

**Report No. 47713 - GH**

**The Inspection Panel** 

## **Investigation Report**

**GHANA: Second Urban  
Environmental Sanitation  
Project (UESP II)  
(IDA Credit No. 3889-GH)**

**March 13, 2009**

## About the Panel

The Inspection Panel was created in September 1993 by the Board of Executive Directors of the World Bank to serve as an independent mechanism to ensure accountability in Bank operations with respect to its policies and procedures. The Inspection Panel is an instrument for groups of two or more private citizens who believe that they or their interests have been or could be harmed by Bank-financed activities to present their concerns through a Request for Inspection. In short, the Panel provides a link between the Bank and the people who are likely to be affected by the projects it finances.

Members of the Panel are selected “*on the basis of their ability to deal thoroughly and fairly with the request brought to them, their integrity and their independence from the Bank’s Management, and their exposure to developmental issues and to living conditions in developing countries.*”<sup>1</sup> The three-member Panel is empowered, subject to Board approval, to investigate problems that are alleged to have arisen as a result of the Bank having ignored its own operating policies and procedures.

### Processing Requests

After the Panel receives a Request for Inspection it is processed as follows:

- The Panel decides whether the Request is *prima facie* not barred from Panel consideration.
- The Panel registers the Request—a purely administrative procedure.
- The Panel sends the Request to Bank Management, which has 21 working days to respond to the allegations of the Requesters.
- The Panel then conducts a short 21 working-day assessment to determine the eligibility of the Requesters and the Request.
- If the Panel recommends an investigation, and the Board approves it, the Panel undertakes a full investigation, which is not time-bound.
- If the Panel does not recommend an investigation, the Board of Executive Directors may still instruct the Panel to conduct an investigation if warranted.
- Three days after the Board decides on whether or not an investigation should be carried out, the Panel’s Report (including the Request for Inspection and Management’s Response) is publicly available through the Panel’s website and Secretariat, the Bank’s Info Shop and the respective Bank Country Office.
- When the Panel completes an investigation, it sends its findings and conclusions on the matters alleged in the Request for Inspection to the Board as well as to Bank Management.
- The Bank Management then has six weeks to submit its recommendations to the Board on what actions the Bank would take in response to the Panel’s findings and conclusions.
- The Board then takes the final decision on what should be done based on the Panel’s findings and the Bank Management’s recommendations.
- Three days after the Board’s decision, the Panel’s Report and Management’s Recommendation are publicly available through the Panel’s website and Secretariat, the Bank’s Project website, the Bank’s Info Shop and the respective Bank Country Office.

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<sup>1</sup> IBRD Resolution No. 93-10; IDA Resolution No. 93-6.

## **Acknowledgements**

The preparation of this Report would not have been possible without the support and valuable contributions of many people. The Panel wishes to thank the Requesters and the communities who met with the Panel in the Project areas. The Panel especially expresses its appreciation to the Centre on Housing Rights and Evictions (COHRE) the representatives of the Requesters, for arranging visits with affected people and for showing the Panel areas of concern to them.

The Panel expresses its appreciation to the many national and local government officials in Ghana with whom the Panel met. They provided valuable insights and information. The Panel is also grateful to the Executive Director's office for Ghana for their assistance.

The Panel also wishes to thank the World Bank Staff in Washington D.C. and in the Accra office for assisting with logistical arrangements. The Panel wishes to thank Bank Management and Staff for their assistance in obtaining documents, providing the Panel with information, and responding promptly to written requests.

The Panel is grateful for the expert advice provided by Christopher McDowell and Jean-Roger Mercier. The Panel appreciates the professionalism exhibited by them at all times.

Finally, the Panel wishes to convey its gratitude and appreciation to the members of its Secretariat for their resourceful handling of this investigation, particularly to Peter Lallas, Dilek Barlas, Tatiana Tassoni, Eduardo Abbott, Shéhan de Sayrah and Christine Curella for their expertise and professional assistance.

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## Abbreviations and Acronyms

AKC	Agyemankata Kwabenya Community
AMA	Accra Metropolitan Authority
AWP	Accra Waste Project
BP	Bank Procedures
COHRE	Centre on Housing Rights and Evictions
CPR	Common Property Resource
DCA	Development Credit Agreement
DfID	Department for International Development
EA	Environmental Assessment
EIA	Environmental Impact Assessment
EMP	Environmental Management Plan
EPA	Environmental Protection Agency
ESA	Environment and Social Assessment
ICR	Implementation Completion Report
IDA	International Development Association
ISDS	Integrated Safeguards Data Sheet
ISR	Implementation Status and Results Report
LVB	Land Valuation Board
MA	Municipal Assembly
MLGRD	Ministry of Local Government and Rural Development
MTR	Mid-Term Review
NGO	Non-Governmental Organization
OD	Operational Directive
OECD	Organization for Economic Co-operation and Development
OMS	Operational Manual Statement
OP	Operational Policies
PAD	Project Appraisal Document
PID	Project Information Document
QEA	Quality at Entry Assessment
RAP	Resettlement Action Plan
RPF	Resettlement Policy Framework
SDR	Special Drawing Rights
TAC	Technical Advisory Committee
TL	Team Leader
TOR	Terms of Reference
TT	Task Team
UESP	Urban Environmental Sanitation Project
UNDP	United Nations Development Program

## Measurements

km	kilometer
m	meter
ha	hectare

# Executive Summary

## Introduction

The Inspection Panel (the “Panel”) presents this Investigation Report in response to a Request for Inspection, dated August 16, 2007, related to the Ghana: Second Urban Environmental Sanitation Project (UESP II) (the “Project”). The Request was submitted by the Accra-based Centre on Housing Rights and Evictions (COHRE) on behalf of the Agyemankata Community, which lives in the area known as Kwabenya within the Accra metropolitan area.

The Request focuses on a specific subcomponent of the Project, namely a proposal to construct a sanitary landfill near the village of Kwabenya. The Request claims that the Bank has failed to comply with its Policies and Procedures in respect to the development of this landfill. The Requesters believe that the landfill, as designed, will involuntarily displace much of the community and pose grave risks to the health of those who remain in its proximity.

In this Report, the Panel notes the importance of the overall Project in addressing environmental sanitation issues in Accra, including highly urgent needs relating to the management and disposal of solid wastes. The Panel also notes the stated objective to develop the sanitary landfill at Kwabenya as an engineered sanitary landfill that would avoid the types of conditions and problems that have been encountered at other, previous waste disposal sites in Ghana.

The Panel determined, however, that the Bank did not comply with several provisions of Bank policies on Environmental Assessment, Involuntary Resettlement, and Project Supervision. These include provisions related to analysis of alternative sites for a landfill, analysis of impacts in the area of influence of the Project, environmental management planning, and resettlement planning. These instances of non-compliance, if not addressed, could adversely impact the affected communities in contravention with Bank Policy.

**The Panel appreciates that Bank staff have acknowledged several of these issues, and notes that additional significant actions are underway at the time of this Report.** These include the development of an (updated) Environmental Impact Assessment and a Resettlement Action Plan. **These ongoing actions present the opportunity for important additional analysis and decisions that could address issues identified in this Report, including on the need to revisit the analysis of alternatives, the size of the buffer zone, and other measures to avoid, mitigate or compensate for potential adverse impacts.**

The Report concludes with observations on certain issues that affected compliance in this Project, including some factors not within the Bank’s control.

## The Project

The Project aims to improve urban living conditions in Ghana, including with respect to environmental health, sanitation and solid waste management, with special emphasis on the poor. The Project seeks a comprehensive and environmentally-sustainable approach to solid waste management, including preparation of integrated solid waste management strategies, support for

operation and monitoring of the new sanitary landfills, and closure and rehabilitation of active and discontinued refuse dumps.

The Project has five components: to address flooding through storm drainage; to increase access to adequate sanitation; sustainable solid waste management; community infrastructure upgrading in low-income communities; and institutional strengthening. The proposed sanitary landfill at Kwabenya is a subcomponent of the solid waste management component. It would serve the greater Accra urban area including Ga District, with a population of 2.5 million (2004 estimate; current unofficial estimates put the figure at about five million), and has an estimated load of 500,000 tons of refuse per year.

The Project follows an earlier phase of Bank interventions to promote urban sanitation in Ghana, the first Urban Environmental Sanitation Project (UESP I). The Project was classified as a “Repeater Project” to UESP I, although UESP I did not include the Kwabenya landfill element. There had been a separate effort to construct a landfill at Kwabenya beginning in 2000, with financial assistance from Britain’s Department for International Development (DfID). At that time, a drainage culvert and access road into the area were built, but implementation was delayed due to land right claims, which, *inter alia*, led DfID ultimately to withdraw its support.

The Project is financed by an IDA Credit of 41.6 million Special Drawing Rights (SDR) (US\$64.39 million equivalent), approved by the Board of Executive Directors in April 2004. US\$25.7 million is allocated to the solid waste management component.

## **The Claims of Requesters**

The Request was submitted by COHRE on behalf of the Agyemankata Community, which evolved out of an organization representing the interests of “The Kwabenya Resident and Land Leasers” in August 2001. The Agyemankata Community does not refer to a fixed and specific geographical area, but rather refers to a community of interest. Its membership has shifted over time to include, for example, stonecutters operating on the land identified for construction of the landfill but who may not live in the immediate vicinity of the proposed landfill.

The Requesters believe that the Kwabenya landfill, if constructed, would result in the involuntary displacement of much of the Agyemankata Community, and leave those who are outside the area of displacement, but in proximity to the landfill, at grave risk to their health. They note that the Project’s Integrated Safeguards Data Sheet (ISDS) states that “*those living near the landfill will be negatively affected*” and that “*surface and ground water pollution could extend 5 to 10 km downstream.*”

The Requesters consider that there is a lack of administrative and technical capacity to ensure that a landfill would be operated safely for the people and local environment. They state that other disposal sites in Ghana have not been adequately maintained, leading to significant risks and harms to nearby communities.

The Requesters claim that the analysis of alternative sites and potential impacts used by the Project is outdated. They state that the proposed site was based on a 1990 United Nations

Development Program strategic plan, whereby a proposed landfill site should be located 1 kilometer away from residential areas. They state that while the location of the proposed site fit this criterion at that time, it no longer does as people have moved into the area over the years.

The Request claims that the Bank has not complied with its Policy on Involuntary Resettlement because it has not ensured meaningful consultation with affected and displaced people, nor ensured that they are informed about their options and rights and offered choices and feasible alternatives. The Request claims that the Bank is also in violation of Policy requirements to assess the borrower's commitment to and capacity for implementing the resettlement instrument.

The Request further contends that decisions taken by the local authority, without adequate consultation and disclosure of information, demonstrate a lack of commitment to implementing a resettlement instrument that meets Bank Policy. For example, Requesters state that they were notified by a newspaper article of the deadline to submit documents on resettlement, indicating that failure to submit the needed document would result in a forfeiture of compensation claims. They viewed this as a threat to their rights, and in violation of Bank Policy to ensure displaced people are provided prompt and effective compensation at full replacement cost.

During the Panel's eligibility visit, it was also alleged that authorities came to the community in January 2007 accompanied by "*armed policemen and national security*" and marked their houses to be vacated. Members of the community claim that these actions were inconsistent with Bank Policy on Involuntary Resettlement and that they have lost trust in the process.

## **The Management Response**

The Management Response states that poor sanitation is the key urban environmental issue that Ghana has been facing over the last 20 years. The Response notes various steps taken over the years to address these issues, but that a 2003–2005 Ghana Poverty Reduction Strategy indicates that "*environmental sanitation and capacity to deal with solid and liquid waste have shown little sign of improvement.*"

Management considers that the Bank has fully complied with OP 4.01 on Environmental Assessment. Management notes that the Project's 2003 Environmental and Social Assessment (2003 ESA) used as a basis the 1999 DfID-financed environmental assessment, and that it has been agreed to update the Environmental Management Plan (EMP) and prepare the Resettlement Action Plan (RAP) in accordance with the final design of the Kwabenya sanitary landfill. Management acknowledges that at the time of the 1999 EIA for the DfID-supported project, there were "*virtually no resettlement needs*" but that due to the construction of the roadway, people began to move closer to the site.

Management states that while the Project's Integrated Safeguard Data Sheet highlights some potentially negative environmental aspects, the statement is a "*general statement that describes the environmental conditions that would prevail if appropriate mitigation measures were not taken in designing and operating the landfill facilities...*"

Management states that the Resettlement Policy Framework (RPF) for the Project was reviewed at appraisal and found to be in line with the Bank's Involuntary Resettlement Policy. Management notes that the Government and Bank were aware that more information was needed to meet the requirements of the Bank's policies and procedures, and to prepare an adequate RAP. They further stated that the Project Credit Agreement requires a detailed RAP acceptable to the Bank.

Management notes that the Project has been rated as *“unsatisfactory for more than a year mainly due to the very slow disbursement level of the credit and the lack of progress in the solid waste management component, with the Kwabenya sanitary landfill subcomponent being the most delayed.”* Management states that the Bank, on several occasions, discussed implementation problems with the Government, indicating that it would likely cancel the financing for the Kwabenya sanitary landfill if evidence of further satisfactory progress on the drafting of a RAP was not available when the Bank visited the site in December 2007.

The Management Response specifies a series of actions and deadlines to address these concerns, including the preparation of *“an acceptable RAP not later than March 31, 2008.”* Management also states that the Government notified the Bank that it had *“no intention of requiring the forfeiture of compensation”* and would abide by the Bank's policies on preparing the RAP.

The Response states that the Government informed the Bank that it undertook numerous efforts to reach out to and consult with the local communities. It also describes a highly contentious situation stating, for example, that when Bank and Government officials attempted to deliver letters to the community, *“they were detained for several hours, confronted with death threats should they ever return, and the letters were returned unopened.”*

## **The Investigation Report and Applicable Policies and Procedures**

This Report concludes the Panel's investigation into the matters alleged in the Request for Inspection. The Chair of the Panel, Werner Kiene, led the investigation. The Panel Secretariat and two expert consultants, on social issues and resettlement, and on environment, assisted the Panel in the investigation.

The Panel reviewed relevant Project documents and other relevant materials provided by the Requesters, Bank staff, government representatives, local authorities, individuals and communities living in the area affected by the Project, non-governmental organizations, and other sources. The Panel carried out interviews with Bank staff in Washington, D.C., both before and after visiting the Project area.

The Panel organized its investigation visit to the areas affected by the Project in February 2008. During this visit, and its Eligibility visit, the Panel met with the Requesters, members of the local Agyemankata community, other affected people, including stone cracker workers in the Project site area, Government officials and Bank staff. The team visited the proposed sanitary landfill site as well as the other sites currently and formerly used to dispose of waste in Accra. The Panel wishes to express its appreciation and thanks to all of the foregoing for their time, efforts, assistance and gracious hospitality during the Panel's visits.

With respect to this Project, the Panel assessed whether the Bank complied with the following applicable Operational Policies and Procedures:

OMS 2.20	Project Appraisal
OP/BP 4.01	Environmental Assessment
OP/BP 4.12	Involuntary Resettlement
OP/BP 13.05	Project Supervision
World Bank Policy on Disclosure of Information	

## **Project Context and Design**

### **Health and Environmental Issues—Waste Management**

One of the key environmental issues facing Ghana for more than a decade has been poor environmental sanitation, resulting from a combination of inadequate water supply, sanitary facilities, drainage and solid waste management. Project documents note that solid waste has been disposed of in uncovered refuse dumps with very little consideration of social and environmental impacts, and leachate is polluting ground and surface waters. Some refuse dumps have been discontinued due to fierce opposition from nearby residents.

Concerns relating to urban sanitation and waste management led to the initiation of the first Urban Environmental Sanitation Project (UESP I) between 1996 and 2003. Though a significant step, major problems relating to waste management and lack of adequate capacity to address the waste and sanitation problems remained. The Ghana Poverty Reduction Strategy 2003–2005 noted that action was “*urgently required to ameliorate the extremely unfavorable environmental health conditions.*” Municipal authorities face major capacity constraints in being able to handle and manage these problems.

In the City of Accra, these issues are of high importance in terms of environmental sanitation and conditions, and for ongoing economic development and investment. Project and other documents note continuing serious problems relating to waste management, including those related to open refuse dump sites within the City.

The Panel was also informed that the refuse sites in the City are nearly at full capacity, and that, if a new site is not constructed, the lack of space for the disposal of trash for a city of several million would result in a serious sanitation emergency. During its field visit, the Panel observed the severe nature of conditions at one of the refuse sites in the City, which appeared to be operating above normal capacity. The Project PAD notes that refuse dumps are managed with very little consideration to environmental and social impacts. The Panel’s visit to the new informal market and some of the canals and lagoons in Accra also revealed how waste is disposed of in an unsanitary and disorganized manner, leading to potential health hazards for neighboring populations and merchants, fresh and sea water pollution, and aesthetic impacts. The risk of getting medical, industrial and other potentially toxic waste mixed with regular household (mainly organic) waste also appears to be very high.

These conditions form an important backdrop to core issues raised by the Request. The Requesters do not contest the need of the City to address these problems of waste management. They fear, however, that the proposed landfill at Kwabenya will not be safely managed or maintained, and this is especially dangerous to area residents. This is compounded by the fact that many new residents have moved into the area over the many years since the site was initially identified. Beyond the effects of involuntary displacement for those in the “footprint” of the proposed landfill as designed, they believe that the nearby community would face grave health and environmental risks.

The PAD refers to “*a greater awareness that refuse dumps have to be replaced with sanitary landfills.*” In interviews with the Panel, Bank staff highlight that the proposed landfill at Kwabenya is intended not to be an open-dump, but instead to be a modern-designed and engineered sanitary landfill that would have in place safeguards and mitigation measures to avoid these types of conditions and problems.

### **Project Risks and Approval as a “Repeater” Project**

As noted above, UESP II was approved as a Repeater Project to UESP I, although the Kwabenya landfill subcomponent was not part of UESP I. The Panel examined whether this approach affected the application of Bank policies to this subcomponent.

According to Bank guidance documents, “Repeater Projects” are defined as “*projects whose basic design and effectiveness have been proven, and which a borrower proposes to augment and scale up.*” The Bank can scale up the impact of its assistance by allowing for rapid replication and expansion of successful projects. The mechanism of Repeater Projects is intended to make full use of this existing knowledge and work, avoid duplication of effort and enable a more streamlined processing of projects for approval. One of the key criteria in reviewing the suitability of a project as a “repeater” is that the project has no environmental, social, or other safeguard problems.

A project’s suitability as a Repeater Project is assessed through a Special Review by a Regional Review Panel. In the case of a Category A project, a separate safeguard review is required.

In the present case, a Regional Review Panel prepared a brief report in June 2003 and determined that the Project was suitable as a Repeater Project. On the question of “safeguards and UESP II,” the report noted that the October/November 2002 safeguards supervision report for the UESP I “*indicated some issues, not considered major by the specialists.*” The Regional Review Panel added that whether or not UESP II is processed as a repeater project, the safeguards work would need to be carried out as for any other Bank project.

The Inspection Panel notes that at the time of this Special Review—mid 2003—and the subsequent Project appraisal at the end of 2003, there was a highly contentious environment and strong voices of local opposition to the landfill. It was also known that DfID had pulled out of the earlier Kwabenya landfill project because the land-related issues were extremely complex and difficult to resolve in the short or medium term. In addition, many new people had moved into the area or were informally working within proximity of the landfill. The Panel notes that in

this environment, where tensions were high, documents show that it was evident that there would be considerable difficulties in achieving compliance with safeguard policies, especially on consultations and involuntary resettlement. **This situation posed significant risks for the affected people and the implementation of the Kwabenya subcomponent.**

**The PAD itself indicates that resettlement at the Kwabenya sanitary landfill could cause considerable controversy, and lists it as a “high” Project risk. This complies with OMS 2.20 on Project Appraisal.** The PAD states elsewhere, however, that the safeguards screening category indicates that one or more safeguard policies are triggered “ . . . *but the effects are limited to their impact and are technically and institutionally manageable.*”

This latter assessment seems to have downplayed the foreseeable problems in achieving compliance with Bank safeguard policies associated with the proposal to construct a landfill at Kwabenya. Close screening of key social and environmental issues by the Bank would have made clear, from the outset, the imminent problems related to land acquisition and resettlement that would be caused by its inclusion as a subcomponent of the Repeater Project.

**The Panel finds that contrary to the criteria established for the use of Repeater Project procedures, the Kwabenya landfill subcomponent had significant foreseeable environmental, social and safeguard problems. The Inspection Panel notes that Management did not take all the required measures to address safeguard issues arising in the Project, in spite of the Regional Review Panel’s advice in 2003.** The shortcomings in the social and environmental work are discussed below.

### **Environmental Issues—Analysis of Compliance**

As noted previously, the Requesters claim that the proposed landfill will pose grave threats to the health and environment of people living near the landfill site. They further claim that the initial site location (in the early 1990s) was based on the criterion that there were no residences within 1 kilometer of the site, but that this is no longer the case as many people have moved into the area over the years.

In its Response, Management states that the 2003 ESA complied with Bank requirements, but acknowledges changing conditions on the ground and notes that additional analysis is being undertaken. Management further states that negative conditions and impacts would prevail only if appropriate mitigation measures were not taken in design and operation of the landfill.

The 2003 ESA contains a section on the Kwabenya subcomponent, which was based on the 1999 EIA that was prepared in the context of the earlier DfID-financed initiative to develop a sanitary landfill at Kwabenya. On the question of site selection, both the 2003 ESA and the 1999 EIA relied considerably on a 1993 study commissioned by the Accra Municipal Authority, which ranked Kwabenya as a preferred site in the greater Accra area.

Bank Management informed the Panel about the need to update the information in the 2003 ESA and that a specific stand-alone environmental assessment and a revised EMP for the Kwabenya subcomponent are under preparation. As of the date of this report, the bidding process for the

selection of the consultants is being completed. As discussed below, the Panel notes that this new EA provides an opportunity to address the shortcomings of the 2003 ESA.

### **Environmental Categorization**

OP/BP 4.01 requires that proposed projects be assigned to one of four categories (A, B, C or FI). An “A” project “*is likely to have significant adverse environmental impacts that are sensitive, diverse, or unprecedented . . .*” A project is classified as “B” “*if its potential adverse environmental impacts . . . are less adverse than those of Category A projects.*” Category A projects require more extensive environmental assessment than Category B projects. **The Panel finds that the Project was correctly categorized as “Category A” for the purpose of OP/BP 4.01.** As discussed below, however, the EA failed to meet several key requirements for a Category A environmental assessment.

### **Analysis of Alternatives**

OP/BP 4.01 requires, particularly for a Category A project, an in-depth and substantiated analysis of alternatives, including a systematic analysis of feasible alternatives to proposed project sites. This analysis is key to the objectives of the Policy to help ensure that Bank-financed projects are environmentally sound and sustainable, and to improve decision making. The question of whether there are other viable alternative locations for the proposed landfill is a central one in the Request.

During its investigation, the Panel learned that the selection of the Kwabenya site was drawn from the 1993 study that ranked the suitability of five options for a landfill in Greater Accra. The 1999 DfID-funded EIA accepted that Kwabenya was the best available site, and the 2003 ESA—which relied considerably on the 1999 EIA—has by and large taken this site selection for granted.

The ranking system in the 1993 study gave Kwabenya the highest available rankings on criteria involving “*distance to nearby communities*” and “*affected people.*” Its guidance stated that a landfill site will always be an undesired obstacle in the neighborhood of humans, and “[a] *distance of 800 m to 1,000 m to the next village/suburb is regarded as averagely suitable.*” The study found that the nearest village to the Kwabenya site was approximately 2 kilometers away, and that some farmsteads mainly on the eastern slope were “*temporary settlers.*” Some years later, the 1999 EIA states that “[t]here are no communities that directly overlook the site.”

The conditions around the Kwabenya site, however, have changed considerably since the ranking study in 1993, and since the 1999 EIA. As acknowledged by Bank Management, and confirmed by the Panel’s investigation, the roadway built into the area in 2001 enabled more people to move into and closer to the site proposed for the landfill.

The 2003 ESA neither includes a new sociological survey nor an account of the people living in the Project area of influence. Rather, in a section titled inaptly “*Justification for the Kwabenya landfill,*” it presents an analysis limited to the justification for a new waste management location,

arguing with reason that the existing dumps are saturated or soon to be, **but not justifying the selection of Kwabenya as the chosen site.**

**The Panel finds that the 2003 ESA did not adequately examine alternative sites for the future landfill, and failed to assess adequately the implications of the influx of people and changing conditions on the ground in the years since the earlier studies on which it relied. This does not comply with OP/BP 4.01.**

As the Panel was preparing this Report, it was informed by Bank staff that a new Environmental Assessment for the Project is being developed, as the existing 2003 ESA is outdated and no longer adequately reflects conditions on the ground. **According to Management, the new EIA will examine, *inter alia*, options for alternative sites. The Panel notes, however, that the draft Terms of Reference for the EIA provided by the Bank makes no specific reference to the need for an analysis of alternatives.** Management needs to clarify this issue.

### **Potential Adverse Impacts and Project Area of Influence**

The Panel examined the complaint that those who live in proximity to the proposed landfill, as designed under the Project, would face potentially serious risks to their health.

OP 4.01 provides that an EA should evaluate a project's potential environmental risks and impacts in its "*area of influence*," and identify ways to prevent, minimize, mitigate or compensate for adverse environmental impacts. A project's area of influence is the area likely to be affected by the project, and may include the air-shed where airborne pollution may enter. The impact analysis must consider the natural environment, human health and safety, as well as social aspects.

Sanitary landfills pose a range of potential impacts on human health and the environment in areas outside of their physical boundaries. The extent and nature of these impacts would depend on a variety of factors, including topography, landfill design and maintenance, proximity of ground and surface waters, and proximity and location of residences and people and would vary according to prevailing local weather conditions (wind direction and speed in particular).

**The 2003 ESA, however, does not adequately identify the full extent of the "*area of influence*" of the proposed landfill (as a subcomponent of the Project) and its potential impacts on nearby people and residents. The Panel finds that this does not comply with OP 4.01.** This instance of non-compliance has made it difficult for the affected people and decision-makers to understand the various types of impacts of the landfill and whether adequate measures would be taken to prevent, minimize, mitigate or compensate for these impacts. Specific aspects of this are addressed below.

### **The "Buffer Zone" and Adjacent Areas**

One means to deal with adverse impacts on people from a landfill is to establish an adequate "buffer zone" around its boundaries. According to the 2003 ESA, the buffer zone is meant to protect people from emission of landfill gases and aspects such as odors and noise. The 2003

ESA suggests that this is an area where settlements will not be permitted and land would be acquired in order to avoid direct harm from the landfill.

The Bank relies on the due application of relevant safeguard policies, including the Environmental Assessment Policy, on a project-by-project basis to determine an appropriate buffer zone. This determination should be based on an appropriate analysis of the nature and extent of potential impacts (see above), and relevant guidance.

The present Report identifies the following additional guidance and materials that suggest the possible need for a larger buffer than that envisioned in the 2003 ESA, particularly given the presence of a school near the landfill site and concerns about available managerial capacity to ensure proper and safe maintenance and operation. As noted above, the ranking study for possible landfill sites in Accra carried out in the early 1990s specified a distance of 800 meters to 1 kilometer between a landfill and the nearest settlement/village. The Panel also notes that a Bank reference document for siting sanitary landfills recommends a buffer zone of 500 meters for a landfill without a gas collection and flaring system, and states that a landfill should not be sited within 1 kilometer of socio-politically sensitive sites, e.g. schools.

The 2002 Ghana Landfill Guidelines state that one of the locational criteria that would normally disqualify a site from use as a landfill is “*areas less than 500m from land-uses which are incompatible with landfilling and have the potential to attract community resistance, including residential areas....*” The Guidelines separately refer to a buffer zone width for metropolitan/municipal landfills of 300m minimum to 600m maximum. The Panel’s environmental expert has reviewed best practices, and notes that the determination of appropriate distances should be, *inter alia*, dependent on available managerial capacity to ensure proper and safe maintenance and operation.

The 2003 ESA states that the buffer zone for the proposed landfill at Kwabenya can be less than 250 meters. The 1999 DfID EA provided for a buffer zone of 250 meters, while the 2003 ESA envisages the possibility of a smaller zone on the ground that the landfill design incorporates measures for lining, draining and venting of gases, and that gas emission outside the boundary of the landfill is deemed “*very unlikely.*” The 2003 ESA’s limited analysis does not include a reference to the larger distances suggested by the original site selection study and the Bank reference document on landfill sitings, or to the changed population conditions. It is also not clear as to how or whether capacity constraints and significant risk factors relating to maintenance and operation are taken into account.

As indicated in the Request, members of the Agyemankata Community are aware of the original guidance, from the early 1990s, for a larger setback distance. **The Panel finds that the 2003 ESA has not adequately assessed or justified a decision to use a buffer zone of 250 meters or less, as compared to the larger distances noted in other documents and in light of significant concerns about capacity to properly and safely maintain the landfill. The Panel notes that the adequate determination of the buffer zone is a complex and site-specific undertaking. It is important to achieve compliance with Bank Policy, and to determine who may be entitled to compensation and resettlement under OP 4.12 (see below).**

**The Panel notes that the landfill could also result in indirect adverse impacts on people who live in the area adjacent to the buffer zone, but within the project area of influence. This also has to be analyzed and addressed in accordance with OP 4.01, which calls for actions to prevent, avoid, mitigate, or compensate for such impacts.**

In this context it is important to note that the Technical Advisory Committee (TAC) formed by the Government of Ghana in July 2004 to address the concerns of property owners recommended to reduce the boundaries of the landfill, including the buffer zone, in order to “*exclude nearly 229 plots of land that are either developed or have already been allocated for development by the landowners*” and are “*at the centre of the controversy.*” The TAC recommendation was adopted by the Government and the AMA.

Members of the Agyemankata Community live near the landfill site, and have a substantial and direct interest in these issues, given the proposal to build a landfill at the site. They have made statements expressing their rejection of the TAC recommendation on the basis that it maintains the landfill at the site, which they believe will result in hazardous effects on their health. The Panel observes that the shortcomings in policy compliance noted above, along with problems of consultation (see below), appear to have hampered an appropriate handling of these concerns. **Management has informed the Panel that the new EIA will examine these issues.**

### **Environmental Management Plan**

An EMP is the instrument of the EA that details measures to eliminate or offset adverse environmental impacts, or reduce them to acceptable levels, and specifies actions to implement these measures. It includes requirements for implementation schedule, cost estimates and integration of EMP with the project. The Policy is specific about costing, capacity building and monitoring requirements to be set out in the EMP.

The 2003 ESA, however, contains an EMP with little or no costing, no provision for capacity building, vague monitoring strategies and generally provides very little information on how negative environmental impacts will be prevented, avoided, mitigated or compensated, and otherwise monitored. Since monitoring and costing elements are absent from the 2003 ESA, the neighboring community could legitimately fear for its health and the undue environmental risks it will have to bear in the absence of appropriate operational content of the 2003 ESA report. **The Panel finds that the EMP produced as part of the 2003 ESA was noticeably deficient in most of these aspects. This is not consistent with OP 4.01. The 2003 ESA did not provide a sound and effective basis for Project appraisal.**

The Panel notes that the TORs for the new EIA contain a section on “Environmental Management Plan”, and recommend measures to prevent or reduce significant negative impacts to acceptable levels, estimate their costs and institutional and training requirements to implement them, propose work programs and budget estimates, include monitoring mechanisms, and “[c]onsider compensation to affected parties for impacts which cannot be mitigated.”

## Consultation

As described above, the Requesters and Management provide differing views on the nature and extent of consultations during the design stages of the Project. There also are many indications of a tense and even hostile atmosphere both by the time of appraisal and during Project implementation.

OP/BP 4.01 requires that “[f]or Category A projects, the borrower consults [project-affected groups and local nongovernmental organizations (NGOs)] at least twice: (a) shortly after environmental screening and before the terms of reference for the EA are finalized; and (b) once a draft EA report is prepared.”

The Requesters live near the proposed landfill site and are a project-affected group. In fact, the Agyemankata Community became organized in June 2001 largely because it felt excluded from initial consultations conducted in 2001/2002. Members of the Community were aggrieved at being labeled squatters and therefore without entitlements under Ghanaian law.

The Management Response indicates that consultations took place in 2001/2002 prior to the Bank’s decision to finance the Kwabenya landfill. According to the Requesters, however, these consultations were mainly with the allodial title holders and the chiefs of the Kwabenya Township, who lived some distance away from the proposed landfill site. They claim that not all the affected people, including many of the Requesters, were properly notified of these consultations.

The Bank’s decision to finance the Kwabenya landfill subcomponent was made in 2003 at a time when the positions had hardened between the Government and the Agyemankata Community, and the climate was hostile with talks of violence. The records show that, in this environment, no consultations with the Agyemankata Community were held during the preparation of the 2003 ESA, as required under the OP/BP 4.01. The Management Response, Annex 2, lists a public consultation in September 2003. However, as noted in Annex 2 of the Management Response, these were interactions with the landowners, not with the Agyemankata Community. Documents available to the Panel indicate that the only public consultation meeting with the Agyemankata Community took place in February 2004 only after the ESA and RPF had been finalized.

The Panel notes that attempts were made by the Government to consult with the affected population. However, since the time of the DfID-funded project, the level of tension between the local community and Project authorities increased, and this affected the ability to have a structured consultation process in accordance with Bank Policy. According to their own statements, the community leadership was opposed to the landfill development, considered that their rights were threatened, believed that their concerns would not be listened to in good faith, and refused to enter into discussions over compensation and resettlement. The Panel notes that the Government and the Bank made efforts to establish consultation opportunities, but did not successfully pursue alternative approaches that may have yielded meaningful consultation.

**The Panel notes that meaningful consultations, as envisaged under OP/BP 4.01 and OP/BP 4.12, did not take place with those living nearest the proposed landfill. The Panel**

**acknowledges the difficulties of conducting such meaningful consultations under the prevailing conditions at the time.**

### **Proper Maintenance of Landfill—Capacity Issues**

During its investigation, the Panel heard many concerns that a landfill at Kwabenya would not be properly operated. These concerns were based, in part, on experience in the operation of other waste sites in the country. The Panel’s field visit and investigation confirmed that there is a strong basis for these concerns. Management acknowledges, in interviews with the Panel, the serious lack of experience with landfill management.

OP 4.01 provides that an EA analysis takes into account, *inter alia*, the country’s “*institutional capabilities related to the environment and social aspects.*” When the borrower has inadequate capacity to carry out key EA-related functions, the project includes components to strengthen that capacity.

The 2003 ESA and PAD note institutional capacity constraints facing local authorities. In describing Project risks, the PAD rates as “*substantial*” the risk that three other landfills supported under the Project may not be operated according to guidelines, with potential for environmental damage. The PAD does not, however, mention Kwabenya as posing this type of risk. **The Panel finds that this omission downplays the significant risk of inadequate operation of a landfill at Kwabenya, and is not consistent with OMS 2.20 on Project Appraisal and with the capacity building provisions of OP/BP 4.01.**

In its Response, Management states that the Kwabenya site is intended to be a “*sanitary landfill*” which is different and better than open dumps. It notes the Project institutional strengthening elements, and adds that the final landfill design needs to meet applicable national laws, policies and guidelines, and will be reviewed by an expert to ensure “*that design takes into account international best practice.*” **The Response also articulates a “no harm” principle**, in which Management indicates its determination to continue work with the Government and communities to “*ensure that . . . affected communities will not be negatively impacted should the Bank agree to finance the construction of the sanitary landfill . . .*” under the original conditions.

**These are welcome statements. The Panel appreciates, however, the concerns of the community that even with the best intentions at design, problems and risks to health and the environment could arise for the members of the community living near the proposed landfill site.** During its field visit, the Panel was informed that the Kumasi sanitary landfill, which had been cited as a more positive example, was experiencing significant problems. Indeed, the Panel was told that an initiative to take members of the Agyemankata Community to visit this site, for the purpose of showing how a well-designed landfill would look, had been cancelled due to these problems. There has also been an extended delay in producing the Report from the Project Mid-Term Review (MTR) (in December 2007), as well as a promised and adequate environmental management plan (now reported to be in preparation) which specifies how such harms are to be avoided, and capacity needs addressed, in line with OP 4.01.

**In light of past experience with waste management, and to achieve compliance with Bank Policy, the Panel notes the need for clarity about institutional arrangements for construction and operation of a future sanitary landfill.**

### **Linkage between EA Process and Resettlement**

The EA and resettlement/compensation processes are intimately linked in terms of Project results and by the terms of the two policies. For instance, the determination of the size and precise location of the future buffer zone is closely linked to the potential harm of the future landfill—something that needs to be properly examined in the Project EA. As noted above, no Bank Policy includes a definition of “buffer zone” and the determination of the appropriate setback distance is done on a project by project basis. At the same time, the final determination of this size and location directly affects the number of people to be relocated as well as the cost of compensation—a core element in resettlement planning.

**This poses a dilemma for the Project. The inadequacy of the 2003 ESA as a basis for these key determinations undercuts the ability of the Project to carry out resettlement planning in accordance with Bank Policy, and establish a well-founded “cut-off” date to identify the affected population eligible for compensation and/or resettlement assistance. This problem occurred during Project design, and affects the timing of current actions.** In particular, it is surprising and possibly inappropriate under Bank Policy to conduct the final EIA after the completion of the RAP. This is, however, the apparent current trajectory of the Project – as the (new) deadline to complete the RAP was October 1, 2008 but the new EIA will take at least some additional months more.

The Panel is concerned that there has been inadequate consideration of the dilemmas posed by these inter-relationships among the relevant policies, both during Project design and implementation. While the upcoming studies (EIA, EMP, etc.) are most important, their inter-relation with the resettlement planning process remains a critical challenge.

### **Social Issues—Analysis of Compliance**

The Panel examined the Requesters claim that the proposed landfill at Kwabenya will result in the displacement of members of their community in non-compliance with Bank Policy on Involuntary Resettlement, OP 4.12.

#### **Area of Displacement and Affected People**

The 2003 ESA identified a landfill site requiring the acquisition of a total land area of approximately 194 hectares (ha). This area, which excluded the compound area, comprised 75 ha for the landfill itself and 119 ha for the buffer zone around the site. Residences and buildings in the buffer zone, including (initially) a school, would be acquired and relocated due to expected landfill gas emissions and other factors such as odors and noise.

The 1999 EIA for the DfID-funded project expected that the landfill would result in relocation of around 22 families comprising some 170 individuals. It also identified 300 members of the stone

quarrying association, and 50 other affected workers. The 2003 ESA did not estimate the number of affected persons. It noted that the proposed landfill would unavoidably result in involuntary resettlement, and identified mixed land uses. The 2003 Resettlement Policy Framework (RPF) counted for the purposes of compensation a total of 113 buildings and structures within the “*project-affected area.*”

As noted earlier, the Government and the AMA adopted the TAC recommendation to reduce the boundary of the land, including land required for the buffer, in order to “*exclude nearly 229 plots of land that are either developed or have already been allocated for development by the landowners*” and are “*at the centre of the controversy.*”

During the Inspection Panel’s field visit, and in interviews with consultants preparing the RAP, it was clear that the number of stonecutters operating in the valley has risen considerably since the 1999 assessment was undertaken. Recent information provided to the Panel by Management, at the Panel’s request, indicates that there may be approximately 1,000 people involved in stone cracking activities in the area. As described above, there are also a number of residences and people adjacent to the area of the landfill and buffer zone, including members of the Agyemankata Community and the school. The Panel cannot know the precise numbers because they have not been established by Project documents.

### **Decision to Proceed with a Resettlement Policy Framework Rather than a Resettlement Action Plan at Appraisal**

OP 4.12 states that for operations “*that entail involuntary resettlement,*” a RAP is required **as a condition of appraisal**, unless otherwise specified (i.e., where impacts are minor or fewer than 200 people are displaced, an abbreviated resettlement plan may be used). A RAP is to include socio-economic studies (including a census survey), analysis of the legal and institutional framework, valuation of and compensation for losses, resettlement measures, implementation schedule, costs and budget, monitoring and evaluation. By comparison, a RPF may be submitted where due to the nature of the subprojects, “*the zone of impact of subprojects cannot be determined*” or “*the zone of impact is known but precise sitting [sic] alignments cannot be determined.*”

In the present case, the Project proceeded with an RPF at appraisal, and left the development of a RAP for Kwabenya to a later date. The RPF explains that existing information on the safeguards situation at the landfill site, and the consultation process with the affected population, were “*insufficient to present an adequate RAP . . . which remains to be done, with adequate exploration of alternatives.*” By comparison, the 2003 ESA states that because “*... detailed designs for the various sub-components have not been finalized it is not possible to prepare a detailed resettlement action plan for the project . . .*”

The Panel notes that the need to prepare a RAP for Kwabenya landfill subcomponent prior to appraisal was raised during Project preparation by Bank staff, who indicated at that time that “*the extent of the resettlement/compensation is known.*” In addition, the Terms of Reference (TOR) for the 2003 ESA include specific terms of reference for a RAP for the Kwabenya landfill, as well as TOR for an RPF for other Project subcomponents.

The Panel notes that the ability to prepare a policy-consistent RAP at the time of appraisal hinged, in part, on having: (a) an adequate 2003 ESA which properly identified Project risks and critical elements such as the appropriate size of a buffer zone around the landfill to protect the nearby community and for purposes of land acquisition; and (b) an adequate, policy-consistent consultation process in advance of Project appraisal. As has been noted in earlier sections, these conditions did not exist. This is a result of, among other things, shortcomings in policy-required actions during Project preparation, especially with respect to the adequacy of the 2003 ESA.

**The Panel notes that the preparation of a RAP would have helped to bring to the surface the crucial and difficult questions involving resettlement planning prior to the time of Project appraisal, rather than leaving these to Project implementation.**

The Panel acknowledges that Management included a covenant in the Development Credit Agreement that the landfill could not be commenced until a policy-consistent RAP was prepared and implemented. **The Panel observes, nevertheless, that difficulties now being encountered in completion of the RAP, and its linkage to the EA Policy, noted above, may be traced back at least in part to the lack of adequate and coordinated safeguards work by the time of Project preparation.**

### **Adequacy of the Resettlement Policy Framework under the Policy**

The Panel examined whether the RPF met relevant policy requirements for such an instrument. The Quality at Entry Assessment carried out for the UESP II was critical of the submitted RPF, characterizing it as “*somewhat disorganized, unfocused, vague and repetitive, and insufficiently operational*” and stating that “*the team appears to have underestimated the grounds of remaining objections*” in the Kwabenya area. **The Panel concurs with these concerns, and describes below certain elements as they relate to the provisions of OP 4.12.**

#### **Social and Legal Issues in Ghana related to Land Acquisition**

The Panel examined background social and legal issues in Ghana that are relevant to the claims of displacement and involuntary resettlement raised in the Request.

Land ownership in Ghana is based on absolute “*allodial*” or permanent title. While those who exercise the allodial rights may not necessarily live in the area, “*customary freeholders*,” who hold usufruct rights, live on and cultivate the land. In addition, there are so-called “*leaseholders*,” who are non-members of the land owning households, but have been given lands on a leasehold basis, generally for 99 years. A number of these leaseholders in Kwabenya practice stone-quarrying. The Panel found, however, that many stone-quarriers in the area have no leases and simply work in the quarries.

The national legal framework for land acquisition and compensation is noted in Chapter 4 of this Report. Under this framework, a piece of land is declared in the public interest by Executive Instrument, the publication of which vests the land in the President free from any encumbrance and is a trigger for any expropriated person to submit claims for compensation. The Project

Appraisal Document of a separate Bank-financed project, the Land Administration Project in Ghana, notes “[t]he government’s compulsory acquisition/vesting of private lands without any consultation with or approval by customary authorities, non-implementation of proper resettlement of displaced persons and continued non-payment of just compensation have created a strong sense of injustice meted by the State.” It also notes that “[t]he problem is acute in the urban areas, particularly in the Greater Accra Region.” In addition, under Ghanaian law, customary freeholders are not entitled to compensation for the land in their own right. Rather, the compensation will be paid to the holders of the allodial rights, who are expected then to distribute the relevant amount to the members of the community including the occupiers of the land.

This forms part of the context in which the Bank was operating and continues to operate in relation to Kwabenya—a subcomponent of the Project which includes land acquisition and resettlement, that, in addition, was overlaid with intense local political sensitivities and a heightened environmental awareness motivating organized popular resistance.

### **Gaps between Domestic Law and Bank Policy**

Under OP 4.12, an RPF must propose measures to bridge any gaps between national and Bank Policy requirements, to ensure that the resettlement program conforms to Bank Policy.

The Kwabenya RPF identifies some differences between the laws of Ghana and World Bank Policy and states that where there are gaps, the relevant provisions of OP 4.12 will apply. For example, it notes that eligibility for compensation under Ghanaian law is essentially based on ownership, while under Bank Policy even “*those who do not have recognizable legal right or claim to the land they are occupying*” are provided resettlement assistance.

During the negotiations for the Credit financing the Project, the Government delegation raised concerns regarding the differences between the Constitution of Ghana and OP/BP 4.12 regarding the recognition of the rights of squatters to land, who hold no title. The Minutes of Negotiations record that the parties agreed to apply the relevant provisions of the RPF, which confirm the application of Bank Policy in case of gaps between the Policy and Ghanaian legislation.

Referring to a “*volatile*” nature of the situation in Kwabenya with respect to land acquisition issues, the RPF notes that an Executive Instrument (described above) should be passed after compensation and resettlement have been carried out, to confirm the land acquisition. It also indicates that compensation would be paid before owners/occupiers are made to vacate their properties. The Panel’s social expert observes, however, that, in light of the issues noted above, the RPF provision about the sequencing of the compensation and issuance of Executive Instrument is not sufficient to ensure payment of compensation to all those eligible under the Bank Policy without additional measures in place to guarantee payment. **The Panel notes that specific measures to bridge the gap between domestic legislation and Bank Policy need to be addressed to achieve compliance with Bank Policy.**

The Panel also determined that the RPF gave insufficient attention to the needs of vulnerable groups including women and other displaced persons who are not protected through national

land compensation legislation. In addition, its section on national legal, regulatory and administrative frameworks does not refer to issues and risks relating to the borrower's capacity and commitment to implement the resettlement instrument, notwithstanding well-known concerns affecting past land acquisition efforts.

**The Panel finds that although important elements were included in the RPF, the risks related to land acquisition and compensation were not sufficiently considered. This does not comply with OP/BP 4.12.**

### **Disclosure of RPF**

**The final RPF was disclosed as a separate and stand-alone document in English on January 16, 2004, prior to appraisal. This is consistent with Bank Policy on Disclosure of Information.**

The Requesters argue, however, that they were not made aware of the RPF during its preparation, and were only given a copy after it was finalized, following a petition and demonstration at the World Bank office in Accra. **The Panel finds that, contrary to the requirements under the Bank Policy on Disclosure of Information, no records are available to show that the draft RPF was disclosed to the affected people.** This has had a negative effect on the consultation process.

### **Informed Consultation**

The Project design called for preparation of the RAP during Project implementation prior to beginning any construction of the landfill. As of January 2009, Management informed the Panel that the RAP is under preparation.

OP 4.12 requires that persons to be displaced and their communities—and any host communities receiving them—are provided timely and relevant information, consulted on resettlement options, and offered opportunities to participate in planning, implementing, and monitoring resettlement. Appropriate and accessible grievance mechanisms are to be established for these groups. The Policy envisages a form of negotiated compensation achieved through fully informed and participatory consultation and demands an iterative and ongoing, rather than one-off, engagement.

The achievement of genuine participation and consultation in sensitive development situations that involve the loss of assets and livelihoods, and potentially relocation, raises a series of challenges that need to be considered and addressed in the preparation of a RAP. Such challenges are greatest where the individuals involved are vulnerable and where power imbalances between the state and the citizen are amplified.

The situation in Kwabenya was particularly challenging with many poor women involved in the stone quarrying activities likely to lose their livelihoods as a result of the land acquisition, migrants with uncertain legal entitlement to be in the country, and those deemed 'squatters' and

informal quarriers without formal title to land or permits to mine and no legal right to compensation under local law.

In administering the survey of affected people, and as of the time of the Panel's investigation visit, little or no efforts appear to have been made to explain meaningfully the processes and the policies that determine them (both the Laws and policies of Ghana and of the World Bank) or to describe an ongoing participation plan in line with the requirements of OP 4.12. **The Panel finds that Management failed to ensure that the affected population was provided with an information sheet in local languages or in English or French (for migrant workers) setting out the purpose of the survey, or explaining the resettlement and compensation procedures.**

### **Project Implementation and Supervision**

Under Bank Policy, supervision is designed to ascertain the extent of compliance with loan covenants, including those related to environmental and social safeguards, and to assess risks to successful implementation, operation, and sustainability of the project. Adequate supervision requires regular visits to the project site and meeting with project beneficiaries and stakeholders.

The implementation of the proposed landfill subcomponent of the Project has been beset by many problems and difficulties. These include, not least, an extremely tense environment between the local community and Project officials and proponents on critical questions of implementation. The Project has missed repeated deadlines for completion of a RAP, and there has also been a substantial delay in developing the new and updated environmental impact assessment and management plan.

**In discussions with the Panel, Bank staff acknowledged that mistakes had been made in supervision of the Kwabenya subcomponent of the Project, particularly in the critical early stages of Project implementation.** As noted above, it was apparent from the outset that the implementation of the Kwabenya subcomponent would be overlaid with intense local political sensitivities, and that DfID had withdrawn from the earlier attempt to develop a landfill at Kwabenya. Notwithstanding these warning signs, the Bank opted for a hands-off approach on the supervision of the Kwabenya subcomponent, without ensuring that sufficient attention was paid to deal with the social and environmental safeguard aspects of the Project. **The Panel finds that supervision of the Kwabenya subcomponent was lacking until well into the implementation of the Project, in non-compliance with OP/BP 13.05.**

The Panel was informed that the Government advised Bank staff not to visit the Kwabenya proposed landfill site for safety reasons, which resulted in very limited on-site supervision. This aside, during interviews, Bank staff acknowledged that they were not even aware of critical local implementation decisions, including the formation of the TAC in June 2004 that made a series of recommendations (on community consultation, avoiding or minimizing resettlement by reducing the size of the landfill, on asset valuation and land acquisition) of direct relevance to Project implementation. This fundamentally affected the course of the work on the Kwabenya landfill subcomponent, and shaped the perceptions of the affected community about the scope and extent of Bank responsibility.

This was compounded by the fact that land acquisition and compensation activities started prior to the preparation of a RAP. The RPF recommendation, noted above, about the sequencing of the issuance of the Executive Instrument and the payment of compensation was not followed. The Executive Instrument was issued on January 26, 2007, with a six-month deadline to submit claims for compensation. The Panel was informed that demolition markers painted on structures in the affected community also occurred in January 2007. In July 2007, the authorities issued a notice that rights to compensation would be forfeited if compensation claims were not submitted by the six-month deadline. The Panel notes that these events further increased tension in the community.

The Panel notes that the Aide Memoire of the September 2007 mission noted that the Bank was informed about procedures followed by the Government to compensate affected people and that Bank staff raised concerns that compensations payments could begin prior to the completion of the RAP. The MTR conducted in December 2007 does not explicitly report on this problem, and notes that substantial progress has been made since December 2006, because the demarcation of the site was completed, the number of structures to be demolished was submitted along with estimate compensation costs and an Executive Instrument was issued.

On the issue of the preparation of the RAP, supervision reports of November 2006 and May 2007 stated that financing would likely be cancelled if further progress on the RAP was not available by the December 2007 Mid-Term Review, and that restructuring of the Project may be required. To date, a draft RAP has been submitted for approval to the Bank but no final RAP is yet available.

The evidence available to the Panel indicates that no resettlement and social safeguard specialist was included as part of the supervision missions until the MTR in December 2007. **This lack of engagement of social specialists is particularly problematic in light of social concerns that had surfaced during the design phase and the inability of project authorities to solve such issues. This is not consistent with Bank Policy on Supervision.** The Panel also was given the impression from many sources that social safeguards were marginalized or relegated in the management and supervision of the project. It likely contributed to significant lost opportunities to identify and respond to growing problems and risks besetting implementation of the Kwabenya landfill subcomponent.

**The evidence suggests that, from the outset of implementation, problems associated with resettlement in Kwabenya were not fully identified, reported to senior management or, when known, were not referred to or shared with staff with safeguards responsibilities** (specifically after May 2005). Project supervision reporting, including the Implementation Status and Results Reports called for under BP 13.05, did not adequately “flag up” social safeguards issues or prompt an internal call for greater supervision on these matters. Indeed it was not until the MTR and after the Request for Inspection that the need for enhanced supervision of social safeguards was signaled with any urgency.

**As Project implementation progressed, and particularly after the submission of the Request for Inspection, Management became more active in responding to emerging problems.** In its Response to the Request for Inspection, Management indicated that it would

reinforce the Project supervision team with a senior social safeguards expert and another social scientist based in Accra, and specified several concrete steps to address social and environmental issues. **The Panel notes the importance of these steps in responding to issues identified above.**

**In assessing Bank actions and policy compliance, the Panel also wishes to highlight that the concerns about safety of Bank staff at the Kwabenya site must not be underestimated.**

## **Concluding Observations**

**Projects in challenging circumstances:** The Panel has noted certain instances of non-compliance by the Bank. At the same time, the Panel has also acknowledged that the environment around the subcomponent may be affecting actions (e.g., consultations, field visits, and resettlement planning) that are essential to compliance with Bank Policies. **A recurring theme in this Investigation is the difficulties encountered in designing and implementing a project when positions amongst project stakeholders have hardened, trust has been lost, and there is an impasse.** The Panel does not pass judgment on this situation, but brings it to the attention of the Board.

**Streamlined procedures:** Another dilemma that this Report addresses is an apparent conflict between time pressure and policy adherence. During interviews, the Panel was informed that at least some in the task team felt that time pressure to prepare and submit the Project to the Board contributed to an underestimation of risks, and that the Bank should have done more to make sure that problems at Kwabenya were not handed over to the implementation period without insuring that they can be properly dealt with. **While noting the necessity of risk taking in development and the objective of simplifying procedures, short-term expediency needs to be assessed in terms of potential problems in the long-term. The Panel is of the opinion that processing the Kwabenya subcomponent as part of a “repeater project,” which generally involves streamlined procedures, was contrary to guidance that projects with safeguard problems should not be so processed.**

**Legacy issues:** A further concern of the Panel relates to “legacy” issues and the effect of changing circumstances on the ground. As the Panel noted in the Investigation Report of the Request for Inspection related to the Uganda Bujagali Hydroelectric Project, legacy issues are found in many projects, whether or not the initial operation was financed by the Bank. The Kwabenya Landfill subcomponent of the UESP II Project highlighted the need for particular care when addressing environmental and social safeguard issues in projects initiated and later stopped. The Panel found that the Kwabenya 2003 Environmental and Social Assessment relied heavily on a siting study and environmental assessment from many years earlier, without taking properly into account the new social and environmental reality in the proposed landfill area resulting from an influx of people with corresponding investments in physical structures and commercial activities.

In response to the Panel’s findings included in the Bujagali Investigation Report, Management committed to develop “*guidance on how to address environmental and social safeguard issues in legacy projects that suffer significant interruptions in implementation.*” The Panel hopes that the

issues and findings of the present investigation will also be taken into account in developing this guidance.

**Country ownership and supervision:** The Panel has highlighted the importance of country ownership, and does not consider that there is any incompatibility between adequate project supervision and country ownership. Nevertheless, Management is responsible for ensuring that relevant policies are met and to facilitate action to address problematic situations that arise. In the present case, the Panel has found that Management's **hands-off approach** may have contributed to inattention to safeguard issues and problems that emerged during Project implementation. Bank staff mentioned other systemic factors of concern that contributed to lack of adequate supervision, including high staff turnover, budget constraints, inadequate coordination in Project management and supervision, and heavy work demands on task team leaders.

**Looking ahead:** The Panel notes that since the Request for Inspection, several new actions have been initiated or are ongoing, including the preparation of an (updated) EIA and a RAP, and that the Bank has reinforced its project supervision team. **The Panel appreciates these efforts and highlights again the importance of taking into account the views of the Requesters and affected people and deciding on action in line with Bank Policies**, within the context of upcoming decisions regarding the proposed landfill.

# Chapter One

## Introduction

### A. Events Leading to the Investigation

#### 1. Brief Description of the Project

1. The Ghana: Second Urban Environmental Sanitation Project (UESP II) (the Project) has the objective to improve the urban living conditions in Ghana specifically in regard to environmental health, sanitation, drainage, vehicular access and solid waste management. The Project consists of five components, involving actions to address flooding through storm drainage, to increase access to adequate sanitation, sustainable solid waste management, community infrastructure upgrading in low-income communities, and institutional strengthening.
2. The Project component on solid waste management includes, as one of its subcomponents, the construction of a sanitary landfill in Accra near the village of Kwabenya. The Request for Inspection focuses on this subcomponent of the overall Project, the proposed sanitary landfill near Kwabenya. The results of the Panel's investigation in response to this Request for Inspection are presented in this Report.

#### 2. Request for Inspection

3. On August 16, 2007, the Inspection Panel (the "Panel") received a Request for Inspection related to the Project financed by the International Development Association (IDA) (Credit No. 3889-GH). The Request was submitted by the Accra-based Centre on Housing Rights and Evictions (COHRE) on behalf of the Agyemankata Community, which lives in the area known as Kwabenya.<sup>2</sup>
4. The Panel registered the Request on August 22, 2007, and notified the Executive Directors, the President of IDA and the Requesters thereof. On September 21, 2007, the Panel received Management's Response to the Request (Management Response).<sup>3</sup>
5. **Pollution and Health Impacts, Involuntary Displacement.** The Requesters contend that the proposed sanitary landfill, funded by the Project, will detrimentally affect the Agyemankata community, in particular those people who live in proximity to the landfill and the related operations of the said landfill. They also fear possible pollution of their water supply.

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<sup>2</sup> Request for Inspection, received by the Inspection Panel on August 16, 2007 (hereinafter the "Request").

<sup>3</sup> Bank Management Response to Request for Inspection Panel review of the Ghana—Second Urban Environmental Sanitation Project (IDA Credit No. 3889-GH), September 21, 2007 (hereinafter "Management Response").

The full text of the Request for Inspection and Management Response are included in the Panel's Report and Recommendation dated October 24, 2007. These are available at the Panel's website, <http://www.inspectionpanel.org>.

6. The Requesters consider that there is a lack of administrative and technical capacity to ensure that a landfill would be operated safely for the people and local environment. They state that other disposal sites in Ghana have not been adequately maintained, leading to significant risks and harms to nearby communities.
7. The Requesters believe that the landfill, if constructed, would result in the involuntary displacement of much of the Agyemankata Community, and would leave the remainder of the community living in conditions that pose grave risks to their health. They note that many households have been informed that they will be displaced if and when the landfill is constructed. According to the Requesters, however, the Bank has not complied with its Policy on Involuntary Resettlement because it has not ensured that displaced persons are meaningfully consulted, participate in the planning and implementation of the resettlement program, are informed about their options and rights relating to resettlement, and are offered choices and feasible alternatives.
8. In addition, they contend that the decisions taken by the local authority, without, *inter alia*, adequate consultation and disclosure of information, demonstrates a lack of commitment to implementing a resettlement instrument that meets Bank Policy, and that as a result the Bank is in violation of the provisions of its Policy that require an assessment of the borrower's commitment to and capacity for implementing the resettlement instrument.
9. **Lack of Meaningful Consultation, Participation and Disclosure.** The Requesters claim that they were not adequately informed and meaningfully consulted during the Project design phase. The Request lists eight examples illustrating the lack of meaningful consultation. Among these examples, they claim that the information provided to them by the responsible government authority, the Accra Metropolitan Assembly (AMA), was in the local newspapers and via radio announcements, but often after the decision had already been made. They assert that the means of communications used to inform people about the Project was "*insufficient*" as it did not allow a process for meaningful input by the community.
10. They Requesters claim that they only gained knowledge of the Bank's involvement in the Project through a newspaper article. Once they became aware of the Bank's involvement, they wrote to the Bank requesting that it withdraw its support for the landfill subcomponent. The Bank responded by inviting the Agyemankata Community to see the Environmental and Social Assessment (2003 ESA)<sup>4</sup> and the Resettlement Policy Framework (RPF),<sup>5</sup> which had already been prepared. The Requesters claim that this was the first time they were made aware of the existence of these documents. They state that they did not participate in the preparation of the Resettlement Action Plan (RAP), were never consulted about it, and that, at the time

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<sup>4</sup> Environmental and Social Assessment, Government of Ghana, Ministry of Local Government and Rural Development, December 2003 (hereinafter "2003 ESA").

<sup>5</sup> Resettlement Policy Framework, Government of Ghana, Ministry of Local Government and Rural Development, December 2003 (hereinafter "RPF").

they submitted the Request, had yet to see it. They state that the community is quite frustrated by the lack of transparency and lack of consultation.

11. The Requesters acknowledge that the AMA did notify the Community by two radio announcements and a newspaper article that they would need to lodge their property documents to the Land Valuation Board (LVB). They add that they were notified of the deadline for submission of documents via an additional newspaper article, and that the failure of submitting the document would result in a forfeiture of compensation claims. They state that they viewed this notice as a threat that the residents risked forfeiting compensation, which they consider a violation of Bank Policy on resettlement. The Requesters also claim that they sent several letters to the AMA, but had yet to receive a response at the time they filed the Request with the Panel. All communications to the Community had been either by radio or newspaper.
12. During the Panel's eligibility, it was alleged that, contrary to the RPF, authorities came to the community in January 2007 accompanied by "*armed policemen and national security*" and marked their houses to be vacated. Members of the community indicated to the Panel that they have lost trust in the process.
13. **Changing Residential Conditions near Site.** The Requesters also claim that the proposed Kwabenya landfill site was based on a 1990 United Nations Development Program (UNDP) strategic plan for the Greater Accra Metropolitan Area, whereby a proposed landfill site should be located 1 km away from a residential area. The Request acknowledges that while the location of the proposed site met the criteria at the time, the current project falls short of the requirement due to the changed residential conditions in the area.

### 3. Management Response

14. Management in its Response to the Request states that poor sanitation, which is the result of inadequate water supply, sanitary facilities, drainage and solid waste management, is the key urban environmental issue that Ghana has been facing over the last 20 years. It further states that the Government has taken steps to examine the situation and set goals for better environmental management. Additionally, a 2003–2005 Ghana Poverty Reduction Strategy, indicated that "*environmental sanitation and capacity to deal with solid and liquid waste have shown little sign of improvement.*"<sup>6</sup>
15. Management asserts that as a Repeater Project to UESP I, which was supported by a Regional Review Panel of experts, the Project was processed in line with the Bank's guidelines and requirements, including the Bank's environmental and social safeguard policies.
16. Management states that the Project has been rated as "*unsatisfactory for more than a year mainly due to the very slow disbursement level of the credit and the lack of*

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<sup>6</sup> Management Response, ¶8.

*progress in the solid waste management component, with the Kwabenya sanitary landfill subcomponent being the most delayed.*<sup>7</sup> It further states that the Bank has been in constant dialogue with the Government to get the Project back to satisfactory status.

17. **Background to Project.** In its Response, Management describes the historical background to the Project. It states that an Environmental Impact Study (EIA)<sup>8</sup> was commissioned in 1999 for the proposed landfill site and construction of a roadway to the site was commenced, both with financial assistance from Britain’s Department for International Development (DfID). Management states that at the time of the 1999 EIA, there were “*virtually no resettlement needs.*” However it notes that due to the construction of the roadway, people began to move closer to the site, and construction of the landfill was delayed due to land right claims from the new occupants of the land. DfID withdrew its financial support due to the delays in the project and also due to shifts in development policy at the time. This led the Government to request the Bank to finance the Kwabenya sanitary landfill, which the Bank agreed to, but with conditions.<sup>9</sup>
18. **Problems in Implementation.** Management notes that the Bank, on several occasions, discussed the problems in the implementation of the landfill subcomponent of the Project with the Government, indicating that it would likely cancel the financing for the Kwabenya sanitary landfill if evidence of further satisfactory progress on the drafting of a RAP was not available when the Bank visited the site in December 2007. The Response further states that the Bank indicated that it would restructure the Project with the possibility of either cancelling or reallocating some of the funding to other successfully implemented components.
19. **Environmental Assessment.** Management considers that the Government and the Bank have fully complied with OP 4.01 on Environmental Assessment. The Government used the DfID-funded 1999 EIA as the basis for preparing the 2003 ESA—a requirement under OP 4.01—for UESP II. The 2003 ESA contained an updated Environmental Management Plan (EMP) and the RPF, which Management states was “*deemed satisfactory*” at appraisal. An update of the EMP and RPF were also proposed to be in accordance with the final design of the proposed landfill. Management further states that a “*significant amount of analysis has been undertaken related to environmental impact,*” the results of which were publicly disclosed.<sup>10</sup>
20. Management notes the claim of Requesters that the Integrated Safeguards Data Sheet (ISDS) states that “*those living near the land fill will be negatively affected*” and that “*surface and groundwater pollution could extend 5 to 10 km downstream.*” In its

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<sup>7</sup> Management Response, ¶13.

<sup>8</sup> Accra Waste, Proposed Landfill at Kwabenya, Environmental Impact Assessment, August 1999 (hereinafter the “1999 EIA”). Note: Management’s Response refers to the document as an Environmental Impact Study. For the purposes of this Report, the term Environmental Impact Assessment (1999 EIA) will be used.

<sup>9</sup> Management Response, ¶¶16–19.

<sup>10</sup> Management Response, ¶22.

Response, Management states that while the ISDS highlights some potentially negative environmental aspects, the statement quoted by the Requesters is a “*general statement that describes the environmental conditions that would prevail if appropriate mitigation measures were **not** taken in designing and operating the landfill facilities... .*”<sup>11</sup>

21. **Displacement and Resettlement.** With respect to issues of displacement and resettlement, Management states that the RPF, which sets out the guiding principles and objectives governing resettlement issues, as well as eligibility criteria for compensation, was reviewed at appraisal and was found to be in line with the Bank’s resettlement policy. Management further states that the Government and the Bank are aware that further information is needed in order to meet the requirements of the Bank’s policies on presenting an adequate RAP.
22. In particular, Management states that “*existing information on the social safeguards situation at the Kwabenya landfill site is ‘in part taken from [the DfID-financed] Environmental Impact Study. It was deemed, however, that this information, and the consultation process with the affected population, are insufficient to present an adequate RAP for Kwabenya, which remains to be done, with adequate exploration of alternatives.’ [footnote omitted] Hence, it was clear that the Government would need to conduct further site-specific consultations for the RAP for the Kwabenya sanitary landfill.*”<sup>12</sup> Therefore Management states that Bank has not proceeded with the Kwabenya subcomponent, because a RAP for the subcomponent has yet to be prepared, in compliance with the provisions of OP 4.12. Management further states that the Project Credit Agreement requires a detailed RAP acceptable to IDA, including “*compensation, relocation and rehabilitation of Affected Persons.*”
23. **Consultation and Disclosure:** Management states that the consultations carried out during the drafting of the RPF were considered sufficient. Management states that these consultations were carried out during field visits to the Kwabenya sanitary landfill site.<sup>13</sup> The Response further states that as part of the preparation of the RAP for the Kwabenya sanitary landfill, further consultations will have to take place.
24. Management states that after the dissemination of the RPF and the publication in the press of the agreement between the Bank and the Government, the Bank received a letter from the Agyemankata Kwabenya Community (AKC or Agyemankata Community) requesting that it not proceed with funding the landfill, as well as visits from the AKC on four separate occasions, all preceded by protests. The Response states that the Bank “*responded to the letters and thoroughly explained during the meetings the obligation to implement a full RAP before commencing civil works at the site.*”<sup>14</sup>

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<sup>11</sup> Management Response, Annex 1, p. 12.

<sup>12</sup> Management Response, ¶25.

<sup>13</sup> Management Response, ¶23.

<sup>14</sup> Management Response, ¶27.

25. Furthermore, Management also states that the Government had undertaken, on several occasions to, “*reach out to and consult the local communities about the Project, including the AKC.*”<sup>15</sup> The Government established a Technical Advisory Committee (TAC) on June 16, 2004 (after Project approval) to address the concerns of property owners. The TAC issued press releases inviting the general public to submit their concerns on the landfill project, and held “*brainstorming sessions*” with land agencies, social groups, traditional authorities, other Kwabenya residents, and Government and project officials. The Response states that the AKC declined to attend these sessions. The Response further states that when the Bank and Government officials attempted to deliver letters to the community, “*they were detained for several hours, confronted with death threats should they ever return, and the letters were returned unopened.*”<sup>16</sup>
26. Management states that due to the complex social situation and the difficulties in seeking meaningful consultations with the affected parties, the Government issued an Executive Instrument, which provided six months for any affected person or persons to submit a claim for compensation. The Government notified the Bank that it had “*no intention of requiring the forfeiture of compensation*”<sup>17</sup> and would abide by the Bank’s policies on preparing the RAP.

#### **4. Eligibility of the Request**

27. In order to determine the eligibility of the Request, the Panel reviewed the Request and Management’s Response. A Panel team visited the Ghana from October 9–12, 2007. During their visit, the Panel Team met with numerous members of the affected community living in and around the site proposed for the sanitary landfill, as well as representatives of COHRE. The Panel also met with Government officials and with local authorities in Accra, with representatives of the Project coordination unit, and with Bank staff including the Country Director and Country Program Manager and others engaged in aspects of the Project. The Panel Team visited the proposed site of the Project and surrounding areas.
28. The Panel determined in its Report and Recommendation, dated October 24, 2007,<sup>18</sup> that the Request satisfied the eligibility criteria for an investigation, as set forth in the 1993 Resolution establishing the Panel and the 1999 Clarifications.<sup>19</sup>

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<sup>15</sup> Management Response, ¶28.

<sup>16</sup> Management Response, ¶28.

<sup>17</sup> Management Response, ¶30.

<sup>18</sup> Inspection Panel Request for Inspection, Ghana: Second Urban Environmental Sanitation Project (UESP II), Report and Recommendation, October 24, 2007 (hereinafter “Eligibility Report”).

<sup>19</sup> The 1999 Clarifications to the Resolution are contained in the “Conclusions of the Board’s Second Review of the Inspection Panel,” April 20, 1999 (hereinafter “the 1999 Clarifications”).



**Picture 1: Panel team meeting with affected people in the Agyemankata Community**

## **5. The Board Decision**

29. On November 9, 2007, the World Bank Board of Executive Directors approved, on a non-objection basis, the Inspection Panel's recommendation to conduct an investigation on the issues raised in the Request for Inspection.

## **6. The Investigation**

30. The purpose of the investigation was to establish whether the Bank complied with its own policies and procedures in the design, appraisal and implementation of the Project, and whether, if instances of non-compliance were found, they caused, or were likely to cause, harm to the Requesters.

31. The Panel conducted a two-part investigation. The first part involved detailed research into Bank records related to the Project, interviews with Bank Staff, and a review of other relevant documents. The second part took the form of an in-country fact-finding visit. To assist in its investigation, the Panel hired two internationally recognized expert consultants: Christopher McDowell on social and resettlement issues, and Jean-Roger Mercier on environmental issues.

32. The Panel's Chairperson, Werner Kiene, along with the Panel's Executive Secretary, Peter Lallas, Panel consultant Shéhan de Sayrah, and the expert consultants, Mr. McDowell and Mr. Mercier, visited Ghana from February 20–26, 2008. The Panel team met with the Requesters, members of the local Agyemankata community, stone cracker workers in the Project site area, as well as Government officials and Bank

staff. The team visited the proposed sanitary landfill site in Kwabenya as well as the other sites currently and formerly used to dispose of waste in Accra.<sup>20</sup>

33. The Panel conducted a first round of interviews with Bank Staff in Washington, D.C. before visiting the Project-affected area, and a second round upon its return. During its investigation, the Panel team identified and carefully reviewed all documents relevant to the case that the Requesters, Bank Staff, and other sources provided to the Panel. The Panel also analyzed other evidence gathered during the field visits or otherwise in its research.
34. This Report presents the results of the Panel's investigation regarding the different sets of environmental and social issues that the Requesters raised in the Request for Inspection.

## **B. Project Description**

### **1. Background and Objectives**

36. Bank Management indicates that poor sanitation, which is the result of inadequate water supply, sanitary facilities, drainage and solid waste management, is the key urban environmental issue that Ghana has been facing over the last 20 years. A critical concern has been in particular the handling and disposal of municipal solid waste.<sup>21</sup>
37. To address this issue, in 1996 the Bank provided financing for the first phase of the Urban Environmental Sanitation Project (UESP I), which was implemented between 1996 and 2003. UESP I was the predecessor to the current Project and consisted of the same five components as UESP II. UESP I, however, did not include the subcomponent to construct the Kwabenya sanitary landfill; at the request of the Government, this subcomponent was added to UESP II.<sup>22</sup>
38. According to Management Response, UESP I *“marked a significant step in attempts to deal with environmental sanitation issues, particularly with regard to storm drainage, solid waste collection and disposal, and sanitation.”* Nonetheless, Management notes that, according to the 2003-2005 Ghana Poverty Reduction Strategy, *“little sign of improvement”* was achieved in environmental sanitation and

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<sup>20</sup> At the time the Project was being prepared, all refuse collected in Accra was dumped at the Oblogo landfill site. Dumping of refuse at this site began after the Mallam landfill site was closed due to severe lack of space.

<sup>21</sup> Management Response, ¶7.

<sup>22</sup> As stated previously, a 1999 Environmental Impact Assessment was commissioned for the proposed landfill site with the financial backing of DfID. Construction of a roadway to the site was commenced, which led to people moving closer to the site. Due to delays in construction and changes in its development portfolio, DfID withdrew its financial support for the project. The Government of Ghana requested the Bank to include the construction of the Kwabenya sanitary landfill as part of UESP II, which the Bank agreed to, but with conditions.

capacity to deal with solid and liquid waste,<sup>23</sup> and action was “urgently required to ameliorate the extremely unfavorable environmental health conditions.”<sup>24</sup>

39. In this context, the UESP II came about. UESP II was classified as a “repeater project” to UESP I. Bank guidelines<sup>25</sup> provide, *inter alia*, that repeater projects are those which build on the previous, related projects. In accordance with the guidelines, a Regional Review Panel was constituted to assess if a repeat operation was justified on the basis of the previous, related project performance. The Panel recommended that the Project be implemented as a repeater project.<sup>26</sup> As UESP I “closed satisfactorily,” the Review Panel considered that the UESP II could consolidate and mainstream the gains and impacts of the UESP I and maintain momentum for the enhanced development impact in the sector.<sup>27</sup>
40. The Project seeks to take a comprehensive and environmentally-sustainable approach to solid waste management, including the preparation of integrated solid waste management strategies by Municipal Assemblies (MAs), support to the operation and monitoring to the new sanitary landfills, and the closure and rehabilitation of the active and discontinued refuse dumps.<sup>28</sup> The objectives of the Project are to improve urban living conditions in Accra, Kumasi, Sekondi-Takoradi, Tamale, and Tema in regard to environmental health, sanitation, drainage, vehicular access, and solid waste management in a sustainable fashion, with special emphasis on the poor.<sup>29</sup>

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<sup>23</sup> Management Response, ¶8.

<sup>24</sup> Ghana Poverty Reduction Strategy 2003–2005, An Agenda for Growth and Prosperity, February 19, 2003, p. 98.

<sup>25</sup> Building on Success: More Efficient Processing of Repeater Projects, January 22, 2003; Building on Success: Guidelines for Processing of Repeater Projects, March 13, 2003.

<sup>26</sup> The classification of UESP II as a repeater project, and the relevance to the present investigation, is addressed in later parts of this Report.

<sup>27</sup> Bank communication dated June 16, 2003.

<sup>28</sup> Project Appraisal Document on a Proposed Credit in the amount of SDR 41.6 million (USD 62.0 Million Equivalent) to the Government of Ghana for a Second Urban Environmental Sanitation Project, April 29, 2004 (hereinafter “the PAD”), ¶6.

<sup>29</sup> Development Credit Agreement (Second Urban Environmental Sanitation Project) between Republic of Ghana and International Development Association, dated August 13, 2004 (hereinafter, “DCA”), Schedule 2, p. 17.

## 2. Project Chronology – Documents and Decision Dates

41. Box 1 below provides a brief chronology of several important Project documents and dates related to UESP I and UESP II.

### Box 1: Brief Chronology

<b>UESP I</b>	
Project Concept Note:	October 11, 1994
Effective:	September 03, 1996
Appraisal:	June 01, 1995
Approval:	March 26, 1996
Mid Term Review:	February 08, 2000
Closing:	December 31, 2003
Implementation Completion Report	June 28, 2004
Project Performance Assessment Report	July 07, 2006
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<b>UESP II</b>	
Project Concept Note review:	April 29, 2003
Initial Project Information Document submitted to Project Information Centre (PIC)	May 22, 2003
Initial ISDS to submitted PIC	May 22, 2003
Environmental Assessment Report dated December 2003 at PIC	December 1, 2003
Decision Meeting	December 15, 2003
Resettlement Policy Framework dated December 2003 at PIC	December 29, 2003
Appraisal	January 19, 2004
Negotiations	February 5–16, 2004
<i>Meeting between Bank and Affected Peoples (dissemination of ESA and RPF)</i>	<i>February 27, 2004</i>
Board/Regional Vice President approval	April 29, 2004
<i>Creation of Technical Advisory Committee Report of Technical Advisory Committee</i>	<i>June 16, 2004 July 2004</i>
Credit Effectiveness	October 29, 2004
<i>Request for Inspection</i>	<i>August 16, 2007</i>
<i>Management Response</i>	<i>September 21, 2007</i>
<i>Report and Recommendation on Request for Inspection</i>	<i>October 24, 2007</i>
<i>Board of Executive Directors Non-Objection to Panel's Recommendation</i>	<i>November 09, 2007</i>
Mid-Term Review	December 31, 2007
Planned closing date	June 30, 2010
Source: Bank and Panel Documents	

### 3. Project Components and the Proposed Sanitary Landfill

42. The Project consists of five components: (i) reducing the susceptibility of low-lying areas to flooding by building adequate storm drainage systems; (ii) increasing access for low and middle-income residents to adequate sanitation; (iii) sustainable solid waste management; (iv) community infrastructure upgrading in low-income communities; and (v) institutional strengthening.<sup>30</sup>
43. The Request for Inspection relates specifically to the subcomponent under solid waste management involving the construction of a sanitary landfill near the village of Kwabenya in Accra.<sup>31</sup>



**Picture 2: Views of proposed landfill area and surroundings**

44. The Project is categorized as Environmental Category A “because there are potentially serious environmental and social issues with one of the sanitary landfills located in Kwabenya...”<sup>32</sup> The ISDS indicates that the “sanitary landfill for Accra at Kwabenya will require involuntary resettlement of an estimated 170 persons (2002 figure).”<sup>33</sup> These and other Project documents are reviewed in more detail in later chapters dealing with the assessment of whether the Bank complied with applicable Bank policies and procedures.
45. Kwabenya is located approximately 20km north of the centre of Accra, in the foothills of the Akwapim Mountain Range. The landfill site is located 2km from the village of Kwabenya. The site consists of a main valley, Valley A, and a smaller valley to the side of the main valley, Valley B. It includes or is near to a number of residences, a community school, farm lands and stone cutter work sites. The construction of the landfill in Kwabenya is proposed to serve Accra as well as urban areas of Ga District, which is adjacent to the City of Accra, which has an estimated 500,000 tons of refuse per year.<sup>34</sup>

<sup>30</sup> DCA, Schedule 2, p. 17. See also PAD, p. 3.

<sup>31</sup> DCA, Schedule 2, p. 17.

<sup>32</sup> PAD, Annex 10, p. 69, ¶242.

<sup>33</sup> Integrated Safeguards Data Sheet, updated October 30, 2003 (hereinafter “ISDS”), Part D.

<sup>34</sup> PAD, pp. 32-33, ¶115.

46. The 1999 EIA, proposed a design, which was designated as “Option A1” for initial development. The area under this designation consists of a “void space”, which could hold up to approximately 23 million m<sup>3</sup> of waste and would serve the sanitation need of Accra for about 30 years.<sup>35</sup> The 1999 EIA also identified a second parcel of land, “Option B1,” capable of holding an additional 10 million m<sup>3</sup> of waste. The decision at the time was to concentrate on Option A1, and to further investigate the second parcel of land before any construction on it began. The 1999 EIA also provides for a buffer zone of approximately 250m, in which no buildings should be located, so as to prevent any risks of emissions of landfill gas.
47. The 2003 ESA states that the total land area to be acquired for the project—which includes the landfill site itself plus the buffer zone around the site—is approximately 194 hectares.<sup>36</sup> The TAC, constituted in June 2004, recommended modifications to the overall size of the landfill.<sup>37</sup> The size and buffer area are discussed in more detail in Chapter 3.
48. On the socio-economic impacts of the acquisition of the land, the 2003 ESA states that while the loss of 194 hectares may seem insignificant, it takes on an added value because of the density of the population in the area, their cultural traditions, and their attachment to their ancestral lands. It further states that “*the project may not only be traumatic, but could be a source of conflict within the lineage group that owns the land.*”<sup>38</sup> To this end, the 2003 ESA recommends that the true owners and the original inhabitants of the land are identified and that fair and equitable compensation be paid out in a transparent manner. It goes on to state that there are bound to be families, whose settlements will have to give way for the project, which will need to be resettled. According to the PAD, before construction of the proposed sanitary landfill commences, a RAP will need to be prepared with the consultation and input of all the stakeholders.<sup>39</sup>
49. The first phase of construction of the proposed landfill commenced in 2000 with financial assistance from DfID. This included the construction of an access road and a covered conduit for storm water drainage. The commencement of the second phase was delayed due to claims of land rights in the area, which, *inter alia*, led to DfID ultimately withdrawing its support for the project.

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<sup>35</sup> 2003 ESA, p. 107.

<sup>36</sup> The breakdown is as follows:

Landfill footprint (excluding compound area)	= 75 ha
Buffer zone around the site	= 119 ha
Total land	= 194 ha

2003 ESA, p. 108.

<sup>37</sup> The Report of the Technical Advisory Committee recommended that “*the boundary of land required for the landfill should be revised to exclude lands presently occupied. All such lands would therefore lie outside land to be used for landfill operations, as well as the buffer zone required for minimizing negative impacts.*” (Final Report of the Technical Advisory Committee, 2004, p. 22.)

<sup>38</sup> 2003 ESA, p. 122.

<sup>39</sup> PAD, p 33, ¶116.

#### **4. Financing of the Project**

50. The Project is financed by an IDA Credit of 41.6 million Special Drawing Rights (SDR) (US\$64.39 million equivalent). At the time the Request was received, about 3.37 million SDR (US\$5.06 million equivalent) had been disbursed, approximately 8 percent of the Credit. The Credit was approved by Board of Executive Directors in April 2004. US\$25.7 million of the total credit is slated for the solid waste management component of the Project, of which the construction of the Kwabenya sanitary landfill is a subcomponent. At the time of writing this report, it was unclear how much exactly would be allocated for this particular subcomponent.

#### **C. Applicability of Bank Policies and Procedures to the Project**

51. In its investigation of the claims made in the Request for Inspection, the Panel assessed whether the Bank complied with the following applicable operational policies and procedures:

OMS 2.20	Project Appraisal
OP/BP 4.01	Environmental Assessment
OP/BP 4.12	Involuntary Resettlement
OP/BP 13.05	Project Supervision
World Bank Policy on Disclosure of Information	

## Chapter Two

### Project Context and Design

52. This Chapter reviews social, environmental and economic factors relevant to an understanding of the Project and the claims presented in the Request for Inspection. The discussion provides a foundation for the Panel’s assessment of Bank compliance, and related issues of harm or potential harm, presented in subsequent chapters.

#### A. Environmental Sanitation Needs in Ghana

##### 1. The Current Situation

53. According to Project documents, one of the key environmental issues facing Ghana for more than a decade has been poor environmental sanitation, resulting from a combination of inadequate water supply, sanitary facilities, drainage and solid waste management.<sup>40</sup> In setting out the basis for the Project, the PAD comments on the problem of open refuse dumps, stating that:

*Refuse has up to now been disposed of in refuse dumps with very little consideration for the environmental and social impact. None of the dumps are being covered, and leachate is polluting the surface and groundwater. There were times when a refuse dump had to be discontinued and another one started elsewhere due to the fierce opposition of nearby residents.*<sup>41</sup>

54. The Environmental Sanitation Policy of Ghana (published May 1999) examined sanitation conditions in Ghana and found that less than 40 percent of Ghana’s urban population is served by a solid waste collection service, with a much higher percentage in rural areas.<sup>42</sup> According to this Policy, the unsatisfactory environmental situation is caused by deficiencies in “*national goals, a defined sub-sector for urban sanitation, sectoral responsibilities, technical capacity in MLGRD* [Ministry of Local

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<sup>40</sup> PAD, Annex 15, p. 80.

<sup>41</sup> PAD, pp. 19-20, ¶73. For additional descriptions of these issues, see generally Kwasi Owusu Boadi & Markku Kuitunen, *Municipal and Solid Waste Management in the Accra Metropolitan Area, Ghana*, 23 *The Environmentalist*, 212–218 (2003); and the Mega-Cities Project, report on Accra, Ghana, available at: [http://www.megacitiesproject.org/network\\_accra.asp](http://www.megacitiesproject.org/network_accra.asp). The PAD goes on to state that the project “*is designed to address the refuse disposal problem in a comprehensive manner. At present, data collection and analysis for solid waste management is woefully inadequate, and will be improved through the project as a basis for the preparation of integrated solid waste management strategies. These strategies will address, inter alia, the safe disposal of hazardous wastes and the creation of transfer stations where the new sanitary landfill are located at some distance from the city center.*”

<sup>42</sup> *Annual cost of environmental degradation to Ghana: \$1.2BN*, published in the Statesman Newspaper, January 21, 2007. Available at: [http://www.thestatesmanonline.com/pages/news\\_detail.php?newsid=2194&section=2](http://www.thestatesmanonline.com/pages/news_detail.php?newsid=2194&section=2) (accessed May 14, 2008).

Government and Rural Development], *up-to-date legislation, enforcement, funding on the national and local government level, and adequate professional staff.*<sup>43</sup>

55. As described in Chapter 1, concerns relating to urban sanitation and waste management led to the initiation of the first Urban Environmental Sanitation Project (UESP I) between 1996 and 2003. Though a significant step, major problems relating to waste management and lack of adequate capacity to address the waste and sanitation problems remained.<sup>44</sup> The Ghana Poverty Reduction Strategy 2003–2005 noted that action was “*urgently required to ameliorate the extremely unfavorable environmental health conditions.*”<sup>45</sup>
56. Frequent staff changes, qualifications and capacity of some staff due to issues of remuneration in the public service, as well as attrition to the private service and frequent transfers within the civil service, have been mentioned as some of the main constraints of urban environmental sanitation.<sup>46</sup> Waste management is one of the biggest problems for the MAs; more than half of the revenues of the MAs are spent on waste management, and yet the situation is far from satisfactory.<sup>47</sup>

## **2. Solid Waste Management Issues in Accra**

57. Accra is a booming city with a very high population growth rate and a history of failing to control its growing waste management problem. The official population growth rate is around 4 percent per annum and the official population for the city of Accra is around 2 million inhabitants,<sup>48</sup> but the real increase is probably higher, and the city spreads so rapidly that the greater Accra’s population is unofficially estimated at about 5 million individuals, and growing.

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<sup>43</sup> PAD, ¶2.

<sup>44</sup> Management Response, ¶8. UESP I focused on solid waste collection and on the privatization of the collection—in other words, on getting the trash out of sight. This apparent tactical approach of reaching for “low-hanging” fruits is understandable. Unfortunately, however, it appears not to have helped either to build adequate capacity among decision makers, or make a dent in the waste situation in the Greater Accra. The Panel expert heard, for example, from a private contractor who benefited from UESP I technical and financial assistance, of extreme financial situations, dying equipment, and inadequate financial margins to replace it, reportedly due in part to management practices. The Implementation Completion Report (ICR) of UESP I states that one of the objectives of the Project was “[p]rivate sector development, by promoting the contracting out of various waste collection and sanitation services;” (ICR, p. 2). It further indicated that the rate of refuse collection in Accra did not increase significantly, while the rate of collection of refuse in the other Project areas (Kumasi, Tema, Sekondi-Takoradi and Tamale) did increase significantly. This, the report states, was due to the fact that the component was not implemented in Accra “as a result of a non-competitive contract being awarded by the MA in 1999” (ICR, p. 8).

<sup>45</sup> Ghana Poverty Reduction Strategy 2003–2005, *An Agenda for Growth and Prosperity*, February 19, 2003, pp. 98, 113.

<sup>46</sup> Panel interviews with Bank staff.

<sup>47</sup> PAD, ¶68. See also Edward Anomanyo, *Integration of Municipal Solid Waste Management in Accra (Ghana): Bioreactor Treatment Technology as an Integral Part of the Management Process* (2004), ¶3.3.2.

<sup>48</sup> Kwasi Owusu Boadi & Markku Kuitunen, *Municipal and Solid Waste Management in the Accra Metropolitan Area, Ghana*, 23 *The Environmentalist*, 212–218 (2003).

58. Concerns for a good environment and a better quality of life are growing in Accra. Street cleanliness and city attraction are felt by many decision-makers as a matter of high importance, including for ongoing economic development and investment.<sup>49</sup> Unfortunately, the concern for street cleanliness, landscape/heritage protection and public health protection has not resolved continuing problems relating to integrated solid waste management. In spite of many past efforts, waste management in Greater Accra has not been fully effective.
59. The Bank has recognized the extent and depth of the structural problem with solid waste management in Accra. These are highlighted in the Project Appraisal Document.<sup>50</sup>
60. From the early 2000s, refuse collected in Accra was dumped at the Oblogo site after the closure of the existing site at Mallam. Oblogo is a dis-used quarry, which is located nearly 20km northwest of the city center of Accra. Refuse is dumped at the Oblogo site, with no apparent containment of leachate or sanitary disposal of waste, both hazardous and non-hazardous. It appears that the site has already reached its capacity and a temporary dump has been started a short distance away.



**Picture 3: Waste Disposal site at another site in Accra**

61. The 2003 ESA acknowledges the dire conditions of the Oblogo site and recommended the eventual decommissioning of the site after appropriate measures to mitigate the environmental and social impacts of the site were taken. As part of UESP II, one of the conditions of the Project with respect to the Kwabenya subcomponent, was the *“improved use, closure, and rehabilitation of refuse dumps at Mallam and*

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<sup>49</sup> Ghana is known for its stability, and Accra is an important place and showcase for investment, which has been supported by past projects, such as the Gateway project. Trade Gateway and Investment Project, Credit between the Republic of Ghana and the International Development Association, June 5, 1998.

<sup>50</sup> PAD, ¶74

*Oblogo in Accra...*” prior to the commencement of any construction of the proposed sanitary landfill at Kwabenya.<sup>51</sup>

62. During the Panel’s field visit to the present Oblogo waste dump in Accra, the Panel observed and confirmed the severe nature of the conditions at the Oblogo site, which appeared to be operating way over normal capacity. The Panel expert noted a weighbridge breakdown, and heard complaints of waste management professionals regarding issues of poor management.
63. The former dump at Mallam was visited rapidly and showed some sign of spontaneous rehabilitation. It did not appear, on initial examination, as posing major and present threats to human health or the environment. However, more would be needed to close the dump once and for all and in good sanitary conditions. The Panel team also visited Kaneshi Market, the main official market for Accra, and Panel’s expert on environmental issues verified that solid waste was being picked up and removed from the area.
64. It is the impression of the Panel’s expert that a very substantial amount of waste in Accra is not properly collected. The Panel’s visit to the new informal market and some of the canals and lagoons in Accra also revealed how some waste is appears to be disposed of in an unsanitary and disorganized manner, leading to potential health hazards for neighboring populations and merchants, fresh and sea water pollution, and aesthetic. Also, the risk of getting industrial and toxic waste mixed up with regular household (mainly organic) appears to be very high at the Oblogo waste dump and other sites.
65. **During meetings with the Requester’s, the Panel team heard of the fears the Requesters’ had with regards to possible poor management of the proposed site at Kwabenya, and the possibility of Kwabenya ending up like Oblogo and Mallam, given the knowledge they had of the situation at these two sites.** If these types of problems were carried into the operation of the proposed landfill near Kwabenya, this would likely undermine any effort to manage waste responsibly and cost-effectively, and confirm the concerns of Requesters that they would face grave risks as a result of the landfill.
66. **In interviews with Bank Management, on the other hand, staff highlighted that the proposed landfill at Kwabenya is intended not to be an open-dump like Oblogo, but instead to be a modern-designed and engineered sanitary landfill that would avoid these types of conditions and problems.** In this regard, the PAD notes the need to replace refuse dumps with sanitary landfills. It states that:

*waste management is one of the most frequently raised concerns by people in urban areas and by government representatives. Considerable progress has been made in recent years to improve the situation, notably through the creation and empowerment of the WMDs, the increasing involvement*

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<sup>51</sup> PAD, p. 10, and DCA, Section 3.03(c).

*of the private sector in refuse collection, the increasing reliance on user charges for solid and liquid waste collection, improvements in internal revenue collection by the MAs, and a greater awareness that refuse dumps have to be replaced with sanitary landfills. . . .*<sup>52</sup>

67. These issues and concerns are addressed in the light of Bank policies in subsequent chapters of the Report.

## **B. Land Tenure in Kwabenya**

68. The current land acquisition and compensation situation in Kwabenya is in flux, but at the time of writing this Report the Panel learned of the following types of entitlements in the Kwabenya area:

### **1. First Tier Claimants: Allodial Title Holders**

69. Land ownership in Ghana is based on absolute “allodial” or permanent title from, which all other lesser titles to, interests in or rights over land derive. Normally, the allodial title is vested in a stool, skin<sup>53</sup>, clan, family and in some cases, may be vested in individuals. The traditional arrangement for making land available and accessible for land use in Ghana consists largely of the exercise of rights under “allodial” title and the rights of the usufruct as limited by the allodial title.<sup>54</sup>

### **2. Second Tier Claimants: Customary Freeholders**

70. Evidence gathered from the Kwabenya site and presented in a series of social impact assessments dating back to the late-1990s, in the 2003 RPF and in current data gathering in preparation of a RAP, suggests there is a second tier of claimants whose claims relate not to allodial title but rather to usufruct rights. These claimants are variously described as “caretakers,” “original families” or “farmers” who have been resident on the affected lands for a number of years.

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<sup>52</sup> PAD, ¶33.

<sup>53</sup> Customary ownership of land in Ghana, *see* Constitution of the Republic of Ghana, sections 267 and 295.

<sup>54</sup> According to records held by the Land Valuation Board (LVB) only two claimants submitted claims for compensation in respect of allodial title over land designated for development within the proposed Kwabenya landfill site. The two claims conflict over a portion of the land believed to be less than one third of the total area but strategically located in terms of access to the site. Under Ghanaian law the LVB must refer such conflicting claims to the Lands Tribunal for adjudication but critically the Lands Tribunal is currently not functioning so there is no mechanism for resolving the conflict other than: the parties agreeing to settle the dispute among themselves and resubmitting their claims; or the parties go to court for a declaration of title. It was not clear from discussions held with officials from the LVB, the AMA or the MLGRD, which of these options may be pursued. However, it is understood that since there are only two claimants, local settlement and the resubmission of claims may occur. The timeframe for any settlement to be reached is not clear.

71. In the case of Kwabenya it is not clear if the claimants would be described as caretakers or more correctly as “indigenous members”<sup>55</sup> of the land holding community. As caretakers it would need to be ascertained whether as occupiers of the land—rather than indigenous members of the landowning community—the individuals obtained the land they now use through specific arrangements with the allodial owners.
72. If it is the case, and it is more likely, that the second tier claimants are in fact “indigenous members” of the land holding community then as such they hold the usufruct rights in the land or so called customary freehold.<sup>56</sup> In many instances customary freeholders in Ghana are people who live on and cultivate land whilst those who exercise the allodial rights (Head of Family, the Chief, the Clan head, some of the elders, etc) may not necessarily live in the area. This would appear to be the case in the Kwabenya site with absentee Chiefs residing in the City of Accra.
73. Where a compulsory acquisition affects the rights of the customary freeholders, under Ghanaian law, they are not entitled to compensation for the land in their own right but rather the compensation for the land will be paid to the holders of the allodial rights who are expected then to distribute the relevant amount to the members of the community including the occupiers of the land.<sup>57</sup>

### **3. Third Tier Claimants: “Leaseholders”**

74. A third tier of claimants are also described in the reports on Kwabenya and could loosely be described as “leaseholders.” It is common throughout Ghana, and would appear to have been the practice in the Kwabenya site that lands have been given (sold or leased) to non-members of the land owning community on a leasehold basis, generally for 99 years. Once the land has been given to non-members of the land owning community it is the holders of the allodial rights, as custodians of the land, who can make such grants and sign documents to evidence the grant or lease. On the expiration of the lease, the land and property reverts to the original owners and the lease would have to be renegotiated.
75. As already indicated, the compensation for acquired land should be received by the holders of the allodial title (provided they put in claims for compensation). All holders of legal rights in the land (leaseholders, common law freeholders, assignees, etc) are also entitled to compensation so far as they put in claims. Currently the so

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<sup>55</sup> “Indigenous” is used to refer to people who have lived on the land for a period of time and are associated with the area, rather than being formally designated as an Indigenous or Minority Group in Ghanaian society.

<sup>56</sup> “Customary” ownership occurs where the right to use or to dispose of user-rights over land rest neither on the exercise of brute force, nor on the evidence of rights guaranteed by government statute, but on the fact that they are recognized as legitimate by the community, the rules governing the acquisition and transmission of these rights being usually explicitly and generally known, though not normally recorded in writing.

<sup>57</sup> Correspondence between Panel’s Social Expert and Land Administration Project staff in Accra, dated March 12, 2008.

called “indigenous people” and other occupiers of the land who do not have explicit grants of leases cannot claim compensation for the land lost. They may however receive compensation for crops and structures they have on the land.

76. Under Ghanaian law, structures that have been built on leased land in the project site must be compensated for. Where the leaseholders have registered documents they may also be compensated for the land. Where a leaseholder is paid for the value of the land the amount is deducted from the compensation payable to the allodial owner, in practice therefore the value of the allodial title is the residue after all other legal interests have been compensated.

#### **4. Fourth-Tier Claimants: Stone Quarriers**

77. The practice of stone quarrying in the area selected for the Kwabenya landfill has been recorded since the mid-1990s—however it is thought to predate this and informal quarrying and mining (usually termed artisanal and small-scale mining) is common throughout Ghana—though the numbers of quarriers in the Kwabenya site has increased over the past decade. The law states that where those operating stone quarries have leases for the quarry operations (referred to as permits or licenses) they are entitled to compensation. But where they have no leases and simply work in the quarries they are not considered as land owners for the purposes of payment of compensation under the law. There appears to be no provision in law to compensate them for their loss of income or livelihoods as a result of acquisition and change in the use of the land.



**Picture 4: Stone quarriers at work at proposed Kwabenya site**

## C. Approval as a Repeater Project

### 1. Designation and Processing of Repeater Projects

78. As described in Chapter 1, UESP II was approved as a Repeater Project. The Panel examined whether and to what extent this approach might have affected the application of Bank policies to the Kwabenya landfill subcomponent of the Project, which was added to UESP II but was not a part of UESP I.
79. According to Bank guidance documents, “Repeater Projects” are defined as “*projects whose basic design and effectiveness have been proven, and which a borrower proposes to augment and scale up.*” The Bank can scale up the impact of its assistance by allowing for rapid replication and expansion of successful projects.<sup>58</sup>
80. The guidance documentation indicates that many Bank-financed investment projects generate, besides the benefits of economic and social development and poverty alleviation, valuable knowledge about what works and what does not work in a given context. It is noted that the best way to take advantage of this knowledge is to use it again, as soon as possible, in broadly similar circumstances, reinforcing and extending the benefits of the original project.<sup>59</sup>
81. The mechanism of Repeater Projects is intended to make full use of this existing knowledge and work, avoid duplication of effort and enable a more streamlined processing of projects for approval. One of the key elements in determining whether a project is eligible to be a “repeater” is that the project does not have any environmental, social, or other safeguard problems.
82. More specifically, under the Bank approach for the processing of repeater projects, the Team Leader (TL) is required to carry out an initial assessment on the existing project’s suitability for a repeater. This would usually be carried out following the Mid-Term Review (MTR) of the Project or at a point where disbursements have reached the 50 percent mark.
83. The review should be based on the following criteria:
- a. The borrower has indicated strong interest in scaling up the ongoing project with a repeat operation;
  - b. The proposed project is strategically aligned with the Country Assistance Strategy and the country’s developmental goals and is appropriately placed to advance these goals;

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<sup>58</sup> Building on Success: More Efficient Processing of Repeater Projects, March 13, 2003, p. 1.

<sup>59</sup> Building on Success: More Efficient Processing of Repeater Projects, p. 1.

- c. An analysis of outputs/outcomes of the most recent PSR for the existing project reveals that its impact has thus far been consistent with the expectations set out in the Project Appraisal Document;
  - d. The PSR ratings (including those for implementation progress and development objectives), and particularly those for the most recent 12 months, have been consistently satisfactory or better;
  - e. The project does not have any unresolved fiduciary problems;
  - f. The project does not have any environmental, social, or other safeguard problems;
  - g. The borrower has ascertained that other domestic and external agencies are uninterested in scaling up the project, or are unable to do so.
  - h. The projected development gains from the repeater project cannot be achieved by providing supplementary financing or using project cost savings;
  - i. A determination that a repeat operation is the best option to maximize development impact compared to a completely new project or non-lending instruments.<sup>60</sup>
84. If the TL is of the opinion that the project does qualify for repeater status, the TL notifies the Country Director and commences a specialist review of the project. The specialist review of the project is to determine the justification of the repeater status based on the existing project's performance to date. The review should also, *inter alia*, take into consideration the existing project's implementation record and results, expected outcomes, sustainability and institutional development aspects.
85. The panel set up to review the project, called the Regional Review Panel, will be composed of legal, quality, safeguard and fiduciary specialists, as well as sector and country specialists. The panel should also include staff from the Network Anchors and other regions.

## **2. Safeguard Policy Review and Project Documentation**

86. According to the Guidelines for Processing of Repeater Projects, one of the important aspects of the review of a project's suitability for classification and processing as a Repeater Project is the safeguard policy review. The Regional Review Panel must review the safeguard aspects of the existing project with particular attention being paid to the environment category of the Repeater Project. For all Category A projects, a separate safeguard review of compliance with environmental and safeguards policies must be carried out. The same applies for Category B and C projects that are being scaled up to become Category A projects. For all projects, regardless of which category they belong to, a new ISDS must be prepared.<sup>61</sup>
87. The preparation of a Project Concept Document is not required if the Regional Review Panel is satisfied that the scaling up results in a benefit. In its stead, the Task Team Leader prepares a brief memorandum to the Country Director outlining and

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<sup>60</sup> Building on Success: Guidelines for Processing of Repeater Projects.

<sup>61</sup> Building on Success: Guidelines for Processing of Repeater Projects.

justifying the proposed project. The memorandum should include the Regional Review Panel's recommendations and a copy thereof should be attached to it. The decision to proceed, or whether to have a concept review meeting, rests with the Country Director.

88. Once the decision to proceed is taken, a Project Information Document (PID) and an ISDS are prepared. The Legal Agreements and a streamlined PAD are also prepared. This is closely followed by a decision meeting and negotiations leading up to Board Approval.

### **3. Assessment of Risks and Processing of UESP II as a Repeater Project**

89. In Repeater Projects, as with all Bank-financed Projects, a safeguard policy review—for compliance with environmental and safeguard policies—must be carried out at the very outset, and a new ISDS must be prepared regardless of the category of the Project.<sup>62</sup> In this Project, the documents have indeed been disclosed before appraisal. However, in the Bank's internal process, the safeguard documents need to be cleared by regional safeguards experts before the documents are made publicly available.

90. The Panel notes with concern that, in this case, it seems that the safeguards specialists were absent from the decision meeting held on December 15, 2003, and the safeguards issues are not even mentioned at that meeting. In a communication dated June 16, 2003, the Regional Review Panel, set up in March 2003, looked at the viability of the executing the Project as a repeater project.<sup>63</sup> In assessing whether there were environmental, social or other safeguard problems, the Review Panel "*indicated some issues, not considered major by the specialists.*"<sup>64</sup> The Review Panel did however state that whether or not UESP II is processed as a repeater project, the safeguards work would need to be carried out as would be the case for any other Bank project.

91. According to the Bank's guidelines for repeater projects the "*safeguard aspects of the current project should also be reviewed as part of the special review ... and should focus on the implication for the environment category of the repeater project. A separate safeguard review of compliance with environmental and safeguard policies should be done for all Category A projects, and any Category B and C projects that become Category A when scaled up.*"<sup>65</sup>

92. The Panel notes that a formal safeguard review meeting did not take place for UESP II. However, Management informed the Panel that a separate safeguard review was carried out for UESP II prior to appraisal and it describes additional safeguards actions that will be taken during the process of project implementation. Management states that this review is included in the ISDS which was last prepared on January 16,

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<sup>62</sup> Building on Success: More Efficient Processing of Repeater Projects, p. 2.

<sup>63</sup> Bank communication dated June 16, 2003.

<sup>64</sup> Bank communication dated June 16, 2003.

<sup>65</sup> Building on Success: Guidelines for Repeater Projects.

2004. The ISDS states, among other things, that the sanitary landfill at Kwabenya will require resettlement of an estimated 170 people and that the RAP will take into account the “*vocal opposition of residents near the periphery of the buffer zone...*”<sup>66</sup> The ISDS adds that the Project EA and the RPF looked into “*the nature and extent of the anticipated environmental and social impacts of the various project subcomponents, and the measures that should be taken to minimize the negative environmental and social impacts during construction and operation.*”<sup>67</sup>

93. The Panel notes that at the time of the Special Review—mid 2003—and the subsequent Project appraisal at the end of 2003, there was a highly contentious environment and strong voices of local opposition to the landfill. It was also known that DfID had pulled out of the earlier Kwabenya landfill project because the land-related issues were extremely complex and difficult to resolve in the short or medium term. In addition, many new people had moved into the area or were informally working within proximity of the landfill. The Panel notes that in this environment, where tensions were high, it was clear that there would be significant difficulties in achieving compliance with safeguard policies, especially on consultations and involuntary resettlement. **This situation posed significant risks for the affected people and the implementation of the Kwabenya subcomponent.**

94. **The PAD itself indicates that resettlement at the Kwabenya sanitary landfill could cause considerable controversy, and lists it as a “high” Project risk. This complies with OMS 2.20 on Project Appraisal.** The PAD states elsewhere, however, that the safeguards screening category indicates that one or more safeguard policies are triggered “. . . *but the effects are limited to their impact and are technically and institutionally manageable.*”<sup>68</sup> This corresponds to Category S2 in the safeguards classification system.

95. This latter assessment seems to have downplayed the foreseeable problems in achieving compliance with Bank safeguard policies associated with the proposal to construct a landfill at Kwabenya.<sup>69</sup> By comparison, Category S1 applies to “*significant, cumulative and/or irreversible impacts; or significant technical and institutional risks in management of one or more safeguard areas.*”<sup>70</sup> The Panel considers that this category (S1) corresponds to the situation at Kwabenya, which is also reflected in some of the statements of the ISDS.<sup>71</sup> Close screening of key social and environmental issues by the Bank would have made clear, from the outset, the

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<sup>66</sup> ISDS, Section II. D. 1(a).

<sup>67</sup> ISDS, Section II.D.3.

<sup>68</sup> PAD, ¶59.

<sup>69</sup> See also discussion of risks to health and the environment, including those due to problems of capacity in the safe operation of a landfill in Chapter 3 of this Report.

<sup>70</sup> ISDS, Section E, Safeguard Classification.

<sup>71</sup> The ISDS acknowledges for example that “[t]he construction of the two new *sanitary landfills* at Accra and Tema could have irreversible impacts unless mitigating measures are taken during the design and operation stage ...” The PAD elsewhere recognizes risks associated with significant capacity constraints for ensuring proper management and maintenance of landfills, a risk also identified by Bank staff in interviews (see Chapter 3 of this Report).

imminent problems and the high risks in managing safeguards that would be caused by including Kwabenya as a subcomponent of the Repeater Project.

96. **The Panel finds that contrary to the criteria established for the use of Repeater Project procedures, the Kwabenya landfill subcomponent had significant foreseeable environmental, social and safeguard problems. The Inspection Panel notes that Management did not take all the required measures to address safeguard issues arising in the Project, in spite of the Regional Review Panel's advice in 2003.** Although the Regional Review Panel stated that safeguard work needed to be as in any other project, the Review Panel identified significant shortcomings in the social and environmental work.
97. While a variety of circumstances and actions have combined to lead to the current problems facing the Project, the Panel observes that shortcomings just noted are likely to have been an important contributing factor. The Panel notes that Bank Management has flagged this Project as a "*Moderately Unsatisfactory*" performing project, with a very low disbursement rate and a serious issue with implementation delays and possibly blockage. The problems and conflicts facing the proposed Kwabenya landfill subcomponent are addressed in the following chapters.

## Chapter Three

### Environmental Issues—Analysis of Compliance

98. This Chapter reviews key environmental issues and concerns raised in the Request for Inspection, and the Management Response to these claims. On the basis of the Panel's investigation, the analysis focuses in particular on the extent to which Bank Management complied with key applicable policy requirements set forth in Bank Policy OP 4.01 on Environmental Assessment, and issues of harm or potential harm related to instances of non-compliance.

#### A. Requesters' Claims and Management's Response

##### 1. Requesters' Claims

99. The Requesters contend that the proposed Bank-funded sanitary landfill will detrimentally affect the community that lives in and around the proposed landfill site. They claim that the negative impact of the proposed landfill, and the possible contamination of the water supply, will lead to the involuntary displacement of several members of the community and leave many of the remaining living in conditions detrimental to their health.
100. The Requesters further claim that the proposed site was based on a 1990 UNDP strategic plan for the Greater Accra Metropolitan Area, whereby a landfill site should be located 1 km away from residential areas. The Agyemankata Community acknowledge that while the proposed site met the criteria at that time, the current project falls short of the requirement due to the changed residential conditions in the area.
101. The Requesters also contend that they were not meaningfully consulted during the Project's design phase. They claim, *inter alia*, that the information provided to them by the responsible government authority, the AMA was in the local newspapers and via radio announcements, often after the decision had already been made. They assert that they were unable to provide input into due to the fact that the means of communications used was "*insufficient.*" They also claim that they only gained knowledge of the Bank's involvement in the Project through a newspaper article.
102. Furthermore, the Requesters claim that they only saw, for the first time, the already prepared ESA along with the RPF, when they went to the Bank Office in Accra upon the invitation of the Bank.
103. During the Panel's Eligibility visit, the Requesters stated that alternatives to the proposed site, which could obviate the need to displace them from their homes, have not been adequately considered.

**Box 2: Written communications from Agyemankata Community and statements during Panel field visits**

“Mr. President, available records show that land fills are dangerous no matter the design. ... Landfill is new to Ghanaians, therefore being first in its kind it must be sited far away from where there are no serious human activities.” (2001, letter from Kwabenya residents to the President of the Republic of Ghana)

“Coupled with anxiety we women become extremely depressed with the knowledge that our homes and work place may soon be destroyed. Many of us affected by this forced eviction have used much of our earnings to build our homes and now face losing our savings once the eviction occurs. At the same time the threat of forced eviction provokes intense anger and a sense of injustice which then fuels active anger. This is common sight if you come to Agyemankata Community.” (2004, letter from Women of the Agyemankata Community to the President of the World Bank)

“We women CANNOT stay and dwell with a landfill site with our children for any number of years because its hazardous effects on our health.” (2004, Press release from Women of Agyemankata Community rejecting TAC recommendation)

“The Community was not consulted before the approval of the project in 2004.”

“The Community was called squatters.”

“We fear the air pollution and we cannot find another place to live.”

“Please tell them that people live here, that there is a school here.”

“Old people have lived here for a long time and cannot move.”

“We believe that a landfill will not be monitored or maintained and we think that there are other more remote place where it can be put.”\*

\* The preceding six statements were made by various affected people during the Panel’s field visits.



**Picture 5: Panel team meeting with affected people**

## 2. Management's Response

104. Management considers that the Bank and the Borrower have fully complied with the requirements of OP 4.01 on Environmental Assessment.
105. Management states that the Government used the DfID-funded EIS as the basis for preparing the 2003 ESA—a requirement under OP 4.01—for the UESP II. The 2003 ESA contained an updated EMP and the RPF, which Management states was “*deemed satisfactory*” at appraisal. An update of the EMP and RPF were also proposed to be in accordance with the final design of the proposed landfill. Management further states that a “*significant amount of analysis has been undertaken related to environmental impact,*” the results of which were publicly disclosed.<sup>72</sup>
106. Management addresses the claim by the Requesters that the ISDS states that “*those living near the land fill will be negatively affected*” and that “*surface and groundwater pollution could extend 5 to 10 km downstream*” by stating that while the ISDS highlights some potentially negative environmental aspects, the statement quoted by the Requesters is a “*general statement that describes the environmental conditions that would prevail if appropriate mitigation measures were not taken in designing and operating the landfill facilities... .*”<sup>73</sup>

### B. Bank Policy on Environmental Assessment

107. OP 4.01<sup>74</sup> requires that an environmental assessment (EA) be carried out for projects proposed for Bank financing, in order to make sure that they are both environmentally sound and sustainable, and thus to improve decision making. The EA evaluates a project’s “*potential environmental risks and impacts in its area of influence; examines project alternatives; identifies ways of improving project selection, siting, planning, design, and implementation by preventing, minimizing, mitigating, or compensating for adverse environmental impacts and enhancing positive impacts; and includes the process of mitigating and managing adverse environmental impacts throughout project implementation.*”<sup>75</sup> Preventative measures, where feasible, are preferred by the Bank over mitigatory or compensatory measures.
108. The EA must also take into account the natural environment such as the air, water, and land; human health and safety; social aspects such as involuntary resettlement, indigenous peoples, and any physical cultural resources.<sup>76</sup> Additionally, the EA must, *inter alia*, take into consideration the institutional capabilities of the Borrower in relation to the environmental aspects of the Project.<sup>77</sup>

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<sup>72</sup> Management Response, ¶22.

<sup>73</sup> Management Response, Annex 1, p. 12.

<sup>74</sup> OP 4.01 on Environmental Assessment, January 1999.

<sup>75</sup> OP 4.01, ¶2.

<sup>76</sup> OP 4.01, ¶3.

<sup>77</sup> OP 4.01, ¶3.

109. Bank projects are classified as one of four categories based on the type, location, sensitivity, and scale of the project and the nature and magnitude of its potential environmental impacts: Category A (likely to have “*significant adverse environmental impacts*”),<sup>78</sup> Category B (“*potential adverse environmental impacts*”),<sup>79</sup> Category C (“*minimal or no environmental impacts*”),<sup>80</sup> or FI (if the Bank uses a financial intermediary).
110. For a Category A project, the EA must examine the project’s potential negative and positive environmental impacts, comparing them with those of feasible alternatives, including the “without project” situation, and must recommend any measures needed to prevent, minimize, mitigate, or compensate for adverse impacts and improve environmental performance.
111. The Borrower must, during the EA preparation process, consult with the project affected peoples and local NGOs to take their views and concerns into consideration. For all Category A projects, the Borrower must consult with these groups at least twice: “(a) *shortly after environmental screening and before the terms of reference for the EA are finalized; and (b) once a draft EA report is prepared.*”<sup>81</sup> This consultation process is a continual process throughout the implementation of the project.
112. For meaningful consultation with the project affected people, the Borrower is required to provide the relevant materials in a timely manner prior to consultation and in a form and language that are understandable and accessible to the groups being consulted. For a Category A project, the Borrower will need to provide a summary of the proposed objectives of the project, its description, and any potential impacts. Once the draft EA is prepared, the Borrower provides a summary of the conclusions of the EA.<sup>82</sup> Additionally, the EA must be made publicly available for access by the project affected groups and local NGOs.<sup>83</sup>

## C. Background to the Project’s Environmental Assessment Process

### 1. Initial “Selection” of a Landfill Site (early 1990s)

113. In 1991 and 1992 a strategic plan for the region was developed by the Accra Planning and Development Programme, in association with the UNDP and the United Nations Centre for Human Settlements. The strategic plan looked into the amount of waste being generated and surmised that either composting or a landfill was the two best options to manage the waste. The strategy further stated that a new landfill site, no

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<sup>78</sup> OP 4.01, ¶8(a).

<sup>79</sup> OP 4.01, ¶8(b).

<sup>80</sup> OP 4.01, ¶8(c).

<sup>81</sup> OP 4.01, ¶14.

<sup>82</sup> OP 4.01, ¶16.

<sup>83</sup> Bank Policies on Disclosure of Information and Involuntary Resettlement are also relevant to issues of consultation and disclosure raised by the Request for Inspection. These are addressed in Chapter 4.

further than 50 km from the center of Accra and easily accessible by rail, should be identified.

114. The AMA's Waste Management Department conducted several field trips to identify the best locations of the proposed landfill site. Eighteen different sites were inspected, but only five were considered. These sites were located in Kwabenya, Mayera, Ambassadorial Enclave, Ajiriganor and Okpoe Gonno. A study of the five locations was commissioned with a local consultant being hired to appraise the sites.<sup>84</sup>
115. The most favored sites were the Okpoe Gonno and Ambassadorial Enclave site. However due to their proximity to Accra's Kotoka International Airport and after consultations with the Ghana Civil Aviation Authority, the sites were taken out of consideration (other criteria involving proximity to nearest settlements are discussed below under Analysis of Alternatives).
116. The Advisory Committee of the Waste Management Department supported the selection of the Kwabenya site. Kwabenya is situated in the foothills of the Akwapim Mountain Range nearly 20 km north of the centre of Accra and about 2 km by road from the village of Kwabenya. Kwabenya is located within the Ga District which has a local administrative centre at Amasaman. The site was visited by the consultants putting together the EIA as well as DfID and a feasibility study was then commissioned.
117. In response to the sanitation issues faced by the City of Accra, the Government of Ghana funded, through a grant provided by DfID, the Accra Waste Project (AWP). Problems of inadequate resources for solid and liquid waste management and an infrastructure in disrepair led to solid waste accumulating in the city and uncontrolled discharges of fecal waste resulting in gross pollution of inland waterways, beaches and coastal waters. The project sought to address some of these fundamental environmental issues that were facing the City of Accra.
118. The AWP included provisions for the design, the environmental assessment and the construction of a new sanitary landfill in order to resolve the issues related to the management of solid waste in Accra. The construction of a new sanitary landfill was, and still is, considered to be essential for the long-term management of solid waste in Accra, due to the fact that no more open space existed in the City of Accra and those that were in use were at or approaching capacity.

## **2. The 1999 EA Process**

119. An EIA was carried out in 1999 with funding from DfID, as well as feasibility studies of the proposed landfill development. The EIA considered benefits that were anticipated by the development, potential adverse environmental impacts, and possible methods of mitigating those impacts.

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<sup>84</sup> Bannerman R R *Preliminary site study for future sanitary landfill sites and faecal treatment plants*. Accra Metropolitan Assembly Waste Management Department, March 1993.

120. For the purpose of a potential DfID funding, the EIA was prepared pursuant to the Environmental Assessment Regulations 1999 (L.I. 1652), pertaining to the Kwabenya Sanitary Landfill. The EIA was part of the AWP, which “*sought to address some of the major environmental problems faced by the city of Accra.*”<sup>85</sup> It identified Kwabenya as the site recommended by “*AMA and local consultants, the Advisory Committee of the Accra Metropolitan Assembly Waste Management Department.*”<sup>86</sup> It is proposed that a development option designated as Option A1 would be developed initially. It comprises a “*void space for waste disposal of approximately 23 million m<sup>3</sup>.*”<sup>87</sup>
121. The most important landfill design issue is considered to be leachate and the EIA looks at three possible technical solutions for protecting the local environment from pollution by leachate, which could reach 121,000 m<sup>3</sup> per annum. The EIA takes a short detour along the analysis of alternatives route, basically to conclude that (i) incineration under one form or another (for example, with or without power generation) is not feasible; and (ii) no other suitable site could be performing as well as Kwabenya.<sup>88</sup> **There is no formal comprehensive environmental, social and economic analysis of the potential alternatives.**
122. On the social issues, the 1999 EIA states that “[t]here are no communities that directly overlook the site and hence visual intrusion is of low significance.”<sup>89</sup> It notes rather that the potential for conflict is with landowners who live some distance away from the proposed site. The EIA identifies the land owners of the future landfill area and estimates the number of families and people to be resettled at respectively 22 and 170. It also identifies 300 members (200 male and 100 female) of the Quarrying Association as well as 50 other workers.<sup>90</sup> The 1999 EIA does not include an Environmental Management Plan. As noted elsewhere, DfID withdrew from this earlier proposal to develop the landfill at Kwabenya, and the proposal subsequently became part of UESP II financed by the Bank.

#### **D. The 2003 ESA Process**

123. As part of the regular internal World Bank processing, UESP II was screened for potential safeguard policies issues and categorized as an “A” for environmental assessment purposes.<sup>91</sup> Consequently, the Borrower needed to conduct a full EIA including all the elements described in OP/BP 4.01.
124. For this purpose, the Borrower commissioned the 2003 ESA which was made public in December 2003. The 2003 ESA included an Update and the Completion of the

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<sup>85</sup> 1999 EIA, p. 1.

<sup>86</sup> 1999 EIA, p. 1.

<sup>87</sup> 2003 ESA, p. 21.

<sup>88</sup> 1999 EIA, Executive Summary, p. 12.

<sup>89</sup> 1999 EIA, Executive Summary, p. 10.

<sup>90</sup> 1999 EIA, Executive Summary, p. 4.

<sup>91</sup> See below for a more in-depth discussion of the categorization of Bank projects.

1999 EIA of the Kwabenya Landfill in Accra, the preparation of an EMP for the Project, and Development of an RPF. Other subcomponents which this study covers are a new landfill in Tema; improved use, closure, and rehabilitation of existing landfills and dumps in Accra (Mallam, Djanman, Oblogo), Tema (Kpone) and Sekodi-Takoradi; lining of drains and erosion control; infrastructure upgrading in low-income communities; latrines; sewerage and sewage treatment; and malaria vector control.

125. **Work on the 2003 ESA on Kwabenya was minimal, and relied heavily on the contents of the 1999 EIA.** The 2003 ESA did acknowledge the fact that some aspects of the 1999 EIA related to Kwabenya needed review, and that Phase 1 of the planned construction of the landfill had been carried out in 2001 with assistance from DfID. This included a tarred access road and a 250 meter long culvert at the bottom of the valley for storm water evacuation. Partial compensation was paid to land owners and users. No further construction took place due to continuing opposition from nearby residents and the inability of the local authorities to settle the land claims and other compensation in a satisfactory manner. The donor's agreed lending program changed, and the assistance was withdrawn.
126. The discussion below reviews the extent to which the 2003 ESA met key elements of Bank Policy 4.01 on Environmental Assessment.

### **1. Environmental Categorization**

127. OP/BP 4.01 require that proposed projects be assigned to one of four categories (A, B, C or FI). An "A" project "*is likely to have significant adverse environmental impacts that are sensitive, diverse, or unprecedented . . .*"<sup>92</sup> A project is classified as "B" "*if its potential adverse environmental impacts . . . are less adverse than those of Category A projects.*" Category A projects require more extensive environmental assessment than Category B projects. **The Panel finds that the Project was correctly categorized as "Category A" for the purpose of OP/BP 4.01.**
128. The Panel concluded, however, that the 2003 ESA did not meet certain core requirements of Bank Policy on issues of direct concern to Requesters, and relied heavily on earlier studies even though conditions at the site had changed considerably. The Panel's findings are summarized below.

### **2. Analysis of Alternatives**

129. OP/BP 4.01 requires, particularly for a Category A project, that an in-depth and substantiated analysis of alternatives be conducted.<sup>93</sup> Specifically, an EA

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<sup>92</sup> OP 4.01, ¶8(a) and footnote 10. OP 4.01 refers to OP/BP 4.10 on Indigenous Peoples, issued in July 2005. It should be noted, however, that the Bank Policy on Indigenous Peoples applicable to UESP II is the now retired policy OD 4.20, because the new policy (OP/BP 4.10) applies "*to all projects for which a Project Concept Review takes place on or after July 1, 2005.*"

<sup>93</sup> OP 4.01, Annex B—Content of an Environmental Assessment Report for a Category A Project, ¶2.

“[s]ystematically compares feasible alternatives to the proposed project site, technology, design, and operation—including the ‘without project’ situation—in terms of their potential environmental impacts; the feasibility of mitigating these impacts; their capital and recurrent costs; their suitability under local conditions; and their institutional, training, and monitoring requirements.”<sup>94</sup>

130. A policy-consistent alternatives analysis is a key element of the EA process to meet the objectives of the Policy to help ensure that Bank-financed projects are environmentally sound and sustainable, and to improve decision making.<sup>95</sup> The question of whether there are other viable alternative locations for the proposed landfill is a central one in the Request.
131. In order to examine whether this requirement was met in the present situation, it is necessary to consider past actions that formed the foundation to the selection of the proposed site. As part of a 1993 study, the author looked at five options available for the selection of an appropriate site for a landfill for the Greater Accra and determined that Kwabenya was the best site available.<sup>96</sup> The 1999 EIA accepted that this was the best available site, and the 2003 ESA, which relied heavily on the 1999 EIA, has, by and large, taken this site selection for granted.
132. The conditions around the Kwabenya site, however, have changed considerably since the early site selection study and since the 1999 EIA. Under the earlier DfID-financed project, a road leading into the site was constructed in 2001; however, the subsequent related plan to construct the landfill was never implemented. In its Response, Management acknowledges that this road enabled more people to move into the area and closer to the site proposed for the landfill,<sup>97</sup> a point confirmed to the Panel during its visits, and notes that construction of the landfill was delayed due to land right claims from the new occupants of the land.
133. This in-flow of people has led to important changes in circumstances on the ground since the ranking study in 1993 and since 1999 when the EIA for the earlier project was prepared. However, the 2003 ESA does not include any new sociological survey, let alone any counting of the people living in the project influence area.
134. The 2003 ESA, in a section inaptly titled “*Justification for the Kwabenya landfill*,” presents an analysis which is limited to the justification of the need for a new waste management location, arguing with reason that the existing dumps are saturated or soon to be, but not in any way or manner justifying the selection of Kwabenya.
135. For the development of the Kwabenya landfill it recommended starting the operation with Option B1 instead of Option A1, both within the Kwabenya site, and by

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<sup>94</sup> OP 4.01, Annex B, ¶2(f).

<sup>95</sup> OP 4.01, ¶1.

<sup>96</sup> Bannerman R R *Preliminary site study for future sanitary landfill sites and faecal treatment plants*. Accra Metropolitan Assembly Waste Management Department, March 1993.

<sup>97</sup> Management Response, ¶17.

considering the impact on houses under construction.<sup>98</sup> Substantial houses are at various stages of construction in the buffer zone, many of which apparently are not authorized.

136. The Panel is concerned about the issue of whether there was adequate consideration of alternative sites during Project design as required by Bank Policy.<sup>99</sup>

137. The 2003 ESA section of Kwabenya selection is poor, and does not add value to the analysis conducted in the 1999 EIA, which did not update the 1993 site selection study.<sup>100</sup> The 2003 ESA fails to provide an adequate update to address the influx of people and changing conditions on the ground over the years since the earlier studies. This is particularly important given that:

- the ranking system used in the early 1990s, which led to the ranking of Kwabenya ahead of other sites, gave Kwabenya the highest available rankings on criteria involving “*distance to nearby communities*” and “*affected people*.” The number of nearby and potentially affected people has, however, changed considerably over the years.
- in describing potential impacts and mitigation measures relating to the proposed landfill, the 1999 DfID EIA states that “[t]here are no communities that directly overlook the site”—a situation that is not the case today.

138. **The Panel finds that the 2003 ESA did not adequately examine alternative sites for the future landfill, and failed to assess adequately the implications of the influx of people and changing conditions on the ground in the years since the earlier studies on which it relied. This does not comply with OP/BP 4.01.** The lack of an adequate analysis of alternatives, which is central to the Request for Inspection, and to the present stalling of the solid waste component, partly explains the present and costly situation. During its field visit and interviews, the Panel noted that consideration of alternative sites to Kwabenya appeared not to be pursued.

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<sup>98</sup> 2003 ESA, p. 137, ¶7.15.1. As mentioned in Chapter 1, the 1999 EIA indicated two development options—Option A1 and Option B1. Option A1 involved the use of Valley A as the main site for the landfill, while Option B1 would be an extension of Option A1 that would only come into play once Option A1 has been filled to capacity. Valley B is also an alternative location that is considered as part of the 1999 EIA, but at the time required further investigation (1999 EIA, ¶4.1). The 2003 ESA considers, as an alternative, starting with Option B1 but rejects this option due to its disadvantages.

<sup>99</sup> The Panel expert notes that other possible alternatives were not considered, e.g. shifting the eastern boundary to the west and partly compensating for the decrease in capacity with a higher landfill; incorporating valley B in the development, and starting the waste boundary at the west side of the stream in the valley.

<sup>100</sup> Section entitled “Site Selection” refers to the 1999 DfID-financed EIA, which in turn refers to the “Study of five potential sites” carried out in 1993 included in Bannerman R R *Preliminary site study for future sanitary landfill sites and faecal treatment plants*. Accra Metropolitan Assembly Waste Management Department, March 1993.

139. As the Panel was preparing this Report, however, it was informed by Bank staff that a new Environmental Assessment for the Project is being developed, as the existing 2003 ESA is outdated and no longer adequately reflects conditions on the ground. **According to Management, the new EIA will examine, *inter alia*, options for alternative sites. The Panel notes, however, that the draft Terms of Reference for the EIA provided by the Bank makes no specific reference to the need for an analysis of alternatives.** Management needs to clarify this issue.

### 3. Potential Adverse Impacts and Project Area of Influence

140. The Requesters claim that their community will be detrimentally affected by the sanitary landfill proposed to be built within a 1 km limit of their community. They list both direct (odors and disease transmission) as well as more indirect (visual) impacts in the Request. This refers to the need for the appropriate setback from the landfill, a key issue that also has direct implications on the resettlement and compensation programs for the Project.



**Picture 6: Houses at various stages of construction at the proposed landfill site**

141. OP 4.01 provides that an EA should evaluate a project's potential environmental risks and impacts in its "*area of influence*," and identify ways to prevent, minimize, mitigate or compensate for adverse environmental impacts. The project area of influence is the area likely to be affected by the project, including areas affected by airborne pollution. The analysis considers the natural environment, human health and safety, and social aspects.
142. The proposed sanitary landfill at Kwabenya carries a range of potential impacts on human health and the environment outside of the boundaries of the landfill. These include, *inter alia*, potential impacts of leachate (formed when solid waste comes into contact with liquid) contamination of surface and ground waters, landfill gas and noxious odors, blown debris, and impacts associated with truck transport on access

roads. The extent and nature of these impacts depends on a variety of factors, including topography, landfill design and maintenance, proximity of ground and surface waters, and proximity of residences and people.<sup>101</sup>

143. **The 2003 ESA, however, does not adequately identify the full extent of the “area of influence” of the proposed landfill (as a subcomponent of the Project) and its potential impacts on nearby people and residents.** The determination of the area of influence is a critical section of an ESA in compliance with OP 4.01. The area of influence retained for a compliant ESA should cover the total area with significant impacts from the project component, here the landfill. There was no formal and scientifically justified determination of the area of influence of the future landfill. **The Panel finds that this does not comply with OP 4.01.** This instance of non-compliance has made it difficult for the affected people and decision-makers to understand the various types of impacts of the landfill and whether adequate measures would be taken to prevent, minimize, mitigate or compensate for these impacts. Specific aspects of this are addressed below.

#### **4. The “Buffer Zone” and Adjacent Areas**

144. One means to deal with adverse impacts on people from a landfill is to establish an adequate “buffer zone” around its boundaries. As described by Bank staff, and envisioned in Project documents, a buffer zone is the area surrounding the landfill of land acquisition and compensation in accordance with OP 4.12 on Involuntary Resettlement.
145. One key element to address adverse impacts of a landfill is to establish a buffer zone around its boundaries. As described by Bank staff, and envisioned in Project documents, this is the area in which land is to be acquired and people relocated or compensated in accordance with OP 4.12 on Involuntary Resettlement in order to avoid seriously harmful potential effects from the landfill.
146. In general, the Bank relies on the due application of relevant safeguard policies, including the Environmental Assessment Policy, on a project by project basis to determine appropriate buffer zone (or setback distance) in a case such as the present one. Reference materials and best practice documents may also be noted.
147. In these regards, the Panel notes that the claim of Requesters relating to the need for a setback distance of 1 km finds support in the early documentation relating to the possibility of developing a landfill at Kwabenya. Specifically, the rating system developed as a guideline to rank alternative possible sites for a landfill in the early 1990s states as follows:

##### *9.08 Distance to the next settlement.*

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<sup>101</sup> See also Lee and Jones-Lee, “Municipal Solid Waste Landfills—Water Quality Issues” 2005 (containing a useful review of potential impacts associated with landfills).

*As a landfill site will always be an undesired obstacle in the neighborhood of humans, it should be tried to stay away with the landfill from human settlements as far as possible. A distance of 800 m to 1,000 m to the next village/suburb is regarded as averagely suitable. This does not necessarily apply to distances to industrial enterprises.*<sup>102</sup> (emphasis added)

148. In qualitative terms, the early documents describe the situation at Kwabenya as follows:

*2.46 Distance to Nearby Developed Communities.*

*The nearest village to the south-east is Kwabenya which is approximately 2 km away. In the West and north at approximately 4 km and 2 km are Pokuase and Mayera respectively. However prominent hills separate both villages from the site. It is noted that there are over 20 farmsteads located mainly on the eastern slope with a total sizeable population. These are temporary settlers mainly engaged in farming activities.*<sup>103</sup>

149. In comparing possible alternative sites, this early rating document gave to Kwabenya the highest possible scores both on the criteria of “*distance to the next settlement*” and “*affected people*,” and ranked it tops in the assessment on social issues together with a site at Okpoe Gonno. As people have moved into the area over the years, however, serious question arise in using Project documentation which seems to flow from these early rankings. In the present situation, the Panel notes that much of the Agyemankata Community appears to lie within this distance of 800 meters to 1 km set out in the early guidance document.
150. A separate Bank reference document is the Standard Terms of Reference (TOR) for Siting Study for Sanitary Landfills<sup>104</sup> recommends a buffer zone distance of 250 meters for a landfill “*where there is gas collection and flaring*,” 500 meters for a landfill without a gas re-capture system. This document further specifies that a landfill should not be sited within 1km of socio-politically sensitive sites where public acceptance might be unlikely, including schools.
151. The 2002 Ghana Landfill Guidelines include a section on “*Locational Criteria*” for the siting of landfills. Among other things, these Guidelines state that

*[t]he following factors would normally disqualify a site from use as a landfill:*

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<sup>102</sup> Rating System for the Suitability Criteria Catalog, 1993, p. 4.

<sup>103</sup> Rating System for the Suitability Criteria Catalog, 1993, Section 2.0, “Prospective Landfill Sites”, Annex A, p. 6.

<sup>104</sup> Terms of Reference, Siting Study for Sanitary Landfill.

12. *Areas less than 500m from land-uses which are incompatible with landfilling and have the potential to attract community resistance, including residential areas, nature reserves, military exclusion zones and cemeteries. . .*
13. *Areas where adequate buffer zones are not possible .*
14. *Areas immediately upwind of a residential area in the prevailing wind direction(s).*<sup>105</sup>
152. These Guidelines also include a table on “Buffer Zone Width” which lists maximum and minimum widths for different landfill categories. For “Metropolitan/Municipal it lists 600 meter maximum and 300 meter minimum. For Large Urban/Small Urban it lists 400 meter maximum and 200 meter minimum.”<sup>106</sup>
153. The Panel expert notes that minimum setback distances for a general waste sanitary landfill range from 75 meters to 500 meters among legislations, in OECD as well as in African countries. World Bank specialists have also recommended setting aside 10 percent of the landfill area as setback/buffer zone. Scientific evidence on the air-borne impacts of sanitary landfills is improving and is gradually pushing the legislator to the upper limit of the 75–500 meter range. One recent study, not specific to Ghana, recommends a distance beyond the 500 meter range due to the problems of landfill gas.<sup>107</sup>
154. In the present situation, the 2003 ESA states that the buffer zone for the Kwabenya landfill can be less than 250 meters. This appears to have been the operating assumption in the landfill design and in resettlement planning as the Panel initiated its investigation. The 2003 ESA contains only limited analysis as to why this figure is provided, with no reference to the larger distances suggested by the earlier site selection study and the Landfill Siting TORs, or to the changed population conditions around the site. The statement in the 2003 ESA, without additional supporting analysis, is as follows:

*The 1999 EIS specifies a buffer zone of approximately 250 m, in which no buildings should be located. This zone is especially meant to prevent risks of emissions of landfill gas. For this reason new buildings for the operation should have provisions against landfill gas. A buffer zone is also needed for aspects as odour and noise. In the EPA Landfill Guidelines a*

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<sup>105</sup> Ghana Landfill Guidelines, Environmental Protection Agency, Ministry of Environment & Science, Ministry of Local Government and Rural Development, July 2002, Section 4.4, “Locational Criteria”.

<sup>106</sup> Ghana Landfill Guidelines, Environmental Protection Agency, Ministry of Environment & Science, Ministry of Local Government and Rural Development, July 2002, Table 4.2, Buffer Zone Width.

<sup>107</sup> Lee and Jones-Lee, “Municipal Solid Waste Landfills—Water Quality Issues” 2005, which states that: “It is well-established that landfill gas can readily travel a mile or more from a landfill, and thereby be adverse to the adjacent property owners’ use of their properties. It is recommended that at least a mile, and preferably two miles, of landfill-owned buffer lands exist between the area where wastes are deposited and adjacent property owners’ property lines. This would provide for dissipation of releases from the landfill on the landfill owner’s property. Such an approach would greatly reduce the trespass of waste-derived materials from the landfill onto adjacent properties.”

*minimum buffer zone of 300 m is recommended. Certain activities such as agro-forestry may be carried out and will also have a beneficial aesthetic effect. Lining and drainage and venting of gas are incorporated in the design, and gas emission outside the boundary of the waste is very unlikely. From this point of view the buffer zone can be less than 250 m.*<sup>108</sup>

155. The 2003 ESA did not explain how its view on buffer zone might be affected should the landfill be designed to include “*sludge disposal facility*” and an “*incinerator for hospital and other hazardous waste*”—possibilities under consideration according to the 2003 ESA.<sup>109</sup> Moreover, as indicated elsewhere in this Report, the 2003 ESA and other Project documents gave inadequate attention to the serious concern raised in the Request of potential health and environmental consequences that might result if the landfill was not properly designed and maintained.
156. The Management Response to the Request indicates that the buffer zone is 250 meters. It also notes an “*area excluded from acquisition*” that is no longer part of the proposed landfill, which is on the eastern side of the landfill where members of the Agyemankata Community reside.<sup>110</sup>
157. As indicated in the Request, the members of the Agyemankata Community are aware of the original guidance, from the early 1990s, for a larger setback distance. **The Panel finds that the 2003 ESA has not adequately assessed or justified a decision to use a buffer zone of 250 meters or less, as compared to the larger distances noted in other documents and in light of significant concerns about capacity to properly and safely maintain the landfill. The Panel notes that the adequate determination of the buffer zone is a complex and site-specific undertaking. It is important to achieve compliance with Bank Policy, and to determine who may be entitled to compensation and resettlement under OP 4.12 (see below).**
158. In addition, and depending on the final determination of the buffer zone, **the Panel notes that the landfill could also result in indirect adverse impacts on people who live in the area adjacent to the buffer zone, but within the project area of influence. This also has to be analyzed and addressed in accordance with OP 4.01, which calls for actions to prevent, avoid, mitigate, or compensate for such impacts.**

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<sup>108</sup> 2003 ESA, p. 124, ¶7.4.1 Buffer Zone.

<sup>109</sup> The 2003 ESA states that “[t]he advisability of adding sludge disposal facility and an incinerator for hospital and other hazardous wastes suitable for incineration will be considered in the designs of both landfills [Kwabanya and Tema].” (2003 ESA, p. 47). Elsewhere, the 2003 ESA notes that risks of incinerators include degradation of air quality due to poor quality stack emissions, generating dioxins and furan, which are associated with cancer (2003 ESA, p. 167).

<sup>110</sup> See Map IBRD 35711, attached to this Report. The 2004 Report of the Technical Advisory Committee states that “As much as possible, the boundary of land required for landfill should be revised to exclude lands presently occupied. All such lands would therefore lie outside land to be used for landfill operations, as well as the buffer zone required for minimizing negative impacts.” (Technical Advisory Committee, Final Report, July 2004, p. 22).

159. Such analysis should incorporate, among other things, factors such as the presence of the school within the Agyemankata Community and concerns about available managerial capacity to ensure proper and safe maintenance and operation. The Panel also notes the indication by Management that the landfill design will take into account international best practice, and has indicated its determination to work with the government and affected community to ensure that the affected community will not be negatively affected should the Bank agree to finance construction under the original conditions.<sup>111</sup> The implications of the important recommendation of the 2004 Technical Advisory Committee to reduce the overall size of the landfill/buffer zone area will need to be taken into account in this context.
160. Members of the Agyemankata Community live near the landfill site, and have a substantial and direct interest in these issues, given the proposal to build a landfill at the site. They have made statements expressing their rejection of the TAC recommendation on the basis that it maintains the landfill at the site, which they believe will result in hazardous effects on their health. The Panel observes that the shortcomings in policy compliance noted above, along with problems of consultation (see below), appear to have hampered an appropriate handling of these concerns. **Management has informed the Panel that the new EIA will examine these issues.**

## 5. Environmental Management Plan

161. An EMP is the instrument of the EA that details measures to eliminate or offset adverse environmental impacts, or reduce them to acceptable levels, and specifies actions to implement these measures. It includes requirements for implementation schedule, cost estimates and integration of EMP with the project.
162. The Policy is specific about costing and monitoring requirements to be set out in the EMP. OP/BP 4.01 Annex C describes the requirements for implementation schedule, cost estimates and integration of EMP with the project. The Policy is specific about costing and monitoring requirements set put in the EMP. Article 3 specifies “...*the EMP identifies monitoring objectives and specifies the type of monitoring, with linkages to the impacts assessed in the EA report and the mitigation measures described in the EMP. . .*” Article 5 specifies “...*the EMP provides (a) an implementation schedule for measures that must be carried out as part of the project, showing phasing and coordination with overall project implementation plans; and (b) the capital and recurrent cost estimates and sources of funds for implementing the EMP. These figures are also integrated into the total project cost tables.*”
163. The 2003 ESA, however, contains an EMP with little or no costing, no provision for capacity building, vague monitoring strategies and generally provides very little information on how negative environmental impacts will be prevented, avoided, mitigated or compensated, and otherwise monitored. The 2003 ESA takes a definite position on the issue of leachate prevention/minimization by recommending the use of a low permeability ( $10^{-9}$  m/sec) land liner comprised of either clay or on-site soils

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<sup>111</sup> Management Response, pp. 11, 13.

mixed with bentonite. This is an important measure that is designed to protect the resources of the affected communities.

164. Since monitoring and costing elements are absent from the 2003 ESA, the neighboring community could legitimately fear for its health and the undue environmental risks it will have to bear in the absence of appropriate operational content of the 2003 ESA report. **The Panel finds that the EMP produced as part of the 2003 ESA was noticeably deficient in most of these aspects. This is not consistent with OP 4.01. The 2003 ESA did not provide a sound and effective basis for Project appraisal.**
165. The Panel notes that Management recently has taken additional steps relating to the development of an Environmental Management Plan, that are expected to address issues noted above. Specifically, the TORs for the new EIA contain a section on preparation of an EMP covering mitigation measures and monitoring programs for the Kwabenya landfill.<sup>112</sup>
166. The Panel notes that the TORs for the new EIA contain a section on Environmental Management Plan, and recommend measures to prevent or reduce significant negative impacts to acceptable levels, estimate their costs and institutional and training requirements to implement them, propose work programs and budget estimates, include monitoring mechanisms, and “[c]onsider compensation to affected parties for impacts which cannot be mitigated.” The Panel notes that the issue of properly developing and implementing an EMP in cases involving landfills is far from academic. Experience indicates that the content and implementation of an EMP can make the difference between a good and a bad landfill as far the surrounding community is concerned.

## 6. Consultation

167. As indicated previously, a major concern expressed by Requesters is that they were not adequately consulted in the preparation of the Project EA, and that that the affected Agyemankata Community was made aware of the EA and allowed to see it only after its completion, and just a short time before Project approval. For its part, Bank Management states that satisfactory consultations were carried out during the drafting of the RPF and the EA. Management however indicates that the environment for consultations was very difficult as a result of high tension surrounding the proposed landfill.
168. OP/BP 4.01 requires that “[f]or Category A projects, the borrower consults [project-affected groups and local nongovernmental organizations (NGOs)] at least twice: (a) shortly after environmental screening and before the terms of reference for the EA are finalized; and (b) once a draft EA report is prepared.”<sup>113</sup>

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<sup>112</sup> Draft TOR for the EIA for the Kwabenya Landfill Project, November 2007, ¶2.0. (Objectives), and Section on Environmental Management Plan, pp. 4–5.

<sup>113</sup> OP 4.01, ¶14.

169. The Management Response indicates that consultations took place during 2001/2002 prior to the Bank's decision to finance the Kwabenya landfill. According to the Requesters, however, these consultations were mainly with the allodial title holders and the chiefs of the Kwabenya Township, who lived some distance away from the proposed landfill site. They claim that not all the affected people, including many of the Requesters, were properly notified of these consultations.
170. The Bank's decision to finance the Kwabenya landfill subcomponent came in 2003 when positions had hardened between the Government and the Agyemankata Community, and the climate was hostile with talks of violence. The records show that, in this environment, no consultations with the Agyemankata Community were held during the preparation of the 2003 ESA, as required under the OP/BP 4.01. Management Response, Annex 2, lists a public consultation in September 2003. However, as noted in the text of Management Response, these were only interactions with some of the affected people at the site. Documents available to the Panel indicate that the only public consultation meeting with the Agyemankata Community took place in February 2004 only after the ESA and RPF had been finalized.
171. The Panel notes that attempts were made by the Government to consult with the affected population. However, since the time of the DfID-funded project, the level of tension between the local community and project authorities increased, and this affected the ability to have a structured consultation process in accordance with Bank Policy. According to their own statements, the community leadership was opposed the landfill development, considered that their rights were threatened, believed that their concerns would not be listened to in good faith, and refused to enter into discussions over compensation and resettlement. The Panel notes that the Government and the Bank made efforts to establish consultation opportunities, but did not successfully pursue alternative approaches that may have yielded meaningful consultation.
172. **The Panel notes that meaningful consultations, as envisaged under OP/BP 4.01 and OP/BP 4.12, did not take place with those living nearest the proposed landfill. The Panel acknowledges the difficulties of conducting such meaningful consultations under the prevailing conditions at the time.** The Panel notes the shortcomings of the 2003 ESA process, which was finalized without the benefit of public consultation as required under the Bank Policy.
173. OP/BP 4.01 also recommends that the outcome of the public consultation be documented and that project design and the EMP reflect appropriately that outcome. This admittedly is a difficult undertaking, especially amid a controversy during which some arguments are highly emotional and difficult to analyze in a rational and scientific manner.<sup>114</sup> In the case of the 2003 ESA, the Panel expert observes that little

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<sup>114</sup> However, much progress on the quality, relevance and operational use of public consultation in Bank operations has been made since the design and adoption of the new Indigenous Peoples Policy where the

effort has been made to move the recommendations beyond the simple recording of the existence of a local conflict and the resulting impasse.

174. It is of interest to note that the World Bank Press Release of April 2004, a key document announcing the proposed funding for UESP II, and the first official document on the project following the Community's direct protest, made no mention of Kwabenya. It was not until June 2004 that the Minister announced, at the launch of the TAC, that the Bank had agreed in late 2003 to fund the building of a landfill at Kwabenya. Accurate information is the key for effective consultation, and such inaccuracies in Bank documents may have generated more mistrust and pushed the parties apart.

## **7. Disclosure of Project Related Information**

175. OP/BP 4.01 requires transparency and appropriate communication in making the EA report available to the public and, in particular, to the project-affected groups.<sup>115</sup> The Bank's Policy on Disclosure of Information repeats the need for full and appropriately-conducted information dissemination on EA and Involuntary Resettlement. For the latter, it is required that “[a]s a condition of appraisal of the operation, the borrower provides the draft [Resettlement Instrument], which conforms to the relevant policy, and makes it available at a place accessible to, and in a form, manner and language understandable to the displaced or affected people and local NGOs.”
176. In the case of UESP II, the EA and the RPF had indeed been disclosed before appraisal. This is consistent with Bank Policy. However, the Panel was informed in its discussions in the field that no proactive step was taken to make the EA report available in a form, manner and presentation understandable and accessible to the local groups and certainly not in Kwabenya. This issue is also addressed in Chapter 4.

## **8. Proper Maintenance of Landfill—Capacity Issues**

177. During its investigation, the Panel heard many concerns expressed by people within the locally-affected Agyemankata Community that a landfill, if built near their community, would not be properly operated and would pose a grave risk to their health and local environment. The people referred to the experience of operating other waste sites in the country as a basis for their fears and concerns.
178. OP 4.01 provides that an EA analysis takes into account, inter alia, the country's “*institutional capabilities related to the environment and social aspects.*” It adds that when the borrower has inadequate legal or technical capacity to carry out key EA-related functions, including management or mitigatory measures, the project includes components to strengthen that capacity.

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concept of free, prior and informed consultation has been refined (OP 4.10 on Indigenous Peoples, July 2005).

<sup>115</sup> OP 4.01, ¶¶15 & 16.

179. As described in Chapter 2, the Panel’s field visit and investigation confirmed that experience with existing waste disposal sites suggests a strong basis for these concerns. The Panel’s expert observed that the present management of the Oblogo waste dump in Accra is seriously inadequate.
180. In this regard, the PAD notes that revenues and budget transfers for waste management “*fall chronically short of the requirement,*” and that the Municipal Authorities “*find it difficult to operate and maintain existing systems and, in addition, to carry out their own infrastructure investments.*”<sup>116</sup> **Elsewhere, however, the PAD states that the “legal and institutional arrangements in Ghana are by and large adequate for environmental and social management.”**<sup>117</sup>
181. In addition, the PAD rates as “substantial” the risk that three other landfills under the Project may not be operated according to guidelines, with potential for environmental damage, but does not mention Kwabenya as posing this risk.<sup>118</sup> **The Panel finds that this omission downplays the significant risk of inadequate operation of a landfill at Kwabenya, and is not consistent with OMS 2.20 on Project Appraisal and with the capacity building provisions of OP/BP 4.01.**
182. In its Response, Management states that the Kwabenya site intended to be a “*sanitary landfill*” which is different and better than open dumps like that at Oblogo. It notes the Project institutional strengthening elements, and adds that the final landfill design needs to meet applicable national laws, policies and guidelines, and will be reviewed by an expert to ensure “*that design takes into account best international practice.*” **The Response also articulates a “no harm” principle,** in which Management indicates its determination to continue work with the Government and communities to “*ensure that . . . affected communities will not be negatively impacted should the Bank agree to finance the construction . . .*” of the landfill under the conditions originally established.<sup>119</sup>
183. **These are welcome statements. The Panel appreciates, however, the concerns of the community that even with the best intentions at design, problems and risks to health and the environment could arise for the members of the community living near the proposed landfill site.** During its field visit, the Panel was informed that the Kumasi sanitary landfill, which had been cited as a more positive example, was experiencing significant problems. Indeed, the Panel was told that an initiative to take members of the Agyemankata Community to visit this site, for the purpose of showing how a well-designed landfill would look, had been cancelled due to these problems. There has also been an extended delay by Management in producing a Report from its MTR of the Project (in December 2007), as well as a promised and adequate environmental management plan which specifies how such harms are to be

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<sup>116</sup> PAD, ¶¶67, 69.

<sup>117</sup> PAD, ¶58.

<sup>118</sup> PAD, p. 9, Table on Critical risks and possible controversial aspects.

<sup>119</sup> Management Response, ¶36.

avoided, and capacity needs are to be addressed, in line with OP 4.01. The new EIA and EMP under development present the opportunity to address these items.

184. **In light of past experience with waste management, and to achieve compliance with Bank Policy, the Panel notes the need for clarity about institutional arrangements for construction and operation of a future sanitary landfill.**

### **9. Linkage between EA Process and Resettlement Problems**

185. The EA and resettlement/compensation processes are intimately linked in the real world, and by the terms of the two policies.<sup>120</sup> For instance, the determination of the size and precise location of the future buffer zone is closely linked to the potential harm of the future landfill. At the same time, the final determination of this size and location directly affects the number of people to be evicted as well as the cost of compensation.
186. **This poses a dilemma for the Project. The inadequacy of the 2003 ESA as a basis for these key determinations undercuts the ability of the Project to carry out resettlement planning in accordance with Bank Policy, and establish a well-founded “cut-off” date to identify the affected population eligible for compensation and/or resettlement assistance. This problem occurred during Project design, and affects the timing of current actions.**
187. Since the 2003 ESA does not form an adequate basis for Borrower’s Executive Instrument and resettlement planning (see also Chapter 4), it is surprising and maybe inappropriate to conduct the final EIA after the completion of the RAP. Given the path chosen by the Borrower and the Bank, the logic of the process may need to be reversed, with the final EIA having to take stock of the decisions and parameters of the RAP. This is by no means trivial and may increase the discomfort and fuel the opposition of the future resident of the proposed landfill site.
188. The Panel is concerned that there has been inadequate consideration of the relationships between the compliance with Bank’s safeguard policies, project design and quality, and among the relevant policies. Given the very high pollution potential of a landfill—however sanitary—meant to cover the needs of 5 million people over several years, the minimization of that potential seems to be actually more of a project design issue than the subject of an add-on study. While the upcoming studies (EA, EMP, etc.) are most important, their inter-relation with the resettlement planning process remains a critical challenge.
189. The Panel’s expert notes that even if the 2003 ESA and RPF were adequate and well prepared, the absolute need for appropriate implementation, monitoring, surveillance and supervision would be obvious. The only way of ultimately producing overall quality is to ensure quality at each step of the process. It will be very difficult, if

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<sup>120</sup> See OP4.01 on Environmental Assessment, ¶3, and OP4.12 on Involuntary Resettlement, ¶¶1 & 2.

feasible, to ensure that that “quality chain” is put in place if the foundations for this quality chain do not exist.

## **E. Other Related Actions and Issues**

### **1. Environmental Permit**

190. In order to go ahead with the construction of the Kwabenya sanitary landfill, the Borrower needs to follow the legal process of applying for and obtaining an Environmental Permit from the Ghana EPA. Given the difficulties encountered ever since the project was initially prepared for DfID funding, the Borrower established a TAC, which prepared a recommendation report (see below).
191. The application for an Environmental Permit was sent to EPA and the Permit was granted on the basis of the 1999 EIA. The EPA permit included a series of strict prescriptions (commitment to environmental mitigation and monitoring, dust, noise, spillage, public safety, leachate, gas) and the obligation of periodic reporting on the operation of the future landfill. The Environmental Permit was delivered on November 7, 2000. The validity of this permit has long since expired and a new Environmental Permit will need to be obtained before Kwabenya’s construction can go ahead.

### **2. Technical Advisory Committee**

192. On June 16, 2004, the TAC was formed by the AMA to look into various issues and problems relating to the implementation of the proposed landfill site at Kwabenya. The terms of reference of the TAC included the following elements:
- Determining the extent of encroachment on the land earmarked for development
  - Identifying the underlying causes of the impasse between some residents and the AMA and the circumstances leading to the recent unlawful actions of some residents
  - Reviewing all previous agreements, projects and programs related to the development of the landfill
  - Assessing all feasible alternatives technologies to confirm or reject the notion that sanitary landfill is a viable and cost effective option for addressing the chronic sanitation problems in Accra
  - Recommending immediate action plans to resolve all outstanding issues.<sup>121</sup>
193. The Committee included professional Governmental staff from a dozen institutions and ministries of no less than Director level, two representatives from the landowners/traditional leaders and opinion leaders from the community/residence

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<sup>121</sup> Final Report of the Technical Advisory Committee, 2004, p. 4.

association. Altogether, out of a total of 30 members, 22 were from the Government of Ghana and the eight remaining were from the local community and representatives of landowners.

194. The TAC operated in a Task Force mode, holding several meetings and delivering its report in July 2004. The TAC concurred with the selection of Kwabenya as the most relevant and cost-effective site to be used in the short term. The TAC report also recommended that the Kwabenya Township be included in Community Infrastructure component of UESP II to facilitate the immediate provision of infrastructure promised to the local community by AMA.<sup>122</sup>
195. Since this intervention, there has, to the Panel's knowledge, been no more analytical or consultation work undertaken on environmental matters related to the proposed landfill site. On the contrary, land valuation and several compensation-related activities have been conducted.<sup>123</sup> As noted above, TORs have been developed for a new EIA and EMP, which would be carried out in parallel with the review of proposed landfill site design. In the meantime, no environmental or otherwise analytical work has been done on alternative sites.

#### **F. Status, Further Actions, and Funding**

196. As described above, a set of TORs has been prepared to develop a new environmental assessment and EMP for the Kwabenya sanitary landfill subcomponent. In its Response to the Request, Management identified a number of other actions to address Project issues, including new deadlines to complete a satisfactory RAP. Management's communication to the Borrower in September 2008 updates and identifies additional steps and new deadlines (described in Chapter 4, below).
197. While the Bank is putting attention on these ongoing actions, the Borrower has issued an Executive Instrument that allows it to start identifying the right owners and compensating them, and the process of developing a RAP is ongoing. Management has informed the Panel that no implementation activities have taken place in regard to any construction works.
198. The Panel notes that since the EMP of the 2003 ESA is not properly costed and institutionally allocated, and since the RAP has not yet been approved, there is considerable uncertainty as to how much the construction and operation of the proposed sanitary landfill would actually cost and how this cost can be funded.

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<sup>122</sup> Final Report of the Technical Advisory Committee, 2004, pp. iii and iv.

<sup>123</sup> See Chapter 4 of this Report on Social Compliance.

## Chapter Four

### Social Compliance

199. This Chapter reviews key socially-related issues and concerns raised in the Request for Inspection, and the related Management Response. The discussion focuses in particular on whether Bank Management complied with key applicable policy requirements set forth in Bank Policy OP 4.12 on Involuntary Resettlement, and on issues of harm or potential harm related to instances of non-compliance.

#### A. The Requester's Claims and Management Response

##### 1. The Requester's Claims

200. The Requesters claim that the construction of the sanitary landfill will detrimentally affect their community leading to the involuntary displacement of many of the communities' residents, leaving the remainder of the community living in conditions detrimental to their health.
201. The Request states that the Agyemankata Community was not meaningfully consulted during the planning and preparation stages of the Project, and were therefore unable to provide input into the drafting of the Resettlement Policy Framework (RPF). They claim that the preparation of the RPF was done in consultation with the chiefs and people of Kwabenya, who are 2 km away from the landfill site and did not represent their interests. Furthermore, the Requesters claim that they have not participated in the preparation of the Resettlement Action Plan (RAP), and that they have yet to see this plan.
202. The Requesters acknowledge that the AMA did notify the Community, by two radio announcements and a newspaper article, that they would need to lodge their property documents to the Land Valuation Board in order to seek compensation. They assert that the reminder of the deadline for submission of documents, the failure of which would result in a forfeiture of compensation claims, was made via a newspaper article. They state that a notice by AMA to bring all relevant documents by July 30, 2007, or forfeit compensation was communicated to the Community only on July 18, 2007, and indicate that this is a threat that residents risk forfeiting their compensation.
203. The Requesters also claim that the actions of the AMA indicate the lack of the commitment on its part to implement a resettlement instrument.<sup>124</sup> During the Panel's field visits, the Requesters stated that the consultation between the community and Project officials was very difficult and contentious. Members of the community indicated to the Panel that they have lost trust in the process, and do not believe that consultations will provide a basis to protect their rights and concerns.

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<sup>124</sup> Request, ¶5.6.

## 2. Management Response

204. Management states that the RPF, which sets out the guiding principles and objectives governing the resettlement issues, as well as the eligibility criteria for compensation, was reviewed at appraisal and was found to be in line with the Bank's resettlement policy. Management states that it is satisfied that the RPF satisfactorily meets the requirements of OP 4.12.
205. Management further states that the Government and the Bank are aware that further information is needed in order to meet the requirements of the Bank's policies on presenting an adequate RAP. It states that "*existing information on the social safeguards situation at the Kwabenya landfill site is 'in part taken from [the DfID financed] Environmental Impact Study. It was deemed, however, that this information, and the consultation process with the affected population, are insufficient to present an adequate RAP for Kwabenya, which remains to be done, with adequate exploration of alternatives.'* [footnote omitted] Hence, it was clear that the Government would need to conduct further site-specific consultations for the RAP for the Kwabenya sanitary landfill."<sup>125</sup> Therefore Management states that Bank has not proceeded with the Kwabenya subcomponent, because a RAP for the subcomponent has yet to be prepared, in compliance with the provisions of OP 4.12.
206. Management states further that a Quality at Entry Assessment (QEA) of the Project was conducted in Fiscal Year 2004/05 and, though the Project was rated as unsatisfactory, "*the [Quality Entry Assessment] panel nevertheless considered the use of the RPF to be appropriate and in line with policy requirements to address the difficult issue of siting the Kwabenya sanitary landfill.*"<sup>126</sup>
207. Management also describes a very tense and confrontational interaction between the local community and both the authorities and the Bank. According to the Response, the Government has indicated that when its official delivered letters to members of the Community in June 2004 inviting them to a meeting, "*. . . they were detained for several hours, confronted with death threats should they ever return, and the letters were returned unopened. Since that incident, Government delegations, project staff, surveyors and valuation staff have visited the site under the protection of armed security personnel.*" The Response also includes and refers to a number of letters and communications from the Community, and state that they frequently include the following: "*We Agyemankata community the immediate residents living on Kwabenya landfill site will never honor any invitation or discussions on a dump (landfill) at Agyemankata Kwabenya. We have the right to protect our environment. Anybody who enters here does so at his/her own risk.* The Response notes that this reflects the "*complex social situation the Government is dealing with and the difficulties in undertaking field visits.*"<sup>127</sup>

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<sup>125</sup> Management Response, ¶25.

<sup>126</sup> Management Response, ¶15.

<sup>127</sup> Management Response, ¶28.

### 3. Bank Policy on Involuntary Resettlement

208. Where Bank-funded Projects involve some form of involuntary resettlement, OP 4.12 states that where feasible, involuntary resettlement should be avoided or minimized, with all possible project alternatives being explored. Where involuntary resettlement cannot be avoided, resettlement activities should be “*conceived and executed as a sustainable development program, providing sufficient investment resources to enable persons displaced by the project to share in project benefits.*”<sup>128</sup> The OP also requires that displaced persons should be meaningfully consulted and should be given the opportunity to participate in the planning and implementation of the resettlement activities.
209. The OP states that for all operations “*that entail involuntary resettlement,*” a RAP is required, unless otherwise specified.<sup>129</sup> The submission of a RAP to the Bank is a **condition of appraisal**. In sum, whenever it is determined that land acquisition is necessary and unavoidable in a project, and resettlement will result, Bank Policy requires that a RAP is prepared and land acquisition is fully described and budgeted.
210. By comparison, an RPF is required for operations “*that may entail involuntary resettlement unless otherwise specified.*”<sup>130</sup> Paragraphs 26-30 of OP 4.12 set down the types of operations where a RPF may be prepared in the first instance, prior to Project approval, to be followed by a full RAP. In particular, where a Bank-funded project, with multiple subprojects, may involve involuntary resettlement, the OP requires that a draft RPF is submitted prior to appraisal where due to the nature of the subprojects, “*the zone of impact of subprojects cannot be determined*” or “*the zone of impact is known but precise sitting [sic] alignments cannot be determined.*”<sup>131</sup> It should also be noted that the OP states that for such aforementioned subprojects, that may involve involuntary resettlement, the Bank requires that a satisfactory RAP be submitted for approval before the subproject can be accepted for Bank financing.<sup>132</sup>

## B. Area of Displacement and Affected People

### 1. Types of Entitlements and Claimants

211. Chapter 2 of this Report provides some general information about the size of the proposed landfill and buffer zone at Kwabenya. It also describes briefly the different types of entitlements held by affected people. These include: first tier claimants having allodial (absolute or permanent) land titles; second tier claimants who are customary freeholders of rights (usufruct rights), such as “caretakers,” “original families” or farmers who have been residents for many years; third tier claimants who

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<sup>128</sup> OP 4.12, ¶2(b).

<sup>129</sup> OP 4.12, ¶17(a). An “abbreviated” resettlement plan may be agreed with the Borrower where impacts on the entire displaced population are minor, or fewer than 200 people are displaced.

<sup>130</sup> OP 4.12, ¶17(b).

<sup>131</sup> OP4.12, ¶28.

<sup>132</sup> OP4.12, ¶29.

can loosely be described as “leaseholders”; and fourth tier claimants who work in the land as stone cutters or stone quarries (and who may or may not have leasehold rights).<sup>133</sup> To assist in the understanding of the Panel’s analysis of issues relating to Bank Policy on Involuntary Resettlement, additional information about the characteristics of the proposed site and buffer zone for the landfill, and the affected and displaced people, is provided below.



**Picture 7: Stone quarrier at work**

## **2. Size of the Site**

212. The 2003 ESA prepared on behalf of the Government of Ghana identified a landfill site of approximately 23 million m<sup>3</sup> (with an option to expand by a further 10 million m<sup>3</sup>) requiring the acquisition of a total land area comprising landfill footprint plus the buffer zone around the site at approximately 194 hectares:

Landfill footprint - (excluding compound area) = 75 ha

Buffer zone around the site = 119 ha<sup>134</sup>

Total land = 194 ha

213. The Technical Advisory Committee formed by the Government of Ghana reported in July 2004 making recommendations that the boundary of the land, including land required for the buffer should be reduced in order to “*exclude nearly 229 plots of land that are either developed or have already been allocated for development by the*

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<sup>133</sup> Management recently provided additional information to the Panel describing “four types of losses” identified by its social consultants: (i) loss of undeveloped residential plots; (ii) loss of incomplete residential structures; (iii) loss of income from stone cracking activities; and (iv) loss of income from food vending activities. This information is part of Management’s description on the status of the RAP, discussed below.

<sup>134</sup> See Chapter 3 of this Report, discussion of buffer zone.

landowners” and are “*at the centre of the controversy.*” The TAC recommendation was adopted by the Government and the AMA.

214. However, in the absence of a new and updated EA and EMP, the need for which was identified in the Terms of Reference for the Environmental Impact Assessment for the Kwabenya Landfill Project dated November 2007, the precise dimensions of the landfill within the 360 acre site including the buffer zone are not yet known.

### 3. Affected People, Lands and Structures

215. The EIA prepared on behalf of DfID in 1999 assessed “*that the change in land use of the valley from farming and stone-winning to a landfill will inevitably result in the relocation of some of the existing residents. Around 22 families comprising some 170 individuals reside in the valley and its immediate surroundings. It is likely that the majority of these people will require resettlement at some point during the lifetime of the development.*”<sup>135</sup> It also identified 300 members (200 male and 100 female) of the Quarrying Association as well as 50 other workers who would be affected.<sup>136</sup>
216. The 1999 EIA considered the wider impacts of the proposed landfill and concluded that “*good site management*” could control public nuisances (vermin, litter and odor) and that “*resultant negative impacts should be minimal.*” The risk to public health due to the landfill was felt to be minimal. Other potential environmental impacts arising from on-site activities were also evaluated during the preparation of the EIA, including deterioration of air quality, noise, vibration, dust, mud, fire and explosions. It was considered that each of these elements could be addressed and controlled through good site management and they are therefore considered to be of relatively low significance.<sup>137</sup>
217. However, the 1999 EIA went on to conclude that “*a small school is situated in the south-eastern portion of Valley A ...*” and “*...not in the footprint of the landfill ... could be impacted by noise, dust, landfill gas etc.*” The report suggested “*the school be re-situated away from the landfill.*”<sup>138</sup>
218. The 2003 ESA did not estimate the number of affected persons but acknowledged the “*change in use of the site to a landfill will unavoidably result in involuntary resettlement of most or all of the existing residents to another area.*” It identified mixed land use including: a number of residential units (both old and new); quarry activities; remnants of old farming activities; and a school within the site. The report went on to state that “*the predominant land-use type observed is residential of various kinds from mud houses through simple single concrete buildings to huge*

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<sup>135</sup> 1999 EIA, section 10.1.1, p. 91.

<sup>136</sup> 1999 EIA, section 7.4.2, p. 82.

<sup>137</sup> The Panel’s analysis of the potential impacts of the Project on these people, and issues under OP 4.12 are addressed below.

<sup>138</sup> 1999 EIA, p. 172.

*multi-storey modern style architectural edifices were found.*<sup>139</sup> It also noted that the 1999 EIS specified that no buildings should be located within the buffer zone of approximately 250 meters (see Chapter 3). The 2003 RPF for the Project counted for the purposes of compensation a total of 113 buildings and structures within the project-affected area.

219. The July 2004 Final Report of the TAC, while not providing an estimate of the total number of people who would be affected by the construction of the landfill, estimated that a reduction in the size of the landfill would exclude 229 plots from the immediate project footprint. The Report did not, however, state how many of these plots were developed or occupied. The TAC found that the land earmarked for acquisition was owned by “*four (4) Families*” and “*six other groups have significant interests in the land by virtue of various treaties signed between them and the original land owners.*” These included residents associations from the Kwabenya township and stonecutters operating in the valley.<sup>140</sup>
220. During the field visit to the landfill site and in interviews with the consultants preparing the RAP it was clear that the number of stonecutters operating in the valley has risen considerably since the 1999 assessment was undertaken. The consultants believed that had identified a minimum of 775 stonecutters though the upcoming EA and EMP is required to provide “*a description of the socio economic environment*” which is expected to include an updated census of the affected population.



**Picture 8: Panel team meeting with stone quarriers**

221. Recent information provided to the Panel by Management, at the Panel’s request, indicates that there may be a total of approximately 1,000 people involved in stone cracking activities in the area. As described previously, there are also a number of

<sup>139</sup> 2003 ESA, p. 55.

<sup>140</sup> Final Report of the Technical Advisory Committee, 2004, p. 9.

residences, other structures (e.g., a school) and people in lands immediately adjacent to the project footprint, including members of the Agyemankata Community. The Panel cannot know the precise numbers because they have not been established by Project documents.

### **C. Decision to Proceed with a Resettlement Policy Framework Rather than a Resettlement Action Plan at Appraisal**

222. The current Project proceeded with an RPF at appraisal, and left the development of a RAP to a later date. The question of whether this decision complied with the provisions of OP 4.12 on Involuntary Resettlement noted above, and its implications for the landfill subcomponent, is reviewed below.

#### **1. Basis for the Decision**

223. As noted above, where a Bank-funded project with multiple subprojects may involve involuntary resettlement, OP 4.12 permits that a RPF rather than a full RAP is prepared by project appraisal if, due to the nature of the subprojects, “*the zone of impact of subprojects cannot be determined*” or “*the zone of impact is known but precise sitting (sic) alignments cannot be determined.*”<sup>141</sup> The Policy adds that the RPF document itself must explain the reasons why a RAP cannot be prepared at this stage of the project cycle. According to the Policy “*for other subprojects that do not fall within the above criteria [for preparing a RPF], a resettlement plan conforming to this policy is required prior to appraisal.*”

224. During its investigation, the Panel found and was informed of a number of reasons that led to the preparation of the RPF. These are described below.

225. The 2003 Project’s RPF, reviewed by the Panel, states that “... *existing information on the social safeguards situation at the Kwabenya landfill site are described in this report to provide the basis for the preparation of a RAP for Kwabenya and to serve as an illustration of the application of the RPF. [...] It was deemed however that this information, and the consultation process with the effected population, are insufficient to present an adequate RAP for Kwabenya, which remains to be done, with adequate exploration of alternatives.*”<sup>142</sup> (emphasis added)

226. On the other hand, according to the Terms of Reference for the preparation of the 2003 ESA, because “... *detailed designs for the various sub-components have not been finalized it is not possible to prepare a detailed resettlement action plan for the project ...*”<sup>143</sup>

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<sup>141</sup> OP 4.12, ¶28.

<sup>142</sup> RPF, p. 6.

<sup>143</sup> Ministry of Local Government and Rural Development, Second Urban Environmental Sanitation Project, Environmental and Social Assessment, Terms of Reference, May 2003, ¶24.

227. Reflecting on the Project, Bank staff interviewed by the Panel recalled a number of reasons for proceeding with the RPF prior to appraisal rather than with a RAP in 2003. These are briefly described below.
228. **Siting alignments.** Staff noted that the view of the engineers involved in the Project during the preparation phase was that while the zone of impact of the landfill site was known, “precise alignments” could not be determined for Kwabenya.
229. **Alternative sites.** It was the view of some officials interviewed that a full RAP would not be undertaken until a final decision had been taken on alternative landfill sites under consideration. There were also some indications that the decision to proceed with a RPF was linked to information sought on possible seismic activity.
230. **Capacity of implementing agency.** During interviews carried out by the Panel, it was indicated that an RPF was the preferred option because there was insufficient capacity or expertise in the Project Implementing Agency to undertake a full RAP.
231. **Safety.** A further reason given for not moving straight to a RAP was because of the difficulty of access linked to threats of violence, risks to the safety of staff, and the fact that final settlement between the affected population and the Borrower had not been reached.
232. **Political pressures and time constraints.** It was also suggested to the Panel that a RPF was preferred because of the Borrower’s wish to move ahead quickly with the Kwabenya landfill site and the Bank not wanting to be thought of as standing in the way. However, some Bank staff noted during interviews that there was little confidence on the part of some in Management that the Kwabenya project would go ahead because of “*irresolvable social issues*” and a RPF was at that stage “*the course of least resistance.*”<sup>144</sup>

## 2. Analysis and Conclusions

233. The Panel notes that the need to prepare a RAP for Kwabenya landfill subcomponent prior to appraisal was raised during Project preparation by Bank staff, who, *inter alia*, indicated, at that time, that “*the extent of the resettlement/compensation is known.*”<sup>145</sup> It is also worth noting that the Terms of Reference for the 2003 ESA include specific terms of reference for a RAP for the Kwabenya landfill, as well as TOR for an RPF for other Project subcomponents.
234. **The Panel notes that the preparation of a RAP would have helped bring to the surface the crucial and difficult questions involving resettlement planning prior to the time of Project appraisal, rather than leaving these to Project implementation.**

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<sup>144</sup> Inspection Panel interview with Bank staff.

<sup>145</sup> Bank communication dated March 2003.

235. The Panel also notes that the ability to prepare a policy-consistent RAP at the time of appraisal hinged, in part, on having: (a) an adequate 2003 ESA which properly identified Project risks and critical elements such as the appropriate size of a buffer zone around the landfill to protect the nearby community and for purposes of land acquisition; and (b) an adequate, policy-consistent consultation process in advance of Project appraisal. As has been noted in earlier sections, these conditions did not exist. This is a result of, among other things, shortcomings in policy-required actions during Project preparation, especially with respect to the adequacy of the 2003 ESA.
236. A RAP would have provided specific information that was critical for effective project implementation. This includes more detailed socio-economic information about the people having entitlements in the project affected area, specific information about budget and resource requirements, etc. It would have also revealed the significant problems and difficulties in achieving a policy-consistent resettlement at the proposed site and thereby enabled more informed decision-making and responsive actions to address these difficulties during the design and appraisal phase of the project. A RAP can also, in some circumstances, provide a “mediatory” and “cooling” function that was needed in the Kwabenya subcomponent.
237. The Panel acknowledges that Management included a covenant in the Development Credit Agreement that the works for the landfill could not be commenced until a policy-consistent RAP was prepared and implemented. **The Panel observes, nevertheless, that difficulties now being encountered in completion of the RAP, and its linkage to the EA Policy, noted above, may be traced back at least in part to the lack of adequate and coordinated safeguards work by the time of Project preparation.**

### **3. Safety Issues and the Choice of Resettlement Instrument**

238. Tensions certainly were high in the Kwabenya area and there had been a number of reported incidents and physical confrontations. These safety issues should not be underestimated.
239. As noted in Chapter 5 (Supervision), no Bank social scientist visited the site between 2003 and the end of 2007, the period during which relations between parts of the affected population and the Government, and to a lesser extent between the affected population and the Bank, deteriorated and hardened.
240. In September 2007 it was agreed between the Bank office and the Government that work on the RAP could proceed, despite the worsening safety situation, following the publication of the Executive Instrument in February 2007 and the marking of houses for possession in an operation supported by armed police.
241. The Panel notes that if the safety issues were overriding in 2003, and precluded a more in-depth assessment of the resettlement situation in preparation of a RAP, it is not clear how the situation had improved to such an extent in September 2007 to

permit the preparation of a RAP prior to March 2008. While not downplaying the serious challenges that confronted Bank staff, in the Panel’s view a visit to the site would have allowed better managing communications and public information, in particular where there was clear misunderstanding on the part of the community about the role and obligations of the Bank. Indeed the experiences of the consultants undertaking the work would suggest that conditions remained very similar and problems around access seriously hindered the preparation of the RAP.

#### **D. Adequacy of the Resettlement Policy Framework under the Policy**

242. Setting aside this question of choice of instrument, and given the Project decision to prepare a RPF at appraisal, the Panel further examined whether the RPF that was prepared met the relevant policy provisions for such an instrument. The Panel’s detailed analysis of this issue is presented below.
243. The Panel examined whether the RPF met relevant policy requirements for such an instrument. The Quality at Entry Assessment carried out for the UESP II was critical of the submitted RPF, characterizing it as “*somewhat disorganized, unfocused, vague and repetitive, and insufficiently operational*” and stating that “*the team appears to have underestimated the grounds of remaining objections*” in the Kwabenya area. **The Panel concurs with these concerns, and describes below certain elements as they relate to the provisions of OP 4.12.**

##### **1. OP 4.12 Requirements for an RPF**

244. According to OP 4.12, a RPF covers, *inter alia*, the following: resettlement and compensation principles, organizational arrangements and design criteria to meet the needs of affected people; estimates of displaced population and likely categories of impacts; a legal framework “*reviewing the fit between local laws and regulations and Bank policy requirements and proposes measures to bridge any gaps between them*”; a detailing of asset valuation methodologies and organizational procedures to deliver entitlements; and a description of the arrangements for funding resettlement, “*including the preparation and review of cost estimates.*”<sup>146</sup>
245. The framework should, in addition, outline how displaced persons would be assisted in their efforts to improve their livelihoods and standard of living or at least to restore them, in real terms, to pre-displacement levels. In addition, at appraisal, the Task Team must assess, *inter alia*, the “*borrower’s commitment to and capacity for implementing the resettlement instrument . . . and significant risks, including risk of impoverishment, from inadequate implementation of the resettlement instrument.*”<sup>147</sup> This assessment is made irrespective of whether an RPF or a RAP is prepared for appraisal.

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<sup>146</sup> OP 4.12, Annex A, ¶¶23–25.

<sup>147</sup> BP 4.12, ¶10.

## 2. Social and Legal Issues in Ghana related to Land Acquisition

246. The Panel examined background social and legal issues in Ghana that are relevant to the claims of displacement and involuntary resettlement raised in the Request.
247. As noted in Chapter 2, land ownership in Ghana is based on absolute “*allodial*” or permanent title, normally vested in a stool, skin, clan, family and, in some cases, in individuals. While those who exercise the allodial rights may not necessarily live in the area, *customary freeholders*, who hold usufruct rights, live on and cultivate the land. In addition, there are so-called “*leaseholders*,” who are non-members of the land owning community, but have been given lands on a leasehold basis, generally for 99 years. A number of these leaseholders in Kwabenya practice stone-quarrying. The Panel found, however, that many stone-quarriers in the area have no leases and simply work in the quarries.
248. The basic policy for compulsory acquisition in Ghana is provided by the 1992 Constitution<sup>148</sup> in which Article 20(1) provides that:

*No property of any description, or interest in or right over any property shall be compulsorily taken possession of or acquired by the State unless the following conditions are satisfied:*

*(a) the taking of possession or the acquisition is necessary in the interest of defence, public safety, public order, public morality, public health, town and country planning or the development or utilisation of property in such manner as to promote the public benefit; and*

*(b) the necessity for the acquisition is clearly stated and is such as to provide reasonable justification for causing any hardship that may result to any person who has an interest in or right over the property.*

249. Article 20(2) provides that compulsory acquisition shall only be made under a law which makes provision for the prompt payment of fair and adequate compensation. While article 20(5) provides that “[a]ny property compulsorily taken possession of or acquired in the public interest or for a public purpose shall be used only in the public interest or for the public purpose for which it was acquired.”
250. Under this framework, a piece of land is declared in the public interest by Executive Instrument, the publication of which vests the land in the President free from any encumbrance and is a trigger for any expropriated person to submit claims for compensation. The Project Appraisal Document of a separate Bank-financed project, the Land Administration Project in Ghana, notes that “[t]he government’s compulsory acquisition/vesting of private lands without any consultation with or approval by customary authorities, non-implementation of proper resettlement of displaced persons and continued non-payment of just compensation have created a strong sense of injustice meted by the State.” It also notes that “[t]he problem is acute in the urban

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<sup>148</sup> Constitution of the Republic of Ghana, 1992, available at: [http://www.ghana.gov.gh/ghana/constitution\\_republic\\_ghana.jsp](http://www.ghana.gov.gh/ghana/constitution_republic_ghana.jsp).

*areas, particularly in the Greater Accra Region.*”<sup>149</sup> In addition, under Ghanaian law, customary freeholders are not entitled to compensation for the land in their own right. Rather, the compensation will be paid to the holders of the allodial rights, who are expected then to distribute the relevant amount to the members of the community including the occupiers of the land.

251. In addition, under Ghanaian law, customary freeholders are not entitled to compensation for the land in their own right. Rather, the compensation will be paid to the holders of the allodial rights, who are expected then to distribute the relevant amount to the members of the community including the occupiers of the land. The Panel found during its investigation that this system has not always worked as an effective mechanism to guarantee the transfer of compensation to those with entitlement.
252. This forms part of the context in which the Bank was operating and continues to operate in relation to Kwabenya—a subcomponent of the Project which includes land acquisition and resettlement, that, in addition, was overlaid with intense local political sensitivities and a heightened environmental awareness motivating organized popular resistance.

### **3. Gaps between Local Laws and Bank Policies**

253. If there are clear differences between compensation and resettlement standards in Bank Policy and in local law, the RPF has to propose measures to bridge the gap so as to ensure that compensation and resettlement assistance are conforming to Bank Policy.
254. The Panel observes that the way compulsory acquisition and compensation issues are handled according to the laws of Ghana is different from the World Bank’s operational policies and procedures in certain important respects.
255. For example, according to the law in Ghana not all people who must be paid compensation under OP 4.12 can claim compensation under the compulsory acquisition laws. Because there is no functional register of land owners in Ghana, when compulsory acquisition is undertaken, it is the responsibility of any person who thinks he/she has been expropriated to put in a claim for compensation. Only those who put in claims can be considered.<sup>150</sup> Chapter 2 of this Report also describes some

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<sup>149</sup> Project Appraisal Document on a Proposed Credit in the Amount of SDR 15.1 million (US\$20.5 million equivalent) to the Republic of Ghana for a Land Administration Project, July 8, 2003, pp. 25, 89.

<sup>150</sup> As noted in Chapter 2, according to Ghanaian law compulsory land acquisition normally begins with the publication of an Executive Instrument which declares that a piece of land is required in the public interest and vests the land in the President free from all encumbrances. Until an Executive Instrument is issued and published the acquisition process is not completed and an expropriated person cannot put in claims for compensation - indeed issues of compensation amounts will not be agreed upon without the Executive Instrument and claims for compensation payment cannot be entertained until the Executive Instrument is published.

of the historical issues and difficulties that have occurred in land acquisition in Ghana, including persistent problems of non-payment of compensation.

256. The Kwabenya RPF identifies some differences between the laws of Ghana and World Bank Policy and states that where there are gaps, the relevant provisions of OP 4.12 will apply. For example, it notes that eligibility for compensation under Ghanaian law is essentially based on ownership, while under Bank Policy even “*those who do not have recognizable legal right or claim to the land they are occupying*”<sup>151</sup> are provided resettlement assistance.
257. During the negotiations for the Credit financing the Project, the Government delegation raised concerns regarding the differences between the Constitution of Ghana and OP/BP 4.12 regarding the recognition of the rights of squatters to land. The Minutes of Negotiations record the agreement reached among the parties to apply the relevant provisions of the RPF, which confirms the application of Bank Policy in case of gaps between the Policy and Ghanaian legislation.
258. Referring to a “*volatile*” nature of the situation in Kwabenya with respect to land acquisition issues, the RPF notes that an Executive Instrument (described above) should be passed after compensation and resettlement have been carried out, to confirm the land acquisition. It also indicates that compensation would be paid before owners/occupiers are made to vacate their properties. On the key issue of ensuring payment of compensation, the RPF details the organizational procedures for the delivery of entitlements including a description of the implementation process.<sup>152</sup> The Panel’s social expert observes that the RPF provision about the sequencing of the compensation and issuance of Executive Instrument is not sufficient to ensure payment of compensation to all those eligible under the Bank Policy without additional measures in place to guarantee payment.
259. **The Panel notes that specific measures to bridge the gap between domestic legislation and Bank Policy need to be addressed to achieve compliance with Bank Policy.**
260. The Panel also determined that the RPF gave insufficient attention to the needs of vulnerable groups including women and other displaced persons who are not protected through national land compensation legislation. In addition, its section on national legal, regulatory and administrative framework does not refer to issues and risks relating to the borrower’s capacity and commitment to implement the resettlement instrument, notwithstanding well-known concerns affecting past land acquisition efforts.
261. **The Panel finds that although important elements were included in the RPF, the risks related to land acquisition and compensation were not sufficiently considered. This does not comply with OP/BP 4.12.**

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<sup>151</sup> OP4.12, ¶15(c).

<sup>152</sup> RPF, sections 5.3 & 5.4.

#### 4. Tenure and Ownership

262. The tenure, ownership and usufruct arrangements in the project site were described in the RPF, but, as noted above, the implications of the complexity of tenure in the Kwabenya site was not fully developed. The designation of some residents as “squatters” is misleading without a full analysis of their title to land and property. **The Panel finds that the description failed to anticipate the complexities of claims, or to delineate the range of claimants or their entitlements under Ghanaian law.**

#### 5. Valuation of Assets

263. The RPF states that for proposed land acquisition in Kwabenya the “*method of full replacement cost of assets and expected losses*”<sup>153</sup> would be used in the assessment of entitlements and it placed an estimated value of the landed properties at US\$4,247,538.42 based on an “*independent estate survey*.”<sup>154</sup>
264. The replacement cost method of valuation, according to the RPF, was based on: physical inspection of each of the properties affected; average replacement costs of different types of buildings and related structures based on collection of information on the quantities and types of materials used to construct different types of structures (e.g. blocks, bricks, wood, steel plates, rafters, doors etc); prices of these items were collected from different local markets and analyzed to take account of the minor differences between the comparables and the subject properties; costs of transportation and delivery of these items to acquired/replacement building site; estimates of construction of new buildings including labor required.
265. The method as described in the RPF appears only to refer to structures and there is no functional definition of replacement costs as regards residential or non-residential land and other assets, commercial businesses or other structures.<sup>155</sup> The Entitlement Matrix makes reference only to the provision of “*full compensation*” but there is no equivalent method for the valuation of such lost assets. Furthermore the Entitlements Matrix makes no reference to other types of lost assets (for example, common property resources (CPRs), crops, trees or other non-residential structures) be they individually or collectively owned. The full range of assets is not included in the Resettlement Cost Estimates and Budget. The methodology set out above would seem to focus exclusively on the market prices in the affected location, whereas replacement value relates to full replacement asset cost in a new equivalent location.
266. The Panel’s expert observes that the RPF should have included a comprehensive definition of replacement costs for all types of assets and a valuation method with an estimate of costs, and a full list of lost or affected Common Property Resources (most

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<sup>153</sup> RPF, p. 36.

<sup>154</sup> RPF, p. 35.

<sup>155</sup> RPF, p. 49.

likely water resources, customary rights to natural resources) and their users identified and consulted.

## 6. Replacement Land/Relocation Sites

267. The RPF did not determine, to the extent possible, what amount of relocation land was needed, why it was needed and for how many families, as well as how much land was to be taken from those families (including cultivatable land). The RPF was required to estimate how much money would be necessary to compensate for the land and then to detail where the money would come from. The indicative budget in the RPF delays the costing of land replacement until “*the extent of replacement [land] has been established.*”<sup>156</sup>

## 7. Livelihood Assistance

268. According to OP 4.12, displaced persons need to be assisted in a manner which helps them improve, or at least restore their standards of living, which is a key objective of the policy. A range of measures can be used achieve this. However, the Panel’s social expert considers that these livelihood assistance opportunities were insufficiently delineated.

269. The Panel also notes that the RPF appears to markedly underestimate the size of the stone quarrying population active in the Kwabenya site in 2003 and while the Framework has some analysis of income generation it does not adequately consider the extent of support required to ensure livelihood re-establishment. Indeed the indicative budget would seem to have considerably underestimated the likely costs of livelihood restoration as a result of land acquisition and displacement.

270. The Panel notes that the Entitlements Matrix failed to include quarryiers as a category of affected or entitled persons.<sup>157</sup> The issues of livelihoods were particularly pertinent for women and migrants who made up a large number of the quarryiers. **The Panel finds that the RPF pays insufficient attention to the needs of vulnerable groups including women and other displaced persons who are not protected through national land compensation legislation.**

## 8. Disclosure of RPF

271. **The final RPF was disclosed as a separate and stand-alone document in English on January 16, 2004, prior to appraisal.**<sup>158</sup> **This is consistent with Bank Policy on Disclosure of Information.**<sup>159</sup>

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<sup>156</sup> RPF, p. 49.

<sup>157</sup> RPF, p. 43.

<sup>158</sup> The RPF was disclosed at the Public Information Unit of the World Bank Ghana Office, Accra; the office of the Coordinating Director of the Assemblies or in the public libraries where the subprojects were to be constructed (i.e. Accra, Kumasi, Sekondi-Takoradi, Tamale, Tema and Ga); and the Infoshop of the World Bank, Washington, D.C.

<sup>159</sup> World Bank Policy on Disclosure of Information, ¶34.

272. The Requesters argue, however, that they were not made aware of the RPF during its preparation, and were only given a copy after it was finalized, following a petition and demonstration at the World Bank office in Accra.<sup>160</sup> **The Panel finds that, contrary to the requirements under the Bank Policy on Disclosure, no records are available to show that the draft RPF was disclosed to the affected people.** This has had a negative effect on the consultation process.

## **E. The Resettlement Action Plan Currently under Preparation**

### **1. Deadlines and Extensions for Developing a RAP**

273. As described previously, the Project design called for the preparation of the RAP during Project implementation. Specifically, the PAD for UESP II dated April 29, 2004, repeats the conditionalities contained in the DCA confirming that before construction could commence on the proposed sanitary landfills at Kwabenya it was necessary: (1) to prepare, and thereafter implement, a satisfactory RAP specifying the arrangements for resettlement, including compensation, relocation and rehabilitation of the affected persons; and (2) to acquire all the necessary land. The acquisition of land for the sanitary landfills was a condition of disbursement.<sup>161</sup>
274. In its Response to the Request for Inspection, dated September 21, 2007, Management noted the commitment in the DCA “*requiring the existence of a RAP acceptable to the Bank, prior to commencing civil works for the landfill and prior to any displacement of any affected persons*”, as well as the government’s urgent need to construct a sanitary landfill for proper waste disposal and to close down existing open dumps.
275. Management further noted the development of an “*agreed action plan*” by the Government. In particular, Management confirmed the commitment of the Government authorities, *inter alia*, to “*prepare an acceptable RAP not later than March 31, 2008.*”<sup>162</sup> Management noted that as part of its December 2007 MTR, the Bank and Borrower would make an in-depth assessment of compliance with the action plan, paying particular attention to progress made in preparing an acceptable RAP for the Kwabenya landfill and, based upon its review, would make a decision regarding the extent of project restructuring.
276. Sometime after the deadline of March 31, 2008, the Panel was informed by Management that an acceptable RAP had not been completed or submitted to Bank Management. In addition, at that time Management had not yet completed its MTR Report. In the months following the missed deadline, there were news reports raising questions about whether the Bank was going to continue financing the landfill

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<sup>160</sup> Request, ¶4.

<sup>161</sup> PAD, ¶243.

<sup>162</sup> Management Response, Annex 1, p. 16.

component, and the Panel sought clarification on several occasions from Management on the status of the MTR Report and this component.

277. In September 2008, the Panel was informed by Management that the MTR Findings and Recommendations had just been finalized, and that a new arrangement has been developed between the Bank and the Borrower regarding these questions that lie at the core of the Request.

278. In its letter to the Government of September 1, 2008, Management states its concerns about the landfill subcomponent, the situation with the RAP, and problems of limited capacity to monitor and enforce compliance with safeguards and environmental standards. Specifically, the letter states that the project

*. . . is lagging behind on the implementation of the solid waste component. I regard to the latter, we are very concerned with the delay in the submittal of the Resettlement Action Plan (RAP) for the Kwabenya Sanitary Landfill, which was due on 31 March 2008 and was received on 26 August 2008 . . . There is also limited capacity at the local and national level to monitor and enforce compliance with safeguards and environmental standards. Although capacity is being strengthened by the project, it remains a threat to the sustainability of the investments and the quality of the services provided. . .*<sup>163</sup>

279. The letter goes on to indicate the view of the Bank that “[o]verall, we believe that the project can achieve its development objectives, provided that we jointly make a great effort.” The letter specifies a number of agreed actions relating, generally, to strengthening capacity for supervision, coordination and implementation, improving collection and disposal of waste, promoting awareness and active community participation in urban services, and identifying additional funds to cope with increasing costs to provide sanitation and urban upgrading to additional low income people.

280. The letter states that one of the main constraints faced by the project relates to the availability of funds, and notes that options were discussed during the MTR to free-up funds including cancelling various project subcomponents or elements, including “landfill operations.” These proposals, says the letter, “were however rejected as they go against the project development objectives.” Instead, the Bank’s supervision team recommended “giving those subcomponents a boost to avoid current inadequate practices. . .”

281. Bank Management indicated to the Panel that as the funds for the Kwabenya landfill are not being utilized at this time, they will temporarily be moved to other components and once Kwabenya comes back on track, an additional amount of approximately \$15 million would be applied for the construction of the landfill and

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<sup>163</sup> Letter to the Minister of Local Government, Rural Development and the Environment, Government of Ghana, dated September 1, 2008.

the completion of outstanding works. In addition, a new deadline of October 1, 2008, is established for submission of a satisfactory RAP. This deadline is beyond the deadline specified in the Management Response to the Request, as described above.

282. These points are expressed in the Bank's letter to the government as follows:

*To deal with the scarcity of funds, we would like to propose the following approach:*

- *An immediate partial reallocation of idling solid waste component funds to support the agreed corrective actions indicated above; and*
- *Provision of up to US\$15M equivalent in additional IDA funds and extension of the closing date for up to 18 months, to allow for the completion of all the investments, including the proposed Kwabenya sanitary landfill. These additional funds will be subject to:*
  - *Submittal of a satisfactory RAP for the proposed Kwabenya landfill site not later than October 1, 2008; and*
  - *Satisfactory completion of the environmental impact assessment and management plan.*<sup>164</sup>

283. **The deadline of October 1, 2008, was not met.** As of January 2009, Bank Management informed the Panel that although substantial progress had been made on the RAP, it still had not reached the level of final review and acceptance by the Bank in accordance with Bank Policy.

284. Because of the extended dates and timelines for submission and completion of the RAP, the Panel is not able to comment on a number of critical areas under Bank Policy. These include:

- i. the identification and acquisition of relocation land;
- ii. assets valuation methodologies;
- iii. a full identification of project impacts and affected populations;
- iv. baseline socio-economic data and census;
- v. the legal framework for land acquisition and compensation;
- vi. a compensation framework;
- vii. a description of resettlement assistance and restoration of livelihood activities;
- viii. a detailed budget;
- ix. an implementation schedule;
- x. a description of organizational responsibilities;

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<sup>164</sup> Letter to the Minister of Local Government, Rural Development and the Environment, Government of Ghana, dated September 1, 2008.

- xi. a framework for public consultation, participation, and development planning;
- xii. a description of provisions for redress of grievances; and
- xiii. a framework for monitoring, evaluation, and reporting.

285. The Panel can, however, report on certain critical questions and issues that have arisen in the process to date of developing the RAP for the proposed Kwabenya landfill subcomponent.

## 2. Choice of Consultants

286. The same firm of consultants, and the same lead consultant who was selected to prepare the RPF in 2003 on behalf of the MLGRD was also contracted to prepare the RAP in 2007–2008. The appointment was cleared with the Bank office and no objections were raised. It should also be noted that the lead consultant was engaged by the MLGRD to assist in the preparation of the TAC report in 2004 and therefore had been closely involved with the Kwabenya project since 2002.

287. As stated previously in this report, the QEA Report was critical of the 2003 RPF, stating that it was “*a document that was partly resettlement policy framework and partly a presentation of preparatory investigations for the Kwabenya RAP. The document (which is subject to public disclosure) would have benefited from specialist Bank review, as the result was somewhat disorganized, unfocused, vague and repetitive, and insufficiently operational.*”<sup>165</sup>

288. The Panel further observes that the Requesters state that they perceived a lack of transparency and genuine consultation in the preparation of the RPF and lost trust in the process of preparing the RAP. **Given that the same consultants were contracted to prepare both the RPF and the RAP the Panel notes that these consultants may not have been ideally positioned to gain the trust of the affected population and to ensure genuine participation and consultation in the critical RAP process.**

## 3. Informed Consultation

289. OP 4.12 requires that persons to be displaced and their communities—and any host communities receiving them—are provided timely and relevant information, consulted on resettlement options, and offered opportunities to participate in planning, implementing, and monitoring resettlement. Appropriate and accessible grievance mechanisms are to be established for these groups.

290. The policy envisages a form of negotiated compensation achieved through fully informed and participatory consultation and demands an iterative and ongoing, rather than one-off, engagement. The achievement of genuine participation and consultation

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<sup>165</sup> Seventh Quality at Entry Assessment (QEA7), Fiscal Year 2004-2005. Panel Report, July 11, 2005 (hereinafter “QEA Report”), ¶3.6.

in sensitive development situations that involve the loss of assets and livelihoods, and potentially relocation, raises a series of challenges that need to be considered and addressed in the preparation of a RAP. Such challenges are greatest where the individuals involved are vulnerable and where power imbalances between the state and the citizen are amplified.

291. The situation in Kwabenya was particularly challenging with many poor women likely to lose their livelihoods as a result of the land acquisition, migrants with uncertain legal entitlement to be in the country, and those deemed “squatters” and informal quarriers without formal title to land or permits to mine and no legal right to compensation. The sensitivities are heightened further still because resettlement is occurring in a context where the citizen does not expect to be treated fairly in the land acquisition or development process, and where mechanisms are not in place to deliver fairness.



**Picture 9: Women of Agyemankata Community during Panel field visit**

292. The Panel notes the difficulties in organizing informed consultation in a situation where a number of the project stakeholders do not wish to engage in a dialogue. In preparing for the RAP, the consultant was required to produce a “*detailed census survey including socioeconomic baseline data to identify the types/characteristics of affected people, and types/categories of impacts*” in the context of developing at the same time a “*consultation strategy to ensure that all affected people and stakeholders are fully informed about the project.*”<sup>166</sup>
293. The consultant’s decision to gain access to the community through individuals who were variously described as “agents,” “spies,” or “informants” as well as the fact that the affected population was not provided with clear information on the objectives of

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<sup>166</sup> Terms of Reference for RAP, September 25, 2007, p. 3.

the survey and the eventual use of the collected data are of concern to the Panel. While these actions might have been undertaken with good intentions to secure potential resettlement benefits for affected families, they are not consistent with the implicit requirements of informed consultation.

294. In administering the survey of affected people, and as of the time of the Panel's investigation visit, little or no efforts appear to have been made to explain meaningfully the processes and the policies that determine them (both the Laws and policies of Ghana and of the World Bank) or to describe an ongoing participation plan in line with the requirements of OP 4.12. **The Panel finds that Management failed to ensure that the affected population was provided with an information sheet in local languages or in English or French (for migrant workers) setting out the purpose of the survey, or explaining the resettlement and compensation procedures.**

## Chapter Five

### Project Implementation & Supervision

295. This Chapter assesses issues that have arisen during Project implementation, and in particular whether the Bank complied with its Policy requirements regarding project supervision in relation to social and environmental aspects of the Project. The discussion also addresses the consequences of instances of non-compliance.

#### A. Policy and Procedural Requirements on Supervision

296. OP 13.05 states that the Bank is required, by the Articles of Agreement, to ensure, *inter alia*, that the loan funds are used only for the purposes for which the loan was granted.<sup>167</sup> The OP acknowledges that it is the borrower's responsibility to implement the project and it is the Bank which supervises the borrower's implementation of Bank-financed projects.<sup>168</sup> According to the OP, project supervision deals with

*... monitoring, evaluative review, reporting, and technical assistance activities to*

*(a) ascertain whether the borrower is carrying out the project with due diligence to achieve its development objectives in conformity with the legal agreements;*

*(b) identify problems promptly as they arise during implementation and recommend to the borrower ways to resolve them;*

*(c) recommend changes in project concept or design, as appropriate, as the project evolves or circumstances change;*

*(d) identify the key risks to project sustainability and recommend appropriate risk management strategies and actions to the borrower; and*

*(e) prepare the Bank's Implementation Completion Report to account for the use of Bank resources, and to draw lessons to improve the design of future projects, sector and country strategies, and policies.[footnote omitted]<sup>169</sup>*

297. According to BP 13.05, responsibility for the supervision of the Kwabenya subcomponent of UESP II rests with the assigned task team (TT) with the team leader (TL) serving as the Bank's principal point of contact for the borrower. The TL is required to develop a supervision plan agreed with the borrower, summarized in the PAD and measured and evaluated principally through project supervision reports including ISR Reports and MTRs.

298. Supervision is designed to ascertain the extent of compliance with loan covenants, including those related to environmental and social safeguards, and to assess risks to

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<sup>167</sup> OP 13.05, ¶1.

<sup>168</sup> OP 13.05, ¶1.

<sup>169</sup> OP 13.05, ¶2.

successful implementation, operation, and sustainability of the project. Adequate supervision requires regular visits to the project site and meetings with project beneficiaries and stakeholders.

## B. General Approach

299. As described in earlier Chapters of this Report, the implementation of the proposed landfill subcomponent of the Project has been beset by many problems and difficulties. These include, not least, an extremely tense environment between the local community and Project officials and proponents on critical questions of implementation. The Project also has missed repeated deadlines for completion of a RAP, and there has also been a substantial delay in developing the new and updated environmental impact assessment and management plan.
300. For reasons described throughout this Report, the likelihood that these problems would emerge and persist was known and foreseeable at the time Project implementation began.
301. The Panel notes that the Seventh QEA panel did not raise any direct concerns about the quality of supervision of UESP II.<sup>170</sup> Rather, it rated as a strength the “*shift of responsibility for project implementation to the municipalities, which was appropriate, in line with government policy to decentralize service provision to local governments, and helped build stronger ownership of the project.*”<sup>171</sup>
302. **In discussions with the Panel, Bank staff acknowledged that mistakes had been made in supervision of the Kwabenya subcomponent of the Project, particularly in the critical early stages of Project implementation.** Particular shortfalls were identified in relation to the supervision of the application of safeguard policies.
303. In discussions with staff working on the Project, it was made clear to the Panel that the Government of Ghana had indicated its desire to handle the issues that existed with the community near the proposed landfill site on its own. It was claimed that the Government repeatedly prevented the Task Team from visiting the site, citing safety conditions, leading one of the TTLs to abandon any site visits to Kwabenya during the course of the Project. This resulted in very limited on-site supervision.
304. The Panel also was told that during the early stages of the Project, when concerns were raised about the problems caused by the proposed construction of the landfill, the Government intimated that Kwabenya was the only site for the proposed landfill with no other adequate alternative, prompting the team to give the Government more time to resolve the problems, while concentrating on other subcomponents of the Project.

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<sup>170</sup> Seventh Quality at Entry Assessment (QEA) Report, Fiscal Year 2004-2005.

<sup>171</sup> QEA Report, ¶B.

305. The Panel was informed that while supervision missions were conducted for the other subcomponents, no one went to the Kwabenya site in the early stages of implementation. As noted elsewhere, an important factor in this related to the difficult security situation for such visits. In addition, however, Bank documentation indicates that the Government was reluctant to discuss the issues they faced with regards to the Kwabenya subcomponent, and yet little, if anything, seems to have been done on the part of the Bank, in the early stages of Project implementation, to follow up on the Government's progress on settling the outstanding issues related to the Kwabenya subcomponent.
306. The Panel was informed that the acquisition of land was something for the government to do, and the Bank was not involved in that. Indeed, in its investigation, the Panel was also informed, during interviews, that critical Project decisions relating to the Kwabenya subcomponent were apparently taken without the Bank's knowledge, or at least the knowledge of key responsible staff.
307. A notable illustration is the creation of the TAC in June 2004.<sup>172</sup> The TAC made a series of important recommendations (on community consultation, avoiding or minimizing resettlement by reducing the size of the landfill, on asset valuation and land acquisition). These recommendations addressed core issues relevant to resettlement at the landfill site, and related issues of policy. They also fundamentally affected the course of the project, and shaped the perceptions of the affected community about the scope and extent of Bank responsibility.
308. This was compounded by the fact that land acquisition and compensation activities started prior to the preparation of a RAP. The RPF recommendation, noted above, about the sequencing of the issuance of the Executive Instrument and the payment of compensation was not followed. The Executive Instrument was issued on January 26, 2007, with a six-month deadline to submit claims for compensation. The Panel was informed that demolition markers painted on structures in the affected community also occurred in January 2007. In July 2007, the authorities issued a notice that rights to compensation would be forfeited if compensation claims were not submitted by the six-month deadline. The Panel notes that these events further increased fear and tension in the community.

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<sup>172</sup> Management informed the Panel in interviews that it was not advised of the establishment of the TAC, and only learned about it once its report was submitted. For more on the TAC, its mandate and its findings, see Chapter 3.



**Picture 10: Houses marked for demolition by National Security Authority**

309. The Panel notes that the Aide Memoire of the September 2007 mission noted that the Bank was informed about procedures followed by the Government to compensate affected people and that Bank staff raised concerns that compensations payments could begin prior to the completion of the RAP. The MTR conducted in December 2007 does not explicitly report on this problem, and notes that substantial progress has been made since December 2006, because the demarcation of the site was completed, the number of structures to be demolished was submitted along with estimate compensation costs and an Executive Instrument was issued.
310. The Panel notes however that according to the supervision reports of November 2006 and May 2007 Bank staff indicated to the government that financing would likely be cancelled if further progress on the RAP was not available by the December 2007 Mid Term Review, and that restructuring of the Project may be required. To date, a draft RAP has been submitted for approval to the Bank but no final RAP is yet available.
311. As described elsewhere in this Report, the actions taken and the mode of communications, including the notice of forfeiture, did not comply with Bank Policy, did not constitute fully informed consultation, and ignited both fear and tensions surrounding the Project. The Bank was forced to distance themselves from these announcements, and (as noted below) eventually became more active in addressing problems relating to the resettlement planning.
312. In general, the Panel observed that the Bank team took a markedly detached approach to the supervision of the Kwabenya subcomponent until late in the implementation of the Project. While Project implementation is the responsibility of the Borrower, the Bank is required, by its Articles of Agreement, to supervise the Borrower's

implementation of the project and particularly to addressing emerging issues and problems of the type presented with the Kwabenya landfill subcomponent.<sup>173</sup>

313. As described in earlier chapters of this Report, it should have been anticipated that the Project would be overlaid with intense local political sensitivities and the possibility of strong local resistance. During interviews, the Panel learned that Bank staff was fully aware of this climate following DfID's decision to withdraw from the project in 2000, in light of reputational and operational risks.
314. Notwithstanding these warning signs, the Bank opted for a hands-off approach on the supervision of the Kwabenya subcomponent, without paying sufficient attention to the social and environmental safeguard aspects of the Project. **The Panel finds that supervision of the Kwabenya subcomponent was lacking until well into the implementation of the Project, in non-compliance with OP/BP 13.05.**

### C. Lack of Engagement of Safeguard Specialists

315. The Panel examined issues relating to the engagement of safeguard specialists in Project supervision, an issue that has also arisen in prior Panel investigations.
316. In this regard, it is important to note that problems during Project implementation may have their source in decisions taken at design and preparation. For example, the shortcomings in the RPF are discussed in Chapter Four of this Report. Many of these could likely have been addressed, as recognized in the QEA Report (as well as by a number of interviewees), through closer involvement of social scientists and safeguards experts in the drafting of the TOR and in the preparation of the RPF. The QEA Report stated that the RPF "*would have benefited from specialist Bank review.*"<sup>174</sup>
317. The evidence available to the Panel indicates that no resettlement and social safeguard specialist was included as part of the supervision missions until the MTR in December 2007. Indeed, the Panel was informed that it would have been pointless to take one for a couple of days and then send that person back to D.C. **This lack of engagement of social specialists is particularly problematic in light of social concerns that had surfaced during the design phase and the inability of project authorities to solve such issues. This is not consistent with Bank Policy on Supervision.** It likely contributed to significant lost opportunities to identify and respond to growing problems and risks besetting implementation of the Kwabenya landfill subcomponent.

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<sup>173</sup> OP 13.05, ¶1.

<sup>174</sup> QEA Report, ¶3.6. During the review of 1999 EIA which took place in October 2003, the RPF and its preparation were not included and thus an opportunity for review was missed. The Panel notes that while the consultants selected to prepare the RPF may have had knowledge of World Bank's Policies, they may not have been fully aware the implications of the Policies and would have benefited from technical assistance or consultant support.

## D. Marginalizing of Social Issues

318. Interviews conducted in the preparation of this report suggested that social safeguards were marginalized or relegated in the management and supervision of the project. Some staff felt that from the outset that the decision to include Kwabenya had been a marginal one that was finally taken to satisfy the wishes of the Borrower and it ran counter to the best judgment of some staff members. Government ownership of and responsibility for Kwabenya was felt to be stronger than for other subcomponents, in particular those which could accurately be described as continuation of the successful UESP I. For these reasons, in part, **the Panel notes that social safeguards issues were marginalized as direct Bank engagement lessened.** There was confidence in the economic management and competency of the Borrower, however, it may have been misguided to assume the same levels of competency in land acquisition and resettlement.
319. **The evidence suggests that, from the outset of implementation, problems associated with resettlement in Kwabenya were not fully identified, reported to senior management or, when known, were not referred to or shared with staff with safeguards responsibilities** (specifically after May 2005). Project supervision reporting, including the Implementation Status and Results Reports (ISRs) called for under BP 13.05, did not adequately “flag up” social safeguards issues or prompt an internal call for greater supervision on these matters. Indeed it was not until the MTR that the need for enhanced supervision of social safeguards was signaled with any urgency.

## E. Failure to Adequately Assess and Report Risks

320. BP 13.05 on Supervision requires that

*During project implementation, the TT regularly*

*.....*

*(d) ascertains the extent of compliance with loan covenants, including those related to environmental and social safeguards;*

*(e) assesses risks to successful implementation, operation, and sustainability of the project.<sup>175</sup>*

321. BP 13.05 on Supervision also requires that the TT updates regularly the ISR Reports, which contain a section on safeguard policies that the TT is strongly encouraged to fill out in a candid and timely manner.
322. Since the local opposition to the proposed Kwabenya sanitary landfill is putting the solid waste component at significant risk of unsuccessful implementation and sustainability, **the Panel finds that the Bank should have consistently reported on the unsatisfactory progress in the “safeguard policies” ISR, which it failed to do.**

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<sup>175</sup> BP 13.05, ¶9.

**This does not comply with the letter and the spirit of BP 13.05.** From discussions with Bank staff, it appears that a different interpretation of the situation and that the systemic “satisfactory” rating in the safeguards section of the ISR simply meant that, since the safeguards-related component was stalled, there was in fact no environmental/social issue to be reported on. It is the opinion of the Panel’s expert that the latter is a very bureaucratic interpretation of the need and use of the ISR tool.

323. The Panel notes that, in line with Bank Policy, supervision efforts need to take into account real-life events in project implementation as they evolve over time, The Panel further notes that supervision is strongly, but not uniquely, affected by the quality of project preparation.
324. In sum, during processing and supervision of this project, until late in Project implementation, the Panel finds that Bank Management has failed adequately to identify and propose actions to address the issue of opposition to the proposed Kwabenya sanitary landfill as a major stumbling block for the Accra Solid Waste management component of UESP II.

#### **F. Recent Steps and Increased Supervision Efforts**

325. **As Project implementation progressed, and particularly after the submission of the Request for Inspection, Management became more active in responding to emerging problems.** The Panel learned that a 2007 Bank mission team, told of Government procedures to value the properties and then to pay compensation, indicated that these did not meet Bank Policy and the RPF and, if implemented, no investment related to Kwabenya could be financed with DCA proceeds. Management reports that the Government subsequently reiterated its commitment to comply with Bank Policy, and that no forfeiture would occur. The team noted that the land valuation methods and the loss-of-livelihood calculations would need to be revisited, and payments would need to be delayed until a satisfactory RAP is completed.
326. The Panel also notes that, in its Response to the Request for Inspection, Management indicated specific steps that it would take to reinforce project supervision. Specifically, Management stated that:

*The Bank has reinforced the project supervision team with a seasoned social safe-guards expert and will have another social scientist based in Accra. These two, together with the senior environmental specialist in the project team, will follow up closely the preparation of the RAP and the EMP and will provide the Government with technical support.*<sup>176</sup>

327. The Response to the Request also identifies a number of further steps to be taken to address issues arising in Project implementation. **The Panel notes the importance of these steps in responding to issues identified above.**

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<sup>176</sup> Management Response, ¶33.

## G. Security Risks and the Tense Environment

328. **In assessing Bank actions and policy compliance, the Panel also wishes to highlight that the concerns about safety of Bank staff at the Kwabenya site must not be underestimated.** The Panel was informed that Management took the decision, based on advice from the AMA and the Police, that it was deemed too dangerous to make regular visits to the site as required by the policy. The risk assessment on staff safety informed the decision to transfer responsibility for maintaining contact with the affected population and in particular, with the Agyemankata Community, over land acquisition, consultation and information, and resettlement issues to the Ministry and the AMA. The Panel was also informed that during supervision missions, the Project team visited all the Project sites, except for the Kwabenya site, specifically due to the perceived dangers to Project staff.

## Chapter Six

### Concluding Observations

#### A. Projects in Challenging Circumstances

329. The Panel has noted certain instances of non-compliance by the Bank. At the same time, the Panel has also acknowledged that the environment around the subcomponent may be affecting actions (e.g., consultations, field visits, and resettlement planning) that are essential to compliance with Bank Policies. **A recurring theme in this Investigation is the difficulties encountered in designing and implementing a project when positions amongst project stakeholders have hardened, trust has been lost, and there is an impasse.** The Panel does not pass judgment on this situation, but brings it to the attention of the Board.

#### B. Streamlined Procedures

330. **Another dilemma that this Report addresses is an apparent conflict between time pressure and policy adherence.** During interviews, the Panel was informed that at least some in the task team felt that time pressure to prepare and submit the Project to the Board contributed to an underestimation of risks, and that the Bank should have done more to make sure that problems at Kwabenya were not handed over to the implementation period without insuring that they can be properly dealt with. **While noting the necessity of risk taking in development and the objective of simplifying procedures, short-term expediency needs to be assessed in terms of potential problems in the long-term. The Panel is of the opinion that processing the Kwabenya subcomponent as part of a “repeater project”, which generally involves streamlined procedures, was contrary to guidance that projects with safeguard problems should not be so processed.**

#### C. Legacy Issues

331. **A further concern of the Panel relates to “legacy” issues and the effect of changing circumstances on the ground.** As the Panel noted in the Investigation Report of the Request for Inspection related to the Uganda Bujagali Hydroelectric Project, legacy issues are found in many projects, whether or not the initial operation was financed by the Bank. The Kwabenya Landfill subcomponent of the UESP II Project highlighted the need for particular care when addressing environmental and social safeguard issues in projects initiated and later stopped. The Panel found that the Kwabenya 2003 ESA relied heavily on a siting study and environmental assessment from many years earlier, without taking properly into account the new social and environmental reality in the proposed landfill area resulting from an influx of people with corresponding investments in physical structures and commercial activities.

332. In response to the Panel’s findings included in the Bujagali Investigation Report, Management committed to develop “*guidance on how to address environmental and*

*social safeguard issues in legacy projects that suffer significant interruptions in implementation.”* The Panel hopes that the issues and findings of the present investigation will also be taken into account in developing this guidance.

#### **D. Country Ownership and Supervision**

333. **The Panel has highlighted the importance of country ownership, and does not consider that there is any incompatibility between adequate project supervision and country ownership.** Nevertheless, Management is responsible for ensuring that relevant policies are met and to facilitate action to address problematic situations that arise. In the present case, the Panel has found that Management’s **hands-off approach** may have contributed to inattention to safeguard issues and problems that emerged during Project implementation. Bank staff mentioned other systemic factors of concern that contributed to lack of adequate supervision, including high staff turnover, budget constraints, inadequate coordination in Project management and supervision, and heavy work demands on task team leaders.

#### **E. Looking Ahead**

334. The Panel notes that since the Request for Inspection, several new actions have been initiated or are ongoing, including the preparation of an (updated) EIA and a RAP, and that the Bank has reinforced its project supervision team. **The Panel appreciates these efforts and highlights again the importance of taking into account the views of the Requesters and affected people and deciding on action in line with Bank Policies,** within the context of upcoming decisions regarding the proposed landfill.

## Annex A

### Table of Findings

ISSUE	MANAGEMENT RESPONSE	PANEL'S FINDINGS
<b><i>PROJECT CONTEXT AND DESIGN</i></b>		
<b>Project Risks and Approval as a Repeater Project</b>	UESP II was a repeater to the first UESP project, which closed satisfactorily in December 2003. In line with Bank procedure, a Regional Review Panel was set up and determined that the UESP II qualified for Repeater Project status. Processing of the project was in line with Bank guidelines and complied with required due diligence, including environmental and social safeguards.	Panel finds that contrary to the criteria established for use of Repeater Project procedures, the Kwabenya landfill subcomponent had significant foreseeable environmental, social and safeguard problems. Panel notes that Management did not take all the required measures to address safeguard issues arising in the Project, in spite of the Regional Review Panel's advice in 2003.
<b><i>ENVIRONMENTAL ISSUES</i></b>		
<b>Environmental Categorization</b>		Panel finds that the Project was correctly categorized as "Category A" for the purpose of OP/BP 4.01.
<b>Analysis of Alternatives</b>	Management considers that technical work for preparation and appraisal as well as the due diligence required under the Bank's environmental and social policies were adequately carried out and appropriately reflected in the PAD.	Panel finds that 2003 ESA did not adequately examine alternative sites for the future landfill, and failed to assess adequately the implications of the influx of people and changing conditions on the ground in the years since the earlier studies on which it relied. This does not comply with OP/BP 4.01.
<b>Potential Adverse Impacts and Project Area of Influence</b>	The final landfill design, which will need to comply with applicable Ghanaian legislation, policies and guidelines, as indicated in the ISDS, will be reviewed by an expert on sanitary landfills to assure that it meets appropriate criteria and that design takes into account international best practice. Ensuring the proper operation of the landfill will be a key element for the facility not to impact adversely the environment during its useful life.	2003 ESA does not adequately identify the full extent of the "area of influence" of proposed landfill (as a subcomponent of the Project) and its potential impacts on nearby people and residents. Panel finds that this does not comply with OP 4.01.
<b>The "Buffer Zone" and Adjacent Areas</b>	<p>During preparation of 2003 ESA consultants conducted a preliminary assessment of the properties within the buffer zone that could be affected by the proposed project and interacted with some of the affected people at the proposed project.</p> <p>Management Response also refers to the recommendations of the 2004 Technical Advisory Committee according to which the boundary of land required for sanitary</p>	<p>Panel finds that 2003 ESA has not adequately assessed or justified a decision to use a buffer zone of 250 meters or less, as compared to larger distances noted in other documents and in light of significant concerns about capacity to properly and safely maintain the landfill.</p> <p>Panel notes that the adequate determination of the buffer zone is a complex and site-specific undertaking. It</p>

ISSUE	MANAGEMENT RESPONSE	PANEL'S FINDINGS
	<p>landfill should be revised to exclude lands presently occupied. All such lands would therefore lie outside the land to be used for landfill operations, as well as the buffer zone required for minimizing negative impacts.</p>	<p>is important to achieve compliance with Bank Policy, and to determine who may be entitled to compensation and resettlement under OP 4.12.</p> <p>Panel notes that the landfill could also result in indirect adverse impacts on people who live in the area adjacent to the buffer zone, but within the project area of influence. This also has to be analyzed and addressed in accordance with OP 4.01, which calls for actions to prevent, avoid, mitigate, or compensate for such impacts.</p>
<p><b>Environmental Management Plan (EMP)</b></p>	<p>The 2003 ESA, prepared based on the 1999 EIA, contained an updated EMP and was deemed satisfactory at appraisal. A further update of the EMP would be needed once the final design specifications of the landfill are known and a RAP is prepared. A significant amount of analysis had been undertaken in relation to the environmental impacts of the proposed sanitary landfill.</p>	<p>Panel finds that EMP produced as part of 2003 ESA was noticeably deficient in most of these aspects [little or no costing, no provisions for capacity building, vague monitoring strategies, and generally provides very little information on how negative environmental impacts will be prevented, avoided, mitigated, or compensated, and otherwise monitored]. This is not consistent with OP 4.01. 2003 ESA did not provide a sound and effective basis for Project appraisal.</p>
<p><b>Consultation</b></p>	<p>Consultations carried out during the preparation of the RPF were considered sufficient and appropriate. The Government had on several occasions attempted to directly consult and communicate with the Project affected people, but were unsuccessful in their attempts due to the resistance from the Agyemankata Community. Management was not involved in the initial planning of the landfill site and once the Bank was involved, it carried out the necessary consultations in regards to the RPF. There was broad support for the project from the people they had consulted with.</p> <p>In addition to the consultations carried out during the preparation of the RPF, further consultations will be carried out during the preparation of the RAP.</p>	<p>Panel notes that meaningful consultations, as envisaged under OP/BP 4.01 and OP/BP 4.12, did not take place with those living nearest the proposed landfill. Panel acknowledges the difficulties of conducting such meaningful consultations under the prevailing conditions at the time.</p>
<p><b>Proper Maintenance of Landfill— Capacity Issues</b></p>	<p>The institutional strengthening component of the Project will help with capacity building and the ability of the municipality to mobilize additional financial resources for ensuring satisfactory management of the</p>	<p>While the capacity constraints facing local authorities was acknowledged and the risk was rated as “substantial” in the PAD, no mention was made in the PAD of any possible capacity issues or risks faced by</p>

ISSUE	MANAGEMENT RESPONSE	PANEL'S FINDINGS
	facility after the Bank project is complete.	<p>constructing a landfill at Kwabenya.</p> <p>Panel finds that this omission downplays the significant risk of inadequate operation of a landfill at Kwabenya, and is not consistent with OMS 2.20 on Project Appraisal and with the capacity building provisions of OP/BP 4.01.</p> <p>In light of past experience with waste management, and to achieve compliance with Bank Policy, Panel notes the need for clarity about institutional arrangements for construction and operation of a future sanitary landfill.</p>

***SOCIAL ISSUES***

<b>Decision to Prepare an RPF rather than a RAP at Project Appraisal</b>	A policy complaint project-wide RPF was prepared following consultations with the affected peoples and subsequent disclosure of the document. Furthermore, the RPF included provision for a RAP to be done at a later stage due to the fact that the information on the social safeguard situation at the Kwabenya site that existed at the time was insufficient and would require further consultations with the affected populations.	Panel notes that preparation of a RAP would also have helped bring to the surface the crucial and difficult questions involving resettlement planning prior to the time of Project appraisal, rather than leaving these to Project implementation.
<b>Adequacy of RPF— Gaps between Domestic Law and Bank Policy</b>		<p>Panel notes that specific measures to bridge the gap between domestic legislation and Bank Policy need to be addressed to achieve compliance with Bank Policy.</p> <p>Panel finds that although important elements were included in RPF, the risks related to land acquisition and compensation were not sufficiently considered. This does not comply with OP/BP 4.12.</p>
<b>Disclosure of RPF</b>	In addition to the Integrated Safeguards Data Sheet, which was published at the Bank InfoShop and in Ghana, the RPF and the ESA were also disclosed in country and at the Bank InfoShop before appraisal.	<p>The final RPF was disclosed as a separate and stand-alone document in English on January 16, 2004, prior to appraisal. This is consistent with Bank Policy on Disclosure of Information.</p> <p>Panel finds that, contrary to requirements under Bank Policy on Disclosure, no records are available to show that the draft RPF was disclosed to the affected people.</p>
<b>Informed Consultation</b>	In addition to the consultations that took place during the preparation of the RPF,	Panel finds that Management failed to ensure that affected population was

<b>ISSUE</b>	<b>MANAGEMENT RESPONSE</b>	<b>PANEL'S FINDINGS</b>
	<p>more consultations will need to take place before a project-specific RAP is prepared. Management's Response also includes, in its Annexes, the minutes of the public consultations held during preparation of the RPF.</p>	<p>provided with an information sheet in local languages or in English or French (for migrant workers) setting out the purpose of the survey, or explaining the resettlement and compensation procedures.</p>
<b><i>PROJECT IMPLEMENTATION AND SUPERVISION</i></b>		
<b>Supervision</b>	<p>Following the Request for Inspection, Management reinforced the project supervision team with a seasoned social safeguards expert and have another social scientist based in Accra. The two specialists will work closely with the existing senior environmental specialist on the preparations of the RAP and the update of the 2003 ESA.</p>	<p>Panel finds that supervision of the Kwabenya subcomponent was lacking until well into the implementation of the Project, in non-compliance with OP/BP 13.05.</p> <p>Lack of engagement of social specialists is particularly problematic in light of social concerns that had surfaced during the design phase and the inability of project authorities to solve such issues. This is not consistent with Bank Policy on Supervision.</p>

## **Annex B**

### **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. 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.

**Mr. Alf Jerve** was appointed to the Panel in November 2008. He earned his Magister Degree in Social Anthropology and his Bachelor's degree in Environmental Science and Biology from the University of Bergen, Norway. As a Social Anthropologist with close to three decades of work in the field of development, he has been engaged in a wide range of development activities, including extensive field research in Africa and Asia. Among his assignments was a three year posting to Tanzania with the Norwegian Agency

for Development Cooperation as Coordinator of a rural development program. From 1993-1995 he was responsible for resettlement and rehabilitation issues with projects in Bangladesh during an assignment with the World Bank. In 1995 he became Assistant Director, and served as Director in 2005 and 2006, at the Christian Michelsen Institute in Norway, an internationally recognized development research institution where he has also devoted his energies and expertise to the research and analysis of a wide variety of policy and program issues affecting people in developing countries. Mr. Jerve has also led and participated in numerous independent evaluations commissioned by bilateral and multilateral development agencies, and served as a Member of the Roster of Experts for the Asian Development Bank's Inspection Function. His publications have focused on rural development, decentralization and poverty reduction and most recently on issues of ownership in development aid cooperation.

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### **Consultants**

**Jean-Roger Mercier** graduated from the Ecole Polytechnique and the Ecole Nationale du Génie Rural, des Eaux et des Forêts in Paris. He obtained a Doctorate in Solar Energy Engineering in Toulouse in France. His career in energy and environmental management has included the private and public sectors. At the World Bank, where he was from 1994 to 2006, he first supervised the environmental and social review team for Sub-Saharan Africa. He then joined the Environmentally and Socially Sustainable Development Vice-Presidency to ultimately become the lead EA specialist of the World Bank. Dr. Mercier has authored half a dozen books, including *La déforestation en Afrique* (1990) and *Energie et Agriculture, le choix écologique* (1978). An active member of the Washington Area Branch of the International Association for Impact Assessment (IAIA), Dr. Mercier co-organized the 2003 Annual meeting in Morocco. He was awarded the prestigious Rose-Hullman award in 2004 from the IAIA. Since retiring from the World Bank, Dr. Mercier has consulted on Environmental Assessment policy for the Inspection Panel, the African Development Bank, the French bilateral agencies and various other organizations. More recently, he has been a key practical researcher on the economics of Marine Protected Areas.

**Christopher McDowell** received his PhD in Ethnology at Zurich University in Switzerland, a Masters degree in Social Anthropology at the University of Cape Town and a first degree from London University (Goldsmiths College). He is currently a Reader in International Politics at City University London and an Associate Dean for Internationalisation. Dr. McDowell has previously held academic posts at Oxford University, the Institute of Development Studies at Sussex University in the UK and Macquarie University in Sydney, Australia. He has published widely on forced population displacement, involuntary resettlement and humanitarianism. Dr McDowell has advised a number of governments, NGOs and international organisations on involuntary resettlement, humanitarian ethics, resettlement and poverty, and refugee return. He is a member of the UK Government's Advisory Panel on Country Information.