

The Inspection Panel
Report and Recommendation
on
Request for Inspection

Re: Request for Inspection
UGANDA: Private Power Generation Project (Proposed)

1. On March 5, 2007, the Inspection Panel (the “Panel”) received a Request for Inspection (the “Request”) dated March 1, 2007 related to the proposed Uganda: Private Power Generation Project (the “Project”). The Ugandan National Association of Professional Environmentalists (NAPE) and other local organizations and individuals (the “Requesters”) submitted the Request to the Panel.

A. The Project

2. According to the Project Appraisal Document (PAD),¹ the proposed Project provides for the construction of the Bujagali hydropower plant with an installed capacity of 250MW, on Dumbbell Island on the Nile River, about 8km downstream from the existing Nalubaale and Kiira Hydropower Plants. The Nile River has its headwaters in Lake Victoria. Under the Project, an intake powerhouse complex and a rock filled dam with a maximum height of about 30 meters with spillway and other associated works will also be developed. The plant’s reservoir is to have an estimated surface area of 388 hectares (ha). The proposed Project requires 238 ha of land take to construct project facilities. Of the 238 ha, 80 ha would be for inundating new areas adjacent to the Nile River and 113ha for temporary and ancillary facilities.² Located downstream from the Nalubaale and Kiira plants, the proposed Bujagali Dam is to use water released from the Lake that passes through the other hydropower plants. According to Project documents, the efficiency of water use is expected to reduce pressure for releasing water from the Lake above the Agreed Curve, which is calculated to

¹ Project Appraisal Document [PAD] on a Proposed International Development Association Partial Risk Guarantee in the amount of up to US\$115 Million for a Syndicated Commercial Bank Loan and on a Proposed International Finance Corporation Financing consisting of: an “A” Loan in the amount of up to US\$100 Million and a “C” Loan in the amount of up to US\$30 Million, and on a Proposed MIGA Guarantee in the amount of up to US\$115 Million for Sponsor’s Equity to Bujagali Energy Limited for the Private Power Generation (Bujagali) Project in The Republic Of Uganda, April 2, 2007, p. 9.

² PAD, p. 9. Transmission lines (100km), substations and related works are also to be constructed as part of the so-called Interconnection Project, which is separate from but associated with the proposed Project.

ensure that the volume of water released remains consistent with what would have occurred under natural conditions with no changes in downstream discharge.³

3. A private sector company (Bujagali Energy Ltd. - BEL) is to develop the Project. BEL is to be responsible for financing, constructing and operating “*on a Build-Own-Operate-Transfer basis.*” The PAD also states that BEL is to sell electricity to the Uganda Electricity Transmission Company (UETCL) under a 30-year Power Purchase Agreement (PPA) signed on December 13, 2005.⁴
4. The total Project cost is estimated to be around US\$750 million. The International Development Association (IDA)⁵ is to support the proposed Project through a guarantee of up to US\$115 million for payment of interest and repayment of the principal amount of a loan to BEL (the IDA Guarantee). The Project is also to be financed through, *inter alia*, an International Financial Corporation (IFC) loan and a Multilateral Investment Guarantee Agency (MIGA) Guarantee. In total, the World Bank Group’s financial support to the Bujagali Project is to be up to US\$360 million. IDA’s Board of Executive Directors approved the proposed IDA Guarantee on April 26, 2007.

B. The Request

5. The Requesters state that the proposed Project is based on “*flawed assumptions and data that have little or no bearing to the current situation*” and are thus inadequate.⁶ They raise various sets of concerns related to hydrological risks, climate change, and cumulative impact assessment; Kalagala Falls “offsets”; economic analysis, options, and affordability assessment; information disclosure, transparency and openness regarding the Project; dam safety; indigenous peoples, cultural and spiritual issues; compensation, resettlement and consultations; and terrestrial and aquatic fauna. According to the Requesters, the claims they present in the Request constitute a violation of Bank operational policies and procedures, including OP/BP 4.01 (Environmental Assessment), OP/BP 4.04 (Natural Habitats), OP/BP 4.02 (Environmental Action Plans), OP 4.07 (Water Resource Management), OP/BP 4.10 (Indigenous Peoples), OP/BP 4.11 (Physical Cultural Resources), OP/BP 4.12 (Involuntary Resettlement), OP/BP 4.37 (Safety of Dams), OP/BP 7.50 (Projects on International Waterways), OP/BP (Economic Evaluations of Investment Operations), OP 1.00 (Poverty Reduction), and World Bank Policy on Disclosure of Information.

³ The Agreed Curve is further defined in footnote 37, *infra*.

⁴ PAD, p.19.

⁵ In this Report, the terms “IDA” and “the Bank” are used interchangeably.

⁶ Request for Inspection Re: Lodging a Claim on the Proposed Bujagali Hydropower Dam and Interconnection Projects in Uganda, March 1, 2007, p.3.

6. In December 2001, the Board of Executive Directors approved an IDA Guarantee to support an earlier proposal for the Bujagali Hydropower Project, involving the construction of the Bujagali power plant. Before Board approval, NAPE had submitted in July 2001 a Request for Inspection to the Inspection Panel in relation to this previous Bujagali proposal. After authorization of the Board of Executive Directors, the Panel conducted an investigation of the issues raised in the 2001 Request.⁷
7. The Bank subsequently cancelled the IDA Guarantee. According to the Requesters, this was cancelled because of “*performance shortfalls, controversies related to social, economic and environmental aspects, [and] evidence of corruption associated with the [private company] AES Nile Power’s (AESNP) Bujagali dam project,*”⁸ among other things. The Requesters claim that, because of high electricity demand and the inability of the Nalubaale and Kiira power plants to generate sufficient electricity, the Government of Uganda (GoU) has now developed a proposal for a Bujagali project with different “*proponents,*” i.e. different actors implementing it. They add, however, that “*many shortcuts [are] being taken to ensure that the project is approved as fast as possible, ignoring outstanding and new concerns raised on the project.*” A summary of the Requesters’ concerns about the new proposed project is set forth below.
8. **Hydrological Risks, Climate Change and Cumulative Impact Assessment.** The Requesters claim that the social and environmental assessment studies (SEA) that BEL prepared do not adequately address the issues of “*hydrological changes on power production*” at the Nalubaale, Kiira and the proposed Bujagali dams, especially considering that the Lake Victoria waters have declined. According to the Requesters, hydrology is a “*major limitation*” for the Project.⁹ The proposed Bujagali dam will be highly dependent on the upstream power plants, Nalubaale and Kiira, but the Requesters claim that BEL cannot control the outflow of water from these plants and has not secured the commitment of the GoU to ensure sufficient outflow rates. Thus, they question whether Bujagali will be able to have enough water to generate the projected capacity. They believe that Lake Victoria will not provide sufficient water, although BEL foresees otherwise. The Requesters argue that the Bujagali dam’s designed capacity of 234-290MW is not feasible under the current hydrological conditions. The studies also do not adequately address the issue of the Lake’s long-term health.
9. The Requesters claim that the SEA did not address climate change impacts on power production, which may cause lower lake levels and lower downstream river flows. These issues were raised in a 2005 report commissioned by the Uganda Ministry of Energy and Mineral Development and prepared by Water Resources and Energy Management International, Inc (WREM), a US consultancy firm. The

⁷ Inspection Panel Investigation Report, UGANDA: Third Power Project (Credit No. 2268-UG), Fourth Power Project (Credit No.3545-UG), and Bujagali Hydropower Project (PRG B 003-UG), May 23, 2002.

⁸ Request for Inspection, p. 2.

⁹ Request for Inspection, p. 3.

Requesters state that BEL also ignored a technical report by the GoU's Directorate of Water Development (DWD) on climate change effects. They contend that BEL did not analyze the Project's cumulative effects and that there are *'no Cumulative Impact Studies on Building a Cascade of Dams along the River Nile.'*¹⁰ According to the Requesters, there are hydrological risks, which may cause environmental damage and disruptions in the livelihoods of lakeside dwellers and businesses, which are not analyzed in the Project's economic analysis.

10. **Kalagala Falls "Offset."** The Requesters state that the commitment of the GoU to establish the Kalagala Falls as an offset for the development of the Bujagali Falls is not binding. They cite the following paragraph from the previous Indemnity Agreement signed between the World Bank and the GoU on December 20, 2001 in the context of the financing of the Bujagali hydroelectric dam: *"Government of Uganda undertakes that any future proposals which contemplates a hydropower development at Kalagala will be conditional upon satisfactory EIA being carried out which will meet the World Bank Safeguard Policies as complied with in the Bujagali project."*¹¹ The Requesters state, that therefore there is no guarantee that the Falls will never be developed for hydropower.

11. **Economic Analysis, Options, and Affordability Assessment.** The Requesters state that there is no evidence that a comprehensive economic analysis of the Project was carried out, because the study published on the World Bank website cannot be considered "comprehensive" and a basis for determining the economic viability of the Project. In addition, the Requesters argue that the economic analysis does not include an adequate assessment of the Project's economic alternatives to support the statement that the Bujagali dam is the least costly option. Alternative energy options were not adequately considered. The Request describes eleven alternatives to the proposed Project that were allegedly dismissed because of their costs and the "difficulty to connect to the national grid." According to the Requesters, the economic analysis does not provide costs, cost-benefit or opportunity cost-scenarios, or calculations for developing these alternatives and for deciding to reject them in favor of the Bujagali option. The Requesters also state that, in deciding on the best option, important factors were not discussed and that the Bank and the GoU have *"skewed research efforts to consistently promote Bujagali above other options."* In addition, in the Requesters' view, *"the idea of dismissing energy alternatives, because they cannot easily be connected to the national grid ... is erroneous."* Other options that would *"help reduce the burden on existing national grid-based hydropower at competitive costs"* were not addressed.¹²

¹⁰ Request for Inspection, p.4.

¹¹ Request for Inspection, p. 5, referring to the Indemnity Agreement dated December 20, 2001.

¹² Request for Inspection, pp. 7-8.

12. The Requesters further argue that the Project is “*economically risky*,” especially in view of the changing hydrology, and that concerns such as the citizens’ ability to afford it, the Project’s high costs and the country’s indebtedness have become contentious issues. The Requesters state that from an original estimate of US\$430 million, the Project cost has now jumped up to US\$735 million. NAPE states that, on February 28, 2007, it met with World Bank officials who acknowledged that the cost increase has been 30%. The Requesters believe that because of this cost increase it is becoming clear that the majority of Ugandans, who live in rural areas far from the national grid, will not be able to afford unsubsidized electricity from the Bujagali dam. Furthermore, the high Project costs will limit the funds for rural electrification and will likely lead to reducing subsidies for grid-connected users. The Requesters claim that the Project will “*negate the country’s economic development and efforts for poverty eradication*.”¹³
13. **Information Disclosure and Transparency.** According to the Requesters, the Bank refuses to make public the information on the Nile hydrology and the Lake Victoria’s hydrological conditions, such as information contained in a Bank-funded Independent Hydrological Review. The Requesters call for more transparency and openness from the Bank and believe that all studies on economic viability and evaluation of options should be released in a timely manner, to allow time for their review before decisions are made. The Requesters particularly complain that while the Power Purchase Agreement (PPA), which is a key Project document, was recently released, only one photocopy is available for consultation, with no signing dates and no serialized pages. It can be read only during working hours at the Uganda Electricity Regulatory Authority (ERA). They also claim that this copy is incomplete – e.g. does not include Project costs – and that, in reality, this is not the actual PPA used to negotiate the loans with the World Bank. According to the Requesters, Ugandan laws require that the Parliament approve the State’s obligations under the PPA but “*there is no evidence that BEL’s PPA has been debated and approved by Uganda’s Parliament...*”¹⁴ The Requesters also note that the Project’s SEA has been signed by the Government in 2005. This means, in the Requesters’ opinion, that the PPA was signed in violation of Ugandan laws and without taking into account the costs of the Project studies and compensation and resettlement issues, which will nevertheless bear on the ultimate tariff for electricity.
14. **Dam Safety Issues.** The Request reports that the safety issues regarding the Nalubaale dam at the Owen Falls are not taken into consideration in the Bujagali dam design. The Requesters raise the issue of whether the Bujagali dam would be able to survive a failure of the Owen Falls dam. The Requesters do not consider sufficient the proposal to form a dam safety panel, because they believe a comprehensive plan and strategies to address these issues should be integrated into the Project design. They argue that these strategies are very important, since

¹³ Request for Inspection, pp. 8-9.

¹⁴ Request for Inspection, p. 10.

there was no Environmental Impact Assessment for the Kiira Dam or a post-construction audit for the Nalubaale dam.

15. **Indigenous Peoples, Cultural and Spiritual Issues.** The Requesters state that the Basoga people living in the Project area are not considered as indigenous peoples in the SEA, which contradicts the fact that they are considered indigenous peoples under the Constitution of Uganda. They add that the *“failure of the World Bank to respect the Constitution of the Republic of Uganda as regards indigenous peoples is a violation of World Bank Policy on Indigenous Peoples (OP/BP 4.10).”*¹⁵ In addition, they observe that the SEA addresses cultural and spiritual issues inadequately.
16. **Compensation, Resettlement and Consultations.** The Requesters state that the existing compensation and resettlement framework is outdated and does not reflect the current economic conditions. They believe that the social costs and benefits of the compensation and resettlement program should be re-assessed in line with current and future realities. The Requesters also include a letter from people displaced as a consequence of the preparation of the earlier proposal for Bujagali. With respect to consultation with affected people, the Requesters note that there is evidence of consultation, but also claim that BEL *“confuse consultation with true participation in a decision-making process.”*¹⁶ In addition, they contend that there was no consultation with 240 clans of the Basoga and 53 of the Busanga indigenous peoples.
17. **Old Data and Issues Related to Fauna.** According to the Requesters, the social and environmental studies are based on outdated data, e.g. on water quality, climate and air-borne particulate. They claim that some sections of the SEA were prepared almost ten years ago and do not reflect the current environmental realities. In addition, the studies on the terrestrial and aquatic fauna were carried out only for a very short period of time and do not provide variations of species distribution and diversity, which normally occur in a period of one year.
18. **Concerns Raised with World Bank.** The Requesters state that they expressed their concerns in a letter sent to the Bank. They further note that they invited the Bank’s Country Office in Kampala to attend public meetings, held in August and October 2006, on Lake Victoria and the role of dams in draining the Lake, but received no response from the Bank. In addition, the Requesters state that they recently met with Bank officials in Kampala to reiterate their worries, but claim that the Bank has not adequately addressed their concerns. They believe that the actions described in the Request are contrary to the World Bank policies and procedures and have materially and adversely affected the Requesters’ rights and interests. They ask the Panel to recommend that an investigation of the issues raised in the Request be carried out.

¹⁵ Request for Inspection, p. 11.

¹⁶ Request for Inspection, p. 12.

19. The above claims may constitute non-compliance by the Bank with various provisions of its operational Policies and Procedures, including the following:

OP/BP 4.01	Environmental Assessment
OP/BP 4.02	Environmental Action Plans
OP/BP 4.04	Natural Habitats
OP 4.07	Water Resource Management
OP/BP 4.10	Indigenous Peoples
OP/BP 4.11	Physical Cultural Resources
OP/BP 4.12	Involuntary Resettlement
OP/BP 4.37	Safety of Dams
OP/BP 7.50	Project on International Waterways
OP/BP 10.04	Economic Evaluations of Investment Operations
OP 1.00	Poverty Reduction
World Bank Policy on Disclosure of Information	

C. Management Response

20. On April 5, 2007, Management submitted its Response to the Request for Inspection.¹⁷ The Response addresses key issues raised by the Requesters and the proposed Project's background, context, benefits and future. A detailed Response to all the Requester's claims is included as Annex 1.
21. The Response states that in the past three years Uganda has been suffering severe power shortages. The reasons include delays in developing additional generation capacity, prolonged drought in the region, about an eight percent increase in the annual electricity demand, and technical losses in the distribution system. This electricity crisis, with service cuts for hours and, at times, days, has strained the country's growth by affecting small and large businesses – particularly manufacturing, high-value agriculture and processing industries – as well as consumers. As a result, the proposed Project is being developed to provide the needed capacity in a *'least-cost and environmentally and socially sustainable manner.'*¹⁸ Management asserts that the proposed Project is expected to eliminate the power shortages by 2011, when the Bujagali power plant is anticipated to be in service, because it will provide an increase of 250MW of generation capacity in the national grid.
22. In its Response, Management also refers to a previously developed Bujagali Hydropower Project (for which an IDA Guarantee of US\$115 million was approved by the Board of Executive Directors in December 2001) and other energy projects in Uganda. Management states that on July 25, 2001, the Panel had received a Request for Inspection related to the previously proposed project, which was submitted by NAPE and other local institutions and individuals.

¹⁷ Bank Management Response to Request For Inspection Panel Review of the Uganda: Private Power Generation Project (Proposed), April 5, 2007.

¹⁸ Management Response, ¶ 6.

- Management further notes that, upon Board authorization, the Panel had conducted an investigation of the issues raised in that Request. According to Management, the “*key findings*” of the Panel’s 2002 investigation focused, *inter alia*, on disclosure of information about the Bujagali Project, preparation of the Sectoral Environmental Assessment, assessment of the cumulative impacts of building multiple dams on the Nile River, economic evaluation and analysis of alternatives, and the agreement to use the Kalagala Falls as an environmental offset. Management notes that, in response to the Panel’s findings, it prepared a “*nine-point action plan*”, which was approved by the Board on July 17, 2002. Management Response contains a matrix describing the 2002 Panel’s investigation findings and the status of implementation of Management’s action plan approved in 2002.¹⁹
23. With respect to this earlier Bujagali Project, Management states that the private company that was to develop it, AES Corporation, withdrew from the Project. Uganda then terminated that Project in 2003, and started seeking new sponsors. As a result, the feasibility of a new Bujagali project was assessed and, according to Management, “*extensive national and regional analyses*” of the new proposed Project’s environmental, social and economic impacts and detailed evaluation of alternatives have been conducted. Management also claims that there has been public consultation and disclosure of Project documents.
24. The Response contains an analysis of “Special Issues”: Current Context and Future Vision; Issues Raised by the Requesters; Project Preparation: Key Issues; Project Benefits and Next Steps.
25. **Current Context and Future Vision.** Management reiterates that the power crisis has harmed industrial production in Uganda, which has paid a high price for failing to develop the earlier Bujagali Project. According to Management, if the Bujagali plant had been constructed and operated in the first attempt, the reduction in Lake Victoria water levels due to over-abstraction “*may not have occurred*”. Power would have been produced at a lower cost so that the price Uganda is currently paying for the supply from thermal plants which run on imported fuel would be significantly less. Management maintains that when the Bujagali hydropower plant becomes operational in 2011, it will generate 60% more annual energy than with all the thermal plants in 2010.
26. Management states that the Government of Uganda (GoU) has learned “*valuable lessons*” from the previous experience, which have shaped “*the current proposed project*” and that the World Bank Group has been able to “*evaluate lessons of experience, including the outcomes and recommendations of the Inspection Panel review, and better understand and appreciate the various concerns of the stakeholders within and outside Uganda.*”²⁰

¹⁹ See Management Response, pp. 6-8.

²⁰ Management Response, ¶ 22.

27. According to the Response, in selecting the Project's private sponsors, the GoU has *"followed a transparent and open, competitive process."*²¹ The Government has also been committed to and implemented a *"stronger program of public disclosure"*, in which the Power Purchase and Implementation Agreement were disclosed along with several environmental, economic and social documents. Management adds that *"proactive consultations and dissemination events"* were conducted to make this information *"widely available"*.²²
28. **Response to Issues Raised by Requesters.** With respect to the Kalagala Falls, Management claims that the GoU *"has reiterated the commitment to the Kalagala offset"* made under the earlier Bujagali project. The proposed Project's social and environmental assessment reviewed by the Bank also recommends such a commitment. Management states that this commitment will be included as a Government obligation in the Project's IDA Indemnity Agreement. It also notes, however, that while it will be binding *"throughout the life of the Indemnity"*, the Bank's legal recourse to enforce the Government obligation will not be available after the termination of the Agreement. As a result, the Indemnity Agreement also includes a provision that prior to termination, the Bank and the GoU will *"pursue discussions to identify mechanisms or instruments to enable the continuation of the GoU obligation to set aside the Kalagala Falls site."*²³
29. Dam safety concerns are also addressed. According to the Response, a Dam Safety Panel (DSP) has been created to provide advice on the design, construction, initial filling and the start-up of the dam, to ensure consistency of the Project with Bank policies. Furthermore, the Project's legal agreements will require the preparation of an Emergency Preparedness and Response Plan (EPRP) including failure scenarios for Nalubaale, Kiira and Bujagali dams.
30. Management acknowledges the Requesters' concerns that past resettlement was not completed. In this regard, the Assessment of Past Resettlement Activities and Action Plan (APRAP) and Community Development Action Plans (CDAP) assess the current conditions. Management also states that BEL and the Bujagali Implementation Unit (BIU) *"are now resolving all outstanding issues"* and are committed, *inter alia*, to completing the titling process, upgrading the Naminya School, improving health services, evaluating sanitation conditions and addressing outstanding problems, and implementing longer-term community development programs.²⁴ The resettlement that will take place under the Interconnection Project is also addressed in a Resettlement Action Plan (RAP), which was not yet finalized when Management Response was submitted.²⁵

²¹ Management Response, ¶ 23. See also paragraph 23 for a detailed description of the four criteria on which the GOU based the selection of the Project's private sponsors.

²² Management Response, ¶ 24.

²³ Management Response, ¶ 28.

²⁴ Management Response, ¶ 30.

²⁵ Management Response, ¶ 31. According to the Response, the draft RAP was disclosed on December 21, 2006, and land evaluations were completed in early 2007.

31. In response to the claim that the Basoga people should be considered indigenous peoples under OP/BP 4.10 because the Constitution of Uganda considers them as such, Management claims that “*all natural-born citizens of Uganda are indigenous peoples under the constitution*”, including the Basoga and 55 other groups in Uganda.²⁶ Management thus considers that the policy on indigenous peoples “*is not triggered by this Project.*” In Management’s view, there is a “*clear demarcation line*” between the Basoga and other African ethnic groups that the Bank has defined as indigenous peoples, and considering the Basoga as indigenous “*would defeat the intended objectives of OP 4.10.*” There are not only criteria such as ancient origin, self-definition and land to define whether the peoples in question are indigenous, but also marginalization and vulnerability. Management claims that the Basoga “*are a large and influential group in Uganda.*”²⁷
32. Regarding Project preparation, Management states that “*seasoned, experienced World Bank Group staff*” and “*high caliber consultants*” have worked in the preparation of this Project. This has led to analyses of the Project’s merits which provide “*solid underpinnings*” and which incorporate the views of “*key project stakeholders.*”²⁸ Management believes that “*the economic, financial, safeguard, technical, governance, and other required analyses to date are compliant with relevant World Bank Group policies and were undertaken to high professional standards.*”²⁹ In addition, Management claims that the Project preparation followed best practice and took into account the findings of the Inspection Panel investigation of the issues raised in the Request for Inspection submitted to the Panel in 2001.
33. According to the Response, the Project analyses considered a wide range of supply options and a wide range of demand scenarios based on the most recent data on the Ugandan economy and the electricity sub-sector, and assessed the impacts of both low and high hydrology scenarios. According to the analysis, climate change is not expected to have a negative impact on water availability. Management believes that environmental and social work carried out thus far has appropriately considered both those issues that emerged in the earlier Bujagali Project and new issues, through, *inter alia*, a new Social and Environmental Assessment, assessment of the status of the resettlement actions, assessment of the cumulative impacts of multiple dams on the River Nile, and consultations with affected communities.
34. Management states that on December 21, 2006, the environmental and social documents were disclosed, as well as the economic and financial analysis in its entirety. Management indicates that these documents were provided to the

²⁶ Management Response, Annex 1, p. 36.

²⁷ Management Response, Annex 1, p. 37.

²⁸ Management Response, ¶ 32.

²⁹ Management Response, ¶ 33.

Requesters a day before they filed the Request. The GoU has also disclosed the PPA for an open-ended period of time.

35. **Project Benefits.** Among the Project benefits, Management notes that providing reliable least-cost power is expected to increase the number of connections of residential users to the national grid, including in rural areas, and will allow industrial and commercial users to increase output, efficiency and thus profits. Management further indicates that employment opportunities are expected to be available for 600-1500 Ugandan nationals (10% from local communities) during the Project's construction phase. Employment opportunities will also be available in the tourism sector because of the Kalagala Offset, and economic activities are expected to increase in and around the Project site.
36. According to Management, the proposed Project will also have environmental benefits. Since the Bujagali dam will use the same water already released through the Nalubaale/Kiira dams, the pressure to over-extract water from Lake Victoria will be reduced. This will help preserve the Lake.
37. The Government will benefit from net tax revenues from the Project and from not having to provide a general subsidy for electricity tariffs. These funds may be used for social and poverty alleviation programs. Management further maintains that the Project will provide economic and commercial benefits to Uganda, will facilitate foreign investments, and will "have important demonstration effects" in Sub-Saharan Africa. On the other hand, Management believes that a failure would be very costly for the country and could send a negative signal to other countries in the region.
38. **Next Steps.** According to the Management Response, after the Board approves the IDA Guarantee, there are key issues that must be closely followed in supervision. These include the environmental and social mitigation plans and the continuation of the Dam Safety Panel's assignment.
39. **Conclusion.** According to Management, the World Bank Group's support for the Project "*is pivotal to its success*" because its involvement gives confidence to the private sector and to lenders. Management also states that it "*takes seriously the Requesters' concerns*" and believes "*that the project adheres closely to Bank policies and more importantly, that the project developers and financiers have been conscientious in pursuing the welfare of project affected persons as well as Uganda as a whole.*"³⁰

³⁰ Management Response, ¶ 47.

D. Eligibility

40. 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 Clarifications,³¹ and recommend whether the matter alleged in the Request should be investigated.
41. The Panel has reviewed the Request and Management's Response. The Panel Chairperson, Edith Brown Weiss, together with Executive Secretary Peter Lallas and expert consultant Eduardo Abbott, visited Uganda from April 18 to April 25, 2007. During their visit, the Panel Team met with the Requesters, other members of civil society and locally affected communities, Bank staff, national and local authorities, Project authorities, members of Parliament and others.
42. The Panel wishes to thank all those who facilitated the Panel's visit, especially the National Association of Professional Environmentalists (NAPE), the Ministry of Energy and Mineral Development, the Bujagali Energy Limited (BEL), and the World Bank Country Office.
43. The Panel wishes to emphasize that it recognizes the immediate importance of developing sources of electricity for Uganda, and the potential of hydropower as a source of energy. It notes Management's explanation as to how the proposed Project addresses this need.
44. Based on the reasons set forth below, 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.
45. 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 persons who signed the Request have common interests and concerns, and reside in the Borrower's territory, as required by Paragraph 9(a).
46. 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 a material adverse effect upon the requesters*" as required by Paragraph 9(b).
47. The Panel has reviewed the claims and the Management Response carefully in relation to this criterion. The Panel also gathered relevant information during its eligibility visit to Uganda, particularly through its visit to the Project area and its meetings with Requesters, other members of civil society and locally affected communities, who reiterated the claims of non-compliance by the Bank with its own operational policies and procedures, and actual and potential harm.

³¹ Conclusions of the Board's Second Review of the Inspection Panel (the "1999 Clarifications"), April 1999.

48. The Panel notes the substantial amount of documentation prepared for the Project, including the Social and Environmental Assessment of December 2006. It appreciates the explanations of Management and Project authorities relating to the Project and its rationale, and their efforts to demonstrate that the Project is following Bank policies and addressing issues of harm that have arisen over time and might yet arise. The Panel also received information from the Ministry of Finance, Ministry of Energy and Mineral Development, and BEL.
49. The Panel also notes Management's claims that the Project preparation followed best practice and took into account the findings of the Inspection Panel investigation of the issues raised in the Request for Inspection submitted to the Panel in 2001.
50. The Panel considers, at the same time, that the Requesters and local people raise a number of significant concerns about this documentation and related explanations. The Panel heard concerns that the Project evaluation has failed adequately to consider alternative sources of electricity generation, and that the Project will not meet its promises of electricity generation. At the same time, there are concerns that it may cause significant harm to affected people, their livelihoods and the environment and ecology of the River Nile and Lake Victoria. These harms, they contend, could be both local and, more broadly, affect the ecology of Lake Victoria and, potentially, the countries and people downstream along the course of the Nile. Some of these concerns are similar to those raised in connection with the previously proposed project.
51. The Panel highlights below several of the issues and concerns raised by the Requesters and local people.
52. **Inundation of Bujagali Falls and the Kalagala Falls Offset.** The Project documents note that the dam, if built, would inundate Bujagali Falls. These Falls are a valuable stretch of the River Nile from an ecological and natural habitat perspective,³² for their spiritual values to the local people, and for tourism uses and value. People interviewed by the Panel during its eligibility visit reiterated that the inundation of Bujagali Falls would be a great loss locally and to the country, with highly adverse ecological, cultural, social and economic impacts. The loss of Bujagali Falls also would follow the previous inundation of Ripon Falls just a few kilometers upstream at the source of the Nile due to the construction many years ago of the Nalubaale Dam.
53. The Management Response and the PAD indicate that the Kalagala Falls and adjacent areas will be an offset for the loss of Bujagali Falls. The Kalagala Falls,

³² The Project SEA notes that they are in the Jinja Wildlife Sanctuary. It adds that “[w]hile the Sanctuary was established in 1953, development along the river has not been restricted and there is no management plan or management activities associated with the Sanctuary. Proposals which may result in the destruction of habitat within a wildlife sanctuary must incorporate suitable mitigation measures, and this principal (sic) has been adopted for the [Project].” Executive Summary, ES-19.

some kilometers downstream from Bujagali Falls, are another beautiful and highly important stretch of the Nile from a cultural, ecological and economic perspective.

54. Specifically, Management indicates in its Response that the Government of Uganda “*has reiterated its commitment to the Kalagala offset that it made under the previous effort to develop Bujagali, as presented in the Management Report and Recommendation in response to the Inspection Panel’s investigation of Power III, Power IV, and the Bujagali Hydropower projects. . . The offset provision for Kalagala Falls and the adjacent natural habitat will be included as a GoU [Government of Uganda] obligation in IDA Indemnity Agreement for the Bujagali project, and will be binding throughout the life of the Indemnity Agreement. . .*”³³ The Panel notes that this commitment is presented as one of the main measures in the Project in offsetting harms.
55. A similar issue involving an offset for Kalagala Falls arose in the course of its 2001/2002 investigation of the previously proposed project. At that time, the Panel requested a legal opinion about the terms of the Indemnity Agreement entered into between IDA and the Republic of Uganda on December 20, 2001, and supplemental letters sent by Uganda to the Bank, with regard to the Kalagala offset.
56. The then General Counsel of the Bank stated that the Indemnity Agreement and the supplemental letters contained “*legally valid, binding and enforceable obligations of Uganda (with correlative rights of the Association)*” with regard to the Kalagala Falls and some related areas. The legal opinion added, however, that in spite of Management’s assertions at the time, these documents also contained “*a provision that expressly recognizes the possibility that Uganda may develop Kalagala Falls*”³⁴ (emphasis added).
57. This raises a question about whether the Board, in connection with the present proposed Project, received accurate and complete information about the Kalagala offset, as a necessary element to inform its decision-making.
58. As it was developing the present Report, the Panel received copies of two letters from the Government to the Bank which contain conflicting statements about the Country’s commitment to maintain the Kalagala Offset. The first letter, dated April 13th, 2007, states that “*any future proposals which contemplate hydropower*

³³ According to Annex 15 of the PAD for the Project, Management expects a commitment from the Government to set aside the Kalagala Falls and related portions of the Mabira Forest for the life of the IDA Agreement. Also, the Executive Summary of the SEA explains that the possibility of a Kalagala hydropower scheme is not included in its analysis of cumulative effects “*as the Kalagala offset agreed by the Government of Uganda to offset the residual impacts of the Bujagali project precludes such development there.*” (emphasis added)

³⁴ Memorandum from Ko-Yung Tung, Vice President and General Counsel to Edward S. Ayensu, Chair, Inspection Panel, March 5, 2002, entitled “*Third and Fourth Power Projects and the Bujagali Hydropower Project in the Republic of Uganda: Legal Advice in Response to Request by Inspection Panel.*”

development [in the Kalagala Falls] will be conditional upon a satisfactory Environmental Impact Assessment (EIA)”. In other words, as with the prior proposed project, it does not preclude future hydropower development at this site. The second letter, sent shortly thereafter on April 16, 2007, refers to “*recent media reports of concerns over requests of private investors to the Ugandan Government to utilize a portion of the Mabira Forest for agricultural and industrial development*” and seems to focus on the Government’s commitment to conserve the Mabira Forest.³⁵

59. In this context, the Panel notes that the provisions of the IDA Indemnity Agreement, to be entered into between the Uganda and IDA, are key to understanding the commitment of the Government with respect to the proposed Kalagala offset. This is particularly important because the text of the two recent letters, noted above, is unclear, and because the statements in the PAD and the SEA, referred to above, are not legally binding.

60. Management has informed the Panel that the specific covenant in the new IDA Indemnity Agreement relating to the Kalagala Offset is still under negotiation. Management furnished a copy of the new Agreement to the Panel with the specific proviso that the document *‘ts a draft subject to change . [and] will become a public document only after execution at financial close.’* The Panel notes that if the new Agreement contains a covenant that provides that Uganda will not develop the hydropower potential of the Kalagala Falls without IDA’s concurrence, this could be consistent with Management’s statements in its Response to the Request for Inspection³⁶, but also could, with IDA’s approval, permit the development of Kalagala Falls. The same covenant could provide that after the termination of the Indemnity Agreement, Uganda will discuss with IDA an extension of this set aside of the Kalagala Falls Site and its undertakings in connection with the Mabira Forest Reserve. In line with Bank policy, the Panel expects Management to provide the Members of the Board of Executive Directors with accurate and complete information about this matter once the negotiations have concluded.

61. **Economic Projections and Analysis of Alternatives.** The Panel notes conflicting statements regarding the costs of the Project, output and affordability of electricity, and analysis of alternative energy sources.

³⁵ The letter states that its purpose is to “*reaffirm the Government’s continued commitment to these obligations as described in Annex 15 of the Bank’s Project Appraisal Document, ...*” with respect to Kalagala Falls and Mabira Forest. The letter subsequently, however, focuses more narrowly on a commitment in Annex D.1 of the SEA in relation to “*the Mabira Forest Reserve and those portions of the Mabira Forest Reserve on both banks of Kalagala Falls that have been de-gazetted.*” The letter concludes with a Government commitment to adopt “*a Sustainable Management Program for Mabira Forest Reserve which is mutually agreeable to both the Government and the Bank.*”

³⁶ “*The offset provision for Kalagala Falls and the adjacent natural habitat will be included as a GoU obligation in the IDA Indemnity Agreement for the Bujagali project, and will be binding throughout the life of the Indemnity.*” Management Response p. 22, ¶ 7.

62. The Requesters claim that the projections of electricity output and costs developed under the Project are incomplete and very likely misleading and inaccurate. The Requesters also contend that Project documents fail adequately to describe alternative approaches that could and should be pursued to meet the needs of electricity generation that would be less costly and harmful.
63. The Panel observes that significant new conditions and circumstances may have arisen since the previously proposed project at Bujagali Falls. These include the situation relating to costs for construction and for electricity, issues of power production and capacity in light of water flows (see also below), and the emergence of alternative potential sources of power generation. The Requesters claim that these new conditions and circumstances are not adequately addressed in Project documents, as required by Bank policies.
64. During its eligibility visit, Requesters and others also expressed concern that local people have not been given adequate information regarding the costs and pricing arrangements under the proposed Project, and that these arrangements might result in less electricity at higher cost than they have been led to believe. They stated that the Project economic analysis is faulty and conveys overly optimistic projections of benefits of the proposed project when compared to other alternatives and of electricity generation in general.
65. The Panel notes that Bujagali Falls is an extremely valuable natural site, which is important to both present and future generations. The Bank's processes for conducting economic evaluation of projects and programs, or their implementation, may not fully capture the value of such unique sites, since the benefits are difficult to quantify and may be discounted to zero, although they may not be zero. While access to electricity is critical to reducing poverty today, economic calculations of the cost and benefits of various options for producing electricity that do not fully consider the value of unique natural sites to present and future generations may be distorted.
66. **Hydrology and Water Flow.** The Panel notes that there are differing views about the effect of the proposed dam on water flows in the River Nile and on the water levels in Lake Victoria.

67. The Requesters contend that the Project documents and explanations by Management do not accurately reflect the significant risks relating to water flows and the lower levels of Lake Victoria posed by the proposed Bujagali hydropower project. In this regard, they contend that important new data on Lake levels, and the potential implications of climate change on temperature (and hence on water evaporation) and on precipitation rates in the region, have not been adequately taken into account in assessments of the proposed new Project.³⁷
68. The Panel also notes that new information exists from independent sources regarding the effects of the existing upstream dams on water levels in Lake Victoria. The effect of water flows on Lake Victoria may raise significant questions about the impact of the Project on the health of the Lake Victoria basin ecosystem.
69. The SEA and other Project documents state that BEL “*adopted the Agreed Curve*” for its design and implementation of the Bujagali Hydropower facilities.” The Panel notes that the Agreed Curve³⁸ affects not only the local water situation but also areas and countries downstream of Bujagali Falls, and relates to an existing international agreement between countries. The Requesters claim that there are indications of new approaches that may affect this critical issue regarding water flow.³⁹
70. There is also conflicting evidence regarding the issue of whether multiple dams on the River will have cumulative effects. The Requesters claim that there could be significant cumulative impacts and that this issue needs to be thoroughly addressed in a transparent and participatory way. Management’s Response indicates that “*developing Bujagali and other sites in the Victoria Nile Basin (excluding Kalagala) will not have significant cumulative environmental impacts.*”⁴⁰
71. The Panel also notes conflicting views regarding the effects of the dam on fisheries in the Project area. The Requesters claim that the effects on fisheries in

³⁷ During discussions in the field, it was noted that Working Group II of the Intergovernmental Panel on Climate Change (IPCC) is issuing its Contribution to the Fourth Assessment Report (Working Group II: Impacts, Adaptation and Vulnerability), which addresses regional impacts of climate change, particularly with regard to temperature and precipitation.

³⁸ The Agreed Curve, as described in the Management Response and SEA, is a long-established formula designed to ensure that water flows downstream remain consistent with what would have occurred under natural conditions without the existing dams. As stated in the Management Response, it “*functions as the operating rule of water discharges through the Nalubaale and Kiira dam complex, in which the volume of water released remains consistent with what would have occurred under natural conditions, thereby ensuring no change in downstream discharge (water releases are a function of the lake level at any given time).*” Management Response, p. 4 at note 4.

³⁹ They cite, for example, the Terms of Reference for the Economic and Financial Evaluation Study, Bujagali II, dated February 2007, which state that “*the ‘Agreed Curve’ should no longer be strictly followed, but should be considered as a guiding element in the operation policy. . .*” Appendix, p. 42.

⁴⁰ Management Response, p. 20, Annex 1 at note 4.

the River and in Lake Victoria need to be analyzed and addressed, while Project officials have indicated to the Panel that they believe there will be no effects.

72. **Resettlement.** The Requesters claim, and Management to some degree acknowledges, that certain problems exist in relation to the resettlement of local people arising from the previously proposed project. Local affected people interviewed by the Panel reiterated and elaborated on their concerns set forth in the Request for Inspection. During its visit, the Panel was able to verify some of the problems faced by the m.
73. In its Response, Management states that BEL has prepared an Assessment of Past Resettlement Activities and has prepared an Action Plan (APRAP) to complete the resettlement started under the earlier Bujagali project and that it will implement Community Development Action Plans (CDAP). In addition BEL and the BIU have committed to a series of actions summarized in the Management Response, paragraph 30. The Response does not say specifically whether Management considers that these actions by BEL and BIU are sufficient to address the Requesters' concerns and to implement properly the Bank resettlement policy. The Panel notes these initiatives, but in the light of past experience considers that the claims of Requesters raise issues as to compliance and harm to local people that need to be examined.
74. **Other Issues.** During its eligibility mission, the Panel was also presented with assertions and questions that elaborated upon compliance and harm issues raised in the Request. They relate to Bank policies on Indigenous Peoples, Cultural Property, Natural Habitat (including impacts on Bujagali Falls and riverine fish species), Dam Safety and International Waterways. The Panel also noted questions of compliance and harm involving the link between the proposed Project and the Mabira Forest, namely the course of the transmission lines of the proposed Project through this Forest and alleged linkage between the Forest and the Kalagala Offset.
75. The Panel notes 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 followed or is taking steps to follow the Bank’s policies and procedures.”* Hence, the Request meets the requirement of Paragraph 9(c) of the 1999 Clarifications.
76. As noted above, the Requesters state that they expressed their concerns in a letter sent to the Bank. They further note that they invited the Bank’s Country Office in Kampala to attend public meetings, held in August and October 2006, regarding Lake Victoria and the role of dams in draining the Lake, but received no response from the Bank. In addition, the Requesters state that they recently met with Bank officials in Kampala to reiterate their worries, but claim that the Bank has not adequately addressed their concerns. They believe that the actions described in the Request are contrary to the World Bank policies and procedures and will

- materially and adversely affect their rights and interests. They ask the Panel to recommend that an investigation of the issues raised in the Request be carried out.
77. The Panel notes that the subject matter of the Request “*is not related to procurement*”, as required by Paragraph 9(d) of the 1999 Clarifications.
78. The Request satisfies the requirement in Paragraph 9(e) of the 1999 Clarifications. On April 26, 20007, the Board of Executive Directors approved the IDA Guarantee as part of the financial package supporting this Project.
79. With respect to Paragraph 9(f) of the 1999 Clarification, Management notes in its Response that the “*proposed Private Power Generation (Bujagali) Project is a new operation. As such there has been a fresh assessment of the social and environmental aspects of the project, which has also required drawing upon former studies, where relevant.*”⁴¹
80. In addition, as noted above, the Request asserts that there is new evidence and circumstances not know at the time of the prior Request. The Request notes, for example, important new information and realities relating to a decline in lake and river water levels, climate change, increased silting, and other factors relevant to hydropower production. It also refers to new circumstances and concerns relating to resettlement arising from the earlier proposed project. The Panel also has received claims allegedly based on important new information on the relationship between water levels in Lake Victoria and the existing dams, as well as regarding possible alternative sources of electricity generation. Therefore, the Request satisfies Paragraph 9(f) of the 1999 Clarifications.

E. Additional Considerations

81. The Panel wishes to draw the attention of the Board to some disturbing information, which could affect the integrity of the Panel process.
82. The Panel heard testimony that some resettled people who submitted the letter of complaint have been subjected to pressure to refrain from complaining about the proposed Project. Individuals indicated to the Panel that they were, on other occasions, threatened for wanting to speak out about their concerns. Some indicated that while they have not refused the dam, they joined the letter stating their concerns regarding their resettlement and are fearful of the consequences.
83. Separately during its visit, the Project authorities provided the Panel with copies of two additional documents, which suggest possible conflicts in the area of influence of the proposed Project. One is a document of minutes from a meeting involving area leaders and the affected people, which illustrates some of the apparent problems. According to the minutes, the leaders of the area to which people had been resettled, stated that they were not happy with the residents

⁴¹ Management Response, Annex 1, p. 22.

voicing their concerns in writing without going through them. In the meeting, the leaders characterized as “exaggerated” some of the peoples’ concerns, and presented a point-by-point response to their main concerns, including representations that the new sponsor will deal with the problems.

84. The other document is a letter from area leaders entitled “Appeal to Bujagali Hydro Power Project Lenders”, which ends with an appeal to the lenders *‘to approve the Bujagali Hydro Power Project so that construction can start immediately to end the suffering that we have had to endure.’*⁴²
85. Also, the Panel was informed that the day before the Panel visited the resettlement area and Project site, Project officials, together with a number of other people, including foreign officials and one of the consultants for the social and environmental impact assessment, visited the area and met with the area leaders, but reportedly not directly with affected people signatory to the Request.
86. The Panel is concerned by the reports of pressure and fear among at least some of the affected people who signed the Request to the Panel. The Panel trusts that the Bank will take appropriate steps to ensure that the concerns turn out to be not well-founded.

F. Conclusions

87. For reasons set forth above, the Panel believes that the conflicting claims and assertions noted above merit independent review and investigation, in accordance with the terms and criteria set forth in the Resolution of the Panel and its Clarifications.
88. The Panel notes that an investigation might conclude that some or all of the claims regarding non-compliance and potential harm are being adequately addressed under the Project or are without merit. But it might also find otherwise. The Panel notes that Requesters and other local people recognize the urgent need for electricity in Uganda. However, they all stated a strong desire for the best information available to understand their concerns and the potential impacts and benefits of the proposed Project.
89. The Panel therefore recommends that an investigation be carried out into the matters raised by the Request.
90. Because of the substantial information gathered in connection with the previously proposed Bujagali dam project, the Panel considers that it would be able to carry out an investigation expeditiously.

⁴² The letter describes their views of the benefits of the Project, but does not elaborate on the “suffering” to which it refers.