

**Report No. 42644-GH**

**The Inspection Panel** 

**Investigation Report**

**GHANA: West African Gas Pipeline Project  
(IDA Guarantee No. B-006-0-GH)**

**April 25, 2008**

## About the Panel

The Inspection Panel was created in September 1993 by the Board of Executive Directors of the World Bank to serve as an independent mechanism to ensure accountability in Bank operations with respect to its Policies and Procedures. The Inspection Panel is an instrument for groups of two or more private citizens who believe that they or their interests have been or could be harmed by Bank-financed activities to present their concerns through a Request for Inspection. In short, the Panel provides a link between the Bank and the people who are likely to be affected by the projects it finances.

Members of the Panel are selected “*on the basis of their ability to deal thoroughly and fairly with the request brought to them, their integrity and their independence from the Bank’s Management, and their exposure to developmental issues and to living conditions in developing countries.*”<sup>1</sup> The three-member Panel is empowered, subject to Board approval, to investigate problems that are alleged to have arisen as a result of the Bank having ignored its own operating Policies and Procedures.

### Processing Requests

After the Panel receives a Request for Inspection it is processed as follows:

- The Panel decides whether the Request is *prima facie* not barred from Panel consideration.
- The Panel registers the Request—a purely administrative procedure.
- The Panel sends the Request to Bank Management, which has 21 working days to respond to the allegations of the Requesters.
- The Panel then conducts a short 21 working-day assessment to determine the eligibility of the Requesters and the Request.
- If the Panel recommends an investigation, and the Board approves it, the Panel undertakes a full investigation, which is not time-bound.
- If the Panel does not recommend an investigation, the Board of Executive Directors may still instruct the Panel to conduct an investigation if warranted.
- Three days after the Board decides on whether or not an investigation should be carried out, the Panel’s Report (including the Request for Inspection and Management’s Response) is publicly available through the Panel’s website and Secretariat, the Bank’s Info Shop and the respective Bank Country Office.
- When the Panel completes an investigation, it sends its findings and conclusions on the matters alleged in the Request for Inspection to the Board as well as to Bank Management.
- The Bank Management then has six weeks to submit its recommendations to the Board on what actions the Bank would take in response to the Panel’s findings and conclusions.
- The Board then takes the final decision on what should be done based on the Panel’s findings and the Bank Management’s recommendations.
- Three days after the Board’s decision, the Panel’s Report and Management’s Recommendation are publicly available through the Panel’s website and Secretariat, the Bank’s Project website, the Bank’s Info Shop and the respective Bank Country Office.

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<sup>1</sup> IBRD Resolution No. 93-10; IDA Resolution No. 93-6.

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## Abbreviations and Acronyms

AG	Associated Gas
ANSI	American National Standards Institute
BP	Bank Procedures
BTO	Back to the Office Report
CDM	Clean Development Mechanism
CEB	Benin Electricity Company
CNL	Chevron Nigeria Limited
CDP	Community Development Program
DfID	Department for International Development
EA	Environmental Assessment
EIA	Environmental Impact Assessment
ECOWAS	Economic Community of West African States
ELPS	Escravos-Lagos Pipeline System
EMP	Emergency Management Plan
ERA	Environmental Rights Action
EPC	Engineering, Procurement, Construction
ERP	Emergency Response Plan
ESAP	Environmental and Social Advisory Panel
ESIA	Environmental and Social Impact Analysis
FID	Final Investment Decision
FoE	Friends of the Earth
FoE-GH	Friends of the Earth - Ghana
GGFR	Global Gas Flaring Reduction Initiative
GHGE	Greenhouse Gas Emissions
HDD	Horizontal Directional Drilling
HSE	Health, Safety and Environment
ICSID	International Center for the Settlement of Investment Disputes
IDA	International Development Association
LNG	Liquefied Natural Gas
MIGA	Multilateral Investment Guarantee Agency
MMBtu/day	Million British thermal units per day
MMscfd or MMscf/day	Million Standard Cubic Feet per day
NAG	Non-Associated Gas
NEPAD	New Partnership for Africa's Development
NGC	Nigeria Gas Company
NGO	Non-Governmental Organization
NNPC	Nigerian National Petroleum Corporation (NNPC)
NO <sub>x</sub>	Nitrogen Oxides
OP	Operational Policy
OPEC	Organization of Petroleum Exporting Countries
OPTS	Oil Producers Trade Section
PAD	Project Appraisal Document
PAPs	Project-Affected People

PCD	Project Concept Document
PID	Project Information Document
RAP	Resettlement Action Plan
RIAS	Regional Integration Assistance Strategy
ROW	Right of Way
SNG	Shell Nigeria Gas
SO <sub>2</sub>	Sulfur Dioxide
SoBeGaz	Société Béninoise de Gaz SA
SoToGaz	Société Togolaise de Gaz SA
SPDC	Shell Petroleum Development Company of Nigeria Limited
tcf	Trillion Cubic Feet
TOR	Terms of Reference
TT	Task Team
USAID	United States Agency for International Development
VRA	Volta River Authority
WAGP	West African Gas Pipeline
WAPCo	West African Gas Pipeline Company Limited
WAPP	West African Power Pool

# **Executive Summary**

## **Introduction**

On April 27, 2006, the Inspection Panel received a Request for Inspection of the West African Gas Pipeline (WAGP) Project.

The Request was submitted by the Ifesowapo Host Communities Forum of the WAGP Project (the “Association”) through their representatives from Olorunda Local Government Area of Lagos State, Nigeria. Additionally, the Panel received a letter from Friends of the Earth Ghana (FoE-Ghana), expressing its support for the Request and asking to be added to the Request. The Association and FoE-Ghana represent local people living in Nigeria and Ghana and are also referred to as the Requesters.

## **The Project**

The Project consists of the construction of a new pipeline system that will transport natural gas from Nigeria to Ghana, Togo and Benin. The Project includes spurs to provide gas-to-power generating units in Ghana, Benin, and Togo, the conversion of existing power generating units to gas, and, as needed, additional compression investments. The new pipeline (678 kilometers long) originates at a connection to the existing Escravos-Lagos Pipeline in Nigeria. Fifty-eight kilometers of pipeline and other ancillary facilities are to be constructed in southwestern Nigeria, and the pipeline then runs off-shore to a terminal point in Takoradi, Ghana.

According to the Project Appraisal Document (PAD), 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.”

The International Development Association (IDA) (hereinafter referred to as “the Bank”) has provided a guarantee, in the amount of US\$50 million, for certain obligations of Ghana related to the purchase of natural gas from the West African Gas Pipeline Company Limited (WAPCo). The Multilateral Investment Guarantee Agency (MIGA) has provided a US\$75 million in political risk guarantee to WAPCo in relation to the construction of the pipeline and associated facilities. The Project is implemented by WAPCo. 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 (the Sponsors).

## **The Claims of the Requesters**

The Requesters believe that the Bank did not comply with its policies and procedures in relation to the Project, and that the Project will cause irreparable damage to their land and destroy the livelihoods of their communities. Requesters from Nigeria's Delta Region are mainly concerned with the Project's impact on gas flaring reduction and with the safety of an existing pipeline to which WAGP is to be linked. The Requesters and affected communities living near the gas pipeline in Nigeria complain mainly about low compensation rates for the land they had to give up for the pipeline. Those living in southwestern Nigeria, where the pipeline goes under the sea, claim that the construction process hurt their fishing enterprise. The Requesters from Ghana are concerned about inadequate consultation regarding the Project's economic viability, the pipeline's safety, and its impacts on coastal fisheries.

### **(i) Environmental Assessment and Environmental Issues**

The Requesters from Nigeria assert that the Environmental Assessment (EA) for the WAGP should have included the effects of the Project on the existing Escravos-Lagos Pipeline System (ELPS) to which the WAGP will be linked. They believe that the ELPS is unsafe because of its history of poor maintenance and accidents. Moreover, they state that the EA identified the importance of an emergency response system for the construction and operation of the Project. However, they question whether local people will be able to utilize and understand such a system in the case of an accident. They cite several instances of oil and gas related accidents. Similarly, the Requesters from Ghana doubt that Ghana has the capacity to respond to such accidents.

The fishermen among the Requesters in Nigeria believe 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. The Requesters in Ghana stress 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.

### **(ii) Economic Evaluation and Gas Flaring**

The Requesters from Nigeria question the economic evaluation of the Project and believe that it was based on incorrect assumptions about its impact on the reduction of flaring of "associated gas" (gas recovered when oil is being extracted) in Nigeria. According to them, the assertion that such associated gas would be a significant source for the pipeline is misleading given the actual amount of associated gas to be exported. The Requesters claim that without assurance that the Project will only use associated (otherwise flared) gas rather than less-costly non-associated gas, the Project will not attain its objectives.

The Requesters from Ghana add that Ghana's Energy Commission has also raised concerns about the Project's long term economic benefit to Ghana and the Requesters believe that these concerns have not been taken into account in the consultation process and will not be adequately addressed in the future.

**(iii) Disclosure of Information and Consultation**

The Requesters claim that the disclosure of relevant information, such as the EA and Resettlement Action Plan (RAP), was inadequate. They also claim that the economic and financial analysis of the Project was never disclosed.

More specifically, they assert that they did not have timely access to the EA. They understand that the EA is now available on the internet, but assert that the EA is still difficult to access and understand, given the size of the document, the lack of internet access in their area and the low literacy level in their community. As a result, the Requesters claim that many of the stakeholders did not have access to information about the Project and that the members of the communities could not understand the information that was provided.

**(iv) Involuntary Resettlement and Poverty Reduction**

The Requesters along the Nigerian portion of the pipeline claim that the Bank has failed to comply with its Policy on Involuntary Resettlement. They fear that the Project will negatively impact their livelihoods. They claim that the Project will not restore or improve their standards of living and that the compensation provided is inadequate.

The Requesters assert that compensation does not account for the loss of land, trees and/or other assets, including future income streams, and they express their concern regarding valuation methods to determine compensation rates. Moreover, the Requesters assert that the RAP lacks mechanisms to secure long-term employment for affected members of their communities. As a result, they believe that the people of their communities will become further impoverished.

**(v) Supervision**

The Requesters claim that many of the above-mentioned problems stem from Management's failure to comply with the Bank's Policy on Supervision.

**Response from Bank Management**

In its Response of June 2006, Management states that the Bank has made significant efforts to apply its Policies and Procedures. Management recognizes, however, that further work will be needed on supervision of the Project and compliance with the Bank's Policies.

**(i) Environmental Assessment and Environmental Issues**

Management claims that the Project will not cause major impacts in Nigeria and explains that the EA did not include the ELPS, because it was not part of the Project's area of influence. Management cites 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 reports that WAPCo conducted a community meeting attended by residents from at least three of the communities that submitted the Request and that WAPCo issued a system-wide Emergency Response Plan on May 19, 2006, and intends to prepare site-specific response plans.

With regard to the problem of water pollution in the Badagry area (in Nigeria) and the alleged loss of fisheries, Management indicates that it would pursue a preliminary investigation into the matter. However, Management deems it unlikely that the problems are related to the Project. In Response to the Requesters' concerns regarding possible negative impacts on livelihoods and fisheries in Ghana, Management believes that the environmental monitoring plan included an assessment of these impacts and contains measures to deal with them adequately.

#### **(ii) Economic Analysis and Gas Flaring**

Management believes that it considered all feasible alternatives and adequately evaluated the sustainability of the Project. It also believes that the economic analysis and the PAD draw a realistic picture of the Project's contribution to the reduction of gas flaring. Management indicates that while flaring reductions are not explicitly mentioned as one of the Project objectives in the PAD, it does "*make a modest contribution to flaring reduction.*" According to Management, the annual volume of associated gas (normally flared) is even included as one of the Project's monitoring indicators.

#### **(iii) Disclosure of Information and Consultation**

Management claims that frequent and extensive consultations were held regarding the EA, the RAP, and the issue of compensation. Management acknowledges, however, that the disclosure of information needs to be improved in the Project. Management also acknowledges that disclosure should have been supplemented with translations of summaries of RAPs and EMPs in the local language.

#### **(iv) Involuntary Resettlement and Poverty Reduction**

Management indicates that it would ensure that the principle of "*replacement value*" will be applied for land and assets and, if the principle for compensation had been applied inconsistently, the Bank will ensure that it gets corrected.

During consultations held by the Bank in 2004, Management and WAPCo assured the participants that government rates would not be used as a basis to determine compensation amounts. Management confirms that it is reviewing the actual payments "*to ensure that, regardless of OPTS [Oil Producers Trade Section] rates or any mark-ups agreed, the principle of replacement value for lost assets was met.*"

Regarding the issue of employment of local affected people, Management claims that most landowners have lost only small parts of their land and thus do not need alternative employment. Management mentions several employment activities that would benefit

people living in the Project area. Additionally, Management emphasizes that WAPCo has instituted Community Development Programs.

**(v) Supervision**

Management states that supervision includes multiple layers of oversight, but acknowledged that further work will need to be done and that a field mission was delayed.

**The Investigation Report and Applicable Policies and Procedures**

This Report concludes the Panel’s investigation into the matters alleged in the Request for Inspection. The Chair of the Panel, Werner Kiene, led the investigation. Two expert consultants, on social issues and resettlement, and on environment, assisted the Panel in the investigation.

The Panel reviewed relevant Project documents and other relevant materials provided by the Requesters, Bank Staff, government representatives, local authorities, WAPCo representatives, individuals and communities living in the areas affected by the Project, non-governmental organizations and other sources. The Panel organized three visits to the areas affected by the Project, in June 2006, January 2007 and July 2007, and interviewed Bank staff in Washington and in the offices in Abuja and Accra.

During its visits, the Panel met with Requesters and other individuals and communities, local and national government authorities, WAPCo staff, representatives from non-governmental organizations, relevant experts and others. The Panel wishes to extend its sincere thanks and appreciation to all of those with whom it met for their time and cooperation.

With respect to this Project, the Panel assessed whether the Bank complied with the following applicable Operational Policies and Procedures:

OP/BP 4.01	Environmental Assessment
OP/BP 4.12	Involuntary Resettlement
OD 4.15	Poverty Reduction
OP 10.04	Economic Evaluation of Investment Operations
OP/BP 13.05	Project Supervision
World Bank Policy	on Disclosure of Information

**Context**

The Project should be viewed in the broader context of Nigeria’s and the region’s hydrocarbon economy and its social and environmental dimensions. Nigeria has more than 250 oil and gas fields, including approximately 2,600 producing oil wells that yield about 2 million barrels of oil per day. Worldwide, Nigeria is the ninth largest gas producer and potentially a major gas supplier. However, a large portion of the gas

associated with oil production is currently flared. Nigeria is reported to be the world's largest gas flaring country in spite of the government's legislation intended to reduce flaring and completely cease flaring by 2008.

The development of the Nigerian oil industry has affected the country in a number of ways, both positive and negative. Oil has been the foundation for the country's remarkable economic growth, but exploration and production of oil and gas also have had adverse effects on the livelihood and environment of communities living in the production area and near the pipelines.

Social and political conflicts are considered to be rooted in the inequitable social relations that underlie the production and distribution of profits from oil, and its adverse impact on the fragile ecosystem of the Niger Delta. Hydrocarbon extraction in the Niger Delta has caused critical environmental effects such as: contamination of streams and rivers by drill cuttings and drilling fluids; oil spillage from wells, pipelines and tankers; gas flares causing noise, light and air pollution in nearby villages; and effluent discharges from oil and gas installations and refineries.

In 2004, the lost opportunity value of flared gas was estimated at US\$2.5 billion and the adverse environmental costs were similar in scale, including from approximately 70 million metric tons of CO<sub>2</sub> emissions a year. The local-area population reported to the Panel that the impacts of the gas flaring on people and the environment -- intense pollution and heat over extended periods of time -- are ravaging and extreme.

### **Social Issues -- Analysis of Compliance**

In response to the Request, the Panel focused its analysis on displacement issues brought to its attention by Requesters in Nigeria. The development of WAGP involves the displacement of people associated with the land acquisition of 144 hectares for pipeline construction and operation in Nigeria, including the right of way (ROW) and ancillary facilities. The 25 meter-wide ROW traverses 23 western Nigerian communities, including the 12 communities submitting this Request. Other social issues, including impacts relating to gas flaring, are addressed in other Chapters of the Report.

**The Panel acknowledges the complexity of land tenure arrangements in West Africa and notes that efforts were made under the Project to address the related social issues.** However, in its investigation, the Panel discovered significant flaws and shortcomings in the application of the Bank's Policy on Involuntary Resettlement. **By not ensuring that WAPCo followed important elements of Bank Policy, Management undercut the Bank's development contribution to this Project. More significantly, the necessary measures to avoid impoverishment of the displaced populations were not and still are not in place.**

## Baseline Socio-Economic Data

Many of the problems that are raised in the Request can be linked to the lack of adequate socio-economic data on affected communities and households. Without underlying socio-economic numbers, resettlement planning and mitigation measures risk falling short of what is required by Bank Policies to safeguard affected people, including vulnerable groups, against risks of impoverishment.

The Bank's Policy on Involuntary Resettlement calls for the assessment of these risks, and related mitigation measures, to be based on an accurate census survey with details on current occupants, displaced households, livelihood, expected loss (total and partial) of assets, and vulnerable groups. There should not be a reliance on averages or aggregates as was done in this Project. The Policy requirements cannot be met by general data on the Project affected area or populations, nor by extrapolation from a sample. Additional studies on land tenure, transfer systems, and patterns of social interaction are also required.

**The Panel found that Management did not ensure that the requisite socio-economic information was gathered as called for in the Bank Policy. This does not comply with OP 4.12. The Panel finds that the absence of adequate baseline information makes it impossible to ensure that the impacts and potential impoverishment risks facing local people are properly addressed, as required under the Bank's Resettlement Policy.**

### (i) Number of Displaced Persons

The Panel expert identified methodological problems in the approach to identifying the number of people claiming ownership on the Nigerian ROW, that bring into doubt the size of the affected population. The plots acquired for the Project appear to be portions of extended family holdings. The socio-economic data which led to decisions on resettlement options, however, did not fully reflect the land tenure system along the ROW.

**The Panel finds that the complexities of the traditional land tenure system, wherein large extended families control land and the heads of these families distribute user rights among members of the extended family, were not adequately taken into account. This does not comply with OP 4.12. The size and economic holdings of the extended families was - and still is - unknown.** Such an analysis would have helped to prevent the lack of transparency in the way compensation payments were made.

The Panel further observes that the number of displaced persons reported in the RAP was determined using a figure for "average" household size which the RAP itself notes is "*surprisingly low*." The Panel expert determined that **the size of the displaced population seems to be underestimated as a result of the methodology used for their identification.**

Similarly, the proportion of the extended family's holdings taken by the WAPCo land acquisition -- a direct indication of the degree of disruption to the basic economic unit -- is unknown. **It may be the case that the takings had nominal impacts on the overall productive capacity of the extended family. However, it may also be the case that some were disproportionately damaged. Without knowledge of the socio-economic organization, it is impossible to assess the impoverishment risk.**

**(ii) Vulnerable Groups**

The Bank's Involuntary Resettlement Policy calls for paying particular attention "*to the needs of vulnerable groups among those displaced (...)*." The RAP prepared for the Project, however, did not contain adequate information on the needs of vulnerable groups that were to be affected by the Project ROW in Nigeria. These included women, the elderly, the poor, and tenants. **The Panel finds that Bank Management failed to ensure that the Sponsor performed an adequate analysis of the socioeconomic risks to vulnerable peoples. This does not comply with Bank Policy on Involuntary Resettlement, and denied these peoples the protections provided under the Policy.** Since no studies were carried out or mitigation has occurred, population along the ROW remains at risk.

**(iii) Land and Productive Assets of Displaced Persons**

A critical element in meeting Bank Policy on Involuntary Resettlement is to properly identify the lands and productive assets of the displaced persons. The Panel notes, however, that since such data had not been collected, a questionable "shortcut" was used by dividing the average of land taken by the average household land holdings. On this basis, the Project planners concluded that the Project would take away less than 4 percent of the total land holdings cultivated by the affected households. There were no adequate data available to verify this claim.

On the other hand, in Project documents presented to the Board, it was stated that "*owners lose less than 6 percent of their total land holdings.*" This figure was meaningless in terms of identifying the actual risks of any individual household. The same defective methodology was used to report estimated household income losses, resulting from the loss of land, as being less than 2 percent of total household income. **The Panel finds that Management did not ensure that Project planners used reliable and specific data on individuals or households affected by the ROW, rather than assumptions and averages.**

As a result of these flaws in methodology, **the Project documents presented to the Board at the time of Project approval included incorrect and incomplete information on livelihood and impoverishment risks. This was inconsistent with OMS 2.20 and OP 4.12.**

## Loss of Livelihood, Under-Compensation, and Harm

### (i) Land-for-Land Option

The Bank's Involuntary Resettlement Policy gives preference to land-based resettlement strategies for displaced persons whose livelihoods are land-based. **The Panel finds that a land-based resettlement option, described as an alternative within the RAP and encouraged as a preference in OP 4.12, was not effectively offered to the displaced persons as a viable option for livelihood restoration. This is inconsistent with the provisions and objectives of OP 4.12.**

In addition, the critical decision to support the policy option of cash compensation as the method for addressing livelihood risks of a land-based economy was based on an assertion that there existed an active market for land in the affected area -- a factor recognized under Bank Policy in determining whether cash compensation is the appropriate method. This assertion, however, was not supported by WAPCo's Environmental and Social Impact Analysis or Estate Surveys. The Panel observed that an active market was apparent in residential plots, but that does not mean that there is an active market in traditional agricultural lands through which the pipeline crosses.

### (ii) Livelihood Restoration and Method to Establish Cash Compensation

The RAP states that landowners "*are expected to be able to restore income streams without further assistance once they have received compensation for their land and assets.*" Accordingly, **the RAP transferred the burden for the restoration of livelihood onto the displaced persons, once they had obtained cash compensation, without providing additional assistance as called for in Bank Policy. The Panel finds that issues of livelihood restoration, resettlement assistance beyond compensation, and benefit-sharing were not properly negotiated with the displaced persons. This does not comply with Bank Policy on Involuntary Resettlement.**

The RAP further states that compensation negotiations would be based on "*the willing buyer/willing seller arrangement.*" The negotiation would take place using an adjusted Nigerian oil-sector (OPTS) rate as a basis for negotiation for land, crops, commercial activities and market squares. WAPCo and the Bank agreed to pay for lost assets and full income restoration through cash compensation. Full compensation, mentioned throughout sections of the RAP, is defined as the OPTS rates for land and crops, adjusted by a 10-fold multiplier and an adjustment for inflation.

The Panel reviewed evidence indicating that those sub-contracted to establish a fair price for the land in question thought that they had to bargain rates down to the lowest level possible. The Panel also heard many concerns about the use of the OPTS rates as a starting point for determining compensation. The OPTS-based approach, combined with multiple references to the national legal framework and evidence of efforts to acquire land at low cost, created a strong likelihood that the affected people would receive less than they were entitled to under the Policy. **The Panel finds that Management failed to**

**comply with the Bank’s Policy on Involuntary Resettlement by accepting the use of a formula that is not based on the livelihood restoration objectives of OP 4.12.**

Moreover, the Panel discovered a major flaw in how the stated approach was applied. A Panel review of the compensation payout spreadsheets confirms that the agreed upon 10-fold multiplier in providing compensation was not applied. **As a result, the displaced people were paid one-tenth of what was planned in the RAP. This has resulted in a major failure to comply with Bank Policy on Involuntary Resettlement, and to ensure that the displaced people are at least as well-off as they were before the displacement as required by this Policy.**

Furthermore, the Panel found that **the compensation methodology did not take into account income foregone for the loss of perennial crops.** The loss of perennial crops is different from annual crops, a factor ignored in the estate agent valuations. **In addition, contrary to Bank Policy, the Panel finds that transaction costs were borne by the displaced persons, which further reduced their chances of being as well off after the transaction as before.** In this regard, the Panel also heard reports that a portion of compensation payments made available to the displaced people may have been appropriated, within the community, by local groups of young men, further reducing compensation to the displaced people.

### **(iii) Remedial Steps**

Following the Request for Inspection, the Bank recognized that serious shortcomings existed with respect to the resettlement planning. Among the remedial actions initiated, the Project took steps to hire a legal expert and a valuation expert to assess, across the Nigerian section of the pipeline, the current values of each type of asset lost to the project.

As of the Panel’s visit, valuations of income stream losses from agriculture had yet to be calculated. The valuator is collecting sample land plot prices, not individual data from the project-affected persons. The planned updating of the baseline study of the directly affected families, including their progress on income restoration, has yet to be completed. The valuator’s terms of reference did not include determining whether the compensation rates met OP 4.12 objectives.

**The Panel observes that Management and WAPCo recognized that under-compensation occurred, and are preparing for another compensation disbursement. The Panel notes and appreciates these actions.**

**The Panel is concerned, however, that this is being done without consultation with the displaced peoples, identifying or preparing mitigation for at-risk populations, without setting clear eligibility requirements based on local land tenure, without correction for the transaction cost error discussed above, without benefit-sharing provisions for the displaced population, and without determining whether cash compensation is or is not the appropriate instrument to be used to avoid Project-**

**induced impoverishment.** In addition, the recommendation for a uniform rate for the entire ROW, adjusted into three zones based on type of land use endangers again the application of the principle of full replacement value.

### **Development Assistance – Sharing in Project Benefits**

To avoid displacement-induced impoverishment, OP 4.12 provides, as one of its objectives, that “*resettlement activities should be conceived and executed as sustainable development programs, providing sufficient investment resources to enable the persons displaced by the project to share in project benefits,*” including through development assistance actions.

The Panel does not question Management’s view that community facilities that the Project installed were important for the well-being of the local population. However, the Panel could find no evidence that adequate development assistance, such as land preparation, credit, training or post-construction job opportunities were considered for displaced persons in addition to compensation. **The Panel finds that Management permitted an involuntary resettlement to begin without a development assistance component as required by OP 4.12 that would provide targeted investment resources to enable the persons displaced by the Project to share in Project benefits.**

### **Disclosure of Information and Consultation**

The Bank’s Involuntary Resettlement Policy, OP 4.12 states that “*displaced persons should be meaningfully consulted and should have opportunities to participate in planning and implementing resettlement programs.*” Bank Policy on Environmental Assessment similarly contains provisions to ensure meaningful consultations with project affected people. The Bank Disclosure Policy requires, *inter alia*, that the Borrower make the draft RAP available before appraisal (i) at the InfoShop and (ii) in-country, at accessible locations and in a form and language that are accessible to potentially affected persons and NGOs.

#### **(i) Findings on Disclosure of Information**

The Panel notes that following a review process by Management, the draft RAP was publicly disclosed on July 7, 2004. The Panel found no evidence, however, of attempts to meaningfully present the draft RAP to the displaced persons. On November 2, 2004, Management informed the Board that community members were aware of the existence of an EA and RAP for elements of WAGP, but the Panel found that few had seen them.

In Igbesa, the area with the highest concentration of displaced persons, disclosure of many engineering documents in English was evident to the Panel in July 2007, but not of the RAP. **The Panel finds that there was a failure to adequately disclose critical RAP information necessary for the displaced persons to make meaningful, informed choices about livelihood restoration. This does not comply with OP 4.12 on Involuntary Resettlement, or with the Bank’s Policy on Disclosure of Information.**



As part of Management's proposed actions in response to the Request for Inspection, a Yoruba translation of the executive summary was prepared about 24 months following the last compensation payment. During its field visit in July 2007, the Panel found no evidence of distribution of this document in the key resettlement area of Igbesa. Regardless of its distribution, **the Panel finds that disseminating such information on livelihood, compensation and other resettlement entitlements years after the displaced persons have made decisions on these matters is neither meaningful nor timely. This does not comply with Bank Policies on Involuntary Resettlement and Disclosure of Information.**

## **(ii) Findings on Consultation**

The Panel notes that the Project sponsors did, in fact, conduct various consultation activities with some of the affected communities during the period in which the RAP was being developed. The records indicated that the focus was on introducing the Project concept, health and safety concerns, and the gathering of public support for the Project. **However, the Panel found only limited evidence that efforts were made to integrate the consultation process into the preparation of the RAP, and in particular to inform the displaced persons of their entitlements under the RAP. This lack of meaningful and timely consultation prevented participation and informed negotiation of resettlement options by the displaced persons as called for in OP 4.12. The Panel finds that Management did not provide adequate guidance and instructions to the Project Sponsor to carry out meaningful consultation with the displaced people.**

## **Grievance Mechanism**

According to OP 4.12, the Bank requires the Sponsor to make arrangements for affordable and accessible procedures for third-party settlement of disputes arising from resettlement.

In the field the Panel was informed that few grievances have been reported. The Panel notes that without meaningful consultation, including access to the RAP and without an effective disclosure procedure, the displaced persons could not have understood grievance avenues available to them. The Panel notes that external reviews of the RAP section on complaints/grievance resolution identified concerns relating to the lack of procedural clarity with respect to use of the mechanism by affected-people. The Panel notes that recent steps have been taken to provide more information regarding the grievance system, but this has occurred after critical decisions were made in the resettlement process. **The Panel finds that Management failed to ensure that the Sponsor had in place an effective grievance process to identify and redress resettlement issues, as required by OP 4.12.**

## **Institutional Capacity**

In line with OP 4.12, due diligence in relation to the present Project requires that Management and the government determine whether WAPCo had the capacity and financing to carry out a RAP in accord with Bank standards. BP 4.12 further requires the Task Team leader to assess, inter alia, the Borrower's commitment to and capacity for implementing the resettlement instruments.

The Panel notes that Management held a training session on safeguard issues in 2007, only after the Request for Inspection was submitted. This session might have introduced some WAPCo staff to the Policies for the first time. During Panel interviews, WAPCo staff commented, "*had we known what we were supposed to do, we would have done it.*"

**With regard to the Borrower capacity, the Panel finds that Management did not comply with the requirements of BP 4.12**, including those to assess the Borrower's commitment to and capacity for implementing the resettlement instrument, and mitigating significant risks, including risk of impoverishment, from inadequate implementation of the resettlement instrument. **The Panel further finds that Management did not adequately review and inform the Board of the Sponsor's past experience and limited capacity with implementing operations involving similar involuntary resettlement activities. This is inconsistent with the provisions of OP/BP 4.12 and OMS 2.20.**

## **Environmental Issues -- Analysis of Compliance**

Bank Policy OP 4.01 requires environmental assessment (EA) of projects proposed for Bank financing in order to assess the project's potential environmental risks in an integrated way and ensure informed decision-making. According to OP 4.01, the EA should take into account "*the natural environment (air, water, and land); human health and safety; social aspects (involuntary resettlement, indigenous peoples, and physical cultural resources); and transboundary and global environmental aspects.*"

### **Categorization/ Screening**

Scrutiny of the Regional and Nigerian EA documents shows them to be of good standard and include the elements of Annex B of OP 4.01. **The Panel finds that the Project was correctly assigned "Category A."** **The Panel further finds that because the Project involves four countries, a consolidated "Regional Assessment" was appropriate.**

### **Independent Advisory Panel**

OP 4.01 provides that for Category A projects that are highly risky or contentious, or involve serious and multidimensional concerns, the Borrower should normally engage an independent advisory panel of internationally recognized specialists.

There is, however, no evidence that the independent advisory panel of internationally recognised environmental specialists was constituted during the planning and design phases of the Project. **The Panel finds that the failure to establish the independent advisory panel during the planning and design stages of the Project, and the delay in its establishment during Project implementation, did not comply with OP 4.01.**

### **Analysis of Alternatives**

The analysis of alternatives is handled comprehensively in the Regional Assessment: chapter 3 of this Assessment deals exclusively with project alternatives while chapter 4 deals with alternatives in project design. Fourteen project alternatives were analysed, eight main alternatives and six variations of these. **The OP 4.01 requirement that alternatives be evaluated has been met. However, the lack of a full economic evaluation of the alternative offshore pipeline route for the Nigerian section is a significant shortcoming and is not consistent with OP 4.01.**

### **Disclosure of EA Documents and Consultation**

The EA documentation is of good quality and is written in sound technical English, but requires a high degree of education to be fully comprehended. For the existing upstream Escravos-Lagos pipeline (ELPS), an Environmental Audit (or risk assessment) in the form of an Integrity Study was undertaken. This document, however, apparently was not placed in the public domain. **The Panel finds that the apparent non-disclosure of this assessment of the ELPS, and the fact that its findings and recommendations are not taken up in the Environmental Assessment Reports, is not in accord with paragraphs 15 and 16 of OP 4.01.** This is of particular significance in the present situation, in light of the many expressions of concern in the Request and by members of local communities about issues relating to the ELPS.

Other EIA reports were made available to the public and to stakeholders as required by the OP 4.01. However, no documentation has been seen that would meet the OP 4.01 requirement that the Borrower provide 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.”* Although many meetings were held with communities and stakeholders, the adequacy with which they were prepared to engage meaningfully in the consultation process must be questioned. The Panel observed that affected communities appear not to have been provided with understandable relevant materials on the overall environmental documentation prior to these meetings. **The requirement of OP 4.01 that disclosure be in a form and language that is understandable to the groups being consulted has not been met.**

### **Assessment of “Upstream” Impacts and the Escravos-Lagos Pipeline System**

The Requesters contend that the existing ELPS, to which WAGP connects, is unsafe and that an EIA should be prepared for this existing pipeline. Management states that the project EA covers both the upstream gas source and pipeline safety issues, and that the

Project Sponsor prepared an Integrity Study to review the safety of the existing structure. Management further states, however, that the ELPS is not part of the Project's area of influence, and that an EA of the ELPS "*was neither necessary nor appropriate.*"

**(i) Project Area of Influence**

The Panel first considered the scope of the Project's "area of influence" to determine if it includes the upstream Escravos-Lagos pipeline and gas supply system. The determination of area of influence is a basic element of OP 4.01 to ensure that the potential impacts of a project are properly and adequately assessed and addressed.

The Panel notes that although the WAGP is not responsible for the operation of the existing Escravos-to-Lagos pipeline, both the extraction of gas and the operation of the existing ELPS are essential for gas to flow through the WAGP. They are therefore integral to the WAGP initiative. In this regard, the Regional EIA and the Nigeria EIA indicate that WAGP could induce environmental and socioeconomic secondary impacts "upstream" and "downstream" of the Project. For example, upstream of the Project, industry may "*increase oil and gas development in order to supply additional natural gas through WAGP*" by drilling new wells in new fields. It also forecasts that the ELPS has the capacity to deliver gas to WAGP in the next 5–10 years without need for modification, but adds that if gas demand rises above a certain level there might be a need to upgrade the lines feeding into the ELPS, augment surface facilities, and so forth.

**The Panel finds that the gas supply system upstream of WAGP is within the Project's area of influence under OP 4.01. The Regional EIA properly flags that the Project might have potential impacts in these upstream areas, but an analysis of their nature and scope has not yet been carried out.** The findings of the Integrity Study of the ELPS are noted below.

The Panel also observes that in various Project documents, Bank Management itself makes a linkage between WAGP and the upstream reduction of gas flaring, in this case to highlight a projected benefit of the Project. The Panel considers that this reinforces the view that **the Project and associated facilities and supply areas should be viewed as an inter-connected system for purposes of environmental assessment, considering both potential benefits and adverse impacts. The Panel is concerned that Project documentation was not consistent in defining the Project's area of influence.**

**(ii) Integrity Study and Safety of the ELPS**

The Management Response states that the ELPS Integrity Study constitutes an environmental audit, which is an appropriate instrument for ELPS given that it is an "existing facility." The Panel notes that OP 4.01 specifies that a range of EA instruments may be used to satisfy the Bank's EA requirement, depending on the project, and that "environmental audits" are an instrument to determine environmental areas of concern at an existing facility. **The Panel finds support for the view that this is an appropriate EA instrument for the ELPS.**

Under OP 4.01, such an EA instrument could be included as part of the overall EA documentation. This would have helped to address a key concern in the Request. **As noted above, however, the Integrity Study of the ELPS was not made part of the EA documentation and apparently has not been publicly disclosed. This has impeded the ability of Requesters and members of the public from being informed of, and providing comments on, this important and controversial subject.**

With respect to the safety issues, the Integrity Study found several shortcomings that led to internal inspection of most sections of the ELPS. This led to a thorough review and inspection as a result of which defects have been detected and corrected, and safety and operational systems modernised. **The Panel's expert concluded that the linkage of the WAGP and ELPS has had the overall effect of improving the safety of the Escravos-Lagos pipeline.**

### **Emergency Response and Contingency Plans**

During the Panel's visit to Nigeria, it was told that before the pipeline carries gas, a series of community meetings would be held to inform persons living near the pipeline of appropriate emergency responses in the case of gas release, fire or explosion. The Panel found that sound and wide ranging emergency response plans have been compiled but, as of July 2007, had not been communicated to communities along the Nigerian portion of WAGP's ROW. **Such emergency response plans will not be effective unless communities are properly informed, both orally and via clear, understandable written text in a form that can be retained and readily accessed, before the pipeline becomes operational.**

### **Fisheries and Livelihoods of Fishing Communities in Nigeria**

The Panel encountered numerous fishermen from the Ajido community who believed that their nets were fouled by a greenish-brown substance during the 2006 fishing season and that this occurred at about the time the pipeline was being drilled under the bed of Badagry Creek. A particle size analysis was undertaken by a researcher the Requesters had hired. This analysis allowed the mass of substance adhering to the nets to be determined but not its biological or chemical composition. Unfortunately no sample of the offending substance was subjected to microscopic or microbiological examination or to chemical analysis to determine its identity and none was preserved to allow for later testing. **Precisely what the offending substance was remains unknown.**

**According to the Panel expert, the speculation that Bentonite used as a drilling lubricant for the Horizontal Directional Drilling (HDD) operation caused the net fouling is without scientific foundation.** In order for Bentonite to have adhesive qualities a small amount of water must be mixed with a large amount of Bentonite. However, a relatively small amount of Bentonite was used during the drilling operation and according to the operators there was no leakage of it.

**There is no record as to whether Management briefed WAPCo as to how the incident was to be investigated and whether or not samples of the offending substance were to be analysed. A lesson to be learned is that project-related incidents need to be comprehensively and rigorously investigated and documented.**

### **Fisheries and Livelihoods of Fishing Communities in Ghana**

The Requesters in Ghana claim that an assessment of the Project's impacts on fisheries should be carried out and affected people along the coastline should be consulted. The Panel observed that the first and second season Environmental Baseline Surveys contain considerable detail on fish and fisheries along the route of the pipeline. Both onshore and marine fisheries are considered, and the fisheries components of the two environmental baseline studies are thorough. **The Panel notes that during the Inspection Panel's July 2007 visit to Ghana neither artisanal fishermen nor fisheries regulators expressed concern about potential negative effects of the WAGP on their future livelihoods.**

### **Project Contribution to Gas Flaring Reduction**

In response to the Request, the Panel reviewed Project documents and other data to understand what might be the effect of the Project on the serious problem of gas flaring in Nigeria, and to determine whether this effect had been fairly described in line with Bank Policy -- in particular to the public and locally affected communities. **The Panel wishes to note that during its investigation visit, members of communities from the Delta region came to meet with the Panel to describe the serious impacts they endure from the flaring, and ask for all that can be done to reduce and eliminate this problem near their villages.**

This Investigation Report describes apparent inconsistencies in Management documents with respect to the expected contribution of flaring reduction. **The Panel notes the importance of ensuring a transparent monitoring of the impact of the Project on gas flaring. The Panel trusts that Management will specifically address this issue in its Response to this Report.**

The Panel expert also observed that the WAGP may improve air quality due to decreased emissions, but flare reduction due to the Project may largely take place away from villages. The Panel notes that the Project may have given rise to the impression among affected people that the Project would reduce flaring in their areas. **The Panel observes that although a few statements in Management documents were pointing out that the Project impact on overall flaring reduction would not be substantial, the documents included a lot of text on gas flaring that was imprecise and suggestive of much larger benefit.** This raises a systemic issue as discussed in the concluding section of this summary.

## **Project Implementation and Supervision**

OP 13.05 on Supervision states that project supervision covers monitoring, reporting, and other actions to ascertain whether the Borrower is carrying out the project with due diligence, to identify problems and recommend to the Borrower ways to resolve them, to recommend changes, as needed, as the project evolves or circumstances change, and to identify key risks and recommend strategies and actions.

### **Mission Duration, Frequency and Expertise**

The Panel notes that there were long gaps between supervision missions prior to the Request. Furthermore, safeguard staff mainly concerned themselves with Project preparation and were far less involved in the construction phase of the Project. **The Panel finds that Management did not ensure adequate supervision during the construction phase. This did not comply with Bank Policy on Supervision.**

The issues of involuntary resettlement required particular attention in supervision. Though Management identified several problems regarding the compensation process, it was slow to address them. **The Panel finds that Management's lack of diligent supervision created a responsibility vacuum during the RAP implementation. This did not comply with the Bank Policy on Supervision, and led to problems in the resettlement process.**

## **Systemic Issues**

The Panel notes that this investigation revealed some systemic issues that have affected the Bank's overall compliance with its Operational Policies and Procedures in the context of this Project. Some of these issues are noted below.

### **(i) Supervision of Public-Private Partnership Projects**

The Panel notes the Bank's efforts to broaden its portfolio through support of public-private partnerships of the kind funded under this Project. However, as the Report shows, private partners are often chosen for their strong technical competence in a particular field, but may not be well equipped to address the range of Bank Policy requirements absent effective guidance, engagement and project supervision.

In the present case, **the Panel is concerned that Management put too much faith in the Project Sponsor's ability to handle complex social issues** in spite of the troubled history of some of the participating companies' involvement in the Nigerian oil and gas sector.

### **(ii) Acting on Early Warning Signs - - Resources for Supervision**

The Panel also observes that a number of warning signs that appeared in the design phases of the Project were not properly interpreted and dealt with. For instance, **Management did not adequately follow up on the warnings relating to the RAP**

**process that were raised and discussed in the monitoring reports.** One important reason is an apparent lack of available supervision resources in terms of funds and safeguards expertise. **Providing sufficient resources and using them for mitigating emerging problems would have been particularly important in a complex Project such as WAGP.**

**(iii) Complex Regional Projects**

The Panel notes that an on-going regional or in-country presence of Bank Management was initially not considered necessary. However, **the Panel observed serious difficulties in policy oversight “from a distance.”** Field presence becomes even more important in large regional projects such as the WAGP.

The Panel observes that the regional character of the Project and the absence of a corresponding administrative structure may have contributed to a lack of clarity regarding lines of communication and authority among country staff, regional staff and headquarters. The Panel observes that Management has recently augmented its field presence in Abuja and Accra and that a new approach to regional projects has been developed for the Africa region.

**(iv) Raising Expectations about Secondary Benefits**

The Panel notes a final systemic issue related to the expected benefits of the Project in reducing gas flaring, as described in various Project documents. Where statements are made to make a project politically attractive, for example by repeated references to secondary benefits, levels of expectation are raised among stakeholders who are mainly interested in these secondary benefits. And, as is brought home by this Request, **when stakeholders do not see their justified expectations fulfilled, they believe that they have been wronged. This also creates a reputational risk for the Bank.**



# Chapter One

## Introduction

### A. Brief Description of the West African Gas Pipeline Project

1. The West African Gas Pipeline (WAGP) Project (the Project) consists of several elements. These include: the construction of a new pipeline system, which will transport natural gas from Nigeria to Ghana, Togo and Benin; spurs to provide gas to power generating units in Ghana, Benin, and Togo; the conversion of existing power generating units to gas; and as needed, additional compression investments.<sup>2</sup>
2. The Project is implemented by the special purpose company the West African Gas Pipeline Company Limited (WAPCo). Current shareholders of WAPCo include Chevron Nigeria Limited (CNL), Nigerian National Petroleum Corporation (NNPC), Shell Petroleum Development Company of Nigeria Limited (SPDC), Volta River Authority (VRA) of Ghana, Société Béninoise de Gaz SA (SoBeGaz) of Benin, and Société Togolaise de Gaz SA (SoToGaz) of Togo.<sup>3</sup>
3. Under the Project, gas will be delivered from Nigeria, via a 678 kilometers 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 the WAPCo in southwestern Nigeria.<sup>4</sup> In Nigeria, the pipeline will be constructed on the lands of 23 communities.
4. 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*”

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<sup>2</sup> Project Appraisal Document, on a Proposed IDA Political 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 Company Limited for the West African Gas Pipeline Project, November 2, 2004, p. 11–12, [hereinafter “PAD”].

<sup>3</sup> PAD, p. 18. Collectively they are referred to as “the Sponsors.” Full details of project ownership and share holdings may be found in Annex 4 and Annex 6 of the PAD. Close to 30 commercial contracts underpin WAGP.

<sup>4</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 Petroleum Corporation, Shell Overseas Holdings Limited and Takoradi Power Company Limited. The development, financing, construction, ownership, operation and maintenance of the Project was agreed to 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.

*for power generation and other industrial, commercial uses, and diversifying energy supply sources.”*<sup>5</sup>

5. Management expects that the Project will promote regional integration and bring economic benefits including “*significant spillover implications for regional economic development.*”<sup>6</sup> It also anticipates that the Project will diminish overall emissions of greenhouse gases and air pollutants.<sup>7</sup>
6. The World Bank Group<sup>8</sup> provides financial risk mitigation for the Project. The International Development Association (IDA)<sup>9</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 Multilateral Investment Guarantee Agency (MIGA) has provided a US\$75 million in political risk guarantees to WAPCo in relation to the construction of the pipeline and associated facilities.<sup>10</sup>

## **B. Events Leading to the Investigation**

7. On April 27, 2006, the Inspection Panel received a Request for Inspection related to the West African Gas Pipeline Project.<sup>11</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 of the 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 area, in Lagos State, southwest Nigeria.
8. On June 6, 2006, Management submitted its response to the Request for Inspection. 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

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<sup>5</sup> PAD, p. 10.

<sup>6</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, ¶15, [hereinafter “Management Response”].

<sup>7</sup> Management Response ¶20. The relationship of the Project to the issue of gas flaring in Nigeria is reviewed in Chapters 2 and 4.

<sup>8</sup> The World Bank Group comprises five closely associated institutions that collaborate to support development projects worldwide. The five institutions are: The International Bank for Reconstruction and Development (IBRD), The International Development Association (IDA), The International Finance Corporation (IFC), The Multilateral Investment Guarantee Agency (MIGA) and The International Centre for Settlement of Investment Disputes (ICSID) (collectively referred to as the “Bank Group”).

<sup>9</sup> IDA is also referred to as the “Bank.”

<sup>10</sup> WAPCo is also the beneficiary of similar insurance structures from Zürich (with reinsurance from OPIC) to back the payment obligations of the Governments of Ghana, Togo and Benin; Management Response, ¶14. 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 Limited “*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>11</sup> Notice of Registration, Request for Inspection, Ghana: West African Gas Pipeline Project, May 2, 2006.

grounds in the Badagry area. On June 9, 2006, during its eligibility visit to Ghana, the Panel received a letter from Friends of the Earth Ghana, in which it expressed its support for the Request submitted by the Association and asked to be added to the Request for Inspection.<sup>12</sup>

9. 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 the Requesters in Ghana (“Supplemental Response”).<sup>13</sup> Management also provided the Panel with “Clarifications Regarding Marine Pollution”<sup>14</sup> in response to the issue raised by the Requesters during the Panel visit in June 2006.
10. On July 7, 2006, the Panel submitted its Report and Recommendation<sup>15</sup> to the Executive Directors and at that time refrained from making a recommendation on whether an investigation is warranted for the reasons explained in section 3 of this chapter, below. 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. The Panel noted, in this context, that this would also allow Management more time 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>16</sup> The Board approved the Panel recommendation on July 27, 2006, on a non-objection basis.
11. The results of the Panel’s follow-up eligibility visit, and its findings regarding follow-up actions by Management, are described below. In this light, in its final Report and Recommendation, dated March 1, 2007, the Panel determined that the Request fulfilled the eligibility requirements for an investigation and recommended an investigation to the Board of Executive Directors. On March 13, 2007, the Board approved the Panel’s recommendation to conduct an investigation into the matters alleged in the Request for Inspection.

### **1. Request for Inspection**

12. The Requesters believe that the Bank is failing to comply with several of its operational Policies and Procedures, and that the Project would cause irreparable damage to their land and destroy the livelihoods of their communities. The following paragraphs briefly summarize the Request.

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<sup>12</sup> On June 14, 2006, the Inspection Panel notified the Regional Vice-President of the new concerns about fishing activities raised by the Requesters during the Panel’s visit to Nigeria as well as the letter from Friends of the Earth Ghana.

<sup>13</sup> Supplemental Response, submitted to the Panel on June 30, 2006.

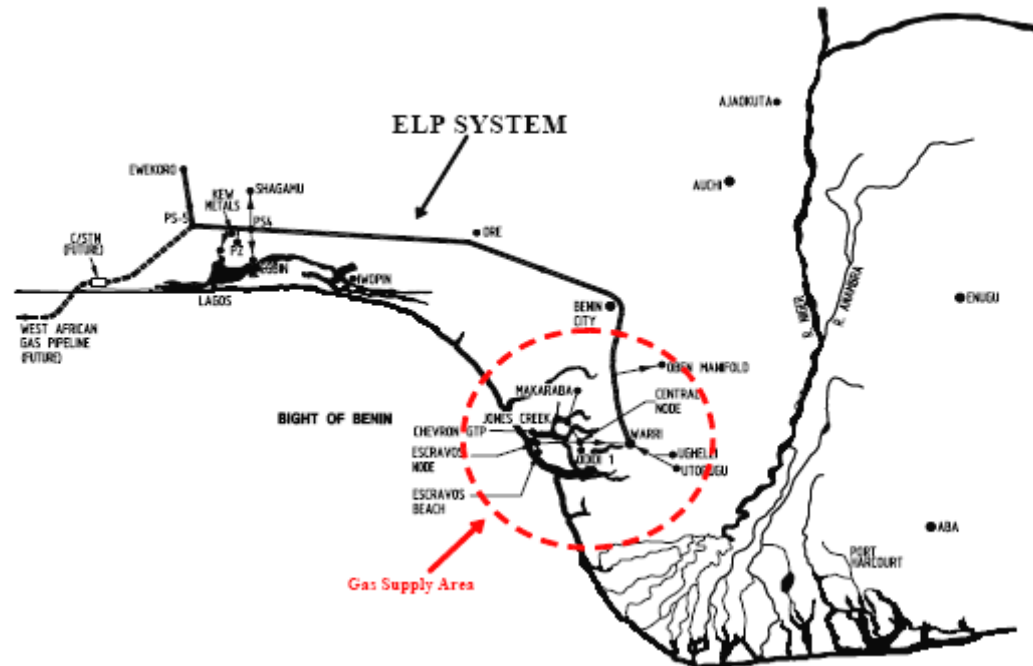
<sup>14</sup> Clarifications Regarding Marine Pollution, dated June 30, 2006.

<sup>15</sup> Inspection Panel Request for Inspection, Ghana-West African Gas Pipeline Project, Report and Recommendation, July 18, 2006.

<sup>16</sup> The World Bank Inspection Panel, Resolution No. IDA 93-6, Resolution No. IBRD 93-10, September 22, 1993 [hereinafter “the 1993 Resolution”].

13. **Environmental Assessment and Environmental Issues:** The Requesters claim that the Bank failed to follow its Policies and Procedures in the preparation of the Environmental Assessment (EA).<sup>17</sup> They believe that the scope of the EA was too narrow because it did not include the existing Escravos-Lagos Pipeline System (ELPS) to which the WAGP will be linked. They consider the ELPS unsafe because of its history of poor maintenance and accidents, including fatal gas explosions and leaks that have occurred in other areas of Nigeria.

**Figure 1.1: Natural Gas Sources, ELPS, and WAGP in Nigeria**



Source: Regional Final Environmental Impact Assessment, West African Gas Pipeline, October 2004, Appendix 2A-2, Figure 2A-2-1, p. 2A-2-4.

14. The fishermen among the Requesters in Nigeria assert 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 indicate that this was an especially serious concern because many people in the area depend upon fishing for a livelihood.
15. The Requesters in Ghana stress 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.

<sup>17</sup> OP/BP 4.01, Environmental Assessment, January 1999. According to the Policy, “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, environmental audit, hazard or risk assessment, and environmental management plan (EMP). EA applies one or more of these instruments, or elements of them, as appropriate.”

16. **Safety Issues:** The Requesters state that while the EA identified the importance of an emergency response system, they question whether local people will be able to utilize and understand such a system in case of an accident. They cite several instances of oil and gas related accidents and the Requesters from Ghana doubt that Ghana has the capacity to respond to such accidents.
17. **Involuntary Resettlement and Poverty Reduction:** The Requesters claim that the Bank has not complied with its Policy on Involuntary Resettlement.<sup>18</sup> They fear that the Project will negatively impact their livelihoods. They are convinced that the Project will not restore or improve their standards of living and that the compensation provided is inadequate.
18. Specifically, the Requesters assert that compensation does not account for the loss of land, trees and/or other assets, including future income streams, and they express their concern regarding valuation methods to determine compensation rates. The Requesters also assert that a mechanism to secure long-term employment for affected members of their communities is lacking. As a result, they believe that community members will become further impoverished.
19. **Disclosure of Information and Consultation:** With regard to disclosure of information, the Requesters claim that the disclosure of relevant information, such as the EA and Resettlement Action Plan (RAP), had been inadequate. Also, according to the Requesters, the economic and financial analysis of the Project was never disclosed.
20. The Requesters also assert that they did not have access to the EA. They allege that when they visited the Badagry and Olorunda local council secretariats in January 2004 to comment on the EA, the document was not available. They understand that the EA is now available on the internet, but assert that the EA is still difficult to access and understand, given the volume of the document, the lack of internet access in their area and the low literacy level in their community.
21. As a result, the Requesters claim that many of the stakeholders did not have access to information about the Project and that the members of the communities could not understand the information that was provided. According to the Requesters, it would have been helpful if relevant portions of the EA and the RAP would have been translated into their local language, Yoruba. They claim that although land acquisition has been completed, a translation of the RAP still does not exist.
22. The Requesters state that most of the affected people were not consulted during the preparation of the EA. They claim that although WAPCo holds periodic meetings with the landowners on the issue on compensation, many of the

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<sup>18</sup> OP/BP 4.12, *Involuntary Resettlement*, December 2001.

affected people in their communities are excluded because they are not considered landowners.

23. Considering the migratory tendencies of fishermen, the Requesters in Ghana claim that local consultations should have included all communities along the coastline.
24. **Economic Evaluation and Gas Flaring:** The Requesters also question the economic evaluation of the Project and believe that it was based, *inter alia*, on the incorrect assumption that it will reduce the flaring of associated gas in Nigeria.<sup>19</sup> According to them the assertion that associated gas (which would otherwise be flared) is the source for the pipeline is false.
25. They cite Bank estimates that indicate that flaring gas instead of capturing it costs Nigeria about US\$2.5 billion per year. Furthermore, they believe that flaring contributes to serious health problems and great environmental harm. In this respect, the Requesters believe that the Bank failed to consider Nigeria's plan to double oil output by 2010, which they believe will inevitably lead to the production of more associated gas. The Requesters claim that without assurance that the Project will only use associated (otherwise flared) gas, rather than less-costly non-associated gas, the Bank will set a bad precedent.
26. The Requesters from Ghana also state that Ghana's Energy Commission has raised concerns about the Projects' long term economic benefit to Ghana and the Requesters believe that these concerns have not been taken into account in the consultation process. They are concerned that these concerns will not be adequately addressed in the future and state that the Bank has already indicated its unwillingness to consider these concerns.
27. **Supervision:** Moreover, the Requesters claim that many of the above problems stem from Management's failure to comply with the Bank's Policy on Supervision.<sup>20</sup>

## 2. Management Response

28. On June 6, 2006, Management submitted its Response to the Request. Management believes that it has made significant efforts to apply its Policies and Procedures. Management recognizes, however, that further work will be

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<sup>19</sup> **Associated gas** is gas that is recovered when oil is being extracted. The gas may form a primary cap above the oil reservoir but is mostly dissolved in the oil. The rate of production of associated gas is dependent upon the rate of extraction of oil: when oil production is reduced associated gas production also falls. **Non-associated gas** is natural gas that occurs in geological formations that do not contain significant amounts of oil. These hydrocarbon reservoirs are tapped predominantly to supply gas, the volume of gas produced can thus be directly controlled and is independent of oil production.

<sup>20</sup> OP/BP 13.05, *Project Supervision*, July 2001.

needed on safeguards supervision.<sup>21</sup> Subsequent to its Response, Management provided the Panel with supplemental material in response to the Requesters' fisheries claims and the claims raised by the Requesters in Ghana.

29. **Environmental Assessment and Environmental Issues:** Regarding the Requesters' claims concerning the EA, Management states that the Project will 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. According to Management, the main reasons for this determination were that the ELPS, which has been in operation since the early 1990s, would not be subject to any changes as a result of the implementation of WAGP and is neither owned by WAPCo nor dependent on the WAGP.
30. Management 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. Management claims that the EA for the WAGP covers both pipeline safety issues and the upstream gas source.
31. With regard to the problem of water pollution in the Badagry area and the alleged loss of fisheries raised during the Panel's June 2006 visit, Management indicates that it has sought cooperation with WAPCo and would pursue a preliminary investigation into the matter. However, Management deems it unlikely that the problems are related to the Project. In Response to the Requesters' concerns regarding possible negative impacts on livelihoods and fisheries in Ghana, Management believes that the environmental monitoring plan included an adequate assessment of these impacts.
32. **Safety Issues:** Regarding safety issues, Management asserts that WAPCo conducted a community meeting in February 2006 attended by residents from at least three of the communities that submitted the Request. Additionally, Management claims that WAPCo issued a system-wide Emergency Response Plan on May 19, 2006, and intends to prepare site-specific response plans.
33. **Involuntary Resettlement and Poverty Reduction:** Management believes that the Project will benefit and not impoverish affected people. 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. More specifically, Management states that, in accordance with Bank Policies, the compensation rates for perennial crops and economic trees should consider all future production as required under Bank Policies. Compensation rates for all immovable assets and improvements also must take into account future income streams; future profits should have been considered as part of future income. Management indicates that if the principle for

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<sup>21</sup> Management Response, ¶60. Management's Response is summarized in more detail in the Panel's first Report and Recommendation.

compensation has been applied inconsistently, the Bank will ensure that it is corrected.

34. With regard to the valuation methods used by WAPCo, Management states that during consultations held by the Bank in 2004, Management and WAPCo assured the participants that government rates would not be used as a basis to determine compensation amounts. Management confirms that it is reviewing the actual payments “to ensure that, regardless of OPTS [Oil Producers Trade Section] rates or any mark-ups agreed, the principle of replacement value for lost assets was met.”<sup>22</sup> Management stated that WAPCo had to conduct both internal monitoring to ensure that valuations and payments are correctly made, as well as annual assessments of the effectiveness of compensation at restoring income. Management stated that an independent audit of resettlement was scheduled for September 2006.
35. Regarding the issue of employment of the local affected people, Management claims that most landowners have lost only small parts of their land and thus do not need alternative employment. Management mentions several employment activities that would benefit people living in the Project area.
36. Additionally, Management emphasizes that WAPCo has instituted Community Development Programs. It expects that the new water systems, schools and health centers to be provided by WAPCo will improve the living conditions of the affected communities as a whole.
37. **Disclosure of Information and Consultation:** Management claims that frequent and extensive consultations were held regarding the EA, the RAP, and the issue of compensation. However, Management acknowledges that the disclosure of information needs to be improved in the Project.
38. Management asserts that the first draft of the EA for Nigeria was disclosed in local, state and national government offices in January 2004. It acknowledges initial difficulties accessing the document in Badagry, but claims that the situation was corrected immediately. The final drafts of the EA and the RAP were disclosed in July 2004 on the internet and at eleven locations in Nigeria, including the local administration in Badagry. Copies were also sent to several NGOs and displayed at the Bank InfoShop. Management also indicates that the Environmental and Social Management Plan (ESMP) for Nigeria, prepared in 2005, is available on WAPCo’s website. Management acknowledges that this disclosure should have been supplemented with translations of summaries of RAPs and EMPs in the local language Yoruba. Despite the Bank’s request in October 2004, Management states that as of the date of Management’s Response these translations were still not available.

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<sup>22</sup> Management Response, Annex 1, No. 5.



39. **Economic Analysis and Gas Flaring:** Regarding the economic analysis, Management believes that it considered all feasible alternatives and adequately evaluated the sustainability of the Project. Management also claims that the economic analysis and the PAD draw a realistic picture of the Project's contribution to the reduction of gas flaring. Management indicates that while flaring reductions are not explicitly mentioned as one of the objectives in the PAD, the Project does "*make a modest contribution to flaring reduction.*"<sup>23</sup> According to Management, the annual volume of associated gas is even included as one of the Project's monitoring indicators.
40. **Supervision and Planned Actions:** Management believes that the Project had been supervised well, but acknowledged that a field mission was overdue. Moreover, in order to address the issues raised by the Requesters, Management 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 would make a first field visit by the end of September 2006.
41. Management asserted in its Response that it would assess the adequacy of compensation rates and verify whether the grievance redress process effectively corrected 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, Management 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.
42. 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.

### 3. Eligibility of the Request

43. To determine the eligibility of the Request and the Requesters, 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. While in Ghana, the Panel met with officials from WAPCo, Bank Management, and various experts.

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<sup>23</sup> Management Response, ¶ 43.

44. The Panel determined in its Report and Recommendation, dated July 7, 2006,<sup>24</sup> that the Request satisfied the eligibility criteria for an Inspection, as set forth in the 1993 Resolution establishing the Panel and the 1999 Clarifications.<sup>25</sup> However, as noted above, the Panel recommended deferring a decision on whether to recommend an investigation. In making this recommendation, the Panel noted that the Requesters with whom the Panel met during its eligibility visit indicated that they did not want to press for an investigation at that time but rather await further developments and Bank actions regarding their concerns.
45. Additionally, Management's Response described actions that appeared to address the concerns of the Requesters, and Management affirmed that concrete actions would take place soon. At that time, Management's Supplemental Response and Management's Clarifications regarding the environmental pollution and fisheries issues also suggested that Management was ready to take responsive action.
46. 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 1993 Resolution that established the Panel.<sup>26</sup> The Board approved the Panel recommendation on July 27, 2006, on a non-objection basis.
47. **Further developments:** 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.
48. 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

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<sup>24</sup> Inspection Panel Request for Inspection, Ghana-West African Gas Pipeline Project, Report and Recommendation, July 18, 2006.

<sup>25</sup> The 1999 Clarifications to the Resolution are contained in the "Conclusions of the Board's Second Review of the Inspection Panel," April 20, 1999, [hereinafter "the 1999 Clarifications"].

<sup>26</sup> The 1993 Resolution, ¶13.

*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.”

49. 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.”*
50. 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 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.
51. 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>27</sup> On February 13, 2007, the Panel informed Management of the letter. Since the letter raised similar issues to the initial Request, the Panel added the signatories to the initial Request.
52. During its follow-up field visit and 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 Inspection and apparent disagreement regarding the situation of the fishermen and the cause of the pollution.<sup>28</sup> 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.
53. The Panel was unable to confirm progress in the field on the actions proposed by Management to address the Requesters’ concerns. The Panel noted that Management did not seem to be following the timetable described in the

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<sup>27</sup> Letter to the Inspection Panel, “A Statement from Communities in the Escravos Region of the Western Niger Delta: in support of the request for inspection related to the West African Gas Pipeline,” submitted by Isaiah Ogah, President Community Justice Front for the Communities, on behalf of the communities Okpele-Ama, Sarabubowei, Benikrukru, Ikokodiagbene Okerenkoko, Oporoza, Kurutie, Azama, Egwa and Kunukunuma, January 12, 2007.

<sup>28</sup> 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,” which differed from Management’s representation to the Panel. Prepared by Tayo Akeem Yusuf for Friends of the Earth and Environmental Rights Action (ERA), Nigeria, January 2007.

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 still had not been set-up by the time of the January 2007 Panel's follow-up visit. The Panel also had questions about the adequacy of supervision and communication.

54. Following this field visit, the Panel determined that the Request fulfilled the eligibility requirements for an investigation and recommended an investigation to the Board of Executive Directors because the Request and Management's Response, the Clarification and its Supplemental Response contained conflicting assertions and interpretations on the issues, facts, compliance with Bank Policies and Procedures, and actual and potential harm. The Panel submitted its Eligibility Report and Recommendation to the Board on March 1, 2007.
55. On March 13, 2007 the Board approved the Panel's recommendation to conduct an investigation into the matters alleged in the Request for Inspection. The Request, Management Response, and the Panel's Report and Recommendation were made public shortly after the Board authorized the Investigation.

#### **4. Investigation**

56. The Panel conducted a two-part investigation. The first part involved detailed research into Bank records related to the Project, interviews with Bank Staff, and a review of other relevant documents. The second part took the form of an in-country fact-finding visit. To assist in its investigation, the Panel hired two internationally recognized expert consultants on social and environmental issues, respectively: Theodore Downing and Richard Fuggle.<sup>29</sup>
57. Then Panel Member Werner Kiene, who became Chairperson on September 1, 2007, together with Executive Secretary Peter Lallas, Operations Officer Serge Selwan, and the two expert consultants visited Nigeria and Ghana from July 15–23, 2007. During the visit, part of the team traveled to Nigeria's capital, Abuja, and met with Bank staff and government authorities. From Lagos, the team traveled along the pipeline route in Nigeria and held meetings at several locations with community representatives, affected-people, and Obas (local kings). The meetings took place in different areas including: Igbesa, Agoloye, Idasha, Igboko, Ajido, and Badagry. Additionally, the team met with different fishing communities at Ajido, Povita and Badagry town. While in Lagos, the team met with representatives of communities from the Escravos area in the Niger Delta. The representatives spoke on behalf of communities or areas such as the Ijo, Deghele, Ugborodo, Ugbognugwu, Otorogun, Sarabubowi, Uwerika, and others. Finally, in Lagos, the Panel met with the lawyer and the land valuer for the Project, as well as WAPCo and Chevron officials. While in Ghana, the team met with Bank staff, WAGP officials, and government authorities. The Panel also traveled to Takoradi and met with local authorities

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<sup>29</sup> See Annex 3 of this Report for the expert consultants' biographies.

and community representatives, including representatives of Aboadze, Abuase, Shama, and others.<sup>30</sup>

58. The Panel concluded a first round of interviews with Bank Staff in Washington, D.C. before visiting the Project-affected area, and a second round upon its return. In its investigation, the Panel identified and carefully reviewed all documents relevant to the case that the Requesters, Bank Staff, and other sources provided to the Panel. The Panel also analyzed other evidence gathered during the field visits or otherwise in its research.
59. This Report presents the results of the Panel's investigation regarding the different sets of environmental, social and other issues the Requesters raise in their submission to the Panel.

## **5. Bank Operational Policies and Procedures Applicable to the Project**

60. With respect to this Project, the Panel assessed whether the Bank complied with the following applicable operational Policies and Procedures:

OP/BP 4.01	Environmental Assessment
OP 4.12	Involuntary Resettlement
OD 4.15	Poverty Reduction
OP 10.04	Economic Evaluation of Investment Operations
OP/BP 13.05	Project Supervision
World Bank Policy on Disclosure of Information	

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<sup>30</sup> During the investigation visit, a group of persons from the Ugborodo Communities from the Escravos area, in the Warri South West Local Government Area of Delta State submitted a letter to the Panel, dated July 14, 2007 and expressed their support for the Request of the Association. Also, the Itsekiri Oil and Gas Producing Communities from Warri Delta State submitted a letter to the Panel, dated July 13, 2007.

## Chapter Two

### Context

61. The purpose of this Chapter is to put the Project in the broader context of Nigeria's and the region's hydrocarbon economy and its social and environmental dimensions. World Bank activities in the energy sector and WAGP are described in more detail below.

#### A. Background to the Energy Sector in Nigeria

##### 1. Hydrocarbon Availability in Nigeria<sup>31</sup>

62. Nigeria is an oil and gas-rich country and energy resources play a significant role in Nigeria's history and socio-economic development. Oil was first discovered in Nigeria in 1908. During the 1930s, Shell-BP Petroleum Development Company of Nigeria Ltd. invested in oil exploration, with commercial exploitation of oil reserves starting in the late 1950s. In 1959, the Nigerian government introduced legislation taxing oil industry profits to effectively split profits 50-50 between the government and the oil company.

63. Due to the development of export markets predominantly in the United Kingdom and Europe, the industry grew during the 1960s and the Nigerian government elected to join the Organization of Petroleum Exporting Countries (OPEC) in 1971. The decision obliged the government to take significant equity in the companies producing oil in the country; the first step toward the creation of the Nigerian National Petroleum Corporation.

64. Nigeria has more than 250 oil and gas fields, including approximately 2,600 producing oil wells that produce about 2 million barrels of oil per day. The proven oil reserves are an estimated 27 billion barrels and the proven gas reserves are estimated at 124 trillion cubic feet (tcf), consisting of about 50 percent associated and 50 percent non-associated gas. This represents approximately one-third of Africa's total gas reserves. Worldwide, Nigeria is the ninth largest gas producer and potentially a major gas supplier. The proved, probable and possible gas reserves are conservatively estimated at more than 150 tcf, or 5 percent of the world's total.<sup>32</sup>

65. Oil accounts for about 90 percent of the nation's total export earnings and nearly half of the gross domestic product. According to the Foreign Trade

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<sup>31</sup> Unless otherwise noted, data is from Nigerian National Petroleum Corporation, <http://www.nnpc-nigeria.com>.

<sup>32</sup> World Bank Energy Sector Management Assistance Programme, Nigeria Strategic Gas Plan ESM279, February 2004, ¶2.2. The terms "associated gas" and "non-associated gas" are defined in Chapter 1 footnote 19.

Division of the U.S. Census Bureau, US imports from Nigeria, mostly oil, totaled almost \$28 billion in 2006.<sup>33</sup> This number rose almost \$20 billion in five years. Because it is classified as light sweet crude and therefore requires less refining, Nigerian oil is an important source of crude-oil. The United States imports more oil from sub-Saharan Africa, primarily Nigeria, than from the Middle East.<sup>34</sup>

66. Past production efforts concentrated on oil and treated associated gas as waste. According to official data for 2004 (see Table 2.1 below), Nigeria is the world's largest gas flaring country<sup>35</sup> in spite of the Nigerian government's legislation intended to reduce flaring<sup>36</sup> and completely cease flaring by 2008. The Panel received information indicating that, in the past, such deadlines have been continuously pushed back.<sup>37</sup> However, the Panel also notes that, according to news reports in October 2007, the Nigerian government has promised to "*stand by the ban on routine gas flaring that had been set for 2008.*"<sup>38</sup>
67. The capture and sale of natural gas has the potential to generate revenue close to, if not exceeding, revenue from Nigeria's oil sales and contribute to flare reduction. Nigeria has the capability to produce gas for many decades to come, based on the production-to-reserves ratio. Nigerian gas holds a larger production-to-reserves ratio than Nigerian oil.<sup>39</sup>

## **2. Social and Environmental Aspects of Hydrocarbon Extraction in Nigeria**

68. The development of the Nigerian oil industry has affected the country in a number of ways—both positive and negative. Oil has been the foundation for the country's remarkable economic growth, but exploration and production of oil and gas also have adverse effects on the livelihood and environment of communities living in the Niger Delta.
69. In the *Nordic Journal of African Studies*, Wunmi William writes:

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<sup>33</sup> US Census Bureau, US International Trade Statistics, Standard International Trade Classification (SITC), <http://censtats.census.gov/sitc/sitc.shtml> (accessed February 25, 2008).

<sup>34</sup> Theodoros Dagne, CRS Report for Congress, IB98046: Nigeria in Political Transition, July 17, 2000, <http://www.fas.org/man/crs/inter-35.htm>, (accessed February 25, 2008).

<sup>35</sup> See Bank-led Satellite Imagery Sheds More Light on Gas Flaring Pollution," World Bank press release, August 29, 2007, <http://go.worldbank.org/W33BPE31S0> (accessed April 10, 2008). According to imaging data, however, Russia is the largest source of gas flaring and Nigeria second.

<sup>36</sup> Petroleum (Drilling and Production) Regulation decree no. 51 of 1969; Petroleum Amendment Decree 16 of 1973; Associated gas re-injection decree 99 of 1979; Associated Gas Re-injection Amendment Decree 7 of 1985; Associated Gas Framework Agreement (AGFA) (1991/1992).

<sup>37</sup> World Bank, British High Commission, DfID and USAID, Policy Note, The Niger Delta," received from the World Bank Country Office, Abuja on July 17, 2007, p. 5.

<sup>38</sup> African Business, October 2007, "Flaring ban deadline to stay," Neil Ford, p. 74.

<sup>39</sup> Michael Economides, "Nigeria Natural Gas: A Transition from Waste to Resource," [http://www.worldenergysource.com/articles/text/economides\\_WE\\_v7n1.cfm](http://www.worldenergysource.com/articles/text/economides_WE_v7n1.cfm) (accessed April 10, 2008).

*“The incidence of environmental crisis in the Niger Delta region in Nigeria has been a topical issue both within and outside Nigeria. Of interest and concern has been the level of ecological degradation, human rights violation, the strangulation of the economic means of survival. The scars of this ecological crisis are evident. Towns and villages in the region have continue to experience the ravaging effect of oil explosion, the roads have been destroyed and rural farming, fishing and hunting ventures stifled. The ugly sight and the woes are endless. They are better imagined than experienced. But this is the daily experience of the inhabitants of the Niger Delta.*

*There are different schools of thought on the root cause of the conflict and crisis in the Niger Delta. No doubt, at the heart of the crisis is the struggle and the desire to control a natural resource – oil. For some, bad governance explains why there are incessant conflicts in the region. Others maintain that the root cause consist in the evolution of a class structure in Nigeria with its corrupt and venal outlook on the national coffers. The list is endless.”<sup>40</sup>*

70. Nigeria’s government received more than \$50 billion from oil exports in 2006, but the petroleum industry generates few employment opportunities or income for the majority of Nigerians, whose per capita income falls below \$400 per year.<sup>41</sup> Rowell outlines the situation in the Niger Delta as follows:

*“Oil and environmental conflict are rooted in the inequitable social relations that under gird the production and distribution of profits from oil, and its adverse impact on the fragile ecosystem of the Niger Delta. It involves the Nigerian State and oil companies on one side, and the six million people of the estimated eight hundred oil producing communities concentrated in the seventy thousand kilometer Niger Delta on the other.”<sup>42</sup>*

71. A Policy Note from a group of international agencies notes the following:

*“Poor infrastructure threatens economic growth and poverty reduction in the Niger Delta. A recent survey of community needs found that improved access to energy was the first priority of residents. The main constraints to the expansion of the agriculture sector, the main source of employment in the Delta, are lack of road and energy infrastructure... Despite the tremendous level of resources potentially available, the quality of public services in the Delta region remains very poor. Public infrastructure is overburdened, schools are in disrepair, and public health services scarcely function. Students have no means of traveling through the creeks to schools, youth have few employment opportunities,*

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<sup>40</sup> Wunmi William, 2002, “Citizenship Questions and Environmental Crisis in the Niger Delta: A Critical Reflection,” *Nordic Journal of African Studies* 11, (3), p. 377-378.

<sup>41</sup> “Oil and Politics in Nigeria,” *The Online News Hour*, Background Report, April 5, 2007, quoting US Library of Congress 2006 statistics, [http://www.pbs.org/newshour/indepth\\_coverage/africa/nigeria/oil.html](http://www.pbs.org/newshour/indepth_coverage/africa/nigeria/oil.html). (accessed February 25, 2008).

<sup>42</sup> A. Rowell, 1994, *Shell-Shocked: The Environmental and Social Costs of Living With Shell in Nigeria* (Amsterdam: Greenpeace), quoted in Wunmi William, 2002, “Citizenship Questions and Environmental Crisis in the Niger Delta: A Critical Reflection,” *Nordic Journal of African Studies* 11, (3), p. 383.



*traditional livelihoods are disappearing with environmental degeneration, and health indicators remains poor.*<sup>43</sup>

In summary, the Niger Delta is wracked by social tension and much of the anger is directed toward the oil and gas industry.

72. Hydrocarbon extraction in the Niger Delta has caused the following environmental effects: contamination of streams and rivers by drill cuttings and drilling fluids; oil spillage from wells, pipelines and tankers; gas flares causing noise, light and air pollution in nearby villages; and effluent discharges from oil and gas installations and refineries.<sup>44</sup>
73. The gas flaring issue is of particular relevance to the West African Gas Pipeline (WAGP) Project. Estimates on the percent of associated gas that is flared range from 44 percent to 76 percent.<sup>45</sup> In 2004, the lost opportunity value of flared gas was estimated at US\$2.5 billion<sup>46</sup> and the environmental costs were similar in scale, including those resulting from the approximately 70 million metric tons of CO<sub>2</sub> emissions a year.<sup>47</sup> The local-area population reported to the Panel that the impacts of the gas flaring on people and the environment -- intense pollution and heat over extended periods of time -- are ravaging and extreme.

## **B. World Bank Activities in the Energy Sector in Nigeria**

### **1. Context of the WAGP**

74. Associated gas wells located onshore link to a central flowstation by a pipeline. The flowstation serves as the collection centre for many wells and the facility is used to separate gas from oil. Much of the separated gas is currently flared at the flowstation but some is captured for the gas-gathering network and prepared for domestic use or export. In contrast, non-associated gas-producing fields can be connected directly to processing plants for treatment. Wells located in shallow waters usually link to a fixed platform where the gas is partially separated from the oil. Offshore wells in deeper water use floating production and storage facilities, which allows for the full treatment and storage of the hydrocarbon for immediate export.

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<sup>43</sup> "World Bank, British High Commission, DfID and USAID, Policy Note, The Niger Delta," received from the World Bank Country Office, Abuja on July 17, 2007, p. 3.

<sup>44</sup> A Nigerian perspective on this matter may be found on the website of the Urhobo Historical Society: <http://www.waado.org/Contents.html> (accessed April 10, 2008).

<sup>45</sup> "World Bank, British High Commission, DfID and USAID, Policy Note, The Niger Delta," received from the World Bank Country Office, Abuja on July 17, 2007, p.5.

<sup>46</sup> World Bank Energy Sector Management Assistance Programme, Nigeria Strategic Gas Plan ESM279, February 2004, ¶1.13

<sup>47</sup> World Bank Energy Sector Management Assistance Programme, Nigeria Strategic Gas Plan ESM279, February 2004, Executive Summary ¶7.

75. Currently, gas-gathering systems are being implemented that will collect the gas previously flared at flowstations. This collected gas can be piped to Liquid Natural Gas (LNG) facilities for treatment and export or could be re-injected into oil-bearing strata. Natural gas has great potential in Nigeria. Natural gas export from Nigeria began in 1999 following the construction of the Bonny Island LNG plant. This plant is one of the world's major sources of LNG. Nigeria currently provides 7 percent of the world's LNG requirements and is expected to rise to 13 percent, making Nigeria the world's third largest exporter of LNG, after the commission of additional processing capacity.
76. The WAGP aims to aid LNG development. After the gas is piped to LNG facilities, it will be fed into the existing gas collection system, through the ELPS to supply the WAGP.<sup>48</sup> However, the Chevron Escravos gas collection facility collects both associated and non-associated gas from offshore fields.<sup>49</sup>
77. The Nigeria Strategic Gas Plan classified potential large users of natural gas into five categories and ranked these in order of ultimate consumption.<sup>50</sup> The ranking is as follows, Gas to:
- i. Power
  - ii. Liquid Natural Gas
  - iii. Liquid [hydrocarbons]
  - iv. Pipelines for export
  - v. Chemicals, refineries and other uses in the domestic, commercial, and industrial sectors of the economy.
78. According to this ranking, gas export through pipelines ranks fourth as a means for gas consumption, and thus for flare reduction. As will be discussed in more detail in Chapter Four of this report, there are different numbers and estimates regarding the WAGPs impact on the reduction of gas flaring. According to one estimate, the WAGP off-take of gas will reduce Nigerian gas flaring by about one percent.<sup>51</sup> However, the PAD and Management Response state that flaring will be reduced by 5 percent,<sup>52</sup> The Panel's expert determined that Escravos residents will not likely see any flaring reduction because gas will be sourced from numerous wells and flowstations both on-shore and off-shore. This reality does not match the perceptions of Escravos region inhabitants who have gained the impression that flare reduction is one of the reasons, perhaps the most important, for the WAGP according to their request to the Inspection Panel and submissions to the Panel during its visits to Nigeria.

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<sup>48</sup> The Escravos-Lagos Pipeline System consists of a network of pipelines of various diameters. The section from Escravos to Warri is known as System A, that from Utorogu and Ughelli to Warri as System B, and that from Warri via Oben to the Alagbado Tee as System C. System C, the main 36 inch diameter pipeline is sometimes referred to as the ELP line or ELPS pipeline.

<sup>49</sup> Regional EIA, Apendix 2A-2, p. 2A-2-1.

<sup>50</sup> World Bank Energy Sector Management Assistance Programme, Nigeria Strategic Gas Plan ESM279, February 2004, Executive Summary ¶21.

<sup>51</sup> Global Gas Flaring Reduction Project, Management Presentation to the Inspection Panel, 2007.

<sup>52</sup> PAD, p. 35, fn. 40 and Management Response ¶ 20

79. A July 2007 Policy Note states that Shell, Chevron, and others have “admitted” that they will not be able to meet federally mandated flare-out deadlines.<sup>53</sup> The Note states that gas flaring reduction is an important element to address the situation in the Niger Delta, but “*rather than continuing a mandate approach to flare reduction, the Government (with the assistance of donors and key stakeholders in the industry) should address the physical, institutional and regulatory barriers to the existing commercially viable options for using the gas in Nigeria, the most attractive of which are likely to be power generation projects.*”<sup>54</sup> The Note further states “*it will also be important to agree among stakeholders on the implementation of the proposed new gas pricing policy*”<sup>55</sup> and takes the view that “*careful planning of the measures, which need to be taken to support commercially viable usage of gas should enable the government to set a realistic timetable for the end of gas-flaring in the Niger Delta.*”<sup>56</sup> As noted above, by comparison, new reports from October 2007 note the commitment of the government to stand by the 2008 ban on routine gas flaring.

## **2. World Bank Activities Related to the WAGP**

80. This section briefly discusses World Bank activities in Nigeria related to the WAGP. According to the Project Appraisal Document (PAD), the Project is part of the Bank’s Regional Integration Assistance Strategy (RIAS), which outlines the Bank’s focus on regional integration in Africa. According to the document this effort involves 15 West-African countries.<sup>57</sup>
81. The purpose of RIAS is to help these 15 States develop “*an open, unified economic space through the integration of markets for goods as well as financial and other services. Well defined and phased integration efforts focus on key sectors - where countries would benefit significantly from cross-border and regional trade - notably air, road, and sea transport, energy, and telecommunications.*”<sup>58</sup> The WAGP project is also included as part of the short-term action plan of the New Partnership for Africa’s Development (NEPAD) and is actively supported by the Economic Community of West African States (ECOWAS).<sup>59</sup>

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<sup>53</sup> “World Bank, British High Commission - DfID and USAID, Policy Note, The Niger Delta,” received from the World Bank Country Office, Abuja on July 17, 2007, p. 5.

<sup>54</sup> Policy Note, p.10.

<sup>55</sup> Policy Note, p.10.

<sup>56</sup> Policy Note, p.10.

<sup>57</sup> PAD, p. 1. The countries part of RIAS are Benin, Burkina Faso, Cape Verde, Côte d’Ivoire, Gambia, Ghana, Guinea, Guinea Bissau, Liberia, Mali, Niger, Nigeria, Senegal, Sierra Leone, and Togo.

<sup>58</sup> PAD, p. 1.

<sup>59</sup> PAD, p. 1. See also, “A Summary of NEPAD Action Plans” Appendix 2, Table 1, available at <http://www.uneca.org/unregionalconsultations/documents/NEPAD%20Action%20Plans%20summary.pdf>. List of NEPAD supported gas and oil transmission Projects, which includes the Kenya-Uganda Oil Pipeline and the Libya-Tunisia-Gas Pipeline, can be also found at <http://nepad.org.ng/projects.htm>.

82. The World Bank estimates Nigeria's gas reserves to have potential production for 120 years, compared to its oil reserves with a potential for production of 30 years.<sup>60</sup> However, because of a lack of gas utilization infrastructure, Nigeria flares 75 percent of the gas it produces – about 2,700 Million standard cubic feet per day (MMscf/day). Initially, the end of routine gas flaring was set for 1984. According to the PAD, it was to be reset for the year 2008 through the National Gas Policy. The National Gas Policy was designed to assist the Nigerian government meet two critical goals: (a) put an end to all gas flaring by 2008; and (b) ensure that natural gas significantly boosts the development of the Nigerian economy over the next few decades.<sup>61</sup>
83. The WAGP Project is one of several projects implemented or under preparation to meet the 2008 deadline for an end of routine gas flaring.<sup>62</sup> The Project, according to the PAD, will initially transport over 70 MMscf/day, with volumes increasing over the life of the Project to about 450 MMscf/day.<sup>63</sup>

### 3. Global Gas Flaring Reduction Initiative (GGFR)<sup>64</sup>

84. The GGFR partnership is a World Bank-led initiative to facilitate and support national efforts to use currently flared gas. It aims to promote effective regulatory frameworks and to tackle constraints to gas utilization, such as insufficient infrastructure and poor access to local and international energy markets for gas currently flared, particularly in developing countries.<sup>65</sup> Nigeria has been a GGFR partner since the start of the initiative and set a commitment of eliminating gas flaring by 2008.
85. GGFR is undertaking gas-flaring reduction projects in several countries. Most GGFR partners have endorsed a global standard for flaring reduction. The partnership is assisting Algeria, Cameroon, Equatorial Guinea, Kazakhstan, Nigeria, and Qatar to meet target dates for zero or minimum flaring. According to Bank staff, "*gas flaring harms the environment and wastes a cleaner source of energy that could generate much needed electricity in poor countries.*" Furthermore, Bank staff considers that "*gas flaring reduction is a concrete and relevant contribution to climate change mitigation and the transition to a low-*

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<sup>60</sup> PAD, Annex 1, ¶9.

<sup>61</sup> PAD, p. 6.

<sup>62</sup> PAD, p. 3.

<sup>63</sup> According to the PAD, p. 3, fn. 3, "[t]he pipeline capacity is technically limited to 474,000 MMBtu/day. 1 MMscf = 1030 MMBtu."

<sup>64</sup> Based on: Global Gas Flaring Reduction Project, Management Presentation to the Inspection Panel, 2007, and "About GGFR," *Global Gas Flaring Reduction: A Public-Private Partnership*, <http://go.worldbank.org/Q7E8SP9J90> (accessed April 10, 2008).

<sup>65</sup> GGFR has the following partners: Donors: Canada, European Union, France, Norway, UK Foreign Commonwealth Office, United States; Organizations: OPEC, World Bank Group; Countries: Algeria (Sonatrach), Angola (Sonangol), Cameroon, Chad, Ecuador, Equatorial Guinea, Gbaon, Indonesia, Kazakhstan, Khanty-Mansiysk (Russian Federation), Nigeria, Norway, Qatar, United States; Companies: BP, Chevron, ENI, ExxonMobil, Marathon Oil, Hydro, Shell, StatoilHydro, TOTAL.

*carbon economy.*<sup>66</sup> Collectively, GGFR projects underway will potentially eliminate 32 million tons of greenhouse gases by 2012. For reference, the top twenty gas flaring countries are listed in the chart below:

**Table 2.1: Who Are the Top Gas Flarers?**

	Official Data for 2004		What Imagery Shows for 2004	
	Country	Billion Cubic Meters	Country	Billion Cubic Meters
1	Nigeria	24.1	Russia	50.7
2	Russia	14.9	Nigeria	23.0
3	Iran	13.3	Iran	11.4
4	Iraq	8.6	Iraq	8.1
5	Angola	6.8	Kazakhstan	5.8
6	Venezuela	5.4	Algeria	5.5
7	Qatar	4.5	Angola	5.2
8	Algeria	4.3	Libya	4.2
9	Indonesia	3.7	Qatar	3.2
10	Eq. Guinea	3.6	Saudi Arabia	3.0
11	USA	2.8	China	2.9
12	Kuwait	2.7	Indonesia	2.9
13	Kazakhstan	2.7	Kuwait	2.6
14	Libya	2.5	Gabon	2.5
15	Azerbaijan	2.5	Oman	2.5
16	Mexico	1.5	North Sea	2.4
17	UK	1.6	Venezuela	2.1
18	Brazil	1.5	Uzbekistan	2.1
19	Gabon	1.4	Malaysia	1.7
20	Congo	1.2	Egypt	1.7

Source: “Bank-led Satellite Imagery Sheds More Light on Gas Flaring Pollution,” World Bank press release, August 29, 2007, <http://go.worldbank.org/W33BPE31S0> (accessed April 10, 2008).

86. The GGFR partnership has assisted the Nigerian government in developing a gas sector strategy and policy for its domestic market in order to increase the effective use of gas in Nigeria and reduce flaring. In 2004, the Nigerian government endorsed the Voluntary Standard for Global Flaring and Venting Reduction developed by GGFR, which sets 2010 as the global deadline to eliminate flaring from existing production. GGFR also facilitates flare reduction demonstration projects in Nigeria to evaluate their potential to earn carbon credits through the Clean Development Mechanism (CDM) and to show that carbon credit trading can improve the economic viability of gas flaring reduction projects.
  
87. In November 2006, the Nigerian Kwale project, the first major electricity generation plant powered by previously flared associated gas, was the first

<sup>66</sup> Somit Varma, Director of the Bank-IFC’s Oil, Gas, Mining, and Chemicals Department, and Bent Svensson, Manager of the Bank’s GGFR partnership quoted in “Bank-led Satellite Imagery Sheds More Light on Gas Flaring Pollution,” World Bank press release, August 29, 2007, <http://go.worldbank.org/W33BPE31S0> (accessed April 10, 2008).

GGFR supported demonstration project registered under the CDM. Kwale is also overall the tenth largest registered project under CDM out of more than 1400 projects. The Kwale project additionally demonstrates the viability of using carbon finance as an incentive for utilizing associated gas. The GGFR program also supports carbon credit capacity building and the development of small-scale gas projects. Focusing on three regions and model communities in the Niger Delta, these small-scale projects help evaluate the technical, economic, and financial viability of small-scale gas flaring reduction.

88. In preparation for the 2008 deadline, operators in the oil and gas sector have been preparing a large number of export projects based on associated gas as well as other gas sources. WAGP is only a small part of this commitment. However, some of the operators have publicly stated that they will only be able to meet the gas flare-out deadline in 2010 due to delays beyond their control.
89. The GGFR program expects that its Nigerian activities will contribute more to the reduction of gas flaring in the Escravos region of the Niger Delta than will the WAGP.<sup>67</sup>

### C. The WAGP – Detailed Description

90. The Project aims to contribute *inter alia* to “*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>68</sup>
91. According to the PAD, the Project includes the following elements: (1) a new pipeline system, the WAGP, which will transport natural gas from Nigeria to Ghana, Togo and Benin; (2) spurs to provide gas to power generating units in Ghana, Togo, and Benin; (3) conversion of existing power generating units to gas; and (4) as needed, additional compression investments.<sup>69</sup>
92. Under the Project, gas will be delivered from Nigeria, via a 678 kilometers pipeline across southwestern Nigeria, to a terminal point in Takoradi, Ghana. Fifty-eight kilometers of pipeline and other ancillary facilities will be constructed in southwestern Nigeria on the lands of 23 communities, including the 12 communities making this Request.
93. A special purpose company, the West African Gas Pipeline Company Limited (WAPCo), is implementing the project. Current WAPCo shareholders include Chevron Nigeria Limited (CNL), Nigerian National Petroleum Corporation (NNPC), Shell Petroleum Development Company of Nigeria Limited (SPDC),

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<sup>67</sup> Global Gas Flaring Reduction Project, Management Presentation to the Inspection Panel, 2007.

<sup>68</sup> PAD, p. 10.

<sup>69</sup> PAD, p. 11-12.

the Volta River Authority (VRA), Société Beninoise de Gaz SA (SoBeGaz), and Société Togolaise de Gaz SA (SoToGaz).<sup>70</sup> The NNPC, CNL, and SPDC have additionally formed ‘N-Gas Limited’ to (1) purchase gas from NNPC, CNL, SPDC and other suppliers, (2) to transport it through the existing Escravos-Lagos Pipeline (owned by NNPC and operated by the Nigerian Gas Corporation) and the WAGP (owned and operated by WAPCo), and (3) to sell gas to the VRA and to the Benin Electricity Company (CEB).<sup>71</sup>

94. The PAD states that “*World Bank Group participation (IDA and MIGA) will provide financial risk mitigation to allow the proposed Project to proceed, support the implementation of regional and national frameworks and actions required to kick start the development of gas markets in Ghana, Benin, and Togo, and more broadly will provide comfort to all the stakeholders regarding Project preparation and implementation standards.*”<sup>72</sup> For these purposes 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 Limited “*have acted and will continue to act in compliance with applicable World Bank Environmental and Social Safeguard Policies and anti-corruption policies.*”<sup>73</sup>
95. The WAGP is a gas transportation facility. WAPCo will not sell the product moved through the WAGP, but will instead derive revenue by charging N-Gas Limited to move its gas through the WAGP. The natural gas purchased by N-Gas Limited will primarily come from the Niger Delta region of Nigeria, and will consist of associated gas (38 percent) from a number of oil fields, and non-associated gas (62 percent) from gas fields in the western Delta region.<sup>74</sup> Associated natural gas shipped via the WAGP is currently being flared. Natural gas will be transported from the western Delta to the Alagbado Tee via the existing Escravos-Lagos Pipeline. Although the Project is not responsible for the operation of the existing ELPS, two points should be noted: firstly, the extraction of gas and the operation of the existing ELPS are essential for gas to flow through the WAGP and secondly the companies that own WAPCo also

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<sup>70</sup> Collectively they are referred to as “the sponsors.” PAD, p. 18. Full details of project ownership and share holdings may be found in Annex 4 and Annex 6 of the PAD. Close to 30 commercial contracts underpin WAGP.

<sup>71</sup> PAD, p. 17-18.

<sup>72</sup> PAD, p. 7.

<sup>73</sup> PAD, p. 9. Both Project Agreements (MIGA and IDA) were signed on December 15, 2004.

<sup>74</sup> These percentages are derived from the sources of natural gas, both associated and non-associated as detailed in Appendix 2A-2 of the Regional Environmental Assessment Document of the WAGP. SPDC has available 270 units of non-associated gas and 18 units of associated gas and CNL 150 units of associated gas (units are Million standard cubic feet per day). The percentages differ from those of Annex 1 of the PAD in which it is stated that initial gas flow will be about 60 percent associated gas and 40 percent non-associated gas. The later figures are also used in Management’s Response to the Request for Inspection. The WAPCo web page of Questions and Answers pertaining to the pipeline states; “*The proportion of associated gas in the nominated gas stream for WAGP Contracts will, initially, be around 75% whereas non-associated gas will be 25%.*”

jointly or severally own the ELPS and most of the gas sources in the western Delta.

96. The end users of the natural gas transported through the WAGP are electric power utilities and industrial and commercial gas customers in the three receiving countries. The initial gas customers are the VRA electric power station in Takoradi, Ghana, a relocated electric power station at Maria Gleta, Benin; and an existing power station near Lomé, Togo. Once the WAGP is operating and providing a ready supply of natural gas, it is anticipated that additional existing industrial and commercial users will switch to gas fuel, and that new power generation and industrial facilities will be developed to take advantage of the available gas.
97. The terrestrial Nigeria section of the WAGP connects at the Alagbado Tee to the existing ELPS. From the Alagbado Tee, the WAGP extends over land for 58 kilometers as a 30 inch pipeline, to the point where it goes offshore near Badagry, Nigeria. The first 4 kilometers of the pipeline shares an existing ROW with two existing gas pipelines – one owned by the Nigerian Gas Company and the other by Shell Nigeria Gas. For the next 32 kilometers the WAGP ROW runs adjacent to the existing Shell ROW. For the final 20 kilometers overland to the beachhead where the pipeline goes offshore, a completely new ROW has been opened. From Adjido, near Badagry the pipeline extends offshore for some 570 kilometers through the Gulf of Guinea, to Takoradi, Ghana. Lateral pipelines of smaller diameter branch off along this route to transport gas to Cotonou, Benin, Lomé, Togo, and Tema, Ghana.
98. A compressor station to boost gas pressure in the pipeline for transmission offshore is situated west of Ajido, near Badagry, roughly 2 kilometers from the beachhead, inland of Badagry Creek. From the beachhead near Badagry, the pipeline passes into the Gulf of Guinea in a south-westerly direction, to a distance of approximately 15 kilometers (9 miles) from shore. There the route turns west and runs roughly parallel to the shoreline, passing out of the territorial waters of Nigeria and successively into those of Benin, Togo and Ghana. The undersea pipe is 20 inches in diameter, concrete coated, and rests on the sea floor at depths from 24 to 72 meters and at 15 to 25 kilometers from the coastline.
99. Most of the WAGP system will be a high-pressure system<sup>75</sup> in order to maximize gas transport capacity. The gas transport capacity of the WAGP as initially built is expected to be 190 million standard cubic feet per day (MMscf/day). Ultimate system capacity can be boosted to 578MMscf/day through installation of additional compressors. The actual rate of gas throughput

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<sup>75</sup> The initial operating pressure of the WAGP will be close to 50 times atmospheric pressure. Once all compressor stations are operational, the pressure will be increased but will not exceed the tested pressure of 143 or the design pressure of 153 atmospheres according to information provided by the WAGP Operations Manager in an interview with the Panel, July 2007.



by the WAGP will ultimately depend on demand for natural gas from Benin, Togo and Ghana.



Picture 1: Shell Nigeria Gas (SNG) and WAGP Pipeline Rights of Way (ROWs)

100. The Project identifies six Energy Sector Issues, including the *Environmental Consequences of Flaring of Gas and Burning of Liquid Fuels*.<sup>76</sup> This Project “ranks high” amongst the projects recommended under the Natural Gas Strategy, which the Government of Nigeria developed in assistance with the Bank to address the air pollution and other issues associated with gas flaring, including meeting the 2008 deadline.<sup>77</sup> The Project is supposed to absorb a portion of the associated gas (AG) in Nigeria and substitute for heavy fuel oil and gas oil consumed in power plants in Ghana, Togo, and Benin, “thus contributing to a reduction in greenhouse gas emissions (GHGE) from the producing end in Nigeria as well as in the consuming end.”<sup>78</sup> By capturing some of the flared gas and feeding it into the pipeline, carbon emissions will be reduced in proportion of the gas input to the system. The PAD states that “although this will only represent a small fraction of gas flaring reduction, it will nevertheless contribute to it in a credible and substantial way.”<sup>79</sup>

<sup>76</sup> PAD, p. 4. The remaining identified issues are: the high cost of electricity generation; the capacity deficit leading to unreliable power supply; the insufficient regional cooperation in energy trade due to physical, institutional, regulatory, and legal constraints and political commitments; the power sector performance and reform in participating countries; and the low access to modern energies.

<sup>77</sup> PAD, p. 4.

<sup>78</sup> PAD, p. 5.

<sup>79</sup> PAD, p. 5.

101. The Project aims to address some of the energy sector issues, including the reduction of energy supply costs, the improvement of the reliability of energy systems in Ghana, Togo, and Benin, the reduction of gas flaring in Nigeria, and the substitution for cleaner fuels in the consuming countries.<sup>80</sup> On the gas flaring, the PAD states that Nigeria's hydrocarbon sector was undergoing a review to address the issues that have affected it for years, including that of access to energy, one of the lowest in the region.
102. **Financing:** The entire Project is estimated to cost about US\$590 million.<sup>81</sup> IDA 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>82</sup>

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<sup>80</sup> PAD, p. 5.

<sup>81</sup> PAD, p. 13 and Management Response, ¶13, states that the sponsors currently estimate the construction costs of the pipeline, excluding other WAPCo costs, to be about US\$495 million.

<sup>82</sup> WAPCo is also the beneficiary of similar insurance structures from Zürich (with reinsurance from OPIC) to back the payment obligations of the Governments of Ghana, Togo and Benin according to Management Response, ¶14 and PAD, p. 10. Both Project Agreements were signed on December 15, 2004.

## Chapter Three

### Social Issues -- Analysis of Compliance

103. This Chapter deals with the complex social environment of the Nigerian portion of the Project. Its main purpose is to analyze the Bank's and Sponsor's actions or omissions in complying with the Bank's safeguards, particularly those dealing with resettlement and compensation.

#### A. Brief Introduction into Social Issues

104. The most significant social issues focused on in this Chapter involve displacement and involuntary resettlement associated with the acquisition of 144 hectares, including the ROW for the pipeline and ancillary facilities in Nigeria.<sup>83</sup> The 25 meter-wide ROW traverses 23 western Nigerian communities, including the 12 communities making this Request. The Project estimated that about 90,000 people live in the 23 communities.<sup>84</sup> The lands, which are mostly agricultural with diverse uses, are owned under customary rights by populations belonging to the ethno-linguistic group of Yoruba.

105. In its presentation to the Board, Management reported that the construction of the pipeline along the Nigeria ROW would directly affect 2,485 households<sup>85</sup> that owned or used plots in the Project area. It reported that the directly affected households had 1,557 private landowners and 928 tenants.<sup>86</sup> It estimated that 8,647 people were living in the households that were to be affected.<sup>87</sup> According to the RAP for Nigeria, over half the displaced persons were from two adjacent rural agricultural communities, Igbesa and Okoomi.<sup>88</sup> The RAP estimated that the average affected household will lose 4–6 percent of its total land holding.<sup>89</sup> However, as will be discussed later in this chapter, these numbers were not based on an adequate socio-economic survey and their reliability might hence be questionable.

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<sup>83</sup> PAD, p. 34 and updated Project Information Document, November 23, 2004, p. 6 [hereinafter "PID"]. Of the involuntary resettlement risks in WAGP, Nigeria accounted for 70 percent of the area taken and 86 percent of the affected households affected. The Panel focused its analysis on what appeared to be the area with the highest concentration of displaced people, along the Nigeria portion of the pipeline, and did not investigate areas in the other countries. The Panel observes that compliance issues surfacing in the Nigeria segment could also be present in other affected areas. Chapter 4 (Environment) also addresses certain significant social issues, including those relating to the subject of gas flaring.

<sup>84</sup> Nigeria Final Draft Rev 1, Resettlement Action Plan – Nigeria, West African Gas Pipeline ("Nigeria RAP"), p. 1-7 (June 2004).

<sup>85</sup> PAD, p. 37.

<sup>86</sup> PAD, Annex 13, ¶23.

<sup>87</sup> PAD, Annex 13, ¶23.

<sup>88</sup> Nigeria RAP, p. 1-9, Table 1.2-2.

<sup>89</sup> Nigeria RAP, Executive Summary, p. iii.

106. Management classified WAGP as a Category ‘A’ project; its most sensitive environmental rating. Management informed the Board that the residual impacts of conversion of land use along the ROW were moderate and would be mitigated by successful execution of the RAP.<sup>90</sup>

## **B. Requesters’ Claims and Management Response**

107. **Requesters’ Claims:** The Requesters believe that the Project, if executed as presently conceived, would do irreparable damage to the land and, consequently, destroy the livelihoods of their communities.<sup>91</sup> They state that the Bank did not comply with its Policies and Procedures, including Bank Policies on Involuntary Resettlement and Environmental Assessment.<sup>92</sup>

108. More specifically, the Requesters claim that the Project provided inadequate compensation to landowners. They contend that there was inadequate consultation with affected people in the resettlement process, and that the affected communities and groups were not able to pinpoint the location where the draft Environmental Impact Assessment document was displayed. The Requesters further contend that Bank Management failed adequately to assess Borrower capacity to carry out a policy-consistent approach to resettlement.

109. The Requesters’ claims raise a number of issues of compliance with relevant Bank Policies, including Involuntary Resettlement. These can be distinguished into several general categories: baseline socio-economic information; information disclosure and participation; loss of livelihood and compensation; grievance mechanisms; sharing of project benefits as part of a “sustainable development program;”<sup>93</sup> and institutional capacity. Specific concerns within this framework include how the Project approached resettlement financing and accountability, and the land tenure rights of the affected people, These and other specific issues raised by the Request will be addressed in more detail below.

110. **Management’s Response:** Management recognized that there were both opportunities and risks in working with a private-sector special purpose company to execute a project of this size.<sup>94</sup> One risk was that WAPCo, driven by a tight preparation schedule and the escalation in costs to investors that could arise from delay, would forge ahead according to its own procedures and the

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<sup>90</sup> PAD, Annex 13, Table 13.1, p. 134 and Nigeria Final Draft Rev 1, Environmental Impact Assessment: West African Gas Pipeline, June 2004, p. 7-3, [hereinafter “Nigeria EIA”], sets responsibility for this component in the RAP.

<sup>91</sup> Request, p. 1.

<sup>92</sup> Request, p. 1.

<sup>93</sup> As discussed in more detail below, a sustainable development program in this context refers to “... providing sufficient investment resources to enable the persons displaced by the project to share in project benefits.” OP 4.12, ¶2 (b).

<sup>94</sup> Management Response, ¶27.

requirements imposed by the four host governments and, as a result, pay insufficient attention to the Bank’s safeguards procedures.<sup>95</sup>

111. Management’s position, generally, is that the systems for social management are adequate to mitigate negative impacts and that the Project will not cause irreparable damage to land or livelihood.<sup>96</sup> Management believes that its efforts in this Project have focused on maximizing opportunities and safeguarding against risks.
112. Management believes that the WAGP is a “*well-prepared project with safeguards that meet World Bank requirements.*”<sup>97</sup> Among the factors that were key to the “*achievement of this outcome,*”<sup>98</sup> is an “*early and continuous engagement of senior Bank safeguard staff,*”<sup>99</sup> allocating “*sufficient time to undertake safeguards work,*”<sup>100</sup> together with “*thorough and timely guidance on safeguard policies.*”<sup>101</sup> In this regard, Management also refers to the private sector capacity of the Sponsor, motivation to maintain due diligence and oversight, and engagement with stakeholders.<sup>102</sup>
113. Management believes that it has made significant efforts to apply its Policies and Procedures and to pursue concretely its mission statement in the context of the Project. In Management’s view, the Bank has endeavored to ensure that WAPCo follows the guidelines, policies and procedures applicable to the matters raised by the Request, but acknowledges that further work will need to be done on safeguards supervision.<sup>103</sup> Management recognizes that potentially inadequate compensation may have been provided to the affected people. Management states that it will work with WAPCo, the government, and affected communities to ensure that the Requesters’ rights or interests are not directly or adversely affected by the Project.<sup>104</sup>

### **C. Baseline Socio-Economic Data**

114. Many of the problems raised in the Request can be linked to the lack of adequate socio-economic data gathered as a foundation for actions relating to resettlement. In line with Bank Policy, effective poverty reduction, resettlement and compensation need to be based on reliable and thoroughly gathered numbers. Without underlying socio-economic numbers, resettlement planning mitigation measures risk falling short of what is required by Bank Policies to

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<sup>95</sup> Management Response, ¶27.

<sup>96</sup> Management Response, ¶49.

<sup>97</sup> Management Response, ¶28.

<sup>98</sup> Management Response, ¶28.

<sup>99</sup> Management Response, ¶29.

<sup>100</sup> Management Response, ¶30.

<sup>101</sup> Management Response, ¶31.

<sup>102</sup> Management Response, ¶29-33.

<sup>103</sup> Management Response, ¶60.

<sup>104</sup> Management Response, ¶60.

safeguard affected-people against risks of impoverishment, particularly if Bank Policy targets specific at-risk segments of the displaced persons (defined in OP 4.12).

## 1. Bank Policy

115. Bank Policy on Involuntary Resettlement states that a resettlement plan or an abbreviated resettlement plan is required “*for all operations that entail involuntary resettlement,*” unless otherwise specified.<sup>105</sup> In the preparation of a RAP,<sup>106</sup> the Policy calls for the assessment of impoverishment risks and mitigation measures to be based on “*socio-economic studies to be conducted in the early stages of project preparation and with the involvement of potentially displaced people.*”<sup>107</sup>
116. These socio-economic studies should include a census of: current occupants of the affected area to establish a basis for the design of the RAP; standard characteristics of displaced households (including production system, labor, and household organization); baseline information on livelihoods and standards of living; the magnitude of expected loss; and information on vulnerable groups.<sup>108</sup> Provisions should also be made to update this information at regular intervals.<sup>109</sup>
117. For a better understanding of the following analysis, it is important to recall that under Bank Policy the term “**displaced persons**” refers to “*persons who are affected in any of the ways described in para. 3*” of the Policy.<sup>110</sup> Paragraph 3 (“Impacts Covered”) provides, among other things, that the Policy “*covers direct economic and social impacts that both result from Bank-assisted projects and are caused by: (a) the involuntary taking of land resulting in (i) relocation or loss of shelter; (ii) loss of assets or access to assets; or (iii) loss of income sources or means of livelihood, **whether or not the affected persons must move to another location** (...)*”<sup>111</sup> (emphasis added). The RAP refers to a total estimated population of 90,000 living in 23 affected communities as the “*Project-affected people/population*” (PAPs). Furthermore, the RAP uses the term “*directly affected population*” to refer only to those households whose plots are going to be acquired for the Project.<sup>112</sup>

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<sup>105</sup> OP 4.12, ¶17(a).

<sup>106</sup> The April 2004 revision of the Involuntary Resettlement Policy refers to the preparation of Resettlement Plan. The Project’s documentation, including Management’s Response, refers to “Resettlement Action Plan” or “RAP,” as does this Report.

<sup>107</sup> OP 4.12, Annex A, ¶6.

<sup>108</sup> OP 4.12 Annex A, ¶6 (a).

<sup>109</sup> OP 4.12 Annex A, ¶6 (a)(v)

<sup>110</sup> OP 4.12, ¶2(b), fn. 3.

<sup>111</sup> OP 4.12, ¶3 (footnotes omitted).

<sup>112</sup> Nigeria RAP, p. 1-7.

## 2. Information Gathered and Failure to Prepare Baseline Survey

118. The discussion below reviews the different types of information about affected people gathered under the Project, and assesses whether or not this information met the requirements of Bank Policy on Involuntary Resettlement.
119. **Environmental and Social Impact Assessment:** In preparation for the RAP, in June 2003, a WAPCo subcontractor conducted household and community surveys incorporated into an Environmental and Social Impact Assessment (ESIA). The household surveys included 510 households.<sup>113</sup> The ESIA was a broad social impact analysis. It did not specifically target the households whose lands and other assets were to be acquired for the Project.
120. WAPCo stated that the objective of the ESIA surveys was not to establish the magnitude of Project impacts on directly affected households.<sup>114</sup> For example, the surveys lacked data on household income attributable to the productive assets affected by the Project, which is important information for judging the relative impact of the loss of land on the overall household economy.<sup>115</sup>
121. **Estate Survey:** Three months later, in September 2003, WAPCo employees and Estate Surveyors began a second survey distinct from the ESIA. WAPCo surveyors and community liaisons surveyed the proposed ROW, making a list of the names of landowners and tenants, measuring their plots, and classifying land use. This “Estate Survey” did not collect any socio-economic information on the land owners or tenants or their productive activities outside the ROW. The Estate Survey identified 1,557 private landowners and 928 tenants.<sup>116</sup> The Estate Survey did not collect information on the total size of the plots in question, nor on the total landholdings of the displaced persons, making it impossible to determine whether the Project was taking a fraction or all of a specific productive asset.
122. The WAPCo Estate Survey discovered differentiation in the valuation of assets along the ROW and associated facilities, ranging from high-valued land near a freeway to low-valued agricultural land, which was about 83 percent of the 144 hectares to be used for the ROW.<sup>117</sup> Two communities had high value, commercial agriculture (flowers and medicinal plants), others mostly staple crops. In addition, 15,147 trees were destroyed, a third of which were located in the heavily impacted communities of Igbesa and Okoomi.<sup>118</sup> The displaced

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<sup>113</sup> Nigeria RAP, Executive Summary, p. iii.

<sup>114</sup> Nigeria RAP, p. 4–3.

<sup>115</sup> Nigeria RAP, p. 4–4.

<sup>116</sup> Nigeria RAP, Executive Summary, p. ii.

<sup>117</sup> Nigeria RAP, Table 6.1–2, p. 6–9 to 6-10. Calculated by dividing 1,201,242 m<sup>2</sup> of agricultural land by 144 hectares taken by the project in Nigeria.

<sup>118</sup> Nigeria RAP, Table 6.3–6, p. 6–23.

persons lost 28 wells/boreholes, 4 surface reservoirs, 4 septic tanks, and associated agricultural structures.<sup>119</sup> The Project also affects 13 segments with fishponds.<sup>120</sup> Affected cultural assets included 6 churches, 16 individual graves, 60 shrines, and 3 praying grounds,<sup>121</sup> and 2 market squares.<sup>122</sup> The Estate Survey identified 38 owner-occupied residential structures that were to be destroyed, most of which were in one neighborhood in Ijoko, creating a risk of homelessness for these families.<sup>123</sup>

123. The two surveys provided the only data on the displaced persons available for preparation of the RAP. Only 6 percent of the 2,485 households who were losing assets had been surveyed by the earlier ESIA study.<sup>124</sup>
124. **Lack of Baseline Socio-Economic Information.** As indicated above, a socio-economic survey was supposed to be conducted with the involvement of potentially displaced people, as specified in OP 4.12, Annex A, paragraph 6. The RAP does not indicate that this happened.
125. Instead, WAPCo was faced with the situation of having broad data on people living in the area from the ESIA survey. WAPCo did not have the information needed specifically to assess the displaced persons' impoverishment risks, the degree of exposure to their socio-economic livelihoods, the magnitude of their expected losses, or to identify specific vulnerable peoples. **The Panel found that Management did not ensure that the requisite socio-economic information was gathered as called for in the Bank Policy. This does not comply with OP 4.12.**
126. The Panel notes that in lieu of a policy-consistent socio-economic survey, Management relied on analytical shortcuts to align available yet insufficient information and knowledge with the pressing needs to complete the RAP. The first was a decision to use the 510 household ESIA survey and draw from it a subset of 167 households that were losing assets to the Project. This subset was used to estimate the Project impact on the displaced households that were to lose assets because of the pipeline and related facilities. Indeed, WAPCo recognized the ESIA survey fell short of meeting socio-economic data requirements in OP 4.12,<sup>125</sup> but claimed that this sample of a sample met the socio-economic data requirements specified in OP 4.12 with respect to the "*project-affected populations.*"<sup>126</sup> **The Policy, however, calls for a socio-**

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<sup>119</sup> Nigeria RAP, Table 6.3-4, p. 6-19 to 6-20.

<sup>120</sup> Nigeria RAP, p. 6-24.

<sup>121</sup> Nigeria RAP, Table 6.3-5, p. 6-21.

<sup>122</sup> Nigeria RAP, Table 6.3-10, p. 6-29.

<sup>123</sup> Nigeria RAP, Table 6.3-4, p. 6-20.

<sup>124</sup> Calculation by the Panel's expert based on spreadsheets provided by WAPCo.

<sup>125</sup> Nigeria RAP, p. 4-3 to 4-4. See fn. 2.

<sup>126</sup> Nigeria RAP, p. 4-4, fn. 2. The footnote commits to doing another "small scale base-line data set regarding the directly affected households" as part of the monitoring effort "to fill in data gaps that may



**economic study of the displaced persons. The Policy requirements cannot be met by general data on the project affected area or populations nor by extrapolation from a sample.**

127. In the absence of an adequate baseline survey, and without an adequate baseline to measure against, it is difficult to measure the impact of the Project and to conduct impact monitoring in the future. This problem was also mentioned by the Environmental and Social Advisory Panel (ESAP), which stated that *“ideally a household baseline survey of compensated households would have been done just prior to compensation payment, and before land-take. That did not happen. The first impact monitoring survey will provide a less than ideal but still useful base for establishing change.”*<sup>127</sup> **The Panel finds that the absence of adequate baseline information makes it impossible to ensure that the impacts and potential impoverishment risks facing local people are properly addressed, as required under Bank Resettlement Policy.**

### **3. Number of Displaced Persons**

128. Without a study of the basic economic units along the ROW, one can neither determine the actual number of those losing land and other assets (i.e. the number of displaced persons), nor the number of PAPs who were affected in other ways. The plots that were acquired by the Project appear to be portions of extended family holdings that were not subject to the requisite socio-economic analysis. Panel interviews with WAPCo community agents confirmed that the number of people who lined up along the ROW claiming ownership was a function of the family head’s decision as to who should go to the line that day. This fact brings into doubt calculations of the size of the project affected population in the Nigerian segment of the WAGP.
129. WAPCo discovered an inconsistency when comparing the directly-impacted subset with the overall ESIA survey. According to the Project ESIA, the average household size of the project affected communities is surprisingly low: 3.48 persons.<sup>128</sup> According to the RAP, Nigeria’s average household is 5.4 persons based on data collected between 1985 and 1990.<sup>129</sup>

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have existed in preparation of the RAP report.” The distinction drawn between “affected” and “directly affected” indicates the Sponsor’s clear awareness of the insufficiency of their data in terms of Bank policy.

<sup>127</sup> Douglas Briggs, Jonathan Jenness, and Miles Seaman, “Report of the August 2007 Mission of the Environmental and Social Advisory Panel (ESAP) for the West African Gas Pipeline Project,” 4 November 2007, p. 33, [hereinafter “ESAP Report”].

<sup>128</sup> Nigeria RAP, p. 1–8, fn. 10.

<sup>129</sup> Nigeria RAP, p. 4–13 citing data by United Nations STATS, 2003.



Picture 2: Meeting with Community Representatives and WAPCo Officials at Compressor Station in Badagry.

130. This inconsistency should have raised questions about the validity of the sub-sample and the shortcut methodology. It is highly improbable that a gas pipeline ROW transecting Yoruba communities would affect abnormally small households. Demographic test like this are usually done routinely to ensure sample validity. Critical Management and Sponsor decisions, such as the justification for a cash compensation payout, were based on alleged characteristics of the displaced persons, and drawn from the inadequate, post-sample of an earlier sample. The independent monitor's suggestion for the correction of the problem of not having baseline data on the displaced persons was ignored.<sup>130</sup>
131. Recognizing, but not resolving this inconsistency, WAPCo decided to use the lower estimate of the directly affected number of people to calculate the number of displaced persons, fundamental involuntary resettlement information that is routinely reported to the Board. **The Panel finds that the size of the displaced population seems to be underestimated as a result of the methodology used for their identification** (see Box 3.1 below).<sup>131</sup>

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<sup>130</sup> "Independent Monitoring Report: Resettlement, Compensation, and Environmental Management Plan Commitments, The West African Gas Pipeline," December 2005, p. 24. "Independent Monitoring Report: Resettlement, Compensation, and Environmental Management Plan Commitments, The West African Gas Pipeline," June 2006, p. 54.

<sup>131</sup> Nigeria RAP, p. 1–8, fn.10.

### **Box 3.1: Analytical Problems in Methods used to Estimate Displaced Persons**

- The Sponsor relied on certain “shortcuts” to estimate the numbers of displaced persons reported to the Board, which raise questions about the reliability of the reported numbers.
- According to the RAP the average household size of affected communities is estimated in the ESIA to be 3.48 persons. The RAP considers this figure to be “surprisingly low,” and notes the data collected from 1985 to 1990 and compiled in the United Nations STATS (2003) placing the average Nigerian household size at 5.4.
- Nevertheless, the RAP uses the lower average to calculate the number of displaced people. In estimating PAPs, the Sponsor multiplied the lower-average-household size (3.48) by the number of households whose plots are going to be acquired (2,485), arriving at an estimate of 8,647 displaced persons. By comparison, if one were to use the United Nations STATS estimated national average household size (5.4), the displaced population is more likely to be about 13,419.
- Looking at it from another angle, the ESIA estimates that there are about 90,000 project affected people in this area. The random ESIA sample discovered that 32 percent of the project affected population is displaced. Thus, 32 percent of 90,000 persons, i.e. 28,000 persons can be estimated as being displaced. This number is considerably higher than the originally estimated number of 8,647 and also higher than the estimated number that would be calculated using the United Nations STATS average household size (13,419).

## **4. Land Tenure**

132. In Yoruba agrarian culture, the basic economic unit is a household under the leadership of a household head who may be married to one or more wives. Households are affiliated with an extended family that is under the leadership of the head of the extended family. This person oversees the extended family’s decision making on ancestral lands. He/she represents the interests of all members of the extended family and therefore has considerable influence on the distribution of land-use rights and the sharing of gains or losses resulting from the transfer of land titles. Hence, both the members of a household whose land is taken and the members of his/her extended family would have to be considered as displaced persons.
133. Given that all members of the extended family have a certain claim to land that is under the control of the extended family, a more accurate and economically meaningful calculation of the number of the displaced persons could have been to take the sum of the population of each extended family that lost productive assets due to the Project. This problem was discussed by the area stakeholders

with WAPCo during the RAP preparation<sup>132</sup> but did not get resolved in spite of the local population's request that the compensation mistakes made by Shell on the earlier land acquisition should not be repeated.<sup>133</sup>

134. The Requesters also report about conflicts created by the chosen approach: *“families were against each other owing to what some members perceived as the small amount of compensation declared by their family heads who signed for and collected compensation cheques on behalf of their families. Family heads were suspected to have stashed part of the compensation for their private use. This perception was entirely false, but as there was hardly any information on the quantum of compensation to family heads, rumours of dishonesty on the part of family heads were rife and these led to bitter quarrels and even physical fights. It is pertinent to note that a family in the sense used here denotes the extended family system practiced widely in our communities.”*<sup>134</sup>

135. These conflicting views persisted throughout the Project planning and implementation until today. For instance, extended household heads in Igbesa notified Chevron during the RAP preparation that they, the extended family heads, are the land owners. They recognized “individual persons” as owning crops, but insisted that the land belonged to the extended family.<sup>135</sup> In contrast, the RAP survey claimed to substantiate the notion that individual ownership is the most common form of land ownership on the ROW.<sup>136</sup> However, the RAP then modified this position by stating that the landowners do not necessarily “own” the land in the Western sense. WAPCo agents reported to the Panel that they had told the displaced persons during negotiations for compensation that they were not land owners—a position consistent with parts of the RAP. The Panel examined receipts for payments and found that the displaced were not compensated for land ownership, but for *“all my building, land and other improvements and satisfaction for the deprivation of use of land ... and for all inconveniences suffered.”*<sup>137</sup> No evidence was apparent of an official governmental transfer of land ownership.

**136. The Panel finds that the complexities of the traditional land tenure system, wherein large extended families control land and the heads of the extended families distribute user rights among members of the extended family, were**

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<sup>132</sup> Letter to ChevronTexaco, “West African Gasline Project Igbesa Right of Way,” from the Pipeline Right of Way Land Owner Association of Igbesa, August 14, 2003.

<sup>133</sup> The Panel interviewed a Yoruba who stated that people were engaged in legal disputes, persisting from the previous Shell pipeline expansion, involving court cases on claims of under-compensation. The Panel was informed that these cases were ongoing at the time of its field visit. Management did not, however, refer to or draw on this recent involuntary displacement experience in their RAP. Had they done so, problems of proposed compensation method might have been more evident.

<sup>134</sup> Request, p. 5.

<sup>135</sup> Letter to ChevronTexaco, “West African Gasline Project Igbesa Right of Way,” from the Pipeline Right of Way Land Owner Association of Igbesa, August 14, 2003.

<sup>136</sup> Nigeria RAP, 4-36 to 4-37 and Table 4.6-1.

<sup>137</sup> From a Compensation and Indemnity Receipt signed between WAPCo and displaced person.

**not adequately taken into account. This does not comply with the OP 4.12 requiring studies on land tenure and transfer systems.**<sup>138</sup> Such an analysis would have helped to prevent the lack of transparency in the way compensation payments were made.

## 5. Vulnerable Groups

137. The Bank's Involuntary Resettlement Policy calls for paying particular attention *"to the needs of vulnerable groups among those displaced, especially those below the poverty line, the landless, the elderly, women and children, indigenous peoples, ethnic minorities, or other displaced persons who may not be protected through national land compensation legislation."*<sup>139</sup> In line with this, the socio economic studies required in the preparation of a RAP should include *"information on vulnerable groups or persons"* as identified in paragraph 8 of OP 4.12.<sup>140</sup>
138. The RAP prepared for the Project, however, did not contain adequate information on the needs of vulnerable groups that were to be affected by the Project ROW in Nigeria, which includes women, the elderly, the poor and tenants. After noting that higher incomes were associated with larger land holdings, the RAP's perfunctory impoverishment analysis concluded that the impacts will be more adverse for the higher income people with larger parcels.<sup>141</sup> The brief analysis of the vulnerability of women concludes that since *"female landowners constitute a smaller portion of the affected people, and they also lose less land than the men. This may be due to women owning smaller amounts of land. Male landowners, on average, lose twice as much land as female landowners. Women do not lose more than proportionate to their holdings and thus will not be vulnerable."*<sup>142</sup> The Panel notes that the "analyses" can not be deemed adequate or defensible for an analysis of impoverishment or female vulnerability. **The Panel finds that Bank Management failed to ensure the Sponsor performed an adequate analysis of the socioeconomic risks to vulnerable peoples. This does not comply with Bank Policy on Involuntary Resettlement, and denied these peoples the protections provided under the Policy.**

## 6. Land and Productive Assets

139. The Panel notes that a shortcut was also used to estimate the impact of the Project takings on the productive area of displaced households. Lacking data on the displaced people themselves -- apart from their names and the size of the

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<sup>138</sup> OP 4.12, Annex A, ¶6(b)(i).

<sup>139</sup> OP 4.12, ¶8.

<sup>140</sup> OP 4.12, ¶6(a)(iv).

<sup>141</sup> Nigeria RAP, p. 4-2.

<sup>142</sup> Nigeria RAP, p. 4-2.

parcels that were to be taken -- WAPCo estimated the Project impact by dividing the average of land taken (700 m<sup>2</sup> from the Estate Survey) by the average household land holdings (1.7 hectares from the ESIA survey).<sup>143</sup> Dividing one average by another average, they concluded that the Project takes away less than 4 percent of the total land holdings cultivated by the affected households.<sup>144</sup> Neither the ESIA nor the Estate Surveys collected data on the total household holdings of the displaced persons necessary to verify this claim.

140. In Project documents presented to the Board, it was stated that “*owners lose less than 6 percent of their total land holdings.*”<sup>145</sup> This figure was meaningless in terms of identifying the actual risks of any individual household. The same defective methodology was used to report estimated household income losses, resulting from the loss of land, as being less than 2 percent of total household income.<sup>146</sup>
141. These major methodological flaws make substantiating compliance with the Bank Policies impossible and prevented Management from making a data-based counter-response to the Requesters’ complaint. **The Panel finds that Management did not ensure that Project planners used reliable and specific data on individuals or households affected by the ROW, rather than assumptions and averages.**
142. The Panel finds that the RAP has substantial, contradictory estimates of livelihood loss that Management presented to the Board, rather than resolve.<sup>147</sup> This is flawed economics. The RAP Executive Summary states “*overall, land acquisition and resettlement impacts of the project are modest and concern primarily to low levels risk associated with landlessness and homelessness.*”<sup>148</sup> Later, it reports that the “*household survey conducted for the Environmental Impact Assessment for WAGP identified that the directly affected households derive a significant portion of their income from agricultural activities, and they tend to be “self-employed” in agriculture, and thus more dependent on land. Figure 6.3-2 indicates the higher reliance by directly affected households on agricultural income sources. The loss of agricultural income (including livestock) for the affected households would mean the average loss of approximately half their income, a potentially severe impact on their livelihoods.*”<sup>149</sup> The Panel does not consider loss of half of one’s income a low level risk.

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<sup>143</sup> Nigeria RAP, p. 6-33. The ESAP Report, p. 15, refers to an overall Project land-take of about 200 hectares, of which about 70 percent occurred in Nigeria.

<sup>144</sup> Nigeria RAP, p. 6-33.

<sup>145</sup> PAD, Annex 13, ¶23.

<sup>146</sup> PAD, Annex 13, ¶23.

<sup>147</sup> See also section I of this Chapter on Information to the Board, below.

<sup>148</sup> Nigeria RAP, Executive Summary, p. i.

<sup>149</sup> Nigeria RAP, p. 6-26.

143. The Panel is concerned that these data analysis flaws were also used as a basis to justify Management’s and the Sponsor’s decision to use cash compensation as the primary means of impoverishment risk mitigation in this Project. Management accepted this flawed methodology and sanctioned the Sponsor’s decision to effectuate the cash-compensation clause of OP 4.12.

## 7. Conclusions

144. As described above, Management did not ensure that the Project was based on an adequate and accurate calculation of the current occupants of the affected area, as a basis for the design of the resettlement program. The failure to collect livelihood impact data appears to have led to unjustified shortcuts that were accepted by Management for critical decisions, such as supporting a cash-only compensation approach.
145. This is particularly disturbing from the perspective of not having information on the impact of this Project on vulnerable peoples, women, the elderly, the poor, and tenants—as required by Policy. Since no studies or mitigation has occurred, any such population along the ROW remains at risk. The subsequent requirement for updating this baseline was precluded, leading to further non-compliance.<sup>150</sup> Ultimately, the RAP put forth by the Sponsor was very similar to RAPs prepared for previous projects that were not subject to World Bank Policies.

### D. Loss of Livelihood, Under-Compensation, and Harm

146. **Requesters’ claims:** The Requesters’ claims touch on multiple, but interrelated issues of the displaced persons: the loss of livelihood, under-compensation, lack of information for informed consent, misunderstanding of their land tenure, and their future relationships with the Sponsor.
147. The Requesters claim that the Project, as presently being implemented, violates OP/BP 4.12. They emphasize that the Bank Policy requires that “*people who are losing their lands or livelihood as a result of a Bank financed project should benefit from the project and should have their standard of living improved or at least restored. This policy stated here was not complied with in our communities.*”<sup>151</sup> They claim that members of their communities were assured that “*adequate compensation would be paid on the basis of rates established by the Nigerian government and that these rates would be further increased to reflect inflation adjustment and restoration of lost incomes.*”<sup>152</sup> The Requesters assert that, in hindsight, this assurance provided “*precious little information on*

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<sup>150</sup> OP 4.12, Annex A, ¶6(a).

<sup>151</sup> Request, p. 3.

<sup>152</sup> Request, p. 3.

*the exact amount of compensation that we were to receive for each plot of land acquired for the Project.*<sup>153</sup>

148. The Requesters add *“the Project sponsors kept us in the dark about this and other information relating to adequate compensation that should improve our standard of living. There were assurances from Project sponsors that the rates for lease of land in our communities set by the Nigerian government would not be used in computing the quantum of compensation to be paid. But to our surprise, when the compensations were eventually paid, the rates were in most cases less than 4% of the market rate.”*<sup>154</sup>
149. The Requesters also state that there was no binding contractual relation between individual landowners and WAPCo. They assert that *“the sponsors of the Project merely paid at their own discretion. They provided compensation for the crops on the land only and did not pay anything for the land and future profits that are accruable from the activities that we would have undertaken on our lands.”*<sup>155</sup>
150. Moreover, the Requesters claim the decision to opt for cash compensation instead of relocation in many instances was informed by a fear of the unknown.<sup>156</sup> Concerns over the handling of ancestral lands being placed in the hands of *“total strangers while moving to some other location to reside”* are expressed, as are previous experiences with *“ruling elites in the country in connivance with the oil multinationals have by their actions and inactions enhanced poverty in our communities.”*<sup>157</sup> Further, the Requesters assert a lack of mechanisms to secure long-term employment for affected members of their communities.<sup>158</sup>
151. The Requesters also claim that *“the sponsors of the project employed the classic divide and rule strategy to their full advantage. Our community members have yet to resolve the bitterness and bickering that was the hallmark of the selective consultations which took place with a few landowners, while other land users and impacted persons were ignored.”*<sup>159</sup> They add that *“There were also instances where the land owners and the land users (those who lease lands for farming) clashed over who should be paid compensation and how the compensation that has been paid should be shared.”*<sup>160</sup>
152. **Management’s Response:** Management responds that *“RAPs for the Project contain measures to improve or restore livelihoods and standards of living,*

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<sup>153</sup> Request, p. 3.

<sup>154</sup> Request, p. 4.

<sup>155</sup> Request, p. 4.

<sup>156</sup> Request, p. 4.

<sup>157</sup> Request, p. 4.

<sup>158</sup> Request, p. 3.

<sup>159</sup> Request, p. 5.

<sup>160</sup> Request, p. 5.



*minimize land acquisition, guarantee that all affected households have an option to choose between land-for-land or cash compensation based on negotiated replacement costs, ensure that no construction starts prior to full payment of compensation, ensure that impacts on water resources and transport infrastructure are minimal and temporary, with no adverse income and livelihood impacts, and most importantly, to provide full replacement value for assets lost.”<sup>161</sup>*

153. Management further asserts that replacement valuation is the approach that was agreed upon with WAPCo, and Management believes that this principle must be applied. If it has been applied inconsistently, Management states that the Bank will ensure this is corrected.<sup>162</sup> Management further states, “[b]ased on this, Management believes that affected people will be able to improve, or at least restore their standards of living as a result of the Project. If any concerns of inadequate compensation have not been properly addressed, as required by the Project’s legal agreements, the Bank will ensure that those standards are met.”<sup>163</sup>
154. Management recognizes potentially inadequate compensation may have occurred.<sup>164</sup> They acknowledge that compensation rates, an issue identified by the Bank mission in June 2005, have not been fully resolved.<sup>165</sup> They state that the Otta section report on individual compensation was not carried out as set forth in the RAP<sup>166</sup> and that internal monitoring by WAPCo has not occurred as planned in the RAP.<sup>167</sup>

## **1. Bank Policies**

155. The first paragraph of OP 4.12<sup>168</sup> identifies the potential multidimensional economic, social and environmental risks to people facing involuntary resettlement, including the dismantling of productive systems, loss of productive assets and income sources, and socio-cultural disruptions.<sup>169</sup>

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<sup>161</sup> Management Response, Annex 1, No. 4.

<sup>162</sup> Management Response, ¶44.

<sup>163</sup> Management Response, ¶44.

<sup>164</sup> Management Response, ¶56.

<sup>165</sup> Management Response, ¶55.

<sup>166</sup> Management Response, ¶56.

<sup>167</sup> Management Response, Annex 1, No. 4.

<sup>168</sup> The Bank policy encompassing the Requesters’ claim, OP/BP 4.12 on Involuntary Resettlement, is part of the Bank’s poverty alleviation mandate, building on decades of experience with involuntary resettlement that has been widely written about in Bank publications: Michael Cernea (ed.), *The Economics of Involuntary Resettlement: Questions and Challenges* (World Bank 1999); Michael Cernea and Scott Guggenheim, *Resettlement and Development: The Bankwide Task Force Review of Project Involving Involuntary Resettlement 1986-1993* (World Bank 1994).

<sup>169</sup> OP 4.12, ¶1: “Bank experience indicates that involuntary resettlement under development projects, if unmitigated, often gives rise to severe economic, social, and environmental risks: production systems are dismantled; people face impoverishment when their productive assets or income sources are lost; people are relocated to environments where their productive skills may be less applicable and the competition for

156. To avoid displacement-induced impoverishment, the Policy sets three major objectives:

*(a) Involuntary Resettlement should be avoided where feasible, or minimized, exploring all viable alternative Project designs; (b) where it is not feasible to avoid resettlement, resettlement activities should be conceived and executed as sustainable development programs, providing sufficient investment resources to enable the persons displaced by the Project to share in Project benefits. Displaced persons should be meaningfully consulted and should have opportunities to participate in planning and implementing resettlement programs;<sup>170</sup> and (c) displaced persons should be assisted in their efforts to improve their livelihoods and standards of living or at least to restore them, in real terms, to pre-displacement levels or to levels prevailing prior to the beginning of Project implementation, whichever is higher.<sup>171</sup>*

157. It is important to clarify that neither cash compensation nor in-kind replacement of lost assets is a policy objective. They are strategies to achieve compliance with the Bank's Involuntary Resettlement Policy to avoid impoverishment of displaced people as a result of the Project.<sup>172</sup> Selecting and effectively implementing the appropriate "means" begins with an impoverishment risk assessment, the elements of which are well defined. Management has to assess the RAP in terms of meeting the three policy objectives.<sup>173</sup> The approved RAP is implemented, monitored, and evaluated.

158. Bank Policy approaches livelihood restoration by requiring the Sponsor to identify specific impoverishment risks and plan measures to mitigate them using a resettlement instrument.<sup>174</sup> Management is also required to ensure the Sponsor has in place, a way to determine eligibility and monitor changes.<sup>175</sup>

159. Management procedures to reach the objectives are defined in OP 4.12, Annex A, and in BP 4.12. During project preparation, Management is responsible for the assessment of: project design, progress in preparing the RAP, adequacy with respect to OP 4.12, (including involvement of affected groups), eligibility of displaced persons, feasibility of the proposed mitigation measures (including provision for sites, funding, and implementation and monitoring).<sup>176</sup>

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resources greater; community institutions and social networks are weakened; kin groups are dispersed; and cultural identity, traditional authority, and the potential for mutual help are diminished or lost. This policy includes safeguards to address and mitigate these impoverishment risks."

<sup>170</sup> The objective that displaced peoples should be meaningfully consulted and should have opportunities to participate in planning and implementing resettlement programs will be consider separately in this report.

<sup>171</sup> OP 4.12, ¶2.

<sup>172</sup> OP 4.12, ¶11 and ¶12.

<sup>173</sup> OP 4.12, ¶2.

<sup>174</sup> OP 4.12, ¶1.

<sup>175</sup> BP 4.12, ¶6.

<sup>176</sup> BP 4.12.

160. Implementation of the resettlement activities is linked to the investment component to ensure that displacement or restriction access does not occur before necessary measures for resettlement are in place.<sup>177</sup>
161. The Bank’s Involuntary Resettlement Policy gives preference to land-based resettlement strategies for displaced persons whose livelihoods are land-based.<sup>178</sup> For those without recognizable legal rights or claim to lands, the Policy calls for resettlement assistance in lieu of compensation for land to help improve or at least restore the livelihoods of the displaced persons.<sup>179</sup>
162. One particular provision of the Involuntary Resettlement Policy is especially significant to the WAGP. According to OP 4.12, “*cash compensation for lost assets may be appropriate where (a) livelihoods are land-based but the land taken for the project is a small fraction of the affected asset and the residual is economically viable; (b) active markets for land, housing and labor exist, displaced persons use such markets, and there is sufficient supply of land and housing: or (c) livelihoods are not land based. Cash compensation levels should be sufficient to replace the lost land and other assets at full replacement costs in local markets.*”<sup>180</sup>
163. To determine whether condition (a) above is applicable, it is necessary to check if the land taken constitutes less than 20 percent of the total productive area.<sup>181</sup> The Policy places a burden on Management and the Sponsor to show this threshold applies.
164. If land is not the preferred option of the displaced persons, the Policy states that “*non-land-based options built around opportunities for employment or self-employment should be provided in addition to cash compensation for land and other assets lost.*”<sup>182</sup>

## **2. Land-for-Land Option**

165. The Panel noted that most of the affected people in an area appeared to be poor Yoruba agriculturalists. Bank policies state that in such a situation, preference should be given to land-based resettlement strategies for displaced persons whose livelihoods are land-based, especially for agricultural based populations.<sup>183</sup>

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<sup>177</sup> OP 4.12, ¶10.

<sup>178</sup> OP 4.12, ¶11.

<sup>179</sup> OP 4.12, ¶16.

<sup>180</sup> OP 4.12, ¶12.

<sup>181</sup> OP 4.12, ¶12, fn. 17.

<sup>182</sup> OP 4.12, ¶11.

<sup>183</sup> OP 4.12, ¶11.

166. Pursuant to Nigerian law, for land held under the customary right of occupancy for agricultural purposes, the local government can allocate alternative lands for the same purpose.<sup>184</sup> The land-for-land option was appropriate with the extended family land holder, the unit that holds the right to reallocate land within their social unit. The Panel could not find evidence in the supervision reports that Management reviewed arrangements reached, if any, between WAPCo and government to provide land-for-land along with the transitional resettlement options needed to move agriculturalists.
167. A land-for-land option was described as an alternative in the RAP to cash-compensation through WAPCo for resettlement at Agbara Estate or Otta in Ogun state.<sup>185</sup> Management and WAPCo report that no one had requested this option as of May 2004.<sup>186</sup>
168. It is unclear to the Panel, who, if anyone, was actually offered the land-for-land option. In the most populated area within the WAGP ROW, the extended family heads hold the right, albeit rarely exercised, to alienate and allocate land use within their families or members of the extended family who were listed in the Estate Survey. The Estate Survey lists 1,557 “land owners” not all of whom are extended family heads with the power to alienate land. The RAP and PAD are inconsistent in the meaning of “landowner”—making it difficult to determine whether the land-for-land option was offered to the 1,557 “landowners” reported in the RAP or the much smaller numbers of extended family heads, some of whom were designated as landowners in the WAPCo spreadsheets.
169. The Board was told that there were 1,557 landowners both in the PAD and RAP.<sup>187</sup> Panel in-country interviews and supervision reports show that WAPCo informed what the RAP calls “land owners” along the ROW that they were not legal owners of the land under the Land Use Act.<sup>188</sup> During compensation negotiations, the same “land owners” were told by WAPCo that they are not land owners under Nigerian law. At best, this undermines meaningful land-for-land negotiations, basically arguing that you must first establish your rights in order to exercise the option.
170. This approach also undermines the land-for-land resettlement option preferred by OP 4.12 for people who derive their income from the land. The land-for-land option involved an area in Abeokuta along the Ogun/Lagos boundary, some distance from the bulk of those being displaced. It appears to have been applied

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<sup>184</sup> Nigeria RAP, p. 3–5, 3-9, The Nigeria RAP, p. 3-5 summarizes the Land Use Act, sec. 6(5). All Legislations in Nigeria prior to 1990 have been codified in volumes now called Laws of Federation of Nigeria 1990.

<sup>185</sup> Nigeria RAP p. 3–9 and p. 5–31 to 5–32.

<sup>186</sup> Nigeria RAP, p. 5–27.

<sup>187</sup> PAD, Annex 13, ¶13 and RAP, Executive Summary, p. ii.

<sup>188</sup> Panel field interviews.

or made available to urban house plots, not agricultural land.<sup>189</sup> Management supervision showed no record of visiting or even mentioning the proposed land-for-land resettlement area in Abeokuta. No reference is made to the land-for-land resettlement options or the set-aside area of Abeokuta in the 455 pages of Regional Stakeholder Consultation.<sup>190</sup> This view is reinforced by the absence of a land-for-land provision in the resettlement budget or the lack of a land-for-land component in the RAP implementation timeline. Nor were provisions made to increase organizational capacity for resettlement within WAPCo for land-for-land resettlement implementation. Management should have quickly identified these shortcomings.

171. The ESAP also identified several shortcomings regarding in-kind compensation. In its report it finds that “*the possibility exists that many persons did not select in-kind replacement of land because the Project offer was not detailed or perceived as too risky.*”<sup>191</sup>
172. Noting that in-kind compensation is generally considered a more reliable means for assuring sustainability of incomes for people who rely on these lost assets and was a requirement of OP 4.12, the RAP builds a case in favor of a cash-compensation option, as found in OP 4.12, paragraph 12.<sup>192</sup> Cash compensation for lost assets is acceptable where “*(a) livelihoods are land-based but the land taken for the project is a small fraction of the affected asset and the residual is economically viable.*”<sup>193</sup> To determine whether condition (a) is applicable, the Policy may apply if the land taken constitutes less than 20 percent of the total productive area.<sup>194</sup> The RAP argues that all three conditions are largely met “*in Nigeria.*”<sup>195</sup>
173. **The Panel is concerned that so little was done to inform the displaced of the land-for-land option.** In the case of housing, 38 households received cash payments, mostly in one community. The Panel interviewed neighbors who stated the families had moved on, however, there is no evidence of the Project following-up in order to determine whether or not they were actually impoverished. No resettlement assistance, apart from cash compensation, was

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<sup>189</sup> Some displaced around Itoki, the more urbanized part of the ROW near Otta, appear to have been offered household land in Abeokuta, the area from which some originated. Regional EIA, p. 5–115.

<sup>190</sup> Regional EIA, Appendix 5-D.

<sup>191</sup> ESAP Report, p.20.

<sup>192</sup> Nigeria RAP, p. 6–33.

<sup>193</sup> OP 4.12, ¶12. Arguments were not made for the other two policy justifications for cash compensations, namely: (b) active markets for land, housing, and labor exist, displaced persons use such markets, and there is sufficient supply of land and housing; or (c) livelihoods are not land-based.

<sup>194</sup> OP 4.12, ¶12, fn. 17.

<sup>195</sup> Under BP 4.12 ¶12, “Payment of cash compensation for lost assets may be appropriate where (a) livelihoods are land-based but the land taken for the project is a small fraction of the affected asset and the residual is economically viable; (b) active markets for land, housing, and labor exist, displaced persons use such markets, and there is sufficient supply of land and housing; or (c) livelihoods are not land-based.” The reference to “in Nigeria” is critical in the RAP, since data was not available to show the conditions were met among the directly affected populations whose livelihoods were threatened by WAGP.

evident. Land was available, some of it nearby this community, but it appears that no efforts were taken to educate the displaced on this option. The Project has neither verified whether the compensation provided to the displaced peoples was sufficient enough for them to purchase alternate housing, nor have the additional risks involved in transferring cash to displaced peoples been assessed, including by the monitoring units.<sup>196</sup>

174. The land-for-land option offered urban residential plots in either Agbara or Otta. According to information reviewed by the Panel, however, a land-for-land agricultural option was not offered, and the supervision reports did not indicate whether Management evaluated the viability or visited the proposed sites proposed for the land-for-land arrangement. Finally, the 100 percent agreement to reject a land-for-land option should have merited a Management inquiry, as it has done in the past when agricultural populations reject such an option.<sup>197</sup>
175. Referring to the risks of cash compensation, the ESAP also noted the necessity to analyze the reason that led to the overwhelming provision of cash compensation and recommended that “[f]uture cash compensation should be preceded by community meetings, in which the hazards are aired, and by provision of community training in clever cash handling.”<sup>198</sup> It also noted that “[f]uture in-kind options should be spelled out in detail.”<sup>199</sup>
176. **The Panel finds that a land-for-land resettlement option, described as an alternative within the RAP and encouraged as a preference in OP 4.12 for displaced persons whose livelihoods are land-based, was not effectively offered to the displaced persons as a viable option for livelihood restoration. This is inconsistent with the provisions and objectives of OP 4.12.**
177. Instead of land-for-land, the RAP offers a “land acquisition strategy” that offers cash compensation for crops and economic trees in accordance with the prevailing national and local government laws, plus 1998 Oil Producers Trade Section rates (OPTS), adjusted for inflation.<sup>200</sup>
178. The plan included provisions that “[f]or the permanent acquisition of land, all owners of land and assets will be offered land-for-land or cash compensation as proposed options; should the affected populations opt for cash in lieu of in-kind

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<sup>196</sup> The monitoring unit argues that empirical collection of data was not in their terms of reference.

<sup>197</sup> In contrast, in the Zimapan hydropower dam in North Central Mexico, an agricultural community rejected the land-for-land option after the land had been provided. The decision was viewed as so irregular that Management dispatched a supervision mission to verify there was no intimidation and report on why the decision was made. In Inga-Lill Aronsson, 2002, “Negotiating Involuntary Resettlement: A study of local bargaining during the construction of Zimapan Dam,” (Uppsala: Uppsala University, Department of Anthropology and Ethnology).

<sup>198</sup> ESAP Report, p. 20.

<sup>199</sup> ESAP Report, p. 20.

<sup>200</sup> Nigeria RAP, p. 5-2, 5-24.

*assistance, willing-seller/willing-buyer arrangements will be used. It is assumed that a willing-buyer/wiling-seller principle to be used for negotiations will allow coverage of replacement and transaction costs, so that OP 4.12 goals are met.*"<sup>201</sup> Following construction, use of the pipeline ROW for raising crops and buildings is precluded. It transferred ROW ownership to WAGP as a 20 year lease holder, with ownership reverting to the government except for the pumping station that will obtain a statutory occupancy right. All land users, tenants and/or cultivators are to be compensated for crops and any improvements or facilities.<sup>202</sup>

179. The critical decision to support the Policy option of cash compensation as the method for addressing livelihood risks of a land-based economy was an assertion that there was an active market for land in the affected area. This, however, was not supported by WAPCo's ESIA or Estate Surveys. To the contrary, the study reported a land tenure system in the more populated parts of the ROW based on land stewardship by large extended families, whose head allocates use rights among affiliated family members. The Panel observed that an active market was apparent in residential plots, but that does not mean there is an active market in traditional agricultural lands through which the pipeline crosses.

### **3. Livelihood Restoration and Method to Establish Cash Compensation**

180. On the question of livelihood restoration for landowners, the RAP states that landowners "*are expected to be able to restore income streams without further assistance once they have received compensation for their land and assets.*"<sup>203</sup> Accordingly, **the RAP transferred the burden for the restoration of livelihood onto the displaced persons, once they had obtained cash compensation, without providing additional assistance as called for in Bank Policy.**<sup>204</sup> **The Panel finds that issues of livelihood restoration, resettlement assistance beyond compensation, and benefit-sharing, were not properly negotiated with the displaced persons. This does not comply with Bank Policy on Involuntary Resettlement.**
181. The RAP further states that compensation negotiations would be based on "*the willing buyer/willing seller arrangement.*" Management does not mention this arrangement in its Response to the Request for Inspection. The negotiation was to take place using an adjusted Nigerian oil-sector (OPTS) rate, established by a

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<sup>201</sup> Nigeria RAP, p. 5-3. Willing-seller/willing-buyer is not a term of art within Bank policy and is presumed to mean market prices.

<sup>202</sup> Nigeria RAP, p. 5-2 to 5-9. Note, the term "land owner" is not used.

<sup>203</sup> Nigeria RAP, p. 6-35.

<sup>204</sup> Nigeria RAP, p. 10-1, fn. 1, states that "as already mentioned and documented, the affected populations exclusively preferred cash compensation over land-for-land and other resettlement assistance arrangements. As a result, they will be the ones to initiate income restoration activities. As the project will pay cash compensations well ahead of the actual start of the construction, many of them may actually start income restoration activities with the cash they have at end."

Lagos Chamber of Commerce Sub-Committee, as a basis for negotiation for land, crops, commercial activities and market squares.<sup>205</sup> The estate agents, representing the sellers, were to facilitate the negotiation between the third quarter of 2003 and December 2004.<sup>206</sup> Two estate agent companies represented all the sellers and another estate agent firm represented WAPCo. The seller's agents received US\$216,000 in fees on a US\$1,946,337 transaction.<sup>207</sup> Panel interviews found that PAPs were completely uninformed of the willing buyer/willing seller concept.

182. WAPCo and the Bank agreed to pay for lost assets and full income restoration through cash compensation. Full compensation, mentioned throughout sections of the RAP, is defined as the OPTS rates for land and crops, adjusted by a 10x multiplier and an adjustment for inflation. This rate was assumed to be the full compensation for the replacement value of lost assets such as land use and crops.
183. Some refer to OPTS rates as “petroleum pricing” of land, derived from values that are much lower than relevant market prices in Western Nigeria. The Panel finds that the use of the OPTS system as a starting point in determining compensation, combined with multiple references to the national legal framework and evidence of efforts to acquire land at low cost, created a strong likelihood that the affected people would receive less than they were entitled to under Bank Policy. **The Panel finds that Management failed to comply with the Bank’s Policy on Involuntary Resettlement by accepting the use of a formula that is not based on the livelihood restoration objectives of OP 4.12.**
184. Moreover, the Panel discovered a major flaw in how the stated approach was applied. A Panel review of the compensation payout spreadsheets confirms that somehow, someone forgot the 10x multiplier in providing compensation. **As a result, the displaced people were paid one-tenth of what was planned in the RAP. This has resulted in a major failure to comply with Bank Policy on Involuntary Resettlement, and to ensure that the displaced people are at least as well-off as they were before the displacement as required by this Policy.**
185. In addition, Management and the Sponsor used an unsupported assumption that crops be compensated at a restoration value using 1998 OPTS rates multiplied by an inflation adjustment of 50 or 75 percent. It is difficult to believe that Nigerian farm gate commodity prices have only risen 50 percent in six years

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<sup>205</sup> Nigeria RAP, p. 5–25. The RAP Executive Summary (p. iii) states that the “Valuation and assessment of properties to be acquired by the WAGP project was based on inflation adjusted oil industry specific rates for the land (OPTS).” OPTS stands for Oil Producers Trade Section of the Lagos Chamber of Commerce.

<sup>206</sup> Nigeria RAP, p. 10–3, Table 10.1–1

<sup>207</sup> Figures from a spreadsheet provided to the Panel’s Expert titled “*NIG Payments summary and communities 15020x*.” Throughout compensation discussions, an exchange rate N132.55 to US\$1.00 (the 2004 rate, it appears) was applied by WAPCo in their spreadsheets and will be used throughout this report.



and that a more market-based estimate of crop values was not available, especially with major international and national agricultural research institutions nearby.<sup>208</sup>

### Box 3.2: Letters the Panel Reviewed Illustrating Compensation Issues

In late-2007, the Inspection Panel received copies of thirteen letters from farmers in Igbesa, Ado-Odo/Ota of the local government area of Ogun State. The letters referred to ill-treatment and inadequate compensation by WAPCo.

Most letters recorded damage to crops and compensation ranging from N2,000 to N18,000 (based on the February 4, 2008, exchange rate, the compensation ranged from US\$17.02 to US\$153.19).

Below are selected text extracted from the letters:

*“I write to inform you of Wapco Nigeria’s ill-treatment to me and my family. They trespassed through my farmland and paid me poorly (...). What they paid to me (N2,000) is nothing compared with damages recorded in my farm as I will list them (...): Cassava, Maize, Yam, Mangoe, Mellon, Pineapple, Cocoyam, Kolanut trees, Egira trees, Vegetable and, Oranges. Please note that as a farmer I rely only on these crops to feed and carry out other expenses on my children from time to time. Your immediate positive action will be appreciated.”*

*“Their payment, although vary, some were paid N3,000 while some were paid N2,000, some were paid N18,000 while some were not paid at all. This is against the promise made to us by Wapco Nigeria officials before they started the work on our land. They promised us adequate and fat [sic] compensation for all crops enumerated.”*

*“Sir, I am maltreated and harassed by the Police when I complained to them. I shall be grateful for your quick intervention in this case.”*

186. The Panel notes with concern that a communication dated June 4, 2007, from Shell Oil to WAGP, states that regarding the compensation rates there “*must have been an oversight that all have failed to recognize, it is a calculation error.*” The message then even expressly states that “*you know that at all times we have always wanted to acquire the land at minimal cost.*”<sup>209</sup>
187. The Panel notes that the ESAP concluded that it “*did not find worked [sic] examples, whether for land, structures, annual or perennial crops and trees, for any country, which demonstrate that the World Bank standards was being met.*”<sup>210</sup> It also states that “*the WAGP Proponent commitments do not uniformly*

<sup>208</sup> The RAP budget states that a 75 percent multiplier will be use, but examination of a sample of payments indicates that 50 percent was used. Nigeria RAP, p. 9-2, Table 9.1-1. No explanation was given for the 1/3 reduction.

<sup>209</sup> Communication dated June 4, 2007 between Shell Oil and WAGP.

<sup>210</sup> ESAP Report, p. 21.

*appear to meet the standard.*”<sup>211</sup> More specifically, with regard to Nigeria, the ESAP notes that “*it appears the World Bank standard was not met.*”<sup>212</sup> The ESAP found that in the compensation calculation, the multipliers were not checked against the World Bank standards systematically, and writes that “*the independent valuer found evidence suggesting very substantial shortfalls in the rates for land payment.*”<sup>213</sup>

#### 4. Productive Trees/Crops

188. The loss of perennial crops is different from annual crops, a factor ignored in the estate agent valuations. **The compensation methodology did not take into account income foregone for the loss of perennial crops.** Depending on the crop, compensation must take into consideration the number of years until crop production begins, the type of crop unless a lost field is replaced with already producing crops, and the number of years of yields. Land quality and climate might also affect the crop production, working contrary to the use of a uniform rate for the ROW and associated facilities. Usually, horticultural/agricultural lands, especially small gardens are the product of many generations and might not be duplicated in a single year.
189. This is also supported by the ESAP, which noted that for Nigeria it would be important that WAPCo hires a “*consultant agricultural economist to determine rates based on income foregone for productive trees whose analysis must be framed within the context of OP 4.12’s focus on restoration of livelihood.*”<sup>214</sup> The Panel is concerned about a lack of follow-up on this matter.

#### 5. Transaction Costs

190. The RAP assumed that, in addition to the replacement value of lost assets, the cash compensation would cover other costs that were not estimated in the economic analysis of the plan itself.<sup>215</sup> Specifically, cash compensation was to

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<sup>211</sup> ESAP Report, p. 21.

<sup>212</sup> ESAP Report, p. 22.

<sup>213</sup> ESAP Report, p. 22.

<sup>214</sup> ESAP Report, p. 23.

<sup>215</sup> OP 4.12, Annex A, fn. 1, states: “with regard to land and structures, ‘replacement cost’ is defined as follows: For agricultural land, it is the pre-project or pre-displacement, whichever is higher, market value of land of equal productive potential or use located in the vicinity of the affected land, plus the cost of preparing the land to levels similar to those of the affected land, plus the cost of any registration and transfer taxes (...). For houses and other structures, it is the market cost of the materials to build a replacement structure with an area and quality similar to or better than those of the affected structure, or to repair a partially affected structure, plus the cost of transporting building materials to the construction site, plus the cost of any labor and contractors’ fees, plus the cost of any registration and transfer taxes. In determining the replacement cost, depreciation of the asset and the value of salvage materials are not taken into account, nor is the value of benefits to be derived from the project deducted from the valuation of an affected asset. Where domestic law does not meet the standard of compensation at full replacement cost, compensation under domestic law is supplemented by additional measures so as to meet the replacement

cover “the costs of moving if the sale of land forces affected families to resume occupancy elsewhere,”<sup>216</sup> “expenses for land preparation on the replacement land, lost income streams from affect crops and trees, provision of seeds, and compensation for immovable assets on the land.”<sup>217</sup> If replacement homes are demanded, the cash allowance for moving pieces of the existing affected structure to the new structure (that is, moving windows and doors to the new house) was to be included in the negotiated prices based on OPTS rates adjusted for inflation. The moving expenses of commercial structure were to be included if they were not replaced.<sup>218</sup>

191. The RAP also used the cash compensation to mitigate the loss of food sources of some subsistence PAPs, both tenants and owners, who were to “receive a substantial amount of cash part of which would be used for food.”<sup>219</sup> In addition, the cash compensation was to cover the estate agent’s fee.
192. The Panel examined samples of the compensation and indemnity receipts signed by the PAPs. According to the receipts that were shown to the Panel during its field visits, the transactions were for “land and other improvements and satisfaction for the deprivation of the use of land,” without reference to the fact that the payment was for any of the additional costs listed in the RAP.<sup>220</sup> Moreover, the RAP argues that the cash compensation may also be used to improve income by improving production techniques, if the landowner decides not to replace their land.<sup>221</sup> These computations were not included in the disbursement equation, compounding the task of determining whether or not the displaced persons were paid replacement value for their properties excluding transactions costs as required by Bank Policy.
193. It also remains contradictory to argue how the full replacement cost—a restitution payment—allows for income restoration if the OPTS cash compensation rate for land is reduced by the costs stated above. The Panel also found no evidence that numerous deductions from the compensation payment were disclosed in the compensation agreement signed by the PAPs or included in the RAP disclosure consultations.
194. The Panel spot-sampled an audit trail that includes signed affidavits of payment with the recipient’s color photo. In sharp contrast, the audit trail for the US\$220,174 ends at the estate agents’ names, with no documentation of

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cost standard. Such additional assistance is distinct from resettlement measures to be provided under other clauses in OP 4.12, ¶6.”

<sup>216</sup> Nigeria RAP, p. 6-37, Table 6.4-1.

<sup>217</sup> Nigeria RAP, p.6-35.

<sup>218</sup> Nigeria RAP, p. 6-40, Table 6.4-1.

<sup>219</sup> Nigeria RAP, p. 6-31.

<sup>220</sup> Compensation and Indemnity Receipt provided by WAGP to a displaced individual. Evidence provided by signed complaints sent to the Inspection Panel and in WAPCo files, July 2007.

<sup>221</sup> Nigeria RAP, p. 4-34.

supporting their transactions. The estate agents withheld their fees from the 28 payments to the communities, as if they were real estate transactions.

195. The Panel finds no evidence that transaction costs issues were being evaluated by Management in their recalculations as required by Bank Policy. **Contrary to Bank Policy, the Panel finds that transaction costs were borne by the displaced persons, which further reduced their chances of being as well off after the transaction as before.**
196. The records for transactions list the full names of the recipient, except those for “traditional rights” and “community rights.” With respect to “community rights,” the Panel heard reports that young men organized in local groups are reported throughout this part of Nigeria as taking a significant percentage off the top of local real estate transactions. They appear to have tapped into the compensations made available to the displaced people. The WAPCo ledgers did not show what type of “community rights” was obtained nor was there mention of this form of payment in the RAP.
197. The Panel notes that the basic purpose of the compensation payments was to restore the livelihood of the displaced people, and ensure that they receive the full measure of compensation to which they are entitled. In this light, the Panel is particularly concerned that this practice was not known to the Project Sponsor or the Bank or, if known, was not remedied and brought to the attention of higher levels of Management. At risk are the reputations of the Bank, Sponsors and Project and, more importantly, an erosion of the underlying capacity of the displaced persons to recover their lost livelihoods.
198. The RAP claimed that the OPTS rates were to be used as a starting point for negotiations. The Panel’s review of the compensation in all 23 villages revealed no negotiation above this proposed baseline.

## **6. Social Order Risks**

199. Another under-compensation risk is evident in the Requester’s concern. A traditional familial relationship envelops the landowner and tenant in a lifetime contract whose economic evaluation is comparable to a lifetime lease. Other tenant relationships, without the familial type ties would need a different economic evaluation.
200. The pattern of compensation may, in the long run, undermine social and economic order. The example by Management of a dispute witnessed in Badagry between landowners and other citizens does not address the underlying issue.<sup>222</sup> Before the Project, the head of the extended family would allocate land use and his dependent families would receive “compensation” from the yields. This continued year after year.

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<sup>222</sup> Management Response, Annex 1, No. 7.

201. With a single WAPCo payment, the company effectively disrupted a sustainable, kinship-based, land use pattern paying on a single year's compensation. If the underlying land asset was not replaced, the effect on the land user extends beyond a single season. The safeguard policy recognizes this risk, calling for land-for-land and protection of the tenant. If the underlying asset is not replaced by the landowner or an adequate reallocation was not or could not be made by the extended family head for his client households, the displacement risk is substantially increased. Once more, only a closer socio-economic examination can determine the extent of impoverishment risks that results from the Project.
202. The risk of conflicts within families was also recognized by the ESAP, which states that “[t]he irresponsible recipient of cash compensation is a typical subject of community decision and family despair when cash compensation is widespread. Unusually large amounts of cash can play havoc in households and extended families.”<sup>223</sup>
203. With regard to the Requester's claim that the Project created community tension, the Panel observed, on anecdotal supporting evidence, the following: near Igbesa, an upset land user, encountered randomly living nearby the ROW, asked the Panel to have his brother arrested because he had received compensation that should have gone to him. In another instance, the Panel observed that the leadership in Ijako had changed during the Project period from an elder, a more traditional male leader, to a young female attorney who recently had moved into the community, a pattern commonly observed in other involuntary displacements when local leaders prove incapable of effectively negotiating on behalf of the community. **Only closer sociological examination can confirm the Panel's suspicion that the Requester's concerns may be justified.**
204. In this context the Panel also notes the ESAP's finding that “*the details of the project compensation commitments are not elaborated in the RAPs and not compared and contrasted to WB policy 4.12. as planned or implemented.*”<sup>224</sup>

## 7. Remedial steps - - Recent Actions by the Bank

205. The Bank has begun reviewing compensation rates for the northern part of the Nigerian ROW (the June 2005 mission undertook to review those rates but this has not yet been completed) but the Bank has not yet received final compensation data from the southern portion of the Nigerian ROW. The Otta section report on individual compensation payments to affected persons does not match the valuation methodology described in the RAP (the spreadsheet

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<sup>223</sup> ESAP Report, p.20.

<sup>224</sup> ESAP Report, p.16.

sent by WAPCo only shows inflation adjustments of 75 percent for land and 50 percent for other assets, but does not include the tenfold increase of OPTS rates as prescribed by the RAP). Since no payment receipts were included, the spreadsheet alone only shows the amounts people were eligible for, not a record of what they were paid.<sup>225</sup>

206. As of the Panel's visit, valuations of income stream losses, from the taking of agricultural lands, had yet to be calculated. The valuator is collecting sample land plot prices, not data from the PAPs. The planned updating of the baseline study of the directly affected households, including their progress on income restoration, has yet to take place. The valuator's terms of reference did not include determining whether the compensation rates met OP 4.12 objectives. Initially, they called for compensation rates to be set in 2003 or 2004 rather than at the date of payment, a decision that justifiably merited criticism from Bank staff. Subsequent updates of the proposed compensation rates are intended to reset the inflation adjustment date nearer to the point of final payment.
207. **The Panel observes that Management and WAPCo recognized that under-compensation occurred and are preparing for another compensation disbursement**, and are considering using a uniform rate for the entire ROW adjusted into three zones based in type of land use. Following a recent supervision mission, Management and WAPCo agreed to estimate the amount still due to each claimant on the ROW based on updated market rates for each type of asset in 2003-2005 and adjusted for inflation to 2008 prices and provide an accounting to Management.<sup>226</sup>
208. **The Panel is concerned, however, that this is being done without consultation with the displaced peoples, identifying or preparing mitigation for at-risk populations, without setting clear eligibility requirements based on local land tenure, without correction for the transition cost error discussed above, without benefit-sharing provisions for the displaced population, and without determining whether cash compensation is or is not the appropriate instrument to be used to avoid project-induced impoverishment.** In addition, the recommendation for a uniform rate for the entire ROW, adjusted into three zones based on type of land use, continues to ignore not only the valuator's findings, but endangers again the application of the principle of full replacement value. It is a decision that structurally may lead to over-compensation for some and under-compensation for others.

## 8. Conclusions

209. **The Panel finds that the implementation of the resettlement activities took place before the necessary measures for resettlement were in place. This**

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<sup>225</sup> The Panel examined a limited sample of payment receipts from displaced peoples in July 2007, comparing them to the WAPCo provided spreadsheets, found correspondence, but did not conduct an independent audit.

<sup>226</sup> Communication from Management dated December 7, 2007.

**does not comply with OP 4.12. As of September 2007, adequate measures were still not in place.** The fact that Management and the Sponsor agreed to a valuation method and compensation scheme may help to remedy this situation only if the agreement is carried out within the framework of Bank Policy.

210. The failure to meet Policy requirements has placed the WAGP project into a difficult situation in terms of meeting policy objectives of livelihood restoration. The RAP livelihood restoration objectives are yet to be completed despite the physical completion of the infrastructure. Without the measures to mitigate project related impoverishment risks—be they adequate baseline data, compensation, land-for-land, in-kind, permanent employment etc.—the involuntary resettlement component of the Project is not finished. The Policy makes it clear that this must be done. What is an appropriate replacement depends, to some extent, on the situation of the displaced person. The Policy also makes this clear when it calls for vulnerability tests among the project-affected-people.
211. As described above, it is evident that the original RAP formula, based on a multiplier over OPTS, did not meet Bank Policy and on top of this, was not followed by the Sponsor. Rather than continue on this path, Management initiated remedial measures to determine replacement costs, a step more aligned with Bank Policy.<sup>227</sup>
212. However, replacement value is one of three coupled policy requirements, all of which must be met. The other two—that the displaced are informed about their options and rights pertaining to resettlement; and consulted on, offered choices among and provided with technically and economically feasible resettlement alternatives—must also be met for full compliance. Further compensation alone, without meeting safeguard policy provisions for meaningful and timely consultation, disclosure, informed consent and grievance procedure invites another compliance failure and possible complaint. **The Panel is concerned that Management’s plan of action in its response to the Request, even if successfully executed, is not likely to align the WAGP with the Bank’s Involuntary Resettlement Policy.**
213. The Panel is not in a position to make a quantitative determination as to levels of under-compensation. The Panel reviewed the 1998 OPTS rates, adjusted for inflation, collected anecdotal prices in the field, and reviewed the initial reports of the estate valuator hired by Management. Management and the Sponsor agree that underpayment occurred and are taking the first steps to align WAGP with Bank policy.
214. The Panel finds that even if compensation were to be set at the replacement value level and a cash compensation strategy was deployed, Management has yet to take the initial steps to ensure the Sponsor addresses the non-land-based

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<sup>227</sup> OP 4.12, ¶6 (a)(iii), fn. 11.

options built around opportunities for employment or self-employment in addition to cash compensation for land and other assets lost.<sup>228</sup>

#### **E. Development Assistance - Sharing in Project Benefits**

215. **Requesters' claims:** The Requesters claim that the Bank failed to ensure that the Project promotes the development of goals of the country and did not evaluate the sustainability of the projects.<sup>229</sup>
216. They argue that “[e]ven at the level of the supposed economic benefit of the project for us as a community, we think this claim is patently false, illusory and diversionary. Firstly employment opportunities would only include temporary manual labour during construction work. As far as we know, no mechanism has been put in place to ensure that qualified persons from the community with the relevant academic credentials are put through training to secure employment on a full term basis. This is despite the fact that we have compiled and submitted the names of graduates from our communities in different fields, especially in the area of engineering.”<sup>230</sup>
217. The Requesters add “[w]e therefore think that this project will further impoverish the people of our communities. We will lose our lands, which are our only means of livelihood, without adequate compensation, while on the other hand we do not have the prospect of long term alternative employment. We have often made the point that we would not accept to be mere onlookers in this project, and that we want to be an important part of the project, but it seems that there is a deliberate move to push us aside with one excuse or the other.”<sup>231</sup>
218. **Management's Response:** Management responds that “*the Project will benefit, not impoverish project affected people, both through resettlement compensation, as well as community development, construction and the planned permanent employment.*”<sup>232</sup> Management responds that for the affected communities as a whole, WAGP brings direct benefits that will contribute to improvements in living conditions.<sup>233</sup>
219. Management points out that most landowners have lost only small amounts of land and do not have to move.<sup>234</sup> They assert that, for the displaced persons, alternative employment is not an issue. Of those whose houses or house plots were acquired, only two opted for resettlement. Cash compensation was the

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<sup>228</sup> OP 4.12, ¶11.

<sup>229</sup> Request, p. 7.

<sup>230</sup> Request, p. 8.

<sup>231</sup> Request, p. 8.

<sup>232</sup> Management Response, Annex 1, No. 9.

<sup>233</sup> Management Response, ¶46.

<sup>234</sup> Management Response, Annex 1, No. 9.



nearly unanimous choice of all affected landowners or land users. Moreover, the land in the ROW can still be used for grazing and foot traffic.<sup>235</sup>

220. Management continues “*Community development is a covenant in the Project Agreement, Section 7(n). In addition to compensation for directly affected people, WAPCo has developed voluntary CDPs [Community Development Program] with full participation of the members of the affected communities, under which WAPCo is financing local development projects identified by the citizens as high priority.*”<sup>236</sup>
221. Management points out that the “*CDP has been designed in consultation with citizens and documented in April 2006 in an MOU between the Consortium and WAPCo. WAPCo will, in its first year, support construction of boreholes, water systems, schools and health centers in 14 communities, at an estimated total cost of US\$ 950,000. Some of the projects will be used by neighboring villages. WAPCo’s intention is to formulate a comprehensive, five-year CDP. Additional communities will receive community development support in the second year and subsequent years of the program. Seven of the 12 communities listed in the Request are direct beneficiaries of the first year program.*”<sup>237</sup>
222. Management notes that “[p]urchases of goods and services and temporary employment during construction are expected to benefit some community members and businesses, and a limited number of permanent positions exist in pipeline operation and maintenance. During operation, WAGP will need services and supplies, some of which should be sourced from the local communities.”<sup>238</sup>

#### **1. Bank Policies:**

223. OD 4.15 on Poverty Reduction states that sustainable poverty reduction is the Bank’s overarching objective, and summarizes Bank procedures and guidelines for operational work on poverty reduction.<sup>239</sup> The new Policy OP 1.00, issued in July 2004 and replacing OD 4.15, states that “*the Bank’s mission is sustainable Poverty reduction. Poverty encompasses lack of opportunities, lack of voice and representation, and vulnerability to shocks.*”<sup>240</sup>
224. To avoid displacement-induced impoverishment, OP 4.12 sets out, as one of the three Involuntary Resettlement Policy objectives, that “*resettlement activities should be conceived and executed as sustainable development programs,*

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<sup>235</sup> Management Response, Annex 1, No. 9.

<sup>236</sup> Management Response, Annex 1, No. 9.

<sup>237</sup> Management Response, ¶46.

<sup>238</sup> Management Response, ¶47.

<sup>239</sup> OD 4.15, ¶6.

<sup>240</sup> OP 1.00, ¶1. See also OP 4.12 on Involuntary Resettlement (specifying actions to address and mitigate impoverishment risks, as discussed in this Report).

*providing sufficient investment resources to enable the persons displaced by the project to share in project benefits.*”<sup>241</sup> This objective is distinct from the issue of restitution covered in OP 4.12 as discussed above under livelihood restoration and compensation. Benefit-sharing, within this framework, is directed at the *displaced persons*. No matter what benefits accrue to the country, region, or surrounding communities even if the displaced persons—those who lose their houses, livelihoods or assets—obtain full replacement value and their livelihoods are restored, they may still not share in Project benefits.

225. The Policy requires that the resettlement plan includes measures to ensure that displaced persons are “*provided with development assistance in addition to compensation measures described in paragraph 6(a) (...) such as land preparation, credit facilities, training, or job opportunities.*”<sup>242</sup>

## **2. Preferential Employment and Sustainable Development Assistance**

226. Of the pipeline contractor’s workforce of 170 in Nigeria, about 130 to 135 were hired from the local communities, selected through an agreement by the Consortium of West African Pipeline Host Communities.<sup>243</sup> The Panel was also informed that the communities benefited from employment during the constructions that took place in the context of the CDPs. However, the Panel notes that there was no arrangement either in the RAP or its implementation for preferred local hiring of displaced persons.
227. Bank Procedure, BP 4.12 on Involuntary Resettlement, draws a distinction between affected persons and displaced people in terms of being project beneficiaries.<sup>244</sup> The displaced persons are the at-risk parties. The Panel could find no evidence that adequate development assistance, such as land preparation, credit, training or post-construction job opportunities were considered for displaced persons in addition to compensation.<sup>245</sup>
228. The Panel notes that Management, in its Response and approval of the RAP confuses compensation with ensuring sustainable development. Arguments that the displaced did not lose that much land, that employment is “not an issue” for the displaced are unsubstantiated by either baseline surveys or consultation records. A suggestion that the ROW might be used for grazing in an area without a substantial grazing tradition lacks technical feasibility.

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<sup>241</sup> OP 4.12, ¶2 (b).

<sup>242</sup> OP 4.12, ¶6 (c).

<sup>243</sup> BTO, Supervision Mission, September 22 - October 13, 2006, ¶38.

<sup>244</sup> OP 4.12, ¶15. Criteria for Eligibility. Displaced persons may be classified in one of the following three groups: “(a) those who have formal legal rights to land (including customary and traditional rights recognized under the laws of the country); (b) those who do not have formal legal rights to land at the time the census begins but have a claim to such land or assets—provided that such claims are recognized under the laws of the country or become recognized through a process identified in the resettlement plan (...); and (c) those who have no recognizable legal right or claim to the land they are occupying.”

<sup>245</sup> OP 4.12, ¶6 (c)(iii).

229. The Panel also notes that Management responded to the issues raised regarding development assistance by referring to macro-economic benefits, in the context of OP 10.04 on Economic Evaluation of Investment Operations. Evidence of general national or sector benefits is laudable and expected for the overall project's success, but does not satisfy the Policy requirements that the displaced persons share in benefits. OP 10.04 refers to economic evaluation of investment operations in terms of the macro-development goals of the borrowing country and does not relieve Management from complying with the requirements in OP 4.12.

### **3. Community Development Program**

230. WAPCo in cooperation with the Consortium of West African Pipeline Host Communities agreed to implement a four to five-year program that will include three years of community infrastructure construction and two final years of training and capacity-building.<sup>246</sup> In 2006, the program that got underway was consisting of 14 projects for 13 communities—four clinics, six classroom blocks, and four local water projects with a total value of approximately US\$1 million.<sup>247</sup>

231. Management and the Sponsor agreed on a CDP in the Project Agreement that neither referenced nor was related to the Involuntary Resettlement Policy.<sup>248</sup> In the RAP, the CDPs are described as “voluntary” with a budget that was distinct from the resettlement plan,<sup>249</sup> and Management agreed that it could be submitted after the Final Investment Decision.

232. Distribution of CDP fixed budget benefits was based on an overall geographic allocation in terms of community impact of the WAGP operations, not the impact on the displaced persons.<sup>250</sup> For example, Igbesa and Okoomi, the two communities most impacted by the Project, lost their market squares. Under OP 4.12, paragraph 2(b), an appropriate remedy for this type of loss would have been to set a baseline to estimate the effect of this loss within the community, identify the individual project affected persons—those who use the market—and assess the impact of the loss, and prepare a plan that included restitution for the loss, and, in addition, provide investment resources for the market square's sustainable development. All this would have taken place with community participation and disclosure. Instead, in this case, the RAP paid cash compensation to relevant stakeholders and considered replacement with

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<sup>246</sup> BTO, Supervision Mission September 22–October 13, 2006, p. 20.

<sup>247</sup> BTO, Supervision Mission September 22–October 13, 2006, p. 20.

<sup>248</sup> Project Agreement (West Africa Gas Pipeline Project) between West African Gas Pipeline Company Limited and International Development Association, 14 December 2004, p. 3, [hereinafter “Project Agreement”].

<sup>249</sup> Nigeria RAP, p. 5–33 and Table 9.1–1.

<sup>250</sup> Nigeria RAP, p. 5–35.

improved market facilities as part of a possible CDP. The RAP explains that “investments such as these [the Igbesa and Okoomi market squares] will have to compete with other community development priorities identified in the Participatory Needs Assessment.”<sup>251</sup>



Picture 3: Health Clinic Part of the Community Development Project

233. WAPCo contracted with a Nigerian NGO, Enterprise for Development International, to facilitate implementation of the CDP projects that will be supported in accordance with the MOU that was negotiated between the Consortium and WAPCo.<sup>252</sup> Management stated that it will review progress in the program through the required annual reports from WAPCo and will make site visits on its next supervision mission.<sup>253</sup> The Expert Panel will evaluate the CDP program’s effectiveness, which is appropriate, since it is part of the Project Agreement. The Expert Panel was not, however, charged with evaluating the sustainable benefit arrangements for the displaced persons—those who lost their homes or productive assets, a clear indication that sustainable development for displaced was not a CDP objective.

234. Management refers to community development programs, temporary construction-related employment, and a limited number of long term

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<sup>251</sup> Nigeria RAP, p. 6–22.

<sup>252</sup> Management Response, ¶ 57.

<sup>253</sup> Management Response, ¶ 57.

employment opportunities.<sup>254</sup> However, Management does not mention sustainable development in their Response, the RAP or the PAD. In contrast, the Requesters focus on sustainable development specifically for the displaced persons as well as broader community and national costs and benefits. The Requesters' position is aligned with Bank Policy in OP 4.12, which specifically safeguards the sustainable development of displaced persons over distinct from restitution.

235. **The Panel finds that Management permitted an involuntary resettlement to begin without a development assistance component as required by OP 4.12 that would provide targeted investment resources to enable the persons displaced by the Project to share in Project benefits.**
236. The Panel does not question Management's view that the Project provides potential positive benefits for the country. The Panel also believes it likely that the community development programs, once executed, will provide positive benefits for many communities near the pipeline and associated infrastructure. However, the Panel notes that the community development program, though an important sign of corporate social responsibility, could not substitute for the targeted assistance to displaced persons as required by the Policy. There is a chance that sustainable objectives might accrue to the displaced persons by injecting enough investment resources into the affected and adjacent communities, but this outcome was neither by design nor very efficient.
237. The Panel finds that Management failed to address a central issue of OP 4.12, paragraph 2(b), namely to draw up and execute the Project as a sustainable development program by providing sufficient investment resources to enable the persons displaced by the project to share in project benefits. By not ensuring that WAPCo followed the Bank's Policies, Management undercut the Bank's value added to this project. More significantly, the necessary measures to avoid impoverishment were not and still are not in place.

## **F. Disclosure of Information and Consultation**

238. **Requesters' Claims:** The Requesters claim that not all stakeholders had access to key Project information, and that the information provided was not understood by members of their communities.<sup>255</sup> They also state *"that is why the expectations of our community people were unnecessarily raised on the compensation we were to receive. Until the day some of us collected our compensations, we had no idea of the criteria used for computing the compensations to be paid for the acquisition of our lands. We believe that there*

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<sup>254</sup> PAD, p. 34 points out that WAPCo intends to implement a community development program in the areas affected by the pipeline, emphasizing capacity-building and empowerment rather than direct provision of infrastructure. No intent was made to focus benefits upon the displaced in the PAD.

<sup>255</sup> Request, p. 4.

*was a deliberate policy not to disclose all relevant information in order to get our support for the project.”*<sup>256</sup>

239. The Requesters further claim that *“the manner [in which] the little consultation that took place was carried out is a recipe for crisis and violence in our communities. There are still tensions between the landowners and those of us whose lands were not acquired but whose livelihood would invariably be affected by the project. Some of us would lose our farmlands; others may be denied easy access to their farms and fishing grounds.”*<sup>257</sup>
240. Additionally, the Requesters assert that *“the sponsors of the project employed the classic divide and rule strategy to their full advantage. Our community members have yet to resolve the bitterness and bickering that was the hallmark of the selective consultations which took place with a few landowners, while other land users and impacted persons were ignored.”*<sup>258</sup> They add that *“there were also instances where the land owners and the land users (those who lease lands for farming) clashed over who should be paid compensation and how the compensation that has been paid should be shared.”*<sup>259</sup>
241. The Requesters state that, in hindsight they received *“precious little information on the exact amount of compensation that we were to receive for each plot of land acquired for the Project.”*<sup>260</sup> They claim that *“the project sponsors kept us in the dark about this [compensation valuation formulas] and other information relating to adequate compensation that should improve our standard of living.”*<sup>261</sup>
242. **Management’s Response:** Management responds that extensive consultations were held and concerns were well documented and presented in a balanced manner,<sup>262</sup> but recognizes potential uncertainty regarding disclosure of information.<sup>263</sup> They find that compensation was adequately covered in consultations but agree that Yoruba translations of summaries of the RAPs and EMPs were not disseminated, as requested by the Bank in its supervision mission of June 2005.<sup>264</sup>
243. Management points out that in all, there were twenty-five documented meetings and teleconferences between the Bank and WAPCo and its consultants, the first of which was in April 2001, nearly two years before detailed discussions on the TORs for the EA and RAP. The Bank was thus in a position to advise WAPCo

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<sup>256</sup> Request, p. 4–5.

<sup>257</sup> Request, p. 5.

<sup>258</sup> Request, p. 5.

<sup>259</sup> Request, p. 5.

<sup>260</sup> Request, p. 3.

<sup>261</sup> Request, p. 4.

<sup>262</sup> Management Response, ¶34.

<sup>263</sup> Management Response, ¶56.

<sup>264</sup> Management Response, ¶34.

on design and content of baseline environmental studies that were initiated prior to the preparation of the EA itself. Management claims that “two years worth of baseline data were collected, which is desirable for a project of this type but usually resisted by investors on tight schedules.”<sup>265</sup>

244. Management claimed that “although the Bank recognized the significant benefits of local disclosure and consultation in an early draft of the EA by WAPCo, it also understood—given the significant social and political sensitivity of World Bank Group involvement with a private sector investment in the oil and gas sector in Nigeria—the importance of having an extremely high quality draft.”<sup>266</sup>
245. Management explains that the early EIA 2004 drafts were disclosed for Nigerian Public Hearing and Permit Review, but were revised as a result of the hearings and disclosed, as required by Bank Policies, in July 2004.<sup>267</sup>
246. Management contends that tension, which may have developed between landowners and other users, as well as within families over the way compensation was distributed as “normal parts of community dynamics,” not a result of the Project.<sup>268</sup> Management provides no supporting evidence for this explanation.

## 1. Bank Policies

247. With regard to consultation and information disclosure, three Bank Policies are relevant to the present situation: the Policy on Involuntary Resettlement (OP 4.12); the Policy on Environmental Assessment (OP 4.01); and the Policy on Disclosure of Information.
248. **OP 4.12 on Involuntary Resettlement.** Disclosure and consultation are integral parts of the Bank’s Involuntary Resettlement Policy. OP 4.12 on Involuntary Resettlement states that “displaced persons should be meaningfully consulted and should have opportunities to participate in planning and implementing resettlement programs.”<sup>269</sup> The importance of meaningful consultation with displaced persons is firmly embedded as part of the three overall policy objectives in OP 4.12.
249. Under the Policy, displaced persons and their communities are to be provided timely and relevant information, consulted on resettlement options, and offered opportunities to participate in planning, implementing, and monitoring

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<sup>265</sup> Management Response, ¶37.

<sup>266</sup> Management Response, ¶37.

<sup>267</sup> Management Response, Annex 1, No. 14.

<sup>268</sup> Management Response, Annex 1, No. 7.

<sup>269</sup> OP 4.12, ¶2b.

resettlement.<sup>270</sup> In preparing the RAP, Management has to ensure that the Borrower draws on appropriate social, technical and legal expertise and on relevant community-based organizations and NGOs and informs potentially displaced persons at an early stage about the resettlement aspects of the project and takes their views into account in project design.<sup>271</sup>

250. Specifically, OP 4.12 requires a RAP to include measures to ensure that the displaced persons are (i) “*informed about their options and rights pertaining to resettlement;*” and (ii) “*consulted on, offered choices among, and provided technically and economically feasible resettlement alternatives.*”<sup>272</sup> It also requires involvement of the displaced persons in the design and implementation of resettlement activities<sup>273</sup> and institutionalized arrangements by which the displaced persons can communicate their concerns to Project authorities throughout planning and implementation. Measures are to be in place to ensure vulnerable groups, such as landless or women are adequately represented.<sup>274</sup>
251. Under OP 4.12, a RAP should review the “*resettlement alternatives presented and the choices made by displaced persons regarding options available to them, including choices related to forms of compensation and resettlement assistance, to relocating as individuals, families or as parts of preexisting communities or kinship groups, to sustaining existing patterns of group organization, and to retaining access to cultural property (for example, places of worship, pilgrimage centers, cemeteries).*”<sup>275</sup> The requirement for data collection on socio-economics of displaced households<sup>276</sup> provides another avenue for displaced persons to inform Management of their situation.
252. In addition to consultation with displaced persons themselves, Management is directed by BP 4.12 to “*discuss with the agencies responsible for resettlement the policies and institutional, legal, and consultative arrangements for resettlement, including measures to address any inconsistencies between government or implementing agency policies and Bank policy.*”<sup>277</sup>
253. **OP 4.01 on Environmental Assessment.** OP 4.01 on Environmental Assessment requires that for all projects designated as “Category A” during the EA process, the Borrower consults with project-affected groups and local non-governmental organizations (NGOs) about the project’s environmental aspects, taking into account their views. The Borrower has to initiate such consultations

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<sup>270</sup> OP 4.12, ¶13 (a) and Annex A, ¶15 (a).

<sup>271</sup> OP 4.12, ¶19.

<sup>272</sup> OP 4.12, ¶6 (a)(i) and (ii).

<sup>273</sup> OP 4.12 Annex A, ¶15 (a). The policy includes the host communities, which were not a significant feature of the WAGP.

<sup>274</sup> OP 4.12, Annex A, ¶15(d).

<sup>275</sup> OP 4.12, Annex A, ¶15(c).

<sup>276</sup> OP 4.12, Annex A, ¶6.

<sup>277</sup> BP 4.12, ¶2(e).



as early as possible.<sup>278</sup> The Borrower has to consult 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.<sup>279</sup>

254. In addition, OP 4.01 provides that the Borrower has to **consult with such groups throughout project implementation as necessary** to address EA-related issues that affect them.<sup>280</sup> Furthermore, “*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.*”<sup>281</sup> OP 4.01 notes that other Bank Policies assign additional disclosure and consultation requirements on project involving involuntary resettlement.<sup>282</sup>
255. Regarding disclosure of information, for a Category A project OP 4.01 requires the Borrower to provide 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 is required to provide a summary of the EA’s conclusions. In addition, the Borrower is required to make the draft EA report available at a public place accessible to project-affected groups and local NGOs.<sup>283</sup>
256. The requirements of OP 4.01, as applied to the present case, are addressed in more detail in Chapter Four (Environment) of this Report.
257. **Bank Policy on Disclosure of Information.** The Bank’s Disclosure Policy requires, *inter alia*, that the Borrower make the draft RAP available before appraisal (i) at the InfoShop and (ii) in-country, at accessible locations and in a form and language that are accessible to potentially affected persons and NGOs.<sup>284</sup>

## 2. Findings on Disclosure of Information

258. The environmental components of the EA were completed and ready for disclosure in June/July 2004,<sup>285</sup> almost six months before the RAP was

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<sup>278</sup> OP 4.01, ¶14.

<sup>279</sup> OP 4.01, ¶14.

<sup>280</sup> OP 4.10, ¶14.

<sup>281</sup> OP 4.01, ¶15.

<sup>282</sup> OP 4.01, ¶15, fn. 19.

<sup>283</sup> OP 4.01, ¶16.

<sup>284</sup> The World Bank Policy on Disclosure of Information, 2002, ¶34.

<sup>285</sup> According to the information in the WB Project portal, the EA went to the Infoshop on July 7, 2004, the final draft is dated June 2004. According to Management Response, disclosure of final draft EAs began in Bank Public Information Centers on June 28, 2004.

approved. WAPCo disclosed its preliminary draft EA of December 2003 in early 2004 for the public hearings in Nigeria, but without the RAP.<sup>286</sup>

259. By March 2004, the draft of the RAP for the Project had been prepared. Management found it had deficiencies and requested many modifications. Management approved the revisions in June 2004, and on July 7, 2004 the draft RAP was publicly disclosed.<sup>287</sup> The draft RAP was open to public comment until October 2004. **The Panel found no evidence, however, of attempts to meaningfully present the draft RAP to the persons to be displaced.** On November 2, 2004, Management informed the Board that community members were aware of the existence of an EA and RAP for elements of WAGP, but few had seen them.<sup>288</sup>
260. In Igbesa, the area with the highest concentration of displaced persons, disclosure of many engineering documents in English was evident to the Panel in July 2007, but not of the RAP. The Panel notes that Management understood that the area affected by the pipeline has a high proportion of English speakers, although the predominant language is Yoruba. A year after acceptance of the RAP, and four months after the displaced persons had been paid, in June 2005, it became clear to Management that the existing English documents were too long and too technical for wide community understanding of entitlements or risks, and this contributed to apprehension and undermined Project credibility.
261. As part of the proposed actions in response to the Request for Inspection, Management and WAPCo agreed to disseminate before September 30, 2006: *“non-technical translations of RAP and EMP summaries, including clear explanation of grievance redress and monitoring mechanisms; advertise the availability of these documents on all work sites by posters—including where and how any complaints or grievances can be registered; and maintain grievance logs for inspection by local communities.”*<sup>289</sup> Thus, WAPCo agreed to distribute non-technical Yoruba translations of the summaries of the EMP and RAP.<sup>290</sup>
262. An eight-page Yoruba translation of the Executive Summary was prepared about 24 months following the last compensation payment, effectively rendering its information useless to the displaced persons who needed to make choices among the alternatives it discusses.
263. Since the RAP was not timely disclosed, the RAP description of locally affected people as owners was unavailable to those who were displaced during negotiation. **The Panel finds that there was a failure to adequately disclose**

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<sup>286</sup> Issues relating to the disclosure of the EA are addressed in Chapter Four.

<sup>287</sup> PAD, p. 38.

<sup>288</sup> PAD, Annex 13, ¶43.

<sup>289</sup> Management Response, ¶57.

<sup>290</sup> Management Response, ¶56.

**critical RAP information necessary for the displaced persons to make meaningful, informed choices about livelihood restoration. This does not comply with OP 4.12 on Involuntary Resettlement, or with the World Bank Policy on Disclosure of Information.**

264. **Moreover, during its field visit in July 2007, the Panel found no evidence of distribution of this document in the key resettlement area of Igbesa. Regardless of its distribution, the Panel finds that disseminating such information on livelihood, compensation and other resettlement entitlements years after the displaced persons have made decisions on these matters is neither meaningful nor timely. This does not comply with Bank Policies on Involuntary Resettlement and Disclosure of Information.**

### **3. Findings on Consultation**

265. **Record of Meetings.** The Panel reviewed the record and information regarding public hearings and consultations under the Project. A public hearing, held in April 2004, shortly after the first draft of the RAP had been reviewed by Management, was attended by approximately 100 participants, mostly government officials.<sup>291</sup> The purpose of the hearing was to identify stakeholder concerns and benefits, and reduce the impacts of such concerns.
266. During a public question and answer session, participants expressed concern over recent failures of Shell Nigeria Gas (SNG)<sup>292</sup> to adhere to environmental agreements in recent work in the region.<sup>293</sup> There were general questions about WAPCo addressing “sociological and health needs” and “community needs” that were narrowed down to “*public health/health care/sanitation, education and micro-credit scheme, local regional context, and safety.*”<sup>294</sup> The minutes showed that detailed answers to questions were deferred to a future meeting.<sup>295</sup>
267. The Panel notes that during that meeting a query was raised about why the RAP and socio-economic issue were not yet included in the EIA. The WAPCo HSE (Health, Safety and Environment) manager responded that “*WAPCo and ICF [the EIA consultants to the Project] have been working very closely with the*

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<sup>291</sup> Regional EIA, Appendix 5–D, Stakeholder Consultations, “Report on EIA Hearing in Nigeria, April 6, 2004.”

<sup>292</sup> See Annex 2 to this Report, Mistakes from the Past Repeated - Management turns a blind eye to questions of Borrower capacity.

<sup>293</sup> Regional EIA, Appendix 5–D, Stakeholder Consultations, “Report on EIA Hearing in Nigeria, April 6, 2004.”

<sup>294</sup> Regional EIA, Appendix 5–D, Stakeholder Consultations, “Report on EIA Hearing in Nigeria, April 6, 2004.”

<sup>295</sup> Regional EIA, Appendix 5–D, Stakeholder Consultations, “Report on EIA Hearing in Nigeria, April 6, 2004.”

*communities to prioritise their needs. WAPCo do not want to raise expectations, as Final Investment Decision (FID) has not been approved.”*<sup>296</sup>

268. A Panel review of the consultation records found that consultations in 2002–2003 centered on an introduction to the Project, health and safety concerns, and gathering public support for the Project.<sup>297</sup> Feedback centered on negative experiences with Shell in a previous pipeline project along much of the same route as WAGP, local labor, labor contracting, and the Project start date.<sup>298</sup> Compared to Benin and Ghana, the reports on Nigerian consultations that the Panel was able to obtain are very limited.<sup>299</sup>
269. During this consultation period, *“WAPCo investors were pressing for clearance and disclosure in order to meet their target date for a final investment decision and to avoid a reported escalation of US\$25 million in the price of steel for the pipeline. The RAP went through similar review, with the first draft reviewed and commented on extensively by Bank staff in April 2004, and the next draft substantially improved and expanded, including the compensation calculation methodology, prior to clearance by the Bank for disclosure in June 2004.”*<sup>300</sup>
270. The Panel notes that the ESAP found that *“the RAPs do not elaborate a plan for sustained interaction with the pipeline affected communities”* and that the ESAP proposes a more long-term interaction.<sup>301</sup>
271. The Panel reviewed records of the consultation that took place between August 2003, when the RAP field work began, and April 2004, when the first draft of the RAP was presented to Management. Also, WAPCo employees discussed their consultation process with the Panel. They focused on the compensation principles of the oil sector within the framework of Nigerian law, as opposed to the findings set forth in the RAP. **The Panel found only limited evidence that efforts were made to integrate the consultation process into the preparation of the RAP, and in particular to inform the displaced persons of their entitlements under the RAP.**

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<sup>296</sup> Regional EIA, Appendix 5–D, Stakeholder Consultations, “Report on EIA Hearing in Nigeria, April 6, 2004.”

<sup>297</sup> Finding evidence of public support is not part of the OP/BP 4.12 policy.

<sup>298</sup> Finding evidence of public support is not part of the OP/BP 4.12 policy.

<sup>299</sup> The first 355 pages of the 455 page Annex 5-D of the EIA list summary sheets, minutes, and attendees to consultations including government-WAPCo meetings and community meetings. Of these, about 30 refer to Nigerian consultations and very few with the 23 communities where people were displaced.

<sup>300</sup> Management Response, ¶38.

<sup>301</sup> ESAP Report, p. 17.



Picture 4: Discussions with Affected People Adjacent to Right of Way - Ijoko

272. **Reliance on Private-Company Sponsor.** The Panel notes that WAPCo retained a major Environmental Impact subcontractor from outside the country to carry out the RAP. This subcontractor in turn, subcontracted with “*ESIA Consulting and Citizens International team, with support from Estate Surveyors and WAGP External Affairs representatives to compiled information for the draft RAP.*”<sup>302</sup> The Panel was informed during staff interview and subsequent field visit that WAPCo excluded consultation with the local Nigerian populations from their primary sub-contractor’s TOR. Management did not review the subcontractor’s TOR and informed the Panel that there is no such requirement to do so in the Bank Policy.<sup>303</sup>
273. The Panel was told that WAPCo did not ask the Bank to review the TORs it prepared for its subcontractors. Indeed, Management informed the Panel that it does not have a copy of the TOR for either subcontractor. Instead, without performing a review, Management seemed to assume that because the Project Sponsor had strong capacity on technical issues, including those covering

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<sup>302</sup> Nigeria RAP, p. 4–5

<sup>303</sup> Communication to Panel from Management, October 10, 2007 stating. “The consultant working for WAPCo began the RAP prior to the Bank’s engagement in the project, and the Bank did not review or advise on the TORs. It is my understanding that the OP/BP does not require the Bank to make any such review if work has been initiated by the consultant. Even if the Bank is engaged in project preparation, it normally provides sample TORs or comments on draft TORs as an aid to borrowers, if asked. WAPCo did not ask; they issued the TORs directly to ICF Consulting, and the Bank does not have a copy of the TOR for ICF (or TORs that ICF gave to their subcontractors).”

environmental issues, it had comparable capacity on social issues. Management made this assumption even though issues about the capacity of members of the consortium composing WAGP were being raised in consultations over land acquisition issues along the shared pipeline route during project preparation.<sup>304</sup>

274. The RAP summarizes community feedback during the consultation process carried out by the WAPCo subcontractors.<sup>305</sup> These community concerns focused on the anticipated negative impact of the Project on their livelihoods, termination of benefits after the construction activities, the need for, yet temporary nature of, local employment opportunities and the possibility of permanent loss of agricultural and environmental assets. Most pressing were concerns stemming from previous experiences with another pipeline project in the same area constructed by SNG, a member of the WAPCo Consortium. In particular there was distrust as to whether a fair value would be paid for expropriated land, and whether the land used during construction would be restored to its original state. PAPs anticipated they would be worse off than before the Project.<sup>306</sup>
275. While this feedback provides evidence of community participation, there is no evidence that the 2,485 households of displaced persons directly participated in the planning and preparation of the RAP. Rather, both the Sponsor's and Management's methodologies assumed that the political representatives of the displaced peoples would listen, speak, and make decisions for them.
276. The Panel considers that WAPCo would have had the capacity to carry out meaningful consultation with the displaced populations. Panel interviews and documentation indicate that consultation, communication and meaningful participation took place between WAPCo and PAPs in the areas of health and safety, as well as in the area of employment.<sup>307</sup> What seems to have been missing was a clear mandate and adequate guidance on a more participatory development of the RAP and on adherence to Bank Policies.
277. **Lack of Clarity with Regard to Applicable Standard.** The Panel notes that there was confusion in WAPCo on the issue of resettlement/land acquisition standards to be used for the WAGP, as reflected in correspondence from the Sponsor to the Bank in 2004.<sup>308</sup>

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<sup>304</sup> Regional EIA, Appendix 5-D, Stakeholder Consultations, "Report on EIA Hearing in Nigeria, April 6, 2004."

<sup>305</sup> Nigeria RAP, p. 4-47 to 4-49.

<sup>306</sup> Nigeria RAP, p. 4-47 to 4-48.

<sup>307</sup> Regional EIA, Appendix 5-D, for example, see minutes of a consultation with Lagos State Fire Service Department on pipeline safety on August 4, 2003.

<sup>308</sup> Letter to Bank Management, "Response to Comments – Resettlement Action Plan, West African Gas Pipeline, document number WAGP-W-LET-0988, April 15, 2004. The letter notes, *inter alia*, that Bank Management raised a concern that there was insufficient reconciliation of gaps between the country and World Bank resettlement and land acquisition requirements, i.e., "*too much focus on doing it the 'country way'.*"

278. In one of the responses to the Bank, WAPCo indicated that it “*accepts that relevant elements of the World Bank Resettlement Policy were not explicitly referenced in the submitted RAP documents.*” At the same time, the fact that principles were not clear is manifested by WAPCo’s request in that response that consideration be given, *inter alia*, to Clause 20.3 in the “WAGP International Project Agreement for Land Acquisition,” which stated that “*the prevailing laws of the relevant State*” were to be used to quantify compensation to the affected, legitimate land owners and lawful occupiers of land whose holdings were disturbed by the project.<sup>309</sup> WAGP also noted that “*WAPCo Sponsors and WAGP Government authorities have consistently expressed concern with changes to precedent that could result from WAGP Land Acquisition efforts, regardless of and in addition to World Bank Policy Requirements.*”<sup>310</sup>
279. The Panel notes that the Bank properly drew attention to the treatment of differences in compensation rates in its review of the RAP submitted by the Project Sponsor in Spring of 2004. The Panel is concerned, however, that this fundamental problem was raised well after the consultations with displaced persons. This is a strong indication that prior to this time, Management had not adequately communicated the proper standard to the Project Sponsor or, at least, that there remained a significant lack of clarity in this regard, even though BP 4.12 requires the Task Team to identify any inconsistencies between national policies and the Bank Policies.
280. In particular, if the Sponsor and Management were disagreeing months after the consultations had closed, it is highly improbable that the consultations with the displaced could have been aligned with Bank Policy. This reinforces other evidence showing the absence of meaningful consultation on critical issues and options relating to resettlement.<sup>311</sup> The Panel expert posits, in particular, that the land-for-land option might have been considered in a different manner had the displaced persons been made aware that the safeguard policies, not national laws, were the operative legal and resettlement framework for their negotiation.
281. In this regard, the Sponsor points out in the April 2004 correspondence that the displaced persons, during negotiations, had shown an overwhelming preference

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<sup>309</sup> The text of the relevant provision is quoted as follows: “The Company shall pay to any affected legitimate land owners or lawful occupiers of land entered in accordance with this Clause fair compensation for disturbance or damage caused by the activities of the Company or the Project Contractors on such land. The principles and procedures for quantifying the amount of such compensation (together with procedures for resolving any disputes in respect of such compensation) shall be those applying under the prevailing laws of the relevant State.”

<sup>310</sup> Letter to Bank Management, “Response to Comments – Resettlement Action Plan, West African Gas Pipeline, document number WAGP-W-LET-0988, April 15, 2004.

<sup>311</sup> As noted also in Chapter five, the Panel also was informed that the Bank did not provide training to the Project sponsors on Bank resettlement principles until sometime in 2007, after the Request and well after the arrangements had been made for resettlement and compensation.

for cash compensation and a very small percentage of the PAPs (approximately 30 out of over 1,000 land owners and over 2,000 tenants in Nigeria had opted for a land-for-land, in-kind replacement.

282. The exchanges between Management and the Sponsor indicate the Sponsor's concern that adherence to the safeguard policies might set a precedent for other industry-wide compensation and entitlements, apart from the WAGP. This reinforces the previously noted concern that Management insufficiently communicated the legal implications of the safeguard framework's place within the Project.<sup>312</sup>
283. The Panel finds this exchange disconcerting. As described above, it is highly improbable that the displaced persons could have made an informed decision as to their resettlement options, within the Bank guidelines, since there was disagreement or, at least, ambiguity, in April 2004 (after the Sponsor claimed the consultation had closed) between the Sponsor and the Bank over the process and the applicable standard. This exchange is an indication of Management's failure to adequately convey the objectives and methods of the Involuntary Resettlement Policy, particularly their relationship to national legal frameworks, before consultation with the displaced people.
284. The Panel further notes that estate agents were contracted by WAPCo to negotiate compensation but not to consult with the displaced peoples on other dimensions of the resettlement package such as livelihood risks, benefit-sharing provisions, and other non-compensation components of the involuntary resettlement instrument.<sup>313</sup> The Panel could not ascertain who in the process, if anyone, was responsible for compliance with these dimensions of Bank Policy. The Panel notes that the livelihood risks, benefit-sharing and other non-compensation components of the resettlement packages were not prepared in consultation with the displaced persons nor were arrangements provided to do so.
285. **The lack of meaningful and timely consultation prevented participation and informed negotiation of resettlement options by the displaced persons as called for in OP 4.12. The Panel finds that Management did not provide adequate guidance and instructions to the Project Sponsor to carry out meaningful consultation with the displaced people.**
286. The Panel observes that Management's claims of a low incidence of grievance may be a further indication of a lack of awareness by the displaced persons of their rights. The Panel notes that Management's failure to comply with the meaningful consultation and disclosure, and issues relating to the grievance

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<sup>312</sup> Letter to Bank Management, "Response to Comments – Resettlement Action Plan, West African Gas Pipeline, document number WAGP-W-LET-0988, April 15, 2004.

<sup>313</sup> Documents received during field visit.



process, are inexorably linked, and likely contributed to problems facing Requesters, addressed below.

## **G. Grievance Mechanism**

### **1. Bank Policies**

287. According to OP 4.12, the Bank requires the Sponsor to make arrangements for affordable and accessible procedures for third-party settlement of disputes arising from resettlement. OP 4.12 requires that “*Appropriate and accessible grievance mechanisms are established for these [displaced] groups.*”<sup>314</sup> Such grievance mechanisms should take into account the availability of judicial recourse and community and traditional dispute settlement mechanisms.<sup>315</sup>

### **2. Facts and Findings**

288. The grievance mechanism is intended to provide an avenue for affected people to make a complaint and resolve any disputes that may arise during land and asset acquisition, ensure that mutually acceptable corrective actions are identified and implemented, to verify that complaints are satisfied with the outcomes of the correction actions, and to avoid the need to resort to judicial proceedings.<sup>316</sup> The RAP envisioned a six step grievance resolution process that included: (1) receipt of a complaint; (2) determination of corrective action; (3) meeting with the party that initiated the complaint; (4) implementation of corrective action; (5) verification of corrective action; and (6) alternative action, if required.<sup>317</sup>

289. When an affected person makes a complaint, the RAP instructs WAGP/WAPCo External Affairs to record the complaint in the Grievance Log.<sup>318</sup> Next, WAGP/WAPCo External Affairs determines the corrective action and then meets with the party who initiated the complaint within 30 days of receiving the grievance. If the aggrieved party agrees to the corrective action, a written agreement is signed and the corrective action is implemented.

290. After implementation, WAPCo is to follow-up with the party to verify that the corrective action has occurred and will have the complainant sign the grievance log. The grievance process ends if the complainant is satisfied. If the complainant remains dissatisfied, or a solution cannot be reached, the complainant can pursue appropriate recourse as provided in the contractual

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<sup>314</sup> OP 4.12, ¶13(a).

<sup>315</sup> OP 4.12, Annex A, ¶17.

<sup>316</sup> Nigeria RAP, p. 7-12.

<sup>317</sup> Nigeria RAP, p. 7-12 to 7-13.

<sup>318</sup> Nigeria RAP, p. 7-12.

documents, mediation through local or traditional authorities, or through the judicial process.<sup>319</sup>

291. The log was to include a detailed record keeping of date and description of the grievance, details of complainant, name and title of the person recording the entry, documents references (if written) and resolution efforts and dates.<sup>320</sup> The grievance log made available to the Panel listed 21 grievances. It did not document the dates, the name and title of the person recording the grievance, or dates of resolution efforts. The logs failed to consistently indicate whether WAPCo met with the complainant, a time frame for taking corrective action. Most significantly, the signatures of the complainants verifying that corrective action had taken place were not recorded, as required in step 5 listed above.
292. The Panel notes that the ESAP considers the RAP section on complaints/grievance resolution and special attention to vulnerable groups as “*brief and schematic*.”<sup>321</sup> Furthermore, the ESAP found that the RAP “*does not contain detailed operating procedures (...)*.”<sup>322</sup> The ESAP also stated that “*affected people were uncertain about who exactly to contact, where and when, in order to make a complaint: and about when they might get a response*.”<sup>323</sup> Also the ESAP concluded from discussions with contractor staff that “*contractors are not clear about how they should manage complaints from the public*.”<sup>324</sup>
293. In its Action Plan, Management also committed to assess whether the grievance redress process was ineffective for PAPs. This was to be done before the first quarter of fiscal year 2007.<sup>325</sup> The ESAP also recommended that WAPCo should implement a standard operating procedure for managing complaints from the public.<sup>326</sup> The Panel is not aware that this has been done.
294. In the field the Panel was informed that few grievances have been reported. The Panel reviewed WAPCo’s community disruptions of work logs for 2006 and found 35 disruptions. Eight focused on disruptions by youth groups demanding payment and/or employment, eleven regarding lack of compensation, six regarding payment for damages to shrines, and other issues. Six disruptions were by extended family heads demanding compensation.
295. The Independent Monitoring report concluded that the Project grievance process complies with the Environmental Safeguard requirements but could be improved by clear written procedural documentation to promote rapid resolution

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<sup>319</sup> Nigeria RAP, p. 7-13.

<sup>320</sup> Nigeria RAP, p. 7-12 to 7-13.

<sup>321</sup> ESAP Report, p. 16.

<sup>322</sup> ESAP Report, p. 26.

<sup>323</sup> ESAP Report, p. 27.

<sup>324</sup> ESAP Report, p. 27.

<sup>325</sup> Management Response, ¶57.

<sup>326</sup> ESAP Report, ¶1.1.6.

of grievances and maintain public trust. Management's response to the request indicates that WAPCo would disseminate non-technical translations of the RAP and EMP summaries, including clear explanation of grievance redress and monitoring mechanisms before September 30, 2006, to late for institution of any meaningful process.<sup>327</sup>

296. The Panel notes that without meaningful consultation, including access to the RAP and without an effective disclosure procedure, the displaced persons could not have understood grievance avenues available to them. Also, Management's claims of a low incidence of grievance may be indicative of a lack of awareness by the displaced persons of their rights. **The Panel finds that Management failed to ensure that the Sponsor had in place an effective grievance process to identify and redress resettlement issues, as required by OP 4.12.**

## H. Institutional Capacity

### 1. Bank Policies

297. In line with OP 4.12, due diligence in relation to the present Project requires that Management and the government determine whether WAPCo had the capacity and financing to carry out a RAP in accord with Bank standards.<sup>328</sup>
298. The Borrower is responsible for preparing, implementing and monitoring the resettlement plan, with the RAP presenting the strategy for achieving the objectives of the Policy.<sup>329</sup> The Policy emphasizes that Borrower commitment to and capacity for undertaking successful resettlement is a key determinant of Bank involvement in a project<sup>330</sup> including a requirement that management review past Sponsor experience with similar operations<sup>331</sup> and any technical assistance that management might provide the Sponsor.<sup>332</sup>

### 2. Facts and Findings

299. The Panel was unable to find a formal assessment of the Borrower's capacity specifically in the area of involuntary resettlement, but notes that the Bank was aware of signs as early as 2001 that the Project faced problems. An open letter was sent to the Bank President on December 18, 2000 from Oil Watch Africa Network and signed by over 50 organizations that raised concerns about

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<sup>327</sup> Management Response, ¶57.

<sup>328</sup> OP 4.12, Annex A, ¶8 and BP 4.12, ¶10.

<sup>329</sup> OP 4.12, ¶18.

<sup>330</sup> OP 4.12, ¶18 and BP 4.12, ¶10 (a).

<sup>331</sup> BP 4.12, ¶2 (d).

<sup>332</sup> BP 4.12, ¶2 (d) and ¶2 (f).

consultation, human rights, environmental, and communal conflicts facing the WAGP project.<sup>333</sup>

300. In particular, the letter raises issues about one of the WAGP partners not showing up for consultations and about inadequate information. It shows concerns for the oil sector's expropriation of traditional lands that has increased commoditization and competition for land in Nigeria resulting in conflicts with an increasingly violent character with destruction of lives and property. The Bank responded that it funded technical assistance that expired in mid-1999 and had no commitment, at that point, to fund the projects although discussions were continuing. Management made a commitment that, if the Bank were to get involved, "*its decision would be based on, among other considerations, a full environmental and social impact assessment that would have to be carried out, and an environmental and social management plan that would have to be developed through a participatory process and in accordance with the Bank's guidelines and procedures.*"<sup>334</sup>
301. It seems that Management assumed, rather than evaluated, the Sponsor's capacity in dealing with the social safeguard issues. The Panel was informed that the Sponsor's partners have a strong reputation for physical environmental work, as was evident in the quality reports of the Project's environmental assessment. However, the Panel did not obtain evidence that this technical capacity implied that the Sponsor's had commensurate capacity in dealing with social issues, particularly those related to land acquisition. It seems that Management did not take into account some signs regarding the Sponsor's limited capacity to meet the Bank's Policies. Full awareness of the Sponsor's limited capacity to deal with social issues, in a manner expected by the safeguard policies, should have led to action, including increased training, intensified supervision, and urgency to field an international Expert Panel.
302. First, even a cursory examination of Nigeria land tenure and industry acquisition of ROWs would have forewarned of potential problems.<sup>335</sup> With

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<sup>333</sup> Letter to James D. Wolfensohn, President of the World Bank, from Issac Osuoka, Environmental Rights Action/Oilwatch Africa Network, December 18, 2000.

<sup>334</sup> Letter to Isaac Osuoka, Environmental Rights Action/Oilwatch Africa Network, from Praful Patel, Sector Director, Finance, Private Sector & Infrastructure, Africa Region, the World Bank, March 1, 2001.

<sup>335</sup> R. O. Adegboye, 1973, *Compulsory acquisition and the subsequent problems of land acquisition: Ibadan-Parapo (Nigeria) experience*, Bull. Rural Economics and Sociology 1(1):125-145 cited in N.O. Adedipe, J.E. Olawoye, E.S. Olarinde, and A.J. Okediran, 1997, *Rural communal tenure regimes and private land ownership in western Nigeria*, FAO Land Reform Bulletin. See: <http://www.fao.org/sd/LTdirect/LR972/w6728t13.htm> Ajoku, C.V., "Compensation assessment and payment", seminar paper presented at Continuing Professional Development (CPD) workshop organized by Edo State Chapter of Nigeria Institution of Estate Surveyors and Valuers (NIESV) (2001?). Akporiaye, B.E., "Oil exploration and compensation payment in the Niger Delta", seminar paper presented at a CPD workshop organized by Delta State Chapter of NIESV (1996). Chudi, V.N., "Compulsory acquisition compensation under the Land Use Act", The Nigerian Estate Surveyor (1974). Hemuka, N.A., "A positive approach to compulsory acquisition and compensation in Nigeria", seminar paper presented at a CDP workshop organized by Edo State Chapter of NIESV (2000). Ibagere, O.P., "Ethics in compensation

reference to the industry in Nigeria, Adegboye (1973) had noted that *“In most cases, compulsory acquisition will be in peri-urban or rural areas. The government pays compensation to the owners for crops, trees and buildings on the land to be taken over, but examples abound where compensation has been inadequate, or were subject to considerable delay with inflationary losses owing to devaluation. Problems associated with compulsory acquisition of land by the state include inaccurate enumeration, lack of agreement on the definition of assets for which compensation is to be paid, the basis of compensation, illiteracy and ignorance of the rights of customary occupants, differences in compensation for annual versus perennial crops or trees, and failure to compensate for compulsorily acquired land with access to adequate land elsewhere.”*<sup>336</sup>

303. Available literature also indicated that the taking of agricultural land showed the same risks identified in the first paragraph of OP 4.12. Adegboye also notes that the result of compulsory acquisition is a serious social dislocation resulting from loss of occupation, land, crops and lifestyle. In many cases, farmers give up farming and take low-paying urban service jobs for fear that land newly allocated to them would also be confiscated. As a result, compulsory acquisition of land is resulting in social breakdown.<sup>337</sup> Whether these impoverishment risks were operative or not along the proposed ROW was an issue to be fully investigated in the RAP’s socio-economic studies.
304. Second, on the eve of the Project, some Project affected persons were alleging that two of the WAPCo partners had failed to meet their social, environmental and corporate responsibilities in the Delta. Stakeholders in Nigeria and Togo raised the issue of the Sponsor’s environmental responsibilities in the Delta.<sup>338</sup> Management’s due diligence involves evaluating whether the WAGP might involve risks of spreading industry-community tensions from the Delta into Southwestern Nigeria. Whereas the WAGP is a partnership engaged in a distinct business endeavor, the local population, including the Requester’s have

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practice”, seminar paper presented at a CPD workshop organized by Edo State Chapter of NIESV (2000). Ikime, O., *The Isoko People* (University Press Ibadan 1977). Odu, M.A.C., “Adequate compensation for compulsory acquisition, a critical factor in ethnic and communal crisis: the Niger Delta example”, seminar paper presented at a CPD workshop organized by the Lagos State Chapter of NIESV (1999). Okolo, C.O., “Laws relating to compensation practices in Nigeria”, seminar paper presented at a CPD workshop organized by Edo State Chapter of NIESV (2000).

<sup>336</sup> Adegboye cited in N.O. Adedipe, J. E. Olaoye, E.S.Olarinde and A.Y. Okediran. Rural communal tenure regimes and private landownership in western Nigeria. Sustainable Development Dimensions. Food and Agriculture Organization of the United Nations (FAO) Land Reform Bulletin: 1997/2. Posted on the web on April 1998. See also, Adegboye, R.O. Compulsory acquisition and the subsequent problems of land resettlement and compensation: Ibadan – Parapo ( Nigeria) Experience. Bull. Rural Economics and Sociology, 1 (1) 125-145.; Nwoosu 1991.

<sup>337</sup> Adegboye cited in N.O. Adedipe, J. E. Olaoye, E.S.Olarinde and A.Y. Okediran. Rural communal tenure regimes and private landownership in western Nigeria. Sustainable Development Dimensions. Food and Agriculture Organization of the United Nations (FAO) Land Reform Bulletin: 1997/2. Posted on the web on April 1998.

<sup>338</sup> PAD, Annex 13, ¶41.

difficulties disarticulating the WAGP, its Sponsor, and the same partners operating individually in the Delta. From their non-technical perspective gas, like water, moves downstream from their upstream location. They see the pipelines coupled one to another. In social issues, perception overrides legalities and must be taken into account.

305. Management seems to have understood this, to some degree. Amnesty International released a report entitled “Nigeria: Are human rights in the pipeline” that was published on the eve of the Board presentation.<sup>339</sup> Delta problems were referenced several times<sup>340</sup> in the PAD, including a disclaimer that “*WAGP has little or no impact on the social or environmental condition of the Delta, and is either a small part of, or is unrelated to, the main activity of the international oil companies. The solutions to the problems in the Delta are one of law and order, good governance, institutional capacity building, fight against organized crime through means such as oil certification, greater security to prevent kidnappings and long-term vision through an integrated coastal zone management plan (ICZM).*”<sup>341</sup> The problems in the Delta might have forewarned the shortcomings of the WAGP, adopting the local industry/government arrangements for land acquisitions.
306. Third, the WAGP affected most of the same stakeholders that were involved in an earlier project along much of the same route. This history influenced all local stakeholder’s expectations, decisions, and organization. A direct sign came from a letter sent to Chevron Texaco Globatech from the Pipeline Right of Way Land Owner Association of Igbesa signed by 13 extend family heads and 38 sub-family heads on August 14, 2003 stating that (a) crops enumeration belongs to the individual person who was cultivating, (b) that the land “*belongs to individual [extended] families*” and that (c) “*payment for land compensation should be paid to the head of families or the representatives of each families [sic] who signed a power of Attorney for the agent representing them,*” and d) that any payment for the a or b be made to the “*rightful owners of the land not the community.*”<sup>342</sup> They wish (e) to “*prevent the re-occurrence of a bitter experience in the first project executed by Shell Nigeria Gas whereby our rights was [sic] wrongly transferred to the community.*”<sup>343</sup>
307. This letter raises serious questions about a WAPCo partner’s capacity for implementing the resettlement instrument, an element that must be assessed in Bank Procedures.<sup>344</sup> The Nigerian on-shore segment of WAGP project was

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<sup>339</sup> Amnesty International, “Nigeria: Are Human Rights in the Pipeline?” (9 November 2004) AI Index AFR 44/020/2004 (available at <http://www.amnesty.org/en/report/info/AFR44/020/2004> ).

<sup>340</sup> For example, PAD, Annex 13, ¶34, ¶41; PAD, Annex 1, ¶45; Annex 13, ¶45, p. 150.

<sup>341</sup> PAD, Annex 1, ¶24.

<sup>342</sup> Letter to ChevronTexaco from Igbesa landowners, “West Africa Gasline Project Igbesa Right of Way, from Pipeline Right of Way Land Owner Association of Igbesa,” August 14, 2003.

<sup>343</sup> Letter to ChevronTexaco from Igbesa landowners, “West Africa Gasline Project Igbesa Right of Way, from Pipeline Right of Way Land Owner Association of Igbesa,” August 14, 2003.

<sup>344</sup> BP 4.12, ¶10.

starting only months after the ending of another land acquisition and construction project that took place along 36 of the 58 kilometers of the proposed WAGP project's ROW. On August 16, 2002, SNG commenced supplying natural gas to Agbara and Otta industrial area. For its safeguard policies to influence the WAGP, Bank Management would have had to elbow its way into a well-defined, contentious political and legal space already filled with preexisting assumptions, conflicts, expectations, and practices about one of the WAPCo companies and its ROW acquisition compensation and procedures.<sup>345</sup> The Panel found no documents describing the SNG land acquisition experience in management documents, nor was it referenced in the RAP or PAD. The Board was ill served by this silence.

308. Evidence from summaries of WAPCo consultations and Panel field interviews confirmed the influence of this previous project on the WAGP. At one point, a Yoruba household head that was directly affected by both projects showed his legal papers to the Panel. The Panel noted his information related to the SNG conflict. Among the lessons learned that might have improved the RAP design were critical issues like the inadequacy of the 1998 OPTS rates, reliance on local government for any land-for-land arrangements, the complexity of the local land ownership situation, and arrangements for local construction employment.
309. The Panel notes that Management held a training session on safeguard issues in 2007, only after the Request for Inspection was submitted. This session might have introduced some WAPCo staff to the Policies for the first time. During Panel interviews, WAPCo staff commented, "*Had we known what we were supposed to do, we would have done it.*"
310. The Panel notes that the ESAP concluded in its first report that "*compliance with the safeguard policies and procedures is a Project objective, but compliance is uneven because of uneven understanding and application of the involuntary resettlement projects.*"<sup>346</sup> The ESAP recommends more safeguard training. This reinforces the Inspection Panel's findings. Further, the ESAP found that "*WAPCo lacks an information management system, at least for environment, safety, compensation and resettlement.*"<sup>347</sup>
311. **With regard to Borrower Capacity, the Panel finds that Management did not comply with the requirements of BP 4.12, to assess (a) the Borrower's commitment to and capacity for implementing the resettlement instrument; (b) the feasibility of the proposed measures for improvement or restoration of livelihoods and standards of living; (c) availability of adequate counterpart funds—specifically the government's capacity to complete the land-for-land**

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<sup>345</sup> Consultations in the Nigeria EIA Annex 5-D express concerns about the SNG experience.

<sup>346</sup> ESAP Report, p. 17.

<sup>347</sup> ESAP Report, p. 18.

option; and (d) significant risks, including risk of impoverishment, from inadequate implementation of the resettlement instrument.<sup>348</sup>

312. As will also be discussed in the next section below, the Panel further finds that Management failed to inform the Board of the Sponsor's limited capacity in land acquisition as measured by the Bank's social safeguard standards and take appropriate corrective actions to ensure that the problems did not reoccur on this Project's watch.
313. With regard to Management responsibility under OP 4.12, paragraph 18, and BP 4.12, paragraph 2(d) and paragraph 10(a), to assess the institutional capacity of the Sponsor, the **Panel further finds Management did not adequately review the Sponsor's past experience and capacity with implementing operations involving similar involuntary resettlement activities.** Neither did Management ensure appropriate coordination between agencies responsible for implementing the RAP. This oversight in supervision resulted in a failure to identify the need for training the Sponsor in the involuntary resettlement safeguards as per BP 4.12, paragraph 2(f). **This is inconsistent with the provisions of OP/BP 4.12.**

## I. Information to the Board

### 1. Bank Policy

314. OMS 2.20—Project Appraisal states in its paragraph 7 that: *“the aim of the appraisal is to examine and evaluate the economic and social objectives which a project is designed to meet, to assess whether the proposed project is likely to meet these objectives efficiently, and to recommend conditions that should be met to ensure that the purposes of the project will be achieved. Appraisal covers both the project and the entity or entities which will implement and operate it.”*
315. Paragraph 61 adds *“If appraisal determines that the project is likely to be highly risky in social terms, but inadequate information is available to support a firm conclusion, consideration should be given to either a pilot project or postponement of the project until sufficient information is available (...) The appraisal should ensure that the implementation process contains a realistic time frame and mechanisms for the expected behavioral responses to occur, and that there is enough built-in flexibility for making design changes in response to socio-cultural information obtained during implementation.”*<sup>349</sup>

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<sup>348</sup> BP 4.12, ¶10.

<sup>349</sup> Also, BP 10.00, Annex E, ¶6 says that “The main text provides sufficient information to enable the EDs to decide on the project” and continues in ¶22 by stating that “The MOP summarizes relevant project risks, both project-specific issues (e.g., commodity prices or the institutional capacity of the agency implementing the project) and other risks (e.g., broader issues that bear on the likelihood of project success—such as the macroeconomic policy framework, including exchange rate arrangements and the



## 2. Findings

316. As has been discussed above, the Project documents presented to the Board at the time of Project Approval included incorrect estimates of livelihood loss. Management did not fully inform the Board of the RAP's methodological problems or lack of sufficient socio-economic information on impoverishment risks as called for in OP 4.12, Annex A.
317. In summary, **the Panel finds that Management failed to provide complete information to the Board regarding the Sponsor's limited capacity to acquire land in accordance with the standard set in OP 4.12, the Project's lack of sufficient baseline data and the lack of a sustainable benefit plan for the displaced people. This was inconsistent with OMS 2.20 on Project Appraisal and OP 4.12 on Involuntary Resettlement.**

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budgetary stance and political or institutional/administrative sustainability). The MOP summarizes the results of sensitivity analysis.”

## Chapter Four

### Environmental Issues -- Analysis of Compliance

#### A. The Project's Environmental Assessments (EA)<sup>350</sup>

317. **Requesters' claims:** The Requesters claim that the Bank failed to follow its Policies and Procedures in the preparation of the Environmental Impact Assessment (EIA). They state that, in contravention of Bank Policies, *"the overwhelming majority of our people were not consulted during the preparation of the Environmental Impact Assessment."*<sup>351</sup>
318. The Requesters also assert that they did not have access to the EIA. When they visited the Badagry and Olorunda local council secretariats in January 2004 to comment on the EIA, the EIA was not available. They understand that the EIA is now available on the internet, but assert that the EIA is still difficult to access and understand given the volume of the document, the lack of internet access in their area and the low literacy level in their community. The Requesters add that *"it would have been helpful if relevant portions of the large documents had been reproduced in Yoruba, the language commonly used in our communities, and distributed to impacted communities."*<sup>352</sup>
319. The Requesters claim that the scope of the EIA was too narrow and should have included the existing Escravos-Lagos Pipeline System (ELPS) to which the WAGP will be linked. They consider the ELPS to be unsafe because of its history of poor maintenance and accidents, including fatal gas explosions and leaks that have occurred in other areas of Nigeria. They are worried that the ELPS *"will source the WAGP pipeline."*<sup>353</sup> Because of that link, the Requesters believe that an EIA for the ELPS is necessary to determine the Project's environmental impacts. The Requesters fear that *"the unsafe state of the Escravos-Lagos Pipeline implies a serious danger for the safety of the West African Gas Pipeline and all who live in its proximity."*<sup>354</sup> In addition, they state that they *"have been told that there is an emergency response and contingency*

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<sup>350</sup> According to the Bank's Environmental Assessment Policy, 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, environmental audit, hazard or risk assessment, and environmental management plan (EMP). EA applies one or more of these instruments, or elements of them, as appropriate."*

<sup>351</sup> Request, p. 5.

<sup>352</sup> Request, p. 6.

<sup>353</sup> Request, p. 6.

<sup>354</sup> Request, p. 7.

*plan to minimize impacts of disasters, but [they] are totally unaware of its content or adequacy.”*<sup>355</sup>

320. **Management Response:** According to Management, the EIA concluded that the Project would not cause major impacts in Nigeria and that impacts would be limited to the Project’s immediate vicinity.<sup>356</sup> Management supports this assertion by citing an Independent Monitoring Report prepared for WAPCo in December 2005.<sup>357</sup> Management claims that the EIA for the WAGP covers both pipeline safety issues and the upstream gas source.<sup>358</sup>
321. As to the Requesters’ concerns regarding the scope of the EIA, Management states that the Bank did not include the ELPS in the EIA because Management determined the ELPS was not a part of the Project’s area of influence, as defined in OP 4.01, Annex A. According to Management, the main reasons for this determination were that the ELPS, which has been in operation since the early 1990’s, would not be subject to any changes as a result of the implementation of the WAGP and is neither owned by WAPCo nor dependent on the WAGP.
322. Management claims that an environmental audit would be a more appropriate instrument for an existing facility. It cites an audit which WAPCo conducted in the form of an ELPS Integrity Study, which concluded that the ELPS would have adequate pipeline capacity for the WAGP and which described the ELPS pipeline as being in overall good condition. Management also claims that the communities the Bank consulted did not raise issues about the safety of the ELPS, “*probably because it is sufficiently distant from any of the communities listed in the Request.*”<sup>359</sup>
323. **Bank Policies:** Bank Policy OP 4.01 requires environmental assessment of projects proposed for Bank financing in order to assess the project’s potential environmental risks in an integrated way and to aid in decision-making. According to OP 4.01, the EA should take into account “*the natural environment (air, water, and land); human health and safety; social aspects (involuntary resettlement, indigenous peoples, and physical cultural resources); and transboundary and global environmental aspects.*”<sup>360</sup> In assessing the natural and social aspects, the EA should consider “*the area likely to be affected by the project, including all its ancillary aspects, such as power transmission corridors, pipelines.*”<sup>361</sup> Depending on the type, location, sensitivity, and scale of the project, the Bank categorizes projects as Category A (likely to have

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<sup>355</sup> Request, p. 7.

<sup>356</sup> Management Response, Annex 1, No. 1.

<sup>357</sup> Management Response, Annex 1, No. 1.

<sup>358</sup> Management Response, Annex 1, No. 3.

<sup>359</sup> Management Response, Annex 1, No. 3.

<sup>360</sup> OP 4.01, ¶3.

<sup>361</sup> OP 4.01, Annex A, ¶5 (“Project Area of Influence”).

“significant adverse environmental impacts”),<sup>362</sup> Category B (“potential adverse environmental impacts”),<sup>363</sup> Category C (“minimal or no environmental impacts”),<sup>364</sup> or FI (if the Bank uses a financial intermediary). Depending on the project, a range of EA instruments may be used, including an EIA, regional or sectoral EA, environmental audit, or others.<sup>365</sup>

324. For Category A projects, the Borrower is required to consult affected groups and NGOs at least twice in order to address EA-related issues that may affect them. The Borrower must provide relevant material, such as draft EAs, before consultation “in a form and language that are understandable and accessible to the groups being consulted.”<sup>366</sup> More specific policy requirements will be discussed in the paragraphs below.
325. **Facts and Findings:** Six documents report the EIAs made for the WAGP. In October 2004 four country specific EIAs, one each for Ghana, Togo, Benin, and Nigeria; and a Regional Assessment (which is essentially a consolidation of the four country studies)<sup>367</sup> were released. A Risk Assessment (or environmental audit) of the Escravos-Lagos pipeline, in the form of an Integrity Review,<sup>368</sup> was also undertaken but not placed in public domain.<sup>369</sup> Independent experts not associated with the Project prepared all these documents.<sup>370</sup> There is documentary evidence that senior bank staff from Washington, DC gave guidance to WAPCo and their consultants in both the planning and execution of the EIA studies and that they insisted that the EIAs conform to the Bank’s Safeguard Standards.<sup>371</sup>

## 1. Documentation

326. According to OP 4.01, Annex B, paragraph 2, “the EA report should include the following items...(a) Executive Summary...(b) Policy, legal, and administrative framework...(c) Project description...(d) Baseline data...(e) Environmental

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<sup>362</sup> OP 4.01, ¶8 (a).

<sup>363</sup> OP 4.01, ¶8 (b)

<sup>364</sup> OP 4.01, ¶8 (c)

<sup>365</sup> OP 4.01, ¶7. See also Annex A, providing definitions of these instruments.

<sup>366</sup> OP 4.01, ¶15.

<sup>367</sup> The Regional Environmental Impact Assessment contains 19 detailed Appendices covering specific topics, *inter alia*, Baseline Studies, Records of Stakeholder Consultations, Air Pollution, Greenhouse Gas Emissions, Natural Gas Sources, Hazard Identification, Qualitative Risk Assessment, Health Safety and Environment Management Plans. It is entitled Regional Final Draft EIA Rev 1, June 2004.

<sup>368</sup> Penspen, “Independent Integrity Review of Escravos-Lagos Gas Pipeline, ELPSIS Phase 1,” July 2001. See also Penspen, “Escravos- Lagos Pipeline System PS1-PS2 36” Pipeline Integrity Review and Defect Assessment Report,” May 2003 and PENS PEN, “Escravos -Lagos Pipeline System Warri-PS1 36” Pipeline Integrity Review and Defect Assessment Report,” May 2003, discussed below.

<sup>369</sup> The EA Reports do not include elements of the Integrity Review. This issue is discussed in more below.

<sup>370</sup> OP4.01 ¶4.

<sup>371</sup> Consolidated Written Comments on the WAGP Draft Regional Environmental Impact Assessment, January and February 2004; Written Comments on Draft EIAs for Nigeria, Ghana, Togo and Benin, February 2004. See Annex 3 of Management Response.

*impacts...(f) Analysis of alternatives...(g) Environmental management plan (EMP)...(h) Appendixes.”*

327. The EIA documents provide the required Executive Summaries, set out the relevant policy, legal and administrative frameworks; describe the project comprehensively; provide baseline data; assess both positive and negative impacts; analyze alternatives; and outline measures to mitigate and monitor potential impacts. **The EIA documents include the elements of Annex B of OP 4.01 Content of Environmental Assessment Report for a Category A Project.**

## **2. Categorization/ Screening**

328. As mentioned above, depending on the type, location, sensitivity, and scale of the project, the Bank categorizes projects. Scrutiny of the Regional and Nigerian EA documents shows them to be of good standard and to meet the requirements of OP 4.01. **The Project was correctly categorized as a Category A project, and as the Project involves four countries a consolidated “Regional Assessment” was appropriate.**

## **3. Independent Advisory Panel of Specialists**

329. OP 4.01 provides that for Category A projects that are highly risky or contentious, or involve serious and multidimensional concerns, the Borrower should normally engage an independent advisory panel of internationally recognized specialists. The Advisory Panel advises on, all aspects of the project relevant to the EA, including the terms of reference for the EA, key issues and methods for preparing the EA, recommendations and findings of the EA, and others.<sup>372</sup> Although steps were taken to constitute the Advisory Panel, there were extensive delays. The Advisory Panel undertook its first field visit in August 2007.
330. There is no evidence that the independent advisory panel of internationally recognised environmental specialists was constituted during the planning and design phases of the Project, as advised in paragraph 4 of OP 4.01. Although steps have been taken to constitute the Advisory Panel subsequent to planning and construction, as of July 2007 the Inspection Panel was informed that the full panel had yet to meet. **The Panel finds that the failure to establish the independent Advisory Panel during the planning and design stages of the Project, and the delay in its establishment during Project implementation, did not comply with OP 4.01.**

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<sup>372</sup> OP 4.01, ¶4. 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.*”

#### 4. Analysis of alternatives

331. OP 4.01, Annex B, paragraph 2(f) requires that the EIA “*Systematically compares feasible alternatives to the proposed project site, technology, design, and operation—including the ‘without project’ situation—in terms of their potential environmental impacts; the feasibility of mitigating these impacts; their capital and recurrent costs; their suitability under local conditions; and their institutional, training, and monitoring requirements. For each of the alternatives, [the EIA] quantifies the environmental impacts to the extent possible, and attaches economic values where feasible. [The EIA] states the basis for selecting the particular project design proposed and justifies recommended emission levels and approaches to pollution prevention and abatement.*”
332. The analysis of alternatives is handled comprehensively: chapter 3 of the Regional Assessment deals exclusively with project alternatives while chapter 4 deals with alternatives in project design. Fourteen project alternatives were analysed, eight main alternatives and six variations of these. The first set of alternatives examined alternative power generation in Ghana, Benin and Togo. The potential for generating electricity from hydroelectric sources, coal, a combination of coal and gas, nuclear, wind, and photovoltaics were considered. The second set of alternatives looked at importation of electricity from Côte d’Ivoire, Burkino Faso and Nigeria. Finally, alternatives for the transportation of gas were compared: using Ghanaian and Beninise gas; natural gas importation from Côte d’Ivoire; Liquid Natural Gas; Compressed Natural Gas; and pipeline routes from Nigeria to Benin, Togo, and Ghana.
333. Section 3.3 of the Regional Assessment provides a synopsis of a draft of the World Bank’s West African Regional Energy Sector Alternatives Analysis. Although this World Bank study is primarily an Economic and Financial Analysis, the criteria used to filter alternatives were: technical feasibility; presence of physical or resource constraints; cost-effectiveness of alternatives; financial, regulatory, security or stakeholder resistance barriers; environmental and social impacts.
334. Section 3.4 describes the methodology used for analysing project-level alternatives. A qualitative approach was used to outline the advantages and disadvantages of each alternative against a set of explicit criteria. These discussions are supplemented by a semi-quantitative (ordinal) ranking of the alternatives based on performance using the specified criteria. Although not mathematically rigorous this approach does provide a transparent and readily accessible comparison of the alternatives across a range of assessment criteria. These criteria were: effectiveness of bringing Nigerian natural gas to market; effectiveness of providing energy to Benin, Ghana and Togo; regional stakeholder acceptance; technical feasibility; capital and operating costs; reduction in greenhouse gas emissions; biophysical impacts of construction;

land take; human displacement; social impacts of construction; health impacts of construction. This analysis shows the pipeline option outranks or equals alternative power generation and delivery options across all criteria. It also shows that the pipeline option equals or outranks alternative natural gas export options.

335. The pipeline is shown to rank lower than the “No-project alternative” (which envisages expansion of oil-based power generation in Benin, Ghana and Togo) in terms of the environmental and social impacts of construction, land take and displacement and social and health hazards during construction, but to be far superior in terms of economic benefits, greenhouse gas reduction, bringing Nigerian gas to market and effective provision of energy to the neighbouring West African countries. The analysis shows that the environmental and social impacts of the pipeline are relatively minor but that the economic and greenhouse gas reduction benefits are great. A pipeline is thus preferred to expansion of oil based power generation in Benin, Ghana and Togo.
336. A similar situation occurs for the renewable fuels alternatives. The aggregate environmental and social costs of the renewable fuel alternatives are not clearly different from those of the pipeline but the pipeline is far superior in terms of economic benefits, greenhouse gas emissions, technical feasibility, bringing Nigerian gas to market and provision of energy to neighbouring countries. The pipeline is thus deemed preferable to the renewable fuels option.
337. The report compares three options for routing a pipeline from Nigeria to Ghana.<sup>373</sup> The options examined were: a 750 kilometers overland route traversing west from Nigeria across Benin, Togo and Ghana; an undersea pipeline from the Niger Delta to Ghana with spur lines to Benin and Togo; and a hybrid onshore route through Nigeria and an undersea route to Ghana with spur lines to Benin and Togo. This comparison is not as rigorous or convincing as the analysis of other project alternatives. The only clear-cut benefit of the hybrid onshore/offshore route is its lower cost of construction. The environmental and social impacts of the offshore route are shown to be slightly lower than the preferred hybrid route but no detailed cost-benefit analysis is made to establish that the preferred hybrid route does indeed produce the least-cost alternative. This is a significant weakness in the analysis of project alternatives and the Bank does not appear to have drawn this shortcoming to the attention of the proponent’s or the consultants preparing the project EA reports.
338. Following the selection of the hybrid onshore/offshore pipeline alternative a detailed study of design alternatives is presented in Chapter 4 of the Regional Assessment. The criteria used for evaluation were: public safety, biophysical impact, social impact, stakeholder acceptance, best practical technology, feasibility and costs of construction, operation and maintenance, future use of gas in West Africa, monitoring and finally, institutional factors. Four routes in

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<sup>373</sup> Regional EIA, p. 4-8 to 4-12.

the vicinity of Lagos were considered, one to the east and three to the west. Various design options for facilities in Benin, Togo and Ghana (not relevant to the Request) were also examined. With respect to construction, the alternatives of leaving the undersea pipeline exposed on the seafloor or of burying it were considered, as were the methods of construction to be applied in wetlands and for lagoon and shoreline crossings. Alternatives for the location of the ancillary weight coating plants, marshalling yards, and concrete supply for the compressor station and for construction camps were all considered. For project operations alternatives relating to liquid storage tanks (above or below ground), waste management, sanitary wastewater, storm water, and power and water supplies were considered and selections justified.



Picture 5: Pipeline with Concrete Coating for Swamp Conditions

339. **The OP 4.01 requirement that alternatives be evaluated has been met. However, the lack of a full economic evaluation of the alternative offshore pipeline route for the Nigerian section is a significant shortcoming and is not consistent with OP 4.01.**



## 5. Disclosure of EA and Consultation

340. For Category A projects, the Borrower is required to consult affected groups and NGOs at least twice in order to address EA-related issues that may affect them. The Borrower must provide relevant material, such as draft EAs, before consultation “*in a form and language that are understandable and accessible to the groups being consulted.*”<sup>374</sup>
341. The Requesters raised concerns regarding stakeholders’ access to Project information. Furthermore, FoE-Ghana’s supporting letter states that Ghana’s Energy Commission had raised “*major concerns regarding gas pricing benefit sharing and the project’s long term economic benefits to Ghana.*” FoE-Ghana asserts that these concerns had not been taken into account during the consultation process and adds that “*the economic and financial analysis of the project were [sic] never disclosed as initially promised.*”
342. In its Supplemental Management Response, Management states that an open public forum was held in Accra in September 2004 specifically to disclose the results of the economic analysis of the Project and provide all interested parties, including Ghana’s Energy Commission, an opportunity to provide input. Management adds that the Energy Commission provided its input through its consultant.
343. A summary of the Economic and Financial Assessment of the WAGP, dated September 23, 2004, prepared for the Bank, concluded that “*the demand projections are prudent; demand in excess of projection will benefit all participants; the viability of the project is assured in the event of underachievement.*” This Assessment further concluded that “*the net economic and financial benefits are significant and the distribution of these benefits is broadly equitable*” and that “*the balance of risk and reward is appropriate for a project of this nature in this location, and the contractual framework is consistent with practice for financing cross-border projects.*”<sup>375</sup>
344. The EA documentation is all of good quality and it is written in sound technical English, but requires a high degree of education to be fully comprehended. The EIA reports were made available to the public and to stakeholders as required by the OP 4.01.<sup>376</sup> However, no documentation has been seen that would meet the OP 4.01 paragraph 15 requirement that “*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*” [emphasis added]. Similarly, the requirement of paragraph 16 of OP 4.01 appears not to have been met. This states that “*the borrower provides for the*

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<sup>374</sup> OP 4.01, ¶15.

<sup>375</sup> IPA Energy Consulting, An Economic and Financial Assessment, September 23, 2004.

<sup>376</sup> Management Response, ¶36.

*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."*

345. The date, location, type of event, target group, purpose of event, and issues raised during public and stakeholder interactions are well documented.<sup>377</sup> These are summarized as issue 2 in Annex 1 of Management's response. The number of persons attending the events and the actions taken pursuant to concerns raised are not recorded. The issues recorded are overwhelmingly questions related to uncomplicated information concerning the pipeline, compensation payments and community development programmes. Affected communities appear not to have been provided with understandable relevant materials prior to these meetings. Only a small proportion directly addresses the Environmental Assessments or raise complex arguments that would not have been covered in simple informative documentation.
346. For the existing upstream Escravos-Lagos pipeline Management considered that a risk assessment, as allowed for in paragraph 7 of OP 4.01, to be the correct choice of assessment instrument. Further discussion over the choice of an environmental audit, in the form of a risk assessment, as an EA tool is provided further below. Nevertheless, **the apparent non-disclosure of this assessment and the fact that its findings and recommendations are not taken up in the Environmental Assessment Reports is not in accord with paragraphs 15 and 16 of OP 4.01.**
347. Although many meetings were held with communities and stakeholders the adequacy with which they were prepared to engage meaningfully in the consultation process must be questioned. **The requirement of OP 4.01 paragraph 15 that disclosure be in a form and language that is understandable to the groups being consulted has not been met.**<sup>378</sup>

## **6. Project Area of Influence - Potential Impacts Upstream of WAGP**

348. As noted earlier, according to OP 4.01's paragraph 5 of Annex A, the EIA should include *"the area likely to be affected by the project, including all its ancillary aspects, such as power transmission corridors, pipelines, ... The area of influence may include, for example, (a) the watershed within which the project is located; (b) any affected estuary and coastal zone; (c) off-site areas required for resettlement or compensatory tracts."*

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<sup>377</sup> Regional EIA, Annex 5-D.

<sup>378</sup> In this context "language" does not mean Mother Tongue (e.g. Yoruba), but to literary style, wording and expression. The Inspection Panel was told by project communications personnel, and sought and received independent verification, that the vast majority of literate persons in Nigeria are more likely to read and write English than their Mother Tongue. This is attributed to all Nigerian schooling being in English and the local tradition of using Mother Tongue as a means of oral and not written communication.

349. Management Response claims “*The Bank spent considerable time in discussions on the ELPS in order to decide whether it was a part of the project’s area of influence and thus should be included in the scope of the EA.... ELPS has been in operation since the early 1990s. It would not be subject to any changes as a result of the implementation of WAGP. It has substantial customers other than WAGP and does not depend on WAGP for its continued operation. The Bank therefore concluded that, based on (a), (b) and (c) of the definition, ELPS was not a part of the project’s area of influence.*”<sup>379</sup>
350. Although the WAGP is not responsible for the operation of the existing Escravos-to-Lagos pipeline, both the extraction of gas and the operation of the existing ELPS are essential for gas to flow through the WAGP and they are thus integral to the WAGP initiative. The companies that hold WAPCo shares also control both the ELP and the gas sources in the western Delta. Whether or not the WAGP should be treated as an entity separate from ELPS and the sources of gas is thus arguable.
351. In this context, the Panel first examined the question of whether and to what extent the Project’s “*area of influence*”, within the meaning of OP 4.01, extends “upstream” of the WAGP facility.

▪ **Induced or Secondary Impacts**

352. The Panel notes that the Regional EIA and the Nigeria EIA for the Project properly identifies the possibility that WAGP could induce environmental and socioeconomic secondary impacts both “upstream” and “downstream” of the Project.<sup>380</sup> It notes, among other things, that upstream of the Project “*industry may increase oil and gas development in order to supply additional natural gas through WAGP.*”<sup>381</sup>
353. The Regional EIA contains details on sources of supply for WAGP gas “*and the associated facilities upstream.*”<sup>382</sup> It states that secondary upstream development impacts induced by WAGP “*would occur in Nigeria, since the source of the natural gas is Nigeria.*”<sup>383</sup>
354. The EIA notes that such secondary upstream development impacts would be minimal for the first 5 to 10 years of the project since there are already oil and gas facilities to provide the initial demand of 140MMscf/day, and even up to 200MMscf/day.<sup>384</sup> With respect to the ELPS pipeline in particular, it is

<sup>379</sup> Management Response, ¶51.

<sup>380</sup> Regional Final Draft EIA rev. 1, p. 6-81.

<sup>381</sup> Regional Final Draft EIA Rev 1, June 2004 (the “Regional EIA”), p. 6-81.

<sup>382</sup> Regional EIA, p. 6-82.

<sup>383</sup> Regional EIA, p. 6-82.

<sup>384</sup> The Regional EIA states that “*since there are already oil and gas facilities in place to provide the initial demand of 140MMscfd. Even as demand increases over time, there are facilities in place to provide for up to 200MMscfd, with no new wellhead or facility development.*” Footnote indicates that minor equipment

indicated in technical data presented in Appendix 2A-2 of the Regional EIA that the ELPS pipeline has the capacity to deliver gas to the WAGP to meet gas demand forecast up to a certain level for the next 5 to 10 years without any modifications being necessary.<sup>385</sup>

355. Beyond this, however, the EIA states that if the demand for gas increases over time so that the WAGP is transporting more than 200MMscf/day, several types of upstream development impacts could occur. These include:

- Upgrades or line repairs to the ELPS
- Recompletion of existing wells
- Augmenting surface facilities to collect, process and transport the gas
- Drilling new wells in existing fields, and in new fields (with new surface facilities and infrastructure)

The EIA adds the caveat that impact prediction is difficult as market demand and an increasing supply of gas through the WAGP system is not easily forecasted and highly volatile.<sup>386</sup>

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upgrades may occur within existing facility footprints to ensure reliable supply. Regional Final Draft EIA rev. 1, p. 6-82.

<sup>385</sup> The relevant section of this appendix follows: “*the Escravos – Lagos Pipeline System originates in the western Niger Delta with gas supply legs west and south of Warri. The pipeline is owned by NNPC, and operated by its subsidiary Nigerian Gas Company Limited (NGC). The western supply leg (ELPS System-A) comprises 58 km of 20 and 24 inch pipeline from inlet points at Escravos (CNL), Escravos Beach (SPDC), Jones Creek and Odidi (SPDC) and Central Node, and flows to Warri. The southern supply leg (ELPS System-B) is a 30 inch line that flows 32 km from the SPDC plant at Utorogu to Warri. Where the two supply lines join at Warri is the NGC company headquarters and operational center. From Warri, the pipeline continues north and west toward Lagos as a 36 inch line to the Egbin node. From the Egbin node, a 30 inch spur line flows south to meet the demand of NEPA at its electric power plant at Egbin. The main 36 inch line reduces in diameter after the Egbin node to a 24 inch pipeline which flows further west to its terminus at Alagbado tee near Itoki in Ogun State where the West African Gas Pipeline project (WAGP) will tie into the ELPS. The total length of the Warri to Alagbado tee line (ELPS System C) is 380 km. The ELPS pipeline which is designed to the limit of ANSI [American National Standards Institute] Class 600 at a pressure of 100 bar is capable of delivering 900 MMscfd of gas out of Warri without compression. The demand on the main Lagos trunkline (System C) at the moment is of the order of 365 MMscfd which represents about 40 % capacity utilization. **The pipeline system will not need to be upgraded or modified with additional installation of equipment or facilities to meet the WAGP gas demand of up to 200 MMscfd forecasted within the next 5-10 years** [Emphasis in the original]. Even with the addition of the full WAGP demand of 200 MMscf, capacity utilization on the main Lagos trunk line would increase to about 63%, which still provides a significant capacity margin for additional domestic growth before the addition of compression facilities is needed. The WAGP is therefore not expected to generate any additional burden or impact on the ELPS since no capacity upgrade or major intervention is required to meet both WAGP and growing Nigerian market demands.” Regional EIA, Appendix 2A-2, p. 2A-2-12.*

<sup>386</sup> Regional Final Draft EIA Rev 1, p. 6-82. It further states that quantifying the benefits and impacts of any potential, secondary upstream development is beyond the scope of the EIA, but adds that comprehensive programs are in place already to mitigate potential operating risks associated with oil and gas production (noting examples). See pp. 6-82 – 6-83. See also PAD, p. 12 (noting expected need, after about five years, to upgrade gas gathering systems and possibly gas treatment facilities upstream of the ELPS in the oil production areas of the Niger delta and elsewhere).

356. By comparison, the Integrity Review of the ELPS, discussed in more detail below, found that subject to final verification by “intelligent pigging” (see below), the key pipelines on the ELPS “*will be able to support the gas requirements of the Nigerian domestic market and WAGP for the projected 20 years life of the system.*”<sup>387</sup> In contrast to the scenario noted in the Regional EIA, this latter conclusion suggests that the WAGP would not have an induced effect on the ELPS itself during its projected life-span.
357. As suggested by the above, the Project documentation is mixed on this question of whether the WAGP might contribute, at some point, to a need to upgrade the ELPS and related upstream social and environmental impacts. This brings into question the stated rationale of Management that the ELPS is not within the Project area of influence because it would not be subject to any changes as a result of WAGP.<sup>388</sup>
358. The Panel also observes that the Integrity Study of the ELPS pipeline does not cover the potential risks posed by eventual upstream activities in the gas supply area. In addition, while the Regional EIA flags these issues, it states that quantifying the benefits and impacts of any potential, secondary upstream development “*is beyond the scope of this EIA.*”<sup>389</sup> The EIA adds that any new facilities would be subject to approval by the relevant national authorities according to national regulations.
359. **The Panel notes the importance, under Bank Policy, of examining impacts linked to the WAGP that may occur both upstream and downstream of the new pipeline, including those that relate to the development of new areas of production and transport. The Panel finds that these are within the Project area of influence within the meaning of OP 4.01. The Regional EIA properly flags these issues, but an analysis of their nature and scope has not yet been carried out.**
360. The Panel also notes that in various Project documents, Bank Management itself makes a linkage between the WAGP and the upstream reduction of gas flaring, in this case to highlight a projected benefit of the Project.<sup>390</sup> The Panel considers that this reinforces the view that **the Project and associated facilities and supply areas should be viewed as an inter-connected system for purposes of environmental assessment, considering both potential benefits and adverse impacts. The Panel is concerned that Project documentation was not consistent in defining the Project’s area of influence.**

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<sup>387</sup> Integrity Study, p. 114 (Conclusions).

<sup>388</sup> As noted above, Management contends in its Response that the ELPS is not within the Project’s area of influence and therefore should not be included in the scope of the EA. One of the basic reasons for this, according to Management, is that the ELPS “*would not be subject to any changes as a result of the implementation of WAGP.*” Response, p. 16, ¶51

<sup>389</sup> Regional EIA, p. 6-82.

<sup>390</sup> The topic of gas flaring is addressed below.

▪ **EA Instrument for the ELPS**

361. Management indicates, in its Response, that an Environmental Audit is an appropriate instrument to apply to an existing facility (such as the ELPS), rather than an EIA. Management further states that WAPCo carried out an audit, in the form of the ELPS Integrity Study.<sup>391</sup>

362. Annex A of OP 4.01 defines environmental audit as follows:

*Environmental audit: An instrument to determine the nature and extent of all environmental areas of concern at an existing facility. The audit identifies and justifies appropriate measures to mitigate the areas of concern, estimates the cost of the measures, and recommends a schedule for implementing them. For certain projects, the EA report may consist of an environmental audit alone; in other cases, the audit is part of the EA documentation.*

363. The Panel notes that the Integrity Study focuses on the existing ELPS infrastructure and its condition. It identifies the ability for the two key stations, in Warri and Oben. The Study, as noted above, found that the key pipelines on the ELPS “*will be able to support the gas requirements of the Nigerian domestic market and WAGP for the projected 20 years life of the system.*”<sup>392</sup> It also identifies areas of concern in the existing system and recommends “*corrective measures*” in one section and the need to implement other “*various recommendations*” contained in 9 other sections of the Study. This is in accordance with the Policy requirement of an Environmental Audit to identify and justify “*appropriate measures to mitigate the areas of concern.*” (see also discussion of Safety Issues, below).

364. **The Panel finds that there is support for the view of Management, in its Response, that an Environmental Audit is an appropriate EA instrument for the ELPS, given that the ELPS pipeline is an “existing facility” (in operation since the early 1990s), and noting also the technical data regarding its capacity to deliver gas to the WAGP.**

365. Under OP 4.01, such an EA instrument may be included as part of the overall EA documentation. As noted above, however, the Integrity Study was not made part of the EA documentation and apparently has not been publicly disclosed. **This non-disclosure has impeded the ability of Requesters and members of the public from being informed of, and providing comments on, this important and controversial subject.**

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<sup>391</sup> Management Response, p. 24.

<sup>392</sup> Integrity Study, p. 114 (Conclusions).

## B. Safety Issues

366. **Requesters' claims:** While the EIA identified the importance of an emergency response system, FoE-GH Requesters question whether local people will be able to utilize and understand such a system in the case of an accident. FoE-GH cites several instances of oil and gas related accidents and doubts that Ghana has the capacity to respond to such accidents.
367. **Management Response:** Regarding safety issues, Management asserts that WAPCo conducted a community meeting in February 2006 attended by residents from at least three of the communities that submitted the Request. Additionally, Management claims that WAPCo issued a system-wide Emergency Response Plan on May 19, 2006, and intends to prepare site-specific response plans.
368. **Bank Policies:** The Bank Policy on Environmental Assessment requires not only identification and assessment of environmental impact, but also that the EIA “*recommends any measures needed to prevent, minimize, mitigate, or compensate for adverse impacts and improve environmental performance*”<sup>393</sup> for a Category A project. If the Borrower has “*inadequate legal or technical capacity to carry out key EA-related functions,*”<sup>394</sup> including mitigatory measures, the project should include measures to strengthen capacity.

### 1. Safety of the Escravos-Lagos Pipeline

369. WAPCo will connect the existing ELPS pipeline to the new WAGP system. As described above, to ensure security of supply and safety of the linked systems, WAPCo requested an independent engineering study to determine the overall integrity of the ELPS.<sup>395</sup> The study included a review of the ELPS initial design, construction records, commissioning records, operating history, operating and maintenance practices, and current condition. An integrity review and ‘fitness for purpose’ assessment is part of this study.
370. In terms of fitness for purpose the Independent Integrity Review<sup>396</sup> concludes:

*that subject to final verification by intelligent pigging, the key pipelines on the ELP system will be able to support the gas requirements of the Nigerian domestic market and WAGP for the projected 20 year life of the system.*

*Similarly, the two key stations on the system, Warri and Oben, appear to be in reasonably good condition and subject to basic wall thickness checks being*

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<sup>393</sup> OP 4.01, ¶8.

<sup>394</sup> OP 4.01, ¶13.

<sup>395</sup> Penspen, “Independent Engineering Integrity Review of the Existing ELP System: Tiger Team Report,” December 2000.

<sup>396</sup> Penspen, “Independent Integrity Review of Escravos-Lagos Gas Pipeline, ELPSIS Phase 1 Final Report,” July 2001.

*completed and yielding satisfactory results, should also meet the requirements for 20 year life.*

*The above conclusions are conditional on NGC [Nigeria Gas Company] completion of the corrective actions specified (...) and the implementation of the various recommendations.*<sup>397</sup>

371. The Independent Integrity Review of the ELPS found that: *“it appears that budget constraints within NGC have adversely affected the proper maintenance of the pipeline and associated installations. Various other factors, such as the fairly recent community problems and the susceptibility of remote swamp locations to varying degrees of vandalism, have added to the problem and have adversely impacted on the maintenance and upkeep of the system.”*<sup>398</sup> Specifically the Integrity Review found that *“most of the mechanical plant is in reasonable condition and any problems should be solvable with relatively minor maintenance input. Main problems are valve leaks to atmosphere, valves passing, actuator controls missing etc. Generally the piping, valves, vessels, traps, pumps, flare etc appear externally to be in good physical condition.”*<sup>399</sup>
372. The Integrity Review found several shortcomings in the instrumentation, communication, electrical supply, cathodic protection, ELPS pipeline ROW maintenance, and operational safety systems of the ELPS pipeline. This led to internal inspection of most sections of the ELPS using intelligent pipeline integrity gauges called pigs – electronic devices inserted into pipelines to detect defects. Additional reports outline optimised repair strategies for all sections of the ELPS.<sup>400</sup> These strategies include routine intelligent pigging to examine the interior of the pipelines for corrosion and defects, rectification of the externally observed shortcomings, training of NGC staff, stockpiling of repair equipment and materials, acquisition of, or rapid access to, a suitable barge for repair of pipelines in the Niger Delta swamp area. Locating and retaining a specialist repair company that can offer a rapid response for repairs in the Niger delta swamp.

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<sup>397</sup> Penspen, “Independent Integrity Review of Escravos-Lagos Gas Pipeline, ELPSIS Phase 1 Final Report,” July 2001, p. 114. “PIG” is the acronym for Pipeline Inspection Gauge. A pig is a tool inserted into a pipeline for a specific purpose. Some pigs separate pipeline products, some scrape and clean wax from pipeline walls, some measure the diameter and deformity of the pipeline or detect anomalies, points of weakness or leakage. “Intelligent pigs” are tools which inspect the pipeline with various sensors—physical, electronic or magnetic—and record the data on electronic recorders within the pig for later analysis. An intelligent pig is sometimes called a “smart pig”.

<sup>398</sup> Penspen, “Independent Integrity Review of Escravos-Lagos Gas Pipeline, ELPSIS Phase 1 Final Report,” July 2001, p. 13.

<sup>399</sup> Penspen, “Independent Integrity Review of Escravos-Lagos Gas Pipeline, ELPSIS Phase 1 Final Report,” July 2001, p. 13.

<sup>400</sup> Penspen, “Escravos- Lagos Pipeline System PS1-PS2 36” Pipeline Integrity Review and Defect Assessment Report,” May 2003 and PENS PEN, “Escravos -Lagos Pipeline System Warri-PS1 36” Pipeline Integrity Review and Defect Assessment Report,” May 2003.



373. The following extract from the Final Report summarizes the general recommendations that have been made to ensure safety on the Escravos-Lagos Pipeline System:

*16. Safety and Loss Prevention*

*16.6.1 Recommended Actions General*

*1. A safety management system must be put in place, to cover all NGC operations. This must be an integral part of NGC's overall management philosophy.*

*The main elements of the safety management system would be:*

- Leadership and administration*
- Planned inspections*
- Task analysis and procedures*
- Accident and incident investigation*
- Emergency preparedness*
- Training for employees*
- Programme evaluation systems*
- Group meetings*
- General promotion*
- Off-the-job safety*

*This would lead to a general improvement in Safety and Loss Control and bring NGC to a Safety 'base line' for their operations. It would enable safety, accidents and incidents to be measured and audited against the established base line.*

*In order to achieve this NGC management must put in place a realistic budget to support this critical activity.*

*2. An emergency response system must be implemented to cover NGC operations (...).*

*It is recommended that the existing Emergency Response Drill and plans be reviewed with the aim of developing a strategy that will provide an integrated approach to emergency response throughout the NGC organisation.*

*The accepted method to provide emergency response is through the implementation of a Master Emergency Plan. The emergency response team ideally operates from a dedicated operations room and uses a series of check lists, which can be either written or part of a computer based system.*

*The Emergency Response is best evaluated through a series of exercises designed to test specific areas of the emergency plan; this is best carried out by an external organisation.<sup>401</sup>*

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<sup>401</sup> Penspen, "Independent Integrity Review of Escravos-Lagos Gas Pipeline, ELPSIS Phase 1 Final Report," July 2001, p. 101-102.

374. During the Inspection Panel’s July 2007 visit to Nigeria, the team received assurance from the Chevron Manager for Strategic Gas Development that over 70 percent of the ELPS had been subject to intelligent pigging and action to correct deficiencies and that the programme to remediate the ELPS before commissioning of the WAGP is ongoing.
375. The net effect of the new WAGP being connected to the old ELPS is that the latter has been subject to thorough review and inspection, defects have been detected and corrected, and safety and operational systems modernised. **The linkage of the WAGP and ELPS has had the overall effect of improving the safety of the Escravos-Lagos Pipeline.**

## **2. Adequacy of Emergency Response and Contingency Plans with Regard to WAGP**

376. The importance of safety in WAGP operations is set out in its Health, Safety and Environment (HSE) Policy Statement.<sup>402</sup> The HSE states: *“The policy of the West African Gas Pipeline Project Team is to conduct its business in a socially responsible and ethical manner that is intended to ensure safety and protect health and the environment.”*<sup>403</sup> Accordingly, *“safety is a value, not just a priority,”*<sup>404</sup> and that the company seeks to *“integrate safety, health and environmental protection into every aspect of its business activities through comprehensive HSE Management systems & processes.”*<sup>405</sup> Furthermore, *“every task is performed with a concern for the safety of ourselves, our fellow employees, contractors, visitors, customers, and the communities in which we are present.”*<sup>406</sup>
377. Details of project planning to ensure the safety of humans and the environment are set out in Specification WAGP-W-S-SA-0001-0, Environmental Design Basis, April 2003, as well as in Specification WAGP-W-S-SA-0002-01, Loss Prevention Design Basis, April 2003<sup>407</sup> and Specification WAGP-W-S-SA-0004, Risk Management Plan, April 2003.<sup>408</sup> The WAGP Risk Management Programme is set out in Appendix 8-B, Document WAGPWFTA1001, March 2003.<sup>409</sup> From these documents and Inspection Panel discussions with WAGP technical staff<sup>410</sup> it is evident that pipeline safety has been a high priority in the planning, design and operation of the facility.

<sup>402</sup> Regional EIA, Appendix 8-B, “8-1.0 WAGP HSE Policy Statement.”

<sup>403</sup> Regional EIA, Appendix 8-B, “8-1.0 WAGP HSE Policy Statement,” p. 1.

<sup>404</sup> Regional EIA, Appendix 8-B, “8-1.0 WAGP HSE Policy Statement,” p. 2.

<sup>405</sup> Regional EIA, Appendix 8-B, “8-1.0 WAGP HSE Policy Statement,” p. 1.

<sup>406</sup> Regional EIA, Appendix 8-B, “8-1.0 WAGP HSE Policy Statement,” p. 2.

<sup>407</sup> Regional EIA, Appendix 8-B, “8-4.2 WAGP-W-S-SA-0001-0, Environmental Design Basis,” and “8-4.3 WAGP-W-S-SA-0002-0, Loss Prevention Design Basis,” respectively.

<sup>408</sup> To enhance pipeline security details of how risks to the pipeline are being managed have not been made public.

<sup>409</sup> Regional EIA, Appendix 8-B, “8-4.0 Risk Management (Rev 2).”

<sup>410</sup> WAGP Operations Representative, July 17, 2007.

378. WAPCo has prepared an Emergency Response Plan (ERP) that outlines procedures, methods, and guidelines to facilitate response to emergencies that might occur. The plan's first priority is to protect people and the environment and to comply with all requirements set forth in the West Africa Gas Pipeline Regulations. The plan has detailed procedures to minimize the hazards resulting from an Emergency Condition.
379. The ERP defines an Emergency Condition as one that:
- Endangers the safety of people within or working on the pipeline system or presents a physical threat to property, plant, or equipment or the security, integrity, or reliability of the pipeline system.
  - Presents a danger to the environment.
  - Threatens the ability of the operator to safely receive, transport, or deliver gas through the pipeline system.
380. The plan includes sections that deal with gas leakage, fire near or involving a pipeline facility, explosion near or involving a pipeline facility, responses to severe thunderstorms, lightning, flooding and high winds, bomb threats.
381. During the Inspection Panel's visit to Nigeria, it was told that detailed location specific emergency response plans were being finalised and that, before the pipeline carries gas, a series of community meetings will be held to inform persons living near the pipeline of appropriate emergency responses in the case of gas release, fire or explosion.<sup>411</sup> As communities along the northern WAGP route have lived in close proximity to the existing SPDC gas pipeline for many years and are familiar with this pipeline's emergency response plans no resistance to the plans is anticipated.
382. Sound and wide ranging emergency response plans have been compiled but had not as of July 2007 been communicated to communities along the WAGP.<sup>412</sup> **Such emergency response plans will not be effective unless communities in Nigeria, Togo, Benin and Ghana are properly informed of emergency procedures, both orally and via clear, understandable written text in a form that can be retained and readily accessed, before the pipeline becomes operational.**<sup>413</sup>

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<sup>411</sup> WAGP Operations Representative; Community Relations Representatives, July 17, 2007.

<sup>412</sup> The WAGP ROW is taken to include both the main pipeline through Nigeria, the spur lines that convey gas to Togo, Benin and Ghana, and that portion of the main pipeline that leads from the beach-crossing to the Takoradi Power station in Ghana.

<sup>413</sup> This also applies to the need for a clear understandable written text to indicate precisely the various restrictions that are applicable along the WAGP ROW. The ROW restrictions and the Emergency Response advice might well form two parts of a common document. The WAGP ROW Access Policy is contained in the Regional EIA, Appendix 8-B, page 513.

## C. Fishing Issues

383. **Requesters' claims:** 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.
384. 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.
385. **Management Response:** 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.
386. 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.
387. **Bank Policies:** As it considers the environmental risk and attendant mitigation measures, according to OP 4.01, the Bank must examine "*the area likely to be affected by the project.*"<sup>414</sup> The area may include, for example, "*(a) the watershed within which the project is located; (b) any affected estuary and coastal zone; ... and (f) areas used for livelihood activities (hunting, fishing, gathering, agriculture, etc.)*."<sup>415</sup>

### 1. Probable Impact of the Project on Fisheries and Livelihoods of Fishing Communities in Nigeria

388. Both the first and second season Environmental Baseline Surveys<sup>416</sup> contain considerable detail on fish and fisheries along the route of the pipeline. Both onshore and marine fisheries are considered. The fisheries components of the

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<sup>414</sup> OP 4.01, Annex A, ¶5

<sup>415</sup> OP 4.01, Annex A, ¶5

<sup>416</sup> Regional EIA, Annexes 5-A and 5-B.

two environmental baseline studies are thorough. The Nigerian Environmental Assessment documents do assess the effect that the Project may have on fisheries and the livelihoods of fishermen.<sup>417</sup> The Nigerian EA concludes<sup>418</sup> that the residual impact (after application of mitigation measures, such as Horizontal Directional Drilling - HDD) of the WAGP on fishing will be low. Particular attention was paid to Badagry Creek and the need for HDD to avoid trenching across this water body was stressed.

389. During the Inspection Panel's July 2007 visit to Nigeria artisanal fishermen did not express concern about the effect of the WAGP may have on their future livelihoods<sup>419</sup> and only the Ajido fishermen Requesters attribute a decrease in their 2006 catch to WAGP construction activities.<sup>420</sup> The fishermen reported that initially they had had trouble with nets fouling on the newly laid pipeline but that WAPCo had rectified this by burying the pipeline in the affected areas and that they were no longer experiencing any difficulties.
390. Without exception the artisanal Nigerian fishermen interviewed confirmed that fish catches in the Badagry Creek varied on both a seasonal and annual basis: that the best fishing is between February and June and is better in wet years than in dry, also that catches in Badagry Creek had been poor in 2003, 2004 and 2005. All fishermen said that 2007 catches had been normal. Only the Ajido fishermen said they had poorer catches in 2006 than in earlier years, attributing their poor catches to the fact that the pipeline had been drilled under Badagry Creek during the 2006 fishing season.<sup>421</sup> The fishermen expressed no concern that the future livelihood was going to be affected by the Project; the demand of the Ajido fishermen is for compensation for the decreased 2006 fish catch, which they attribute to the project.
391. It is common cause that the nets of the Ajido fishermen were fouled by a greenish-brown substance during the 2006 fishing season and that this occurred at about the time the pipeline was being drilled under the bed of Badagry Creek. The offending substance clogged fixed nets, reputedly causing them to tear in tidal currents, it also prevented throw-nets from sinking.<sup>422</sup> The Ajido fishermen

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<sup>417</sup> Nigeria EIA, Badagry Creek p. 6-73, Beach p. 6-172, and Off-shore p. 6-202, 6-218.

<sup>418</sup> Nigeria EIA, Executive Summary, Table ES-1, p. ES-19 to ES-20.

<sup>419</sup> The team met informally with fishermen between Ajido and Badagry, Nigeria.

<sup>420</sup> This claim is discussed further later in this section.

<sup>421</sup> Management's "Clarifications Regarding Marine Pollution," states that the Badagry Creek HDD was completed on April 12, 2006. "Independent Monitoring Report: Resettlement, Compensation, and Environmental Management Plan Commitments, The West African Gas Pipeline," June 2006, indicates that between March 27 and April 4 (the date of their field visit to the Badagry Creek HDD site is not specified precisely) drilling of the Badagry Creek crossing had not yet commenced. The HDD activity at the Badagry Creek crossing can thus be fixed as occurring during the first two weeks of April 2006. Although requested the contractor's logbook for the HDD operation could not be shown to the Inspection Panel during its July 2007 visit to the HDD site.

<sup>422</sup> A fishing net retailer servicing the Ajido/Badagry fishermen reported that he had experienced no increased demand for fishing nets in either 2006 or 2007 and that he was unaware of there having been any problems in the lagoon.

aver that this fouling was a unique occurrence and has not occurred before.<sup>423</sup> The Ajido fishermen also told the Panel that the problem was not just close to Adjido but was widespread in Badagry Creek and that it had persisted throughout the 2006 fishing season from February to October.<sup>424</sup>



Picture 6: Panel Team Inspecting Fishing Nets and Tools

392. Persons familiar with Badagry Creek waters<sup>425</sup> told the Inspection Team that a green substance discoloured the waters of the Creek for some periods almost every year. Fishermen from Badagry town confirmed this and said that it was frequently necessary for them to wash their nets in “*Omo*” (a commercial

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<sup>423</sup> Panel discussions with Adjido fishermen, July 18, 2007.

<sup>424</sup> This concurs with the dates and distribution given in “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,” January 2007, prepared by Tayo Akeem Yusuf for Friends of the Earth Nigeria and Environmental Rights Action, Nigeria.

<sup>425</sup> The Commander of the Marine Police, Badagry; Personal Assistant to the Director General of the Nigerian Administrative Staff College with 20 years experience of weekly crossings of Badagry Creek waters.

washing powder) to remove the green substance. These descriptions suggest periodic blooms of green algae do affect Badagry Creek.

393. Few scientific studies of the water quality of the Badagry Creek have been made. In the words of the EIA “*Information on the water quality of the coastal waters of West Africa in the study area is relatively scant (...) most of the work relates to water temperature and salinity of the lagoon waters.*”<sup>426</sup> The Nigerian baseline studies conducted for the EA probably constitute the most detailed data available.<sup>427</sup> The following extract from the First Baseline Study relates:

*The low tide water regime was much richer both in chlorophyll a and total chlorophyll content than high tide water (this was based on measurements on Badagry Creek). Based on the mean concentrations of chlorophyll a of the different water bodies in the area ( $2.49 \pm 2.26\mu\text{g/L}$ ) the trophic status of the investigated water bodies can be classified as mesotrophic (i.e. moderately nutrient rich) following the classification of McColl (1972).*

*The much richer levels of chlorophyll c in the non-tidal waters ( $9.34 \pm 0.79\mu\text{g/L}$ ) compared to the tidal water ( $0.16 \pm 0.38\mu\text{g/L}$ ) as well as in high tide waters  $0.55 \pm 0.55\mu\text{g/L}$  compared to low tide waters ( $<0.1 \pm 0.1\mu\text{g/L}$ ) suggest that algae of the division Chrysophyta (i.e. golden algae) and Phaeophyta (brown algae) were the dominant primary producers in those richer waterbodies. Similarly, the preponderance of chlorophyll b in non-tidal waters and low-tide tidal water suggest that Chlorophyta (i.e. green algae) were the dominant primary producers in those waters.*<sup>428</sup>

394. These studies establish the presence of green planktonic algae in Badagry Creek as well as nutrient loads that could support algal blooms, but these would not account for the fouling of fishing nets. The studies make no mention of the presence of filamentous green algae (such as *Spirogyra*) which would cause fouling.
395. A particle size analysis was undertaken on samples that were cut from damaged fishing nets, air dried, pulverised and sieved.<sup>429</sup> This analysis allowed the mass of substance adhering to the nets to be determined but not its biological or chemical composition. The study asserts that the green articles found on the nets are of the same size as bentonite and concludes that this indicates that the sticky green particles on the nets resulted from the bentonite used for the offshore pipeline laying. It also claims that the green coating on the damaged nets was

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<sup>426</sup> Regional EIA, Appendix 5-A, “Environmental Baseline Survey, First Season,” p. 1-49.

<sup>427</sup> Regional EIA, Appendix 5-A, “Environmental Baseline Survey, First Season,” June 2003, Chapter 7, On-shore results, Nigeria; Regional EIA, Appendix 5-B “Environmental Baseline Surveys, Second Season,” Chapter 4, Environmental Characteristics of the Area.

<sup>428</sup> Regional EIA, Appendix 5-A, Section 7.3.3, second paragraph (no page numbers).

<sup>429</sup> Tayo Akeem Yusuf, “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,” January 2007, prepared for Friends of the Earth Nigeria and Environmental Rights Action NGO, Section 2.1.1

due to microbial degradation of the bentonite.<sup>430</sup> Unfortunately no sample of the offending substance was subject to microscopic or microbiological examination or to chemical analysis to determine its identity and none was preserved to allow for later testing. **Precisely what the offending substance was remains unknown.**

396. **According to the Panel expert, the speculation that Bentonite used as drilling lubricant for the HDD operation caused the net fouling is without scientific foundation.** In order for Bentonite to have adhesive qualities a small amount of water must be mixed with a large amount of Bentonite.<sup>431</sup> Volumes of Bentonite many orders of magnitude larger than used for the Badagry Creek HDD would need to be released into the lagoon for it to have formed a sticky sludge affecting the entire lagoon for tens of kilometres on either side of the drill site for many months. Responding to questioning by the Inspection team the WAGP Operations Manager stated that although more Bentonite was used for the Badagry Creek HDD than initially expected there had been no loss of drilling lubricant from the bore and none had contaminated the lagoon. Further, the contamination of nets occurred before (and long after) the HDD operation and can logically thus not be the cause of the net fouling.
397. Once the problem of net fouling had been drawn to the attention of Management in early June 2006, Management had WAPCo investigate the matter and visit the affected fishermen.<sup>432</sup> WAPCo visited the site on June 22, 2006, and on several occasions thereafter and took samples of the offending substance for physical examination. The WAPCo Health, Safety and Environmental Auditors concluded that the substance was organic, a filamentous green algae, which they tentatively identified as a species of *Spirogyra*. That the substance was not subject to detailed examination to establish precisely what it was lies at the root of the ongoing dispute. While it is reasonable for the HSE Auditors to have concluded that the substance was *Spirogyra*, it is not professional for auditors to fail to investigate thoroughly and not to have a problematic unknown substance properly identified. **There is no record as to whether Management briefed WAPCo as to how the incident was to be investigated and whether or not samples of the offending substance were to be analysed. A lesson to be learned is that incidents that may be project related need to be comprehensively and rigorously investigated and documented** so as to establish without doubt whether Bank supported projects are responsible for alleged harm.

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<sup>430</sup> Tayo Akeem Yusuf, "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," January 2007, prepared for Friends of the Earth Nigeria and Environmental Rights Action NGO, Section 2.1.1

<sup>431</sup> A.G. Clem and R.W Doehler, "Industrial Applications of Bentonite," *Proceedings of the Tenth national Conference on Clays and Clay Minerals*, p. 272-283.

<sup>432</sup> Management "Clarifications Regarding Marine Pollution."





Picture 7: Badagry Creek – Panel Discussion with Fishermen

## 2. Probable Impact of the Project on Fisheries and Livelihoods of Fishing Communities in Ghana

398. The Requesters in Ghana claim that an assessment of the Project’s impacts on fisheries should be carried out and affected people along the coastline should be consulted.
399. As mentioned above, both the first and second season Environmental Baseline Surveys<sup>433</sup> contain considerable detail on fish and fisheries along the route of the pipeline. Both onshore and marine fisheries are considered. The fisheries components of the two environmental baseline studies are thorough.
400. **During the Inspection Panel’s July 2007 visit to Ghana neither artisanal fishermen nor fisheries regulators expressed concern about potential negative effects of the WAGP on their future livelihoods.**<sup>434</sup> The fishermen also expressed gratitude for the positive actions being undertaken by the WAPG Community Development Programme to assist Ghanaian fishing communities. The Regional Director of Fisheries placed on record that he *“had absolutely no complaints from either artisanal or commercial fishermen because of the pipeline.”*

## 3. Takoradi Shoreline Erosion

401. Shoreline erosion in the vicinity of the Takoradi Thermal Power Plant was occurring prior to the WAGP pipeline crossing the beach at Takoradi. This erosion was noted in the 1999 Supplementary Environmental Impact Assessment undertaken for power plant expansion, *“it is noted that the coastline*

<sup>433</sup> Regional EIA, Appendices 5-A and 5-B.

<sup>434</sup> The team met formally with fishermen from the Abuaezi, Aboadze and Shama communities near Takoradi, Ghana and with the Regional Director of Fisheries (Western Region), Ministry of Fisheries, Ghana.

*currently appears to be showing signs of erosion by wave undercutting at the shoreline.*<sup>435</sup>

402. To facilitate trenching the pipeline at the Takoradi shore crossing at two rock berms some 10 meters apart and over 50 meters long were constructed from the beach into the Gulf of Guinea. Following construction of these berms the localized erosion of the beach east of the beach crossing received further attention. Two studies were undertaken to address this problem: one commissioned by the offshore contractor and one by the WAPG.<sup>436</sup> These studies led to WAPCo proposing to Ghana's Environmental Protection Agency that the berms be disconnected from the beach by complete removal of all rocks on and close to the beach and lateral spreading of the remaining rocks in deeper water to reduce the berm elevation to mean sea level. It is anticipated that these actions will restore the pre-construction pattern of sediment transport in the vicinity of the Takoradi shore crossing and prevent further localized beach erosion.
403. Although the shoreline erosion poses no threat to the Takoradi Thermal Power Plant a local gravel road and stand of palm trees are threatened. It will thus be prudent for the erosion to be monitored to assess the effectiveness of the measures proposed to contain further undercutting. Should the problem persist physical reinforcing of the shoreline by means of a revetment of concrete, rock or dolosse would be necessary to prevent loss of coastal land margin.

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<sup>435</sup> Jacobs Gibb, Supplementary Environmental Statement Prepared In Support Of Takoradi Thermal Power Plant Expansion Project (T2): Addendum Environmental Report, March 1999.

<sup>436</sup> AY&A Consultants of Accra Ghana were commissioned by Horizon, the off-shore contractors. Moffat and Nichol, marine engineers from the United Kingdom, were commissioned by WAPG.



Picture 8: Panel Visit to Takoradi (Ghana) – Beach Erosion (Top) – Pipeline Crossing (Bottom Right) – Panel Meeting with Fishermen Community Chiefs (Bottom Right)

#### **D. Assumptions Underlying Project Design and Assessment of their Realism / Gas Flaring**

404. **Requesters' claims:** According to the Requesters, the Project does “*not promote the holistic development in our community and even in our country as it is premised on the false assumption that it will reduce flaring of associated gas in Nigeria.*”<sup>437</sup>

405. The Requesters write that “[t]he WAGP’s project’s proponents claim that associated gas (which is normally being flared) will be the source of the pipeline.”<sup>438</sup> They say that they requested information in order to substantiate this claim. The Requesters maintain that the associated gas question is important because, if the claim is true, additional gas would need to be drilled because the gas fields in the Western Niger Delta, where the gas for the WAGP would be sourced, are generally non-associated gas fields.

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<sup>437</sup> Request, p. 7.

<sup>438</sup> Request, p. 8.

406. The Requesters claim “[a]s the World Bank itself has said; 75% of gas flaring in Nigeria is a result of the failure of proponents of the West Africa Gas Pipeline Project to put in place the necessary infrastructure to enhance gas utilization in the country.”<sup>439</sup> In this context, the Requesters claim that it would be irresponsible for the Bank to support the WAGP. In the Requesters’ words, “it allows project sponsors to continue the unwarranted degradation of our environment and livelihoods.”<sup>440</sup>
407. They additionally claim that specific guarantees that the WAGP will use only associated gas are needed. Without the guarantee, the Bank’s support for the WAGP will instead increase the use of more cheaply produced non-associated gas. In doing so, the Requesters claim that the WAGP would “set a precedent of looking solely at profit margins, rather than the best development interest of the people of this country.”<sup>441</sup>
408. A letter received by the Inspection Panel from Isaiah Ogah writing on behalf of several communities living around the Escravos area of the Western Niger Delta claims that the WAGP amounts to financially rewarding oil companies for a problem that they created. In his words: “We state that gas flaring is a deliberate process, a choice initiated by the multinational oil companies operating in Nigeria to maximize profit. Shell and ChevronTexaco major sponsors of the West African Gas Pipeline project have been flaring gas in and around our communities for over forty years. This practice has led to Health problems such as asthma, bronchitis and respiratory illnesses; it has also led to acid rain that destroys our properties and our ecosystem. The failure of the sponsors of West African gas Pipeline project to use this project to address this violent injustice provides us with further evidence of the fact that to the oil multinationals, our continuing existence is of no consequence.”<sup>442</sup>
409. Additionally, the Panel received another letter from the Escravos Area, which was submitted by the Ugborodo communities in Escravos, Warri South West in the Western Niger Delta Region.<sup>443</sup> Also, the Itsekiri Oil and Gas Producing Communities from Warri submitted a letter to the Panel, dated July 13, 2007.<sup>444</sup>

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<sup>439</sup> Request, p. 8.

<sup>440</sup> Request, p. 8.

<sup>441</sup> Request, p. 8.

<sup>442</sup> Letter to the Inspection Panel, “A Statement from Communities in the Escravos Region of the Western Niger Delta: in support of the request for inspection related to the West African Gas Pipeline,” submitted by Isaiah Ogah, President Community Justice Front for the Communities, January 12, 2007.

<sup>443</sup> Letter to the Inspection Panel, “West African Gas Pipeline: Ugborodo Communities – Escravos, Warri South West L.G.A. of Delta State, Nigeria, in the Western Niger – Delta Region,” submitted on behalf of the Ugborodo Trust Management Committee, July 14, 2007.

<sup>444</sup> Letter to the Inspection Panel, “West African Gas Pipeline – The Concerned of Itsekiri Oil and Gas Producing Communities,” submitted on behalf of the Itsekiri Oil and Gas Producing Communities, July 13, 2007.

410. During discussions with community representatives from the above-mentioned areas, the Panel was told that some of the communities in the area where gas is being flared are suffering and “*dying silently*.”<sup>445</sup> The community representatives wanted the Bank to visit and see where the oil and associated gas is sourced. They stated that non-associated gas is not flared, but is exported through the WAGP. They suggested re-injecting the associated gas. They added that reducing gas flaring in their areas is a sign of good faith.
411. **Management Response:** In its Response, Management writes that it “*believes that the project’s contribution to reduced gas flaring is presented without overstatement in the economic analysis as well as the PAD and—in order to see actual results—the annual volume of AG (normally flared) is included as one of the project’s monitoring indicators*.”<sup>446</sup>
412. Management also states that “*The projected decline in overall emissions of greenhouse gases, according to the EAs, ranges between 86 million metric tons and 11 million metric tons CO<sub>2</sub> equivalent over a 20-year period, depending on the assumptions made about future economic growth and associated energy consumption in the four countries. Overall regional emissions of other air pollutants will also decline under either scenario. WAGP will make a small but meaningful contribution to reduction of gas flaring by transporting annually an estimated 1 billion cubic meters of associated gas (AG), some or all of which is currently flared (roughly 5 percent of the total amount of gas that is flared in Nigeria). Emissions of particulates, oxides of sulfur and nitrogen, and unburned hydrocarbons will decrease in Nigeria as currently flared gas is instead sent out of the country for cleaner combustion in Benin, Ghana and Togo. Ambient air quality should therefore improve in the gas production areas as routine flaring is reduced. Emissions of air pollutants in Benin, Ghana, and Togo will depend on the assumptions that are made regarding the levels of future development, but even if increases occur, they would be expected to be less than would be the case with oil-fired or coal-fired generation*.”<sup>447</sup>
413. In response to the Request, the Panel reviewed Project documents and other data to understand what might be the effect of the Project on the serious problem of gas flaring in Nigeria, and to determine whether this effect had been fairly described in line with Bank Policy -- in particular to the public and locally affected communities. The Panel wishes to note that during its investigation visit, members of communities from the Niger Delta region came to meet with the Panel to describe the serious impacts they endure from the flaring, and ask for all that can be done to reduce and eliminate this problem near their villages.

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<sup>445</sup> The problems associated with gas flaring in the Niger Delta have been widely reported. National Geographic published in February 2007 short videos and pictures reporting the state in which the local population is living at <http://ngm.nationalgeographic.com/ngm/0702/feature3/index.html>.

<sup>446</sup> Management Response, ¶41.

<sup>447</sup> Management Response, ¶20.

414. **Facts and Findings:** According to the PAD, the WAGP project is designed to meet the following development objectives: “(a) To improve the competitiveness of the energy sectors of Ghana, Benin, and Togo by promoting the use of cheaper and environmentally cleaner gas from Nigeria in lieu of liquid fuels for power generation and other industrial and commercial uses; and (b) To foster regional economic and political integration that would support economic growth.” The PAD also includes three sector issues that the project will address. The reduction of flaring is listed as one of the three sector issues. In the language of the PAD, the three sector objectives that the project will address are “(i) reducing energy supply costs and improving the reliability of energy systems in Ghana, Togo, and Benin, (ii) reducing gas flaring in Nigeria and substituting for cleaner fuels in Ghana, Togo, and Benin, and (iii) supporting economic and regional integration in West Africa.”<sup>448</sup>
415. The PAD explains that Nigeria flares 75 percent of the gas it produces (2,700 MMscf/day) because of the lack of gas utilization infrastructure. According to the PAD, “initially set for 1984, the end of routine gas flaring has now be [sic] reset for the year 2008; this has been embodied in the National Gas Policy to be formalized in a Gas Act this year. Several projects have been implemented or are under preparation to meet the 2008 deadline. One of such is the proposed WAGP which will initially transport 70+ MMscf/day, with volumes increasing over the life of the Project to about 450 MMscf/day.”<sup>449</sup>
416. The PAD further states that “the WAGP is a relatively small part of the overall gas development in the Delta (representing 5 to 10% of overall gas production). The proposed Project will have limited impacts on the Delta as WAGP should have no bearing on oil production and, in the short term, no bearing on gas production.”<sup>450</sup> In regards to the ratio of AG to NAG carried through the pipeline, the PAD explains that “initially, the gas sold to the WAGP will be about 60% AG (reducing to about 40% over 20 years), a large proportion of which would be flared in the absence of productive uses of gas, including the WAGP.”<sup>451</sup>
417. The Panel notes that according to the figures above, the WAGP will have a relatively small role in reducing flaring because the Project only represents a small portion of overall gas production in Nigeria.
418. At the same time, one of the key performance indicators of the Project is “flaring and venting of AG in Nigeria is reduced by 200 MMscf/day by 2008.”<sup>452</sup> This volume of 200 MMscf/day, however, is in the upper range of the total volume of gas that WAGP is expected to transport in its initial operations.

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<sup>448</sup> PAD, p. 5.

<sup>449</sup> PAD, p. 3.

<sup>450</sup> PAD, p. 3.

<sup>451</sup> PAD, p. 6.

<sup>452</sup> PAD, Annex 3, p. 59.

As a result, this indicator gives the impression that the total flow through WAGP will be derived almost exclusively from associated gas that would otherwise be flared. Other statements in Project documents and the Management Response give different and varying impression regarding the portion of the gas flowing through WAGP that would be from associated gas.<sup>453</sup> **The Panel notes the importance of ensuring a transparent monitoring of the impact of the Project on gas flaring. The Panel trusts that Management will specifically address this issue in its Response to this Report.**

419. The Panel also observes that the language and claims relating to flaring change in the Project documents over time. For example, the Project Concept Document (PCD) from July 2003 claims *“it is estimated that up to about twenty percent of this currently flared gas will eventually be fed into the proposed pipeline system, which has been sized to meet the expected market potential of about 450 MMscf/day over the 20 years, with an initial “foundation” contracted capacity at startup of about 150 MMscf/day.”*<sup>454</sup>
420. The PCD continues *“the proposed Project has been pushed to the top of the regional agenda, partly because of concerns about gas flaring.”*<sup>455</sup> In contrast to the June 2003 PCD and the PAD from November 2004, the Regional and Nigerian EIAs do not contain quantitative assessments of the reduction of gas flaring. The Regional EIA lists reduced air emissions, due to a reduction of flaring in Nigeria and fuel switching to cleaner natural gas in the WAGP end-user countries, as the primary environmental benefits of the project.<sup>456</sup>
421. The Panel notes that, like the Requesters, Bank staff also noted concern in early 2004 about the lack of quantification of the reduction in greenhouse gas emissions. The BTO from the Communication Needs Assessment shows that Bank staff were concerned about an over-statement of flaring benefits even before the Project was approved. According to the BTO, *“NGOs claim that they have seen no evidence that the pipeline would move associated gas or would reduce flaring. In fact the mission also found this to be a problematic issue. WAPCo while constantly stating reduction of flaring as a main benefit to the*

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<sup>453</sup> The EIA states that WAGP’s initial capacity is expected to be 190 MMscfd, **with an initial delivery volume of 140 MMscfd** (Regional EIA, p. 2-10). Annex 4 of the PAD states that the initial installed capacity of WAGP will be about 200 MMscf/day, however based on current projections the 200 MMscf/day would be reached after about 5 years (PAD, pp. 63, 65). In terms of the proportion of AG to be used, the PAD and the Management Response state that gas purchased for delivery through the WAGP will be about 60 percent AG initially, declining to about 40 percent after 20 years (Management Response, ¶22; PAD, p. 6). The Regional EIA, by comparison, indicates that the gas will be only 38 percent AG (see Regional EIA, Appendix 2A-2, noted in Chapter 2, para. 95 and note 70 of this Report).

<sup>454</sup> Project Concept Document, July 25, 2003, p. 8 [hereinafter “PCD”].

<sup>455</sup> PCD, p. 12.

<sup>456</sup> Regional EIA, p. 1-14.



*project refuses to quantify this in anyway except in the overall reduction of greenhouse gases. This is insufficient” [emphasis added].*<sup>457</sup>

422. In the BTO, Bank staff stressed the need for a firm quantification of the amount of associated gas the WAGP would transport and the related flaring reduction in the Niger Delta, stating that without real numbers the claim of gas flaring reduction was not credible.<sup>458</sup>
423. For communities, the PAD states that communities in Nigeria will benefit from the WAGP “*directly through reduced local gas flaring and potentially indirectly through revenues that accrue to the FGN [Federal Government of Nigeria].*”<sup>459</sup> The Nigerian EIA goes into more specificity, explaining, “*WAGP will bring about additional environmental benefits to Nigeria in the form of reduced emissions of specific air pollutants. Emissions of sulfur dioxide (SO<sub>2</sub>) nitrogen oxides (NOx), and suspended particulates (...) will be reduced in Nigeria, due to the reduction in gas flaring. These emission reductions will bring about an improvement in air quality in the areas surrounding the present flares, primarily in the Niger Delta region.*”<sup>460</sup>
424. The Panel expert observes that the WAGP may improve air quality due to decreased emissions, but flare reduction due to the Project may largely take place away from villages.
425. The Panel notes the importance of the Bank’s efforts to support flaring reduction through the Global Gas Flaring Reduction Initiative and is aware of the negative attention the Bank has received related to the extractive industries. However, the Panel is concerned that the Project documents and information may have supported the impression among affected people that the Project would reduce flaring their areas.
426. **The Panel observes that although a few statements in Management documents were pointing out that the Project impact on overall flaring reduction would not be substantial, the documents included a lot of text that was imprecise and suggestive of much larger benefit.** This led to a continuing expectation that the flaring reduction benefit will be realized. This also raises a systemic issue as discussed at the concluding section of this Report.

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<sup>457</sup> BTO, Communication Needs Assessment, February 23 to March 12 and March 26 to April 4, 2004, sec. 5.5.

<sup>458</sup> “*The credibility of this claim is in doubt because of a lack of specific information.*” BTO, Communication Needs Assessment, February 23-March 12 and March 26-April 4, 2004, sec. 5.5.

<sup>459</sup> PAD, p. 23.

<sup>460</sup> Nigeria EIA, p. 1-12.



## Chapter Five

### Project Implementation, Supervision and Systemic Issues

427. **Requesters' claims:** In their submission to the Panel, the Requesters state: “*We consider the problems with the project sponsors (...) a result of the World Bank's failure to adequately supervise the project's preparation and implementation.*”<sup>461</sup> The Requesters identify a number of issues, such as: (a) inadequate compensation to landowners; (b) the manner in which the EIA was carried out; (c) the disclosure of the EIA; (d) an unconvincing approach to gas flaring; and (e) the failure to include the Escravos-Lagos pipeline in the EIA as their primary concerns.<sup>462</sup>
428. **Management response:** In its response, Management states that “*the project has been well prepared, and supervision includes multiple layers of oversight, which had already identified the issues raised in the request.*”<sup>463</sup> The system of multi-layered supervision claimed for the RAP and EIA implementation defined oversight roles for WAPCo, cooperating governments, the Bank and MIGA, and an independent Panel of Experts. According to Management, the Bank and MIGA engaged with WAPCo and its consultants regarding environmental and social safeguards early and often.
429. Management asserts strong continuity was maintained in the senior Bank staff overseeing and supporting safeguards work during preparation.<sup>464</sup> During implementation, Management claims that WAPCo followed the multi-tiered supervision described in the EIA and the PAD. The Bank has received the required monthly reports from WAPCo that include progress on the ESMP and RAP implementation. Additionally, WAPCo hired consultants to undertake independent monitoring missions to assess safeguards implementation. WAPCo has submitted the first two of the three reports to the Bank at the time of Management Response.<sup>465</sup>
430. According to Management, the Bank and MIGA have conducted one formal supervision mission on safeguards, solely committed to supervise the RAP implementation, in June 2005. During the mission, concerns about safety, CDPs, and compensation were raised.<sup>466</sup> The mission stressed to WAPCo the need to prepare clear emergency response plans and to ensure progress on community development plans. WAPCo claimed that both were on schedule.

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<sup>461</sup> Request, p. 3.

<sup>462</sup> Request, p. 3.

<sup>463</sup> Management Response, Annex 1, No. 12.

<sup>464</sup> Management Response, ¶37.

<sup>465</sup> Management Response, ¶39.

<sup>466</sup> Management Response, ¶40.

The mission also requested and received data on compensation in Nigerian communities for analysis.<sup>467</sup>

431. Management states that it recognized a potential lack of credibility because, although numerous specialized field visits had occurred, the Bank had not been on a supervision mission to Nigeria since June 2005 and the required Expert Panel had not yet visited the field.<sup>468</sup> Management further recognizes that the appointment of the Expert Panel required under the Project was delayed.<sup>469</sup>
432. **Bank Policies:** In relation to supervision, OP 13.05, paragraph 2 states that “*project supervision covers monitoring, evaluative review, reporting, and technical assistance activities to (a) ascertain whether the borrower is carrying out the project with due diligence to achieve its development objectives in conformity with the legal agreements; (b) identify problems promptly as they arise during implementation and recommend to the borrower ways to resolve them; (c) recommend changes in project concept or design, as appropriate, as the project evolves or circumstances change; (d) identify the key risks to project sustainability and recommend appropriate risk management strategies and actions to the borrower (...).*”
433. The Bank is required to regularly supervise resettlement implementation to determine compliance with the resettlement instrument.<sup>470</sup> During Project Appraisal, the Task Team (TT) is expected to assess the adequacy of arrangements for internal, and if considered appropriate, independent monitoring and evaluation of the implementation of the RAP.<sup>471</sup> Early in the project cycle, the TT is expected to discuss a series of social issues with the Sponsor that may include actions such as developing procedures for establishing eligibility for resettlement assistance; conducting socioeconomic surveys and legal analyses; carrying out public consultation; identifying resettlement sites; evaluating options for improvement or restoration of livelihoods and standards of living; or, in the case of highly risky or contentious projects, engaging a panel of independent, internationally recognized resettlement specialists.<sup>472</sup>
434. In accordance with OP 4.01, for Category A projects that are highly risky or contentious or that involve serious and multidimensional environmental concerns, such as the WAGP, the cooperating governments should normally also engage an advisory panel of independent, internationally recognized environmental and social specialists to advise on all aspects of the project relevant to the EA.<sup>473</sup>

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<sup>467</sup> Management Response, ¶40.

<sup>468</sup> Management Response, ¶56.

<sup>469</sup> Management Response, ¶57.

<sup>470</sup> OP 4.12, ¶24.

<sup>471</sup> BP 4.12, ¶10 (f).

<sup>472</sup> BP 4.12, fn. 5.

<sup>473</sup> OP 4.01, ¶4.

## A. Supervision Structure - - Regional Presence, Supervision Missions

435. **Regional Presence:** Management Response states that senior Bank safeguard specialists exercised project oversight.<sup>474</sup> The Panel notes that all of these staff members were based in Washington. It seems that in Management's view, an on-going regional presence was not established nor considered necessary. **However, in the experience of the Panel, safeguard policy oversight and ensuring Borrower adherence to EA and RAP requirements cannot be undertaken "from a distance" without Bank staff present close to the project site. Little field verification of compliance with safeguards took place and the expert panel was not appointed soon enough to be helpful to the Project.**
436. **Mission Duration and Frequency:** The Panel reviewed Management's Aide Memoirs, BTOs and other documents to determine the frequency, location, and duration of supervision missions. As of September 2007, Management has undertaken a Communication Needs Assessment Mission, a Consultation Appraisal Mission, a Safeguards Supervision Mission, and four Supervision Missions.<sup>475</sup> Both the Communication Needs Assessment and the Consultation Appraisal Mission took place before the Project was approved on November 23, 2004. On these first two missions, Bank staff spent about 11 days in Nigeria.<sup>476</sup>
437. The Safeguards Supervision Mission to oversee the RAP implementation took place in June 2005 following the commencement of land acquisition. However, the general supervision missions did not begin until 2006 and, of these four missions, two went solely to Accra. The Panel observes that ten months elapsed between the Safeguards Mission and the first general Supervision Mission. By the time the Request was received in late-April 2006, only these two missions – the Safeguards Mission and the first Supervision Mission (which traveled only to Accra) - had been completed. **The Panel notes that there were long gaps between supervision missions prior to the Request.**
438. **Supervision during Construction Phase:** Further, as reported to the Panel in interviews with Bank staff, safeguard staff mainly concerned themselves with project preparation and were far less involved in the construction phase of the project. It was admitted that Bank staff did not visit the Project to spot-check compliance during construction because they trusted the oil companies

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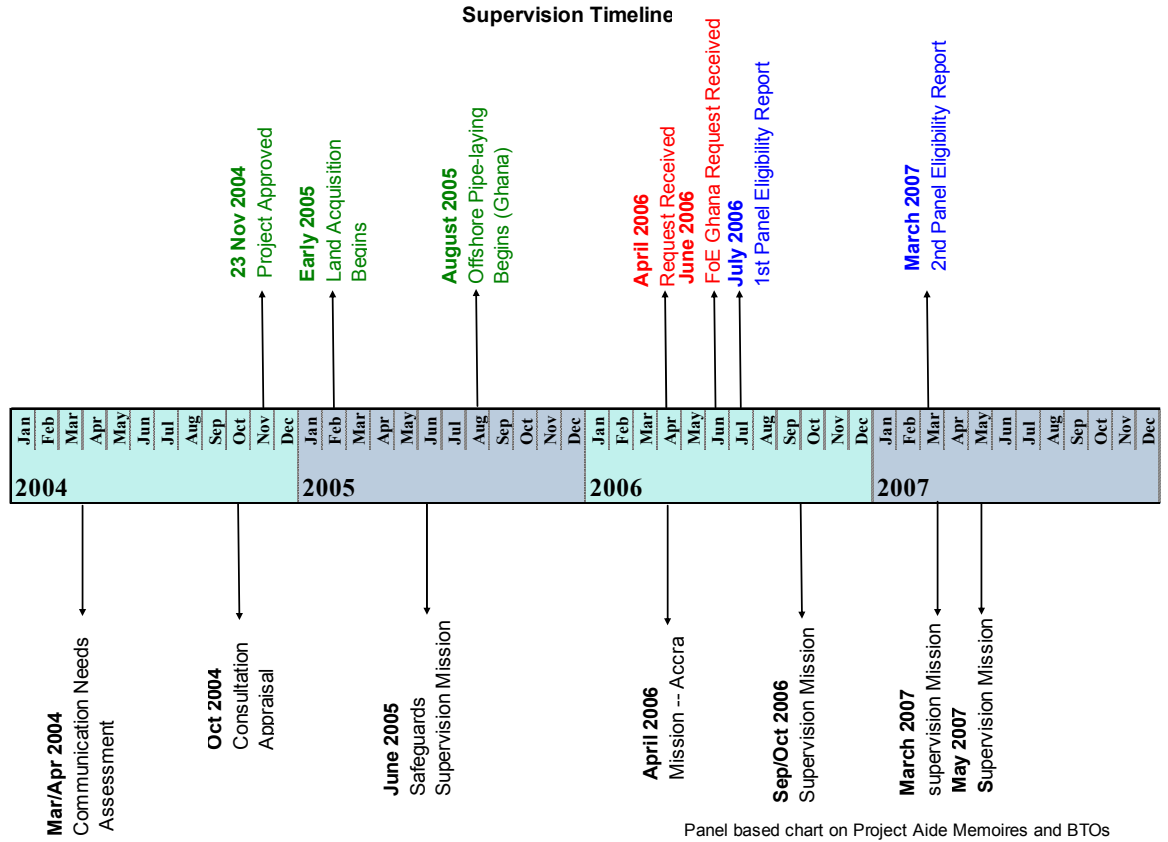
<sup>474</sup> Management Response, ¶29.

<sup>475</sup> Communication Needs Assessment: February 23–March 12 and March 26–April 4, 2004 (visited all four countries); Consultation Appraisal Mission: October 9-17, 2004 (Ghana, Togo, Benin) and October 27-31 (Nigeria); Safeguards Supervision Mission: June 12-17, 2005 (Ghana, Benin, Nigeria); Supervision Mission: April 3-5 (Accra, Ghana); Supervision Mission: September 22-October 13, 2006 (all four countries, Nigeria 10/7/06-10/11/06); Supervision Mission: March 21-31, 2007 (all four countries); Supervision Mission; and Supervision Mission: May 14-16, 2007 (Accra, Ghana).

<sup>476</sup> The communication needs assessment mission visited four countries between February 23 and March 12 and from March 26 to April 4, which averages out to approximately 7 days in each country. The BTO for the October 2004 Consultation Appraisal Mission states that the mission visited Nigeria from October 27-31.

sponsoring the Project and they took WAPCo’s assurances on good faith. **Thus, the Panel finds that Management did not ensure adequate supervision during the construction phase.**

**Figure 5.1: Supervision Timeline**



439. **Expertise:** The supervision missions generally included both environmental and social experts. The 2005 Safeguards Supervision Mission included social and environmental experts. Bank staff also stated in interviews that although “Pipeline safety” and “Restoration of Livelihoods” were regarded as the two most important “corporate risks” to the Project, pipeline safety and security have not been a focus of Bank supervision because the Bank lacked staff with expertise on pipeline construction. During the interviews, it was explained that where the Bank lacked appropriate expertise it relied on “expert panels” for advice and assistance. However, as will be discussed below, the formation of an expert panel was delayed and did not take place until mid 2007. **The Panel finds that Management failed to involve appropriate expertise and failed to ensure that an expert panel was introduced in a timely fashion** (see also discussion below).

## **B. Monitoring Arrangements**

### **1. The Structure of Monitoring and Supervision**

440. WAGP Project monitoring and evaluation for the RAP consists of three levels: (1) internal monitoring by WAPCo; (2) impact monitoring commissioned to specialized firms; and (3) a RAP completion audit. WAPCo’s RAP Management Team has the ultimate responsibility for monitoring and evaluation, but the management team is to be supported by WAPCo’s land acquisition team and supplemented by other staff.<sup>477</sup> The RAP Management Team must submit quarterly status reports.
441. Performance monitoring of the RAP is integrated into overall project management. A few guidelines outlined to aid in progress monitoring included the preparation and implementation of a socioeconomic survey to establish a baseline at the time of land acquisition, an update of baseline survey within 18 months of land acquisition, public consultations with affected people, and case studies of grievances.<sup>478</sup>
442. According to the RAP, impact monitoring has three goals: (1) assess the effects of land acquisition; (2) verify internal performance monitoring; and (3) identify adjustments in the implementation of the RAP.<sup>479</sup> The WAPCo land acquisition team, in consultation with external and independent Panel of Experts, is supposed to commission social and economic impact monitoring studies. According to the RAP, monitoring is to continue for two years after the Project.<sup>480</sup> An extract from the RAP describing the Monitoring structure is shown below.<sup>481</sup>

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<sup>477</sup> Nigeria RAP, p. 8-4 to 8-5.

<sup>478</sup> Nigeria RAP, p. 8-5.

<sup>479</sup> Nigeria RAP, p. 8-7.

<sup>480</sup> Nigeria RAP, p. 8-8.

<sup>481</sup> Nigeria RAP, p. 8-2.

**Table 5.1: RAP Monitoring Framework**

<b>Component Activity</b>	<b>Type of Information/ Data Collected</b>	<b>Source of Information/ Data Collections Methods</b>	<b>Responsibility for Data Collection, Analysis and Reporting</b>	<b>Frequency/ Audience of Reporting</b>
Internal Performance Monitoring	Measurements of input, process, output and outcome indicators against proposed timeline and budget, including compensation disbursement	Quarterly narrative status and compensation disbursement reports	WAPCo RAP land acquisition team, including community relations representatives	Semi annual or as required by WAPCo RAP management team and lenders
Impact Monitoring	Tracking effectiveness of inputs against baseline indicators. Assessment of affected people's satisfaction with inputs, processes and outputs	Annual quantitative surveys. Regular public meetings and other consultation with project affected people; review of grievance mechanism outputs.	WAPCo RAP land acquisition team, including external affairs representatives Panel of Experts	Annual
Completion Audit	Assessment that all components of the RAP were implemented, with comparison of the PAP situation before and after RAP implementation using a representative sample	External assessment/sign off report based on performance and impact monitoring reports, independent surveys and consultation with affected persons	Contractual external auditing and evaluation auditor  Panel of Experts	On completion of RAP timetable

Source: Nigeria RAP, p. 8-2.

443. According to the RAP, responsibility for external monitoring is delegated to an independent panel of experts that was to undertake semi-annual evaluations on the process, outputs, outcome, and impact indicators.<sup>482</sup> The panel of experts was given the responsibility of verifying the results of internal monitoring, assessing overall compliance with the RAP, and verifying that project affected people's incomes and livelihoods are restored or enhanced.<sup>483</sup>
444. An external monitor was also envisaged to support evaluation of the project through a variety of activities including open-ended discussions with randomly

<sup>482</sup> Nigeria RAP, p. 8-8.

<sup>483</sup> Nigeria RAP, p. 8-8.

sampled PAPs, acting as an observer during public consultations, surveying standards of living before and after resettlement, and advising project management on possible improvements for implementing the RAP, among other activities. Finally, at the completion of the project, WAPCo was supposed to have a completion audit undertaken by either an external auditor or the panel of experts.<sup>484</sup>

445. The Inspection Panel observes that the monitoring reports from the panel of experts sent ample warnings to Management of underlying problems in the WAGP project, many of which appear in the Requester's subsequent complaints.<sup>485</sup> Ten months after compensation was disbursed, in November 2005, the Monitors reported that the WAGP staff were neither monitoring disbursement of all compensation payments by verifying and documenting payment to appropriate parties; nor was the ROW Access Manual done. The 2005 monitoring notes the lack of a clear definition of eligibility for communities who will be involved in the CDP.<sup>486</sup> They reported that it was unclear who was responsible for monitoring resettlement, inflation, population migration, and local employment. They reported on the lack of baseline data on the displaced peoples and that earlier recommendations for the collection of such data were not implemented. They concluded that no reliable baseline data on the topic of livelihood/standard of living for the displaced persons is available.<sup>487</sup>
446. In the Supervision Mission Aide Memoire, the Bank notes that the preparation of community development plans and emergency response plans are on schedule.<sup>488</sup> Management's Response acknowledges that the Safeguards Mission raised the following issues: inadequate compensation, need for an emergency response plan, implementation of the CDPs, and employment of local labor and contractors. Management claims that all of these issues were followed up on.<sup>489</sup> The Response cites the same December 2005 Independent Monitoring Report referred to above to claim that WAPCo developed an "effective" environmental and social management system and that no adverse impacts on resources or local communities from violations of environmental safeguards had been identified.<sup>490</sup>
447. Most significantly, the Monitors identified a need for guidelines for Engineering, Procurement, Construction (EPC) contracts<sup>491</sup> to direct additional

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<sup>484</sup> Nigeria RAP, p. 8-9.

<sup>485</sup> The TOR set forth in the RAP precluded any field sample collection or other quantitative analysis referred to as "empirical monitoring" in the ESMP.

<sup>486</sup> "Independent Monitoring Report: Resettlement, compensation and environmental management plan commitments: The West African Gas Pipeline." December 2005, p. 3.

<sup>487</sup> "Independent Monitoring Report: Resettlement, Compensation and Environmental Management Plan Commitments, the West African Gas Pipeline," June 2006, p. 50.

<sup>488</sup> Aide Memoire, Joint MIGA-IDA Safeguards Supervision Mission, June 2005, ¶20.

<sup>489</sup> Management Response, Annex 1, No. 12.

<sup>490</sup> Management Response, Annex 1, No. 1.

<sup>491</sup> The WAGP had two EPC companies, one for the offshore EPC and another for the onshore EPC.

land acquisition and compensation consistent with the RAP, ensuring fair valuation and payment to affected parties, and to minimize “land take.” The Monitors’ conclusion that WAPCo had “*established an effective environmental and social management system and has appropriately implemented its environmental safeguard commitments*” is inconsistent with the substantive social compliance issues that they report. References to this conclusion by Management in response to the Requester’s complaint do not address the underlying unresolved issues. **The Panel finds that Management did not adequately address and follow-up on the warnings relating to the RAP process that were raised and discussed in the monitoring reports.**

448. As discussed in detail in Chapter Three, the Panel did not find evidence of the displaced persons and their communities being offered an opportunity to participate in the implementation or monitoring of the involuntary displacement. This does not comply with OP 4.12, paragraph 13(a), which requires that, “*displaced persons and their communities, and any host communities receiving them, are provided timely and relevant information, consulted on resettlement options, and offered opportunities to participate in planning, implementing, and monitoring resettlement.*”

## **2. Additional Monitoring Measures Described in Management Action Plan**

449. In addition to the activities described in the previous paragraphs, Management created a Management Action Plan in the Response to the Request for Inspection in 2006. The Response stated that “*Management will work with WAPCo, the Government, and affected communities to ensure that the Requesters’ rights or interests are not directly or adversely affected by the project.*”<sup>492</sup> Management committed to specific actions.<sup>493</sup>
450. According to this Plan, the ESAP was expected to make its first field visit in September 2006, although the visit did not actually take place until August 2007.<sup>494</sup> At the time of the Response, Management claimed ESAP would review the risk mitigation and emergency plans, assesses the effectiveness of the grievance process, and evaluate the CDP projects effectiveness.<sup>495</sup> Management noted that the Bank would review progress reports on the CDP through the already required annual reports from WAPCo. A resettlement audit planned for September 2006 would review the adequacy of compensation.<sup>496</sup>
451. Management addressed the impoverishment issues by committing to determine if the compensation rates were insufficient to replace acquired assets, and if the grievance process was ineffective for any affected persons. They committed to

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<sup>492</sup> Management Response, ¶60.

<sup>493</sup> Management Response, ¶57.

<sup>494</sup> Management Response, ¶57.

<sup>495</sup> Management Response, ¶57.

<sup>496</sup> Management Response, ¶57.



conduct professional surveys to assess, along the length of the pipeline, the current values of each type of asset lost to the project based on actual field measurements and ratings, instead of State, local, or OPTS rates. Assets valued include communal lands, trees, crops, other structures, and public assets.<sup>497</sup> The survey was completed in July 2007.<sup>498</sup> Management also agreed to discuss these findings with the affected communities and correct the problem.<sup>499</sup>

452. Management agreed to conduct two supervision missions a year until the project is completed. The next mission, scheduled for the first quarter of fiscal year 2007, would include a full complement of staff specialists to “*start planning for the resettlement audit, and to assess staff capacity and institutional arrangements of agencies required to deliver planned emergency response, community development and resettlement grievance redress services.*”<sup>500</sup>

### **3. The Environmental and Social Advisory Panel**

453. For Category A projects that are highly risky or contentious or that involve serious and multidimensional environmental concerns, OP 4.01 recommends that the cooperating governments should engage an advisory panel of independent, internationally recognized environmental and social specialists to advise on all aspects of the project relevant to the EA. The RAP incorporated this provision. WAPCo and Management agreed to form and finance an Expert Panel called the Environmental and Social Advisory Panel.

454. The three-person ESAP was built into the structure of the Project to provide advice and consult with the government regulatory agencies on issues related to health, safety, the environment, and socioeconomic issues.<sup>501</sup> The TORs for the Expert Panel mandate it to review and provide recommendations to address social and environmental issues encountered during project implementation such as those raised by the Request.<sup>502</sup> More specifically, the RAP assigns to the ESAP, several significant tasks, including semi-annual evaluations of process, outputs, outcomes and impact indicators.<sup>503</sup>

455. According to the PAD, the ESAP was to provide an “*independent assessment of the success of safeguard measures and policies.*”<sup>504</sup> The approved RAP design gave ESAP a central monitoring role, whose reports would be critical to

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<sup>497</sup> Management Response, ¶57.

<sup>498</sup> “West African Gas Pipeline Project: Valuation of Re-Study for Real Property Assets Acquired Along the Pipeline Route in Ogun and Lagos States (Draft),” August 3, 2007.

<sup>499</sup> Management Response, ¶57.

<sup>500</sup> Management Response, ¶57.

<sup>501</sup> This appears to be pursuant of OP 4.01, ¶4: “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.”

<sup>502</sup> Management Response, ¶57

<sup>503</sup> Nigeria RAP, p. 8-8.

<sup>504</sup> PAD, Annex 13, ¶60.

allowing Management to perform its due diligence. The ESAP's specific tasks included verifying results of internal monitoring by field check of delivery of acquisition, compensation and rehabilitation measures. It was to verify payment of compensation, including its levels and timing, infrastructure repair and relocation; housing reconstruction, where appropriate; land reinstatement and restoration; and enterprise relocation, compensation and its adequacy. In addition, the ESAP was to assess overall compliance with the RAP, identify any areas of non-compliance and agreed corrective actions; verify that project affected people's incomes and livelihoods have been restored or enhanced, and more.<sup>505</sup>

456. The ESAP was charged with interacting closely with the environmental and social experts of the States and other country experts, Bank staff, the Project contractors through the design, construction, and supervision stages, and local non-governmental organizations in its work.<sup>506</sup> The ESAP was to advise the States on the implementation of the recommendations in the EA, ESMP, RAP and associated studies and development of environmental management capacity (including emergency response capacity) as well as capacity with respect to resettlement and compensation monitoring and mitigation.<sup>507</sup>
457. WAPCo would provide the funds for the ESAP, but the experts were to be recruited and appointed by the Bank. The experts were supposed to provide advice both during preparation and implementation, for up to seven years. The Panel was first informed that WAPCo had committed \$200,000 toward ESAP, with half of it to be spent during preparation and half during implementation.<sup>508</sup> However, according to Management, WAPCo agreed to provide \$100,000 to finance the Panel of Experts and, according to Bank staff, trying to figure out how to get the Bank to bureaucratically accept the money caused "*headaches.*" The Panel requested clarifications on the purpose and usage of these funds, but did not receive sufficient information from Management to clarify the matter.
458. Management anticipated, in its Action Plan, that the ESAP would make its first field visit by September 2006. The ESAP terms of reference were prepared in June 2006 and then again in May 2007.<sup>509</sup> However, the Bank did not hire the Experts until 2007. According to Management, ESAP hiring was delayed due to "*issues related to approvals for contracting consultants.*"<sup>510</sup> In interviews with Bank staff, the Panel was informed that the Panel of Expert's formation was delayed due to administrative and bureaucratic problems. The ESAP started its work with a visit to all onshore pipeline locations between August 6 and 17,

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<sup>505</sup> Nigeria RAP, p. 8-8 to 8-9.

<sup>506</sup> Terms of Reference for the ESAP dated March 23, 2007. Not all tasks assigned to the ESAP in the RAP appear in its Terms of Reference.

<sup>507</sup> TOR, ESAP, March 23, 2007.

<sup>508</sup> Nigeria RAP 2004, page 9-4,

<sup>509</sup> Referenced in correspondence from Management dated June 11, 2006 and May 23, 2007.

<sup>510</sup> Management Response, ¶57.

2007, and submitted its first report on November 4, 2007.<sup>511</sup> As discussed in more detail in the relevant sections of this report, the ESAP identified significant shortcomings of the Project and proposed several remedial actions.

459. Had the functioning advisory panel of international experts been present during design and construction phases, undesirable social and economic outcomes of the resettlement component might have been corrected and many of the non-compliance issues covered in this report avoided. **Hence, had the ESAP been hired in a more timely fashion, it is likely that many of the concerns raised by the Requesters and the shortcomings identified by the Panel would have been more satisfactorily dealt with. Delaying the hiring of the experts for the ESAP has had an unfortunate adverse impact on project implementation.**
460. **The Panel finds that the significant delay in establishing the ESAP constitutes non-compliance with Bank Policies (OP 13.05 and OP 4.01) and led to many of the problems highlighted in this Report.**

### C. Identification of Issues and Corrective Action

461. OP 13.05 requires that the Bank “*identify problems promptly as they arise during implementation and recommend to the borrower ways to resolve them.*”<sup>512</sup>
462. The Panel reviewed Bank’s supervision documents to analyze whether problematic issues had been identified by Bank Management and followed-up adequately. According to OP 4.12, paragraph 24, Management has the responsibility to ensure the Sponsor adheres to the safeguard standards.
463. In June 2004, Management accepted the Nigeria WAGP RAP that had been prepared by WAPCo’s consultant, ICF Consulting Group. The RAP discussion produced no comments before Board presentation, in part because the document was not disseminated in any meaningful fashion among the displaced people. During its interviews, the Panel discovered that, after disclosure of the RAP on the Bank’s InfoShop website, the subcontractor who prepared the RAP had completed its obligation to the WAGP. No provisions were made to train WAPCo staff in the specifics of the RAP and provide particular guidance to the on-site Community Affairs advisor and his colleague. Without an Expert Panel (see discussion above) or continuing subcontractor, execution of the RAP rested completely on WAPCo. WAPCo’s local contingent (two persons) turned over the compensation responsibilities to its EPC contractor staff without any active involvement of WAPCo personnel.<sup>513</sup> During the critical task of compensation

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<sup>511</sup> “Report of the August 2007 Mission of the Environmental and Social Advisory Panel (ESAP) for the West African Gas Pipeline Project” November 4, 2007, p. 4.

<sup>512</sup> OP 13.05, ¶2 (b).

<sup>513</sup> “Independent Monitoring Report: Resettlement, Compensation, and Environmental Management Plan Commitments, the West Africa Gas Pipeline” December 2006, p. 47.

distribution to the displaced peoples, no one familiar with the RAP preparation or its objectives appeared to be on the ground. The cash-compensation based land acquisition process was completed in less than two months.

464. Management was aware of deficiencies with the RAP implementation, according to the BTOs. Management knew that untrained local WAPCo staff assumed full responsibility for RAP implementation. In the September 2006 BTO, Management states that the two community relations officers and consultant valuers did not seem very well informed about the RAP.<sup>514</sup> The March 2007 BTO states that *“the mission also indicated that the procedures in the RAP for determining compensation for land in Nigeria do not appear to have been followed in the field by WAPCo. During discussions, WAPCo’s resettlement staff argued that the land was being leased, not purchased, and that compensation at less than full sales price was therefore justified.”*<sup>515</sup> The March 2007 BTO states that *“WAPCo’s management reiterated deficiencies in RAP implementation and in record-keeping.”*<sup>516</sup>
465. Management did not provide to WAPCo staff any meaningful training on Bank safeguard policies, including on involuntary resettlement, until two years after compensation payments had been distributed.<sup>517</sup> The fact that inadequately trained staff were to carry out the RAP implementation brings into question, Bank’s ability to carry out the Supervision safeguard policy to *“ascertain whether the borrower is carrying out the project with due diligence to achieve its development objectives in conformity with the legal agreements”* and subsequently to *“identify problems promptly as they arise during implementation and recommend to the borrower ways to resolve them.”*<sup>518</sup>
466. **The Panel finds that Management’s lack of diligent supervision created a responsibility vacuum during the RAP implementation. This did not comply with the Bank Policy on Supervision, and led to problems in the resettlement process.**
467. **Compensation:** As early as June 2005, during the Safeguards Supervision Mission evaluating the implementation of the RAP, Management identified concerns with low compensation rates in Nigeria. Community members in Ota, Nigeria presented the Bank with a written statement outlining their concerns and suggested a one hundred percent increase in compensation values.<sup>519</sup> They claimed that rates were inadequate and not consistent with rates in the oil and gas industry or policies of the WAPCo Sponsors.

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<sup>514</sup> BTO, Supervision Mission, September 22-October 13, 2006, Annex 2, ¶12.

<sup>515</sup> BTO, Supervision Mission March 21-31, 2007, ¶28.

<sup>516</sup> BTO, Supervision Mission, May 14-16, 2007, ¶24.

<sup>517</sup> BTO, Supervision Mission, May 14-16, 2007, ¶23.

<sup>518</sup> OP 13.05, ¶2(a) and ¶2(b).

<sup>519</sup> Aide Memoire, Joint MIGA-IDA Safeguards Supervision Mission, June 2005, ¶17.

468. As a result, the Mission committed to having a social scientist analyze the compensation complaints and recommended that the WAGP project team “*Engage and field the expert advisory panel [ESAP] without further delay*”<sup>520</sup> and have ESAP evaluate the compensation complaints, as mandated in the RAP, in their first field mission. However, the Project Team did not return to Nigeria and begin interviewing for an estate evaluator and lawyer to evaluate compensation until September 2006<sup>521</sup> - more than a year after the problem was identified and after the community brought their concerns to the Inspection Panel. The BTO from March 2007 notes that the estate valuers had finished his field work and analysis, but not yet completed a written report.<sup>522</sup> The estate valuers briefed the supervision mission during the May 2007 mission,<sup>523</sup> nearly two years after the Bank first identified the problem. In August 2007, the ESAP team made its first visit to construction sites in Nigeria, Ghana, Togo, and Benin. The Report was released on November 4, 2007.<sup>524</sup> **Though Management identified several problems regarding the compensation process, it was slow to address them.**
469. **Consultation:** In the Request, the Requesters claim that the “*overwhelming majority*” of people were not consulted.<sup>525</sup> The Request also expressed concern about the adequacy of a consultation with Bank staff on October 30, 2004 in Badagry.<sup>526</sup> In their Response, Management noted that they considered “*extensive consultations were held and concerns well documented and presented in a balanced manner,*”<sup>527</sup> and cited the twenty-five formal consultations in communities along the pipeline ROW in Nigeria concerning the EA and twenty consultations organized for the RAP.<sup>528</sup>
470. The Panel notes that a number of presentations took place with PAPs. However, interaction with PAPs does not automatically mean that their opinions were consulted and taken into account. Despite describing WAPCo’s communication approach overall as “*fairly open and pro-active,*”<sup>529</sup> the Communication Needs Assessment BTO from February 23-March 12 and March 26-April 4, 2004, criticized WAPCo for being “*too focused on education and public relations activities that try to sell the project rather than listening to stakeholders. The communication team relies too heavily on its own perceptions of success rather than empirical reviews.*”<sup>530</sup>

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<sup>520</sup> Aide Memoire, Joint MIGA-IDA Safeguards Supervision Mission, June 2005, ¶5.

<sup>521</sup> BTO, Supervision Mission, September 22-October 13, 2006, ¶37.

<sup>522</sup> BTO Supervision Mission, March 21-31, 2007, ¶27.

<sup>523</sup> BTO, Supervision Mission, May 14-16, 2007, ¶17.

<sup>524</sup> “Report of the August 2007 Mission of the environmental and Social Advisory Panel (ESAP) for the West African Gas Pipeline Project, November 4, 2007.

<sup>525</sup> Request, p. 5.

<sup>526</sup> Request, p. 6.

<sup>527</sup> Management Response, ¶34.

<sup>528</sup> Management Response, ¶35.

<sup>529</sup> BTO, Communication Needs Assessment, February 23-March 12 and March 26-April 4, 2004, sec. 6.1.

<sup>530</sup> BTO, Communication Needs Assessment, February 23-March 12 and March 26-April 4, 2004, sec. 6.1.

471. As a result, the Communication Needs Assessment Mission recommended that WAPCo “*should maintain its pro-active approach but facilitate two-way communication. WAPCo’s Communications team’s role and discourse shall shift from information and persuasion to education and dialogue. They will require assistance in this area. Listening and understanding and [sic] other people’s point of view becomes an essential quality of the approach. There should be a more blended approach with the other partners in the project.*”<sup>531</sup> Despite the advice, the Bank did not appear to have done any follow-up monitoring of this recommendation.
472. During the Consultation Appraisal Mission in October 2004, the BTO reported that while some community members were aware of the EIA or RAP’s existence, few people had seen them. In the BTO, Management states that “*concerns stem to a considerable extent from the fact that communities and their leaders are not informed about the content of the EIAs and RAPs which contain many of the answers to their questions.*”<sup>532</sup> To address the problems, the Bank recommended “*concise presentation of the information contained in the EIAs, emphasizing the steps that are to be taken and the respective obligations of WAPCo, the governments, other parties including the Bank and the independent panel of experts, as well as the communities. A useful format would be an information-sharing workshop, in the local language(s), to inform the communities about what they can expect (and thus help monitor) during implementation, without adding to what most of them consider to be more than adequate information about the project.*”<sup>533</sup> The BTO recommended the preparation of a set of highlights that would summarize the discussion, the suggestions received, and the agreed follow-up actions after each meeting.
473. In June 2005, the Safeguards Supervision Mission Aide Memoire still warned that the “*‘information gap’ observed during the missions conducted in October 2004 persists and warrant further attention from WAPCo, the Bank Group, and NGOs.*”<sup>534</sup> The later BTOs and Aide Memoires do not specifically address consultation issues.
474. **Accessibility of Documents.** The Panel notes that disclosure issues and, in particular, the issue of access to information, the language of the documents, and the technical nature of the document were raised in the supervision documents.
475. Starting from February 2004, Bank documents highlighted the accessibility of documents as an issue. In its initial Communication Needs Assessment, the Bank noted that “[d]espite many efforts, WAPCo’s communication products are often too technical and too standardized and do not seem to be adequately

<sup>531</sup> BTO, Communication Needs Assessment, February 23- March 12 and March 26-April 4, 2004, sec. 7.2.

<sup>532</sup> BTO, Consultation Appraisal Mission, October 9-17 and October 27-31, 2004, pg. 7.

<sup>533</sup> BTO, Consultation Appraisal Mission, October 9-17 and October 27-31, 2004, pg. 7

<sup>534</sup> Aide Memoire, Joint MIGA-IDA Safeguards Supervision Mission, June 12-17, 2005, ¶2.

*customized for country specific needs.*<sup>535</sup> Additionally, the Communication Needs Assessment recognized that the EAs and RAPs were either in French or English, identified the need to have local-language summaries of the documents, and acknowledged that the “*objectives of public disclosure of these documents required by the World Bank are not fully achieved.*”<sup>536</sup>

476. Based on these critiques—the physical accessibility, language, and technical nature—of the documents, the Consultation Appraisal Mission BTO of October 2004 recommended that the information in the RAPs, EIAs, and EMPs be concisely presented, perhaps in the form of an information sharing workshop conducted in the local language(s) between then and the final investment decision and land acquisition.<sup>537</sup> Annex 2 of the Management Response lists numerous consultations on the RAP and EIA prior to May 2004. However, from this list it is unclear whether the recommended presentations took place before land acquisition that began in early 2005. The March 2007 BTO notes that WAPCo translated and distributed several documents: Safety Booklet in Egun Language (Nigeria); Grievance Procedure in Yoruba Language (Nigeria); WAPCo RAP Executive Summary in Yoruba Language (Nigeria); and others.<sup>538</sup> **However, the Panel notes that despite early problem identification, the adaptation and distribution of these essential documents took over three years.**
477. **Grievance Mechanism:** The Panel did not see that the issue of grievances was addressed prominently in the Bank supervision documents.
478. **Development Assistance, such as Training or Job Opportunities to Displaced Persons:** The issue of employment for affected people is addressed in the supervision documents. Management noted early that communities expressed expectations of jobs for people who live along pipeline route.<sup>539</sup> During the Safeguards Mission in June 2005 Management observed that the Ota residents were apprehensive that there would be fair employment for local population.<sup>540</sup>
479. The Supervision Mission, in September-October, 2006 concluded that “*communities have also benefited from employment opportunities, with local hiring facilitated by the Consortium. Of the land pipeline contractor’s present workforce of 170, approximately 85 percent are Nigerians, 10 to 15 individuals from Port Harcourt and the rest for the local communities.*”<sup>541</sup>

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<sup>535</sup> BTO, Communication Needs Assessment, February 23-March 12 and March 26 to April 4, 2004, sec. 6.1.

<sup>536</sup> BTO, Consultation Appraisal Mission, October 9-7 and 27-31, 2004, p. 7.

<sup>537</sup> BTO, Consultation Appraisal Mission, October 9-7 and 27-31, 2004, p. 7.

<sup>538</sup> BTO, Supervision Mission March 21-31, 2007, ¶21.

<sup>539</sup> BTO, Communication Needs Assessment, February 23–March 12 and March 26–April 4, 2004, sec. 5.1.

<sup>540</sup> Aide Memoire, Joint MIGA-IDA Safeguards Supervision Mission, June 2005, p. 7.

<sup>541</sup> BTO, Supervision Mission, September 22-October 13, 2006, ¶38.

480. Regarding local labor in pipeline construction in Nigeria, the Mission stated that it *“inquired into the number of jobs created by the Project. So far, between 400 and 500 people have been employed in the Project, both at the local hand labor level and at the level of medium skills and crafts, as there were carpenters, fitters and builders available in the pipeline communities. The Consortium of Host Communities facilitates recruitment.”*<sup>542</sup>

#### **D. Systemic Issues Identified during the Investigation**

481. The Panel notes that this investigation revealed some systemic issues that have affected the Bank’s overall compliance with its Operational Policies and Procedures in the context of this Project. Some of these issues are noted below.

##### **1. Supervision of Public-Private Partnership Projects**

482. The Panel is concerned by information it received that Management essentially put its faith in the Project Sponsor to carry out oversight and supervision during key preparation phases, as a substitute for direct engagement by staff in this critical function.

483. Management recognized that in working with a private-sector special purpose company to execute a project of this size, there were both opportunities and risks.<sup>543</sup> One risk was that WAPCo, driven by a tight preparation schedule and the escalation in costs to investors that could arise from delay, would forge ahead according to its own procedures and the requirements imposed by the four host governments, paying insufficient attention to Bank Group safeguards procedures.<sup>544</sup>

484. The Panel recognizes the importance of public-private partnerships and both the benefits and challenges involved. The Panel notes the Bank’s efforts to broaden its portfolio through support of public-private partnerships of the kind funded under this Project. However, as the Report shows, private partners are often chosen for their strong technical competence in a particular field, but may not be well equipped to address the range of Bank Policy requirements absent effective guidance, engagement and project supervision.

485. Management should have recognized these shortcomings and should have introduced adequate measures to address them. It would have been important to train the private partner adequately and to ensure thorough and timely supervision. As has been discussed above in this report, this was not the case. Instead, Management relied too much on the Sponsor.

486. In the present case, **the Panel is concerned that Management put too much faith in the Project Sponsor’s ability to handle complex social issues** in spite

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<sup>542</sup> BTO, Supervision Mission, September 22-October 13, Annex II, ¶21.

<sup>543</sup> Management Response, ¶27.

<sup>544</sup> Management Response, ¶27.



of the troubled history of some of the participating companies' involvement in the Nigerian oil and gas sector.

## 2. Acting on Early Warning Signs - - Resources for Supervision

487. The Panel also observes that a number of warning signs that appeared in the design phases of the Project were not properly interpreted and dealt with. For instance, Management did not adequately follow up on the warnings relating to the RAP process that were raised and discussed in the Monitoring reports. One important reason is an apparent lack of available supervision resources in terms of funds and safeguards expertise. **Providing sufficient resources and using them for mitigating emerging problems would have been particularly important in a complex Project such as WAGP.**
488. In addition, communication channels between the various parties monitoring the WAGP project appear to have been less than optimal. The Independent Monitors appointed by the Borrower “flagged” several matters of concern in each of their reports. The issues raised by the Independent Monitors (e.g. inconsistent implementation of the WAPCo Environmental Management System change management procedures,<sup>545</sup> problems with compensation)<sup>546</sup> do not appear to have been communicated to the Bank’s safeguard specialists in Washington.

## 3. Complex Regional Projects

489. **Bank Staffing and expertise:** As mentioned above, the Bank does not appear to have had at its disposal safeguard staff with expertise in pipelines. This makes it difficult to understand why the appointment of an expert panel was delayed and is only being finalised towards the end of pipeline construction. This problem has occurred before in earlier Panel inspections.
490. **Field presence:** The Panel notes that oversight of safeguard Policies and of Borrower adherence to EA and RAP requirements cannot be undertaken “from a distance” and without support from Bank staff present close to the project site. Field presence becomes even more important in large regional projects such as the WAGP. Management failed to realize, however, that in the context of a regional project more local oversight was needed. In this regard, the Panel noted that at the time of the eligibility visits the Bank’s office in Abuja, Nigeria was not well informed about the Project and was unable to provide the Panel with basic information about the WAGP and its implementation.
491. Despite the Bank’s insistence on consultation and disclosure and having staff skilled in these fields little appears to have been done in this Project to “field

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<sup>545</sup> “Independent Monitoring Report: Resettlement, Compensation, and Environmental Management Plan Commitments, the West Africa Gas Pipeline” June 2006, p. 2. Listed as a principal recommendation.

<sup>546</sup> “Independent Monitoring Report: Resettlement, Compensation, and Environmental Management Plan Commitments, the West Africa Gas Pipeline” June 2006, p. 3. Listed as a principal recommendation.

check” the adequacy of the Borrower’s communications with project affected communities. The failure of Bank staff to ensure that the Borrower made information available to local people at a level they would comprehend is perplexing.

492. With respect to overseeing safeguard Policies, communication between the Bank’s country and regional safeguard staff and those at Headquarters needs to be re-examined. It appears to be a consistent failing that “problem projects” do not have staff with adequate seniority and experience in safeguard compliance assigned to monitor projects in the field.
493. The Panel notes that an on-going regional or in-country presence of Bank Management was initially not considered necessary. However, **the Panel observed serious difficulties in policy oversight “from a distance.”** Field presence becomes even more important in large regional projects such as the WAGP.
494. The Panel observes that the regional character of the Project and the absence of corresponding administrative structures may have contributed to a lack of clarity regarding lines of communication and authority among country staff, regional staff and headquarters. The Panel observes that Management has recently augmented its field presence in Abuja and Accra and that a new approach to regional projects has been developed for the Africa region.

#### **4. Raising Expectations about Secondary Benefits**

495. The Panel notes a final systemic issue related to Project descriptions of the expected benefits of the Project in reducing gas flaring, as described above. Where statements are made to make a project politically attractive, for example by repeated references to secondary benefits, levels of expectation are raised among stakeholders who are mainly interested in these secondary benefits. And, as is brought home by this Request, **when stakeholders do not see their justified expectations fulfilled, they believe that they have been wronged. This creates a reputational risk for the Bank.**

## Annex 1 – Table of Findings

ISSUE	MANAGEMENT RESPONSE	PANEL’S FINDINGS
<b><i>SOCIAL ISSUES IN NIGERIA</i></b>		
General		<p>Panel acknowledges complexity of land tenure arrangements in West Africa and notes that efforts were made under Project to address related social issues.</p> <p>However, by not ensuring that WAPCo followed important elements of Bank Policy, Management undercut Bank’s development contribution to this Project. More significantly, the necessary measures to avoid impoverishment of displaced populations were not and still are not in place</p>
Baseline Socio-Economic Data	<p>There were twenty-five documented meetings and teleconferences between the Bank and WAPCo and its consultants, the first of which was in April 2001, nearly two years before detailed discussions on the TORs for the EA and RAP. The Bank was thus in a position to advise WAPCo on design and content of baseline environmental studies that were initiated prior to the preparation of the EA itself. Two years of baseline data were collected, which is desirable for a project of this type but usually resisted by investors on tight schedules.</p>	<p>Panel found that Management did not ensure that the requisite socio-economic information was gathered as called for in the Bank Policy. This does not comply with OP 4.12. The Panel finds that the absence of adequate baseline information makes it impossible to ensure that the impacts and potential impoverishment risks facing local people are properly addressed, as required under the Bank’s Resettlement Policy.</p>
- Number of displaced persons	<p>In Nigeria, the construction of the gas pipeline, compressor station, and construction camps required acquisition of about 144 hectares (ha) of land. Due to the linear nature of the project, this relatively small amount of land is spread among 23 communities of two western states of Nigeria. A total of 1,557 private landowners and 928 tenants are losing a small portion of the total holdings they own and/or cultivate. They all have been contacted both by the Estate Surveyors contracted by WAGP and responsible for the land and asset inventory as well as by independent surveyors that the affected people themselves hired to represent them. The estimated number of people in the affected families of owners and tenants is 8,647. About 143 residential plots are affected; on 37 of these there are fully constructed homes.</p>	<p>Panel finds that complexities of traditional land tenure system, wherein large extended families control land and heads of families distribute user rights among members of the extended family, were not adequately taken into account. This does not comply with OP 4.12. The size and economic holdings of the extended families was - and still is - unknown.</p> <p>Panel further observes that number of displaced persons reported in the RAP was determined using a figure for “average” household size which the RAP itself notes is “<i>surprisingly low.</i>” The Panel expert determined that the size of the displaced population seems to be underestimated as a result of the methodology used for their identification.</p> <p>The proportion of extended family’s holdings taken by the WAPCo land acquisition is unknown. It may be that the takings had nominal impacts on the overall productive capacity of the extended family. However, it may also that some were disproportionately damaged. Without knowledge of the socio-economic organization, it is impossible to assess the</p>

ISSUE	MANAGEMENT RESPONSE	PANEL'S FINDINGS
		impoverishment risk.
- Vulnerable groups		Panel finds that Bank Management failed to ensure that Sponsor performed an adequate analysis of socioeconomic risks to vulnerable peoples. This does not comply with Bank Policy on Involuntary Resettlement, and denied these peoples protections provided under the Policy. Since no studies were carried out or mitigation has occurred, population along ROW remains at risk.
- Land and productive assets of displaced persons	RAPs for the project contain measures to improve or restore livelihoods and standards of living, minimize land acquisition, guarantee that all affected households have an option to choose between land-for-land or cash compensation based on negotiated replacement costs, ensure that no construction starts prior to full payment of compensation, ensure that impacts on water resources and transport infrastructure are minimal and temporary, with no adverse income and livelihood impacts, and most importantly, to provide full replacement value for assets lost.	Panel finds that Management did not ensure that Project planners used reliable and specific data on individuals or households affected by the ROW, rather than assumptions, averages, and related arguments.  As result of these flaws in methodology, Project documents presented to the Board at time of Project approval included incorrect and incomplete information on livelihood and impoverishment risks. This was inconsistent with OMS 2.20 and OP 4.12.
Loss of Livelihood, Under-Compensation and Harm		
- Land-for-Land option	Most landowners have lost only small amounts of land and do not have to move. For them, alternative employment is not an issue. Of those whose houses or house plots were acquired, only two opted for resettlement. Cash compensation was the nearly unanimous choice of all affected landowners or land users. Moreover, the land in the ROW can still be used for grazing and foot traffic.	Panel finds that a land-based resettlement option, described as an alternative within the RAP and encouraged as a preference in OP 4.12, was not effectively offered to the displaced persons as a viable option for livelihood restoration. This is inconsistent with the provisions and objectives of OP 4.12.
Livelihood restoration and method to establish cash compensation	The intent of the Bank, in rejecting the initial draft of the RAP, making extensive comments on the second draft, and meeting with WAPCo's consultants to assist in improving the RAP, was to assist WAPCo in its efforts to avoid negative impacts on anyone's livelihood. WAPCo's consultants had surveyed the affected communities and both the consultants and WAPCo had consulted directly with affected families. At the consultations held by the Bank in October 2004, concerns were raised about the possibility that government rates would be used in determining compensation amounts, and WAPCo and the Bank assured the audience that this would not be the case. The RAPs also call for an independent audit of resettlement, which	RAP transferred burden for restoration of livelihood onto displaced persons, once they had obtained cash compensation, without providing additional assistance as called for in Bank Policy. Panel finds that issues of livelihood restoration, resettlement assistance beyond compensation, and benefit-sharing were not properly negotiated with displaced persons. This does not comply with Bank Policy on Involuntary Resettlement.  RAP transferred burden for restoration of livelihood onto displaced persons, once they had obtained cash compensation, without providing additional assistance as called for in Bank Policy. Panel finds that issues of livelihood

ISSUE	MANAGEMENT RESPONSE	PANEL'S FINDINGS
	<p>is scheduled for September 2006. In June 2005, the communities that gathered at Badagry did not express any dissatisfaction with compensation. Those that gathered at Otta did, but at the same time, they expressed their appreciation for the process, particularly the fact that the funds were paid directly to the intended recipients. The RAPs include grievance procedures, which should be the first means of dealing with the Requesters' concern about the level of compensation. The Bank had already requested and received information on amounts paid to the group of communities around Otta that met with the June 2005 mission. The tabulation covers only three of the Requesters, and the Bank has now asked WAPCo for the corresponding information for all of the other communities, in advance of the scheduled September 2006 independent audit. A resettlement specialist is analyzing the Otta area data and will submit findings and recommendations by May 31, 2006.</p> <p><i>Potentially inadequate compensation:</i> The Bank and WAPCo are committed to compensation at full replacement costs. The Bank has begun reviewing compensation rates for the northern part of the Nigerian ROW (the June 2005 mission undertook to review those rates but this has not yet been completed) but the Bank has not yet received compensation data from the southern portion of the Nigerian ROW. The Otta section report on individual compensation payments to affected persons does not match the valuation methodology described in the RAP (the spreadsheet sent by WAPCo only shows inflation adjustments of 75 percent for land and 50 percent for other assets, but not after first increasing Oil Producers Trade Section (OPTS) rates by ten times as explained in the RAP). Since no payment receipts were included, the spreadsheet alone only shows the amounts people were eligible for, not a record of what they were paid. The Bank is seeking further information from WAPCo on its valuation methods and a full review of the adequacy of compensation is required in advance of the scheduled September 2006 independent audit.</p>	<p>restoration, resettlement assistance beyond compensation, and benefit-sharing were not negotiated with the displaced persons. This does not comply with Bank Policy on Involuntary Resettlement.</p> <p>Panel discovered a major flaw in how stated approach was applied., and that the agreed upon 10-fold multiplier in providing compensation was not applied. As a result, the displaced people were paid one-tenth of what was planned in RAP. This has resulted in a major failure to comply with Bank Policy on Involuntary Resettlement, and to ensure that displaced people are at least as well-off as before displacement as required by this Policy.</p> <p>Furthermore, Panel found that compensation methodology did not take into account income foregone for the loss of perennial crops. In addition, contrary to Bank Policy, Panel finds that transaction costs were borne by displaced persons, which further reduced their chances of being as well off after transaction as before.</p>
- Remedial steps	Before the first quarter of fiscal year 2007, the Bank will assess whether compensation rates were insufficient to replace acquired assets or the grievance redress process was ineffective for any affected people.	Panel observes that Management and WAPCo recognized that under-compensation occurred, and are preparing for another compensation disbursal. Panel notes and appreciates these actions.

ISSUE	MANAGEMENT RESPONSE	PANEL'S FINDINGS
	<p>Information available now is inconclusive but if either assessed rates paid are below replacement cost or the grievance process is functioning poorly, WAPCo and the Bank will correct the problems. The next supervision mission, scheduled for the first quarter of FY07, will assess the facts on the ground and, if needed, agree on any necessary retrofit measures with WAPCo. The mission will discuss findings with the affected communities. Before September 30, 2006, WAPCo will conduct professional surveys to assess, across the length of the pipeline, the current values of each type of asset lost to the project, including communal lands, trees, crops, other structures, and public assets. These surveys will be based on actual field measurement and ratings, not on State, local, or OPTS rates. The definition of replacement value in OP 4.12 will be the guideline used. Before the first quarter of fiscal year 2007, the Bank will review the specific cases cited in the Request to ensure replacement value compensation was paid.</p> <p>Replacement value compensation is the approach agreed with WAPCo and the Management believes that this principle must be applied. If it has been applied inconsistently, the Bank will ensure this is corrected.</p>	<p>Panel is concerned, however, that this is being done without consultation with displaced peoples, identifying or preparing mitigation for at-risk populations, without setting clear eligibility requirements based on local land tenure, without correction for transaction cost error discussed above, without benefit-sharing provisions for displaced population, and without determining whether cash compensation is or is not the appropriate instrument to be used to avoid Project-induced impoverishment.</p>
<p>Development Assistance – Sharing in Project Benefits</p>	<p>Management believes that the project will benefit, not impoverish affected people, through resettlement compensation, as well as community development, construction and planned permanent employment. Further, replacement valuation is the approach agreed with WAPCo and Management believes that this principle must be applied. If it has been applied inconsistently, the Bank will ensure this is corrected. Based on this, Management believes that affected people will be able to improve, or at least restore their standards of living as a result of the project. If any concerns of inadequate compensation have not been properly addressed, as required by the project's legal agreements, the Bank will ensure that those standards are met.</p> <p>For the affected communities as a whole, WAGP brings direct benefits that will contribute to improvements in living conditions. The CDP has been designed in consultation with citizens and documented in April 2006 in an MOU between the Consortium and WAPCo. WAPCo</p>	<p>Panel finds that Management permitted an involuntary resettlement to begin without a development assistance component as required by OP 4.12 that would provide targeted investment resources to enable the persons displaced by Project to share in Project benefits.</p>

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	<p>will, in its first year, support construction of boreholes, water systems, schools and health centers in 14 communities, at an estimated total cost of US\$ 950,000. Some of the projects will be used by neighboring villages. WAPCo's intention is to formulate a comprehensive, five-year CDP. Additional communities will receive community development support in the second year and subsequent years of the program. Seven of the 12 communities listed in the Request are direct beneficiaries of the first year program.</p> <p>Purchases of goods and services and temporary employment during construction are expected to benefit some community members and businesses, and a limited number of permanent positions exist in pipeline operation and maintenance.</p> <p>More broadly, the revenues that will accrue to Nigeria from the sale and transport of hitherto flared gas and non-associated gas (NAG) should contribute to development and poverty alleviation.</p>	
Disclosure of Information and Consultation	<p>Management considers that extensive consultations were held and concerns well documented and presented in a balanced manner. Management believes that compensation was adequately covered in consultations but agrees that Yoruba translations of summary RAPs and EMPs were not disseminated, as requested by the Bank in its supervision mission of June 2005.</p> <p>WAPCo and its consultants conducted twenty-five formal consultations in communities along the pipeline ROW in Nigeria concerning all matters covered in the EA. There were twenty additional consultations organized exclusively for the RAP.</p> <p>The first draft of the EA for Nigeria was disclosed at national, state and local government offices in January 2004, before the EA had been cleared by the Bank, in preparation for public hearings held by the Federal Government of Nigeria (FGN) in March 2004. It was regarding this disclosure that persons seeking access to the document at Badagry encountered difficulties, but these were swiftly corrected by WAPCo once it learned of them. After clearance by the Bank, the final drafts of the EA and RAP were disclosed at eleven locations in Nigeria, including Badagry local administration and on</p>	<p>Panel finds there was a failure to adequately disclose critical RAP information necessary for displaced persons to make meaningful, informed choices about livelihood restoration. This does not comply with OP 4.12 on Involuntary Resettlement, or with Bank's Policy on Disclosure of Information.</p> <p>Yoruba translation of executive summary of RAP was prepared about 24 months following the last compensation payment. During field visit in July 2007, Panel found no evidence of distribution of this document in key resettlement area of Igbesa. Regardless of distribution, Panel finds that disseminating such information on livelihood, compensation and other resettlement entitlements years after the displaced persons have made decisions on these matters is neither meaningful nor timely. This does not comply with Bank Policies on Involuntary Resettlement and Disclosure of Information.</p> <p>Panel found only limited evidence that efforts were made to integrate consultation process into preparation of RAP, and in particular to inform displaced persons of their entitlements under the RAP. This lack of meaningful and timely consultation prevented participation and informed negotiation of resettlement options by displaced persons as called for in OP 4.12. Panel</p>

ISSUE	MANAGEMENT RESPONSE	PANEL'S FINDINGS
	<p>WAPCo's and the Bank's website, and copies were provided to various NGOs. WAPCo verified the presence of the documents at the disclosure locations, and the Bank is not aware of any problems with public access to them.</p> <p><i>Potential uncertainty regarding disclosure of information:</i> Although the Task Team understood the areas affected by the pipeline to have a high proportion of fluent English speakers, during the June 2005 mission it became clear that the existing English documents were too long and technical for wide community understanding of entitlements or risks, and this contributed to apprehension and undermined project credibility. Non-technical Yoruba translations of the summaries of the EMP and RAP documents have yet to be completed and disseminated, as agreed by WAPCo during the June 2005 mission. The findings of the technical study on the existing ELPS Integrity Study were not disseminated or publicly reviewed; in addition, WAPCo's own project safety plans are drafted but will be made public only in the next few weeks.</p> <p><i>Transparency and accountability.</i> The June 2005 Bank mission recognized the translation issue and WAPCo committed to remedy it. The Bank will conduct two supervision missions a year until the project is complete. The next mission is scheduled for the first quarter of fiscal year 2007, and will include financial and economic staff specialists, social and environmental staff specialists to start planning for the resettlement audit, and to assess staff capacity and institutional arrangements of agencies required to deliver planned emergency response, community development and resettlement grievance redress services. Before September 30, 2006, WAPCo will disseminate non-technical translations of RAP and EMP summaries, including clear explanation of grievance redress and monitoring mechanisms; advertise the availability of these documents on all work sites by posters—including where and how any complaints or grievances can be registered; and maintain grievance logs for inspection by local communities.</p> <p>Management believes that compensation was adequately covered in consultations; tensions that may have developed are not a result of the project.</p>	<p>finds that Management did not provide adequate guidance and instructions to Project Sponsor to carry out meaningful consultation with displaced people.</p>



ISSUE	MANAGEMENT RESPONSE	PANEL'S FINDINGS
Grievance Mechanism	<p>As pointed out in response to Item 2, WAPCo and its consultants responded to questions on compensation and land acquisition that were asked by participants at consultations on the EA. In addition, 20 community meetings on RAP issues were held between November 2002 and September 2003. Further RAP workshops were conducted in August 2003, at Ijoko and Itoki villages, and at Anuko-Ijoko village. In February 2004, there was another series of meetings on land acquisition and the RAP, one each at Otta, Igbesa, and Badagry.</p> <p>The RAPs also contain grievance redress and monitoring mechanisms to correct any deficiencies. Measures include: (i) a complaint register and grievance redress/dispute resolution process ; (ii) internal monitoring by WAPCo teams to ensure that the valuation and payments are made correctly; that the grievance process is functioning and any problems are being resolved (however, as this internal monitoring by WAPCo has not occurred as planned in the RAP, the task team is reviewing the adequacy of compensation to replace lost assets and progress in income restoration to date; (iii) annual impact monitoring to assess the effectiveness of compensation in improving or at least restoring incomes; (the first of these impact monitoring reports is scheduled for September 2006, coinciding with the first field visit of the expert panel) (iv) external monitoring by an expert panel to verify that results comply with resettlement standards, (scheduled for September 2006); and (v) after completion of all planned actions under the RAP, an independent completion audit to ensure the resettlement objectives have been achieved and mitigation measures have had their intended effects to improve or at least restore livelihoods.</p> <p>In September 2006, the expert panel will assess effectiveness of the grievance redress process and ensure oversight and monitoring process are credible.</p>	<p>Panel notes that without meaningful consultation, including access to the RAP and without an effective disclosure procedure, displaced persons could not have understood grievance avenues available to them. The Panel finds that Management failed to ensure that the Sponsor had in place an effective grievance process to identify and redress resettlement issues, as required by OP 4.12.</p>
Institutional Capacity	<p>The Bank recognized that in working with a private-sector special purpose company to execute a project of this size, there were both opportunities and risks. The opportunity lay in the substantial resources of its major investors—capital, technical capacity, swift decision-making, lessons learned from prior experience in Nigeria and elsewhere in the world, and corporate commitments to protect the natural</p>	<p>Panel finds that Management did not comply with the requirements of BP 4.12, including those to assess the Borrower's commitment to and capacity for implementing the resettlement instrument, and mitigating significant risks, including risk of impoverishment, from inadequate implementation of the resettlement instrument. Panel further finds Management did not adequately review and inform the Board of</p>

ISSUE	MANAGEMENT RESPONSE	PANEL'S FINDINGS
	<p>and human environment from the adverse impacts such development projects can cause. This combination of resources is rarely available to projects executed by public sector borrowers. The risk was that WAPCo, driven by a tight preparation schedule and the escalation in costs to investors that could arise from delay, would forge ahead according to its own procedures and the requirements imposed by the four host governments, paying insufficient attention to Bank Group safeguards procedures.</p> <p>The Bank's effort has focused on maximizing opportunities and safeguarding against risks. Therefore, the Bank has guided the project Sponsors in preparing a regional EA, which integrates the findings of each country-specific EA that the Sponsor was obliged to prepare.</p>	<p>the Sponsor's past experience and limited capacity with implementing operations involving similar involuntary resettlement activities. This is inconsistent with the provisions of OP/BP 4.12 and OMS 2.20.</p>

***ENVIRONMENTAL ISSUES***

Documentation & Categorization		<p>The EIA documents meet the requirements of Annex B of OP 4.01 <i>Content of Environmental Assessment Report for a Category A Project</i>.</p> <p>The Project was correctly assigned "Category A", and as the Project involves four countries a consolidated "Regional Assessment" was appropriate.</p>
Independent Advisory Panel	<p>Appointment of the expert panel that was required under the project was unreasonably delayed because of issues related to approvals for contracting consultants. These procedural problems are being resolved and the panel is expected to be appointed and make its first field visit before the end of September 2006. The TORs for the expert panel mandate it to review and provide recommendations to address social and environmental issues encountered during project implementation such as those raised by the Request.</p>	<p>Panel finds that failure to establish the independent advisory panel during the planning and design stages of the Project, and delay in its establishment during Project implementation, did not comply with OP 4.01</p>
Analysis of Alternatives	<p>Management believes that the economic analysis did consider all feasible alternatives and adequately evaluated the project's sustainability.</p>	<p>The OP 4.01 requirement that alternatives be evaluated has been met. However, the lack of a full economic evaluation of the alternative offshore pipeline route is a significant shortcoming and is not consistent with OP 4.01.</p>
Disclosure EA Documents and Consultations	<p>The first draft of the EA for Nigeria was disclosed at national, state and local government offices in January 2004, before the EA had been cleared by the Bank, in preparation for public hearings held by the Federal Government of Nigeria (FGN) in March 2004. It was regarding</p>	<p>EA documentation is of good quality and written in sound technical English, but requires a high degree of education to be fully comprehended. For existing upstream Escravos-Lagos pipeline (ELPS), an Environmental Audit (or risk assessment) in form of an Integrity Study was</p>

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	<p>this disclosure that persons seeking access to the document at Badagry encountered difficulties, but these were swiftly corrected by WAPCo once it learned of them. After clearance by the Bank, the final drafts of the EA and RAP were disclosed at eleven locations in Nigeria, including Badagry local administration and on WAPCo's and the Bank's website, and copies were provided to various NGOs. WAPCo verified the presence of the documents at the disclosure locations, and the Bank is not aware of any problems with public access to them. The detailed Environmental and Social Management Plan (ESMP) for Nigeria prepared in May 2005 is also on WAPCo's website. The signed memorandum of understanding for the CDPs has been returned to the communities and will be disclosed on the WAPCo website and at the Bank's InfoShop.</p>	<p>undertaken. This document, however, apparently was not placed in public domain. Panel finds that apparent non-disclosure of this assessment of the ELPS, and fact that its findings and recommendations are not taken up in Environmental Assessment Reports, is not in accord with paragraphs 15 and 16 of OP 4.01.</p> <p>Panel also observed that affected communities appear not to have been provided with understandable relevant materials on overall environmental documentation prior to consultation meetings. The requirement of OP 4.01 that disclosure be in a form and language that is understandable to the groups being consulted has not been met.</p>
<p>Upstream Impacts and the ELPS</p>	<p>Management believes that the EA covers both the upstream gas source and pipeline safety issues. An ELPS Integrity Study was also conducted (see below), showing that the existing pipeline needed no major repairs in the next ten years as a result of its connection to WAGP.</p> <p>The Bank spent considerable time in discussions on the ELPS in order to decide whether it was a part of the project's area of influence and thus should be included in the scope of the EA. ELPS has been in operation since the early 1990s. It would not be subject to any changes as a result of the implementation of WAGP. It has substantial customers other than WAGP and does not depend on WAGP for its continued operation. The Bank therefore concluded that, based on (a), (b) and (c) of the definition, ELPS was not a part of the project's area of influence.</p> <p>Moreover, an environmental audit is the appropriate instrument to apply to an existing facility rather than EA, and WAPCo on its own had commissioned a two-phased study of ELPS, focusing on present condition, safety and security, which are the main topics an audit would consider. The study concluded that ELPS could carry the gas for supply to WAGP in its present condition, but it also recommended a number of safety and security improvements that the pipeline operator should undertake. As a result of the two-phased study, improvements in safety and security will be made at ELPS, and so WAGP's impact on its condition has been</p>	<p>Panel finds that the gas supply system upstream of WAGP is within the Project's area of influence under OP 4.01. Regional EIA properly flags that Project might have potential impacts in these upstream areas, but an analysis of their nature and scope has not yet been carried out.</p> <p>Panel also observes that in various Project documents, Bank itself makes linkage between WAGP and upstream reduction of gas flaring, in this case to highlight a projected benefit of the Project. This reinforces view that Project and associated facilities and supply areas should be viewed as an inter-connected system for purposes of environmental assessment, considering both potential benefits and adverse impacts. Panel is concerned that Project documentation was not consistent in defining the Project's area of influence.</p> <p>Management Response states that ELPS Integrity Study constitutes an environmental audit, which is an appropriate instrument for ELPS given that it is an "existing facility." Panel finds support for view that this is an appropriate EA instrument for the ELPS.</p> <p>As noted above, however, Integrity Study of the ELPS was not made part of EA documentation and apparently has not been publicly disclosed. This has impeded ability of Requesters and members of public from being informed of, and providing comments on, this important and controversial subject.</p>

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	<p>positive rather than negative.</p>	<p>Net effect of the new WAGP being connected to the old ELP system is that latter has been subject to thorough review and inspection, defects have been detected and corrected, and safety and operational systems modernised. Panel's expert concluded that linkage of the WAGP and ELPS has had overall effect of improving the safety of the Escravos-Lagos pipeline.</p>
<p>Emergency Response and Contingency Plans</p>	<p>The Bank and MIGA supervised the project specifically for ESMP and RAP implementation in June 2005, holding consultation meetings at Badagry and Otta. At that time, no construction work had begun in Nigeria, and so the mission focused on consultation, RAP implementation, and the status of activities such as design of the CPDs and preparation of emergency response plans. The issues raised during the mission were: inadequate compensation, need for emergency response plan, implementation of CDPs, and employment of local labor and contractors. Bank staff followed up on these issues.</p> <p>On emergency response, the Bank received assurances from WAPCo that response plans would be completed in early 2006 and discussed with all affected communities prior to any transmission of gas. The system-wide plan was issued in May 2006. WAPCo held community meetings on emergency response in February 2006 and will hold additional meetings in the third quarter of 2006 after detailed, site-specific response plans are prepared.</p>	<p>Panel found that sound and wide ranging emergency response plans have been compiled but had not, as of July 2007, been communicated to communities along the Nigerian portion of WAGP's ROW. Such emergency response plans will not be effective unless communities are properly informed, both orally and via clear, understandable written text in a form that can be retained and readily accessed, before the pipeline becomes operational.</p>
<p>Fisheries and Livelihoods in Nigeria</p>	<p>WAPCo visited the site on June 22, 2006 in the company of the community representative to Ajido, where they met with the chief fisherman and several other local fishermen at Ajido.</p> <p>This meeting was followed by several other face-to-face meetings with the affected fishermen (including the chief fisherman), further site visits to Ajido, the physical sampling of the substance, and discussions among WAPCo's construction engineers and Health, Safety, and Environmental (HSE) auditors. WAPCo's conclusion is that the brownish-green substance is a filamentous green alga, tentatively identified as a species of Spirogyra. At one stage of its life cycle, Spirogyra can take on a brownish color, which may explain why some fishermen describe the substance in their nets as brown and others as green. WAPCo also noted</p>	<p>Numerous fishermen from the Ajido community believed that their nets were fouled by a substance during the 2006 fishing season and that this occurred at about time pipeline was being drilled. Unfortunately no sample of substance was subject to microscopic or microbiological examination or to chemical analysis to determine its identity and none was preserved to allow for later testing. Precisely what offending substance was remains unknown.</p> <p>According to Panel's expert, speculation that Bentonite used as drilling mud caused the net fouling is without scientific foundation. Record is silent as to whether Management briefed WAPCo as to how the incident was to be investigated and whether or not samples of the offending substance were to be analysed. A</p>

ISSUE	MANAGEMENT RESPONSE	PANEL'S FINDINGS
	<p>that there are municipal wastewater discharges into the creeks, and these are a likely source of nutrients that could cause an accumulation of algae in the lagoon greater than normal. Given that the substance appears to be plant material, that its location is in the lagoon and not the marine environment, and that, according to WAPCo, the HDD process in the area was completed smoothly, WAPCo has concluded that the problem encountered by the Ajido fishing community is not related to the installation of the gas pipeline.</p> <p>Bank staff have also reviewed the information provided by WAPCo. HDD was recommended in the Environmental Impact Assessment for WAGP as the method of choice for the lagoon crossing and the beach crossings in Nigeria, Benin and Togo. It is not the least-cost technique, but has been proven to be the best process in preventing damage to sensitive aquatic environments, when compared to the conventional method of sheet piling, excavating and backfilling. HDD was therefore specifically chosen by WAPCo for the lagoon crossing at Badagry as the preferred method to minimize disturbance to this sensitive area.</p> <p>Based on the above noted clarifications and the methods employed in drilling and laying the pipeline in the lagoon and Badagry Creek, Management believes it is unlikely that the substance found on the nets is related to WAPCo's operations.</p>	<p>lesson is that incidents that may be project related need to be comprehensively and rigorously investigated and documented.</p>
<p>Fisheries and Livelihoods in Ghana</p>	<p>It was not cost-effective to consult with every coastal community; instead, consultations were held in major fishing centers, with a focus on coastal communities in the vicinity of pipeline landfalls. Chief fishermen and other representatives of the fishing communities participated in these consultations. During Bank appraisal of WAPCo's community participation, staff spoke with fishing community representatives in all four countries. Through WAPCo's community development program, the NGOs contracted to assist in program implementation and WAPCo's own community liaison officers will continue to remain engaged with all communities along the pipeline right-of-way and in coastal areas surrounding pipeline landfalls for several years. This affords community members, including fishermen, ready lines of communication to raise any</p>	<p>Panel observed that Environmental Baseline Surveys contain considerable detail on fish and fisheries along the route of pipeline. Panel notes that during July 2007 visit to Ghana neither artisanal fishermen nor fisheries regulators expressed concern about potential negative effects of WAGP on their future livelihoods</p>

ISSUE	MANAGEMENT RESPONSE	PANEL'S FINDINGS
	<p>concerns about project impacts. Moreover, the environmental monitoring plan for WAGP includes assessment of fishery and livelihood impacts, which will be undertaken by independent consultants. Bank supervision and the independent expert panel will have these issues on their agenda as well.</p>	
<p>Gas Flaring</p>	<p>At the regional and local levels, overall emissions of greenhouse gases and air pollutants are expected to diminish as a result of WAGP, resulting in improved air quality at the global, regional, and local levels, and related improvements in public health and quality of life. The projected decline in overall emissions of greenhouse gases, according to the EAs, ranges between 86 million metric tons and 11 million metric tons CO<sub>2</sub> equivalent over a 20-year period, depending on the assumptions made about future economic growth and associated energy consumption in the four countries. Overall regional emissions of other air pollutants will also decline under either scenario. WAGP will make a small but meaningful contribution to reduction of gas flaring by transporting annually an estimated 1 billion cubic meters of associated gas (AG), some or all of which is currently flared (roughly 5 percent of the total amount of gas that is flared in Nigeria). Emissions of particulates, oxides of sulfur and nitrogen, and unburned hydrocarbons will decrease in Nigeria as currently flared gas is instead sent out of the country for cleaner combustion in Benin, Ghana and Togo. Ambient air quality should therefore improve in the gas production areas as routine flaring is reduced. Emissions of air pollutants in Benin, Ghana, and Togo will depend on the assumptions that are made regarding the levels of future development, but even if increases occur, they would be expected to be less than would be the case with oil-fired or coal-fired generation.</p> <p>While the stated objectives in the PAD do not include flaring reduction, the project has been characterized by some as a “flaring reduction project.” Despite the fact that it was not part of the development objectives, the project does, in fact, make a modest contribution to flaring reduction; this can be noted when the amounts of gas that WAGP would carry are looked at in the context of the large total volume flared in Nigeria. The modest amount of flaring reduction that WAGP aims to achieve is treated as an</p>	<p>Panel notes that during its investigation visit, members of communities from Delta region came to meet with Panel to describe serious impacts they endure from flaring, and ask for all that can be done to reduce and eliminate this problem near their villages.</p> <p>Panel’s Report notes apparent inconsistencies in Management documents with respect to expected contribution of flaring reduction. Panel notes the importance of ensuring a transparent monitoring of the impact of Project on gas flaring. The Panel trusts that Management will specifically address this issue in its Response to this Report.</p> <p>Panel observes that although a few statements in Management documents were pointing out that Project impact on overall flaring reduction would not be substantial, documents included a lot of text on gas flaring that was imprecise and suggestive of much larger benefit. This raises a systemic issue as discussed at the concluding section of Panel’s Report.</p>

ISSUE	MANAGEMENT RESPONSE	PANEL'S FINDINGS
	<p>economic and environmental benefit to Nigeria, without overstatement in the economic analysis.</p> <p>It also believes that the project's contribution to reduced gas flaring is presented without overstatement in the economic analysis as well as the PAD and—in order to see actual results—the annual volume of AG (normally flared) is included as one of the project's monitoring indicators.</p> <p>The Requesters' communities are 250 kilometers from the nearest part of the Delta, where Nigeria's oil and gas resources are located. The Bank held discussions with WAPCo and its main investors and assured itself that WAGP would not result in any new development of gas or oil in the Delta in the near future. The only impact to be anticipated there between now and the time that throughput in the pipeline would exceed 250 MMscf/day is the positive effect of any reductions in flaring that occur. Thereafter, there could be new construction of gas-gathering infrastructure and possibly construction of new gas wells.</p>	

***PROJECT IMPLEMENTATION, SUPERVISION AND SYSTEMIC ISSUES***

<p>Mission Duration, Frequency and Expertise</p>	<p><i>Early and Continuous Engagement of Senior Bank Safeguard Staff.</i> Senior Bank safeguards staff from the Quality Assurance and Compliance Unit and the Environment unit of the Legal Department, along with the two regional safeguards coordinators that served in the region during preparation, worked directly with the Bank's WAGP team, WAPCo and its consultants, and MIGA's safeguard specialists, in review and oversight of the safeguards work. These staff members were involved prior to preparation of the Terms of Reference (TORs) for the EA and RAP through negotiations of the key legal agreements and presentation of the project to the Board. Three senior members of this team comprised the first field mission for safeguard supervision in June 2005. The Bank team has followed up on all but two of the actions recommended by the mission: the analysis of the adequacy of compensation is still underway and the expert panel has not yet been deployed to examine the compensation complaints.</p> <p><i>Sufficient Time to Undertake Safeguards Work.</i> The Bank resisted pressure from the private investors and the client governments to take the</p>	<p>Panel notes there were long gaps between supervision missions prior to Request. Furthermore, safeguard staff mainly concerned themselves with Project preparation and were far less involved in the construction phase of the Project. Panel finds that Management did not ensure adequate supervision during the construction phase. This did not comply with Bank Policy on Supervision.</p> <p>Issues of involuntary resettlement required particular attention in supervision. Though Management identified several problems regarding compensation process, it was slow to address them. Panel finds that Management's lack of diligent supervision created a responsibility vacuum during the RAP implementation. This did not comply with Bank Policy on Supervision, and led to problems in the resettlement process.</p>
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ISSUE	MANAGEMENT RESPONSE	PANEL'S FINDINGS
	<p>project to the Board in an unreasonably short time that would have compromised the quality of the Bank's review of safeguards compliance, including consultation and disclosure.</p> <p><i>Private Sector Capacity and Motivation to Maintain Due Diligence and Oversight.</i> Most of the consultations and field visits were conducted by WAPCo and its consultants. A social safeguards specialist from the Bank conducted field visits to all locations prior to the inception of work on the EA and RAP. MIGA environmental and social specialists made field visits and attended the public hearings that were held on the first draft of the EA. The Bank's External Affairs Department (EXT) held consultations in all four countries while the second drafts of the EA and RAP were in preparation. Bank environmental, social and community development specialists conducted field visits to all locations and visited communities involved in WAPCo's consultation processes to get a firsthand appreciation of the people's concerns and assess whether consultation and disclosure had been adequate. The arrangements for supervision rely on WAPCo to oversee contractor performance in implementing the Environmental Management Plan (EMP) and to hire consultants to conduct independent monitoring and independent audits of its own performance. Superimposed on this structure are normal Bank supervision missions and a planned independent Environmental and Social Advisory Panel.</p>	
<p>Systemic Issues</p> <ul style="list-style-type: none"> <li>- Supervision of public-private partnerships</li> <li>- Action on early warning signs -- resources for supervision</li> </ul>		<p>Panel is concerned that Management put too much faith in Project Sponsor's ability to handle complex social issues in spite of troubled history of some of the participating companies' involvement in the Nigerian oil and gas sector.</p> <p>A number of warning signs that appeared in the design phases of Project were not properly interpreted and dealt with. One important reason is an apparent lack of available supervision resources in terms of funds and safeguards expertise. Providing sufficient resources and using them for mitigating emerging problems would have been particularly important in a complex Project such as WAGP.</p> <p>Panel notes that an on-going regional or in-country presence of Bank Management was initially not considered necessary. However,</p>





## Annex 2 – Mistakes from the Past, Repeated

1. Under Bank Policy, the Sponsor is responsible for preparing, implementing and monitoring the resettlement plan, with the RAP presenting the strategy for achieving the objectives of the Policy. The Policy emphasizes that Borrower commitment to and capacity for undertaking successful resettlement is a key determinant of Bank involvement in a project,<sup>547</sup> including a requirement that management review past Sponsor experience with similar operations<sup>548</sup> and any technical assistance that management might provide the Sponsor.<sup>549</sup>
2. In the present case, no formal assessment of the Borrower's capacity specifically in the area of involuntary resettlement could be found, but the highest level of Management had early warning as early as 2001 that there was a problem. An Open Letter was sent to the Bank President on 18 December 2000 from Isaac Osuoka from Oil Watch Africa Network and signed by over 50 organizations raised concerns about consultation, human rights, environmental, and communal conflicts facing the WAGP project.<sup>550</sup> In particular, the letter it raise issues about one of the WAGP partners not showing up for consultations, inadequate information. It shows concerns for the oil sector's expropriation of traditional lands that has increased commoditization and competition for land in Nigeria that has created conflicts with an increasingly violent character with destruction of lives and property. The Bank responded that it funded technical assistance that expired in mid-1999 and had no commitment, at that point, to fund the projects although discussions were continuing. Management made a commitment was that if the Bank were to get involve "*the decision to get involved would be based on a full environmental and social impact assessment that would have to be carried out, and an environmental and social management plan that would have to be developed through a participatory process and in accordance with the Bank's guidelines and procedures.*"<sup>551</sup>
3. Management assumed, rather than evaluated the Sponsor's capacity in dealing with the social safeguard issues. The Sponsor's partners have a strong reputation for physical environmental work, as was evident in the quality reports of the Project's environmental assessments. This capacity did not imply that they had an equal capacity in dealing with social issues, particularly those related to land acquisition. Management did not heed three early warnings about the Sponsor's limited capacity to meet the Bank's safeguard Policies. Full awareness of their Sponsor's limited capacity to deal with social issues, in a manner expected by the safeguard Policies, should have led to action, including increased training, intensified supervision, and urgency to field an international Expert Panel. Such actions were not forthcoming.

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<sup>547</sup> OP 4.12 ¶18 and BP 4.12, ¶10a.

<sup>548</sup> BP 4.12, ¶2d.

<sup>549</sup> BP 4.12, ¶2d and 2f.

<sup>550</sup> Open Letter was sent to the Bank President on 18 December 2000 from Oil Watch Africa Network.

<sup>551</sup> Letter from Senior Management responding on behalf of the Bank President, March 1, 2001 to Oil Watch Africa Network.

4. First, even a cursory examination of Nigeria land tenure and industry acquisition of ROWs would have forewarned of potential problems.<sup>552</sup> With reference to the industry in Nigeria, Adegboye (1973) had noted that *“In most cases, compulsory acquisition will be in peri-urban or rural areas. The government pays compensation to the owners for crops, trees and buildings on the land to be taken over, but examples abound where compensation has been inadequate, or were subject to considerable delay with inflationary losses owing to devaluation. Problems associated with compulsory acquisition of land by the state include inaccurate enumeration, lack of agreement on the definition of assets for which compensation is to be paid, the basis of compensation, illiteracy and ignorance of the rights of customary occupants, differences in compensation for annual versus perennial crops or trees, and failure to compensate for compulsorily acquired land with access to adequate land elsewhere.”*<sup>553</sup>
5. Available literature also indicated that the taking of rural agriculturalists land showed the same risks identified in the first paragraph of OP 4.12. Adegboye also notes that the result of compulsory acquisition is a terrible social dislocation resulting from loss of occupation, land, crops and lifestyle. In many cases, farmers give up farming and take low-paying urban service jobs for fear that land newly allocated to them would also be confiscated. As a result, compulsory acquisition of land is resulting in social breakdown. Whether these impoverishment risks were operative or not along the proposed ROW was an issue to be fully investigated in the RAP’s socio-economic studies. The fact that 144 hectares would be taken, a relatively small amount of land for a multinational company, does not preclude the need to determine whether or not the taking may remove critical, albeit small livelihood assets from vulnerable persons or tenants.
6. Second, on the eve of the project, some project affected persons were alleging that two of the WAPCo partners had failed to meet their social, environmental and corporate responsibilities in the Delta. Stakeholders in Nigeria and Togo raised the issue of the Sponsor’s environmental responsibilities in the Delta.<sup>554</sup> Management’s due diligence

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<sup>552</sup> R. O. Adegboye, 1973, *Compulsory acquisition and the subsequent problems of land acquisition: Ibadan-Parapo (Nigeria) experience*, Bull. Rural Economics and Sociology 1(1):125–145 cited in N.O. Adedipe, J.E. Olawoye, E.S. Olarinde, and A.J. Okediran, 1997, *Rural communal tenure regimes and private land ownership in western Nigeria*, FAO Land Reform Bulletin. See: <http://www.fao.org/sd/LTdirect/LR972/w6728t13.htm> Ajoku, C.V., “Compensation assessment and payment”, seminar paper presented at Continuing Professional Development (CPD) workshop organized by Edo State Chapter of Nigeria Institution of Estate Surveyors and Valuers (NIESV) (2001?). Akporiaye, B.E., “Oil exploration and compensation payment in the Niger Delta”, seminar paper presented at a CPD workshop organized by Delta State Chapter of NIESV (1996). Chudi, V.N., “Compulsory acquisition compensation under the Land Use Act”, *The Nigerian Estate Surveyor* (1974). Hemuka, N.A., “A positive approach to compulsory acquisition and compensation in Nigeria”, seminar paper presented at a CDP workshop organized by Edo State Chapter of NIESV (2000). Ibagere, O.P., “Ethics in compensation practice”, seminar paper presented at a CPD workshop organized by Edo State Chapter of NIESV (2000). Ikime, O., *The Isoko People* (University Press Ibadan 1977). Odu, M.A.C., “Adequate compensation for compulsory acquisition, a critical factor in ethnic and communal crisis: the Niger Delta example”, seminar paper presented at a CPD workshop organized by the Lagos State Chapter of NIESV (1999). Okolo, C.O., “Laws relating to compensation practices in Nigeria”, seminar paper presented at a CPD workshop organized by Edo State Chapter of NIESV (2000).

<sup>553</sup> Adegboye 1973; Nwoosu 1991.

<sup>554</sup> PAD Annex 13, ¶42, Page 149.

involves evaluating whether the WAGP project might involve risks of spreading industry-community tensions in the Delta into Southwestern Nigeria. Whereas WAGP is a partnership engaged in a distinct business endeavor, the local population, including the Requester's have difficulties disarticulating WAGP, its Sponsor, and the same partners operating individually in the Delta. From their non-technical perspective, gas, water, moves downstream from their upstream location. They see the pipelines coupled one to another. In social issues, perception overrides legalities and must be taken into account just as a Company's investors' perceptions – no matter how irrational, may move stock prices.

7. Management seems to have understood this, to some degree. Amnesty International was released a report entitled "*Nigeria: Are human rights in the pipeline*" was published on the eve of the Board presentation.<sup>555</sup> Delta problems were referenced four times<sup>556</sup> in the Project Appraisal, including a disclaimer that "*WAGP has little or no impact on the social or environmental condition of the Delta, and is either a small part of, or is unrelated to, the main activity of the international oil companies. The solutions to the problems in the Delta are one of law and order, good governance, institutional capacity building, fight against organized crime through means such as oil certification, greater security to prevent kidnappings and long-term vision through an integrated coastal zone management plan (ICZM).*"<sup>557</sup> This is surprisingly strong, political language for an Appraisal document. Taking a political position might have distracted management from evaluating another risk scenario: that the problems in the Delta might forewarn the shortcomings of the WAGP project adopting the local industry/government arrangements for land acquisitions to mitigate impoverishment risks.
8. Third, WAGP project brought most of the same stakeholders – including a WAPCo partner, subcontractors, local landowners, youth groups, traditional Yoruba leaders, and many of the same project affected persons – together in another ROW land acquisition process along much of the same route. This history influenced all local stakeholder's expectations, decisions, and organization. A direct warning came from a letter sent to Chevron Texaco Globatech from the Pipeline Right of Way Land Owner Association of Igbesa signed by 13 extend family heads and 38 sub-family heads on 14 Aug 2003 stating that a) crops enumeration belongs to the individual person who was cultivating, b) that the land belongs to individual extended families and that c) payment for land compensation should be paid to the head of families or the representatives of each family who signed a power of attorney to the agent that represented them and d) that any payment for the a or b be made to the "*rightful owners of the land not the community.*" They wish e) to "*prevent the re-occurrence of a bitter experience in the first project executed by Shell Nigeria Gas whereby our rights was [sic] wrongly transferred to the community.*"<sup>558</sup>

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<sup>555</sup> Amnesty International Index AFR 44/020/2004.

<sup>556</sup> PAD Annex 13, Pages 34, 41, 67; PAD Annex 1, ¶45; Annex 13, ¶45, Page 150.

<sup>557</sup> PAD, Annex 1, ¶24, Page 45.

<sup>558</sup> Letter to ChevronTexaco from Igbesa landowners, "West Africa Gasline Project Igbesa Right of Way, from Pipeline Right of Way Land Owner Association of Igbesa," August 14, 2003.

9. This letter raises serious questions about a WAPCo partner's capacity for implementing the resettlement instrument, an element that must be assessed in Bank Procedures.<sup>559</sup> The Nigerian on-shore segment of WAGP project was starting only months after the ending of another land acquisition and construction project that took place along 36 of the 58 kilometers of the proposed WAGP project's ROW. On 16 August 2002, Shell Nigeria Gas (SNG) commenced supplying natural gas to Agbara and Otta industrial area. For its safeguard Policies to influence WAGP, Bank management would have to elbow its way into a well-defined, contentious political and legal space already filled with preexisting assumptions, conflicts, expectations, and practices about one of the WAPCo companies and ROW acquisition compensation and procedures.<sup>560</sup> The Panel found no documents describing the SNG land acquisition experience in management documents, nor was it referenced in the RAP or PAD. The Board was ill served by this silence.
10. Evidence from summaries of WAPCo consultations and Panel field interviews confirmed the influence of one project on the other. At one point, a Yoruba household head that was directly affected by both projects showed his legal papers to the Panel. Only after about 40 minutes did the Panel discover his information related to the SNG conflict. Among the lessons learned that might have improved the RAP design were critical issues like the inadequacy of the OPTS 1998 rates, reliance on local government for any land-for-land arrangements, the complexity of the local land ownership situation, and arrangements for local construction employment.
11. With regard to Borrower Capacity, Bank Policy requires an assessment of the national and sub-legal frameworks affecting a potential involuntary resettlement. It seems reasonable that an assessment of the capacity of a Sponsor also be considered within a national and regional framework. Sufficient material was readily available to make this assessment at the time. Instead, the issue was erroneously considered and dismissed.<sup>561</sup> As described in the main body of the Report, the Panel found that management did not comply with the requirement of BP 4.12, to assess (a) the Borrower's commitment to and capacity for implementing the resettlement instrument; (b) the feasibility of the proposed measures for improvement or restoration of livelihoods and standards of living; (c) availability of adequate counterpart funds – specifically the government's capacity to complete the land-for-land option; and (d) significant risks, including risk of impoverishment, from inadequate implementation of the resettlement instrument.<sup>562</sup>
12. The Panel further found that management failed to inform the Board of the Sponsor's limited capacity in land acquisition as measured by the Bank's social safeguard standards and take appropriate corrective actions to ensure the problems did not reoccur on this Project's watch.

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<sup>559</sup> BP 4.12 ¶10.

<sup>560</sup> Consultations in the EIA Annex 5D express concerns about the SNG experience.

<sup>561</sup> PAD, Annex 1, ¶24, Page 45.

<sup>562</sup> BP 4.12 p. 10.

### Annex 3 – Biographies

**Mr. Werner Kiene** was appointed to the Panel in November 2004 and has been its Chairperson since September 2007. He holds a Masters of Science degree and a Ph.D. in Agricultural Economics from Michigan State University. He has held leadership positions with the Ford Foundation and German Development Assistance. In 1994, Mr. Kiene became the founding Director of the Office of Evaluation of the United Nations World Food Programme (UNWFP). He was the World Food Programme Country Director for Bangladesh from 1998 through 2000 and also served as UN Resident Coordinator during this period. From 2000 to 2004 he was a Representative of the UN WFP in Washington, D.C. Mr. Kiene's focus has been on the design, implementation and assessment of sustainable development initiatives. His professional writings have dealt with issues of rural poverty and social services delivery; food security, agricultural and regional development; emergency support and humanitarian assistance; international trade and international relations. Mr. Kiene is involved in professional organizations such as the European Evaluation Association; the Society for International Development; the American Association for the Advancement of Science; and the International Agriculture Economics Association.

**Mr. Tongroj Onchan** was appointed to the Panel in September 2003. He has a Ph.D. in agricultural economics from the University of Illinois. Professor Onchan taught on the Faculty of Economics at Kasetsart University in Thailand for 26 years, including a term as Dean. He later served as vice president of Huachiew Chalermprakiat University; then joined the Thailand Environment Institute (TEI) as vice president. In 1998, Mr. Onchan was appointed president of TEI. He helped establish and was appointed president of the Mekong Environment and Resource Institute (MERI) in 2000. He has served as advisor to the Prime Minister and to the Minister of Science, Technology and Environment, as member of the National Environmental Board, chairman of the National EIA Committee, chairman of the Committee on the Preparation of State of the Environment Report for Thailand, and member of the National Audit Committee. Mr. Onchan is on many editorial boards, among them the Asian Journal of Agricultural Economics and the International Review for Environmental Strategies. He has consulted for a number of international organizations, including the Asian Productivity Organization, ESCAP, the World Bank, the Asian Development Bank, the Food and Agriculture Organization, the International Labor Organization, USAID and the Ford Foundation. He has been project director of over thirty research projects and author or co-author of numerous technical and research papers on rural development, natural resources and environmental management. Currently, he serves in several capacities: chairman of the Board of Directors of the MERI, member of National Research Council for economics, and a director of the International Global Environment Strategy (IGES) based in Japan. Mr. Onchan was appointed as eminent person to serve as a member of the Asia and Pacific Forum for Environment and Development (APFED).

**Mr. Roberto Lenton** is currently Chair of the Technical Committee of the Global Water Partnership and was appointed as a Member of the Inspection Panel of the World Bank in August 2007. A specialist in water resources and sustainable development with over 30 years of international experience in the field, he also serves as Chair of the Water Supply

and Sanitation Collaborative Council, Member of the Board of Directors of WaterAid America, and Senior Advisor to the International Research Institute for Climate and Society (IRI) at Columbia University. A citizen of Argentina with a Civil Engineering degree from the University of Buenos Aires and a Ph.D. from MIT, Mr. Lenton is a co-author of *Applied Water Resources Systems*. He is also a lead author of *Health, Dignity and Development: What will it take?*, the final report of the United Nations Millennium Project Task Force on Water and Sanitation, which he co-chaired. Mr. Lenton was earlier Director of the Sustainable Energy and Environment Division of the United Nations Development Programme in New York, Director General of the International Water Management Institute in Sri Lanka and Program Officer in the Rural Poverty and Resources program of the Ford Foundation in New Delhi and New York. He has served on the staff of Columbia University and the Massachusetts Institute of Technology (MIT), including posts as Executive Director of the IRI Secretariat for International Affairs and Development and Adjunct Professor in the School of International and Public Affairs at Columbia and Assistant Professor of Civil and Environmental Engineering at MIT.

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#### **Consultants**

**Richard Fuggle** is Emeritus Professor of Environmental Studies at the University of Cape Town. Prof. Fuggle is a Member of the Academy of Science of South Africa, a Registered Natural Scientist, a Certified Environmental Practitioner in South Africa and a Professional Member of the South African Institute of Ecologists and Environmental Scientists. He has edited two books on environmental management in South Africa and has published over 100 academic papers on environmental topics. He led the team, which developed the South African Guidelines for Integrated Environmental Management. Prof. Fuggle has served on numerous Commissions of Enquiry related to Environmental Assessments. He has received awards and distinctions for his contributions to the advancement of Environmental Impact Assessment both nationally and internationally. Prof. Fuggle earned his Ph.D from McGill University in Montreal.

**Theodore Downing**, Research Professor of Social Development at the University of Arizona, earned his PhD from Stanford in Social Anthropology. Specializing in international social policy development, he has extensive research, project management, and policy-making experience in Latin America, Africa, and the Middle East. His understanding of capacities and limits of government was enhanced by being elected for two terms to the Arizona House of Representatives. Beginning as a short-term consultant to The World Bank in 1987, he has worked on involuntary resettlement and indigenous peoples safeguard issues through most phases of the Bank's project cycle - preparation through supervision and across the energy, agricultural, and the extractive industry sectors. His development experience includes directing the Mexico's anti-coffee rust research team for the Mexican National Science Foundation, helping establish an environmental science college at King Abdulaziz University in Jeddah. His colleagues elected him to be President of the international Society for Applied Anthropology and is currently President of the International Network on Displacement and

Resettlement ([www.displacement.net](http://www.displacement.net)). Samples of his writings and project experience are available at [www.ted-downing.com](http://www.ted-downing.com).