

557. To the Basoga, the Project area – like their entire region – is inhabited by ancestral spirits and living humans who are constantly interacting – from birth to death and beyond.⁶¹⁷
558. From the perspective of the Bujagali Project, the key elements of Busoga spiritual cosmology are: a) the spirits are innumerable, powerful and frequently cross over into the world of the living and may do both good and bad, b) they inhabit the same world as the living and are associated with animate and inanimate objects throughout the landscape, c) they can move freely without the need for human permission, d) they have differential power, influence, and interests, e) they are hierarchical, somewhat comparable to the ancient Greek Pantheon, f) they influence the health, well-being and the livelihood of the living, g) more powerful spirits communicate through mediums who do not view themselves as capable of negotiating or predicting spirit behavior – they are mediums of the spirit who possesses them, and h) the mediums are selected by the spirits, not by the cultural (political) leaders.
559. The intersection of spirit, place, and its medium defines the cultural resource at risk under OP/BP 4.11, a situation common to significant cultural sites throughout the world.⁶¹⁸
560. The Panel's review of available evidence collected during the investigation confirms that Budhagaali Falls are the residence of a host of spirits ranging from high level Busoga spirits to individual family spirits among whom is one of the Busoga's most venerated, powerful, princely spirits, *Nabamba Budhagaali Spirit*.⁶¹⁹ In 2001, the Project noted that the *Ntembe* clan, whose leader is *Ntembe Waguma*, and diviner (*muswezi*) is Nfuudu, has clan level ancestral spirits at the Bujagali Falls site which will be disturbed by the project. Like other clans, the *Ntembe* are found throughout Busogaland.⁶²⁰ A 2001 map of community level sites of cultural significance, included in the RCDAP, shows; 16 islands, 32 shrines, 10 large trees, 6 rocks, 20 burial ground, 2 fire places, and a forest in the immediate project area (see Figure 1 below).⁶²¹

⁶¹⁷ Over fifty years ago, Lloyd Fallers, in his classic study of the Basoga, *Bantu Bureaucracy* (1954), felt that despite the substantive presence of Catholicism and other global religions, ancestor worship was "very near the heart of the Soga value-system." p. 80

⁶¹⁸ Routine and Dissonant Cultures: A theory about the psycho-socio-cultural disruptions of involuntary resettlement and ways to mitigate them without inflicting more damage. Theodore E. Downing and Carmen Garcia-Downing. IN Anthony Oliver-Smith. *Development and Dispossession: The Anthropology of Displacement and Resettlement*. Santa Fe: School for Advanced Research Press 2008, in Press.

⁶¹⁹ RCDAP 2001, pp. 101-102, and map of community sacred sites (including spiritual locations of rocks, trees, shrines). AES contracted a Consultant to survey the traditional religious sites and beliefs in communities along the East and West banks of the Nile River and identified specific names for these features. Because the Panel reviewed the draft form of these studies containing the surveys they are hereinafter referred to as "AES Consultant."

⁶²⁰ The reports are ambiguous as to the spiritual and clan leadership of the *Ntembe* clan, with one document referring to Lubaale Nfuudu as the leader of the *Ntembe* clan and another assigning this position to *Ntembe Waguma*. HPP-APRAP, p. 23, footnote 3.

⁶²¹ RCDAP 2001, pp. 101-102, and map of community sacred sites (including spiritual locations of rocks, trees, shrines), Figure 15, p. 107. The islands are named for their resident spirits, with *Kiwotokwa Island* a

561. Surveying the traditional religious landscape adjacent to the project area in 1998 or 1999, an AES consultant concluded that the traditional beliefs associated with these natural features play an environmental conservation, security and mental health role for the believers. One of the islands to be submerged is used for ceremonies to find missing drown bodies. He concludes that *“the implication of destroying the islands is that the spirits will disappear. Those whose family members regularly use the Nile waters will be put in a situation of fear of the unknown regarding what else to do when one of their people drowns. The associated fear and helplessness, might lead to various forms and degree of mental breakdown.”*⁶²²
562. Absent the full CPMP investigation⁶²³, in compliance with OP 4.11, the full breadth of the Bujagali Falls spiritual site at the higher level of Busoga cosmology has not yet been established. At the level of the Princely, higher spirits, all Busoga clans and their Bujagali Falls associated *baswezi* are stakeholders.

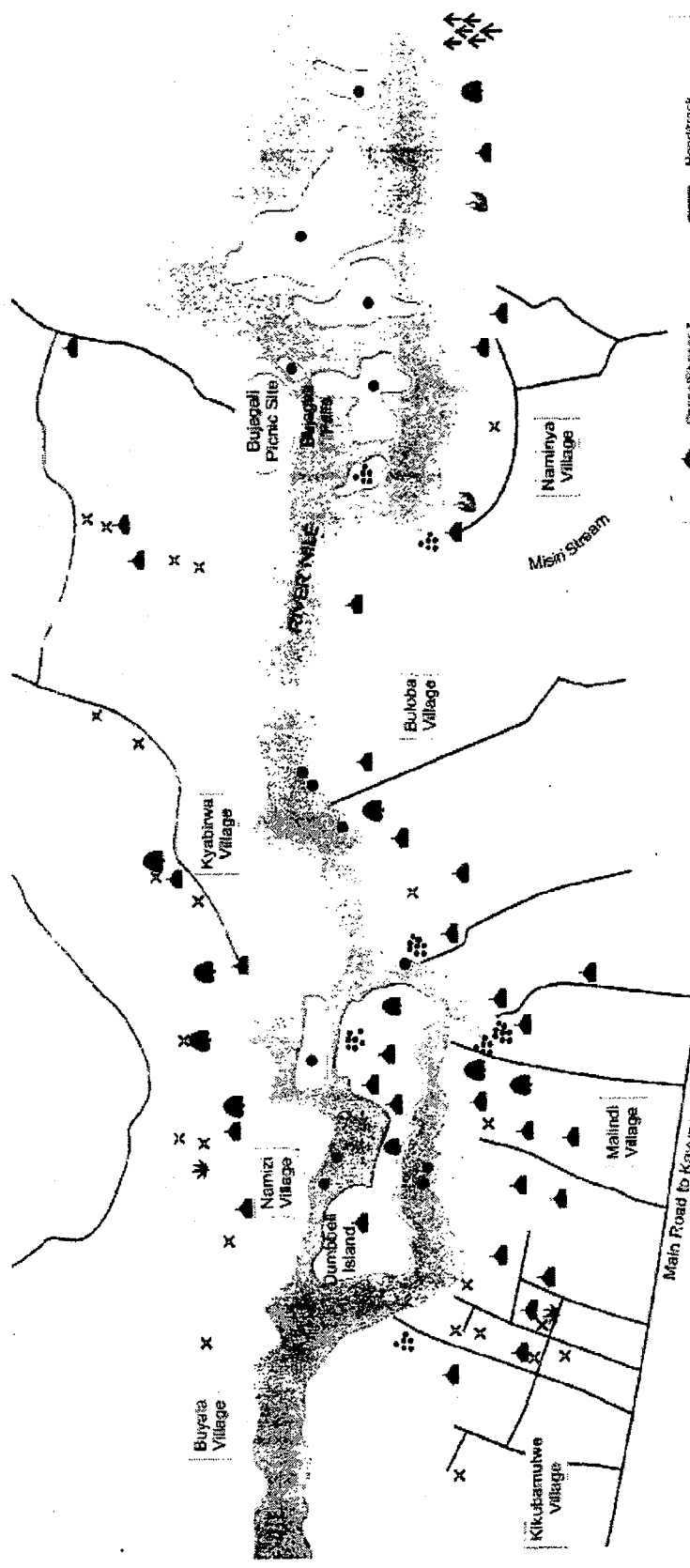


Picture 9 Nabamba Bujagali performing spiritual ceremony

resident site of for *wisambwa* or high spirits - Nalongo, Nabamba Budhagaali, Walumbe and Mukasa. The River Nile and its Significance to Traditional Religion and Practices of the Inhabitants of the River Nile West Bank. AES Consultant September 18, 2000, p. 41.

⁶²² The River Nile and its Significance to Traditional Religion and Practices of the Inhabitants of the River Bank in Wakise Subcounty. September 18, 2000. AES Consultant, p. 24. Another island to be submerged is used for infertility ceremonies (Kirongo Island).

⁶²³ The preparation of the Cultural Properties Management Plan is discussed further in Section I of this chapter.



- Shrine/Shrines *
- Big tree where spirits reside
- Islands
- Stones where spirits reside
- Burial grounds
- Headtrack
- Streams
- Fire place
- Herbs
- Forest

* Locations of cultural sites are approximate and indicative
 * Symbol indicates angle of in some cases, multiple Shrines

Source: WS Atkins (1999)

Project Name
BUJAGALI HYDROPOWER FACILITY EIA
 Prepared for:
AES NILE POWER



Date: FEBRUARY, 2001 G6603 RCDAP_15 **Fig. 15**

INDICATIVE PLAN SHOWING SITES OF CULTURAL SIGNIFICANCE (COMMUNITY LEVEL)

Figure 9 Sites of Cultural Significance (Source: 2001 RCDAP, p. 107)

E. Busoga Cultural Domain

563. Busoga Kingdom is a cultural institution that promotes popular participation and unity among the people of Busoga through cultural and development programs for the improved livelihood of the people of Busoga.⁶²⁴ Under Article 246 of the Ugandan Constitution, the Busoga Kingdom is assigned limited authority. Unlike the typical monarchies in Africa, the Busoga did not have a central authority at the advent of British rule. Nevertheless, it had developed small principalities, each with its own hereditary ruler. These principalities were later to be consolidated under a King called “*Isebantu Kyabazinga*” who ruled the Busoga Kingdom.⁶²⁵
564. This secular institution, which is a stakeholder on Busoga cultural issues, makes no claims to hold spiritual power, a position consistent with the Project’s consultations with the Busoga Kingdom Prime Minister.⁶²⁶ In early August 2006, the Prime Minister explained that the spirits of the Falls have not been adequately released and expressed his feelings that the previous EIA did not adequately capture the effects of the Bujagali Falls inundation on the spirits of the Falls and noted that there needs to be collective belief of this spiritual question among the community.⁶²⁷ He suggested a meeting with the Busoga cultural leaders to identify a way forward.⁶²⁸ At a subsequent meeting on August 18, 2006, nine of the 11 Busoga cultural leaders reconfirmed that cultural issues of the project were not addressed, that the spirits and the Falls and shrines need to be relocated, that the entire Falls lies within the Kingdom. The nine present cultural leaders felt that all 11 needed to be involved.⁶²⁹ While offering to search for a path to a solution, this conclave of cultural leaders did not claim spiritual authority.
565. **The Panel finds that Management and the Sponsor have increasingly recognized and involved the Kyabazinga Institution as an important guardian of the Basoga cultural tradition.** The Panel also recognizes that the Kyabazinga Institution is not empowered to speak as surrogates in consultations for the Basoga spiritual stakeholders.

F. Panel’s Analysis – Physical Cultural Resources

566. As noted above BEL’s consultations led it to conclude that, rather than a localized cultural site, Bujagali Falls are of spiritual significance to the Kingdom of Busoga as it is a place inhabited by spirits. The Panel notes however that in the Project Appraisal Report (PAD) Management downplayed the consultation findings showing the

⁶²⁴ Official Busoga Kingdom website: www.busoga.com/theKingdom.php

⁶²⁵ Official Busoga Kingdom website: www.busoga.com/theKingdom.php

⁶²⁶ Panel interview with the same Busoga Cultural Minister, who is no longer in office.

⁶²⁷ HPP-PCDP, p. 35. Summary of meeting of 11 Aug. 2006.

⁶²⁸ HPP-PCDP, p. 35. Summary of meeting of 18 August 2006.

⁶²⁹ HPP-PCDP, p. 35. Summary of meeting of 18 August, 2006.

spiritual significance of the Bujagali Falls spiritual site to the broader Busoga community and downplayed the significance of the cultural resources.⁶³⁰

567. Panel interviews revealed that the 2001 CPMP and its 2006 assessment might have significantly mischaracterized key elements of the Busoga cosmology. A CPMP, in compliance with OP/BP 4.11, should have identified Bujagali Falls as a significant cultural resource, triggering rigorous safeguards for specific avoidance, consultation and mitigation.
568. OP 4.11's approach to cultural resource is based on three essential components: avoidance, consultation and mitigation.

1. Avoidance

569. The Panel observes that, since the initiation of the Bujagali Project, Management did not adequately consider avoidance of the significant cultural resource impacts at Bujagali Falls.⁶³¹
570. Management decided not to conduct a full CPMP for the Project. This very likely contributed to the fact that the issue of avoidance was not raised effectively in the SEA (see also Chapter 5) and in the Assessment of Past Resettlement Activities and Action Plan.⁶³² This contributed to the non-alignment of avoidance and mitigation measures, as required under Bank policy, to address the threat to the cultural resource.

⁶³⁰ PAD, Annex 15, ¶ 73. The PAD states that "The project covers some physical features that are culturally significant to local people. These consist of various types of rocks, trees, and land sites that are associated with spiritual forces. Local beliefs attached to these spirits influence events in peoples' lives. For example, residents believe that the spirits are contacted by mediums or local practitioners or traditional spiritual leaders. During the preparation of the previous Bujagali project, local spirit mediums contacted the spirits and reported that if appropriate ceremonial procedures were financed by AESNP and carried out, the spirits would accept project-induced changes to the spiritual landscape of the project area. The previous project undertook extensive consultations with local people, religious leaders, and relevant government authorities in order to reach a consensus on this issue. AESNP carried out these ceremonies. BEL has carried out additional consultations, especially with the Kingdoms of Buganda and Busoga, and has learned that some additional ceremonies may be needed. BEL will also institute a Code of Practice on cultural issues, along with training, for workers and contractors during the construction and operation phases. Many households construct small hut-like structures (known as amasabo), which serve as shrines to ancestor spirits (these spirits are family-related, as opposed to the universal spirit forces discussed above). AESNP had mapped all such shrines and initiated a compensation procedure for their reconstruction and associated ritual procedures. BEL will complete any unfulfilled commitments."

⁶³¹ The 2001 CPMP's only discussion of avoidance stated that: "At the level of the wider community AESNP acknowledges that the rapids at Bujagali Falls will be largely inundated and that this is an unavoidable impact with this project configuration. However, it is considered by the parties involved with the spiritual value of the site - namely Nabamba Bujagali, Lubaale Nfuudu and the Leader of the Ntembe Clan that the issue is a local one and the impact is acceptable as long as appropriate measures are taken. Toward this end, these parties have given their consistent support to the project, as long as the necessary ceremonies to ensure appeasement of the spirits are carried out."

⁶³² HPP-APRAP

571. The Panel notes that if the Busoga religion and cultural tradition had been a more fully understood and widely recognized one, the current site may not have been acceptable, or alternative sites would have been given a much stronger consideration and weight. **The Panel finds that Management failed adequately to consider or implement alternatives to avoid the project-related impacts on Busoga spirituality and culture in violation of OP/BP 4.11.**

2. Consultation

572. In its early consultations, Management concluded that the local community did not see potential negative impacts of the Project on traditional culture and that certain traditional ceremonies could mitigate impacts.⁶³³ This seems not to be consistent with the information gathered by the Panel during its field visits. The discrepancy may be explained by focusing on who was consulted.

573. The 2001 RCDAP findings came from an AES sponsored study of the traditional religion and practices in communities located nearby the project construction and flooding area on both banks of the Nile. The study interviewed 20 focus groups, half with women, which included community's residents, local government council representatives (LC), traditional religious and health practitioners, and representatives from what they termed "modern religions."⁶³⁴ On the East Nile bank, the survey also interviewed diviners with special interest in the Bujagali site, including Nabamba Bujagali and Lubaale Nfuudu.⁶³⁵ The RCDAP concluded that whilst the Falls will be inundated this is not seen as a cultural or spiritual issue of over-riding issue to the majority (83 percent) of the local community.⁶³⁶

574. The Panel notes that determination of the significance of a spiritual site requires consultation with the affected parties.⁶³⁷ The Panel considers that the consultation methodology used in this RCDAP was detailed, but structurally flawed. First, the survey included mostly laymen many of whom were not sufficiently knowledgeable of the traditional religion. Second, it excluded key Busoga clans' spiritual leaders (*baswezi abadhagaali*) who have a strong spiritual attachment to the site and whose livelihood might be impacted by its flooding.⁶³⁸ The consultations did not recognize that mediums of the Nabamba Budhagaali derive their power through recognition by the traditional clan priests (*muswezi*) as agents of their believers. The mediums of the high Busoga spirits are incapable of commanding their followers, meaning that the appropriate consultation strategy is participatory, as this is common among traditional religions.

⁶³³ RCDAP 2001, p. 19 and AESNP Hydro Electric Power Project, Witness NGO Report on the Implementation of Resettlement and Community Development Action Plan at Hydro Site, InterAid Uganda April 2003, pp. 22-23.

⁶³⁴ RCDAP 2001, pp. 96, 103. The study included 2 villages as a control group.

⁶³⁵ RCDAP 2001, p. 126.

⁶³⁶ RCDAP 2001, p. 113.

⁶³⁷ BP 4.11 ¶ 7.

⁶³⁸ The unavailable 1999-2000 study on the traditional religion of the Basoga may have reviewed this information, but was unavailable to the Panel.

575. Third, the consultations assumed, not determined, that the spirits at Bujagali Falls were Basoga, not limited to inhabitants nearby the Project site, a fact reconfirmed in 2006 when the Kyabazinga council indicated that consultation on a path to deal with spiritual issues required consultations with cultural leaders throughout the Basoga (see above).⁶³⁹ The information brought to the Board during consideration of the Project was inaccurate since it was based on a survey of people in the project area, many of whom were non-Busoga migrants who had moved into the area following a disease-linked depopulation. **Most of those who believe in the significance of the Bujagali Falls spiritual site do not live in the immediate vicinity of the Project.** The terms of reference for the cultural consultations were not revised after interviews discovered that the spiritual sites in the project area were of major significance to a religious tradition that extended beyond the immediate area of the study.⁶⁴⁰



Picture 10 Undated picture received by Panel expert showing spiritual Medium Nfuudu performing Spiritual Ceremony

576. The Panel offers three illustrations of situations in which Management acted in a way inconsistent with Bank policy.

577. First, the SEA's TOR limits the consultations to within the project-affected area.⁶⁴¹ Nonetheless, the Panel notes that the SEA's consultant expanded the consultation to include the cultural Kingdoms of Buganda and Busoga. These expanded consultations

⁶³⁹ BP 4.11 ¶ 7.

⁶⁴⁰ AES contracted a Consultant to survey the traditional religious sites and beliefs in communities along the East and West banks of the Nile River. In the 2001 RCDAP references to "community level" spirits – meaning spirits discovered in the AES survey with significance above the household level. In their consultations with Nabamba Bujagali and Nfuudu, both mediums stressed that the spirits they were concerned about had broader significance throughout Basogaland – not just in the project area or "community" (see The River Nile and its Significance to Traditional Religion and Practices of the Inhabitants of the East Bank. AES Consultant, September 18, 2000, page 89 and 92). This fact was ignored leading to a significant misinterpretation of the importance of the cultural properties, a mistake which compliance with OP 4.11 would have avoided.

⁶⁴¹ HPP-TOR, p. 11.

yielded valuable information: a) that the Spiritual problem persisted, b) that it was a Busoga, not just a local issue, and c) that consultations with a wider range of stakeholders was necessary. Despite this new information, there was no follow-up. In the PAD, Management states that the Kingdoms supported the Project and BEL is having on-going consultations with local traditional authorities and has committed to measures to ensure that these issues are properly addressed prior to and during construction.⁶⁴² There is no mention of the expanded consultations and their results.

578. Second, the Panel was informed that Management contacted the Cultural Research Centre, run by the Diocese of Jinja, an authority on Busoga spirituality, not for advice on consultations, rather only for translation purposes. According to the Centre, its cultural experts offered their assistance beyond translation but they were refused. The Panel could find no evidence that the Cultural Centre's information was reviewed or incorporated into the project planning.
579. Third, on September 28, 2001 at the only large ceremony conducted to appease "*the Budhagaali community spirit*"⁶⁴³ an unspecified number of clan spiritual leaders, the *baswezi abadhagaali* and important dignitaries from all over Busoga were transported to the site at the Sponsor's expense. The followers of the Budhagaali were concerned with the rumor that the construction of the dam would take place at their sacred site. They were satisfied, however, when it was revealed that the dam would not be constructed at the site but 3 kilometers downstream at Dumbbell Island.⁶⁴⁴
580. The Panel was informed during its field visit that the Sponsor and Witness NGO present at the ceremony did not intervene to correct the misimpression that the sacred site was not to be destroyed.⁶⁴⁵ The lack of action to address this misimpression was inconsistent with consultation and disclosure requirements under OP 4.11 ¶11 and ¶12. Without a follow-up consultation the Panel is concerned that the principal stakeholders have not understood the extent of the Project's impact.
581. The limited consultation creates on-going uncertainties as to affected people's acceptance of the project's cultural resource impacts.⁶⁴⁶ **The Panel finds that the Project failed adequately to consult with the Busoga spiritual clan leaders associated with one or more high status Spirits about the significant cultural patrimony of the Bujagali Falls. This is not in compliance with OP 4.11.**

3. Mitigation

⁶⁴² PAD, p. 133

⁶⁴³ AESNP, p. 75. The Monitor is unclear as to whether the ceremony was for the Budhagaali community "spirit" or "spirits" – referring on the same page to both.

⁶⁴⁴ AESNP.

⁶⁴⁵ AESNP, p. 78.

⁶⁴⁶ The policy provisions for chance finds would be acceptable for dealing with unanticipated decisions by the spirits should they appear during the consultation process and might have been included in the Cultural Property Management Plan.

582. In its 2006 assessment of the 2001 CPMP, Management concluded that compensation for individual cultural sites was completed. The mitigation usually involved a comprehensive consultation exercise with dedicated groups in each of the interested communities, who were tasked with identifying the sites and devising adequate compensation measures, which included compensation for the structures and compensation for a ceremony allowing for relocation of the *amasabo*.⁶⁴⁷ This method is consistent with that used by the construction industry in Uganda. The mitigation was organized by specialized consultants on behalf of the Sponsor and witnessed by a local NGO. The local NGO concluded that there is no pending issue with respect to relocation of these sites,⁶⁴⁸ save issues concerning relocation of spirits on the river island.⁶⁴⁹ The Panel concurs with this assessment.
583. The Sponsor's approach has been to identify three interested "stakeholders" in the "Bujagali spirit(s)" and fund either appeasement or relocation ceremonies. The Sponsor focused on obtaining written consent from three stakeholders that compensation had been adequate and that construction of the dam at Dumbbell Island could proceed. It is evident from the 2006 consultations that this approach was not working: Busoga cultural leaders and the Panel interviews with the Nabamba Bujagali, cultural experts, the Sponsor, and Management agreed that the mitigation was incomplete.
584. As of the Panel's visit in November/December 2007, the appeasement ceremony attempted in 2001 organized by Nabamba Bujagali has led to uncertain results. The spiritual medium claims it was incomplete and he is still uncertain whether or not the spirits will be appeased if another ceremony occurs. In meetings with the Panel and others he has explained that the clan spiritual heads should be present and he cannot predict what the *Nabamba Budhagaali* Spirit will do. Meanwhile, Lubaale Nfuudu has relocated the "Bujagali spirits" to a temporary location, from which they will be moved, once more, to a suitable place away from the Project site to be purchased by the Sponsor. Project reference to undifferentiated "Bujagali spirits" makes it difficult to determine whether or not there are rival claims or just a rivalry between the two spiritual mediums.⁶⁵⁰
585. **Misidentifying Bujagali Falls as a local cultural resource, misaligning its consultation strategy, and failing to prepare a new Cultural Property Management Plan compounded errors and muddled mitigation. Resultant problems included loss of objectivity of the Sponsor, impatience, assignment of pecuniary motives to stakeholders, cost cutting, culturally inappropriate mitigation efforts, and most importantly, a misunderstanding that the Bujagali Project is ensconced in a long-term relationship with its new neighbors and their spirit world.**

⁶⁴⁷ HPP-APRAP, p. 23 ¶ 5.2.

⁶⁴⁸ HPP-APRAP, p. 23 ¶ 5.2.

⁶⁴⁹ AESNP, p. 67.

⁶⁵⁰ AESNP, p. 71.

G. Understanding the Local Cultural and Spiritual Context

586. The Project is being implemented in a complex cultural and spiritual environment, including several spiritual beliefs and traditions that, according to Bank policy need to be taken into account in project design and implementation. This requires a special effort to understand and show sensitivity to the beliefs of local people. What follows is a description of how Management has dealt with these issues in the context of the Project.
587. In a public document, Management loses objectivity by subjectively judging the genuineness of the interest of the mediums in cultural and spiritual aspects, including claiming expertise in measuring actual spiritual performance. They state that *“there has been fierce rivalry between Nabamba Budhagali on the one hand and Ntembe and Nfuudu on the other during the whole consultation and negotiation process, Nabamba has been quite successful in attracting media attention and obtaining significant compensation, whereas the other two seemed to be more genuinely interested in cultural and spiritual aspects.”*⁶⁵¹ Furthermore, with reference to Nabamba Bujagali, they state that *“while the two other stakeholders appear to have been genuinely satisfied with measures taken by AESNP, the Nabamba Budhagaali medium seems to have remaining claims over the site. This particular individual has been able in the past to draw a lot of attention, including international attention, which later did not appear to be justified by his actual spiritual performance, in contrast with the other two. It cannot be excluded that he will seek to obtain more compensation through media coverage for instance”*⁶⁵² (emphasis added). The indicators Management used to give credibility of one medium over the other are inappropriate. A medium’s credibility accrues from their believers.⁶⁵³
588. Following a ceremony financed by the first Sponsor on September 28, 2001, to relocate the Bujagali spirits, Management claims that all three interested mediums acknowledged in writing that compensation had been adequate and construction of the dam could proceed with the partial inundation of Bujagali Rapids as a result.⁶⁵⁴ The witness NGO contradicts this account. While they agree that the Sponsor prepared a single “Certificate of Appeasement” agreement to be signed by three sponsor-identified stakeholders with spiritual interests, they claim that the negotiations on October 2, 2001 with the Nabamba Bujagali withheld his endorsement.⁶⁵⁵

⁶⁵¹ HPP-APRAP, p. 23, footnote 3.

⁶⁵² HPP-APRAP, p. 23.

⁶⁵³ The witness NGO draws a superficial cultural judgment based on the Nabamba Budhagaali request for money, bottled beer and soda vs. the Lubaale Nfuudu’s requests for more traditional drinks, and other criteria not systematically aligned with cultural knowledge of Basoga. For example, the witness NGO questions his ceremonial legitimacy because the Nabamba Budhagaali drew followers primarily from the Basoga, not across the Uganda as he had anticipated. They berate his lack of powers to float across the rapids on a bark cloth. The attendance is consistent with the claim that the Bujagali spirit is a Basoga, not a pan-national site (AESNP, p. 75).

⁶⁵⁴ HPP-APRAP, p. 23.

⁶⁵⁵ AESNP, p. 81.

589. The Panel notes that the insistence on a Certification of Appeasement tied to the construction of the dam is not part of OP/BP 4.11 or OP/BP 4.04. This novel document reflected a misunderstanding of the medium's role. In interviews with the Panel, the Nabamba Bujagali, as a spiritual medium, insists that Bujagali Falls is a significant cultural site that requires more costly and time-consuming consultation with the Busoga spiritual clan leaders. He could not assure the Sponsor of the outcome of spiritual consultation.⁶⁵⁶ The Nabamba Bujagali stated that with Busoga spiritual logic, he could not sign the agreement for the Spirit.⁶⁵⁷ He also claimed that the ceremony on September 28, 2001, had been called not to conduct the ritual of appeasement but to consult his *buswezi Budhagaali*.⁶⁵⁸
590. Lubaale Nfuudu felt the spirits had been moved to a temporary location, on his property and will be relocated again nearby the Project site.⁶⁵⁹ The Nabamba Bujagali medium seems to have remaining claims over the site. The Panel notes that 2001 Project documents identify the Lubaale Nfuudu as a diviner (*muswezi*) who asserts that the spirit Lubaale is the father of Nabamba Budhagaali spirit.⁶⁶⁰ He conducts occasional ceremonies with *busweszi* at the Bujagali Falls to communicate with Lubaale, one of the highest spirits within Busoga cosmology, but different from the Bujagali spirit. This opens the possibility that Bujagali Falls, as a cultural property may be the site of two high spirits of the Busoga, not one.
591. The Panel finds that Management publicly injected the Bank into a religious misunderstanding without competence in the cultural spiritual context of its position, including passing judgment on legitimacy and credibility of a spiritual medium's performance. **Management unnecessarily and inappropriately took sides in a spiritual controversy of a religion in which millions of Ugandans believe. The Panel finds this action by Management to be non-compliant with the OP 4.11.**
592. Among the Busoga, as in most cultures, healing and spirituality involve numerous specialists who are compensated, often in kind, for services that provide peace of mind and meaning to the lives of their constituents, patients or believers. This ceremonial budget did not include compensation to the religious specialists. The spiritual medium, Nfuudu, told the Sponsor's cultural researchers that he borrowed money against his land title as collateral for a ceremony requiring him to transport house about a hundred *baswezi*.⁶⁶¹ The Sponsor questioned the ulterior motives of the mediums and small ceremonial costs. Negotiating minor costs without understanding the ceremony itself or the importance of its participants in the overall project consultation underscores loss of Management focus on resolving its cultural resource issues. These representation costs are frequently covered within the cost of consultation.

⁶⁵⁶ HPP-APRAP, p. 23.

⁶⁵⁷ AESNP, p. 80.

⁶⁵⁸ AESNP, p. 80.

⁶⁵⁹ HPP-APRAP, p. 23.

⁶⁶⁰ RDAP 2001, pp. 101-102.

⁶⁶¹ The River Nile and its Significance to Traditional Religion and Practices of the Inhabitants of the East Bank. AES Consultant September 18, 2000, p. 92.

593. Furthermore, a prime example of the culturally inappropriate mitigation efforts was the attempt to achieve closure to the cultural resource mitigation over the Bujagali Falls. Four days following this consultation at the Falls ritual site, he refused to sign because the document assigned the *Budhagaali* Spirit to the *Ntembe* Clan, a clear contradiction with Busoga beliefs. Following this dispute, he refused to endorse the Certificate of Completion of Appeasement and even refused to collect a US\$ 1,000,000 check for the preceding ceremony.⁶⁶² Inexplicably, the 2006 Assessment reported that all three interested parties had acknowledged in writing that compensation had been adequate and that construction of the dam at Dumbbell Island could proceed.⁶⁶³
594. The Panel finds, consistent with Busoga beliefs, that the spiritual mediums cannot provide assurance as to whether or not the Project could proceed before consulting the Spirits in a manner appropriate to their culture. As Nabamba Bujagali explained to the Panel, the Spirit speaks through him. Non-believers may view this response as nonsense, believing that spiritual mediums are speaking for themselves. As such, he can provide no guarantee.
595. The HPP Consultation Summary Report notes that the river and many islands and rapids in the project area hold cultural/religious values for some local persons and communities.⁶⁶⁴ In the public consultation from October 5-6, 2006 attended by 150 people, an issue was raised about an unspecified location within the river (which could have been one of the islands) of spiritual significance to which the Sponsor replied that they would consult with the Busoga Kingdom.⁶⁶⁵ Grave yards are archaeological sites and may be cultural/spiritual sites, whose significance is established through ethno-archaeological investigations. With reference to the islands, the Sponsor felt it was impossible to locate these graves with certainty and therefore also impossible to exhume and relocate their bodies. The new Sponsor assumed the mitigation strategy developed by the previous to hold an inter-denominational remembrance service to honor the memories of those buried in the islands. No consultation or ethno-archaeological work had established the provenance of the remains to determine the culturally appropriate mitigation. The Panel obtained information that the islands may be the location where previous spiritual media are buried. Noting that appropriate consultation and mitigation has yet to be done for the Bujagali Falls spiritual site, the Panel observes that the island areas must be included in the mitigation strategy to reach compliance with OP/BP 4.11. Management's treatment of these remains is inconsistent with the provisions being made for archaeological discoveries along the T-Line.⁶⁶⁶

⁶⁶² AESNP, pp. 79-81.

⁶⁶³ HPP-APRAP, p. 23.

⁶⁶⁴ HPP Consultation Summary Report, 22 September 2006, p. 2.

⁶⁶⁵ HPP-PCDP, p. 43.

⁶⁶⁶ IP-SEA, p. 98 and 287.

596. **The Panel finds that Management assumed that what they called the “Bujagali spirits” were restricted to the Project construction and flooding area, in contravention to the BP 4.11 requirement that they work with and assist the Borrower to identify the spatial and temporal boundaries of the cultural resources affected by the project.⁶⁶⁷ This did not comply with avoidance and mitigation requirements of OP/BP 4.11.**
597. Narrowing its size, location, and scale, Management discounted the significance of what should have been identified as the Bujagali Falls spiritual site to all of the Busoga, not just to those living in close proximity to the Project area. It appears that Management defined the project-affected-people under OP 4.11 on Physical Cultural Resources as those covered under OP/BP 4.12 on Involuntary Resettlement. In the case of the Bujagali project, the groups are distinct. **Consequently, the Panel finds that the culturally and spiritually affected people were not adequately identified as required by Bank policy.⁶⁶⁸**

H. Panel’s Analysis - Critical Natural Habitats

598. Given the importance that the Requesters attach to the spiritual aspects of the Falls, the Panel examined in detail the Bank’s consideration of this issue in light of different policies. In the Project, these issues have mainly been considered under the Bank policy on Physical Cultural Resources (OP/BP 4.11). However, OP 4.04 also contains provisions that are relevant to these issues, as discussed below.
599. Project documents recognize that the inundation of the Bujagali Falls will destroy a natural habitat of significance to the people of Uganda, and identify specific actions to offset this impact.⁶⁶⁹ At the same time, Management takes the view that the Project is not significantly converting or degrading a “*critical natural habitat*” as defined in OP 4.04.⁶⁷⁰ The Panel analyzes the various dimensions of that decision in light of provisions contained in the Bank policy.
600. Since OP 4.04 states that the “*Bank does not support projects that, in the Bank’s opinion, involve the significant conversion or degradation of critical natural habitats,*” the Panel reviewed what constitutes a critical natural habitats. Annex A of OP 4.04 defines “critical natural habitats” as

⁶⁶⁷ BP 4.11, ¶ 6.

⁶⁶⁸ Management recognized that “cultural sites and traditional beliefs appear to be closely associated with ecological features, like the River Nile, large trees, and boulders, each as a resident spirit which is worshiped”(RCDAP 2001, p. 106). This statement may be true for most of Africa, if not the world.

⁶⁶⁹ See PAD, ¶157. See also Letter from Bank Country Manager to Minister of Energy & Mineral Development, April 25, 2001 (Bujagali Hydropower Project: World Bank Group’s Requirement of an Offset at Kalagala Falls).

⁶⁷⁰ Safeguard Datasheet, March 26, 2007, p. 5 (Section OP/BP 4.1). In reviewing Bank Policy on Natural Habitats, and actions to offset the impacts of the inundation, both the PAD and the SEA state that “*the land take and the inundation will not impact critical natural habitat.*” PAD, ¶ 157. See also Letter of April 25, 2001, noted above.

“(i) existing protected areas and areas officially proposed by governments as protected areas (e.g., reserves that meet the criteria of the World Conservation Union [IUCN] classifications [footnote omitted]), areas initially recognized as protected by traditional local communities (e.g., sacred groves) and sites that maintain conditions vital for the viability of these protected areas (as determined by the environ-mental assessment process; or, ...

(ii) sites identified on supplementary lists prepared by the Bank or an authoritative source determined by the Regional environment sector unit (RESU). Such sites may include areas recognized by traditional local communities (e.g., sacred groves); ...” (emphasis added)

601. Thus OP 4.04 indicates that socio-cultural factors do have a bearing on the assignment of “*criticality*” to a natural habitat. The Panel further observes that there is substantial literature and practice recognizing the important relationship between sacred places and the conservation of natural habitats and protected areas, a subject of much attention in recent years. IUCN Guidelines for Protected Area Management Categories, referred to in the definition of Critical Natural Habitat under OP 4.04, state that a Category III Protected Area is an “[a]rea containing one, or more, specific natural or natural/cultural feature which is of outstanding or unique value because of its inherent rarity, representative or aesthetic qualities or cultural significance.”⁶⁷¹ (emphasis added).

602. The Panel notes that “*areas initially recognized as protected by traditional local communities (e.g. sacred groves)*”, as referred to in OP 4.04, include areas recognized as protected for their cultural significance and ecological functions by traditional peoples. In the Bujagali Falls area, Project studies and the Panel have identified islands, sacred groves, rocks, waterfalls, and numerous Busoga spiritual sites.⁶⁷² The persistent resistance to disturbance of the site by the Busoga spiritualists and the expressed concerns of the Kyabazinga Institutions is evidence that Bujagali Falls are a natural habitat of great importance to the Basoga that is being protected by them, as provided in OP 4.04. The discussion in the Report describes and documents the cultural and spiritual significance of the Bujagali Falls site to the Busoga people. In addition, studies conducted by AESNP for the prior Bujagali project suggest a strong ethno-botanical use of the Bujagali Falls project area, in particular the islands, for

⁶⁷¹ The current draft revised IUCN Guidelines amplify on this element. They note that sacred sites have “... intercultural and crosscutting values which, in turn produces equitable synergies between spiritual, cultural and natural diversity in support of more holistic conservation objectives,” and provide that “Category III Protected Areas could include: . . . **Natural-cultural sites:** such as the many forms of sacred natural sites (sacred trees or groves, springs, waterfalls, mountains, sea coves etc) of importance to one or more faith groups ... **Cultural sites with associated ecology:** where protection of a cultural site also protects significant and important biodiversity, such as archaeological/ historical sites that are inextricably linked to a natural area.” See draft of revised Guidelines for applying protected area management categories, IUCN, July 2008, pp. 98, 32).

⁶⁷² The AES Consultant study was preceded by an earlier 1998 commissioned study of the traditional religion of the Basoga people and the significance of the Bujagali site in particular, including Bujagali Falls (RCDAP 2001, ¶ 13.9, p. 96.) This study was not made available to the Panel.

healing and mental well-being. These studies include an ethno-botanical survey with these numerous healers to identify the flora associated with their practices.⁶⁷³

603. AESNP cultural consultant concluded that:

“Cultural sites and traditional beliefs appear to be closely associated with ecological features like River Nile (Kiira), large trees, and boulders. Where any of these features are found, respondents find a resident spirit. These spirits are worshipped, respected and feared. These attitudes are manifested through rituals, sacrifices and observation of taboos.”

“The beliefs and practices associated with the physical features play several roles. One is an environmental conservation role,⁶⁷⁴ another is a security role, and the other is the mental health role.

... The River Nile (Kiira), its rapids, islands and rocks and bank play a central role in the religious (traditional) lives of the inhabitants of Wakisi subcounty.

... We identified four categories of religious and quasi-religious objects.

i. The first category includes the natural ecological objects such as islands, the Nile, streams, trees and rocks.

⁶⁷³ RCDAP 2001, p. 102, states that in 1999, the Kyabazinga refers to the Bujagali Falls as “a treasured cultural site would be lost.” And in June of 2000, the Kyabazinga Institution presented a statement to the Open Forum held in Washington that “Bujagali Falls is a very important cultural site to the Institution of the Kyabazinga of Busoga.”

⁶⁷⁴ The recognition of this “environmental conservation role” is noteworthy. The Panel notes that there is substantial literature and practice highlighting the importance of sacred sites for and as part of conservation objectives, individually and collectively, as well as for inter-related spiritual and cultural value. IUCN Guidelines for Protected Area Management Categories, referred to in the definition of Critical Natural Habitat under OP 4.04, state that a Category III Protected Area is an “[a]rea containing one, or more, specific natural or natural/cultural feature which is of outstanding or unique value because of its inherent rarity, representative or aesthetic qualities or cultural significance.” (emphasis added). The current draft revised IUCN Guidelines amplify on this element. They note that sacred sites have “. . . intercultural and crosscutting values which, in turn produces equitable synergies between spiritual, cultural and natural diversity in support of more holistic conservation objectives,” and provide that “Category III Protected Areas could include: . . . **Natural-cultural sites:** such as the many forms of sacred natural sites (sacred trees or groves, springs, waterfalls, mountains, sea coves etc) of importance to one or more faith groups. **..Cultural sites with associated ecology:** where protection of a cultural site also protects significant and important biodiversity, such as archaeological/ historical sites that are inextricably linked to a natural area.” See draft of revised Guidelines for applying protected area management categories, IUCN, January 2008, pp. 86, 28). On the topic of “The Importance of Sacred Natural Sites and Cultural Landscapes for Biodiversity Conservation”, UNESCO refers to the “biological-cultural diversity found in sacred sites”, and highlights the following element of this relationship: “In order to secure and maintain the support of indigenous and local people in the conservation of biodiversity, examples of the traditional conservation of sacred sites and cultural landscapes need to be increasingly recognized and disseminated as alternative models of sustainable development, which build upon traditional foundations...” UNESCO, People Biodiversity and Ecology, www.unesco.org.

ii. *The second category involves the shrines constructed by diviners for the conducting various rituals.*

iii. *The third is burial places.*

iv. *The fourth involves animate objects like strange snakes, leopard, and tortoise.*"⁶⁷⁵

604. A companion study on the East bank based on dozens of focus group interviews make more than seventy references to local medicinal herbs, several stating "local herbs", which is evidence of a herbalists tradition that may warrant an ethno-botanical investigation to understand the importance of the site to the people's health and healing. Bone sitters and birth attendants are noted as using "local herbs" There are also numerous references to, individual named trees (e.g. Muvule tree) with special significance, not only simply spiritually but also in terms of their ecological functions (medicinal uses).⁶⁷⁶
605. As mentioned above, OP 4.04 states that the Bank does not support projects that, in the Bank's opinion, involve the significant conversion or degradation of critical natural habitats. The Panel notes that this aspect of the text ("*in the Bank's opinion*") indicates, *inter alia*, the need for and importance of the considered judgment of the Bank on this crucial question. This phrasing does not imply or give Management a blank check to apply or not certain policy provisions to a specific project but rather requires Management to form and provide expressly an opinion on the issue in question, which must be consistent with the objectives of the applicable policy. This is particularly relevant in view of the controversy surrounding these issues in the present Project. The Panel did not find sufficient documentation that would have permitted Management to make such a considered judgment.
606. The Panel finds that the Bujagali Falls area is a sacred place, like a sacred grove, recognized by the Basoga, a traditional local community, for its high cultural and spiritual significance and inter-related ecological features and values. **In this context and for the reasons described above, the Panel finds that the Bujagali Falls area may be regarded as a critical natural habitat for purposes of OP 4.04.** The Project entails flooding of the Bujagali Falls area. Bank policy regards inundation as a form of significant conversion or degradation.
607. In light of the above, the Panel finds that the Project record does not provide sufficient discussion as to why the area was not considered a critical natural habitat. Nor do Project documents explain the Bank's "opinion" that the Project would not

⁶⁷⁵ The River Nile and its Significance to Traditional Religion and Practices of the Inhabitants of the River Bank in Wakise Subcounty. AES Consultant September 18, 2000, p. 19, 31.

⁶⁷⁶ Munene, John. "The River Nile and its Significance to Traditional Religion and Practices of the Inhabitants of the East River Bank in Subcounty," p. 15. Commissioned by AES in 1998. Other important natural and ecological features and values of the Bujagali Falls area are described in Chapters II and IV of this Report.

involve significant conversion or degradation of a critical natural habitat. **Considering the known spiritual importance of the Project area, without such an explanation, one could also arrive at an opposite conclusion, i.e. that the inundation may be regarded as resulting in the significant conversion of a critical natural habitat which would be in violation of OP 4.04. The Panel finds that omitting the reasons behind an opinion of not declaring the Falls a critical natural habitat is not consistent with the objectives of OP/BP 4.04. The Panel finds that there is an overriding need for the Bank to address these issues in a coherent and well-founded manner to ensure compliance with Bank policies.**

I. The Cultural Property Management Plan (CPMP)

608. Throughout the interaction with Project, the Busoga spiritual leaders have acted in a manner consistent with their belief systems as described in non-project associated ethnographic information. Their concerns focused on what is perceived as possible disharmony with their cultural patrimony and to the spiritual importance of the Bujagali Falls to the Busoga.
609. It remains uncertain whether or not key stakeholders (consulted and as yet to be consulted) in the spiritual community comprehend the fact that their sacred site will be inundated and inaccessible for their traditional ceremonies. This issue extends well beyond the two spiritual mediums.
610. Management was also on untested grounds by substituting an abbreviated procedure, not provided for in Bank Policy whereby the new Sponsor would find out what remains to be done from the previous plan, which was assumed to be correct. The previous Sponsor's plan was designed under OPN 11.03, a policy framework that had been replaced by 2006. The Panel could not find evidence that the TOR for the new Sponsor were prepared in consultation with relevant experts and project-affected groups, particularly the local CSO in Jinja that has recognized expertise on the Basoga. Had the project been examined as called for in OP/BP 4.11 it is unlikely that the several non-compliance issues highlighted by the Panel would have occurred. **The Panel finds that insufficient competence was dedicated to an examination of this issue for the Appraisal.**
611. There are livelihood impacts directly associated with the disruption of the cultural resources sites that, although initially identified by AES, were subsequently ignored. Contemporary ethnographic accounts and the RCDAP 2001 describe many categories of traditional practitioners (diviners, interpreters, gourd players, immunizers, exorcists, dispensers, herbalists, caretakers/mediums, bone sitters, and more)⁶⁷⁷ who require payment in money or in-kind for their services, as in any other religion. Within the context of a traditional society, these transactions are substantial, and they should have been included in the CPMP as specified in OP 4.11.

⁶⁷⁷ RCDAP 2001, p. 105.

612. **The Panel finds that Management failed to prepare a Cultural Properties Management Plan, assuming that the work of the previous Sponsor was sufficient to meet OP/BP 4.11 guidelines.** The overall social management plan (part of the SEAP) does not include planning, resources, or budget supporting Management's response that cultural and spiritual issues will be implemented throughout the life of the project.⁶⁷⁸
613. In summary, the Project misidentified the Bujagali Falls spirits as localized, with Project impacts limited to people nearby the Project site. The TOR for the Cultural Properties Management omitted the need for consultation with the approximately 340 Busoga clans' spiritual leaders (*baswezi*) with spiritual ties to the cultural property that was to be affected by the Project.⁶⁷⁹ **The Panel finds that Management is in non-compliance with OP 4.11, by misjudging the size, location, scale as well as the nature and magnitude of the cultural and spiritual significance of Bujagali Falls. The Panel also finds that Management did not consult with key stakeholders throughout the Project cycle and is therefore in non-compliance with OP 4.11. The Panel also finds that mitigation measures were not adequate because the scope of the impact and the consultation process were incomplete.**

J. Opportunities to Address Cultural and Spiritual Issues

614. The Panel observes that there are important opportunities available to address the cultural and spiritual issues within the context of the Busoga and the OP/BP 4.11. The Busoga commonly say that "*those who are together are like gourds, they cannot avoid hitting each other.*" They recognize the value of consultation, "*to put an end to disputes, clan members usually hold a meeting and call those who have conflicts together.*"⁶⁸⁰ And they understand mitigation. The Busoga have many ceremonies to reconcile conflict and establish good relationships between those in conflict – the spirit and clan members.⁶⁸¹ Harmony is not a permanent status, it comes and goes.⁶⁸² The Panel's investigation of Busoga culture suggests the cultural problem is one of restoration of harmony and developing an appropriate consultation protocol, not simply appeasement.⁶⁸³
615. In the prior Project, Management's cultural resource strategy focused on closure, relocating, or appeasing the spirits, compensating when necessary, documenting

⁶⁷⁸ Management Response, p. 38.

⁶⁷⁹ Whether or not the *baswezi* have ties to particular spiritual medium is irrelevant to evaluation of the significance of the cultural property. The Panel notes that the 28 September 2001 ceremony, *baswezi* present participated in the ceremonies, an indication that they share a common belief in the centrality of the *Nabamba Budhagaali* spirit consistent with the ethnography reviewed by the Panel. (AESNP).

⁶⁸⁰ Reconciliation among the Basoga. 2001. Culture Research Centre, p. 47.

⁶⁸¹ Reconciliation among the Basoga. 2001. Culture Research Centre, p. 47.

⁶⁸² Celebrating the Sanctity of Human Life among the Basoga, Cultural Resource Center, Jinja, Uganda May 2004 Marianum Press Ltd., pp. 325- 326.

⁶⁸³ Celebrating the Sanctity of Human Life among the Basoga, Cultural Resource Center, Jinja, Uganda May 2004 Marianum Press Ltd., p. 325.

spiritual appeasement through signed certificates, and setting a finite timeline (originally 6 months in 2001).⁶⁸⁴

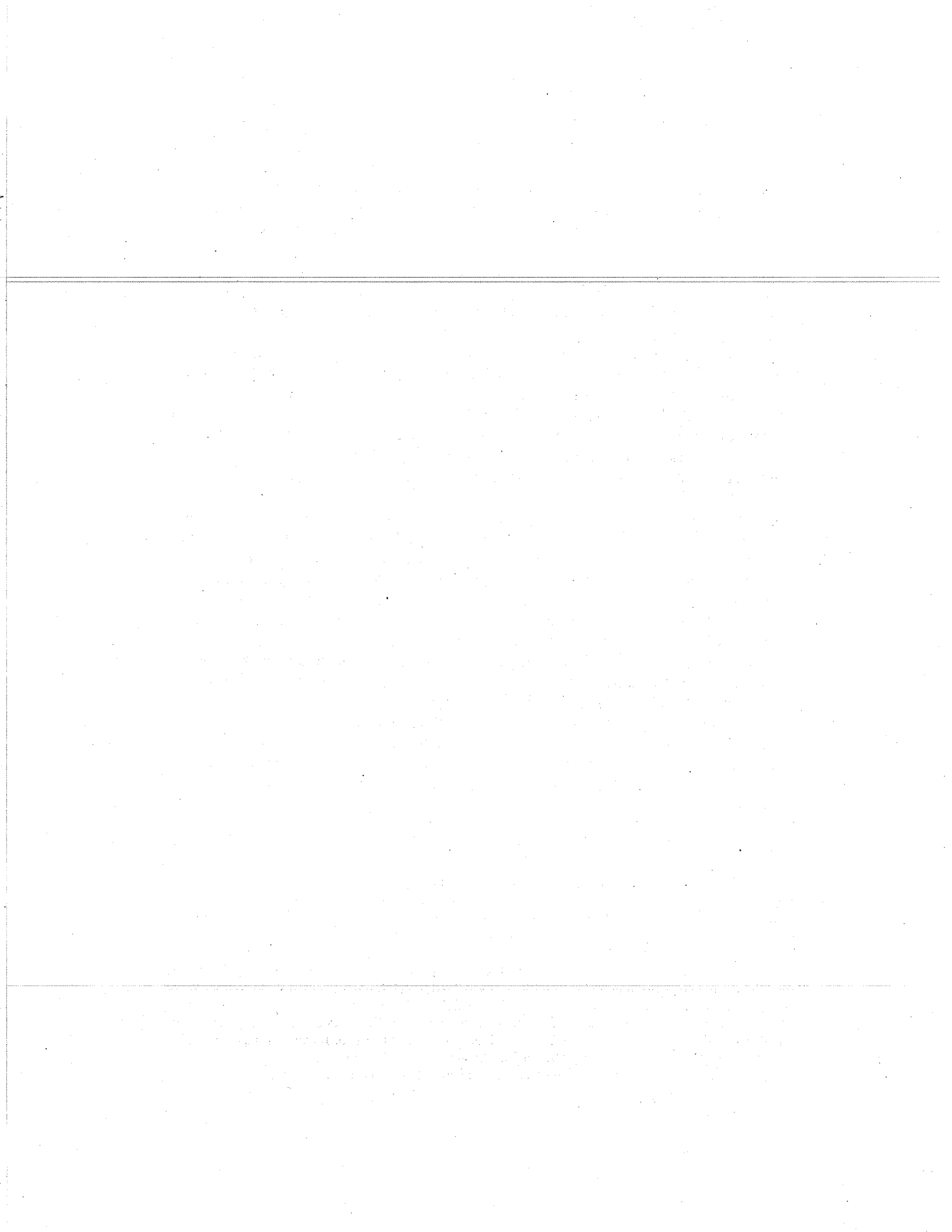
616. The current Project continued this strategy. Its only remaining cultural property resources commitment was to hold an inter-denominational remembrance service, originally proposed by the first Sponsor, AES, to honor the memories of those buried in the islands, as it was impossible to locate these graves with certainty and therefore also impossible to exhume and relocate their bodies.⁶⁸⁵ Such a service might prove valuable for some residents in the project area, but does not appear to have been developed through consultations with the Busoga spiritual stakeholders.
617. Similarly there does not exist yet a long-term strategy for sustaining a relationship between believers and the Project, nor have arrangements been negotiated allowing worship at alternative sites in the future. Panel interviews with Basoga cultural experts revealed that an outcome of a spiritual consultation may be for the spirits to stay in place and permit the project to proceed. **The Panel finds that Management has thus far failed to support negotiations that would allow enduring coexistence with spiritual elements of Busoga traditional religion and the Bujagali dam.**
618. Construction of a Bank-supported hydroelectric dam on a sacred site that is high valued to a large cultural group is rare. The Panel's expert is aware of one such project: Aguamilpa dam in Mexico, which was financed by the World Bank. The dam was constructed during the early 1990's – before the first Bujagali project was initiated.⁶⁸⁶ During Appraisal, Bank consultants discovered that the dam would inundate the highly sacred Huichol Indian site of the water Goddess Macahua at the convergence of the Santiago and Huayanamota River. Bank and Mexican anthropologists and the Chief Engineer consulted and negotiated with groups of shamans then financed a multi-year movement of the ceremonial site to a new location on the edge of the reservoir. The result was a successful mitigation, including the blessing of the dam by traditional religious leaders. Traditional ceremonies punctuated the dam construction up to and including its inauguration by the President of Mexico. Unanticipated at the time, the Huichol were later to view the entire reservoir, which is now a source of income (through exclusive control of navigation and fishing), as sacred.⁶⁸⁷

⁶⁸⁴ RCDAP 2001, p. 118.

⁶⁸⁵ HPP-APRAP, p. 23. The original AES proposal emerged in RCSAP 2001, p. 113.

⁶⁸⁶ Scott Evan Guggenheim, "Peasants, Planners, and Participation: Resettlement in Mexico. IN Anthropological Approaches to Resettlement: Policy, Practice and Theory. Eds. Michael M. Cernea and Scott E. Guggenheim. 1993. Boulder: Westview Press, pages 201-228, especially pages 221-222. Theodore E. Downing, Appraisal of the Aguamilpas (Mexico). The World Bank. 2 July 1987. Jason Stanley. Financing: Where funding arrangements meet resettlement in three Mexican dam projects. Todd M Vanden Berg. "We are not compensating rocks: Resettlement and Traditional Religious Systems". In Journal World Development (UK publication), Vol. 27, No. 2 pp 271-283. 1999. Accepted for publication August 17, 1999. Ritual Gestures in Busoga. Busoga Cultural Research Centre, Nile Gardens 5, Jinja, Uganda, Dec 2001. Pages 30-62. Jason Stanley. 2003 October. "Financing Matters: Where funding arrangements meet resettlement in three Mexican dam projects. RSC working paper. University of Oxford page 3. (D454).

⁶⁸⁷ Project Files, communication dated 9 June 2008, based on follow-up visit of May 2008.



Chapter IX

Systemic Issues Affecting Policy Compliance

619. The Panel notes that this investigation, like some earlier ones, has revealed certain systemic issues that have affected the Bank's overall compliance with its Operational Policies and Procedures in the context of this Project. Some of these issues, which the Panel believes are important to understanding some of the key findings in the present Report, are noted below.
620. At the outset, the Panel wishes to reiterate that it considers energy a crucial factor in Uganda's development. The findings of this Report, and the discussion below, do not dispute this fact. Rather, they highlight what might itself be noted as **the first systemic point to be raised by this Report, i.e., that energy production requires considerable care in order to ensure that social, economic and environmental aspects are properly considered, in line with Bank policy, to adhere to sound development practices and avoid situations where costs, including social and environmental costs, outweigh the benefits expected from what are usually sizable investments.**

A. Legacy Issues from Preceding Projects

621. This investigation encountered a situation of adverse effects on people due to a failure to assess, correct and complete resettlement actions initiated in the previous effort to develop the Bujagali dam. In particular, many people whose lands were to be flooded or affected by the anticipated reservoir inundation and construction activities were relocated at the time of the first Bujagali dam project. When the implementation of this earlier project was halted, following withdrawal of the sponsor, **many of these people were essentially left in limbo, and they did not receive key elements of the resettlement process to which they were entitled under Bank policy** (e.g., relating to livelihood and income restoration, community development initiatives). Their continuing problems, and the shortfalls in compliance, are beginning to be addressed only now, several years later, following the present Request for Inspection.
622. Legacy issues from previous funding are found in many projects. The experience with the Bujagali Dam highlights the significant problems that may arise when actions of previous projects are not carried to completion or corrected in accordance with Bank policy. The Panel notes the importance to affected people of timely actions to address any such situations that might arise.

B. Incorporating Climate Change into Project Design

623. The Panel Report indicates that important studies were done to analyze the question of climate change, even if the most significant of these were not disclosed as integral part of the Project documents. The Panel also notes that hydro-electricity, while posing its own set of social and environmental impacts, has the important

comparative benefit of avoiding the generation of greenhouse gas emissions produced by some other large-scale alternative sources of energy - - a point properly noted in Project documents and in the consideration of the proposed Project.

624. At the same time, the Panel discovered that the following conclusion was drawn from the analysis of climate change, and presented to the Board of Directors in the key Project Document, the PAD: "[. . .] *there will be no adverse effect on water release due to climate change during the life of the proposed project.*"
625. The Panel is troubled by this conclusion - - it failed to include a risk or uncertainty factor, was inconsistent with the underlying analysis, and appears to provide an overly optimistic reading of the potential effects of climate change. The Panel considers that climate change requires a change in mindset towards thinking in probabilistic rather than deterministic terms, recognizing the inherent uncertainty that surrounds climate related issues, and avoiding categorical, deterministic statements. The approach noted above is not in line with the objectives of Bank policies in support of informed decision-making.
626. The Panel notes, in this regard, the Bank's increased role in supporting action to address climate change, and its systems-level efforts to ensure that climate change risks are mainstreamed and integrated into Bank's strategic analysis and project decision making. The proper reporting of risks is of central importance in this larger context.

C. Timely Disclosure of Information within the Project Cycle

627. The Requesters have expressed concern that it was not possible for them to bring the Request at an earlier time because of the lack of transparency and disclosure during the discussions of reviving plans for a second round of investment in the Bujagali dam project.
628. This point finds support in the record of disclosure of Project documents. Project files show that the Bank was involved in the preparation of this Project since early 2005. However, the Project Information Document, which is supposed to be issued early in the Project cycle to provide factual information to the public about a project as it evolves, was not issued until January 30, 2007. The Project appraisal took place shortly thereafter in March 2007, and the Board approved the Project on April 26 of the same year. **While the Panel notes ongoing efforts to streamline procedures, this should not be at the expense of providing adequate information to the public in a timely way.**
629. Related to this, the Requesters have also raised concerns about the implications of the Project moving forward to such a degree during the investigation of their claims, which they note might result in significant issues of non-compliance and harm.

630. The Panel observes that these concerns have given the impression to affected people that the Project is a *fait accompli*, notwithstanding the possibility of findings of non-compliance and harm. The Requesters have expressed concern that this could prevent the Project from addressing significant findings in this regard. The Panel notes that this is an important process and systemic issue raised by the present Request, particularly in projects where it is alleged that irreversible harm may occur as a result of Bank's non compliance.

D. Transparency Issues and Public-Private Partnerships

631. During its field investigation, the Panel noted considerable concern among Ugandan citizens and a number of their representatives about the lack of transparency on the economic impacts of the project. While realizing the complexity of this project, and the resulting agreements that were made between private and public partners, it is of concern to the Panel that so little is known about the impact of these agreements not only by the average Ugandan citizen, but also by persons in position to comprehend the implications of the various arrangements made.
632. **Given the increase in private-public partnerships, and issues relating to access to information in this context, IBRD and IDA might incur reputational risks that are thus far not adequately handled.** Similar issues were raised with regard to the prior Bujagali project and other projects reviewed by the Panel in the past. **In this regard, the Panel notes the importance of clarifying Bank policy concerning the disclosure of all project-related documents. This is of particular relevance in public-private partnership projects where some of the documents may be concluded among private parties relying on Bank financial support.**
633. In the present context, the Panel found that there was an unduly optimistic assessment of the costs, benefits and risks of the Project, including: (i) an under-estimation of capital costs in the PAD; (ii) an under-estimation of the likely impact of the Project on tariffs; (iii) a non-recognition of the likely shortfall in UETCL revenue against the capacity charge up to 2002; and (iv) non-recognition of some key risks, notably in collection rates and exchange rates. In all of these, and especially the third category, Bank Management was substantially dependent on the work of others. In addition, the Panel found that approach to assessing alternatives to the project was insufficiently transparent, making it difficult for Bank Management authoritatively to address claims that it was inadequate and biased in favor of the Project. **As it stands, the net benefits of the Project could be substantially less than Bank Management has claimed.**

E. Critical Natural Habitats and Sacred Places - - Guidance to Staff

634. As described above, OP.4.04 defines critical natural habitats to include existing and proposed protected areas, "*areas initially recognized as protected by traditional local communities (e.g., sacred groves)*" and sites that maintain conditions vital for the viability of these protected areas. Internal guidance to staff for the application of the

Natural Habitats policy, by comparison, describes “*critical natural habitats*” as “*those Natural Habitats which are either legally protected, officially proposed for protection, or unprotected but of known high conservation value.*”

635. In practice, this particular guidance seems to suggest a more limited interpretation and application of the policy than a plain reading of its terms would warrant. As a result, areas recognized as sacred and protected by traditional local communities, but considered to be lacking a unique biodiversity and/or official protection, may not have been regarded as “*critical natural habitats.*” As described in the Panel’s Report, the Project provides an illustration of an overly restrictive application of the Policy that puts the Bank at risk of a serious violation of its policy.
636. The Panel notes that, in contrast to this apparently narrow application of the Policy, there is a strong and increasing recognition over the years, for example through the IUCN process, of the importance of sacred places both for their spiritual and cultural values, and for and as part of broad conservation objectives, both individually and collectively. . An IUCN Category III Protected Area is an “[a]rea containing one, or more, specific natural or natural/cultural feature which is of outstanding or unique value because of its inherent rarity, representative or aesthetic qualities or **cultural significance.**” (emphasis added). The current draft IUCN Guidelines amplify on this element, as described in the Report.
637. The Panel also notes as well that it addressed these same provisions of OP 4.04 brought this particular issue to the Board’s and the Bank’s attention in its recent investigation of the Cambodia forest project. The Panel Report, in a section entitled “Identification and protection of critical natural habitats,” highlighted that, according to Bank Policy OP 4.04, the status of critical natural habitats is also granted to places that are sacred and protected as such by traditional communities. The Report then states:
- “It is apparent ... that there are many spirit forests and spirit trees in forests in their locality which are important to the cultural identify of local people [footnote omitted]. This is particularly the case with indigenous communities. Thus, there are many areas within the general forest estate that need to be considered as **critical natural habitats** . . . There are also numerous documented cases of spirit forests (critical natural habitats) being logged and destroyed without any consideration of their spiritual or cultural values.”* (emphasis added)
638. The Panel observes that the Management Response to the Panel’s Report related to the Cambodia forest project does not dispute the Panel’s finding.
639. **The Panel considers that such internal guidance given to staff working in Bank-financed projects involving natural habitats and possibly critical natural habitats, like the current Project, may have sent an inadequate and overly-narrow signal on the application of the Policy. Project stakeholders would benefit from clarification on these matters.**

Annexes

Annex A Table of Findings

ISSUE	MANAGEMENT RESPONSE	PANEL'S FINDINGS
ENVIRONMENTAL ISSUES		
Adequacy of the Social and Environmental Assessments	The proposed Private Power Generation (Bujagali) Project is a new operation. There has been a fresh assessment of social and environmental aspects of the project, which has also required drawing upon former studies, where relevant.	Project has appropriately been classified as category "A", the category for projects with the most serious level of impacts. This complies with OP 4.01.
Environmental Management Plan		The fact that the Environmental Management Plan is not an integral part of the SEA that has been disclosed is a deficiency. This is not in compliance with OP 4.01.
Institutional Capacity		The requirement to support needed capacity building, which is important in the implementation of social and environmental aspects, has not been complied with in this Project.
Independent Panel of Experts		As Project is contentious and involves environmental concerns, appointment of environmental panel of international experts is warranted and the lack of such panel is not in compliance with OP 4.01.
Disclosure of Project Documentation	The World Bank Group has disclosed the project's Economic Study, BEL's SEA, the NELSAP Strategic/Sectoral Social and Environmental Assessment (SSEA), and other environmental and social documents.	Panel acknowledges that the necessary studies have been conducted and disclosed, albeit independently, and considered by Management and referred to specifically in PAD. However, failure to disclose SSEA or its relevant parts as an integral part of Project's documentation is not consistent with OP 4.01.
Cumulative Impacts of Bujagali and Existing and Future Hydro Projects Cumulative Impacts of Transmission Lines	The SSEA for the Nile Equatorial Lakes describes the criteria for assessing the social and environmental appropriateness of future hydropower developments on the Nile River in Uganda and in the entire East Africa region. Section 14 of the SSEA analyzes the cumulative impacts of several hydropower development alternatives under differing scenarios of regional grid integration. It concludes that developing Bujagali and other sites in the Victoria Nile Basin (excluding Kalagala) will not have significant cumulative environmental impacts. BEL's SEA examines cumulative impacts of Bujagali, the hydropower plants at Nalubaale, Kiira and Karuma along with	Analyses in SSEA do not provide systematic examination of potential consequences of the Nalubaale and Kiira facilities, the Bujagali Project, and the planned Karuma project all being situated on the Victoria Nile between Lake Victoria and Lake Kyoga. Panel finds that analyses are not sufficiently backed by evidence and include opinions rather than careful fact-based examinations of additive effects of impacts from present and foreseeable projects. Panel finds that neither SSEA nor SEA have addressed cumulative effects of existing and planned projects in meaningful way. This is not in compliance with OP 4.01.

ISSUE**MANAGEMENT RESPONSE****PANEL'S FINDINGS**

the transmission facilities therewith on the Victoria Nile in Uganda.

Panel finds that the failure to consider mitigation measures, which would reduce social and environmental impacts of the transmission line, does not comply with OP 4.01 and OP 4.12.

Environmental Impacts on Fisheries and Aquatic Systems

Building on relevant work conducted to date, BEL's consultants conducted further field studies and analyses where the need for updated information had been identified, such as water quality, fisheries, terrestrial ecology, resettlement and compensation, and cultural resources. The reach of the Victoria Nile that will be affected by Bujagali is not considered to be critical habitat for any fish species of conservation importance.

Based on its review of relevant research studies, Panel observes that the status of fish species inhabiting both Lake Victoria and Victoria Nile is disputed and that ongoing research is desirable. However, significant effort has been devoted to study these fish in the reaches of the Victoria Nile that will be affected by the Bujagali Hydropower Project.

Kalagala Offset Agreement

GoU has agreed to reconfirm its commitment to the Kalagala offset that it made under the previous effort to develop the Bujagali project. This offset commitment is consistent with the mitigation provision for Kalagala Falls, and also recommended in BEL's SEA Report. The offset provision for Kalagala Falls and the adjacent natural habitat will be included as a GoU obligation in the IDA Indemnity Agreement for the Bujagali project.

Panel finds that Management acted consistently with OP 4.01 and OP 4.04 as these relate to assessment of likely consequences of Project on fish stocks in the Upper Victoria Nile and Lake Victoria.

Panel finds that there is evidence that an offset has been created, to meet OP 4.04, but there is no evidence of the offset site being subject to appropriate conservation and mitigation measures in conformity with sound social and environmental standards. Project is thus not in compliance with OP 4.04. Panel finds that the Kalagala offset may not achieve the purpose for which it was set aside, and this is not consistent with the provisions of OP 4.04. Panel notes with concern that proposed Environmental Mitigation and Monitoring Plan is silent on the need for monitoring of enhancement and offset plantings. Monitoring of replacement plantings has not been included in the terms of reference of the witness NGO appointed to monitor Project compliance with IDA conditionalities. This is not consistent with OP 4.04.

Safety of Dams

A Dam Safety Panel (DSP) has been established, which includes two of the three members of the previous panel set up under the earlier effort to develop the Bujagali project. [...] Management considers the current project in compliance with the OP (OP 4.37).

Panel finds that Management has complied with the procedures set forth in OP 4.37.

HYDROLOGICAL AND CLIMATE CHANGE RISKS

Appropriateness of Hydrological Data

The hydrology of the Victoria Nile is complex due to meteorological influences,

Panel's hydrology expert has concluded that hydrologic data sets used in Project

ISSUE**Series used in Project Design****MANAGEMENT RESPONSE**

the rainfall-runoff process, the scale of the evaporation losses, and the interaction between rainfall and evaporation within the watershed. The available reservoir inflow record comprises 106 years of data. It includes several significant hydrological cycles, among which the seasonal and ten year cycles are the most apparent. Given the length of the hydrological record at this site and studies on climate impacts, the hydrological risk for energy generation is considered to be definable from the available data set.

PANEL'S FINDINGS

design constitute a reliable data series and its variability over time is a natural condition, which can be observed in other hydrologic series of different parts of the world, when hydrologic series is long enough. Panel finds that this provides an appropriate baseline for analysis of environmental and economic issues, in compliance with OP 4.01.

Impact of Hydrologic Risk on Energy Output

The Economic Study addresses the economic viability and risk analysis of the Bujagali project. The key elements assessed in the economic analysis include [...] the hydrology of Lake Victoria and its impact on hydropower generation. [...] Risks arising from varying degrees of future uncertainty regarding these variables have also been evaluated.

There seems to be a discrepancy in Project documents: PAD and Economic Study differ as to which water release regime will be in effect once Bujagali becomes operational, the "Agreed Curve" or the "Constant Release" rule. This discrepancy brings into question the data basis for Project's economic analyses, and is likely to have resulted in a more positive conclusion to the Economic Study than would have been the case under the Agreed Curve scenario. This is inconsistent with OP 10.04, the provisions of which require Management to provide an accurate picture of the Economic Study (based on the Agreed Curve), and indicate whether this affects relevant conclusions. Panel notes that this contradiction in Project documents has a material implication not only for economic viability of Project and provisions of OP 10.04, but also on lake levels of Lake Victoria, since different operational rules result in different time-profiles and variance of water levels.

Potential Impact of the Project on Lake Victoria

With joint operation of the existing hydropower and the proposed project, generation of the same energy output as currently generated by Nalubaale and Kiira would only require 45% of the current water release from Lake Victoria. Management acknowledges that BEL will not control the release of water from Lake Victoria, but is of the view that it is in the interest of the GoU to ensure that Bujagali and the Nalubaale/Kiira dams are operated efficiently.

Panel notes importance of assessing changes in operating regimes and extending area of influence of the Project to Lake Victoria. Panel finds that SEA analysis did not comply with OP 4.01 in defining the area of influence of the Project because Project impacts on the changing levels of Lake Victoria were not assessed. Panel notes the importance of making the structure for governance of water releases from Lake Victoria clear and transparent to all stakeholders.

ISSUE	MANAGEMENT RESPONSE	PANEL'S FINDINGS
Climate Change Risks	<p>The broader climate change (and hydrology) aspects were addressed in different studies which have also been publicly disclosed. The SSEA analyzed in detail the impacts of climate change on power development options in the Nile Equatorial Region, including Bujagali.</p>	<p>Panel finds that the possible effect of climate change on hydropower projects on the Victoria Nile has been seriously considered in the SSEA. This is in compliance with OP 4.01. Management does not appear to have ensured that Economic Study drew on the much more thorough analysis in SSEA. Panel finds that this is not compliant with OP 10.04. Panel is aware of the limitation of known technology in evaluating climate change scenarios and that the analysis of climate change is an evolving science, where gaps remain. Indeed, this situation makes all the more troubling the PAD's categorical assertion, without any reference to risk and uncertainty, that there will be no adverse effect on water release due to climate change during Project life. This failure to express climate change as a risk factor is not consistent with OP 10.04. Panel notes the importance of continued attention and analysis to the effect of climate change on flows and hydropower generation on the Victoria Nile.</p>

ECONOMIC AND ENVIRONMENTAL ANALYSIS OF ALTERNATIVES

Economic Analysis of Alternatives	<p>Management considers that economic, financial, safeguard, technical, governance, and other required analyses to date are compliant with relevant Bank policies.</p>	<p>The terms of reference for the Economic Study call for comprehensive update of earlier work.</p>
Demand Forecasts and Electricity Tariffs	<p>Three load forecasts were prepared for the current project, taking into account actual data over the past several years and the comments made by the Inspection Panel with regard to ensuring an adequate range between the high and low load forecasts (see the Economic Study).</p>	<p>There is evidence that Management addressed demand forecasting for the current Project seriously. It commissioned a detailed, sophisticated review in 2004, which stressed the importance of thorough revision of load forecasts.</p>
Alternatives Considered: <ul style="list-style-type: none"> • Geothermal Potential 	<p>A detailed review of geothermal prospects was conducted as part of the project analysis of alternatives. The analysis concludes that historical estimates of the geothermal potential of Uganda being as much as 450MW are substantially overstated. The true potential is likely to be in the order of only 10% of this figure. [...] These findings led to the inclusion of a 40MW geothermal power plant, to be commissioned in mid-2011, in the least-cost analysis.</p>	<p>Panel notes the statement in Management Response that additional studies and shallow drilling are included under the ongoing Power IV Project, to assist GoU in assessing geothermal prospects at several sites in Western Uganda. Additional information resulting from this work would help resolve conflicting views regarding geothermal potential in Uganda, and may have significant bearing on economic analysis of alternatives.</p>
<ul style="list-style-type: none"> • Small and Medium Scale Alternatives 	<p>The Bank is providing considerable support to Uganda in development of hydropower potential. This includes large-scale hydro</p>	<p>Panel notes that information in Economic Study and PAD relating to knowledge about and potential of smaller scale and/or</p>

ISSUE**MANAGEMENT RESPONSE****PANEL'S FINDINGS**

and the ongoing ERT Project, which is supporting mini-hydro development for grid-connected and off-grid applications. [...] The Bujagali Economic Study included all hydro projects that are either currently providing power to grid, or suitable for grid connection and which are actively under development and thus suitable for consideration in planning timeframe.

distributed generation alternatives did not clearly establish that available studies and data had been identified and evaluated to decide whether further consideration was required. Panel finds that Economic Study and PAD did not demonstrate full compliance with OP 10.04 requirement to evaluate alternatives.

- Oil Resources

While oil resource discovery was at a very early and unproven stage when the Economic Study Final report was completed, Panel finds that the existence and potential of this resource should have been reviewed in the discussion of alternate supply options.

Project Costs

The World Bank Group and other lenders have taken several steps to ensure that costs of Bujagali reflect current market conditions. BEL conducted its procurement of the EPC contractor under the supervision of the EIB.

Panel finds that, although certain parts of the analysis were carried out thoroughly, to meet all requirements of OP 10.04, PAD should have included explanation and supporting evidence of why all parties had concluded that substantial project cost variations would not alter conclusions of the Economic Study. Panel observes that the foregoing analysis does not suggest that the updating of the EPC cost figures in the PAD does not obviously disadvantage Karuma relative to Bujagali.

Assessment of Least Cost Options for Expanding Power Generation

Process of testing the sensitivity of the least cost expansion plans with and without Bujagali appears to have been carried out thoroughly. The assumed increase of 10 percent for the "high Bujagali capital cost scenario" compared with the "base scenario", with an assigned probability of only 20 percent, was inappropriately low. Nevertheless, a sensitivity test suggested that the Economic Study's conclusions that Bujagali was the least-cost option were robust for an increase of almost 50 percent in capital costs.

Panel finds that, in order to comply with the requirements of OP 10.04, the PAD should have qualified its statement about the projected drop in tariffs to take into account the impact of EPC and transmission cost increases.

Panel considers that the relationship between estimates in Economic Study and PAD's financial analysis should have been

ISSUE**MANAGEMENT RESPONSE****PANEL'S FINDINGS****Externalities**

presented more clearly and transparently in PAD.

Panel finds that the limited presentation and discussion of these costs in Economic Study did not succeed in demonstrating full compliance with OP 10.04. In Panel's view, to meet all requirements of OP 10.04, Economic Study should have examined, in more detail, the potential of changes in damage from other pollutants than CO₂, even if it might have proved difficult to value them.

Hydro-power Location Alternatives within Uganda

Management is firmly convinced of the appropriateness and breadth of analysis undertaken to identify and assess alternatives for expansion of Uganda's power sector. The economic analyses considered options that had realistic potential for availability in a timeframe similar to the Bujagali project, and which, therefore, could be considered as alternatives.

Panel finds that Management did not ensure that cultural and spiritual matters were properly considered when comparing the Bujagali and Karuma alternatives, as required by OP 4.01. This is especially relevant in light of the significant cultural and spiritual importance of Bujagali Falls to the Busoga people. Lack of proper consideration of cultural and spiritual matters in this comparison had important consequences, in that it appears to have led to the conclusion that there was little difference between the Bujagali and Karuma sites and that therefore economic and financial aspects of the options should become the determining factor in selecting the preferred option.

Alternative Project Configurations at Bujagali

Panel notes that a range of alternatives have been considered in these studies. Panel is concerned, however, that analysis unduly narrowed consideration of alternatives on the basis of *a-priori* judgments rather than exploring all technically feasible options, including those that would not involve flooding Bujagali Falls and thus have lower social and environmental costs, and laying them out in a systematic way along with their economic, social and environmental benefits and costs, so that judgments on optimal alternatives could be made with full understanding of trade-offs involved. This is not consistent with OP 4.01's provisions that feasible alternatives should be explored systematically to meet basic Project objectives, and may have led to inadequate consideration of alternatives that met Project objectives while avoiding social and environmental costs associated

ISSUE**MANAGEMENT RESPONSE****PANEL'S FINDINGS**

with flooding Bujagali Falls.

ECONOMIC EVALUATION: POVERTY REDUCTION AND RISK**Affordability and Poverty Reduction**

Management states that Project will allow industrial and commercial users to increase their output and efficiency, and therefore their profits, thereby enhancing economic growth. [...] These developments are expected to have positive impacts on poverty alleviation in Uganda, directly through the availability of power to newly connected households and indirectly through employment creation. [...] According to the Economic Study, Bujagali's commissioning in 2011 would enable the cost of power to end-users to fall to US¢16/kWh in 2006 money. This would improve the affordability of power to end users.

Economic Study provides quantitative assessments of both costs and benefits, which suggest that Project would have largely positive direct impacts on Uganda's economy and enhance national economic activity. In this sense, and bearing in mind reservations about the cost estimates of the Economic Study, from a macroeconomic perspective, analysis appears to have complied with the requirement in OP 1.00 to show that Project is likely to contribute to "broad based growth." In terms of affordability of electricity generated under the Project, Panel notes that the US¢16/kWh figure provided in Economic Study is likely to be an underestimate of the cost of electricity with Project. Further, Management Response does not discuss the different EPC cost estimates cited in the Economic Study and the PAD or make clear their implications for the tariff estimates. Panel did not find evidence in Economic Study or PAD of any estimates of the economic impact of Project on low-income households. Panel considers that such analysis, in addition to the broader macroeconomic analysis undertaken in Economic Study, should have been made during appraisal to provide a better understanding of whether the objective of poverty reduction envisaged by OP 1.00 would be achieved.

Revenue Projections and the Institutional Framework

Panel notes that PAD's projection the GoU support needed to power utilities over period 2005-2016 appears misleading and seriously at odds with the projected revenue stream of Project. Panel notes that the likely tariff variations and possible revenue shortfalls or surpluses and their implications for UETCL, UMEME, and government net revenues are key sustainability concerns. Panel notes that the revenue gap that UETCL, in particular, will face, may lead to large, urgent demands on GoU Treasury and potentially on the Bank via its Guarantee.

Infrastructure Funds

In light of the scale of revenue requirements, financial risks accepted by UETCL and GoU, and the scale of

ISSUE

MANAGEMENT RESPONSE

PANEL'S FINDINGS

subsidies and guarantees involved in Bujagali, Panel notes that Management should have explored further ways of managing and addressing financial and governance risks, in the interests of project sustainability in accordance with OP 10.04.

Power Purchase Agreement

Panel finds that for the Sponsor and its lenders, the terms and conditions of the 2005 PPA, especially those set forth in Annex D, seem to represent a low-risk (though potentially disputatious) means of managing and recovering costs which are, by definition, subject to uncertainty. For UETCL, the power purchaser and its guarantors, by comparison, it means that there is no ceiling on payments on capital costs and whether or not Project delivers the direct economic benefits offered over 30 years, in terms of costs and tariffs, is to a significant extent, outside their hands.

Distribution of Risks

Panel observes that the high allocation of risk to UETCL and eventually GoU increases the possibility that Project may not achieve the broad objective of sustainable development and poverty reduction embodied in Bank Operational Policies and Procedures. Panel is concerned that any additional GoU resources spent in the financing of the development and operation of Project may lead to decreased resources available for social and other priority development programs.

SOCIAL ISSUES-- INVOLUNTARY RESETTLEMENT

Assessment and Action Plan

Panel found no formal monitoring or evaluation report supporting the assertion that involuntary resettlement was "largely completed," the reason stated for forgoing full RAP preparation, as required by OP 4.12. Panel finds that the hydropower APRAP failed to assess and update the previous 2001 RAP and provide additional new information as required to complete the RAP requirements to current standards. This does not comply with OP/BP 4.12. This led to Action Plans that did not meet the policy objectives and requirements.

Baseline Socio-Economic Data

Management considers that BEL has carried out social and environmental evaluations and documentation that are in full compliance with World Bank policies.

Panel notes that the survey conducted by BEL cannot be considered a census of economic or social conditions as defined in OP 4.12. In this sense, Management's

ISSUE**MANAGEMENT RESPONSE****PANEL'S FINDINGS****Livelihood Restoration**

claim that the Project took the first Panel's report findings into account in preparation of the current Project is not accurate because significant weaknesses in the process of gathering baseline data information were similarly identified in the 2002 Panel Investigation Report. Panel also finds that the approach to consultations with people who had moved and had been compensated is not consistent with involuntary resettlement policy.

Method to Assess Livelihood Restoration and Address Project Delay

Panel observes that effects of the original displacement and of the ensuing delay have not been fully reflected in the APRAP. Overall, Panel finds Project in non-compliance with the mandate of Bank Policy on Involuntary Resettlement to improve or at least to restore, in real terms, the livelihoods and standards of living of people displaced by the Project.

In Panel's view the methodology used to assess livelihood restoration in the context of Project, while suggestive of issues, cannot substitute for an economic analysis of livelihood risks and restoration. Panel also finds that Management did not assess and include into the APRAP a methodology for restitution of unintended socio-economic costs incurred by displaced persons resulting from project stoppage/delay. This is not consistent with OP 4.12.

Real or perceived unfulfilled promises in the prior Bujagali Project

Panel notes that lack of clear communication with affected people to address concerns of displaced persons with regards to the commitments made by AESNP, risks leaving the project with contentious, unresolved issues.

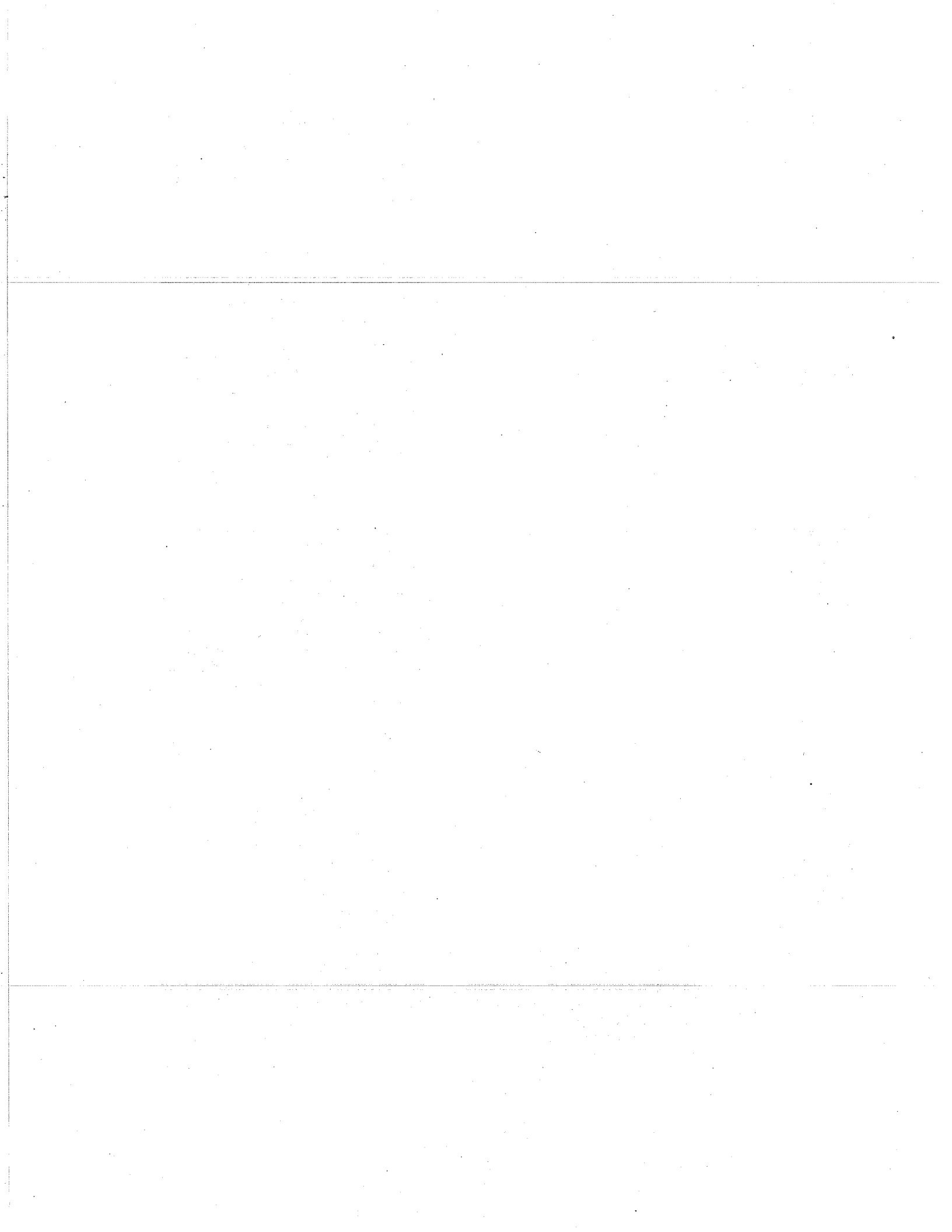
Specific Livelihood Risks: Fishing and Agriculture

Panel finds that Project failed to provide adequately for loss of livelihood associated with loss of fishing and agriculture, in non compliance with OP 4.12.

Compensation

Management notes that people who will be affected by the transmission line—part of the project's associated Interconnection Project that is expected to be financed by the African Development Bank (AfDB)—must be compensated and resettled satisfactorily.

Panel concurs with the APRAP's findings, which validate the claims of the PAPs that full replacement value compensation may have not taken place in the prior project.



ISSUE

MANAGEMENT RESPONSE

PANEL'S FINDINGS

Land Titles

Panel finds that APRAP conclusion related to the necessity of issuing land titles to people resettled under prior project is consistent with OP 4.12. Panel notes however that there seems to be no agreed timetable for issuance of these titles.

Vulnerable Peoples

The APRAP determined that past resettlement did not provide for vulnerable people and has recommended actions to ensure that these people's needs are addressed going forward.

Panel notes that the absence of focus on livelihood risks to the vulnerable is evident in that none of the proposed assistance measures addresses vulnerable tenants/sharecroppers or children. Additionally, proposed assistance measures do not address the question of sustainability beyond limited Project support. Panel finds Project out of compliance with vulnerable peoples provisions of OP 4.12.

Housing and Electricity for Affected People

During its field visit, Panel verified that the standard of living of displaced households who resettled in Naminya and Nansana has improved with respect to housing. On the other hand, APRAP discovered some shortcomings in housing condition and Panel observed physical problems and deterioration with some houses and structures. Panel is concerned that no physical action is planned with regard to houses at the resettlement site. Panel also notes that, given the context and previous expectations of affected people, the broad statement made by AES regarding electricity provision may have reasonably been interpreted as a promise to deliver electricity connections to affected households. Panel notes that this is an outstanding controversy of high importance to affected communities.

Investment Resources for Livelihood Restoration

Panel's review of the limited scope of livelihood restoration programs indicates that they may be under-budgeted. As livelihood restoration instruments develop, Bank policy provides that Management is to monitor resettlement budget to ensure sufficient resources.

Sharing in Project Benefits and Community Development

According to the APRAP, US\$497,000 will be needed to finance the programs to complete resettlement and income restoration. Bujagali Energy Limited (BEL), the project developer, is committed to providing US\$2.4 million for community development over a five-year period

Panel finds that with limited funding, broad criteria for eligibility and lack of specificity, CDAP programs do not assure compliance with OP 4.12

ISSUE

MANAGEMENT RESPONSE

PANEL'S FINDINGS

following the start of construction.

Indigenous Peoples

Management considers that a clear demarcation line exists between the Basoga and ethnic groups in other African countries that the Bank has defined as indigenous. The Basoga are a large and influential group within Uganda. Considering the Basoga and all other Ugandan groups as indigenous peoples would defeat the intended objectives of OP 4.10.

Panel did not find any evidence that Management violated provisions of Bank policy on Indigenous Peoples, with regard to the Basoga people.

CULTURAL AND SPIRITUAL VALUES

Physical Cultural Resources

There have been extensive consultations on various social aspects of the project, including spiritual and cultural issues.

Panel finds that Management failed adequately to consider or implement alternatives to avoid project-related impacts on Busoga spirituality and culture. Most of those who believe in the significance of the Bujagali Falls spiritual site do not live in the immediate vicinity of the Project. Project also failed adequately to consult with Busoga spiritual clan leaders associated with one or more high status Spirits about significant cultural patrimony of Bujagali Falls.

Misidentifying Bujagali Falls as a local cultural resource, misaligning its consultation strategy, and failing to prepare a new Cultural Property Management Plan compounded errors and muddled mitigation. Resultant problems included loss of objectivity of the Sponsor, impatience, assignment of pecuniary motives to stakeholders, cost cutting, culturally inappropriate mitigation efforts, and most importantly, a misunderstanding that the Bujagali Project is ensconced in a long-term relationship with its new neighbors and their spirit world.

Management unnecessarily and inappropriately took sides in a spiritual controversy of a religion in which millions of Ugandans believe. The Panel finds this action by Management to be non-compliant with the OP 4.11.

The Panel finds that Management assumed that what they called the "Bujagali spirits" were restricted to the Project construction and flooding area, in contravention to the BP 4.11 requirement that they work with

ISSUE

MANAGEMENT RESPONSE

PANEL'S FINDINGS

and assist the Borrower to identify the spatial and temporal boundaries of the cultural resources affected by the project. This did not comply with avoidance and mitigation requirements of OP/BP 4.11.

Panel finds that the culturally and spiritually affected people were not adequately identified as required by Bank policy.

Critical Natural Habitats

Project documents indicate that the Project is not significantly converting or degrading a "critical natural habitat" as defined in OP 4.04.

Panel finds that the Bujagali Falls area may be regarded as a critical natural habitat for purposes of OP 4.04.

The Panel finds that the Project record does not provide sufficient discussion as to why the area was not considered a critical natural habitat. Nor do Project documents explain the Bank's "opinion" that the Project would not involve significant conversion or degradation of a critical natural habitat. Considering the known spiritual importance of the Project area, without such an explanation, one could also arrive at an opposite conclusion, i.e. that the inundation may be regarded as resulting in the significant conversion of a critical natural habitat which would be in violation of OP 4.04. The Panel finds that omitting the reasons behind an opinion of not declaring the Falls a critical natural habitat is not consistent with the objectives of OP/BP 4.04. The Panel finds that there is an overriding need for the Bank to address these issues in a coherent and well-founded manner to ensure compliance with Bank policies.

Cultural Property Management Plan

The management of cultural and spiritual issues is part of the overall social management plan (part of the SEAP), which will be implemented throughout the life of the project. Implementation will be monitored/supervised by the World Bank Group throughout the loan/contract periods. A Ugandan NGO, "Interaid," was contracted to carry out independent monitoring during AES implementation of its RAP. BEL has committed to

Panel finds that Management failed to prepare a Cultural Properties Management Plan, assuming that work of previous Sponsor was sufficient to meet OP/BP 4.11 guidelines. Panel finds that Management is in non-compliance with OP 4.11, by misjudging the size, location, scale as well as the nature and magnitude of cultural and spiritual significance of Bujagali Falls. Panel finds that Management did not consult with key stakeholders throughout

ISSUE

MANAGEMENT RESPONSE

PANEL'S FINDINGS

independent monitoring, also through Interaid, of all aspects of the project, including those related to cultural heritage.

Project cycle and is, therefore, in non-compliance with OP 4.11. Panel finds that mitigation measures were not adequate because the scope of the impact and the consultation process were incomplete.

Annex B Independent Review of Contractual Arrangements

INDEPENDENT REVIEW OF CONTRACTUAL ARRANGEMENTS

Graham Hadley, Economic and Commercial Consultant, UK

1. SCOPE OF REVIEW

1.1 This review was carried out over the period July 2007 – January 2008 at the request of the World Bank Inspection Panel. The main documents reviewed were the Power Purchase and Implementation Agreements of December 2005 and of December 2007, as amended; the Report and Recommendations of the Inspection Panel of May 2007, which included the Request for Inspection (March 1 2007) and the subsequent Management Response; Burnside's SEA (Executive Summary) of December 2006; Power Planning Associates' Economic and Financial Evaluation Study of February 2007; The World Bank's Project Appraisal Document, April 2007; Linklaters' Preliminary Review of Basic Contractual Documents, March 2006; the Siemens Reports on the Bujagali Transmission Interconnection of July and August 2006; the African Development Fund's Appraisal Report on the Bujagali Interconnection Project (BIP), February 2007; AfDF's Loan Agreement for the BIP of October 2007; and a letter of approval of May 2007 from JBIC setting out the terms of their loan to the BIP.

Because my terms of reference request, inter alia, a comparative analysis with the prior Bujagali project, I have also revisited the Power Purchase Agreement (PPA) for prior Bujagali project and associated documents of December 1999, and my previous report to the Inspection Panel: "Independent Review of the Executed Agreements, 8th February 2002". In addition I owe thanks to World Bank and African Development Bank staff who have provided working papers and otherwise assisted me in addressing particular questions I have raised with them.

1.2 My report is subject to some important qualifications, mainly arising from the limited time available:

- I have been unable to study the full project documentation.
- Whereas in my 2002 report I was able to cite international benchmarks against which to assess the capital costs, I have not been able to do the same for this Project. My comments on the cost increases rest only on general observation of recent cost trends in the power business.
- The recent physical and documentary developments – including financial close in December - may have economic or financial consequences which I have not been able fully to take into account.

For these reasons any criticisms expressed should be regarded as provisional, and, pursuant to my terms of reference, I have offered observations and suggestions rather than recommendations.

1.3 My terms of reference include a comparative analysis of the contractual framework for this Project as compared with the prior Bujagali project, focusing inter alia on costs, risks and risk-sharing, financing, tariffs and currency issues. The report concentrates on those aspects – costs and their implications for tariffs, and risks and how these are shared – which I believe should be of most interest to the Inspection Panel and the World Bank Group - which also represent the most significant changes from the earlier project.

2. EXECUTIVE SUMMARY

Background and Developments since the prior Bujagali project

2.1 Recent increase in retail tariffs and unit generation costs make it intrinsically more likely that the Present Project will allow tariff reductions, than was the case for prior Bujagali project (3.2)

2.2 The strategic case remains strong: optimum use of Nile waters and provision of a major increment to generating capacity, to meet growing demand from both existing and newly connected customers (3.3)

2.3 Advantages in risk mitigation have been included, as compared with the prior Bujagali project:

- (a) World Bank Group links with one of the equity partners (Industrial Promotion Services, Kenya);
- (b) New Project-related studies, notably on hydrology;
- (c) Government-backed scheme for resettlement;
- (d) a “safety net” allowing public sector buy-back in the event of prolonged very low hydrology (4.1 and 8)

Costs, Revenues and Risks for BHP and BIP

2.7 The increased EPC cost (at the time of the PAD) of the present Bujagali Project, as compared with the prior project does not of itself suggest an excessive price, given world power plant cost trends and perceived risks in Uganda. However, there appears to have been a significant increase over the bid price in the past year, reflected in the December 2007 contract price of US\$564.4m (5.2-5.4)

2.8 The Economic Study – the basis of the PAD’s appraisal – has taken the lowest available cost estimates for both the BHP and the BIP. As a consequence, it is possible that the comparison of generation options was unduly favourable to Bujagali; and the likely tariff impact was too optimistic (5.5-5.8)

2.9 In addition, the PAD may underestimate the risk of further EPC cost increases, especially in the light of the December 2007 amendment to the PPA, and of a share of these passing through into the BHP capacity charge. Compared with the prior Bujagali project, the power purchaser bears a greater share of financial risk, mainly through the absence of a stipulated maximum capacity charge in the PPA (5.9-5.10)

2.10 Further, forecast sales revenues and the rate of recovery of full supply costs from customers (“recovery rates”) may fall short of forecasts, increasing the risk that UETCL will suffer a revenue shortfall against the BHP PPA requirements in the period 2011-23, triggering the GoU guarantee (5.8 and 6.5)

2.11 Financial and economic risks to the Project, if realised, will result in higher tariffs or higher subsidies or a combination of both. Such risks are, principally:

- (a) Cost escalation;
- (b) Currency depreciation;
- (c) Prolonged low hydrology;
- (d) Lower demand growth;
- (e) Lower or static collection rates;
- (f) Affordability;

2.12 Lesser risks include:

- (a) Construction delay;
- (b) Withdrawal of the developer/operator;
- (c) Poor plant performance (8)

Overview

2.13 The strong strategic role of the Project has been recognised in the increased and wider involvement of public authorities, giving the Project robustness (9.1)

2.14 However, the direct economic benefits of the BHP and BIP projects may have been over-estimated. While BHS /BIP may still, bearing in mind recent upward movements in hydrocarbon prices, be the lowest-cost option for generation, it may cause upward rather than downward pressure on retail tariffs (9.2)

2.15 The balance of interest between customers and UETCL (and its guarantors) will be determined by the price selected for the levelised tariff once the plant commences operation. It may be prudent to set this conservatively, initially, to minimise the risk of the PPA guarantee being called, and to allow the prospect of subsequent tariff reductions once debt repayment is completed. (9.3)

2.16 It may be helpful to review the Project, as a leveraged independent power project (IPP), experience before deciding what combination of public and private resources to use in developing the Karuma project, if as expected it follows Bujagali (9.5)

3. BACKGROUND

3.1 There have been some significant developments in the Ugandan electricity sector since the prior Bujagali project: continuing demand growth; the acquisition of new high-cost stop-gap thermal generation; big tariff increases; part-privatisation of Distribution;

and increased dependency of UETCL on Government funds. These changes also change the appraisal of the present Project. Some key conditions, however, remain unchanged, notably the fact that only about 5% of the population is connected to an electricity supply; and only about half the cost of electricity units sent out from power stations is actually recovered from customers.

3.2 The increases in generation costs per unit and in retail tariffs make Bujagali relatively more attractive than it was in 2001, in the sense that there is now a better prospect that it will produce intramarginal retail tariffs, rather than (as for the prior Bujagali project) push them up. Affordability may therefore be less of an issue, though that problem could return in the event of low demand growth; rising technical/commercial losses; or depreciation of the Uganda Shilling (US\$).

3.3 On the one hand, from a financial point of view, the strategic case for Bujagali remains strong and unchanged: it would optimise productive use of Nile waters, a major Ugandan natural resource, without increasing the draw from Lake Victoria; it would provide a big extension to the generating capacity of the central grid system to cope with growing demand (especially from business); and by the involvement of private companies it would attract (directly and indirectly) both expertise and inward investment.

3.4 (On the other hand strategically, an opposing view might be that Bujagali increases dependence on the Nile waters, i.e. it reduces diversity of supply, compared with other generation options; it pre-empted use of public financial resources; an alternative strategy based on or including dispersed generation through smaller units could more rapidly bring supplies to the un-connected majority of the population, whilst reducing foreign currency dependency)

3.5 In fact, the Project sponsors claim more than strategic benefits for the present Bujagali Project – they say that it is the least-cost option for new generation, and that it should allow tariff reductions when operational. These conclusions rest on a comparative economic analysis of costs and risks of options for new generation, and a financial review. My report examines these, and also highlights the costs and risk-sharing explicit or implicit in the contract documents, comparing these with those for the prior project.

4. PROJECT CHANGES

4.1 Physically and in its electrical impact, the present Project and its associated transmission project closely resembles the prior Bujagali project. The Project vehicle – a **leveraged independent power project (IPP), building and operating the plant and selling bulk power to the public utility under a long term contract (PPA)**, with Government and International Financial Institutions supporting both the loan finance and the PPA - is also conceptually the same. Although there are some changes in the loan and guarantee structures, the key contract documents (**PPA and Implementation Agreement (IA)**) are also similar, even identical, in many respects. Some of the changes most relevant for cost and risk are:

- the award of the Project to the developer was by competitive process, not single-track;
- the World Bank Group has important links, independent of the Project, with one of the equity partners;
- although this investigation report highlights many of their shortcomings, in general terms it may be said that more wide-ranging studies have been made (and made available in Uganda) of the economic, environmental and social aspects of the project, in particular, hydrological risk; and plans backed by the public authorities have been developed with the purpose of providing long-term solutions to social problems; and
- increased provision has been made for the public electricity supply system to buy-back the project in particular, low hydrology, circumstances.

4.2 All of these represent potential improvements – reduction of risk - for the prior Bujagali project as compared with the present Project, as explained in section 8 below. (At least one of these conforms with findings made by the Inspection Panel in respect of the prior project) However, there are two other significant changes whose effect is likely to be adverse, for the power purchaser and his guarantors:

- capital costs and total costs for the power plant have increased significantly in real terms; and
- determination of the capacity charge payable under the PPA is by application of a cost formula, rather than by reference to a stipulated maximum charge.

5. COSTS - ANALYSIS

5.1 This section examines costs, of both BHP alone and the combined BHP/BIP project; how they have been treated in the financial and economic analyses; and the possible cost outcomes relative to tariffs and revenues. In the following section these points are distilled into conclusions, or summarised observations.

5.2 Increased Capital Cost of the Power Plant Para 55 of the PAD refers to the 62% increase in cost (absolutely and per KW) between the “hard”(EPC) costs of the prior project and the present Bujagali Project. This equates to an increase of 10% p.a. cumulative over 5 years – a significant increase in real terms. However, the explanation in PAD para 55 – a mixture of international trends and factors specific to Uganda – may be correct. Power plant costs have certainly increased in real terms internationally, and although the index of this for hydro plant may be less than for thermal plant because of the higher proportion of civil engineering costs in the former, the other more local factors referred to in the PAD may more than offset this

5.3 Competitive Solicitation The outcome of competition, for the Project concession and separately, the EPC contract, throws some interesting light on the price. The project concession was awarded to BEL from a thin field of compliant bidders. The winning bid for the EPC contract was 43% below the next lowest bid (PAD para 54). This suggests potential bidders (in both competitions) were taking a risk-averse stance, either abstaining or loading their bid prices with a significant risk premium. The latter may also apply to the winning EPC bidder, despite his price advantage. None of this demonstrates that the agreed price is higher than a “realistic market price” assessed by any other means; what it does indicate is that the market price for an IPP project of this magnitude in Uganda is high.

5.4 Total Cost Increases Leaving aside financing costs, the BHP EPC costs have increased since early 2007, as follows:

	<u>BHP \$m</u>
Economic Study Feb 2007 (estimated)	441(1)
PAD April 2007 (estimated)	520
December 2007 – EPC price	564.4

Note 1: See para 6.6 below for the derivation of this figure.

In the case of the BIP, different costs have been given in different contexts, as follows:

	<u>BIP \$m</u>
Siemens Report July/Aug 2006	c. 80-95
Economic Study Feb 2007	28
PAD April 2007	55
AAR Feb 2007	74.7

The last of these figures appears the most authoritative at the time, though I understand that current prices being discussed are lower. I do not have enough information to be able to judge the degree of comparability of these figures.

5.5 Two points may be drawn from this picture. The first is the propensity of EPC costs to increase between selection of a winning bidder and fixing of the price. In this case, the cost appears to have increased by \$123m (28%) from the Economic Study estimate to the point where the contract price was fixed, and further increases seem to be allowed by the PPA. It is clearly preferable if possible to treat the bid price as binding, which would be international best practice (IBP); the PAD does not appear to explain why that was not done here. In allowing “single-track” negotiation after the competition has closed, any benefit from competitive pressures may be lost.

Second, it is the lowest numbers, for both the BHP and BIP, which were used in the Economic Study, which appears to be the only economic appraisal addressing the total Project. The PAD relies heavily on this study in confirming the judgement that this is the lowest cost option for generation and should enable retail tariffs to be reduced. The PAD adds a financial appraisal of BHP (using higher costs as noted), but omits BIP from this

analysis altogether, on grounds - as the Panel was recently informed – that because of the BIP’s wider role in the system, “it would be inappropriate to attribute the transmission line costs solely to the Bujagali project”.

5.6 The Economic Study also appears to omit or underestimate other cost elements for the BHP, included in the PAD estimate. The full comparison is as follows:

	Economic Study	\$m	PAD
BHP EPC	441(1)		520(2)
Idc	94(3)	94	
Other BHP	51(4)		184
Total BHP	586		798
BIP	28(5)		55
TOTAL	614		853

Notes:

- (1) Items 1 and 3 in Table 5-4, Economic Study
- (2) Para 53, PAD
- (3) Interest during construction (Idc), assumed – see para 5.4.3 Economic Study
- (4) Items 4 and 5, Table 5-4
- (5) Item 2, Table 5-4

5.7 Of course it is quite legitimate to use different figures for different appraisal purposes. Thus in comparing new generation options, it may be fair to omit financing costs for all options but include Idc as an inescapable cost for all. On the other hand, tariff calculations are absolute, not relative, so that all costs to be recovered should be included. The following questions arise:

- (a) why did the PAD apparently ignore the significant increase in EPC costs since the Economic Study?
- (b) For a fair comparison of generation options, transmission connection costs for all should be included. Given that without BHP, BIP is also an avoidable cost, should it not have been included in full? Failing to do so disadvantages, in the appraisal, other generation options whose connection costs are less.
- (c) In considering tariff effects, the full recoverable costs of the Project must be included. In this case (as noted in section 5), it is not clear to what extent it is intended to recover the cost of the BIP through the BST. The loan repayment terms would theoretically allow a relaxed attitude to this; but even if the total cost of BIP is omitted for the purpose of tariff calculation, the Economic Study still appears to underestimate costs as shown in the PAD by \$212m (\$798m - \$586m). It thus seems likely that the Economic Study underestimated both the costs (for comparative purposes) and the tariff effects of the BHP/BIP project.

- (d) To claim that BIP costs should not be attributed to BHP because of its wider role in the system, but at the same time to claim for BIP a full share of the revenue benefits of BHS (see para 5.6 above) appears inconsistent.

5.8 Costs, Revenues and Tariffs in the PAD para 84 indicates levels of output assumed in the low and high hydrology scenarios. Using those figures, PAD para 95 shows that in a high hydrology scenario, Bujagali's lifetime (30 years) capacity charges could be recovered through a levelized bulk supply tariff (2.5 % p.a. inflation assumed, 2006 prices) of 5.7c/unit. The equivalent figure under low hydrology, calculated to have the same value, \$113m, is 9.7c/unit. The intention would presumably be to include this charge in UETCL's BST, to be passed on to customers via UMEME and retail tariffs. The actual revenue generated for UETCL would however be less than \$113m, (25% less, at a conservative estimate) because of technical and commercial losses. By contrast, during the first 12 years of operation (the period of repayment of senior debt), the BHP annual capacity charge is actually estimated at an average of \$155m, with a peak of \$187m in 2022 (PAD Annex 11, para 10). So the levelized tariff would leave UETCL with a substantial revenue shortfall in paying the BHP capacity charge. The following questions arise:

- (a) how will a levelized tariff actually be set, given hydrological uncertainty? (One answer presumably would be to use the low/high hydrology probability estimate of 79/21: on the PAD para 95 basis, this would give an ex-ante levelized tariff of 8.4c/unit)
- (b) whichever levelized tariff is set, there will be a significant revenue shortfall, to be paid by UETCL, against the required capacity charge up to 2022, of \$32m, plus compensation for losses, p.a. on average, peaking at \$74m plus in 2022. (If the tariff were set at 8.4c but 2022 was actually a year of low hydrology, the revenue gap that year would rise to \$89m plus). Has UETCL's revenue shortfall been included in the PAD financial, cash flow and retail tariff forecasts?
- (c) the revenue forecasts (see attachment 4, Annex 12) assume recovery rates rise from 54% in 2006 to 75% in 2013. Has the risk assessment given sufficient weight to the possibility of both higher costs and significantly lower revenues? This will have a major bearing on whether the GOU guarantee of capacity payments under the PPA is likely to be triggered.
- (d) As for the Economic Study, it is not clear that the cost of the transmission project has been included in tariff calculations. Detailed consideration of supply options in Annex 9 appears to exclude or under-estimate connection costs – see table 9.5 which repeats the Economic Study figures. The actual bulk supply tariff which UETCL will pass onto the distribution sector, for inclusion in retail tariffs, should include an element for recovery of BIP costs – see section 4 above.

5.9 Bujagali EPC Cost Risk para 41 of the PAD states “... *there is limited likelihood of EPC cost increases once the EPC contract is finalized*”. Annex 9, paras 26 and 28, reporting the Economic Study on which the PAD is based, indicate that the full risk analysis for the power system “with/without Bujagali” included a 20% chance of a maximum cost increase of 10%, balanced by the same probability of a cost reduction of 5%. These judgements may be over-optimistic, for the following reasons:

- (e) after the price is set, contractors are adept at pleading unforeseen geology/geotechnical grounds to justify an increase. The fact that the winning bid was significantly lower than the next best leads one to surmise that the contractor will want to take every opportunity to improve his margins (though as noted he has already managed to secure a 28% increase before fixing the price). In fact, the current contractual framework allows further price increases (see below).
- (f) although the Project may be technically straight-forward by international standards, the challenge in Uganda of pulling together international and local contractors in an integrated project programme will be significant
- (g) in their 2006 review of the draft contract, Linklaters drew attention to some provisions which appeared to relax the discipline on the contractor – on defect restitution, warranties, and his scope to resist Liquidated Damages in the event of delay. It is not clear whether these have been tightened up.
- (h) the PAD puts weight on the incentive on BEL to contain EPC costs. This may also be over-optimistic, in that there is scope for cost increases to be recovered via the PPA (see next para).

5.10 PPA Capacity Charge The substitution of a cost formula in the 2005 PPA, for the maximum capacity charge specified in the 1999 PPA, is probably the single largest adverse change, for the power purchaser and his guarantors, in the contractual basis for the present Project. It represents a significant shift in risk away from the Project investors and lenders, on to the power purchaser. The formula and its effects can be described as follows:

5.10.1 The formula for determination of the monthly capacity charge or payment is in Annex D to the PPA. It is very complex, since the components are defined rather than priced, and all are subject to variation. In broad terms, the components are:

- development costs
- EPC costs
- tariff debt service reserve
- working capital
- fees and taxes payable by BEL

All of these constituting Tariff Project Costs, plus

- equity repayment and return
- debt repayment
- GOU Equity (representing past development costs)
- O&M fee

5.10.2 Some of these are treated as pure pass-through (fees, and elements of the O&M charge). Others are carefully defined as to the make-up of their “base” cost, and in some cases – including EPC costs - increases on the base are subject to a quantified percentage “cap”. The costs are subject to accountants’ inspection. However, the fact remains that, leaving aside debt repayment, BEL has

considerable scope to shape the base costs and in some cases the increases too, to deliver a higher capacity charge.

5.10.3 Considerable potential delay is built in to the determination of the capacity charge (previous to which payments are on an interim basis). The charge must be set (the Final Declaration Date) within 2 months of production of a Final Cost Report, but that report need not be produced earlier than 6 months after the Final Draw Date, and that event (meaning the earlier of the final draws on equity or debt) in turn may be up to 18 months after the commencement of commercial operation. So 26 months may elapse after the start of operations before there is a determined capacity charge. And curiously there are no specific provisions for capacity charge dispute resolution. The power purchaser may be relying on BEL to be motivated to move as quickly as possible from an interim capacity charge to the finally determined charge, but equally there is plenty of time as well as scope for BEL to shape the figures.

5.10.4 As in the prior Bujagali project, the capacity charge is invariant to output. So the payment will be same under low hydrology (when the output may be halved) as it will with high hydrology. Of course, hydrology is outside BEL's control. But the payments are also relatively invariant to plant availability, which is in BEL's control. A percentage reduction in availability (say 5%) would have to be sustained for a whole year before there was an equivalent reduction in the monthly capacity charge (PPA, Annex D).

5.10.5 For BEL and its lenders, Annex D no doubt represents a low-risk (though potentially disputatious) means of managing and recovering costs which are bound to be subject to uncertainty. For the power purchaser and his guarantors, it means that there is no ceiling on capital costs and whether or not the Project delivers the direct economic benefits offered over 30 years, in terms of costs and tariffs, is to a significant extent in BEL's hands.

6. COSTS – SUMMARY OBSERVATIONS

6.1 Capital costs have significantly increased in real terms compared with the prior project, despite the adoption of competitive tendering. There is however no evidence to believe that the price bid obtained was higher than what might be assessed as a "fair market price" for Uganda.

6.2 There has however been a further increase (28% since the the Economic Study, or 8% since the PAD) to the point where the price was fixed.

6.3 The PAD may be optimistic in its view that EPC cost escalation is unlikely. Putting this together with the absence of a capped capacity charge in the PPA, there has been a significant transfer of cost risk to the power purchaser compared with the prior Bujagali project.

6.4 The Economic Study, and also the PAD which depends on it, may have understated Bujagali's total costs compared with other generation options, and in assessing tariff effects, with reference to financing costs and the BIP. There is a risk that Bujagali will apply upward rather than downward pressure to retail tariffs.

6.5 In the adoption of a levelized life-time tariff for Bujagali, UETCL will be set a major financial challenge in the period 2011-23. There may be a risk that its revenues will be insufficient to meet its obligations, since the projected revenues depend heavily on substantial increases in both customer numbers and recovery rates. The potential revenue gap in this period will actually be larger than that identified in s.6.8, taking account of the final, higher, EPC price.

7. NEW RISK MITIGATION FOR THE PRESENT BUJAGALI PROJECT

7.1 In this section I describe the new risk mitigation measures taken for the present Bujagali project compared with the prior Project (see section 4 above).

7.2 Award of the project by Competition. Competitive solicitation for IPP projects is of course international best practice (IBP). It should ensure the lowest market price consistent with technical fitness for purpose. In this case however, competitive pressures were weak, and the benefit of selecting the lowest compliant bidder has been offset by other factors exerting upward pressure on costs, as described in section 5.

7.3 World Bank Group links with the Equity partners. The PAD paras 64 and 65 describes IFC's links with Industrial Promotion Services (Kenya). The importance of this, together with other safeguards regarding future changes in equity holding, is that it should reduce the medium/long-term risk of collapse precipitated by withdrawal of the sponsors. Sithe Global is an experienced and respected international IPP company (as was AES in 2001); should they wish to withdraw at a later date however, it might be expected that IPS (K) could temporarily take over equity leadership and engage another experienced investor/operator – or provide a transition into public ownership.

7.4 More Comprehensive Studies and Plans. An effort has clearly been made to anticipate and answer criticism of the Project in Uganda by the conduct of detailed environmental, economic and social studies – required for a project which has such a big potential impact. There appears to have been a change of mind-set since the prior project: for that project the power purchaser and his guarantors took an arms-length approach, leaving it mainly to AES to overcome the planning and other local problems and propose solutions, whereas for the present Project it has been recognised at the outset that although BEL continues to take the lead, these problems will not be overcome without the involvement and long-term commitment of the public authorities. In my personal opinion, it is particularly important that public authorities should under-write the resettlement costs (some of them long-term) arising from local disruption at the dam and along the interconnecting transmission line. This should be an important factor in gaining public support, and thus reducing social and political risks.

7.5 Buy-back in case of Low Hydrology. For both the prior and present Bujagali projects, the PPA/IAs provide for buy back of the plant by UETCL under default conditions and certain *force majeure* events. In general terms, these provisions follow international norms. However, para. 4.8 of the PPA of the present Project adds a new provision: UETCL may terminate the PPA and buy back the plant in the event of 30 consecutive months of “low water”.

This is an important safeguard: as I explain later the cost of power from Bujagali, per unit, as determined by the PPA may become prohibitively high in a sustained low hydrology scenario, and in those circumstances it will be preferable for the public authorities to assume control, when they can stop paying the fixed capacity charge, smooth tariff effects and ensure that funds are available for alternative generation. The provision is to be welcomed: I have two reservations about it, first that the low water trigger may have been defined too demandingly from the power purchaser’s perspective; and second that the payment terms for buy-out (Annex J to the IA) which mean that BEL can set the price broadly to equate to capacity payments foregone, seem generous to BEL, given that the plant will be in real trouble if this scenario occurs. However, I recognise that the sponsors and their lenders are looking for protection against loss.

8. RISK REVIEW

8.1 In this section I describe the main risks to which in my view the Project is exposed, how these are shared, and the possible consequences.

8.2 Capital cost escalation. (See section 5 above) If the capacity charge is set higher than present estimates, or rises subsequently, either tariffs must increase or additional subsidies paid to UETCL.

8.3 Currency depreciation. For the present Bujagali Project as for its predecessor, capacity payments are denominated in USD (\$). As I pointed out in my 2002 report, and as stated in the Inspection Panel’s Report on the prior project, a 10% p.a. depreciation of the US\$ against the USD would double the price of the project to Uganda in 7 years. Consequences as in 8.2.

8.4 Prolonged low hydrology. A more pessimistic but more realistic view of hydrology has been taken for the present Bujagali Project as compared with the prior project. Nevertheless substantial uncertainty remains. Past hydrological patterns have shown great year-on-year volatility, so that both the “high” and “low” numbers used in the PAD are long-term averages only. Para 95 of the PAD illustrates how the cost of a unit from Bujagali rises dramatically in a “low” year. A levelized tariff may be set ex-ante, but if the actual hydrological pattern falls below that assumed for the levelized tariff, then the capacity charge shortfall (see para 6.6 above) will widen and the consequences as in 8.2 follow.

8.5 Lower demand growth. Assumed demand growth rests both on continuing growth of demand from existing customers, and a high rate of new connections/customers, such that

the number of customers almost doubles by 2012. If this growth does not occur, UETCL's revenues fall below forecast, with possible consequences as before. To illustrate, if Bujagali were operating today, its average capacity charge during the first 12 years would pre-empt over three quarters of total electricity sector revenues (customer payments) in Uganda (PAD Annex 12, attachment 1)

8.6 Lower or static recovery rates. It has been optimistically assumed that recovery rates will have risen to 75% by 2013. If they remain at the 2006 rate (54%), sector revenues will be 28% lower. Consequences as before.

8.7 Affordability. If the PAD's economic analysis is proved correct, Bujagali's introduction will allow a reduction in (real) retail tariffs of at least 5% compared with current levels. Collection rates appear not to have been significantly affected by the large (approximately 80%) increases in the last 3 years, so Bujagali's affordability on that basis doesn't seem to be subject to high risk (though new customers may reveal different price sensitivities – and produce different collection rates – compared with existing customers). However, if any of the risks above arise, further subsidies may be a preferable alternative to a tariff increase which might reduce rather than increase revenues.

8.8 Construction Delay. Despite Liquidated Damages provisions penalising the contractor, the costs of delay would be likely in practice to be shared via the PPA with the power purchaser (see section 5.7 above). Extreme delay could require additional stop-gap generation. Otherwise, the main consequence of delay would be to defer for customers the main benefit of the project, namely a reduction in power-cuts. Overall, this may be regarded as one of the lesser, or more manageable, economic risks.

8.9 Withdrawal of the Developer/Operator. This risk has been mitigated compared with the prior project. Sithe is bound in for the construction phase, and subsequently would be replaceable as operator if not so easily as investor. Adequate provision has also been made for the project to be bought out if necessary.

8.10 Poor Plant Performance. Although the PPA is generous to the owner-operator in the scale of penalties for low availability, this may be regarded as low-risk. In the extreme, the provisions for Company Default provide a safety net.

8.11 Sharing of Risk. From the documents, the greatest share of economic risks lies with the power purchaser. The capacity charge may be adjusted upwards if the developer/operator hits unforeseen costs, but not downwards if demand or supply conditions deteriorate for the purchaser. In effect, the lenders especially but also the investors are held harmless against all or most eventualities. However, in a crisis of non-affordability in Uganda such as might be produced by currency devaluation or very low hydrology, the investors and lenders may also be at risk, if the money to pay the capacity charge is just not there. In these circumstances, buy-out is likely to provide the best solution. Personally, I would have preferred (as described in my 2002 report and in the Inspection Panel's Report on the prior Bujagali project) to see terms more favorable to the purchaser.

9. OVERVIEW

9.1 Generally, the institutional and financial arrangements for the present Bujagali Project and for the BIP recognise (to a much greater extent than for the prior project) that this is a National Project of great strategic importance to Uganda with wide implications, in which the Government and its IFI backers have major roles to play. This gives the Project a degree of robustness its predecessor lacked.

9.2 However, its direct economic benefits may have been over-rated. There is a considerable risk that it will exert upward rather than downward (as the PAD argues) pressure on tariffs – though given current hydrocarbon price forecasts it may still be the least-cost option. In pulling forward the economic benefits to customers by adoption of a levelized tariff rather than one which follows the capacity charge (which is twice as high during debt repayment as it is subsequently), the power purchaser is opening the risk that he will require increased Government subsidies in the period 2011-23. And if demand or hydrology are significantly below current central estimates, Bujagali looks poor value for money.

9.3 The chosen level of the tariff will in practice be the way in which the balance of interest is struck between customers, and the power purchaser and his guarantors. The tariff will of course not need to be determined until closer to the date of operation, reflecting the then view of costs. If UETCL is to be given a full opportunity to pay the capacity charge without recourse to further subsidies via the GoU guarantee, it would be prudent to set the levelized tariff at least the low hydrology level – in today's terms, not less than 10c/unit. To the extent that the BIP costs are to be recovered, or BHP costs increase (as they already have since the PAD), or compensation for commercial/technical losses is required, the addition to UETCL's bulk supply tariff should probably be higher than this.

9.4 Once debt is repaid, the picture changes, in Bujagali's favor. It may then be possible to reduce its tariff. After the first dozen years, it should become a reliable source of cheap power (so long as the Nile flows!) for decades to come.

9.5 A wider personal observation relates to the decision to build BHS as an IPP, rather than as for the BIP, a public sector project. The high cost of commercial debt in Uganda, coupled with the high-pricing, risk-averting strategy of the investors in response to a perceived high-risk environment, has inevitably saddled the project with large front-end-loaded costs. GOU and the IFIs have still had to accept ultimate liability as guarantors. As an alternative, public sector financing might have produced lower costs overall, and would certainly have made it easier to manage costs and cost recovery via tariffs over a 40 year project life-time. Private sector capabilities could still have been harnessed to build and operate the plant on a contracted basis. Of course, I recognise the demonstration value of attracting a major private investment in to Uganda, but it might be argued that a smaller, lower risk infrastructure project would have been a better place to start. I offer these personal observations with diffidence since it might be said they are

outside my TOR.; but it would seem prudent to take stock of the Bujagali experience before deciding the strategy for Karuma if this is to follow.

9.6 Setting aside the positive aspects of the Project, it may be helpful to summarise those areas in which management performance may have fallen short. These appear to be:

- **In analysis of generation options:** there was an insufficiently transparent approach to the assessment of Bujagali against all feasible alternative generation options, making it difficult for management authoritatively to refute charges that the analysis was either inadequate or biased in favour of Bujagali.
- **In project evaluation:** the assessment of costs, risks and benefits was unduly optimistic. In particular (1) capital costs were under-estimated; (2) the likely effect on tariffs was under-estimated: Bujagali is more likely to exert upward than downward pressure on tariffs; (3) the risk of a significant revenue gap (between UETCL's income and the requirements of the Bujagali capacity charge) in the first 10 years of the project was not recognised: the attendant risk is that the WB guarantee may be called; (4) other risks, notably those of shortfalls against recovery rate forecasts, and the exchange rate, were not given due weight.
- **In project structure and risk management:** (1) management failed to realise the benefits of competitive solicitation by allowing a long period of post-bid negotiation with the winning bidder, during which the price increased by nearly 30%; (2) management failed to fix or cap the capacity charge in the PPA, thus increasing the risk that the power purchaser will have to accept further cost increases in the future; (3) management failed to set sufficiently robust performance penalties and buy-out terms, to minimise downside risk for the power purchaser.

9.7 It must be recognised that WB management were, especially in respect of the third category above, dependent on the actions, decisions and advice of other agencies. Nevertheless, the World Bank's influence on the Project has been very significant, and WB management would have been fully entitled to examine and if necessary change policy on all of these matters.

Annex C Spiritual Significance in Busoga Culture

Prof. Theodore Downing

1. The Bujagali Hydroelectric Project is moving into a neighborhood known for its strong, complex cultural and spiritual tradition. Although peoples of other groups inhabit the project area, the Basoga claim spiritual dominion of both sides of the Nile, its islands, the water and its waterfalls.⁶⁸⁸ According to the 2002 census, there are about 2.7 million Busoga in Uganda whose territory lies to the east of the project site.⁶⁸⁹ Their language, Lusoga, predominates in this area, on the East bank of the River Nile. The Basoga share a common dialect and ideological, spiritual history, sharing a cluster of eight or more high status spirits who are invoked in their specific ceremonies, i.e., prayers, blessings for a good crop, a job, healing, divination/consultation, or witchcraft ceremonies, depending on the specific need or celebration. These eight high status spirits include *Lubaale*, *Kintu*, *Mukama*, their legendary fathers and *Budhagaali* (the spirit residing at the Bujagali Falls site). The Basoga are distinct from the Buganda, the more dominant tribe in Uganda whose traditional realm reaches to the West bank of the Nile.
2. To the Basoga, the project area – like their entire region – is inhabited by ancestral spirits and living humans who are constantly interacting – from birth to death and beyond.⁶⁹⁰ The *Enswenzi*, their traditional spiritual cosmology, is extensive and complex. Every human being possesses a body and a soul. When a person dies, the body disintegrates but the soul continues to exist as a spirit (*omizimu*).⁶⁹¹ The spirits are innumerable, consisting of the spirits of everyone who has lived since the beginning.
3. The spirits exercise very strong influence on the harmony, wealth, physical and emotional well-being of the living - most of all on their health and livelihood. They play a critical role in group welfare and regulate the moral conduct of the

⁶⁸⁸ The 2001 RAP states its baseline survey identified 22 ethnic groups living in the project area (Bujagali Hydropower Project Social and Environmental Assessment Main Report, December 2006, page 161). The region was repopulated by migrants from throughout Uganda and other central African countries in the 1940's after being nearly abandoned by the Busoga at the turn of the century due to sleeping sickness. Bujagali Power Project - Hydropower Facility - Resettlement and Community Development Action Plan, March 2001, page 98. Both banks of the Nile are recognized by the Uganda government as Basoga, but sleeping sickness prevented dense settlement until the late 1940's when peoples from all over Uganda and neighboring East African countries settled it. Bujagali Power Project - Hydropower Facility - Resettlement and Community Development Action Plan, March 2001, page 24. By the time of the baseline study, in 1999-2000, only 46% of the people in the project area were Soga, mostly living on the east bank (54% vs. 36% on the west bank).

⁶⁸⁹ www.busoga.com/aboutBusoga.php - (Obwa Kyabazinga Bwa Busoga online).

⁶⁹⁰ Over fifty years ago, Lloyd Fallers, in his classic study of the Basoga, *Bantu Bureaucracy* (1954), felt that despite the substantive presence of Catholicism and other global religions, ancestor worship was "very near the heart of the Soga value-system." page 80.

⁶⁹¹ *Traditional Religion and Clans Among the Basoga*, Volume 1, Richard Kayaga Gonza, Editor, Cultural Resource Center, Jinja, Uganda 2002, page 76.

living.⁶⁹² Practically all good fortune and misfortune is related directly or indirectly to actions of certain spirits or to witchcraft, including death.⁶⁹³ Illness can result from people not living in harmony with the spirits. The good spirits, although without physical bodies, are believed to eat, drink and demand their due from their earthly relatives.⁶⁹⁴

4. Families and households have immediate individual ancestral spirits (*omuzimu*), venerated within individual compounds through shrines (*amasabo*) and offerings. Communications from and with these spirits are on issues of concern to the family (i.e., land problems, lost will or a spirit's dissatisfaction with its property distribution).⁶⁹⁵ At this level, these spirits do not have permanent priests (mediums). Communication with these spirits occurs simply through individual prayers or dreams, unless there are some serious issues that require the intervention of a diviner. The spirits, however, can choose any member of the family or household to communicate their message.⁶⁹⁶ The elaborateness of ritual and offerings to the ancestral spirits varies with the occasion and issue. These ceremonies can be performed by family members and elders of the clan as well as a diviner.⁶⁹⁷
5. Above the level of the family spirits are the spirits of the founders of the clan. A clan is a group of people who trace their lineage to a common, distant patrilineal ancestor. Regardless of blood lines, clan members consider themselves to be brothers and sisters. Clans are not limited to an area, but may be dispersed throughout the lands of Busoga.⁶⁹⁸ Each of the 338 or more clans recognizes a founding ancestral spirit or *Enkuni*.⁶⁹⁹ In terms of displacement and resettlement, these spirits are very important. They are revered because of the special protection they provide to the clan members. They a) unify the clan, b) provide blessings to clan members during special invocations, i.e., job interviews, examinations, or good grades, c) preserve the clan, d) punish those who treat clan members

⁶⁹² Witchcraft, Divination, and Healing among the Basoga, Richard Kayaga, Editor, Cultural Research Centre, Jinja, Uganda Marianum Press Ltd. 2003, and Ritual Gestures in Busoga, Cultural Resource Center, Jinja, Uganda 2001, Traditional Religion and Clans Among the Basoga, Volume 1, Richard Kayaga Gonza, Editor, Cultural Resource Center, Jinja, Uganda 2002, page 77.

⁶⁹³ Witchcraft, Divination, and Healing among the Basoga, Richard Kayaga, Editor, Cultural Research Centre, Jinja, Uganda Marianum Press Ltd. 2003, page 9.

⁶⁹⁴ Traditional Religion and Clans Among the Basoga, Volume 1, Richard Kayaga Gonza, Editor, Cultural Resource Center, Jinja, Uganda 2002, page 77.

⁶⁹⁵ Traditional Religion and Clans Among the Basoga, Volume 1, Richard Kayaga Gonza, Editor, Cultural Resource Center, Jinja, Uganda 2002, page 76.

⁶⁹⁶ Traditional Religion and Clans Among the Basoga, Volume 1, Richard Kayaga Gonza, Editor, Cultural Resource Center, Jinja, Uganda 2002, page 76.

⁶⁹⁷ Traditional Religion and Clans Among the Basoga, Volume 1, Richard Kayaga Gonza, Editor, Cultural Resource Center, Jinja, Uganda 2002, page 78-85.

⁶⁹⁸ Fallers 1965, page 64-65.

⁶⁹⁹ Traditional Religion and Clans Among the Basoga, Volume 1, Richard Kayaga Gonza, Editor, Cultural Resource Center, Jinja, Uganda 2002, pages 16-75: Field review with two Basoga, identified other clans that were not on the initial list. The *Enkuni* are discussed on page 89.

unjustly, and e) accompany clan members on their moves.⁷⁰⁰ When a family breaks away from its territory for any reason, in order not to sever all links with the old clan, the head of the family will pick up a stone or collect some soil from his old place to take with him to his new place. It is believed that the stone or the soil represents and incorporates the spirit of the ancestor who started the clan and that by taking it along, the spirit of the ancestor accompanies them to their new place, gives them its blessings and helps the family maintain the feeling that they are still part of the clan they left behind.⁷⁰¹

6. When clan-wide problems such as sterility, quarrels, famine, sickness, death, or poor harvests occur, people attribute these problems to the *Enkuni* being angry. Unlike familial spirits, communication with the clan spirits is more elaborate, requiring the mobilization of more people and resources. In order to determine whether a problem is or is not associated with an *Enkuni*, the clan leaders seek the assistance of a diviner (*mulaguzi*), who determines if the problem is associated with the *Enkuni*. The clans have a traditional clan priest (*muswezi* - singular) who is always accompanied by a group of fellow priests (*baswezi* - plural) during ceremonies. The offerings are provided by and are at the expense of the members of the clan. These Busoga clan rituals invoke the high status spirits including: *Kintu*, *Mukama*, *Lubaale*, *Enkuni*, *Budhagaali*, *Iyingo*, *Waitambogwe*, *Isegya* and *Lukoghe*.⁷⁰²
7. The highest status or princely spirits, the *Emisambwa/musambwa*, are the spirits of the founders of the Busoga: *Kintu*, and *Mukama*, their wives, brothers and their children, powerful kings, clan leaders, and mothers of lineages. People believe that the founders were the children of *Kintu* and *Mukama*. These princely spirits are considered to be strong spirits, possessing the ability to reincarnate into animate and inanimate objects. Highest among them are the *Kintu*, the *Budhagaali*, the *Lubaale*, the *Mukama*, the *Iyingo*, the *Nawandio*, the *Waitambogwe*, and the *Wunhi*.⁷⁰³
8. Princely spirits (*musambwa*) will possess someone to be its priest/priestess and therefore have a shrine.⁷⁰⁴ The spirit gives its priest powers to give good luck, blessings, prosperity and protection against evil spirits. The confirmation of someone possessed by a *musambwa* requires the participation of the traditional clan spiritual leaders (*baswezi*).⁷⁰⁵ Ceremonials and rituals at *musambwa* level are

⁷⁰⁰ Traditional Religion and Clans Among the Basoga, Volume 1, Richard Kayaga Gonza, Editor, Cultural Resource Center, Jinja, Uganda 2002, inter alia.

⁷⁰¹ Traditional Religion and Clans Among the Basoga, Volume 1, Richard Kayaga Gonza, Editor, Cultural Resource Center, Jinja, Uganda 2002, page 89.

⁷⁰² Traditional Religion and Clans Among the Basoga, Volume 1, Richard Kayaga Gonza, Editor, Cultural Resource Center, Jinja, Uganda 2002, page 90-91.

⁷⁰³ Traditional Religion and Clans Among the Basoga, Volume 1, Richard Kayaga Gonza, Editor, Cultural Resource Center, Jinja, Uganda 2002, pages 112, 114.

⁷⁰⁴ Traditional Religion and Clans Among the Basoga, Volume 1, Richard Kayaga Gonza, Editor, Cultural Resource Center, Jinja, Uganda 2002, page 114.

⁷⁰⁵ Traditional Religion and Clans Among the Basoga, Volume 1, Richard Kayaga Gonza, Editor, Cultural Resource Center, Jinja, Uganda 2002, page 149.

proportionally more elaborate, expensive and involve participants from different Busoga clans.

9. To summarize, from the perspective of the Bujagali Project, the key elements of Busoga spiritual cosmology are: a) the spirits are innumerable, powerful and frequently cross over into the world of the living and may do both good and harm, b) they inhabit the same world as the living and are associated with animate and inanimate objects throughout the landscape, c) they can move freely without the need for human permission, d) they have differential power, influence, and interests, e) they are hierarchical, somewhat comparable to the ancient Greek Pantheon, f) they influence the health, well-being and the livelihood of the living, g) more powerful spirits communicate through mediums who do not view themselves as capable of negotiating or predicting spirit behavior – they are mediums of the spirit who possesses them, and h) the mediums are selected by the spirits not by the cultural (political) leaders.
10. This brief primer places the Bujagali Falls site and its chief spirit, the *Nabamba Budhagaali*, and its medium, the Nabamba Bujagali in context. As in most religions, the sacredness of a site comes from a group of religious practitioners assigning special significance to a specific site, to a specific spirit with a specific power, the power to provide blessings to the believers (health, happiness, harmony and protection of their livelihood). At the Bujagali Falls sites, just as in many traditional indigenous or animistic religions, these spirits are usually associated with animate or inanimate objects, such as animals, rocks, trees, rivers, mountains, or waterfalls.⁷⁰⁶ Consequently, destruction or disturbance of a sacred site and the associated ceremonies and offerings to spirits may be difficult.⁷⁰⁷
11. The available evidence confirms that Budhagaali Falls is the residence of a host of spirits ranging from individual family spirits to high level Busoga spirits, particularly one of the Busoga's most venerated, powerful, princely spirits, *Nabamba Budhagaali* Spirit. This Spirit is the son of the founding ancestral couple of the Busoja, Kintu and Nambi.⁷⁰⁸ Nabamba was nicknamed "*Bujagali*" because he was fond of swimming. The Nabamba-Budhagaali Spirit may chose to stay in this place and is free to shift to another place – without any human or other spirit's permission.⁷⁰⁹ The Busoga believe that at the time of his birth, Nabamba Budhagaali Spirit turned into "water", which water turned into the water of the

⁷⁰⁶ Routine and Dissonant Cultures: A theory about the psycho-socio-cultural disruptions of involuntary resettlement and ways to mitigate them without inflicting more damage. Theodore E. Downing and Carmen Garcia-Downing. In Anthony Oliver-Smith. *Development and Dispossession: The Anthropology of Displacement and Resettlement*. Santa Fe: School for Advanced Research Press, 2008, in Press.

⁷⁰⁷ AES contracted a Consultant to survey the traditional religious sites and beliefs in communities along the East and West banks of the Nile River and identified specific names for these features. The River Nile and its Significance to Traditional Religion and Practices of the Inhabitants of the Wakisi Subcounty - East Bank, September 18, 2000.

⁷⁰⁸ Traditional Religion and Clans Among the Basoga, Volume 1, Richard Kayaga Gonza, Editor, Cultural Resource Center, Jinja, Uganda 2002, pages 10, 114 and 149.

⁷⁰⁹ Traditional Religion and Clans Among the Basoga, Volume 1, Richard Kayaga Gonza, Editor, Cultural Resource Center, Jinja, Uganda 2002, page 149.

Nile River. This powerful spirit may take on multiple animate and inanimate forms.

- Both the *Nabamba Budhagaali* Spirit and its medium, the Nabamba Bujagali, are unquestionably tied to the Busoga clans stretching across Busogaland. The *Nabamba Budhagaali* Spirit can possess a spiritual leader from any Basoga clans, who becomes, according to interviews, “like an arch-bishop” among the clan spiritual leaders (*baswezi abadhagaali* - plural). Each clan can have a *muswezi abadhagaali* (singular), a clan level spiritual representative of the high spirit who are ordained at a sacred rock associated with this high spirit at the Bujagali Falls religious site (see Figure 2 below). The recognition and initiation of *Nabamba Budhagaali* Spirit’s medium is presided over by a conclave of these representatives, jointly known as the Baswezi Budhagaali. Presently, Nabamba Bujagali is the medium for the *Nabamba Budhagaali* Spirit. His initiation was recognized by Busoga clan spiritual leaders (*baswezi*) and other seers.⁷¹⁰ These trans-Busoga networks of clan spiritualists conduct their final initiations and rituals at Bujagali Falls.⁷¹¹

Figure 2: Nabamba Budhagaali priest introducing the newly possessed at the rock. This is the spirit site for *Budhagaali*, and raising hand of the new priest. This is a sign of taking an oath.



Source: Ritual Gestures in Busoga, Cultural Resource Center, Jinja, Uganda 2001, Traditional Religion and Clans among the Basoga, Volume 1, Richard Kayaga Gonza, Editor, Cultural Resource Center, Jinja, Uganda 2002, page 49.

⁷¹⁰ Traditional Religion and Clans Among the Basoga, Volume 1, Richard Kayaga Gonza, Editor, Cultural Resource Center, Jinja, Uganda 2002, pages 149-150. The Nabamba Bujagali is selected by the Nabamba Budhagaali spirit from among other spiritualists.

⁷¹¹ Traditional Religion and Clans Among the Basoga, Volume 1, Richard Kayaga Gonza, Editor, Cultural Resource Center, Jinja, Uganda 2002, page 149.

13. Bujagali Falls spiritual centrality is not limited to the *Nabamba Budhagaali* Spirit and its medium. Lubaale Nfuudu, a spiritual medium (*muswezi*) for another of the princely, high status Busoga spirits, Lubaale, has temporarily relocated some Bujagali spirits. Lubaale Nfuudu takes care of multiple shrines (*amasabo*) where new spirits were arriving all the time. He was briefly possessed during the Panel's interview. Whether or not he relocated the *Nabamba Budhagaali* Spirit is unclear and probably immaterial, since the Spirits are free to move wherever they wish.
14. In 2001, the Project noted that the *Ntembe* clan, whose leader is *Ntembe Waguma*, and diviner (*muswezi*) is Nfuudu, see the Bujagali Falls as the location of their clan level ancestral spirits which will be disturbed by the project. Lubaale Nfuudu is the caretaker for his clan spirit and Lubaale, another Busoga ancestral spirit. He also states he also built Nabamba a shrine and questions the legitimacy of Nabamba Budhagaali as a medium.⁷¹²
15. Consultations with LC1 and LC3 local council on the west bank revealed that apart from the Nabamba Bujagali spirit, other spirits on the west bank needed appeasement.⁷¹³ Resolution of spiritual disturbances is different for clan and family level spirits. Family level spiritual disturbances in the immediate project area appear to have been resolved in the Sponsor's individual mitigation actions.⁷¹⁴ Like other clans, the *Ntembe* are found throughout Busogaland with the Bujagali Falls area being their clan site.⁷¹⁵
16. A Cultural Management plan and strategy for dealing with the higher spirits associated with Bujagali Falls, particularly Nabamba Budhagaali spirit, consistent with Busoga cosmology, has yet to be established. At the level of the higher spirits, all Busoga clans and their Bujagali Falls associated *baswezi* are stakeholders.⁷¹⁶
17. The high spirits (*musambwa*) of one island to be submerged are associated with Kintu and his wife Nambi. They are the founding couple of the Basoga, father of Lubaale and Nabamba Budhagaali spirits. The study noted that "*if Kintu and Nambi are annoyed they can [leave the island] come to the land and take domestic animals or even the people themselves as sacrifices. No one is accepted to light a fire or burn the bush on the Island. If one does so, Kintu would claim that they are burning his children and can cause harm.*"⁷¹⁷ For those believing in this

⁷¹² The River Nile and its Significance to Traditional Religion and Practices of the Inhabitants of the Wakisi Subcounty - East Bank. AES Consultant September 18, 2000, page 92.

⁷¹³ PCDP, Appendix B, Phase 1, Consultation Materials, Dec 2006, page 12.

⁷¹⁴ Bujagali Power Project - Hydropower Facility - RCDAP, March 2001, page 102, ¶ 15.17.

⁷¹⁵ The reports are ambiguous as to the spiritual and clan leadership of the Ntembe clan, with one document referring to Lubaale Nfuudu as the leader of the Ntembe clan and another assigning this position to Ntembe Waguma. Bujagali Hydropower Project Social and Environmental Assessment Main Report, Appendix I Assessment of Past Resettlement Activities and Action Plan (APRAP) December 2006, page 23 ft 3.

⁷¹⁶ Bujagali Power Project - Hydropower Facility - RCDAP, March 2001, page 102, ¶ 15.17.

⁷¹⁷ The River Nile and its Significance to Traditional Religion and Practices of the Inhabitants of West Bank. AES Consultant, September 18 2000, page 3.

traditional religion, disturbance of the sacred sites is an issue of livelihood, harmony, health and well-being.

Annex D Biographies

Mr. Werner Kiene was appointed to the Panel in November 2004 and has been its Chairperson since September 2007. He holds a Masters of Science degree and a Ph.D. in Agricultural Economics from Michigan State University. He has held leadership positions with the Ford Foundation and German Development Assistance. In 1994, Mr. Kiene became the founding Director of the Office of Evaluation of the United Nations World Food Programme (UN WFP). He was the World Food Programme Country Director for Bangladesh from 1998 through 2000 and also served as UN Resident Coordinator during this period. From 2000 to 2004 he was a Representative of the UN WFP in Washington, D.C. Mr. Kiene's focus has been on the design, implementation and assessment of sustainable development initiatives. His professional writings have dealt with issues of rural poverty and social services delivery; food security, agricultural and regional development; emergency support and humanitarian assistance; international trade and international relations. Mr. Kiene is involved in professional organizations such as the European Evaluation Association; the Society for International Development; the American Association for the Advancement of Science; and the International Agriculture Economics Association.

Mr. Tongroj Onchan was appointed to the Panel in September 2003. He has a Ph.D. in agricultural economics from the University of Illinois. Professor Onchan taught on the Faculty of Economics at Kasetsart University in Thailand for 26 years, including a term as Dean. He later served as vice president of Huachiew Chalermprakiat University; then joined the Thailand Environment Institute (TEI) as vice president. In 1998, Mr. Onchan was appointed president of TEI. He helped establish and was appointed president of the Mekong Environment and Resource Institute (MERI) in 2000. He has served as advisor to the Prime Minister and to the Minister of Science, Technology and Environment, as member of the National Environmental Board, chairman of the National EIA Committee, chairman of the Committee on the Preparation of State of the Environment Report for Thailand, and member of the National Audit Committee. Mr. Onchan is on many editorial boards, among them the Asian Journal of Agricultural Economics and the International Review for Environmental Strategies. He has consulted for a number of international organizations, including the Asian Productivity Organization, ESCAP, the World Bank, the Asian Development Bank, the Food and Agriculture Organization, the International Labor Organization, USAID and the Ford Foundation. He has been project director of over thirty research projects and author or co-author of numerous technical and research papers on rural development, natural resources and environmental management. Currently, he serves in several capacities: chairman of the Board of Directors of the MERI, member of National Research Council for economics, and a director of the International Global Environment Strategy (IGES) based in Japan. Mr. Onchan was appointed as eminent person to serve as a member of the Asia and Pacific Forum for Environment and Development (APFED).

Mr. Roberto Lenton is currently Chair of the Technical Committee of the Global Water Partnership and a Member of the Inspection Panel of the World Bank. A specialist in water resources and sustainable development with over 30 years of international experience in the field, he also serves as Chair of the Water Supply and Sanitation Collaborative Council, Member of the Board of Directors of WaterAid America, and Senior Advisor to the International Research Institute for Climate and Society (IRI) at Columbia University. A citizen of Argentina with a Civil Engineering degree from the University of Buenos Aires and a Ph.D. from MIT, Dr. Lenton is a co-author of *Applied Water Resources Systems*. He is also a lead author of *Health, Dignity and Development: What will it take?*, the final report of the United Nations Millennium Project Task Force on Water and Sanitation, which he co-chaired. Dr. Lenton was earlier Director of the Sustainable Energy and Environment Division of the United Nations Development Programme in New York, Director General of the International Water Management Institute in Sri Lanka and Program Officer in the Rural Poverty and Resources program of the Ford Foundation in New Delhi and New York. He has served on the staff of Columbia University and the Massachusetts Institute of Technology (MIT), including posts as Executive Director of the IRI Secretariat for International Affairs and Development and Adjunct Professor in the School of International and Public Affairs at Columbia and Assistant Professor of Civil and Environmental Engineering at MIT.

Theodore Downing, Research Professor of Social Development at the University of Arizona, earned his PhD from Stanford in Social Anthropology. Specializing in international social policy development, he has extensive research, project management, and policy-making experience in Latin America, Africa, and the Middle East. His understanding of capacities and limits of government was enhanced by being elected for two terms to the Arizona House of Representatives. Beginning as a short-term consultant to The World Bank in 1987, he has worked on involuntary resettlement and indigenous peoples safeguard issues through most phases of the Bank's project cycle - preparation through supervision and across the energy, agricultural, and the extractive industry sectors. His development experience includes directing the Mexico's anti-coffee rust research team for the Mexican National Science Foundation, helping establish an environmental science college at King Abdulaziz University in Jeddah. His colleagues elected him to be President of the international Society for Applied Anthropology and is currently President of the International Network on Displacement and Resettlement (www.displacement.net). Samples of his writings and project experience are available at www.ted-downing.com.

Richard Fuggle is Emeritus Professor of Environmental Studies at the University of Cape Town. Prof. Fuggle is a Member of the Academy of Science of South Africa, a Registered Natural Scientist, a Certified Environmental Practitioner in South Africa and a Professional Member of the South African Institute of Ecologists and Environmental Scientists. He has edited two books on environmental management in South Africa and has published over 100 academic papers on environmental topics. He led the team which developed the South African Guidelines for Integrated Environmental Management. Prof.

Fuggle has served on numerous Commissions of Enquiry related to Environmental Assessments. He has received awards and distinctions for his contributions to the advancement of Environmental Impact Assessment both nationally and internationally. Prof. Fuggle earned his Ph.D from McGill University in Montreal.

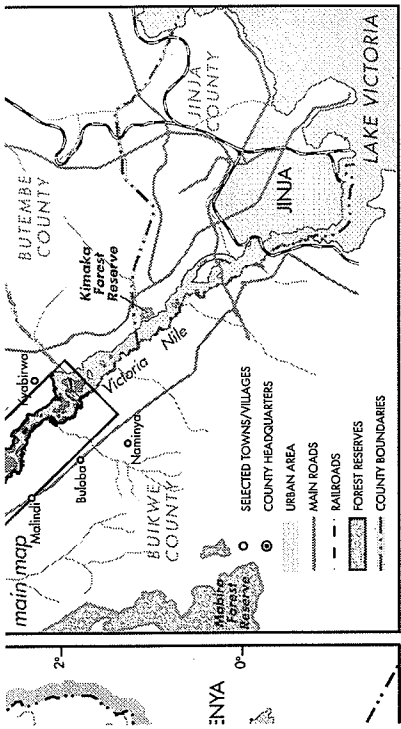
Graham Hadley was educated at Cambridge (MA Modern History 1966) and in 1991 completed the Harvard Business School Advanced Management Programme. After a Civil Service career (final position: Under Secretary, Department of Energy), Mr. Hadley joined the Electricity Industry in 1983. He played a key role in the restructuring and privatization of the industry in 1988-91, first as Board Secretary to the Central Electricity Generating Board, and subsequently (1990-95) as a Board Member and Director of National Power. At National Power his main role was as MD of international business development: from a zero base he established the company as one of the leading independent power producers, with assets in the US, Europe and Asia. Since 1996 he has been an economic and commercial consultant, in the position of Senior Advisor to National Economic Research Associates (NERA) until 2007. At NERA or independently, he has advised IFAs, Governments, utilities and regulators internationally on utility sector reform, particularly on industrial restructuring, the introduction of private capital and investment strategy. He has also specialized in power purchasing and the use of power purchase agreements (PPAs) to manage risk. In this area his assignments have included: Expert Witness in a PPA contract arbitration dispute between a US power company and a Caribbean utility; advice to and training in power purchasing of Electricity Regulators in India and Sri Lanka ; assistance to the Government of Mexico in developing model PPAs and the policy of competitive power solicitation. He has also advised developers and power purchasers on specific PPAs. From 2000-2007 he was also a Member of the UK Competition Commission, serving on a number of both merger and sector Inquiry Panels.

Peter Pearson received his degrees in economics from the Universities of Keele, London and Surrey. He is Professor of Energy and Environmental Studies, Director of the Centre for Energy Policy and Technology and a director of the Energy Futures Lab at Imperial College London. He has held academic posts at the Universities of Glasgow and Surrey. From 1989-94, he headed Surrey University Energy Economics Centre (SEEC), and in 1993 held a UK Economic and Social Research Council Global Environmental Change Research Fellowship. He has been Chair (1992, 2002) of the British Institute of Energy Economics, was a member of the European Commission's Advisory Group on Energy (AGE) for the 6th Framework RTD Programme (2002-2006), an invited reviewer for the International Energy Agency's *World Energy Outlook*, and Chair of the *International Evaluation Panel on Environment and Societal Sciences* for the Academy of Finland (2006). He delivered the 2007 Queen's Lecture at the Technical University of Berlin and was a Specialist Advisor to the House of Commons Innovation, Universities, Science & Skills Select Committee's *Inquiry into Renewable Electricity Generation* (2007-08). He is the author/co-author of 160 scholarly publications on energy, environment and water

Carlos E. M. Tucci, Civil Engineer and Professor at the Institute of Hydraulic Research of the Federal University of Rio Grande do Sul. Mr. Tucci holds a Ph.D. from Colorado State University, 1978. He is a former vice-president of the International Association of Hydrologic Science, a former president of the Brazilian Water Resources Association, and a former executive secretary for the Water Resource Research and Investment fund in Brazil. He is now Chief-editor of the Brazilian Water Resources Journal and REGA Water Resource Management Journal for Latin America.. Mr. Tucci has about 400 publications in books, book chapters, Papers in journals, essays and conferences. He was honored by the Civil Defense of The State of Rio Grande do Sul and for the best scientific book published in 1993 in the State of Rio Grande do Sul.

- EXISTING RIVER AREA
- NEW HIGH WATER LEVEL WHEN RESERVOIR IS FILLED
- PERMANENT FENCE LINE
- TRANSMISSION LINES
- PERMANENT ROADS

Source: Bujagali Hydropower Social & Environmental Assessment (2006)



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KAGOMA COUNTY

