

The Inspection Panel

Report and Recommendation

on

Request for Inspection

Uganda: Third Power Project (Credit 2268-UG) and the Proposed Bujagali Hydropower Project

1. On July 27, 2001, the Inspection Panel (the “Panel”) received a Request for Inspection (the “Request”) dated July 25, 2001 related to the above-referenced projects (the Projects) (Annex 1). On August 7, 2001, the Panel notified the Executive Directors and the President of the International Development Association (IDA) of receipt of the Request (meaning “Registration” under the Panel’s *Operating Procedures*).¹

A. Financing

2. IDA has been involved in the power sector in Uganda for over 20 years and has financed several projects, beginning with emergency repairs to the Owen Falls Dam in the early 1980s. The Owen Falls Dam and the Owen Falls Extension are a hydro power complex constructed and extended over a period of some 50 years. IDA financed the Power II Project in 1985 (SDR 29.5 million, around US\$28.8 million) under which rehabilitation works were carried out for the Owen Falls Dam. In 1991, it financed the Power III Project with an original amount of SDR 86,900,000 (about US\$125 million) for the construction of the Owen Falls Extension. In January 2000, it provided a Supplemental Credit to the Power III Project in the amount of SDR 24,000,000 (about US\$33 million). More recently, the Power IV Project was approved in July 2001 with a Credit of SDR 48,000,000 (about US\$62 million), which will assist in financing Power Generation Unit 14, and contingent upon economic viability, Unit 15 (40-80MW) at the Owen Falls Extension powerhouse. In addition, the Government of Uganda has requested further financial assistance from IDA, which is now considering a possible participation in the proposed Bujagali Hydropower Project (the Bujagali Project) through the issuance of a Partial Risk Guarantee in an amount of about US\$100 million to cover certain specific financial risks. The International Finance Corporation (IFC) is also considering financial support for this project.

B. The Projects

3. According to the Development Credit Agreement² for the Power III Project, its objectives were to: “ (a) assist the Borrower with the continued rehabilitation of the power system in Uganda; and (b) develop its hydroresources and expand the transmission and distribution system, to provide reliable, least-cost energy to Uganda's growing population” The project included the following activities: a) “at Owen Falls:

¹ See The Inspection Panel, *Operating Procedures* (August 1994) at ¶ 17.

² Development Credit Agreement dated January 9, 1992 at pg 11, Schedule 2.

dam strengthening, construction of a spillway, plant capacity expansion by at least 102 MW, and civil works to accommodate a plant capacity of 170 MW"; b) *"rehabilitation and expansion of transmission and distribution on the national grid"*³; and c) provision of technical assistance services to the Uganda Electricity Board (UEB) and the Ministry of Energy.

4. The Supplemental Credit for the Power III Project financed (a) project cost over-runs; (b) urgent remedial works identified by a Panel of Experts to be undertaken on Owen Falls Dam to enhance dam safety; and (c) technical assistance services related to the *"unbundling of UEB and the concessioning of distribution and generation assets."*
5. The proposed Bujagali Hydropower Project includes a 200MW run-of-the-river hydropower plant at Bujagali, 8 kilometers downstream from the Owen Falls Extension, and the construction of about 100 kilometers of 220 kv and 132 kv transmission lines and associated substations. According to paragraph 24 of the Management's Response (the Response) (Annex 2), the project will be developed and constructed on a Build-Own-Operate-Transfer (BOOT) basis by the private sector.

C. The Request

6. The Request was submitted by the National Association of Professional Environmentalists of Kampala (NAPE), Uganda Save Bujagali Crusade (SBC) and other local institutions and individuals (the Requesters). The Requesters claim that failures and omissions of IDA in the design, appraisal, and implementation of the Projects have materially affected their rights and interests and are likely to jeopardize their future social, cultural, and environmental security.
7. The Requesters allege that the Owen Falls Extension and the construction of the proposed Bujagali Hydropower Project have resulted or may result, in social, economic and environmental harm to the local population.
8. The Requesters also claim they have been harmed or are likely to be harmed as a result of failure to undertake an Environmental Assessment (EA) of the Owen Falls Extension; the lack of a cumulative environmental assessment related to the dams already built, under construction and in the final stages of design; inadequate involuntary resettlement (including compensation arrangements); inadequate consultation, participation and disclosure of information; and lack of economic and technical analysis, including lack of alternative economic analysis, especially in the case of the Owen Falls Extension.
9. The Requesters have specific concerns regarding the adequacy of environmental assessment under the Power III Project, the lack of a post-construction Environmental Impact Assessment (EIA) for Owen Falls Dam and thus inadequate assessment of cumulative effects of the projects financed and to be financed by IDA.
10. The Request claims that IDA did not conduct an adequate economic, financial, institutional and environmental appraisal of the Power III Project and that mistakes in the design of the project resulted in only 100MW being installed at Owen Falls

³ *ibid.*

Extension instead of 200MW, thus hastening the proposal to build the Bujagali Hydropower Project.

11. The Requesters allege that resettlement activity for the proposed Bujagali Hydropower Project has commenced without IDA's supervision or involvement, and in the absence of a resettlement plan approved by IDA.
12. The Request questions the economic and technical analysis, including the alternative economic analysis, of the proposed Bujagali Hydropower Project and contends that the Project is not the least-cost option for generating power in Uganda. It also considers that the proposed Bujagali Hydropower Project would have significant negative cumulative impacts on the environment and on fisheries and tourism. Noting that tourism is Uganda's second largest foreign exchange earner after coffee, the Request claims that construction of Bujagali dam "*will inundate the falls, which is a major tourist attraction; the camp sites on the banks of the river, and eliminate substantial revenues that accrue from tourism activities like White Water Rafting along the Nile*"; adding that "*we know that this loss has been underestimated in the Bujagali EIA.*"⁴ In addition the Requesters claim that the proposed dam could threaten a rare fish.
13. The Requesters contend that the proposed Bujagali Hydropower project is the cause of the newly raised, and proposed increases in, electricity tariffs to levels that cannot be afforded by the citizens of Uganda thereby, causing further economic harm. The Request considers that "*the project's cost implications needs to be made public, and independently reviewed. Without such steps, we feel the Bujagali Dam could lead to serious harm to all Ugandans, as we believe costs of power will rise steeply.... thus slowing economic growth for the country as a whole.*"⁵ Without the information on the economic assumptions underlying the Bujagali project, "*citizens are unable to fully assess the project's impacts on our economy, our electricity tariffs and our overall energy future.*"⁶
14. The Requesters also claim that there has been a lack of disclosure of information and consultation regarding the proposed project and state that the Power Purchase Agreement (PPA) pertaining to the proposed Bujagali Hydropower Project as well as its economic analysis have not been released to the public.
15. The Requesters state that they have tried but failed to clarify and resolve their concerns with Bank officials.
16. Finally, according to the Request, "*a claim with the Compliance Advisor Ombudsman (CAO) of IFC*" was filed with respect to IFC's participation in the Bujagali Project "*and the claim is still under investigation.*"⁷
17. The Requesters claims could constitute violations of, inter alia, the following Bank Policies and Procedures:

OD/OP 4.01 on Environmental Assessment⁸

⁴ See request, pg 4.

⁵ id pg 3.

⁶ id pg 4.

⁷ id pg 5.

⁸ and/or OMS 2.36 as indicated in theResponse.

OP 4.04 on Natural Habitats
OD 4.15 on Poverty Reduction
OD 4.20 on Indigenous Peoples
OD 4.30 on Involuntary Resettlement
OP 4.37 on the Safety of Dams
OPN 11.03 on Management of Cultural Property in Bank-Financed Projects
OP 10.04 on Economic Evaluation of Investment Operations
OD 10.70 on Project Monitoring and Evaluation
OD 13.05 on Project Supervision
BP 17.50 on Disclosure of Operational Information

D. The Response

18. On September 13, 2001, the Panel received Management's Response to the Request for Inspection.
19. In its Response, Management states that "*IDA has been involved in the power sector in Uganda for over 20 years through development of several projects, beginning with emergency repairs to the Owen Falls Dam in the early 1980,*"⁹ and it describes in some detail IDA's involvement in the sector and more specifically its financing of the projects referred to in the Request.
20. Management notes that several current Bank policies and procedures were not applicable when the Power III Project was appraised in 1990. Concerning the Requesters' allegations regarding the inadequacy of environmental assessment under the Power III Project, the lack of a post-construction Environmental Impact Assessment (EIA) for Owen Falls Dam and thus inadequate assessment of cumulative effects, Management "*believes that directives, policies and procedures prevailing at the time the Power III Project was prepared were adhered to.*"¹⁰ Management, agrees, however, that "no formal EIA process of the type contained in the 1989 OD 4.00 was conducted for the Power III Project."¹¹ Further, "*because the 1988 IEPS for the Power III Project pre-dates by approximately a year and a half the October 15, 1989 date of OD 4.00's applicability,*" Management's considers that "*IDA met the requirements of OMS 2.36. This OMS did not require an EA. The analysis conducted for the Power III Project adhered to the principles (OMS 2.36, para. 9) of the Bank's guidelines to address environmental concerns.*"¹²
21. With regard to the appraisal of the Power III Project, Management's considers that "*the appraisal of the Power III Project was robust and conducted in compliance with the relevant guidelines and policies in effect at the time.*"¹³ It claims that project benefits have been in line with appraisal estimates and that Owen Falls Extension will have 120MW installed by the end of 2002, with a projected total of 160MW installed by end 2003.

⁹ See Management Response pg 5 ¶ 13.

¹⁰ *id.* ¶ 13.

¹¹ Management Response pg 20 ¶ 58.

¹² *id.* ¶ 57.

¹³ Executive Summary of Response pg x ¶ 14.

22. Concerning the Bujagali Project, Management “submits that adequate measures have been taken to follow IDA directives, policies and procedures” and recognizes that “this process will need to be continued through Board presentation and supervision of the proposed Bujagali Hydropower Project.”¹⁴ It adds that an EIA for the proposed Bujagali Hydropower Project has been conducted by the project’s private sector sponsor “in close consultation with IFC and IDA” and that “independent analyses of cumulative effects were prepared and incorporated in the March 2001 EIA for the proposed Bujagali Hydropower Project.” It notes that the “seven volume EIA was disclosed in Uganda and deposited in the InfoShop on April 30, 2001.”¹⁵
23. Contrary to the Requesters’ allegations, Management claims that it “has ascertained that both IFC and IDA staff have reviewed the Resettlement and Community Development Action Plan (RCDAP) prepared by the private project sponsor to ensure that it responds to the requirements of Operational Directive (OD) 4.30.” Although neither institution has made “a final determination as to its compliance with applicable directives, policies and procedures,”¹⁶ it believes that the sponsor has taken comments from IFC and IDA staff and reflected these comments in the RCDAP without prejudice to their final decision. The RCDAP is available in the InfoShop and in Uganda as is part of the project’s seven volume EIA. According to Management, the private project sponsor began the resettlement activity at the Bujagali site in April 2001, “and is fully aware that it is doing so at its own financial risk....”¹⁷
24. With regard to the technical and economic analysis of the Bujagali project, Management claims that its “review of the extensive analysis of Uganda’s least-cost power master plan” has confirmed the Government’s assessment that, when environmental and social impacts are factored into account, the proposed Bujagali Hydropower Project is the next least-cost generation option for Uganda after Owen Falls Extension. Management adds that an “assessment of generation alternatives has identified three potential power projects – Bujagali, Kalagala, and Karuma – and has examined possible cumulative effects of their development.” A study undertaken by the Government of Uganda and two independent studies commissioned by IFC have concluded that, “the Bujagali site - and in the future the Karuma site - could be developed as hydropower projects, provided the Kalagala site was not developed for hydropower. An agreement has been reached among the Government, IFC and IDA to develop Kalagala for tourism and other purposes.”
25. As to the Projects’ impact on the fisheries and tourism industries, Management states that studies commissioned by the project sponsor “have determined that the fish species found in the project area are also found both upstream and downstream. Additional fish sampling has been undertaken to confirm the findings in the EIA.” Management agrees, however “with the statement that the construction of the proposed Bujagali Hydropower Project will inundate Bujagali Falls” and states that “the March 2001 EIA (pp. 147-159) presents the analysis of the social, environmental and cost parameters that was undertaken to evaluate the potential for avoiding inundation of Bujagali Falls” and that it was “determined that there was no feasible configuration that would avoid inundation of Bujagali Falls.” Management adds that the proposed project’s

¹⁴ See Executive Summary of Response pg ix ¶ 12.

¹⁵ *ibid.*

¹⁶ *id.* ¶ 15.

¹⁷ Response para 107.

potential impacts on tourism have always been a concern but it notes that “*an agreement is in place to develop a downstream site at Kalagala for purposes other than hydropower production, including tourism.*”¹⁸

26. Management denies any relation between the proposed Bujagali project and recent increases in electricity tariff rates and states that the “*May 2001 tariff increase was the first to be implemented in Uganda since 1993 and was made by the autonomous Ugandan Electricity Regulatory Authority (ERA).*” According to Management, “*a tariff increase was needed, independent of the proposed Bujagali Hydropower Project to ensure the financial viability of the power sector. The increase re-establishes a satisfactory financial basis for power sector operations, based on current cost structures, and will ensure that the power sector generates sufficient revenues to cover recurrent expenditures, debt service, working capital and investment needs.*”¹⁹ Management adds that it “*would like to clarify that the Government put forward the Bujagali Dam project ahead of the Karuma Dam. This decision by the Government was based on the least-cost analysis of power expansion options, which determines from detailed calculations and simulations, the least-cost expansion plan for the power sector*” and that, contrary to what has been stated, two “*studies that support the conclusion that the Bujagali Hydropower plant is the least-cost generation alternative have been carried out and made publicly available.*”²⁰
27. With regard to Disclosure of Information and public consultation, Management claims that consultations with affected people and stakeholders began in 1997 and have continued to date with regard to the proposed Bujagali dam project, pursuant to the provisions of OP 4.01. Management also points out the results of the economic studies are not yet available for public discussion since the results have yet to be discussed with the Government of Uganda for issuance to the public. It adds that at a July 2001 Washington DC Forum (which included Ugandan and international NGOs), “*IFC staff explained this situation to participants, made a presentation of the analytical process (objectives, approaches and key considerations), and made a commitment that the results of these analyses would be disclosed to the public well before consideration of the Project by the Board.*”²¹ Management concludes that the “*Power Purchase Agreement (PPA) is an agreement between the Ugandan Government and the private project sponsor, and that should the concerned parties agree to disseminate it to the public, IDA would have no objection.*” Management also notes that “*the proposed Bujagali Hydropower Project has yet to be appraised and that when the economic analysis has been finalized, a summary will be made publicly available.*”²²

E. Eligibility

28. For purposes of determining the eligibility of the Request and the Requesters, the Panel reviewed the Request and Management’s Response. Panel Members Jim MacNeill (Leader) and Edward S. Ayensu²³ met World Bank officials and a representative of the

¹⁸ id pg xi ¶ 19.

¹⁹ id pg x ¶ 18.

²⁰ According to Management “Both of these studies were made publicly available at the June 2000 Washington, D.C. Forum.”

²¹ See Management Response pg 37 ¶ 114.

²² See Executive Summary of Response pg xi ¶ 20.

²³ The Panel members were assisted by the Panel’s Executive Secretary Mr. Eduardo Abbott.

Government of Uganda in Washington prior to visiting Uganda. In Uganda they met with Government officials, some Members of Parliament and representatives of a number of NGOs, including NAPE, UWS, HURIPPEC, CHEC, ECOVIC, and GREENWATCH, and academicians from the Makerere University. They visited the Owen Falls and Bujagali project areas and the Kalagala Falls. During the field trip the Panel met with the Requesters, spiritual leaders, tourist operators and representatives of local institutions and individuals, including people from the Budondo resettlement area. They also met with officers of the UEB and AES/AESNP²⁴ (the project's private sponsor). Before the visit, the Panel consulted with the Executive Director representing Uganda and his staff.²⁵

29. Paragraph 9 of the 1999 Clarifications mentions certain “*technical eligibility criteria*” that must be met by a Request for Inspection, and the Panel concludes as follows:
- (a) The Panel is satisfied that the affected party consists of two or more persons with common interests or concerns and who are in the borrower's territory.
 - (b) The Request does assert in substance that a serious violation by the Bank and IDA of their operational policies and procedures has or is likely to have a material adverse effect on the Requesters.
 - (c) 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 to it, thus demonstrating that it has followed or is taking steps to follow the Bank's policies and procedures.
 - (d) The matter is not related to procurement.
 - (e) The related Credit has not been closed or substantially disbursed.
 - (f) The Panel has not previously made a recommendation on the subject matter.
30. The Panel's visit confirmed NAPE and SBC, as representative of people that claim that have or may be affected by the Projects, and the individual signatories of the Request meet the eligibility criteria to submit a Request for Inspection, under the Resolution. The Panel therefore finds that the Requesters and the Request are eligible.

F. Conclusion

31. The Request and Management Response contain conflicting assertions and interpretations about the issues, the facts, compliance with Bank policies and procedures, and actual harm and potential harm. The Panel is neither able to address these conflicting statements in the 21 day period available to it to prepare and submit this report on eligibility, nor is it allowed to do so pursuant to the 1999 Clarifications of the Resolution.²⁶ The Panel can only address these issues during the course of an investigation.

²⁴ AES Corporation and the AES Nile Power Corporation.

²⁵ The Panel wishes to thank the Executive Director and his staff for their assistance. It wishes to thank the Government officials, NGO representatives, local people and representatives of AES who took time to meet with them. Finally, it would like to thank Bank staff in Kampala and Washington for their logistical support.

²⁶ According to the “1999 Clarifications” when the Panel makes a field visit to establish eligibility it “*will not report on the Bank's failure to comply with its policies and procedures or its resulting material adverse effect...*” See ¶ 7.

G. Recommendation

32. In the light of the foregoing, the Panel recommends an investigation into the matters alleged in the Request.