

Involuntary Resettlement Issues in the West African Gas Pipeline Project
Except of report made and published by the Inspection Panel, 25 April 2008.

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In 2008, Ted Downing was an investigator of a complaint filed by civil society organizations in Nigeria to The World Bank's Inspection Panel. At issue were possible violations of the Bank's involuntary resettlement and other safeguard policies that were occurring in the West African Gas Pipeline project. The full report is available [at this location](#). Ted examined irregularities in the involuntary resettlement. The Panel's findings led to an additional 11M US\$ to project affected peoples, mostly Yoruba and closer alignment of the project with the international safeguards. Management, in this report, refers to Bank management.

Report No. 42644-GH

The Inspection Panel



Investigation Report

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

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Chapter Three

Social Issues -- Analysis of Compliance

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

A. Brief Introduction into Social Issues

104. The most significant social issues focused on in this Chapter involve displacement and involuntary resettlement associated with the acquisition of 144 hectares, including the ROW for the pipeline and ancillary facilities in Nigeria.⁸³ The 25 meter-wide ROW traverses 23 western Nigerian communities, including the 12 communities making this Request. The Project estimated that about 90,000 people live in the 23 communities.⁸⁴ The lands, which are mostly agricultural with diverse uses, are owned under customary rights by populations belonging to the ethno-linguistic group of Yoruba.
105. In its presentation to the Board, Management reported that the construction of the pipeline along the Nigeria ROW would directly affect 2,485 households⁸⁵ that owned or used plots in the Project area. It reported that the directly affected households had 1,557 private landowners and 928 tenants.⁸⁶ It estimated that 8,647 people were living in the households that were to be affected.⁸⁷ According to the RAP for Nigeria, over half the displaced persons were from two adjacent rural agricultural communities, Igbesa and Okoomi.⁸⁸ The RAP estimated that the average affected household will lose 4–6 percent of its total land holding.⁸⁹ However, as will be discussed later in this chapter, these numbers were not based on an adequate socio-economic survey and their reliability might hence be questionable.

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

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

⁸⁵ PAD, p. 37.

⁸⁶ PAD, Annex 13, ¶23.

⁸⁷ PAD, Annex 13, ¶23.

⁸⁸ Nigeria RAP, p. 1-9, Table 1.2-2.

⁸⁹ Nigeria RAP, Executive Summary, p. iii.

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

B. Requesters’ Claims and Management Response

107. **Requesters’ Claims:** The Requesters believe that the Project, if executed as presently conceived, would do irreparable damage to the land and, consequently, destroy the livelihoods of their communities.⁹¹ They state that the Bank did not comply with its Policies and Procedures, including Bank Policies on Involuntary Resettlement and Environmental Assessment.⁹²
108. More specifically, the Requesters claim that the Project provided inadequate compensation to landowners. They contend that there was inadequate consultation with affected people in the resettlement process, and that the affected communities and groups were not able to pinpoint the location where the draft Environmental Impact Assessment document was displayed. The Requesters further contend that Bank Management failed adequately to assess Borrower capacity to carry out a policy-consistent approach to resettlement.
109. The Requesters’ claims raise a number of issues of compliance with relevant Bank Policies, including Involuntary Resettlement. These can be distinguished into several general categories: baseline socio-economic information; information disclosure and participation; loss of livelihood and compensation; grievance mechanisms; sharing of project benefits as part of a “sustainable development program;”⁹³ and institutional capacity. Specific concerns within this framework include how the Project approached resettlement financing and accountability, and the land tenure rights of the affected people. These and other specific issues raised by the Request will be addressed in more detail below.
110. **Management’s Response:** Management recognized that there were both opportunities and risks in working with a private-sector special purpose company to execute a project of this size.⁹⁴ One risk was that WAPCo, driven by a tight preparation schedule and the escalation in costs to investors that could arise from delay, would forge ahead according to its own procedures and the

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

⁹¹ Request, p. 1.

⁹² Request, p. 1.

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

⁹⁴ Management Response, ¶27.

requirements imposed by the four host governments and, as a result, pay insufficient attention to the Bank's safeguards procedures.⁹⁵

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

C. Baseline Socio-Economic Data

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

⁹⁵ Management Response, ¶27.

⁹⁶ Management Response, ¶49.

⁹⁷ Management Response, ¶28.

⁹⁸ Management Response, ¶28.

⁹⁹ Management Response, ¶29.

¹⁰⁰ Management Response, ¶30.

¹⁰¹ Management Response, ¶31.

¹⁰² Management Response, ¶29-33.

¹⁰³ Management Response, ¶60.

¹⁰⁴ Management Response, ¶60.

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

1. Bank Policy

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

¹⁰⁵ OP 4.12, ¶17(a).

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

¹⁰⁷ OP 4.12, Annex A, ¶6.

¹⁰⁸ OP 4.12 Annex A, ¶6 (a).

¹⁰⁹ OP 4.12 Annex A, ¶6 (a)(v)

¹¹⁰ OP 4.12, ¶2(b), fn. 3.

¹¹¹ OP 4.12, ¶3 (footnotes omitted).

¹¹² Nigeria RAP, p. 1-7.

2. Information Gathered and Failure to Prepare Baseline Survey

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

¹¹³ Nigeria RAP, Executive Summary, p. iii.

¹¹⁴ Nigeria RAP, p. 4–3.

¹¹⁵ Nigeria RAP, p. 4–4.

¹¹⁶ Nigeria RAP, Executive Summary, p. ii.

¹¹⁷ Nigeria RAP, Table 6.1–2, p. 6–9 to 6–10. Calculated by dividing 1,201,242 m² of agricultural land by 144 hectares taken by the project in Nigeria.

¹¹⁸ Nigeria RAP, Table 6.3–6, p. 6–23.

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

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

¹¹⁹ Nigeria RAP, Table 6.3-4, p. 6-19 to 6-20.

¹²⁰ Nigeria RAP, p. 6-24.

¹²¹ Nigeria RAP, Table 6.3-5, p. 6-21.

¹²² Nigeria RAP, Table 6.3-10, p. 6-29.

¹²³ Nigeria RAP, Table 6.3-4, p. 6-20.

¹²⁴ Calculation by the Panel's expert based on spreadsheets provided by WAPCo.

¹²⁵ Nigeria RAP, p. 4-3 to 4-4. See fn. 2.

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

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

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

3. Number of Displaced Persons

128. Without a study of the basic economic units along the ROW, one can neither determine the actual number of those losing land and other assets (i.e. the number of displaced persons), nor the number of PAPs who were affected in other ways. The plots that were acquired by the Project appear to be portions of extended family holdings that were not subject to the requisite socio-economic analysis. Panel interviews with WAPCo community agents confirmed that the number of people who lined up along the ROW claiming ownership was a function of the family head’s decision as to who should go to the line that day. This fact brings into doubt calculations of the size of the project affected population in the Nigerian segment of the WAGP.
129. WAPCo discovered an inconsistency when comparing the directly-impacted subset with the overall ESIA survey. According to the Project ESIA, the average household size of the project affected communities is surprisingly low: 3.48 persons.¹²⁸ According to the RAP, Nigeria’s average household is 5.4 persons based on data collected between 1985 and 1990.¹²⁹

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

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

¹²⁸ Nigeria RAP, p. 1–8, fn. 10.

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



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

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

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

¹³¹ Nigeria RAP, p. 1–8, fn.10.

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

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

4. Land Tenure

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

with WAPCo during the RAP preparation¹³² but did not get resolved in spite of the local population's request that the compensation mistakes made by Shell on the earlier land acquisition should not be repeated.¹³³

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

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

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

¹³² Letter to ChevronTexaco, "West African Gasoline Project Igbesa Right of Way," from the Pipeline Right of Way Land Owner Association of Igbesa, August 14, 2003.

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

¹³⁴ Request, p. 5.

¹³⁵ Letter to ChevronTexaco, "West African Gasline Project Igbesa Right of Way," from the Pipeline Right of Way Land Owner Association of Igbesa, August 14, 2003.

¹³⁶ Nigeria RAP, 4-36 to 4-37 and Table 4.6-1.

¹³⁷ From a Compensation and Indemnity Receipt signed between WAPCo and displaced person.

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

5. Vulnerable Groups

137. The Bank's Involuntary Resettlement Policy calls for paying particular attention *"to the needs of vulnerable groups among those displaced, especially those below the poverty line, the landless, the elderly, women and children, indigenous peoples, ethnic minorities, or other displaced persons who may not be protected through national land compensation legislation."*¹³⁹ In line with this, the socio economic studies required in the preparation of a RAP should include *"information on vulnerable groups or persons"* as identified in paragraph 8 of OP 4.12.¹⁴⁰
138. The RAP prepared for the Project, however, did not contain adequate information on the needs of vulnerable groups that were to be affected by the Project ROW in Nigeria, which includes women, the elderly, the poor and tenants. After noting that higher incomes were associated with larger land holdings, the RAP's perfunctory impoverishment analysis concluded that the impacts will be more adverse for the higher income people with larger parcels.¹⁴¹ The brief analysis of the vulnerability of women concludes that since *"female landowners constitute a smaller portion of the affected people, and they also lose less land than the men. This may be due to women owning smaller amounts of land. Male landowners, on average, lose twice as much land as female landowners. Women do not lose more than proportionate to their holdings and thus will not be vulnerable."*¹⁴² The Panel notes that the "analyses" can not be deemed adequate or defensible for an analysis of impoverishment or female vulnerability. **The Panel finds that Bank Management failed to ensure the Sponsor performed an adequate analysis of the socioeconomic risks to vulnerable peoples. This does not comply with Bank Policy on Involuntary Resettlement, and denied these peoples the protections provided under the Policy.**

6. Land and Productive Assets

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

¹³⁸ OP 4.12, Annex A, ¶6(b)(i).

¹³⁹ OP 4.12, ¶8.

¹⁴⁰ OP 4.12, ¶6(a)(iv).

¹⁴¹ Nigeria RAP, p. 4–2.

¹⁴² Nigeria RAP, p. 4–2.

parcels that were to be taken -- WAPCo estimated the Project impact by dividing the average of land taken (700 m² from the Estate Survey) by the average household land holdings (1.7 hectares from the ESIA survey).¹⁴³ Dividing one average by another average, they concluded that the Project takes away less than 4 percent of the total land holdings cultivated by the affected households.¹⁴⁴ Neither the ESIA nor the Estate Surveys collected data on the total household holdings of the displaced persons necessary to verify this claim.

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

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

¹⁴⁴ Nigeria RAP, p. 6-33.

¹⁴⁵ PAD, Annex 13, ¶23.

¹⁴⁶ PAD, Annex 13, ¶23.

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

¹⁴⁸ Nigeria RAP, Executive Summary, p. i.

¹⁴⁹ Nigeria RAP, p. 6-26.

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

7. Conclusions

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

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

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

¹⁵⁰ OP 4.12, Annex A, ¶6(a).

¹⁵¹ Request, p. 3.

¹⁵² Request, p. 3.

*the exact amount of compensation that we were to receive for each plot of land acquired for the Project.”*¹⁵³

148. The Requesters add *“the Project sponsors kept us in the dark about this and other information relating to adequate compensation that should improve our standard of living. There were assurances from Project sponsors that the rates for lease of land in our communities set by the Nigerian government would not be used in computing the quantum of compensation to be paid. But to our surprise, when the compensations were eventually paid, the rates were in most cases less than 4% of the market rate.”*¹⁵⁴

149. The Requesters also state that there was no binding contractual relation between individual landowners and WAPCo. They assert that *“the sponsors of the Project merely paid at their own discretion. They provided compensation for the crops on the land only and did not pay anything for the land and future profits that are accruable from the activities that we would have undertaken on our lands.”*¹⁵⁵

150. Moreover, the Requesters claim the decision to opt for cash compensation instead of relocation in many instances was informed by a fear of the unknown.¹⁵⁶ Concerns over the handling of ancestral lands being placed in the hands of *“total strangers while moving to some other location to reside”* are expressed, as are previous experiences with *“ruling elites in the country in connivance with the oil multinationals have by their actions and inactions enhanced poverty in our communities.”*¹⁵⁷ Further, the Requesters assert a lack of mechanisms to secure long-term employment for affected members of their communities.¹⁵⁸

151. The Requesters also claim that *“the sponsors of the project employed the classic divide and rule strategy to their full advantage. Our community members have yet to resolve the bitterness and bickering that was the hallmark of the selective consultations which took place with a few landowners, while other land users and impacted persons were ignored.”*¹⁵⁹ They add that *“There were also instances where the land owners and the land users (those who lease lands for farming) clashed over who should be paid compensation and how the compensation that has been paid should be shared.”*¹⁶⁰

152. **Management’s Response:** Management responds that *“RAPs for the Project contain measures to improve or restore livelihoods and standards of living,*

¹⁵³ Request, p. 3.

¹⁵⁴ Request, p. 4.

¹⁵⁵ Request, p. 4.

¹⁵⁶ Request, p. 4.

¹⁵⁷ Request, p. 4.

¹⁵⁸ Request, p. 3.

¹⁵⁹ Request, p. 5.

¹⁶⁰ Request, p. 5.

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

153. Management further asserts that replacement valuation is the approach that was agreed upon with WAPCo, and Management believes that this principle must be applied. If it has been applied inconsistently, Management states that the Bank will ensure this is corrected.¹⁶² Management further states, “[b]ased on this, Management believes that affected people will be able to improve, or at least restore their standards of living as a result of the Project. If any concerns of inadequate compensation have not been properly addressed, as required by the Project’s legal agreements, the Bank will ensure that those standards are met.”¹⁶³

154. Management recognizes potentially inadequate compensation may have occurred.¹⁶⁴ They acknowledge that compensation rates, an issue identified by the Bank mission in June 2005, have not been fully resolved.¹⁶⁵ They state that the Otta section report on individual compensation was not carried out as set forth in the RAP¹⁶⁶ and that internal monitoring by WAPCo has not occurred as planned in the RAP.¹⁶⁷

1. Bank Policies

155. The first paragraph of OP 4.12¹⁶⁸ identifies the potential multidimensional economic, social and environmental risks to people facing involuntary resettlement, including the dismantling of productive systems, loss of productive assets and income sources, and socio-cultural disruptions.¹⁶⁹

¹⁶¹ Management Response, Annex 1, No. 4.

¹⁶² Management Response, ¶44.

¹⁶³ Management Response, ¶44.

¹⁶⁴ Management Response, ¶56.

¹⁶⁵ Management Response, ¶55.

¹⁶⁶ Management Response, ¶56.

¹⁶⁷ Management Response, Annex 1, No. 4.

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

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

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

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

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

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

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

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

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

¹⁷¹ OP 4.12, ¶2.

¹⁷² OP 4.12, ¶11 and ¶12.

¹⁷³ OP 4.12, ¶2.

¹⁷⁴ OP 4.12, ¶1.

¹⁷⁵ BP 4.12, ¶6.

¹⁷⁶ BP 4.12.

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

2. Land-for-Land Option

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

¹⁷⁷ OP 4.12, ¶10.

¹⁷⁸ OP 4.12, ¶11.

¹⁷⁹ OP 4.12, ¶16.

¹⁸⁰ OP 4.12, ¶12.

¹⁸¹ OP 4.12, ¶12, fn. 17.

¹⁸² OP 4.12, ¶11.

¹⁸³ OP 4.12, ¶11.

166. Pursuant to Nigerian law, for land held under the customary right of occupancy for agricultural purposes, the local government can allocate alternative lands for the same purpose.¹⁸⁴ The land-for-land option was appropriate with the extended family land holder, the unit that holds the right to reallocate land within their social unit. The Panel could not find evidence in the supervision reports that Management reviewed arrangements reached, if any, between WAPCo and government to provide land-for-land along with the transitional resettlement options needed to move agriculturalists.
167. A land-for-land option was described as an alternative in the RAP to cash-compensation through WAPCo for resettlement at Agbara Estate or Otta in Ogun state.¹⁸⁵ Management and WAPCo report that no one had requested this option as of May 2004.¹⁸⁶
168. It is unclear to the Panel, who, if anyone, was actually offered the land-for-land option. In the most populated area within the WAGP ROW, the extended family heads hold the right, albeit rarely exercised, to alienate and allocate land use within their families or members of the extended family who were listed in the Estate Survey. The Estate Survey lists 1,557 “land owners” not all of whom are extended family heads with the power to alienate land. The RAP and PAD are inconsistent in the meaning of “landowner”—making it difficult to determine whether the land-for-land option was offered to the 1,557 “landowners” reported in the RAP or the much smaller numbers of extended family heads, some of whom were designated as landowners in the WAPCo spreadsheets.
169. The Board was told that there were 1,557 landowners both in the PAD and RAP.¹⁸⁷ Panel in-country interviews and supervision reports show that WAPCo informed what the RAP calls “land owners” along the ROW that they were not legal owners of the land under the Land Use Act.¹⁸⁸ During compensation negotiations, the same “land owners” were told by WAPCo that they are not land owners under Nigerian law. At best, this undermines meaningful land-for-land negotiations, basically arguing that you must first establish your rights in order to exercise the option.
170. This approach also undermines the land-for-land resettlement option preferred by OP 4.12 for people who derive their income from the land. The land-for-land option involved an area in Abeokuta along the Ogun/Lagos boundary, some distance from the bulk of those being displaced. It appears to have been applied

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

¹⁸⁵ Nigeria RAP p. 3–9 and p. 5–31 to 5–32.

¹⁸⁶ Nigeria RAP, p. 5–27.

¹⁸⁷ PAD, Annex 13, ¶13 and RAP, Executive Summary, p. ii.

¹⁸⁸ Panel field interviews.

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

171. The ESAP also identified several shortcomings regarding in-kind compensation. In its report it finds that *“the possibility exists that many persons did not select in-kind replacement of land because the Project offer was not detailed or perceived as too risky.”*¹⁹¹
172. Noting that in-kind compensation is generally considered a more reliable means for assuring sustainability of incomes for people who rely on these lost assets and was a requirement of OP 4.12, the RAP builds a case in favor of a cash-compensation option, as found in OP 4.12, paragraph 12.¹⁹² Cash compensation for lost assets is acceptable where *“(a) livelihoods are land-based but the land taken for the project is a small fraction of the affected asset and the residual is economically viable.”*¹⁹³ To determine whether condition (a) is applicable, the Policy may apply if the land taken constitutes less than 20 percent of the total productive area.¹⁹⁴ The RAP argues that all three conditions are largely met *“in Nigeria.”*¹⁹⁵
173. **The Panel is concerned that so little was done to inform the displaced of the land-for-land option.** In the case of housing, 38 households received cash payments, mostly in one community. The Panel interviewed neighbors who stated the families had moved on, however, there is no evidence of the Project following-up in order to determine whether or not they were actually impoverished. No resettlement assistance, apart from cash compensation, was

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

¹⁹⁰ Regional EIA, Appendix 5-D.

¹⁹¹ ESAP Report, p.20.

¹⁹² Nigeria RAP, p. 6–33.

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

¹⁹⁴ OP 4.12, ¶12, fn. 17.

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

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

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

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

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

¹⁹⁸ ESAP Report, p. 20.

¹⁹⁹ ESAP Report, p. 20.

²⁰⁰ Nigeria RAP, p. 5-2, 5-24.

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

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

3. Livelihood Restoration and Method to Establish Cash Compensation

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

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

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

²⁰³ Nigeria RAP, p. 6-35.

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

Lagos Chamber of Commerce Sub-Committee, as a basis for negotiation for land, crops, commercial activities and market squares.²⁰⁵ The estate agents, representing the sellers, were to facilitate the negotiation between the third quarter of 2003 and December 2004.²⁰⁶ Two estate agent companies represented all the sellers and another estate agent firm represented WAPCo. The seller's agents received US\$216,000 in fees on a US\$1,946,337 transaction.²⁰⁷ Panel interviews found that PAPs were completely uninformed of the willing buyer/willing seller concept.

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

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

²⁰⁶ Nigeria RAP, p. 10–3, Table 10.1–1

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

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

Box 3.2: Letters the Panel Reviewed Illustrating Compensation Issues

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

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

Below are selected text extracted from the letters:

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

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

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

186. The Panel notes with concern that a communication dated June 4, 2007, from Shell Oil to WAGP, states that regarding the compensation rates there “*must have been an oversight that all have failed to recognize, it is a calculation error.*” The message then even expressly states that “*you know that at all times we have always wanted to acquire the land at minimal cost.*”²⁰⁹

187. The Panel notes that the ESAP concluded that it “*did not find worked [sic] examples, whether for land, structures, annual or perennial crops and trees, for any country, which demonstrate that the World Bank standards was being met.*”²¹⁰ It also states that “*the WAGP Proponent commitments do not uniformly*

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

²⁰⁹ Communication dated June 4, 2007 between Shell Oil and WAGP.

²¹⁰ ESAP Report, p. 21.

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

4. Productive Trees/Crops

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

5. Transaction Costs

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

²¹¹ ESAP Report, p. 21.

²¹² ESAP Report, p. 22.

²¹³ ESAP Report, p. 22.

²¹⁴ ESAP Report, p. 23.

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

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

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

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

²¹⁶ Nigeria RAP, p. 6-37, Table 6.4-1.

²¹⁷ Nigeria RAP, p.6-35.

²¹⁸ Nigeria RAP, p. 6-40, Table 6.4-1.

²¹⁹ Nigeria RAP, p. 6-31.

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

²²¹ Nigeria RAP, p. 4-34.

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

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

6. Social Order Risks

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

²²² Management Response, Annex 1, No. 7.

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

7. Remedial steps - - Recent Actions by the Bank

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

²²³ ESAP Report, p.20.

²²⁴ ESAP Report, p.16.

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

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

8. Conclusions

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

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

²²⁶ Communication from Management dated December 7, 2007.

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

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

²²⁷ OP 4.12, ¶6 (a)(iii), fn. 11.

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

E. Development Assistance - Sharing in Project Benefits

215. **Requesters' claims:** The Requesters claim that the Bank failed to ensure that the Project promotes the development of goals of the country and did not evaluate the sustainability of the projects.²²⁹

216. They argue that “[e]ven at the level of the supposed economic benefit of the project for us as a community, we think this claim is patently false, illusory and diversionary. Firstly employment opportunities would only include temporary manual labour during construction work. As far as we know, no mechanism has been put in place to ensure that qualified persons from the community with the relevant academic credentials are put through training to secure employment on a full term basis. This is despite the fact that we have compiled and submitted the names of graduates from our communities in different fields, especially in the area of engineering.”²³⁰

217. The Requesters add “[w]e therefore think that this project will further impoverish the people of our communities. We will lose our lands, which are our only means of livelihood, without adequate compensation, while on the other hand we do not have the prospect of long term alternative employment. We have often made the point that we would not accept to be mere onlookers in this project, and that we want to be an important part of the project, but it seems that there is a deliberate move to push us aside with one excuse or the other.”²³¹

218. **Management's Response:** Management responds that “the Project will benefit, not impoverish project affected people, both through resettlement compensation, as well as community development, construction and the planned permanent employment.”²³² Management responds that for the affected communities as a whole, WAGP brings direct benefits that will contribute to improvements in living conditions.²³³

219. Management points out that most landowners have lost only small amounts of land and do not have to move.²³⁴ They assert that, for the displaced persons, alternative employment is not an issue. Of those whose houses or house plots were acquired, only two opted for resettlement. Cash compensation was the

²²⁸ OP 4.12, ¶11.

²²⁹ Request, p. 7.

²³⁰ Request, p. 8.

²³¹ Request, p. 8.

²³² Management Response, Annex 1, No. 9.

²³³ Management Response, ¶46.

²³⁴ Management Response, Annex 1, No. 9.

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

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

1. Bank Policies:

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

²³⁵ Management Response, Annex 1, No. 9.

²³⁶ Management Response, Annex 1, No. 9.

²³⁷ Management Response, ¶46.

²³⁸ Management Response, ¶47.

²³⁹ OD 4.15, ¶6.

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

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

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

2. Preferential Employment and Sustainable Development Assistance

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

²⁴¹ OP 4.12, ¶2 (b).

²⁴² OP 4.12, ¶6 (c).

²⁴³ BTO, Supervision Mission, September 22 - October 13, 2006, ¶38.

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

²⁴⁵ OP 4.12, ¶6 (c)(iii).

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

3. Community Development Program

230. WAPCo in cooperation with the Consortium of West African Pipeline Host Communities agreed to implement a four to five-year program that will include three years of community infrastructure construction and two final years of training and capacity-building.²⁴⁶ In 2006, the program that got underway was consisting of 14 projects for 13 communities—four clinics, six classroom blocks, and four local water projects with a total value of approximately US\$1 million.²⁴⁷
231. Management and the Sponsor agreed on a CDP in the Project Agreement that neither referenced nor was related to the Involuntary Resettlement Policy.²⁴⁸ In the RAP, the CDPs are described as “voluntary” with a budget that was distinct from the resettlement plan,²⁴⁹ and Management agreed that it could be submitted after the Final Investment Decision.
232. Distribution of CDP fixed budget benefits was based on an overall geographic allocation in terms of community impact of the WAGP operations, not the impact on the displaced persons.²⁵⁰ For example, Igbesa and Okoomi, the two communities most impacted by the Project, lost their market squares. Under OP 4.12, paragraph 2(b), an appropriate remedy for this type of loss would have been to set a baseline to estimate the effect of this loss within the community, identify the individual project affected persons—those who use the market—and assess the impact of the loss, and prepare a plan that included restitution for the loss, and, in addition, provide investment resources for the market square's sustainable development. All this would have taken place with community participation and disclosure. Instead, in this case, the RAP paid cash compensation to relevant stakeholders and considered replacement with

²⁴⁶ BTO, Supervision Mission September 22–October 13, 2006, p. 20.

²⁴⁷ BTO, Supervision Mission September 22–October 13, 2006, p. 20.

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

²⁴⁹ Nigeria RAP, p. 5–33 and Table 9.1–1.

²⁵⁰ Nigeria RAP, p. 5–35.

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



Picture 3: Health Clinic Part of the Community Development Project

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

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

²⁵¹ Nigeria RAP, p. 6–22.

²⁵² Management Response, ¶ 57.

²⁵³ Management Response, ¶ 57.

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

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

F. Disclosure of Information and Consultation

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

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

²⁵⁵ Request, p. 4.

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

239. The Requesters further claim that *“the manner [in which] the little consultation that took place was carried out is a recipe for crisis and violence in our communities. There are still tensions between the landowners and those of us whose lands were not acquired but whose livelihood would invariably be affected by the project. Some of us would lose our farmlands; others may be denied easy access to their farms and fishing grounds.”*²⁵⁷

240. Additionally, the Requesters assert that *“the sponsors of the project employed the classic divide and rule strategy to their full advantage. Our community members have yet to resolve the bitterness and bickering that was the hallmark of the selective consultations which took place with a few landowners, while other land users and impacted persons were ignored.”*²⁵⁸ They add that *“there were also instances where the land owners and the land users (those who lease lands for farming) clashed over who should be paid compensation and how the compensation that has been paid should be shared.”*²⁵⁹

241. The Requesters state that, in hindsight they received *“precious little information on the exact amount of compensation that we were to receive for each plot of land acquired for the Project.”*²⁶⁰ They claim that *“the project sponsors kept us in the dark about this [compensation valuation formulas] and other information relating to adequate compensation that should improve our standard of living.”*²⁶¹

242. **Management’s Response:** Management responds that extensive consultations were held and concerns were well documented and presented in a balanced manner,²⁶² but recognizes potential uncertainty regarding disclosure of information.²⁶³ They find that compensation was adequately covered in consultations but agree that Yoruba translations of summaries of the RAPs and EMPs were not disseminated, as requested by the Bank in its supervision mission of June 2005.²⁶⁴

243. Management points out that in all, there were twenty-five documented meetings and teleconferences between the Bank and WAPCo and its consultants, the first of which was in April 2001, nearly two years before detailed discussions on the TORs for the EA and RAP. The Bank was thus in a position to advise WAPCo

²⁵⁶ Request, p. 4–5.

²⁵⁷ Request, p. 5.

²⁵⁸ Request, p. 5.

²⁵⁹ Request, p. 5.

²⁶⁰ Request, p. 3.

²⁶¹ Request, p. 4.

²⁶² Management Response, ¶34.

²⁶³ Management Response, ¶56.

²⁶⁴ Management Response, ¶34.

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

244. Management claimed that “although the Bank recognized the significant benefits of local disclosure and consultation in an early draft of the EA by WAPCo, it also understood—given the significant social and political sensitivity of World Bank Group involvement with a private sector investment in the oil and gas sector in Nigeria—the importance of having an extremely high quality draft.”²⁶⁶
245. Management explains that the early EIA 2004 drafts were disclosed for Nigerian Public Hearing and Permit Review, but were revised as a result of the hearings and disclosed, as required by Bank Policies, in July 2004.²⁶⁷
246. Management contends that tension, which may have developed between landowners and other users, as well as within families over the way compensation was distributed as “normal parts of community dynamics,” not a result of the Project.²⁶⁸ Management provides no supporting evidence for this explanation.

1. Bank Policies

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

²⁶⁵ Management Response, ¶37.

²⁶⁶ Management Response, ¶37.

²⁶⁷ Management Response, Annex 1, No. 14.

²⁶⁸ Management Response, Annex 1, No. 7.

²⁶⁹ OP 4.12, ¶2b.

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

250. Specifically, OP 4.12 requires a RAP to include measures to ensure that the displaced persons are (i) “*informed about their options and rights pertaining to resettlement;*” and (ii) “*consulted on, offered choices among, and provided technically and economically feasible resettlement alternatives.*”²⁷² It also requires involvement of the displaced persons in the design and implementation of resettlement activities²⁷³ and institutionalized arrangements by which the displaced persons can communicate their concerns to Project authorities throughout planning and implementation. Measures are to be in place to ensure vulnerable groups, such as landless or women are adequately represented.²⁷⁴
251. Under OP 4.12, a RAP should review the “*resettlement alternatives presented and the choices made by displaced persons regarding options available to them, including choices related to forms of compensation and resettlement assistance, to relocating as individuals, families or as parts of preexisting communities or kinship groups, to sustaining existing patterns of group organization, and to retaining access to cultural property (for example, places of worship, pilgrimage centers, cemeteries).*”²⁷⁵ The requirement for data collection on socio-economics of displaced households²⁷⁶ provides another avenue for displaced persons to inform Management of their situation.
252. In addition to consultation with displaced persons themselves, Management is directed by BP 4.12 to “*discuss with the agencies responsible for resettlement the policies and institutional, legal, and consultative arrangements for resettlement, including measures to address any inconsistencies between government or implementing agency policies and Bank policy.*”²⁷⁷
253. **OP 4.01 on Environmental Assessment.** OP 4.01 on Environmental Assessment requires that for all projects designated as “Category A” during the EA process, the Borrower consults with project-affected groups and local non-governmental organizations (NGOs) about the project’s environmental aspects, taking into account their views. The Borrower has to initiate such consultations

²⁷⁰ OP 4.12, ¶13 (a) and Annex A, ¶15 (a).

²⁷¹ OP 4.12, ¶19.

²⁷² OP 4.12, ¶6 (a)(i) and (ii).

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

²⁷⁴ OP 4.12, Annex A, ¶15(d).

²⁷⁵ OP 4.12, Annex A, ¶15(c).

²⁷⁶ OP 4.12, Annex A, ¶6.

²⁷⁷ BP 4.12, ¶2(e).

as early as possible.²⁷⁸ The Borrower has to consult these groups at least twice: (a) shortly after environmental screening and before the terms of reference for the EA are finalized; and (b) once a draft EA report is prepared.²⁷⁹

254. In addition, OP 4.01 provides that the Borrower has to **consult with such groups throughout project implementation as necessary** to address EA-related issues that affect them.²⁸⁰ Furthermore, *“for meaningful consultations between the borrower and project-affected groups and local NGOs on all Category A and B projects proposed for IBRD or IDA financing, the borrower provides relevant material in a timely manner prior to consultation and in a form and language that are understandable and accessible to the groups being consulted.”*²⁸¹ OP 4.01 notes that other Bank Policies assign additional disclosure and consultation requirements on project involving involuntary resettlement.²⁸²
255. Regarding disclosure of information, for a Category A project OP 4.01 requires the Borrower to provide for the initial consultation a summary of the proposed project’s objectives, description, and potential impacts. For consultation after the draft EA report is prepared, the Borrower is required to provide a summary of the EA’s conclusions. In addition, the Borrower is required to make the draft EA report available at a public place accessible to project-affected groups and local NGOs.²⁸³
256. The requirements of OP 4.01, as applied to the present case, are addressed in more detail in Chapter Four (Environment) of this Report.
257. **Bank Policy on Disclosure of Information.** The Bank’s Disclosure Policy requires, *inter alia*, that the Borrower make the draft RAP available before appraisal (i) at the InfoShop and (ii) in-country, at accessible locations and in a form and language that are accessible to potentially affected persons and NGOs.²⁸⁴

2. Findings on Disclosure of Information

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

²⁷⁸ OP 4.01, ¶14.

²⁷⁹ OP 4.01, ¶14.

²⁸⁰ OP 4.10, ¶14.

²⁸¹ OP 4.01, ¶15.

²⁸² OP 4.01, ¶15, fn. 19.

²⁸³ OP 4.01, ¶16.

²⁸⁴ The World Bank Policy on Disclosure of Information, 2002, ¶34.

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

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

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

²⁸⁶ Issues relating to the disclosure of the EA are addressed in Chapter Four.

²⁸⁷ PAD, p. 38.

²⁸⁸ PAD, Annex 13, ¶43.

²⁸⁹ Management Response, ¶57.

²⁹⁰ Management Response, ¶56.

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

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

3. Findings on Consultation

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

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

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

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

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

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

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

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

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

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

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

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

³⁰⁰ Management Response, ¶38.

³⁰¹ ESAP Report, p. 17.



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

272. **Reliance on Private-Company Sponsor.** The Panel notes that WAPCo retained a major Environmental Impact subcontractor from outside the country to carry out the RAP. This subcontractor in turn, subcontracted with “*ESIA Consulting and Citizens International team, with support from Estate Surveyors and WAGP External Affairs representatives to compiled information for the draft RAP.*”³⁰² The Panel was informed during staff interview and subsequent field visit that WAPCo excluded consultation with the local Nigerian populations from their primary sub-contractor’s TOR. Management did not review the subcontractor’s TOR and informed the Panel that there is no such requirement to do so in the Bank Policy.³⁰³

273. The Panel was told that WAPCo did not ask the Bank to review the TORs it prepared for its subcontractors. Indeed, Management informed the Panel that it does not have a copy of the TOR for either subcontractor. Instead, without performing a review, Management seemed to assume that because the Project Sponsor had strong capacity on technical issues, including those covering

³⁰² Nigeria RAP, p. 4–5

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

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

274. The RAP summarizes community feedback during the consultation process carried out by the WAPCo subcontractors.³⁰⁵ These community concerns focused on the anticipated negative impact of the Project on their livelihoods, termination of benefits after the construction activities, the need for, yet temporary nature of, local employment opportunities and the possibility of permanent loss of agricultural and environmental assets. Most pressing were concerns stemming from previous experiences with another pipeline project in the same area constructed by SNG, a member of the WAPCo Consortium. In particular there was distrust as to whether a fair value would be paid for expropriated land, and whether the land used during construction would be restored to its original state. PAPs anticipated they would be worse off than before the Project.³⁰⁶
275. While this feedback provides evidence of community participation, there is no evidence that the 2,485 households of displaced persons directly participated in the planning and preparation of the RAP. Rather, both the Sponsor's and Management's methodologies assumed that the political representatives of the displaced peoples would listen, speak, and make decisions for them.
276. The Panel considers that WAPCo would have had the capacity to carry out meaningful consultation with the displaced populations. Panel interviews and documentation indicate that consultation, communication and meaningful participation took place between WAPCo and PAPs in the areas of health and safety, as well as in the area of employment.³⁰⁷ What seems to have been missing was a clear mandate and adequate guidance on a more participatory development of the RAP and on adherence to Bank Policies.
277. **Lack of Clarity with Regard to Applicable Standard.** The Panel notes that there was confusion in WAPCo on the issue of resettlement/land acquisition standards to be used for the WAGP, as reflected in correspondence from the Sponsor to the Bank in 2004.³⁰⁸

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

³⁰⁵ Nigeria RAP, p. 4-47 to 4-49.

³⁰⁶ Nigeria RAP, p. 4-47 to 4-48.

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

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

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

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

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

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

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

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

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

³¹³ Documents received during field visit.

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

G. Grievance Mechanism

1. Bank Policies

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

2. Facts and Findings

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

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

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

³¹⁴ OP 4.12, ¶13(a).

³¹⁵ OP 4.12, Annex A, ¶17.

³¹⁶ Nigeria RAP, p. 7-12.

³¹⁷ Nigeria RAP, p. 7-12 to 7-13.

³¹⁸ Nigeria RAP, p. 7-12.

documents, mediation through local or traditional authorities, or through the judicial process.³¹⁹

291. The log was to include a detailed record keeping of date and description of the grievance, details of complainant, name and title of the person recording the entry, documents references (if written) and resolution efforts and dates.³²⁰ The grievance log made available to the Panel listed 21 grievances. It did not document the dates, the name and title of the person recording the grievance, or dates of resolution efforts. The logs failed to consistently indicate whether WAPCo met with the complainant, a time frame for taking corrective action. Most significantly, the signatures of the complainants verifying that corrective action had taken place were not recorded, as required in step 5 listed above.
292. The Panel notes that the ESAP considers the RAP section on complaints/grievance resolution and special attention to vulnerable groups as “*brief and schematic*.”³²¹ Furthermore, the ESAP found that the RAP “*does not contain detailed operating procedures (...)*.”³²² The ESAP also stated that “*affected people were uncertain about who exactly to contact, where and when, in order to make a complaint: and about when they might get a response*.”³²³ Also the ESAP concluded from discussions with contractor staff that “*contractors are not clear about how they should manage complaints from the public*.”³²⁴
293. In its Action Plan, Management also committed to assess whether the grievance redress process was ineffective for PAPs. This was to be done before the first quarter of fiscal year 2007.³²⁵ The ESAP also recommended that WAPCo should implement a standard operating procedure for managing complaints from the public.³²⁶ The Panel is not aware that this has been done.
294. In the field the Panel was informed that few grievances have been reported. The Panel reviewed WAPCo’s community disruptions of work logs for 2006 and found 35 disruptions. Eight focused on disruptions by youth groups demanding payment and/or employment, eleven regarding lack of compensation, six regarding payment for damages to shrines, and other issues. Six disruptions were by extended family heads demanding compensation.
295. The Independent Monitoring report concluded that the Project grievance process complies with the Environmental Safeguard requirements but could be improved by clear written procedural documentation to promote rapid resolution

³¹⁹ Nigeria RAP, p. 7-13.

³²⁰ Nigeria RAP, p. 7-12 to 7-13.

³²¹ ESAP Report, p. 16.

³²² ESAP Report, p. 26.

³²³ ESAP Report, p. 27.

³²⁴ ESAP Report, p. 27.

³²⁵ Management Response, ¶57.

³²⁶ ESAP Report, ¶1.1.6.

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

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

H. Institutional Capacity

1. Bank Policies

297. In line with OP 4.12, due diligence in relation to the present Project requires that Management and the government determine whether WAPCo had the capacity and financing to carry out a RAP in accord with Bank standards.³²⁸
298. The Borrower is responsible for preparing, implementing and monitoring the resettlement plan, with the RAP presenting the strategy for achieving the objectives of the Policy.³²⁹ The Policy emphasizes that Borrower commitment to and capacity for undertaking successful resettlement is a key determinant of Bank involvement in a project³³⁰ including a requirement that management review past Sponsor experience with similar operations³³¹ and any technical assistance that management might provide the Sponsor.³³²

2. Facts and Findings

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

³²⁷ Management Response, ¶57.

³²⁸ OP 4.12, Annex A, ¶8 and BP 4.12, ¶10.

³²⁹ OP 4.12, ¶18.

³³⁰ OP 4.12, ¶18 and BP 4.12, ¶10 (a).

³³¹ BP 4.12, ¶2 (d).

³³² BP 4.12, ¶2 (d) and ¶2 (f).

consultation, human rights, environmental, and communal conflicts facing the WAGP project.³³³

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

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

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

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

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

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

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

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

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

³³⁸ PAD, Annex 13, ¶41.

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

305. Management seems to have understood this, to some degree. Amnesty International released a report entitled “Nigeria: Are human rights in the pipeline” that was published on the eve of the Board presentation.³³⁹ Delta problems were referenced several times³⁴⁰ in the PAD, including a disclaimer that “*WAGP has little or no impact on the social or environmental condition of the Delta, and is either a small part of, or is unrelated to, the main activity of the international oil companies. The solutions to the problems in the Delta are one of law and order, good governance, institutional capacity building, fight against organized crime through means such as oil certification, greater security to prevent kidnappings and long-term vision through an integrated coastal zone management plan (ICZM).*”³⁴¹ The problems in the Delta might have forewarned the shortcomings of the WAGP, adopting the local industry/government arrangements for land acquisitions.
306. Third, the WAGP affected most of the same stakeholders that were involved in an earlier project along much of the same route. This history influenced all local stakeholder’s expectations, decisions, and organization. A direct sign came from a letter sent to Chevron Texaco Globatech from the Pipeline Right of Way Land Owner Association of Igbesa signed by 13 extend family heads and 38 sub-family heads on August 14, 2003 stating that (a) crops enumeration belongs to the individual person who was cultivating, (b) that the land “*belongs to individual [extended] families*” and that (c) “*payment for land compensation should be paid to the head of families or the representatives of each families [sic] who signed a power of Attorney for the agent representing them,*” and d) that any payment for the a or b be made to the “*rightful owners of the land not the community.*”³⁴² They wish (e) to “*prevent the re-occurrence of a bitter experience in the first project executed by Shell Nigeria Gas whereby our rights was [sic] wrongly transferred to the community.*”³⁴³
307. This letter raises serious questions about a WAPCo partner’s capacity for implementing the resettlement instrument, an element that must be assessed in Bank Procedures.³⁴⁴ The Nigerian on-shore segment of WAGP project was

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

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

³⁴¹ PAD, Annex 1, ¶24.

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

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

³⁴⁴ BP 4.12, ¶10.

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

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

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

³⁴⁶ ESAP Report, p. 17.

³⁴⁷ ESAP Report, p. 18.

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

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

I. Information to the Board

1. Bank Policy

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

³⁴⁸ BP 4.12, ¶10.

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

2. Findings

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

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