the cumulative effects of the existing and planned projects in a meaningful way. This is not in compliance with OP 4.01.” • Expertise: “Based on its review of relevant research studies, the Panel observes that the status of the fish species inhabiting both Lake Victoria and the Victoria Nile is disputed and that ongoing research is desirable”. • Sufficient evidence: “[T]he Panel finds that the analyzes are not sufficiently backed by evidence and include opinions rather than careful fact-based examinations of the additive effects of impacts.” • Complexity: “As the project is contentious and involves complex multidimensional environmental concerns, appointment of an environmental panel of international experts is warranted and the lack of such a panel is not in compliance with OP 4.01.” • Social-environmental costs: Panel is concerned, however, that the analysis unduly narrowed its consideration of alternatives on the basis of a priori judgments rather than exploring all technically feasible options, including those that would not involve flooding the Bujagali falls and thus have lower social and environmental costs, and laying them out in a systematic way along with their economic, social and environmental benefits and costs, so that judgments on optimal alternatives could be made with a full understanding of the trade-offs involved. • i) Sustainability, ii) use the environmental resources and ii) Social-environmental costs: “[E]nergy production requires considerable care in order to ensure that social, economic and environmental aspects are properly considered, in line with Bank policy, to adhere to sound development practices and avoid situations where costs, including social and environmental costs, outweigh the benefits expected from what are usually sizable investments.”²⁴ • i) Sustainability and ii) complexity: “[G]enerating energy for development in a way that is economically efficient, socially equitable and environmentally sustainable is hugely complex and one of the major sustainable development challenges of today.(...) The results of the Panel’s investigation illuminate some of these complexities in the Bujagali Project • Compatibility between environmental protection and Bank: “The

²⁴ This paragraph is again repeated in the Summary Report of the Panel’s Investigation Report: “Right at the outset, the Panel wishes to go on record that it considers energy a crucial factor in uganda’s development. The findings of this Report do not dispute this fact but show that energy production requires considerable care in order to ensure that social, economic and environmental aspects are properly considered, in line with bank policy, to achieve sound development practices and avoid situations where costs, including social and environmental costs, outweigh the benefits expected from what are usually sizable investments.”

PURPOSE	INDIA (1997) Panel's discourses when commenting its findings on the eligibility of the request and Management's response and remedial actions	ARGENTINA/PARAGUAY (2002) Panel's discourses when presenting its findings on the issues	UGANDA (2002) Panel's discourses when presenting its findings on the issues
	<ul style="list-style-type: none"> • Large projects: "Any actions need to be taken in the context of the current and inevitable development of large scale open pit coal mining to fuel thermal power plants and consequent ash processing in this area". • Compensation to affected people: "to avoid involuntary resettlement and where this is not possible, harmonized resettlement and rehabilitation strategy including practical job opportunities". • Compatibility between environmental protection and development: Remedial actions to solve the environmental problems are "vital for India's fight to alleviate poverty and future development" • Practical measures: "The Panel understands that the past studies to be revisited might also be updated and translated into practical measures." • Urgency: i) Preventing the problems "would require identifying the factual source of current R&R problems now so that Management can propose remedial actions based on local solutions as a matter of urgency.". ii) "[T]he Panel believes it is imperative to conduct an immediate independent investigation of the facts." • Cooperation: "Close cooperation between NTPC and coal mining activities in the Singrauli area". 		<p><i>World Bank stance has been nevertheless clear in the sense that : "...the long term protection of the Kalagala Falls and the preclusion of development of hydropower potential at Kalagala is a necessary offset for World Bank Group participation in the proposed project'."</i></p> <ul style="list-style-type: none"> • Use of the environmental resources: i) "Uganda is facing a serious power supply crisis. The Panel wishes to place on record that it considers energy a crucial factor in Uganda's development. ii) "In closing, the Panel would like to emphasize that energy is a crucial factor in Uganda's development.

Main discourses used by the World Bank Management

PURPOSE	INDIA (1997) Management's discourses when responding to the request and formulating the remedial actions	ARGENTINA/PARAGUAY (2002) Management's discourses when responding to the Panel's findings on the issues	UGANDA (2007) Management's discourses when responding to the Panel's findings on the issues
ACKNOWLEDGING OMISSIONS	<ul style="list-style-type: none"> • Environmental and impact assessment • Development pathway is debatable: <i>The further development of the Singrauli area had been part of a public debate in India and the projects formed part of India's eighth plan approved by parliament.</i> 	<ul style="list-style-type: none"> • Environmental and impact assessment 	<ul style="list-style-type: none"> • Environmental and impact assessment • Consistency with / reference to the Panel's report • Panel's criteria: <i>"Presentation of the Project to stakeholders could have been strengthened in ways such as those suggested by the Panel (clear statement and graphic showing the inter-relationships and entire suite of documents that constitute the studies making up the SEA)."</i> • Efficiency in EA: <i>"It is true that in the interests of efficiency, an EA may, in principle, refer to and/or incorporate, as appropriate, other relevant studies."</i> • Qualitative VS qualitative terms: <i>"Criterion 'impacts on historical and religious sites' was not measured in quantitative terms."</i> • Sustainability: <i>"The Private Power Generation (Bujagali) Project is aimed at providing the capacity needed to overcome the supply constraints in a least-cost and environmentally and socially sustainable manner."</i> • i) Use of the environmental resources , ii) Sustainability, iii) Complexity and iv) Management: <i>"Management stresses the importance of supporting sustainable use of Lake Victoria, including water use, biodiversity, fisheries, water quality, watershed management, tourism, transportation, and other issues. This complex web of issues cannot be resolved on the basis of a single hydropower project. For this reason, the Bank is supporting the LVEMP II. (...) The Project will establish and/or strengthen regional and national institutions that regulate, monitor and enforce sustainable utilization of natural resources and environmental standards. Mechanisms for resolving."</i> • i) Sustainability and ii) Environmental Management: <i>"Management acknowledges the critical importance of sustainable management of Lake Victoria (including water usage (e.g., energy, water supply, etc.), fisheries management, pollution control, tourism, transport, and many other interrelated issues), and is supporting collaborative efforts by the EAC in the context of the LVEMP."</i>
DEFENDING PERFORMANCE AND ACTIONS	<ul style="list-style-type: none"> • Environmental and impact assessment • Management's opinion • Expertise: <i>XIDAS, "an independent development institute, with experience in social research and rural extension work", was agreed to be in charge of the project-specific remedial action on environmental assessment.</i> • I) Consultation / participative approach, ii) Expertise, iii) Management: <i>"Extensive consultation was also initiated with concerned corporations, government agencies, Non-Governmental Organizations (NGOs), and project-affected people and communities regarding the Panel Report and Recommendation. These discussions included the Cabinet Secretary of the Government of India (GOI) during his visit to</i> 	<ul style="list-style-type: none"> • Environmental and impact assessment <ul style="list-style-type: none"> ○ <i>Screening</i> • Consistency with / reference to: <ul style="list-style-type: none"> ○ Requirements of OP 4.01: <i>"Term EA as defined by OD 4.01"</i> • Expertise: <ul style="list-style-type: none"> ○ <i>International consultants</i> ○ <i>Competence of the environmental management of the reservoir</i> ○ <i>EBY's judgment at the time [Prior to 1995], with which the Bank concurred, was that impacts were not considered significant</i> ○ <i>"Sewerage system and wastewater treatment plant design is based on a 25-year population forecast that considered all urban growth factors, including the significant induced impacts of the international bridge from Posadas."</i> • Consultation / Participative approach: <i>"Extensive public consultation."</i> 	<ul style="list-style-type: none"> • Environmental Impact Assessment <ul style="list-style-type: none"> ○ Scope of the EA: <i>i) The SSEA "is regional in scope and extends well beyond Bujagali, and thus was disclosed under the NBI". ii) "The applied 'Limits of Acceptable Change' approach "requires a clear definition of spatial and temporal boundaries". iii) "[T]he scope of work for the EIA included a requirement that alternative options at, and around, the Bujagali site also be investigated".</i> ○ Contribution of EA to development: <i>The SSEA offers an overview analysis of major regional power development options and regional transmission interconnections in the Nile Equatorial Lakes Region in Eastern Africa. It also provides a solid foundation for planning the development of the region's power sectors until 2020.</i> • Consistency with / reference to: <ul style="list-style-type: none"> ○ SSEA ○ The requirements of OP 4.01. ○ Private sector projects and with the timing of key planning elements: <i>No inclusion of detailed EMP in the SEAs "is consistent with the approach taken in private sector projects and with the timing of key planning elements. In large private sector infrastructure projects, the SEA report contains a comprehensive framework EMP. A detailed EMP can only be prepared when the EPC contractors, who have the main responsibility for environmental management, have been selected and the contract signed. Once the EPC contractors were engaged contractually, they worked in parallel with BEL to develop detailed SEAPs."</i> ○ Management's undertakings ○ The 2002 Action Plan: <i>"Management completed a freestanding SSEA of Power Development Options in conformance with the Action Plan found in the Management Report in response to the Inspection Panel investigation of the first Bujagali project (2002)."</i> ○ Panel's reports: <i>"Having taking the findings and recommendations of the first Inspection Panel report were taken into account, Management launched the SSEA prior to finalization of the preparation of the new Project."</i> ○ Resettlement and Community Development Action Plan (RCDAP): <i>"the analysis of alternatives took into consideration the traditional practices and the value attached to 'unseen, free moving, spiritual forces associated with ancestors (personal spirit forces) or with nature (impersonal spirit forces)' (RCDAP, pages 95-96)"</i> ○ Inception Report (WS Atkins, 1998): <i>"The Inception Report (WS Atkins, 1998) (...) included a requirement that alternative</i>

PURPOSE	INDIA (1997) Management's discourses when responding to the request and formulating the remedial actions	ARGENTINA/PARAGUAY (2002) Management's discourses when responding to the Panel's findings on the issues	UGANDA (2007) Management's discourses when responding to the Panel's findings on the issues
	<p>Washington, and senior officials of the Ministry of Finance, Ministry of Environment and Forestry, Ministry of Coal, Ministry of Power, Governments of the states of Uttar Pradesh and Mahya Pradesh, Local Authorities of the Singrauli region, Coal India Limited, NTPC officials at corporate headquarters, and plant managers in the Singrauli region and their R&R staff."</p> <ul style="list-style-type: none"> • Consultation / Participative approach: Terms of reference for work of XIDAS would be prepared jointly including discussions with the affected population, concerned NGOS, and other stakeholders. • Compatibility between environmental protection and the Bank: "The Environment Department considered the analysis, findings, and recommendations of this study to be sufficiently significant not only for India but Bank-wide and has recommended wider dissemination. A workshop is scheduled in the Bank in mid-September." • Practical measures: The task will be carried out "with urgent attention to finding practical solutions to immediate problems facing those who have not yet received their full entitlements under RAPs or ReAPs of the Project". 	<ul style="list-style-type: none"> • Limitations for financing environmental and social management exist: "Financial sustainability of effective environmental management may be more robust than previously apparent" because of: i) prognostics made based on past events (e.g. the effect of past falls of the national annual revenue in the capability to finance environment-related recurrent costs); ii) the broader reforms in the energy sector in Argentina that rise the price for power paid by the Government of Argentina to EBY. • National/International regulations and standards: <ul style="list-style-type: none"> ○ "In accordance with Paraguayan regulations". ○ Improvement of standards ○ "Design standards are based on technically sound national and/or international practices" ○ "Supervision engineers control quality and enforce standards" • Management: "Quality assurance protocol to evaluate the environmental conditions and the quality of the civil works in the resettlement sites." • Strengthening of Bank supervision: "Bank supervision was strengthened." • Environmental and social mitigation measures • Emerging understanding of the OD 4.01 when it had been just recently introduced. • Resettlement sites issues are related less to environmental assessment than to construction supervision and maintenance: Design and quality issues in the resettlement sites are related less to environmental assessment than to construction supervision and maintenance. • Contracts with clauses: "Civil works contracts with clauses" 	<p>options at, and around, the Bujagali site also be investigated."</p> <ul style="list-style-type: none"> • National/International regulations and standards: Global best practice • Expertise and Management: i) "BEL has hired a highly qualified Ugandan environmental and social manager, who is supported by a numerous team.". ii) The qualified staff meet the capacity building needs identified at the concept stage of the Project. iii) "An Environment and Social Independent Panel of Experts was established in 2006 for the current Project and it follows a similar panel that served for the first Bujagali project. ii) "In view of the Project's history and its crucial importance to Uganda, Management at the outset has established enhanced due diligence for both Project preparation and supervision. This includes assignment of experienced staff with the necessary range of expertise, as well as recruitment of highly qualified consultants for specific tasks such as the financial analysis, economic analysis, hydrology review, etc.". iv) "[F]ollowing advice from several academic and local cultural experts". • Expertise, Management and Consultation / Participative approach: "Management will follow up on specific stakeholder commitments through implementation of a proposed Action Plan, including establishment of a project monitoring committee, implementation of a management plan for cultural resources, and disclosure of the reports prepared by the Independent Panel of Social and Environmental Experts." • Management: "[D]isputes over natural resources management and environmental impacts will also be developed." • Consultation / Participative approach: <ul style="list-style-type: none"> ○ "World Bank Group staff met with the Requesters in Uganda in March 2007, shortly before the Request was submitted to the Inspection Panel, and specifically described the suite of sectoral and Project documents and where each of their key concerns was addressed." ○ "[F]ollowing (...) feedback from more than 60 consultations with spiritual leaders, local officials, and other PAPs. ○ Consideration of cultural and spiritual matters "was evident in the appeasement ceremony, facilitated by AES, and which took place in August 1998, with the spiritual leader, Nabamba Bujagali, who found the Project to be 'culturally acceptable'." • Limitations for financing environmental and social management exist: "A stand-alone partial-risk guarantee will normally not provide financing for environmental and social management. However, since 1994, the World Bank has done it." • Scope of the project: <ul style="list-style-type: none"> ○ "Karuma project is not located between Lake Victoria and Lake Kyoga". ○ "As a run-of-river facility downstream of Nalubaale and Kiira, Bujagali will have no control over releases from Lake Victoria. Nonetheless, the SEA reviewed the cumulative impacts of the Project in the Victoria Nile Basin." ○ "The Bujagali Project is only one of the many options considered in the SSEA. Since the SSEA is a planning tool and linked to all planned power projects in the region, it would not be logical to consider the SSEA only as an integral part of the Bujagali safeguard documents suite. However, reference to the SSEA has been made in the Bujagali safeguards documents and in the Integrated Safeguard Data Sheet." • Not highly quantitative terms (or not so much) to facilitate communication to stakeholders: <ul style="list-style-type: none"> ○ The SEA adapted the 'Limits of Acceptable Change' approach to cumulative effects assessment "to ensure that suitable qualitative and quantitative methodology, that was not highly quantitative or statistical in nature and that was easy to convey to a variety of stakeholders". ○ The analysis in SSEA "presents a basic qualitative information on cumulative impact issues". • Multi-criteria: <ul style="list-style-type: none"> ○ The applied 'Limits of Acceptable Change' approach "requires selection of key criteria that reflect people's social, economic, and environmental priorities for the study area." ○ The analysis in SSEA "was undertaken on a basin or sub-region basis depending on the groupings of options which would potentially lead to cumulative impacts." ○ "Strategic social and environmental framework facilitated decision-making on the timing and selection of the next project for development." ○ "Technical, environmental, and social ground". ○ "The potential power output of the different schemes, their financial costs and their relative environmental and socio-economic implications". ○ "Economic Analysis performed for the new Project".

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		<ul style="list-style-type: none"> • Requirements for contractors • Improvement of the borrower • Project can have positive impacts: "Resettlement process can have several significant positive impacts regarding risk and infrastructure." • Negative impacts can be positive: "Negative impacts can (...) result positive in many ways". • Negative impacts can be negligible: "Any potential additional impacts that might be negative were expected to be negligible." • i) Rectification of problems by the Bank and ii) Communication of problems to the borrower: "Quality problems were rectified and/or brought to EBY's attention for resolution." 	<ul style="list-style-type: none"> ○ "Technical (lower power output, increased construction time) and on environmental, social and economic grounds". ○ "[T]he present configuration provides a more environmentally sound development option for the Victoria Nile. • Technical issues: • i) changes in flow regime would be absorbed by Lake Victoria; ii) Loss of habitat will be localized; ii) "[S]ome socio-economic impacts of hydropower options (...) are generally quite local and do not really generate cumulative effects; iii) a geographical concentration of multiple options might affect the regional socio-economic dynamic and therefore will generate some impacts that may accumulate in time and space; iv) (...) In the entire region, it is the only project with involuntary resettlement and thus the impact will not cumulate with other options proposed"; v) "Should demand growth be lower than expected, as the Panel suggests."; vi) "Over-abstraction would be less of an issue if climate predictions prove correct, and the water ii) inflows to Lake Victoria are higher than today". v) Instead of two additional dams on a short stretch of the river, only one additional dam (Bujagali dam) will be built. • Already ongoing activities with the same purpose: "Given the ongoing technical and operational support to NEMA, further strengthening of the agency in the context of the Bujagali Project was not required." • Availability of information: "For some projects (...) very little information was available." • Compensation: Compensation to people for relocation • Uncertainties: 1) Given currently available data and information, identification of cumulative effects on health and educational services or on cultural/spiritual sites is unknown; 2) As these activities are not believed to have been commercially available at the time of Kiira's approval, it seems unlikely that there are cumulative effects on white-water rafting; 3) "Possible slight reduction in sediment and nutrient flow". • Risks: the EA "includes an assessment of the hydrology of the Victoria Nile and hydrological risks and along with the potential effects of climate change on the long-term viability of the Bujagali Project" • Negative impacts can be positive: i) "Aesthetic impacts have potential for enhanced tourism; Disruption of aquatic organisms and communities can be potentially positive if productivity of reservoir increased; ii) Some disruption of fishers can be potentially positive if increased productivity in reservoir is reflected in fishers' catches"; iii) "the only significant negative cumulative socio-economic impact in this region (...) will be on aesthetics and tourism concerns. In contrast, it should be taken into account that a more reliable supply of energy will improve infrastructure and services, an essential factor to attract tourism and promote economic growth." • Measures that minimize negative impacts: <ul style="list-style-type: none"> i) The Project does not create an incremental draw on Lake Victoria: it reuses the water released for the operation of the Nalubaale/Kiira dam complex. With the joint operation of the existing hydropower facilities and the proposed Project, the same energy output generated by Nalubaale and Kiira in 2007 would only require 45 percent of the current water release from Lake Victoria (...) Project opponents contend that as demand continues to rise, it could add to pressure for over-abstraction of Lake Victoria, since Uganda will be increasingly reliant on Nile-based hydropower (...)By more efficiently using the water for both hydropower facilities through a joint operating regime of water flows, such pressure will be lessened. ii) The GoU, Bank and other donors are establishing a Sector Wide Approach to support the investment plan and stay ahead of demand growth. GoU is taking a number of measures to diversify power supply, including procuring permanent thermal generation capacity, adopting demand side management measures, as well as accelerating mini-hydro and co-generation prospects in the short term, and geothermal prospects in the long term. • Use of the environmental resources: "Energy is a crucial input to Uganda's development, and hydropower is an important option for meeting the country's power needs. With less than 10 percent of the population connected to electricity, a long-term investment program is required in the energy sector to realize the country's development aspirations.(...) The current Project is the largest private sector investment in East Africa, and will provide stable baseload power which is needed to grow the economy and expand access to electricity.