

# **The Inspection Panel**

## **Final Eligibility Report and Recommendation on Request for Inspection**

### **Re: Request for Inspection GHANA: West African Gas Pipeline Project (IDA Guarantee No. B-006-0-GH) Inspection Panel Recommendation**

1. On April 27, 2006, the Inspection Panel received a Request for Inspection related to the West African Gas Pipeline Project<sup>1</sup>. The Request was submitted by the Ifesowapo Host Communities Forum of the West African Gas Pipeline Project (the “Association”) through their representatives from the Olorunda Local Government Area of Lagos State, Nigeria. The Request was submitted on behalf of the members of the Association, which is composed of 12 communities that will be affected by the Project around the Badagry axis<sup>2</sup>, in Lagos State, southwest Nigeria.
2. On June 6, 2006, Management submitted its response to the Request.<sup>3</sup>
3. A Panel team visited Nigeria and Ghana from June 4-10, 2006, to determine the eligibility of the Request for Inspection. During the Panel’s visit, some Requesters raised a new concern related to pollution of their fishing grounds in the Badagry area.<sup>4</sup>
4. On June 9, 2006, during its eligibility visit to Ghana, the Panel received a letter from Friends of the Earth Ghana (“FoE-GH”), in which it expressed its support for the Request submitted by the Association and asked to be added to the Request for Inspection (the “FoE-GH submission”).

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<sup>1</sup> Hereinafter referred to either as “WAGP” or “the Project”. Document Number of the Notice of Registration is INSP/SecM20006-0003.

<sup>2</sup> Hereinafter also referred to as “Badagry area”.

<sup>3</sup> Bank Management Response to Request for Inspection Panel of the Ghana: West African Gas Pipeline Project (IDA Guarantee No. B-006-0-Gh), June 6, 2006, [hereinafter “Management Response”]. INSP/R2006-0004, dated July 18, 2006.

<sup>4</sup> The new concerns will be discussed in more detail below in Section C of this report.

5. On June 14, 2006, the Inspection Panel notified the Regional Vice-President of the new concerns about fishing activities raised with the Panel during the Panel's visit to Nigeria and the FoE-GH letter. The Panel added both items to the processing of the existing Request. Management provided the Panel with a supplemental response regarding the issues raised in the later letter from FoE-GH ("Supplemental Response")<sup>5</sup>. Management also provided the Panel with "*Clarifications Regarding Marine Pollution*"<sup>6</sup> in response to the issue raised by the Requesters during the Panel visit in June 2006.
6. On July 7, 2006, the Panel submitted its Report and Recommendation<sup>7</sup> to the Executive Directors and at that time refrained from making a recommendation on whether an investigation is warranted for the reasons explained later in this Report. The Panel stated in its Report and Recommendation that it expected to be able to make a determination by the end of the year 2006 as to whether an investigation would be merited. This would also give a further chance to Management to demonstrate that it was taking "*adequate steps to follow the Bank's policies and procedures*" as required by the Resolution that established the Panel.<sup>8</sup>
7. The Board approved the Panel recommendation on July 27, 2006, on a non-objection basis.
8. The present report contains the Panel's final recommendation on whether an investigation of the issues of concern raised by the Requesters is warranted.

## A. The Project

9. The Project aims to contribute to, *inter alia*, "*improving the competitiveness of the energy sectors in Ghana, Benin, and Togo by promoting the use of cheaper and environmentally cleaner gas from Nigeria in lieu of solid and liquid fuels for power generation and other industrial, commercial uses, and diversifying energy supply sources*"<sup>9</sup>
10. According to the PAD, the Project includes the following elements: (1) a new pipeline system, the West African Gas Pipeline (WAGP), which will transport natural gas from Nigeria to Ghana, Togo and Benin; (2) spurs to provide gas to power generating units in Ghana, Benin, and Togo; (3) conversion of existing

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<sup>5</sup> Submitted to the Panel on June 30, 2006.

<sup>6</sup> Hereinafter "Management Clarifications", dated June 30, 2006.

<sup>7</sup> INSP/R2006-0004, dated July 18, 2006.

<sup>8</sup> Paragraph 13 of the Resolution No. IBRD 93-10 of September 22, 1993 (hereinafter "the Resolution").

<sup>9</sup> Project Appraisal Document (PAD) on a Proposed IDA Partial Risk Guarantee in the Amount of US\$50 Million for Ghana and a Proposed MIGA Guarantee in the Amount of US\$ 75 Million for Sponsors Equity to the West African Gas Pipeline Project, November 2, 2004, p. 10.

power generating units to gas; and (4) as needed, additional compression investments.<sup>10</sup>

11. Under the Project, gas will be delivered from Nigeria via a 678 kilometer pipeline across southwestern Nigeria to a terminal point in Takoradi, Ghana. Fifty-eight kilometers of pipeline and other ancillary facilities are to be constructed by WAPCo in southwestern Nigeria.<sup>11</sup> In Nigeria, the pipeline will be constructed on the lands of 23 communities, including the 12 communities making this Request. The Project is implemented by the special purpose company WAPCo.<sup>12</sup>

## **B. Financing**

12. The entire Project is estimated to cost about US\$ 590 million.<sup>13</sup> The International Development Association (IDA)<sup>14</sup> has provided a guarantee, in the amount of US\$ 50 million, for certain obligations of the Republic of Ghana related to the purchase of natural gas. The guarantee was approved on November 23, 2004, and the Guarantee Agreement became effective on December 31, 2004. Also, the Multilateral Investment Guarantee Agency (MIGA) has provided a US\$ 75 million political risk guarantee to WAPCo in relation to the construction of the pipeline and associated facilities.<sup>15</sup>

## **C. The Request**

13. The Requesters claimed that the Project would cause irreparable damage to the ir land and destroy the livelihoods of their communities.<sup>16</sup> More specifically, they

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<sup>10</sup> PAD, p. 11-12.

<sup>11</sup> WAPCo's participation in the project is provided in the WAPCo Shareholder Agreement of May 19, 2003, entered into by WAPCo, Chevron Texaco West Africa Gas Pipeline Company Ltd., Nigerian National Power Corporation, Shell Overseas Holdings Limited and Takoradi Power Company Limited. The development, financing, construction, ownership, operation and maintenance of the Project was agreed in an International Project Agreement dated May 22, 2003, between the Republic of Benin, the Federal Republic of Nigeria, the Republic of Togo, the Republic of Ghana, and WAPCo. The International Project Agreement was negotiated pursuant to Article VII of the Treaty on the West African Gas Pipeline Project between the Republic of Benin, the Republic of Ghana, the Federal Republic of Nigeria, and the Republic of Togo, signed on January 31, 2003.

<sup>12</sup> Current shareholders of WAPCo include Shell, Chevron, Nigerian National Petroleum Corporation (NNPC), Volta River Authority (VRA) of Ghana, BenGaz of Benin, and SotoGaz of Togo.

<sup>13</sup> PAD p. 13. Management Response (p. 4 ¶ 13) states that the sponsors currently estimate the construction costs of the pipeline, excluding other WAPCo costs, to be about US\$ 495 million.

<sup>14</sup> IDA is also referred to as the "Bank".

<sup>15</sup> WAPCo is also the beneficiary of similar insurance structures from Zurich (with reinsurance from OPIC) to back the payment obligations of the Governments of Ghana, Togo and Benin. Management Response, ¶ 13. IDA has entered into Project Agreements with WAPCo and N-Gas Limited, respectively that contain several covenants, representations and warranties that both WAPCo and N-Gas "have acted and will continue to act in compliance with applicable World Bank Environmental and Social Safeguard Policies and anti-corruption policies." PAD, p. 9. Both Project Agreements were signed on December 15, 2004.

<sup>16</sup> The Requesters state that the Bank did not comply with a number of its policies and procedures, including OP/BP 4.12 on Involuntary Resettlement, OP/BP 4.01 on Environmental Assessment, OP/BP

believed that the scope of the EA was too narrow because it did not include the existing Escravos-Lagos Pipeline (“ELPS”) to which the West African Gas Pipeline will be linked.

14. The fishermen among the Requesters in Nigeria expressed concern about the environmental impact of the Project on their fishing grounds. They claimed that the construction of the gas pipeline polluted the water and damaged their nets so that they were no longer able to catch fish in the area. They indicated that this was an especially serious concern because many people in the area depended upon fisheries for a livelihood.
15. The Requesters in Ghana also stressed that fishing is essential to their livelihoods and that continued impact assessments should have been conducted to avoid any negative Project impacts on livelihoods and the fisheries ecosystem. Considering the migratory tendencies of fishermen, the Requesters claimed that local consultations should have included all communities along the coastline. They also raised concerns about safety issues.
16. With regard to involuntary resettlement, the Requesters asserted that the Project provides inadequate compensation for people who have or will lose land, trees and/or other assets, including future income streams, and expressed their concern regarding the compensation rates and valuation methods. They also asserted a lack of mechanisms to secure long-term employment for affected members of their communities.
17. With regard to information and consultation, the Requesters claimed that the disclosure of relevant information, such as the EA and RAP, had been inadequate and that consultations had been limited.
18. The Requesters also questioned the economic evaluation of the Project and believed that it was based, *inter alia*, on the incorrect assumption that it will reduce the flaring of associated gas in Nigeria. According to them the assertion that associated gas (which would otherwise be flared) would be the source for the pipeline is false.
19. Moreover, the Requesters claim that Management has failed to comply with the Bank’s policies on supervision.

## **D. Management Response**

20. On June 6, 2006, Management submitted its Response to the Request. Management believed that it had made significant efforts to apply its policies and procedures and believed that the Project meets Bank safeguards

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10.04 on Economic Evaluation of Investment Operations, and OP/BP 13.05 on Project Supervision. The Request for Inspection is summarized extensively in the Panel’s first Report and Recommendation, INSP/R2006-0004, dated July 18, 2006.

requirements. Management recognized, however, that further work will be needed on safeguards supervision.<sup>17</sup>

21. Regarding the Requesters' claims concerning the EA, Management stated that the Project would not cause major impacts in Nigeria and that the EA did not include the ELPS, because it was not part of the Project's area of influence. It cited an ELPS Integrity Study, which described the ELPS pipeline as being in good condition overall and having sufficient capacity to operate under the Project. Regarding safety issues, Management asserted that WAPCo has issued a system-wide Emergency Response Plan, and intends to prepare site-specific response plans.
22. Regarding the Requesters' concerns about the amount of compensation, Management indicated that it would ensure that the principle of "*replacement value*" would be applied for land and assets. Additionally, Management mentioned several employment activities that would benefit people living in the Project area, such as temporary employment of local residents and permanent employment for a much smaller group of residents.
23. Regarding the issue of gas flaring, Management indicated that while flaring reductions are not an explicit objective in the PAD, the Project would "*make a modest contribution to flaring reduction.*"<sup>18</sup> According to Management, the annual volume of associated gas is one of the Project's monitoring indicators.
24. Management claimed that frequent and extensive consultations had been held regarding the EA and the RAP, and the issue of compensation. However, it acknowledged that disclosure of information still needed to be improved.
25. Management believed that the Project had been supervised well, but acknowledged that a field mission was overdue.
26. With regard to the problem of water pollution and the alleged loss of fisheries raised during the Panel's June 2006 visit, Management provided the Panel with "*Clarifications Regarding Marine Pollution,*" in which it indicated that it had sought cooperation with WAPCo and would pursue a preliminary investigation into the matter. However, Management deemed it unlikely that the problems were related to the Project.
27. In Response to the FoE-GH Requesters' concerns regarding possible negative impacts on livelihoods and fisheries, Management submitted a Supplemental Response in which it claimed that the environmental monitoring plan included the assessment of these impacts. In addition, Management stated that WAPCo would stay engaged with Project- affected communities for several years.

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<sup>17</sup> Management's Response is summarized in more detail in the Panel's first Report and Recommendation.

<sup>18</sup> Management Response, ¶ 43.

## **Planned Action by Management**

28. In order to address the issues raised by the Requesters, Management Response proposed several actions, such as the facilitation of community development programs, additional disclosure of information and enhancement of supervision. Management also stated that an expert panel to review the Project's environmental and social issues would be appointed and make a first field visit by the end of September 2006.
29. Management also asserted that it would assess the adequacy of compensation rates and verify whether the grievance redress process had been effective in correcting problems. Additionally, Management claimed that before September 30, 2006, WAPCo would conduct professional surveys based on field measurements and ratings to assess the current values of each type of lost asset. Management confirmed that this would be guided by the definition of "replacement value", as required by OP 4.12. Further, it stated that the Bank would review the cases cited in the Request. Management said that a resettlement audit, planned for September 2006, would review the adequacy of compensation to replace lost assets and the status of income restoration.
30. Moreover, Management expected that system wide emergency response plans would be disclosed in June 2006 and that detailed site plans would be developed and discussed with local communities.

## **E. Eligibility of the Request for Inspection**

31. The Panel reviewed the Request and Management Response, the Supplemental Response, and Management Clarifications. A Panel team visited Nigeria and Ghana from June 4-10, 2006. During the visit the Panel team met with the signatories of the Request for Inspection and with other affected people in Ajido, Badagry and Lagos, with national government officials, and with Bank Management in Abuja. In Accra, Ghana, the Panel met with officials from WAPCo, Bank Management, and experts.
32. The Panel determined in its Report and Recommendation, dated July 7, 2006<sup>19</sup>, that the Request satisfied the eligibility criteria for an Inspection, as set forth in the 1993 Resolution establishing the Panel<sup>20</sup> and the 1999 Clarifications<sup>21</sup>. However, due to the special circumstances described below, the Panel recommended to defer a decision on whether to recommend an investigation.
33. The Panel, in its Report and Recommendation, noted that the Requesters with whom the Panel met during its eligibility visit indicated that that they did not

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<sup>19</sup> INSP/R2006-0004, dated July 18, 2006.

<sup>20</sup> Resolution No. IBRD 93-10 of September 22, 1993 (hereinafter "the Resolution")

<sup>21</sup> The 1999 Clarifications to the Resolution (hereinafter "the 1999 Clarifications") are contained in the "Conclusions of the Board's Second Review of the Inspection Panel", dated April 20, 1999.

want to press for an investigation at that time but rather await further developments and Bank actions regarding their concerns.

34. Management Response described actions that appeared to address the concerns of the Requesters, and Management affirmed that concrete actions would take place soon. Management's Supplemental Response to the concerns raised by FoE-GH and Management's Clarifications regarding the environmental pollution and fisheries issues also suggested that Management was ready to take responsive action.
35. In light of the foregoing, the Panel refrained from making a recommendation on whether an investigation was warranted, in order to provide the opportunity for the issues of concern to be resolved. The Panel stated in its Report and Recommendation that it expected to be able to make a determination by the end of the year 2006 as to whether an investigation would be merited. This gave a further chance to Management to demonstrate that it was taking "*adequate steps to follow the Bank's policies and procedures*" as required by the Resolution that established the Panel.<sup>22</sup>
36. The Board approved the Panel recommendation on July 27, 2006, on a non-objection basis.

## **F. Recent Developments**

37. In order to ascertain the need for an investigation, the Panel followed up on the status of the Requesters' concerns and the status of Management's progress in addressing them.
38. According to Paragraph 13 of the Resolution "*[t]he Panel shall satisfy itself before a request for inspection is heard that the subject matter of the request has been dealt with by the Management of the Bank and Management has failed to demonstrate that it has followed, or is taking adequate steps to follow Bank's policies and procedures.*"
39. On November 8, 2006, the Requesters sent a letter to Management, which they copied to the Panel, in which they asked for clarifications on various unresolved issues and requested an update on certain actions envisaged in Management's Response. On November 14, 2006, the Panel requested a meeting with Bank staff and consultants responsible for the Project and received a useful briefing on Project implementation. The Panel subsequently asked Management to elaborate on certain issues related to the Requesters' concerns. Management did not adequately address specific aspects of this request for information.

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<sup>22</sup> Paragraph 13 of the Resolution.

40. On December 19, 2006, the Panel received an e-mail from the representative of the Requesters stating that “[w]e are in the process of writing a report on the issues listed in the Action Plan put forward by World Bank's management, whether they were implemented and how they were able to address the concerns of the communities. The environmental scientist called to study the impact of the drilling on fisheries is yet to conclude work and consultations are still ongoing to determine the next step to take by the communities.” The e-mail added that “[w]e expect to conclude consultation (sic) around the second week in January 2007.”
41. On December 27, 2006 the Panel informed Management that, “in the interest of giving Management and the Requesters a further opportunity to find satisfaction and common grounds on the issues still raised, the Panel expects to finalize its Report and send it to the Board in February 2007.”
42. From January 24-30, 2007, Panel Member Werner Kiene, together with Assistant Executive Secretary Anna Sophie Herken and Panel Operations Officer Serge Selwan made a follow-up field visit to Nigeria to observe first-hand developments relating to the Requester's concerns and Management's actions before making its recommendation. The Panel met with the Requesters and several hundred other affected people in Lagos and Ajido, with WAPCo officials in Lagos, and with Bank staff in Abuja.
43. During this visit, a group of persons from the Escravos area of Western Niger Delta submitted a letter to the Panel and expressed their support for the Request of the Association and asked that their names be added to it.<sup>23</sup> On February 13, 2007, the Panel informed Management of the letter and requested comments. As of the date of this Report, Management has not responded to the letter, although the Panel has been informed that comments will be forthcoming. Since the letter raises similar issues to the initial Request, the Panel is adding the signatories to the initial Request.
44. In Nigeria, the Panel had a constructive meeting with WAPCo officials who provided updated information and agreed to furnish to the Bank updated data about different aspects of Management's Response. They noted, however, that they had not been adequately informed by Bank Management regarding the content of the Management's Response and the extent to which it required actions on their part. The Panel would like to thank WAPCo officials for the meeting, and for their constructive approach.
45. During its follow-up field visit, and especially during its meetings with the Requesters, the Panel also observed that there seemed to be a lack of information regarding the compensation issues raised in the Request for

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<sup>23</sup> Letter dated January 12, 2007, signed by Isaiah Ogah, President Community Justice Forum, on behalf of the communities Okpele -Ama, Sarabubowei, Benikrukru, Ikododiagbene Okerenkoko, Oporoza, Kurutie, Azama, Egwa and Kunukunuma.



Inspection and apparent disagreement regarding the situation of the fishermen and the cause of pollution. The Requesters provided the Panel team with a copy of a study called “*A report on the disruption of fishing efforts in the coastal waters of the Nigerian Host Communities of the West African Gas Pipeline (WAGP) Project*”<sup>24</sup> which differs from Management’s representation to the Panel.

46. The Panel also noted that the affected people repeatedly stated that their situation had remained the same in the past six months. They seemed not to have been informed or consulted about actions set forth in Management’s Response.
47. The Panel was unable on the ground to confirm progress on the actions proposed by Management to address the Requesters’ concerns. The Panel noted that Management does not seem to be following the timetable described in the Management’s Response. As an example, the expert Panel that was to be appointed and make its first field visit by the end of September 2006 had still not been set-up by the time of the Panel’s follow-up visit in January 2007. The Panel also has questions about the adequacy of supervision and communication.
48. The Panel notes the economic importance of this infrastructure Project to the region, the important role of the private sector, and the volatile situation in parts of the Project area. The Panel observes that in such circumstances it is especially important to determine Bank compliance with its policies and procedures, and thus to facilitate the achievement of the objectives of the Project and Bank policies.

## **G. Conclusions**

49. The Panel finds conflicting assertions of the Requesters and Management about the interpretation of issues, facts and the compliance with Bank policies and procedures. During its follow-up visit to Nigeria in January 2007, the Panel noted disagreement regarding some major issues, such as the cause of pollution of the lagoon and alleged damage to fisheries, serious concerns regarding the valuation of assets and procedures for compensation, and a lack of information regarding the implementation of the Project. As stated in the original Eligibility Report, the Request and the Requesters meet the eligibility criteria set forth in the Resolution that established the Inspection Panel and the 1999 Clarifications.
50. The Panel believes that these important questions regarding the Bank’s alleged failure to comply with its own policies and procedures and possible harm to the Requesters can only be addressed in the context of a Panel investigation.

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<sup>24</sup> Prepared by Tayo Akeem Yusuf for Friends of the Earth/ Environmental Rights Action (ERA), Nigeria, dated January 2007.

51. In light of the foregoing and the facts related to the matters of concern to the Requesters, the Panel recommends to the Board of Executive Directors that an investigation be conducted.