

The Inspection Panel

Report and Recommendation On Request for Inspection

Colombia: Cartagena Water Supply, Sewerage and Environmental Management Project (IBRD Loan No. 4507-CO)

1. On April 20, 2004, the Inspection Panel received a Request for Inspection (“the Request”) related to the Colombia: Cartagena Water Supply, Sewerage and Environmental Management Project (the “Project”). On April 22, 2004, in accordance with the Resolution establishing the Inspection Panel (“the Resolution”),¹ the Panel notified the Executive Directors and the President of the International Bank for Reconstruction and Development (IBRD)² that it had received the Request, which constituted Registration of the Request under the Panel’s Operating Procedures.³ The Panel received Bank Management’s Response to the Request on May 21, 2004.⁴ As provided in paragraph 19 of the Resolution, the purpose of this report is to determine the eligibility of the Request and make a recommendation to the Executive Directors as to whether the Panel should investigate the matters alleged in the Request.

A. The Project

2. The Request raises issues related to the Project, which has been partly financed under the Bank’s Loan No. 4507-CO. The loan agreement⁵ specifies that Aguas de Cartagena S.A. E.S.P (“ACUACAR”) ⁶ will carry out the Project with the

¹ IBRD Resolution 93 – 10, The Resolution Establishing the Inspection Panel (September 22, 1993).

² For the purposes of this Report, the IBRD is sometimes referred to as “the Bank.”

³ See The Inspection Panel, Operating Procedures (August 19, 1994), ¶ 17.

⁴ Bank Management Response to Request for Inspection Panel Review of the Cartagena Water Supply, Sewerage, and Environmental Management Project (IBRD Loan No. 4507-CO), May 21, 2004, [hereinafter “Management Response”].

⁵ Loan Agreement (Cartagena Water Supply, Sewerage and Environmental Management Project) between International Bank for Reconstruction and Development and Distrito Turístico y Cultural de Cartagena de Indias, Loan No. 4507-CO, (December 10, 1999), [hereinafter “Loan Agreement”].

⁶ ACUACAR is a mixed ownership company with 46% capital participation of private Spanish operator Aguas de Barcelona S.A. (AGBAR), 50% capital participation by the District of Cartagena, and 4% employees and others.

assistance of the Borrower, the Distrito Turístico y Cultural de Cartagena de Indias (“the Borrower”),⁷ a political subdivision of the Republic of Colombia, the guarantor of the loan. The objectives of the Project are to: “(a) improve the water and sewerage services in the territory of the Borrower and the sanitary conditions of the Borrower’s poorest population (b) facilitate the environmental cleanup of water bodies surrounding the territory of the Borrower (Cartagena Bay, Caribbean beaches, and Ciénaga de la Virgen lake); and (c) improve the sustainability of water and sewerage services in the Borrower territory through a private sector participation model.”⁸

3. The Project includes the following components:⁹
 - A. Expansion of the water supply system: expanding the water production system, replacing the primary distribution mains, and other measures;
 - B. Expansion of the sewerage system in the Ciénaga Basin: improving sanitation conditions by enhancing the conveyance capacity of existing sewage collectors and expanding the secondary sewerage network in the southwest, southeast, and central parts of the city which currently drain to the Ciénaga, and by constructing new pressure lines, pumping stations and gravity collectors;
 - C. Construction of the main conveyance system of the wastewater to the treatment plant: clean-up of the water bodies surrounding Cartagena which currently receive wastewater – the Bay, the Ciénaga, the beaches and the water courses. This component includes upgrading the Paraíso pumping station, constructing the pipeline from Paraíso pumping station to the treatment plant site and constructing the effluent pipeline from the plant to the submarine outfall. The conveyance system would consist of a 72 inch in diameter pressure pipe with a total length of 23.85km;
 - D. Construction of treatment installations: providing preliminary treatment to remove floatable materials, grease, oil, sand, and grit;
 - E. Construction of a submarine outfall for the discharge of the treated effluent to the Caribbean Sea near Punta Canoa;
 - F. Industrial wastewater discharge control: identifying key sources of industrial pollution in the city of Cartagena, establishing a system for regulating the discharge of industrial wastes, and a system for auditing industrial waste discharge, defining strategies to control small and dispersed sources of industrial pollution, and providing technical assistance for the pretreatment process;

⁷ In this report the Distrito is also referred to as “The District of Cartagena” or the “city of Cartagena.”

⁸ Loan Agreement, Schedule 2.

⁹ Management Response, ¶20.

- G. Environmental and social component: measures mitigating the environmental and social impacts of the Project, including environmental supervision during construction, the restoration and conservation of the Ciénaga de la Virgen nature reserve, a monitoring program before and after construction of the submarine outfall to study pathogenic coliforms and other contaminants discharged through the outfall and an environmental institutional strengthening program. A Social Impact Mitigation and Community Development Program will include organization and strengthening of the communities and other measures¹⁰
- H. Project management: technical assistance, studies, design and supervision of works: support and partial financing for project management, design and supervision of the water supply systems and the sewerage systems works; design of the main wastewater conveyance system, treatment installations and submarine outfall; supervision of the main conveyance system works, the treatment installation, the submarine outfall works; and procurement audits.
4. The Request concerns the proposed construction of the submarine outfall mentioned above. According to the PAD,¹¹ the outfall will be built at Punta Canoa, a village located some 20 km north of Cartagena. The conveyance system will begin with a 72 inch in diameter¹² pipeline to be built from Cartagena to the preliminary treatment works inland from the shore at Punta Canoa. Thereafter, another pipeline will carry the effluent to the shoreline where a submarine outfall will be constructed. The total length of the conveyance system will be 23.85km. The length of the submarine outfall will be 2.85km with the discharge point at 20m in depth. A 500m diffuser will be attached to the outfall and used to carry 27 vertical pipes with 2 ports each. The submarine outfall is expected to begin operation in 2005.
5. In its Response to the Request for Inspection, Management states that, after completion of the Project, the sewerage coverage of Cartagena is expected to rise to 95 percent and an adequate system of collection treatment and disposal of the city's wastewater will be constructed.¹³ According to the Response, Project's Component A is fully committed, the majority of its works have been completed and the rest "*will be completed before the end of calendar year 2004.*"¹⁴ Component B is also fully committed and "*will be completed before the end of*

¹⁰ The District will supply piped water to the communities of the North Zone as a condition of the Loan. See Loan Agreement, Art. III, § 3.04(b).

¹¹ World Bank, Project Appraisal Document on a proposed loan in the amount of US\$85 million to the District of Cartagena with the Guarantee of the Republic of Colombia for the Cartagena Water Supply, Sewerage and Environmental Management Project, (June 28, 1999), 18, [hereinafter "PAD"].

¹² 1.82m. The PAD describes the diameter of the pipes in inches.

¹³ Management Response, ¶ 23.

¹⁴ *Id.*, ¶ 25.

2004”¹⁵. As to Component C, D, and E Management states that delays in obtaining the environmental license for the works have postponed their implementation, which is currently at the bidding stage. Finally, components F, G, and H “*are well advanced and will continue for the entire implementation period as planned.*”¹⁶

B. Financing

6. On December 10, 1999, the Bank entered into a loan agreement with the Distrito Turistico y Cultural de Cartagena de Indias providing for a US\$85 million loan to finance about 72% of the total Project cost. In addition to the IBRD loan, the Project’s financing structure includes US\$7.58 million from the Borrower, US\$4.6 million from ACUACAR, the implementing agency for the Project, and US\$20 million from the Government of Colombia, the guarantor of the Loan. The Project was to be implemented over a five-year period ending in December, 2004.¹⁷ The current closing date of the loan is June 30, 2005.¹⁸

C. The Request

7. Corporación Cartagena Honesta, a local non-government organization, submitted the Request on its own behalf and on behalf of 125 residents of Punta Canoa, 139 residents of Arroyo de Piedra, 41 residents of Manzanillo, and 119 residents of Cartagena. The documents providing for power of representation are attached to the Request.¹⁹
8. The Requesters claim that the Bank has not complied with its operational policies and procedures in relation to the Cartagena Water Supply, Sewerage and Environmental Management Project, and that “[a]ll of these claimants have already been harmed by mismanagement, misinformation, and exclusion in the planning and appraisal phases of this Bank-financed project and will suffer much greater harm if the project is constructed and implemented.”²⁰
9. The Requesters claim that the proposed submarine outfall to be constructed off the coast of Punta Canoa will pollute the marine environment in the area.²¹ They argue that the coastal zone supports fisheries that supply the people of the area

¹⁵ Ibid.

¹⁶ Id., ¶ 25, 26.

¹⁷ Loan Agreement, Schedule 2.

¹⁸ Id., Article II §2.03.

¹⁹ Request for Inspection of the Cartagena Water Supply, Sewerage , and Environmental Management Project on Behalf of the Residents of Cartagena, Punta Canoa, Arroyo de Piedra, and Manzanillo, (April 19, 2004), Exhibits 1 and 2, [hereinafter “Request”].

²⁰ Request, 2.

²¹ Ibid.

- with their primary source of food and income. They believe that, as a result of the Project, “*untreated wastewater*”²² will be discharged into the sea and will contaminate marine life and have a serious and permanent impact on the people’s health and livelihood, especially the indigenous people of Punta Canoa, Arroyo de Piedra and Manzanillo whose lives are “*inextricably linked to the health of the Caribbean Sea.*”²³
10. The Requesters allege that the outfall is designed to discharge on average 227,000 cubic meters (about 60 million gallons) per day of effluent that has been subject only to preliminary treatment - filtering of solids such as floatable material and dirt.²⁴ They argue that this degree of treatment, which is less than primary treatment, will not remove bacteria or chemical pollutants from the effluent; hence there exists a high risk of the effluent causing pathogenic and chemical contamination of the coastal waters.²⁵
 11. The Requesters add that the monitoring of bacteria levels to deal with the risk that harmful bacteria from the waste flow may reach nearby beaches, “*will not provide adequate protection against potentially life-threatening pollution.*”²⁶ They point out that the men and boys of the affected villages fish each morning and evening in the waters close to the end of the proposed outfall. They use canoes and nets in traditional fishing techniques to catch small fish, shrimp, and lobster for daily consumption and also for sale of any surplus. The Requesters claim that biological and chemical contamination would deplete the fish stocks and could have “*severe human health impacts for fishermen and anyone else exposed to the tainted fish or water.*”²⁷
 12. The Requesters claim that the Bank violated OP 4.01 Environmental Assessment because the environmental assessment (EA) carried out by the Borrower “*failed to adequately consider potential damage to human health and the marine environment.*”²⁸ Further, they claim that the EA “*unjustifiably dismissed more environmentally sound and financially viable (and certain) alternatives*” to the submarine outfall option,²⁹ and wrongly concluded that a wastewater treatment and reuse system was not a viable option.
 13. The Requesters claim that the EA did not properly account for the geological conditions surrounding the Project,³⁰ ignoring the potential harmful impact of a geological event on the outfall pipeline. They allege that the site of the proposed

²² Ibid.

²³ Id., 3.

²⁴ Id., 3

²⁵ Id., 4.

²⁶ Request, 3.

²⁷ Id., 4.

²⁸ Id., 11.

²⁹ Id., 13.

³⁰ Id., 14.

submarine outfall is unsuitable from a geological or geophysical point of view.³¹ They add that according to studies by the Colombian national agency for geochemical mapping in Colombia, the Instituto de Investigaciones en Geociencias y Minería (INGEOMINAS),³² and by a researcher with the Colombian Navy's Center of Oceanographic and Hydrographic Investigations,³³ the area around Punta Canoa is vulnerable to diapirism, also known as mud volcanism. The Request explains that "[t]his phenomenon is characterized by the sudden, violent expulsion of thousands of cubic meters of mud, clay, and gases."³⁴ The Requesters argue that because the proposed outfall will be constructed over land and seabed subject to diapirism a sudden geological event of this nature could rupture the outfall pipeline without warning and cause the effluent to be accidentally discharged much closer to the shore. They point out that in 1979 diapirism caused a large explosion and eruption of a submarine mud volcano just off the coast from Punta Canoa. They note that according to INGEOMINAS a similar event could cause a rupture in the proposed outfall pipeline.

14. They also claim that the EA did not include a biological study of the waters of the region to be affected by the outfall as required by Resolution 0842 (2000) by CARDIQUE, the local environmental licensing agency, and used instead "*outdated and deficient studies of the biotic nature of the area.*"³⁵
15. They further claim that the EA failed to identify and adequately address the requirements of the domestic laws and regulations.³⁶ They argue that the terms of the license given to ACUACAR in which the company has ten years to come into compliance with Colombia's national environmental standards³⁷ and the quality of the effluent to be discharged at the outfall could not possibly meet the fecal coliform standards imposed by national law.
16. The Requesters further allege that the EA failed to take account of the 1983 Convention for the Protection and Development of the Marine Environment of the Wider Caribbean Region.³⁸ They argue that the proposed outfall will violate the Convention because the treatment plant in the Project fails to remove biological or chemical contaminants from the effluent.³⁹ The Requesters also reference the 1999 Aruba Protocol to the Cartagena Convention on Land-based Sources of Pollution which Colombia signed on October 2, 2000, and argue that the Project's

³¹ Request, 5.

³² In English this agency is known as the Institute for Research and Information on Geosciences, Mining, and Environment.

³³ Dr George Vernet, a geologist at the University of Bordeaux, France. See Request, 5.

³⁴ Request, 5.

³⁵ Id., 17.

³⁶ Id., 15.

³⁷ Id., 16. The primary violation alleged is of Decree 1594 of 1984, the water quality criteria section of the Code of Natural Resources; another national law cited as being violated is Decree 2811 of 1974.

³⁸ Id., 17. The Panel notes that Colombia became a party to the agreement on March 3, 1988.

³⁹ Id., 18.

scheme for discharging effluent subject to only preliminary treatment will violate the strict standards in the Protocol for total suspended solids in wastewater.

17. The Requesters also state that the Bank did not comply with the consultation requirements of OP 4.01- Environmental Assessment. They argue that, because the Project was classified as Category A, the views of Project affected groups had to be taken into account during the EA process, and that this did not happen.⁴⁰ The Requesters claim that the public consultations held by ACUCAR representatives in 1998 were “*symbolic of the disregard shown to the health and culture of the people of Punta Canoa and nearby communities throughout the EA and approval processes.*”⁴¹ They claim that in spite of the residents’ level of concern and opposition to the submarine outfall, the EA addressed the social and economic effects on the villages only in a cursory fashion. They cite as an example the EA’s statement that there is “*very little marine life*”⁴² near Punta Canoa and that fishing will not be affected by the outfall.⁴³
18. The Requesters claim that the Bank did not comply with OD 4.20 – Indigenous Peoples by failing to identify the affected communities living in Punta Canoa, Arroyo de Piedra, and Manzanillo as indigenous,⁴⁴ by failing to ensure that the Project’s adverse effects would be avoided or mitigated, and by approving the loan without the Borrower having prepared an Indigenous People’s Development Plan as required by OD 4.20.
19. The Requesters claim that the affected people are Afro-Colombian who clearly meet the requirements for classification as “*indigenous communities*” under OD 4.20.”⁴⁵ According to the Request, these people “*constitute a group ‘with a social and cultural identity distinct from the dominant society that makes them vulnerable to being disadvantaged in the developmental process’.*”⁴⁶ They have “*a way of life distinct from the rest of the Colombian society*” and possess “*a close attachment to ancestral territories and natural resources in the area; self-identification and identification by others as members of a distinct cultural group; distinct customary social and political institutions; and engagement in primarily subsistence oriented-production.*”⁴⁷ Further, the village of Punta Canoa is said to have been founded several centuries ago and has remained a traditional fishing village.⁴⁸
20. The Requesters claim that the Project will disrupt and threaten the culture and stability of these indigenous people living in the villages of Punta Canoa, Arroyo

⁴⁰ Request, 18.

⁴¹ Id., 19.

⁴² Ibid.

⁴³ Ibid.

⁴⁴ Id., 20.

⁴⁵ Id., 21.

⁴⁶ Request, 21.

⁴⁷ Ibid.

⁴⁸ Ibid.

de Piedra, and Manzanillo who, according to the PAD, they “live under traditions and culture of their ancestors and keep the structure of rural families.”⁴⁹ They argue that: “[a]t best, the construction of major sewerage infrastructure and the associated increase in noise, traffic, and workers in the area will bring rapid and unwelcome change to these peaceful and close-knit Afro-Colombian villages that currently live without even basic amenities. At worst, the arrival of the project will unjustly force one of Colombia’s poorest but most self-sufficient communities to bear the cost of the following negative effects: long-term, disruptive construction, foul-smelling, noisy, and ugly sewage conveyance infrastructure; pathogenic bacteria and chemical contaminants in their coastal waters and fisheries, their most important natural resource; and sewage matter on their beaches.”⁵⁰ The Requesters argue that these effects could drive village residents from their homes and undo their communities.⁵¹

21. The Requesters claim that the potential fiscal instability of the Borrower and the expected increase in the total cost of the Project, which could cause the Borrower to default on the loan, will cause them harm.⁵² They argue that because of past fiscal mismanagement, the city of Cartagena is not able to take on a US\$85 million debt.⁵³ They assert that the PAD was incorrect in asserting that Cartagena had put its fiscal problems behind it,⁵⁴ since there have been continuing difficulties in governance, controversies over misappropriation of public funds, and a worsening of the city’s fiscal problems.
22. The Requesters claim that by conducting an inaccurate assessment of Cartagena’s financial capacity to take on the loan the Bank has violated OP 10.04 – Economic Evaluation of Investment Operations;⁵⁵ by accepting inaccurate financial and accounting statements from the Borrower the Bank violated OP 10.02 – Financial Management.⁵⁶ They also claim that by failing to scrutinize adequately and effectively the economic and environmental risk evaluations of the outfall and the alternative options for disposing of wastes, the Bank violated OP 10.04. They assert that the Bank by failing to scrutinize contrary evaluations of the Project by the Cartagena Controller⁵⁷ and by the Outfall Commission appointed in 2000⁵⁸ also violated OD 4.15 – Poverty Reduction.
23. The Requesters also claim that the Bank violated OP 13.05 – Project Supervision by failing to address adequately a number of possible conflicts of interest between Bank officials, ACUACAR and the local environmental licensing agency. They

⁴⁹ Id., 22.

⁵⁰ Id., 6.

⁵¹ Ibid

⁵² Request, 7.

⁵³ Ibid.

⁵⁴ Ibid.

⁵⁵ Id., 25.

⁵⁶ Ibid.

⁵⁷ Id., 30.

⁵⁸ Request, 30.

claim that the Bank did not comply with OP 13.05 when it failed to require the Borrower and ACUACAR to promote or use Pacts of Integrity with bidders on contracts awarded under the outfall Project. The Requesters claim that *“the Bank shifted the burden of improving Cartagena’s bidding policies to the Colombian chapter of Transparency International (TICOL).”*⁵⁹

24. The Requesters state that they raised the issues in their Request with the Bank on numerous occasions.⁶⁰ They declare that they are not satisfied with the responses and explanations they have received from the Bank,⁶¹ and as a result they request that the Inspection Panel recommend to the Board of Executive Directors that an investigation of their complaints be conducted. They also request that the Bank stop disbursing funds to the Project until an investigation is complete and an appropriate remedy adopted, and that they be allowed to participate actively in the formulation of remedial measures. They request that any proposals made by the Bank as a result of an investigation *“require full and honest consultation with all affected communities.”*⁶²
25. In its Notice of Registration, the Panel noted that the above claims may constitute violations by the Bank of various provisions of the following operational Policies and Procedures:

OD 4.01	Environmental Assessment ⁶³
OD 4.04	Natural Habitats
OD 4.07	Water Resources Management
OD 4.15	Poverty Reduction
OD 4.20	Indigenous People
OP/BP 10.02	Financial Management
OP/BP 10.04	Economic Evaluation of Investment Operations
OD 13.05 and OP/BP 13.05	Project Supervision

D. Management Response

26. On May 21, 2004, Management submitted its response to the Request. The Response provides background information on the Project and discussed in detail three so-called “special issues:” (1) harm to the environment and human health; (2) harm to the North Zone communities and their way of life; and (3) undue fiscal strain on the city of Cartagena and region. Annex 1 of the Management Response provides detailed responses to each specific claim raised by the Requesters. Management claims that, after reviewing the complaint and the

⁵⁹ Id., 28.

⁶⁰ Id., 31.

⁶¹ Id., 33.

⁶² Id., 33.

⁶³ The Requesters allege the Bank’s non compliance with OP/BP 4.01. However, the applicable Bank policy for this Project is OD 4.01, as the Project Information Document was first issued before March 1, 1999. See World Bank Operational Policy 4.01 – Environmental Assessment.

Project documents and consulting with Bank staff and “*informed parties in Colombia,*” “*the Bank correctly applied its policies and procedures.*”⁶⁴ Management also states that the Project “*will not cause any harm to the marine environment or to human health,*” and that, as a result, the Requesters’ rights have not been, nor are likely to be, adversely affected by a failure of the Bank to follow its own policies and procedures.⁶⁵ The Response notes that “*the project’s support for construction of sewerage networks in poorer neighborhoods will help relieve the current situation of severe pollution resulting from improper wastewater disposal.*”⁶⁶

27. The first set of issues analyzed in Annex 1 relate to the Requester’s allegations concerning the adequacy of the EA with respect to OD 4.01 – Environmental Assessment. The Request claims that the EA failed to consider potential damage to the marine environment and to human health and that it dismissed more environmentally sound and financially viable alternatives than the submarine outfall option for disposal of wastes. Management contends that the EA, as well as the process of preparing the EA, for the wastewater treatment plant, the wastewater conveyor and the submarine outfall comply with OD 4.01.⁶⁷ According to Management, the EA incorporated an Environmental Management Plan (EMP) that included, *inter alia*, environmental management and supervision during construction, an environmental baseline program to monitor oceanographic, biological, and ecological indicators, a community public awareness and communication program, and activities to enhance environmental quality. Management notes that the EA was based on a Feasibility Study for Wastewater Treatment and Disposal (FS), which addressed issues of human health and the marine environment. Human health impacts were also analyzed in the Social Impact Assessment (SA) of the Cartagena Sanitation Project.⁶⁸

28. Management states that the FS study analyzed a “*comprehensive set of alternatives*”⁶⁹ combining different treatment and final disposal sites, including all but one of the options proposed by the Requesters,⁷⁰ and that “*all alternatives were evaluated from technical, economic, environmental, and social perspectives.*”⁷¹ According to Management, the FS study “*identified the submarine outfall as the preferred alternative.*”⁷² Management emphasizes that an

⁶⁴ Management Response, ¶ 57.

⁶⁵ *Ibid.*

⁶⁶ *Id.*, Annex 1, Item 3, 28.

⁶⁷ *Id.*, Annex 1, Item 1, 25.

⁶⁸ *Id.*, ¶ 34.

⁶⁹ Fifteen alternatives were addressed. *Id.*, Annex 1, Item 4, 30.

⁷⁰ Management Response, Annex 1, Item 4, 31, 32. According to the Response, only the “*combination of biological treatment in oxidation lagoons and irrigation of Cartagena’s mangrove swamps with the treated effluent,*” among the Requesters’ proposals, was not taken into consideration. This happened because of “*the sensitivity of the mangrove ecosystems, considered to be natural habitat under OP 4.04.*”

⁷¹ *Id.*, Annex 1, Item 4, 31. The Response includes a description of some of the alternatives analyzed, namely those also raised by the Request, and their degree of viability with respect to the one eventually selected, the submarine outfall.

⁷² *Id.*, Annex 1, Item 1, 26.

- international firm of high repute conducted the FS study⁷³ and a Panel of Experts (POE) composed of internationally recognized wastewater management experts “conducted six meetings to review the FS, EA and final design specifications for the marine outfall.”⁷⁴ According to Management, the Colombian Oceanographic Institute (CIOH), reviewed and cleared the EA and the FS, and the regional environmental authority, CARDIQUE, issued the environmental license which the Ministry of Environment ratified.
29. Management emphasizes also that the decision regarding the selected wastewater management system “coincides with the position of the World Health Organization” (WHO) which in its recent guidelines identifies an effective outfall preceded by preliminary treatment to have low risk of human health impacts.”⁷⁵ In addition, Management states that, according to the Pan American Health Organization (PAHO), about 100 outfalls similar to the one proposed for Cartagena are in operation in other Latin American countries such as Chile, Uruguay and Brazil, where they have functioned with no problems.⁷⁶
30. In response to the Requesters’ claim that the EA did not analyze the Project’s adverse impacts on the immediate coastal zones of Punta Canoa, Arroyo de Piedra, Manzanillo and Cartagena, Management asserts that the EA analyzed the impacts on the coastal zones. Management indicates that extensive studies were conducted⁷⁷ and all the studies concluded that “the planned outfall would minimize the risk that the discharged effluent would have any harmful effects on the coastal zones, including those near Punta Canoa, Arroyo de Piedra and Manzanillo and those near Cartagena.”⁷⁸ As to the alleged adverse impacts of the outfall on natural habitats and fishing activities, Management claims that such impacts of the outfall “would be negligible” and the work “conforms to the precautionary approach referred to in OP 4.04 and is in compliance with that policy.”⁷⁹
31. Management notes that although “pathogenic bacterial contamination is the main public health risk posed by the proposed outfall [...] [t]his risk is reduced by appropriate choice of the outfall location.”⁸⁰ The Response explains that bacteria undergo a process of physical dilution and of biological decay in the marine environment, and that proper selection of the outfall length allows for control of the bacteria die-off, as a longer outfall entails longer travel time from the shore,

⁷³ Id., Annex 1, Item 1, 26. The Response states that the consulting firm, Hazen & Sawyer, also prepared a stand alone document, “Environmental Diagnostic of Outfall Alternatives for the Disposal of Wastewater in Cartagena,” to be submitted as part of the licensing process, which presented an “analysis of alternatives with particular emphasis on environmental impacts.”

⁷⁴ Id., ¶ 34.

⁷⁵ Id., ¶ 24. See also ¶32.

⁷⁶ Management Response, ¶ 29.

⁷⁷ Id., Annex 1, Item 3, 28.

⁷⁸ Id., Annex 1, Item 3, 29.

⁷⁹ Id., Annex 1, Item 10, 37.

⁸⁰ Id., Annex 1, Item 3, 29.

thus a higher die-off. The proposed outfall extends 2.85km from the shore and discharges the wastes at a depth of about 20m.⁸¹

32. The Response also indicates that the submarine outfall as designed *“provides adequate protection against harmful bacteria from the waste flow reaching nearby beaches.”*⁸² However, Management states that because a submarine outfall, if not properly mitigated, could cause negative environmental impacts, the Project was categorized as A to *“ensure that proper analysis and mitigation measures were incorporated in its design and implementation.”*⁸³ Management adds that a set of precautionary measures was designed, such as the intensive monitoring referred to by the Requesters,⁸⁴ chlorination installations, and a contingency plan for the collection, treatment and disposal of wastewater.⁸⁵
33. The Requesters allege that the FS and the EA failed to consider the hazardous geological conditions of the area around Punta Canoa and Arroyo de Piedra. Management Response states that not only did the FS and EA analyze the issue, but additional studies by the Marine Resources and an expert hired by ACUACAR confirmed the conclusions of the EA and the FS that the risk of diapirism, or mud volcanism, in the area is low *“because there is an absence of large magnitude seismic activity and magnetic volcanism.”*⁸⁶ Management adds that in the course of the licensing process, CARDIQUE reviewed the Marine Resources study, agreed with the findings, and stated that the District of Cartagena should take the low geological risk into account in the technical specifications for the outfall.⁸⁷
34. With respect to the EA, the Request also complains about an inadequacy of consultation with the communities concerned and a failure by the implementing agency to take their views into account. Management responds that consultations were undertaken in compliance with OD 4.01. It claims that a *“participatory approach was used during project preparation”*⁸⁸ to discuss various drafts of the Project design with Project stakeholders and that consultations were conducted for the EA and for the Social Assessment with urban neighborhoods in southeast Cartagena and rural communities in the northern zone of the city where the outfall is to be built.⁸⁹
35. With respect to the claim that the Project violates national law, Management states that *“each of the arguments raised has already been fully adjudicated under*

⁸¹ Ibid.

⁸² Management Response, Annex 1, Item 2, 27.

⁸³ Id., Annex 1, Item 2, 27.

⁸⁴ See supra ¶ 11.

⁸⁵ Management Response, Annex 1, Item 2, 27.

⁸⁶ Id., Annex 1, Item 5, 33.

⁸⁷ Id., Annex 1, Item 5, 33, 34.

⁸⁸ Id., Annex 1, Item 8, 35.

⁸⁹ Ibid.

Colombian law,”⁹⁰ which “makes clear that the marine outfalls are permissible, provided the process of conducting the appropriate studies is properly carried out and the license fits within the appropriate parameters.”⁹¹ It adds at this point that these claims do not arise out of an act or omission of the Bank in following its policies and procedures. As to Colombia’s obligations under international law, the Response emphasizes that, although Colombia is a party to the 1983 Convention for the Protection and Development of the Marine Environment of the Wider Caribbean Region,⁹² it is not a party to the 1999 Protocol Concerning Pollution from Land-based Sources and Activities in the Wider Caribbean Region,⁹³ as Colombia has signed but not ratified the Protocol. Thus, Management states, the Protocol is not binding upon Colombia and the requirements raised by the Requesters do not apply.⁹⁴

36. As regards the social and economic effects of the Project, Management claims that they have been appropriately assessed and Bank staff and ACUACAR have taken “adequate steps to address the concerns of the village residents” of the communities of Punta Canoa, Arroyo de Piedra and Manzanillo.⁹⁵ It continues that the SA assessed the social and economic conditions of the target population and involved consultations with the Project beneficiaries about their priority needs and concerns. Moreover, it adds, a Social Impact Mitigation and Community Development Program was developed to address the Project’s social and economic impacts in general, with specific attention to the communities mentioned above.
37. With respect to the social issues, in particular the identification of the population living in the North Zone as indigenous people, Management notes that “there was no indication that indigenous people would be affected by the proposed works. There was therefore no need for an Indigenous People Development Plan.”⁹⁶ According to Management, although the communities of Punta Canoa, Arroyo de Piedra and Manzanillo are long-established ones with strong family ties and traditions, they do not meet the criteria set forth in OD 4.20 as to, for example, ancestral territory, self-identification, or indigenous language.⁹⁷ Management also maintains that Colombian law does not consider these communities as indigenous; but rather regards them as Afro-Colombian. Nonetheless, Management claims that consultations with these communities were conducted as part of the SA process and in order to prepare the Social Impact Mitigation and Community

⁹⁰ Id., Annex 1, Item 6, 33.

⁹¹ Management Response, Annex 1, Item 6, 32, 33.

⁹² Convention for the Protection and Development of the Marine Environment of the Wider Caribbean Region, Cartagena de Indias, Colombia, March 24, 1983, at <http://untreaty.un.org/English/treaty.asp>.

⁹³ Protocol Concerning Pollution from Land-based Sources and Activities in the Wider Caribbean Region, Oranjestad, Aruba, October 6, 1999, at <http://www.cep.unep.org/law/lbsmpnut.html>.

⁹⁴ Management Response, Annex 1, Item 7, 35.

⁹⁵ Id., Annex 1, Item 9, 36.

⁹⁶ Id., Annex 1, Item 12, 38.

⁹⁷ Ibid.

Development Program, and that the concerns expressed by the affected people were “reflected in project design.”⁹⁸

38. With respect to the financial management of the Project, including the possible risk of default of the borrower and inaccuracies in the financial and accounting statements, Management states that “*the work carried out in project preparation and supervision is in line with good practice on financial analysis.*”⁹⁹ According to the Response, this work has demonstrated that “*the risk that the District of Cartagena would default on its debt service obligations for the project is small.*”¹⁰⁰ In addition, Management claims that the Bank has required “*audited financial statements from both ACUACAR and the project to be submitted on an annual basis [...]*and ACUACAR has maintained financial management systems to ensure timely and accurate information regarding project resources and expenditures.”¹⁰¹ The Response adds that independent auditors and Bank supervision missions confirm this. Management contends that the Project complies with OP 10.02.¹⁰² Similarly, Management maintains that the cost effectiveness analysis carried out by an international consulting firm and the cost benefit analysis conducted by Bank staff complies with OP 10.04 on Economic Evaluation of Investment Operations.¹⁰³
39. As to Project supervision, Management states that “*the supervision of the project has been thorough and in compliance with OD 13.05 and OP/BP 13.05.*”¹⁰⁴ The Response adds that the Bank has conducted 13 missions to the Project area, has reviewed quarterly Project Management Reports (PMRs) that ACUACAR prepared and submitted, and has participated in several consultation meetings making presentations on the technical aspects of the Project.¹⁰⁵ With respect to the Requesters’ conflict of interest allegations concerning the Project’s environmental specialist and the Task Manager, Management claims to have found “*no evidence of conflict of interest involving the previous Environmental Specialist on the Bank’s project team.*”¹⁰⁶ For instance, according to Management, the environmental license was not issued during the tenure at CARDIQUE of the Bank Environmental Specialist’s distant relative, although it was issued shortly after his departure. Likewise, Management states that “*financial support was never offered in exchange for approval of the licenses*”¹⁰⁷ and the Task Manager

⁹⁸ Id., Annex 1, Item 13, 39, 40.

⁹⁹ Id., Annex 1, Item 15, 40. Management states that the work conducted included financial assessment of the District of Cartagena and ACUACAR, financial structure of the operation, continued review of both the financial performance of ACUACAR and the District as well as financial management of the project.

¹⁰⁰ Management Response, Annex 1, Item 15, 40.

¹⁰¹ Id., Annex 1, Item 17, 42.

¹⁰² Id., Annex 1, Item 17, 43.

¹⁰³ Id., Annex 1, Item 18, 44.

¹⁰⁴ Id., ¶ 51.

¹⁰⁵ Ibid.

¹⁰⁶ Management Response, Annex 1, Item 21, 45.

¹⁰⁷ Id., Annex 1, Item 22, 46.

met with CARDIQUE “as part of project preparation and supervision activities.”¹⁰⁸

40. The Requesters claim that the Bank violated OP 13.05 by failing to follow up on a promise by its Task Manager to require the borrower and ACUCAR to promote or use Pacts of Integrity with bidders on contracts awarded under the outfall Project.¹⁰⁹ Management states that neither the Task Manager nor the Bank promised to promote Pacts of Integrity or any other methodology used by Transparency for Colombia (TICOL).¹¹⁰ Management claims that the Bank only agreed to finance the services of TICOL, because it considered its involvement to be a positive step in local efforts to combat corruption.¹¹¹
41. The Response states that the Project complies with OD 4.15 on Poverty Reduction, as the communities of Punta Canoa, Arroyo de Piedra and Manzanillo will benefit from the provision of water and sanitation services, a new wastewater disposal system to reduce contamination and improve the environment, and support for community development and organization.¹¹² In addition, according to Management, the Project design and the monitoring program “will ensure that fishing and tourism in the North Zone will not be impacted.”¹¹³ The Project will also benefit the city of Cartagena as it “aims to bring public health benefits in terms of sanitation services especially to the city’s poorest neighborhoods [...] approximately 80,000 people will directly benefit from project investments in increased sewerage and water supply coverage.”¹¹⁴
42. Finally, Management claims to have responded in a timely fashion to all letters sent by the Requesters and to have provided available material when requested.¹¹⁵ Management notes that with regard to the allegations of Project ethical irregularities raised by the Requesters, such matters are within the jurisdiction of the Department of Institutional Integrity and hence are not within the scope of the Panel’s investigation.

E. ELIGIBILITY

43. The Panel must determine whether the Request satisfies the eligibility criteria for an Inspection, as set forth in the 1993 Resolution establishing the Panel and the 1999 Conclusions of the Board’s Second Review of the Inspection Panel (“1999

¹⁰⁸ Ibid.

¹⁰⁹ Request, 28.

¹¹⁰ Management Response, Annex 1, Item 23, 46.

¹¹¹ Ibid.

¹¹² Id., Annex 1, Item 26, 47.

¹¹³ Id., Annex 1, Item 26, 48.

¹¹⁴ Ibid.

¹¹⁵ Id., Annex 1, Item 27, 49.

Clarifications”),¹¹⁶ and recommend whether the matter alleged in the Request should be investigated.

44. The Panel has reviewed the Request and Management’s Response. The Panel Chairperson, Professor Edith Brown Weiss, together with Executive Secretary Eduardo Abbott and Operations Officer Tatiana Tassoni, visited Colombia from June 10 through June 16, 2004. During their visit, the Panel team met with the Requesters and other people in affected communities, representatives of ACUACAR, national, regional and local government officials, local NGOs, technical experts and prominent citizens. The Panel wishes to thank everyone who met with the Panel team for their cooperation and assistance and, in addition, expresses its appreciation to ACUACAR for their technical presentations.
45. The Panel is satisfied that the Request meets all of the eligibility criteria provided in the 1993 Resolution and paragraph 9 of the 1999 Clarifications.
46. During the visit, the Panel confirmed that the signatories of the Request are legitimate parties under the Resolution to submit a Request for Inspection to the Inspection Panel. They have a common interest and common concerns and reside in the Borrower’s territory, as required in paragraph 9(a).
47. The Panel confirms that the Request *“does assert in substance that a serious violation by the Bank of its operational policies and procedures has or is likely to have material adverse effect upon the requesters.”* The Request states, and the Requesters interviewed by the Panel during its visit to the Project area reiterated, that the residents of the villages of Punta Canoa, Arroyo de Piedra and Manzanillo, Colombia, are severely threatened in their livelihood and as communities by the proposed submarine outfall off Punta Canoa for the disposal of wastes from Cartagena with only preliminary treatment,¹¹⁷ and that they and others exposed to the polluted waters will suffer severe health impacts. The communities maintain a subsistence living from fishing and farming in the area, which they believe will be irreparably harmed.
48. The Requesters believe that the disposal of *“untreated”*¹¹⁸ wastes is not safe, that the ocean currents will bring the pollutants toward shore, that the presence of mud volcanoes both on land and in the oceans could cause accidental spillage of wastes, and that the emerging tourist industry will be harshly affected so that they will not be able to find employment in this sector. Moreover, they believe that the consideration of alternatives and the economic evaluation of the alternatives for the Project was inadequate, and that there have not been adequate consultations with affected people. The Requesters assert that these issues indicate that Bank management and staff have not complied with a number of Bank policies and

¹¹⁶ Conclusions of the Board’s Second Review of the Inspection Panel, (April 20, 1999).

¹¹⁷ Preliminary treatment involves removal of floatable materials, grease, oil, sand and grit. The waste will not be treated to meet primary and secondary standards.

¹¹⁸ Request, 2.

procedures and that the failure to comply has a very significant adverse effect on the Requesters' rights, as required by paragraph 9(b).

49. Management Response, the Panel's visit to Colombia and interviews with national, local and Project officials confirmed that there are sharply differing views on alternatives for treating and disposing of waste and the risks and the costs involved. However, all parties involved concur that the provision of water and sanitation services for the poor neighborhoods of Cartagena is an essential undertaking for the city and its citizens.
50. The Panel is satisfied that the Request *"does assert that its subject matter has been brought to Management's attention and that, in the Requesters' view, Management has failed to respond adequately demonstrating that it has followed or is taking steps to follow the Bank's policies and procedures."* The Requesters state that they have communicated with the Bank and thoroughly documented their allegations of Bank non-compliance with its policies and procedures and Project irregularities, but they are *'emphatically not satisfied with the responses and explanations'*¹¹⁹ that they have received from the Bank. A number of letters exchanged between the Requesters and the Bank are attached to the Request for Inspection submitted to the Panel. Hence, the Request meets the requirement of Paragraph 9(c).
51. The Panel notes that the subject matter is not related to procurement, and thus satisfies the requirement of paragraph 9(d).
52. The expected closing date of the related Loan is June 30, 2005. Only about 31 percent of the Loan had been disbursed as of the date the Request was filed. The Request therefore satisfies the requirement in paragraph 9(e) that the related Loan has not been closed or substantially disbursed.
53. The Panel has not previously made a recommendation on the subject matter of the Request. Therefore, the Request satisfies paragraph 9(f).

F. CONCLUSIONS

54. The Requesters and the Request meet the eligibility criteria set forth in the Resolution that established the Inspection Panel and the 1999 Clarifications. The Request and Management Response contain conflicting assertions and interpretations about the issues, the facts, and compliance with Bank policies and procedures.
55. In light of the foregoing, the Panel recommends that an investigation be conducted.

¹¹⁹ Id., 27.