

# **The Inspection Panel**

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

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

1. On April 27, 2006, the Inspection Panel (the “Panel”) received a Request for Inspection (the “Request”), dated the same day, related to the Ghana: West African Gas Pipeline Project (the “Project”). The Request was submitted by the Ifesowapo Host Communities Forum of the West African Gas Pipeline Project (the “Association”) through their representatives from the Olorunda Local Government Area of Lagos State, Nigeria. The Request was submitted on behalf of the members of the Association, which is composed of 12 communities that will be affected by the Project around the Badagry axis, in Lagos State, southwest Nigeria. These communities are Ajido, Imeke Agemowo, Araromi Ale, Idaghe Iyesi, Ilogbo Eremi and Igbesa, Okoomi, Itori, Oloya/Abiola, Arobieye, Igboliye and Egushi Benja. The Request includes four Annexes, including an Annex with signatures of 44 persons from different affected communities and two letters of consent from families who support the Request. (The Request for Inspection is attached to this Report as Annex I)
2. During the Panel’s eligibility visit to Nigeria in early June, some Requesters raised a new concern with the Panel, namely that as of some weeks ago fishermen were no longer able to catch many fish in the area between Badagry and Tafi villages on the coast, allegedly because of severe pollution which interfered with the use of their fishing nets. They indicated that this was an especially serious concern, because many people in the area depended upon fisheries for a livelihood. They believed that it might be caused by the recent construction of the gas pipeline in the area.
3. On June 9, 2006, during the Panel’s visit to Ghana, the Panel received a letter, dated the same day, from Friends of the Earth Ghana (“FoE-GH”), signed by its Director Theo Anderson (Annex III). In this letter, FoE-GH expressed its support for the Request submitted by the Ifesowapo Host Communities Forum of the West African Gas Pipeline Project and asked to be added to the Request for Inspection (the “FoE-GH submission”).

4. On June 14, 2006, the Panel notified the Regional Vice-President of the new concerns about fishing activities raised with the Panel during the Panel's visit to Nigeria and of the FoE-GH letter. The Panel has added both items to the processing of the existing Request.

## **A. The Project**

### **Project Objectives**

5. The Project aims to contribute to, *inter alia*, "improving the competitiveness of the energy sectors in Ghana, Benin, and Togo by promoting the use of cheaper and environmentally cleaner gas from Nigeria in lieu of solid and liquid fuels for power generation and other industrial, commercial uses, and diversifying energy supply sources."<sup>1</sup> In its response, Management specifies that "the project was designed to substitute inexpensive and environmentally friendly natural gas from Nigeria for expensive alternate fuels ..."<sup>2</sup>
6. Management expects that the Project will promote regional integration and bring economic benefits including "significant spillover implications for regional development."<sup>3</sup> It also anticipates that the Project will diminish overall emissions of greenhouse gases and air pollutants.

### **Project Components**

7. According to the PAD, the Project includes the following elements: (1) a new pipeline system, the West African Gas Pipeline (WAGP), which will transport natural gas from Nigeria to Ghana, Togo and Benin; (2) spurs to provide gas to power generating units in Ghana, Benin, and Togo; (3) conversion of existing power generating units to gas; and (4) as needed, additional compression investments.<sup>4</sup>
8. Under the Project, gas will be delivered from Nigeria via a 678 kilometer pipeline across southwestern Nigeria to a terminal point in Takoradi, Ghana. Fifty-eight kilometers of pipeline and other ancillary facilities are to be constructed by the West African Gas Pipeline Company (WAPCo) in southwestern Nigeria. In Nigeria, the pipeline will be constructed on the lands

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<sup>1</sup> Project Appraisal Document (PAD) on a Proposed IDA Partial Risk Guarantee in the Amount of US\$50 Million for Ghana and a Proposed MIGA Guarantee in the Amount of US\$ 75 Million for Sponsors Equity to the West African Gas Pipeline Project, November 2, 2004, p. 10.

<sup>2</sup> Bank Management Response to Request for Inspection Panel of the Ghana: West African Gas Pipeline Project (IDA Guarantee No. B-006-0-GH) [hereinafter "Management Response"], p. 2, ¶ 7.

<sup>3</sup> Management Response, ¶ 15.

<sup>4</sup> PAD, p. 11-12.

of 23 communities with an overall population of 140,000, including the 12 communities making this Request.<sup>5</sup>

9. The development, financing, construction, ownership, operation and maintenance of the Project was agreed in an International Project Agreement dated May 22, 2003, between the Republic of Benin, the Federal Republic of Nigeria, the Republic of Togo, the Republic of Ghana, and WAPCo. The International Project Agreement was negotiated pursuant to Article VII of the Treaty on the West African Gas Pipeline Project between the Republic of Benin, the Republic of Ghana, the Federal Republic of Nigeria, and the Republic of Togo, signed on January 31, 2003.
10. The Project is implemented by the special purpose company 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.<sup>6</sup>
11. The Project Appraisal Document (PAD) states that *“the 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>7</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 *“have acted and will continue to act in compliance with applicable World Bank Environmental and Social Safeguard Policies and anti-corruption policies.”*<sup>8</sup>

## **B. Financing**

12. The entire Project is estimated to cost about US\$ 590 million.<sup>9</sup> The International Development Association (IDA)<sup>10</sup> has provided a guarantee, in the amount of US\$ 50 million, for certain obligations of the Republic of Ghana related to the purchase of natural gas. The guarantee was approved on November 23, 2004, and the Guarantee Agreement became effective on December 31, 2004. Also, the Multilateral Investment Guarantee Agency

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<sup>5</sup> WAPCo’s participation in the project is provided in the WAPCo Shareholder Agreement of May 19, 2003, entered into by WAPCo, Chevron Texaco West Africa Gas Pipeline Company Ltd., Nigerian National Power Corporation, Shell Overseas Holdings Limited and Takoradi Power Company Limited.

<sup>6</sup> Collectively they are referred to as “the sponsors”.

<sup>7</sup> PAD, p. 6.

<sup>8</sup> PAD, p. 9. Both Project Agreements were signed on December 15, 2004.

<sup>9</sup> PAD p. 13. Management Response (p. 4 ¶ 13) states that the sponsors currently estimate the construction costs of the pipeline, excluding other WAPCo costs, to be about US\$ 495 million.

<sup>10</sup> IDA is also referred to as the “Bank”.

(MIGA) has provided a US\$ 75 million political risk guarantee to WAPCo in relation to the construction of the pipeline and associated facilities.<sup>11</sup>

## C. The Request

### I. Claims raised by the Ifesowapo Host Communities Forum of the West African Gas Pipeline Project

13. The Requesters believe that the Project, as it now stands, will cause irreparable damage to their land and destroy the livelihoods of their communities. They state that the Bank did not comply with a number of its policies and procedures, including OP/BP 4.12 on Involuntary Resettlement, OP/BP 4.01 on Environmental Assessment, OP/BP 10.04 on Economic Evaluation of Investment Operations, and OP/BP 13.05 on Project Supervision.

### Environmental Assessment

14. According to the Requesters, 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>12</sup> The Requesters state that although WAPCo holds periodic meetings with the landowners on the issue on compensation, many of the affected people in their communities are excluded because they are not considered landowners. In the Requester’s opinion, public consultation should have included non-land owners because *“the pipeline would pass very close to our homes, through routes our children take to their schools, routes our woman take to their farms and to our fishing grounds.”*<sup>13</sup> In the Requesters’ view, this makes the non-landowners “stakeholders” who should be included in consultations. They claim that they were not consulted until a Bank team visited Badagry on October 30, 2004.
15. 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,*

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<sup>11</sup> WAPCo is also the beneficiary of similar insurance structures from Zurich (with re insurance from OPIC) to back the payment obligations of the Governments of Ghana, Togo and Benin. Management Response, ¶ 13.

<sup>12</sup> Request, p. 5.

<sup>13</sup> Request, p. 6.

*and distributed to impacted communities.*<sup>14</sup> They claim that a translation of the Resettlement Action Plan (RAP) into Yoruba does not exist, although land acquisition has been completed.

16. The Requesters claim that the scope of the EIA was too narrow and should have included the existing Escravos-Lagos Pipeline (“ELPS”) to which the West African Gas Pipeline 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>15</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>16</sup> In addition, they state that they *“have been told that there is an emergency response and contingency plan to minimize impacts of disasters, but [they]... are totally unaware of its content or adequacy.”*<sup>17</sup>

### **Involuntary Resettlement and Poverty Reduction**

17. The Requesters also claim that the Bank has not complied with its policy on involuntary resettlement (OP/BP 4.12). They fear that the Project will negatively impact their livelihoods and provide inadequate compensation. They are convinced that the Project will not restore or improve their standards of living.
18. The Requesters are especially concerned about the amount of compensation they received for the plots of land acquired for the Project. According to the Requesters, 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>18</sup> They state that, in hindsight, they received too little information on the exact amount of compensation they would receive for each plot of land acquired under the Project. They further claim that *“[t]here 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>19</sup>

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<sup>14</sup> Request, p. 6.

<sup>15</sup> Request, p. 6.

<sup>16</sup> Request, p. 7.

<sup>17</sup> Request, p. 7.

<sup>18</sup> Request, p. 3.

<sup>19</sup> Request, p. 4.

19. The Requesters indicate that there were no *“binding contractual relations between individual landowners and WAPCO”*.<sup>20</sup> They assert that the payment of compensation was left to the discretion of the Project sponsors, resulting in payment of compensation only for the actual crops on the affected land and not for the land or loss of future profits from their activities on the land.
20. The Requesters also fear that they will not only lose their lands, which are one of their means of livelihoods, but that they will also have no prospect of alternative long-term employment. As a result, they believe that the people of their communities will become further impoverished. They claim that employment benefits would only be of a temporary nature during the construction of the pipeline. The Requesters assert that they are not aware of mechanisms that will ensure that qualified persons from their communities are trained to secure long-term employment, although they have submitted names of individuals from their communities qualified in various fields, such as engineering.

### **Consultation and Disclosure**

21. 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. They state that at the time the compensation was paid, many of them were not aware of the criteria that were used for compensation. The Requesters believe that relevant information was withheld deliberately in order to garner community support for the Project.
22. Moreover, the Requesters state that the limited consultations that were held were *“a recipe for crisis and violence in our communities.”*<sup>21</sup> They claim that the *“community members have yet to resolve the bitterness and bickering that was the hall mark of the selective consultations which took place with a few landowners, while other land users and impacted persons were ignored.”*<sup>22</sup> Landowners and other stakeholders were unable to agree over who should be eligible to receive and keep compensation. The Requesters believe that the Project sponsors deliberately tried to incite tensions as part of a strategy to divide the community. The Requesters indicate that the Project and the insufficient information about the amount of compensation paid, has also caused serious social conflicts within families.

### **Economic Evaluation**

23. The Requesters also question the economic evaluation of the Project and believe that it will 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*

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<sup>20</sup> Request, p. 4.

<sup>21</sup> Request, p. 5.

<sup>22</sup> Request, p. 5.

*the flaring of associated gas in Nigeria.*<sup>23</sup> 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 the destruction of the lands and rivers, to serious health problems, and to great environmental harm.

24. The Requesters assert that while the Project proponents claim that associated gas (which is normally being flared) will be the source for the pipeline, they have obtained information demonstrating that this assertion is false. They claim that the fields in the Western Niger Delta where the gas for the Project will be sourced *“are generally non-associated gas fields. This means additional gas would be drilled instead.”*<sup>24</sup> The Requesters claim that the Project design does not compellingly demonstrate that any amount of associated gas would run through the pipeline. As a result, the Requesters deem it “inappropriate” for the Bank to support the Project, because it would allow the Project sponsors to *“continue the unwarranted degradation of our environment and livelihoods.”*<sup>25</sup>
25. 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 precedent of looking solely at profit margins, rather than the best development interest of the people of this country.”*<sup>26</sup>

## **Supervision**

26. Moreover, the Requesters claim that Management has failed to comply with the Bank’s policies on supervision. They state that they *“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>27</sup>
27. The Requesters therefore request that the Panel recommend an investigation to the Board of Executive Directors.
28. 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:

OP/BP 4.01  
OP/BP 4.12

Environmental Assessment  
Involuntary Resettlement

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<sup>23</sup> Request, p. 7.

<sup>24</sup> Request, p. 8.

<sup>25</sup> Request, p. 8.

<sup>26</sup> Request, p. 8.

<sup>27</sup> Request, p. 3.

OD 4.15 Poverty Reduction  
OP/ BP 10.04 Economic Evaluation of Investment  
Operations  
OD/OP/BP 13.05 Project Supervision  
World Bank Policy on Disclosure of Information

## II. Claims Raised by Friends of the Earth Ghana

29. The FoE-GH Submission not only supports the original Request for Inspection but raises concerns about consultation, safety and adverse livelihood consequences for fishermen in Ghana as a result of the construction and operation of the pipeline. While FoE-GH acknowledges the “*contribution of energy development to poverty alleviation on the West Africa sub-region*”,<sup>28</sup> it raises a variety of issues that it considers critical to the implementation of the Project. One of its main concerns is the Project’s “*lack of transparency.*”<sup>29</sup> The Submission alleges that while the importance of consultation was recognized in the design of the Project, the issue of consultation was not handled adequately in practice.
30. The Submission states that Ghana’s Energy Commission has raised concerns about the Projects’ long term economic benefit to Ghana and that FoE-GH believes that these concerns have not been taken into account in the consultation process. The NGO is worried that these concerns will not be adequately addressed in the future and states that the Bank has already indicated its unwillingness to consider these concerns. According to the Submission, the economic and financial analysis of the Project was never disclosed, though this was initially promised.
31. Moreover, while the EIA identified the importance of an emergency response system, FoE-GH questions 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.
32. FoE-GH stresses that “*fishing is a critical source of livelihood for a significant proportion of Ghana’s population.*”<sup>30</sup> While it recognizes that the planned route of the pipeline does not pass sensitive fisheries ecosystems, it believes that the Project sponsors should assess the pipelines’ impacts on fisheries and livelihoods. The Submission states that the Bank should ensure that continued impact assessments are conducted to avoid any negative Project impacts on livelihoods and the fisheries ecosystem. Considering the migratory tendencies of fishermen, FoE-GH claims that local consultations should include all communities along the coastline.

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<sup>28</sup> Letter submitted by FOE-GH, dated June 9, 2006, p. 1.

<sup>29</sup> Letter submitted by FOE-GH, dated June 9, 2006, p. 1.

<sup>30</sup> Letter submitted by FOE-GH, dated June 9, 2006, p. 2.

## **D. Management Response**

33. On June 6, 2006, Management submitted its Response to the Request.<sup>31</sup> (Annex II) At the time of its Response, the Panel had only received the initial Request, but was not aware of the additional environmental issue related to pollution and fisheries in Nigeria or of the letter from FoE-GH. Thus Management's Response only addressed the issues raised by the Ifesowapo Host Communities Forum of the West African Gas Pipeline Project.
34. The Response, which includes four annexes, provides background information on the Sector and the Project. In addition, the Response discusses a number of the Project's so-called "special issues", such as (1) Consultations, Disclosure and Supervision; (2) Poverty and Resettlement; (3) Project Economics; and (4) Environment. A Management Action Plan is also included in the Response. Detailed responses to each specific claim raised by the Requesters are provided in Annex 1 of Management Response.
35. Subsequent to its Response, Management provided the Panel with supplemental material in response to the Panel's notification regarding the new fisheries claim by the Requesters and the letter from FoE-GH. Management supplemental response is attached in Annex IV, and forms an integral part of this report.

### **Response to the Requesters' Claims**

36. With respect to the Requesters' allegations of non-compliance, Management believes that it has made significant efforts to apply its policies and procedures. Management acknowledges that the Project included both risks and opportunities, but asserts that it focused on maximizing opportunities and safeguarding against risk. Management believes that the Project is well-prepared and meets Bank's safeguards requirements. Management recognizes, however, that further work will be needed on safeguards supervision. Management also notes that it will work with WAPCo, the Government of Nigeria and affected communities to ensure that "the Requesters' rights or interests are not directly or adversely affected by the project."<sup>32</sup> According to Management, there was strong continuity in senior Bank staff overseeing and supporting the safeguards work during Project preparation.

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<sup>31</sup> Bank Management Response to Request for Inspection Panel of the Ghana: West African Gas Pipeline Project (IDA Guarantee No. B-006-0-Gh), June 6, 2006, [hereinafter "Management Response"].

<sup>32</sup> Management Response, ¶ 60.

## Environmental Assessment

37. According to Management, the Environmental Assessment (EA)<sup>33</sup> concluded that the Project would not cause major impacts in Nigeria and that impacts would be limited to the Project's immediate vicinity. Management supports this assertion by citing an Independent Monitoring Report prepared by WAPCo in December 2005. Management claims that the EA for the WAGP covers both pipeline safety issues and the upstream gas source.
38. 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.
39. As to the Requesters' concerns regarding the scope of the EA, Management states that the Bank did not include the ELPS in the EA, 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 WAGP and is neither owned by WAPCo nor dependent on the WAPG.
40. 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 system would have adequate pipeline capacity for the WAPG 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 communities listed in the Request*".<sup>34</sup>

## Involuntary Resettlement and Poverty Reduction

41. Because of the Project's provision for resettlement compensation, community development, and planned permanent employment, Management considers that the Project will benefit and not impoverish affected people.
42. Management notes that the repercussions of the Project's acquisition of land are limited in Nigeria: 1,557 private landowners and 928 tenants are losing small portions of the total holdings that they own or cultivate. It believes affected

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<sup>33</sup> The Request for Inspection refers to the Environmental Assessment as Environmental Impact Assessment (EIA).

<sup>34</sup> Management Response, Annex 1, p. 25.

people have all 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.

43. As to the Requesters' concerns about the amount of compensation, Management indicates that the principle for compensation agreed upon and applied is the "*replacement value*" 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 compensation "has been applied inconsistently, the Bank will ensure that it is corrected."<sup>35</sup>
44. 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 indicates that for all assets, including land, WAPCo used "*estate valuers*"<sup>36</sup> and that compensation payments had to also consider asset improvements., Management states that due to public concerns, WAPCo did not base compensation rates only on the 1998 Oil Procedures Trade Section (OPTS) compensation schedule rates, but instead, after negotiations with three communities, agreed to increase the rates by 75 percent for land, and 50 percent for crops and buildings. In January 2005 these rates were increased by an additional five percent due to delays in payment. However, Management notes that according to the RAP, "*the OPTS rates were reported to be first increased by ten times and then, for inflation, an additional increase (+75% for land, and +50 % for other assets) was reported to be added.*"<sup>37</sup> Management confirms that it is reviewing the actual payments "*to ensure that, regardless of OPTS rates or any mark-ups agreed, the principle of replacement value for lost assets was met.*"<sup>38</sup>
45. According to Management, the RAP instructs WAPCo 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 states that an independent audit of resettlement is scheduled for September 2006. It states that the Requesters should first bring their concerns about the level of compensation to the attention of the grievance mechanism.

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<sup>35</sup> Management Response, ¶ 44.

<sup>36</sup> Management Response, Annex 1, p. 26.

<sup>37</sup> Management Response, Annex 1, p. 26.

<sup>38</sup> Management Response, Annex 1, p. 26.

46. As to the Requester's concern about the alleged lack of a binding contractual relationship between individual landowners and WAPCo, Management claims that these agreements are documented in "Compensation and Indemnity Receipts for Direct Payment" forms. "[I]f registered as described in the RAP", Management believes, the receipts for property acquired meet Bank standards.<sup>39</sup>
47. Regarding the issue of employment of local labor force raised in the Request, Management claims that most landowners have lost only small parts of their land and thus do not need alternative employment. Management refers to several activities that are described in the EA, such as temporary employment of local residents in clearing, pipe installation and construction, local purchases and permanent employment for a much smaller group of residents. According to Management, WAPCo is operating a nine-month training program for long-term positions; 25 trainees are Nigerians and the number of positions to be filled in Nigeria is expected to be 16. Management also states that WAPCo has committed to at least 15 % local content during the construction phase and achieved 12.2 % through March 2006.
48. In its response, Management also 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.

### **Consultations and Disclosure**

49. Management does not agree with the Requesters' claim that consultations about compensation were inadequate. It considers that the issue of compensation was adequately addressed in frequent and extensive consultations.
50. Management indicates that WAPCo and its consultants conducted twenty-five formal consultations in affected communities concerning the issues covered by the EA. Twenty additional consultations were organized exclusively for the RAP. According to Management, WAPCo held at least sixteen meetings in communities that signed the Request, open to both landowners and non-landowners. Management also states that the Federal Government of Nigeria held a public hearing on the EA on April 6, 2004.
51. In addition, Management asserts that a social safeguard specialist conducted field visits to all locations and that the Bank's External Affairs department held consultations in all four countries during the preparation of the second draft of the EA and the RAP. Additionally, Bank environmental, social and community development specialists conducted field visits to assess whether consultations and disclosure had been adequate.

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<sup>39</sup> Management Response, Annex 1, p. 27.

52. In response to the Requester's claim that insufficient consultation about compensation has incited tensions in communities and within families, Management states that any tension that may have developed were "*normal parts of community dynamics.*"<sup>40</sup>
53. Regarding disclosure of information, 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 Info Shop. Management also indicates that the Environmental and Social Management Plan (ESMP) for Nigeria which was 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, these translations are still not available.

### **Supervision**

54. Management believes that the Project has been well prepared and supervised and that the issues raised in the Request had already been identified in supervision. Management states that it has conducted one supervision mission on safeguards in June 2005 before construction began, in which issues related to, *inter alia*, safety and compensation were raised. Management acknowledges that a "*field mission for supervision is overdue and will be conducted in the first quarter of FY 2007.*"<sup>41</sup>

### **Economic Analysis**

55. Regarding the economic analysis, Management claims that it performed its own analysis and also engaged a consulting firm to perform an additional analysis. It believes that the economic analysis considered all feasible alternatives and adequately evaluated the sustainability of the Project adequately.
56. According to Management, the EA includes not only Project alternatives but also addresses a "no action or no "project" alternative. It believes, that the WAGP was by far the most attractive investment and expects that the Project will generate significant economic benefits to participating countries.
57. Management also believes that the economic analysis and the PAD draw a realistic picture of the Project's contribution to the reduction of gas flaring.

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<sup>40</sup> Management Response, Annex 1, p. 28.

<sup>41</sup> Management Response, Annex 1, p. 33. FY 2007 refers to the World Bank fiscal year 2007, which starts on July 1, 2006

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>42</sup> According to Management, the annual volume of associated gas is even included as one of the Project’s monitoring indicators.

### **Action Plan**

58. Management is aware that some of the issues raised in the Request, such as compensation rates, community development mechanisms, and some environmental and safety issues, still need to be addressed. To do so, Management Response introduces an Action Plan, proposing several actions to resolve the situation.
59. In a first step, Management identifies the risks still facing the Project: (1) Potential uncertainty regarding disclosure of information; (2) Potentially inadequate compensation; and (3) Potential lack of credibility.<sup>43</sup>
60. To address these risks, Management proposes several actions, such as the facilitation of community development programs and measures to increase transparency and accountability through conducting two supervision missions per year until Project completion. Additionally, Management states that before September 30, 2006 WAPCo will disseminate non-technical translations of RAP and EMP summaries, including explanations of the grievance and monitoring mechanisms.
61. Moreover, Management expects the appointment of an expert panel by September 2006. According to Management, the expert panel’s mandate includes the review of social and environmental issues. The expert panel will also assess the effectiveness of the grievance procedures in September 2006.
62. Management also states that it will assess whether compensation rates were sufficient to replace acquired assets and whether the grievance redress process was effective in correcting problems. Additionally, Management claims that before September 30, 2006, WAPCo will conduct professional surveys based on actual field measurements and ratings to assess the current values of each type of lost asset, including communal lands, trees, crops, other structures, and public assets. Management confirms that this will be guided by the definition of “replacement value” as required by OP 4.12, and that the Bank will review the cases cited in the Request.
63. Management expects that system wide emergency response plans will be disclosed in June 2006 and that detailed site plans will be developed. Further, a

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<sup>42</sup> Management Response, ¶ 43.

<sup>43</sup> Management Response, ¶ 55.

resettlement audit, planned for September 2006 will review the adequacy of compensation to replace lost assets and the status of income restoration.

### **Responses to Additional Items Raised**

64. With regard to the problem of pollution and the loss of fisheries in the Badagry area, which has arisen only in recent weeks, Management provided the Panel with *“Clarifications Regarding Marine Pollution,”* in which it indicated that, upon receiving notice from the Inspection Panel, it *“sought WAPCo’s cooperation in undertaking an urgent preliminary investigation into the matter.”*<sup>44</sup> WAPCo completed its work in the Lagos Beach shore approach on March 14, 2006, and the Badagry Lagoon crossing on April 12, 2006.
65. According to Management Clarifications, WAPCo visited the site on June 22, 2006 and met with the chief fishermen and other fishermen in Ajido. WAPCo purchased a sample used net from the fishermen to test the brownish-green substance that is interfering with the fishing and the nets. Management states that these tests showed that the brownish-green substance is plant material, a filamentous green alga. Management Clarifications indicate that *“[b]ased 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.”*<sup>45</sup> Management also states that in July 2006, an environmental staff specialist from the Bank’s Abuja office *“will visit the site to follow up on the matter with the fishermen, local government (including its environmental unit) and WAPCo field staff to ensure that this matter is appropriately referred to the Nigerian environmental authorities.”*
66. Management also responded to the FoE-GH letter, which raised concerns about the quality of consultations with affected communities, and about the adverse effects that the construction and installation of the pipeline may have on the fishermen of Ghana. In response to the claim that the Project’s long term economic benefits to Ghana were not taken into account in the consultation process, Management states that the results of the economic analysis were disclosed in an open forum in Accra in September 2004 to all interested parties, who were given the opportunity to provide their inputs. It also asserts that Bank staff *“conducted a round of consultations in all four countries”* to evaluate WAPCo’s public participation program, and meetings with the communities were held for the preparation of the environmental and social impact assessment.<sup>46</sup>

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<sup>44</sup> West Africa Gas Pipeline Project – Clarifications Regarding Marine Pollution, [hereinafter “Management Clarifications”].

<sup>45</sup> Management Clarifications, p. 2.

<sup>46</sup> Management Response to FoE-GH letter, p. 1.

67. With respect to the emergency response system, Management states that WAPCo held public meetings with all affected communities to discuss the response plans and to describe in a clear way the actions that all parties need to take in case of accidents. In Response to the FoE's request that continued impact assessments be conducted to avoid negative impacts on livelihoods and fisheries, Management claims that the environmental monitoring plan includes the assessment of these impacts, carried out by independent consultants. In addition, consultations were held during Project appraisal with fishing communities' representatives in all countries, and NGOs contracted to assist in project implementation together with WAPCo's community liaison officers will *"remain engaged with all communities along the pipeline right-of-way in coastal areas surrounding pipeline landfalls for several years."*<sup>47</sup>

## **E. Eligibility**

68. The Panel must determine whether the Request satisfies the eligibility criteria for an Inspection, as set forth in the 1993 Resolution<sup>48</sup> establishing the Panel and the 1999 Clarifications<sup>49</sup>, and recommend whether the matter alleged in the Request should be investigated.
69. The Panel has reviewed the Request and Management first and supplemental Responses. The Panel Chairperson, Edith Brown Weiss, together with Executive Secretary Eduardo Abbott and Panel Operations Officer Serge Selwan, visited Nigeria and Ghana from June 4 – 10, 2006. During their visit, the Panel met with the signatories of the Request for Inspection and with other affected people in Ajido, Badagry and Lagos, with national government officials in Abuja, and with Bank Management in Abuja. In Accra, Ghana, the Panel met with officials from WAPCo, experts and Bank Management. While in Accra, the Panel received a letter from FoE-GH in support of Request of Inspection.
70. The Panel wishes to thank the Ifesowapo Host Communities Forum of the West African Gas Pipeline Project, FoE-GH, Environmental Rights Action/ FoE Nigeria, and Government officials in Abuja. The Panel especially expresses its appreciation to the Requesters for showing the Panel the area of concern to them. The Panel also wishes to thank WAPCo staff for providing documents and discussing points of concern with the Panel. The Panel is grateful to Bank staff in Abuja for providing the Panel with information and for assisting with logistical arrangements.

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<sup>47</sup> Management Response to FoE-GH letter, p. 2.

<sup>48</sup> Resolution No. IBRD 93-10 of September 22, 1993, hereinafter "the Resolution".

<sup>49</sup> The 1999 Clarifications to the Resolution (hereinafter "the 1999 Clarifications") are contained in the "Conclusions of the Board's Second Review of the Inspection Panel" dated April 20, 1999.

71. The Panel proposes to add the letter submitted by FoE-GH as part of the documentation for the Request, since the Project also takes place in Ghana and because at the request and with the agreement of the Republic of Ghana, IDA agreed to provide a guarantee for financial obligations regarding the development, financing, construction and operation of the Project.
72. During the visit, the Panel confirmed that the Requesters are legitimate parties under the Resolution to submit a Request for Inspection to the Inspection Panel. The Requesters have a common interest and common concerns as required in Paragraph 9(a).
73. The Request indicates that affected people have authorized the Ifesowapo Host Communities Forum of the West African Gas Pipeline Project to represent their interests to the Inspection Panel.
74. The Panel notes that the Request “*assert[s] 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.*” (Paragraph 9(b)).
75. The Requesters assert that they have suffered serious harm or will suffer harm in the future, because the Project “*if executed as presently conceived, would do irreparable damage to the land and consequently, destroy the livelihoods of the 12 communities.*”<sup>50</sup> The Requesters claim that the Bank’s support for the Project would allow the Project sponsors to “*continue the unwarranted degradation of our environment and livelihoods.*”<sup>51</sup>
76. The Requesters allege that the World Bank actions constitute a violation of Bank policies and procedures on Project Supervision, Involuntary Resettlement, Environmental Assessment, and Economic Evaluation of Investment Operations and that these actions have had a significant adverse effect on the Requesters’ rights, as required by paragraph 9(b).
77. The Requesters claim that they have brought their concerns to Management’s attention at various occasions. They state that they have attempted to discuss their concerns with Management, *inter alia*, during visits of Bank missions to Nigeria in October 2004 and in June 2005. They believe that despite these repeated efforts the Bank has remained inactive and failed to address their concerns. Management Response acknowledges that it has been aware of many of the issues that the Requesters raise and that these issues were discussed in local consultations and during a Bank mission in 2004 to Badagry and discussed again in the safeguards supervision mission in 2005. The Panel is therefore satisfied that the Request “*does assert that the 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*

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<sup>50</sup> Request, p. 1.

<sup>51</sup> Request, p. 8.

*followed or is taking steps to follow the Bank's policies and procedures" as set forth in Paragraph 9(c).*

78. The Panel notes that the subject matter of the Request is not related to procurement, as required by paragraph 9(d).
79. No funds had been disbursed under the Guarantee 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.<sup>52</sup>
80. Furthermore, the Panel has not previously made a recommendation on the subject matter of the Request. Therefore, the Request satisfies Paragraph 9(f).
81. The Panel notes, however, that this Request has special circumstances which affect the Panel's consideration of whether an Investigation is merited at this time.
82. The Panel notes that Management's Response contains an Action Plan to address issues raised in the complaint. The supplemental Response regarding pollution and fisheries indicates that Management is seeking to ensure that the problem is addressed.
83. The Panel did not find widespread discontent about the Project itself among affected people. However, people expressed their concern about the criteria for compensation and the failure to consider future earnings, and displayed documents which the Panel observed would merit review. People also raised a new concern relating to environmental contamination and fisheries.
84. Importantly, when consulted about the Management Action Plan, the Requesters with whom the Panel met during its eligibility visits, among them a Requester acting as a community liaison, indicated that they do not want to press for an investigation at this time but rather await further developments and Bank actions regarding their concerns.
85. In light of Articles 4 and 5 of the 1999 Clarifications and consistent with prior similar recommendations approved by the Board, the Panel recommends to defer the decision on whether to recommend an investigation or not, until the review of compensation and other actions included in Management's Action Plan have been initiated and to see whether the concerns of the Requesters have been met. This will also include that environmental monitoring is in place and that further adequate response to the above mentioned fishery issue is provided.
86. Given Requesters' preference to await Bank's commitment to undertake certain steps to ensure compliance and address their concerns as noted above, and

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<sup>52</sup> According to the Resolution, "*this will be deemed to be the case when at least ninety-five percent of the loan proceeds have been disbursed.*" Footnote to Paragraph 14 (c).

given the relative complacency of affected people about the Project at present, the Panel recommends that it defer a decision with regard to recommending an investigation in order to give Management time to implement its Action Plan. The Panel expects to be able to make a determination by the end of 2006 as to whether an investigation is merited.

## **F. Conclusions**

87. In light of the foregoing observations and in fairness to all the parties concerned, the Panel, as it has done in a similar situation in the past with Board approval, does not take a position at this time on whether the Request merits an investigation.
88. Since the Panel is not making a recommendation on this issue, the Requesters may still have recourse to the Panel later if they consider there are serious violations of Bank policies and procedures causing material adverse effect, which are based on specific acts or omissions of the Bank relating to the Project.
89. The Panel, therefore, recommends to the Board of Executive Directors that it approve the Panel's proposal to refrain from issuing a recommendation at this time on whether an investigation is warranted in this case, but rather await further developments on the matters raised in the Request for Inspection. The Panel expects to be able to make a determination by the end of 2006 as to whether to recommend an investigation.