

The Inspection Panel

1. Statement of Mr. Roberto Lenton
Chairperson of the Inspection Panel
Read at Board Meeting on South Africa - Eskom
Investment Support Project
July 29, 2010

2. Inspection Panel Report and
Recommendation
South Africa: Eskom Investment Support Project
(IBRD Loan No. 78620) (INSP/R2010-0003)
June 28, 2010

THE WORLD BANK INSPECTION PANEL

INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT
INTERNATIONAL DEVELOPMENT ASSOCIATION

1818 H Street, NW Phone: (202) 458-5200
Washington, DC 20433, USA Fax : (202) 522-0916
Internet: www.inspectionpanel.org
Email: Ipanel@worldbank.org

Statement of Mr. Roberto Lenton, Chairperson of the Inspection Panel Read at Board Meeting on South Africa – Eskom Investment Support Project - Report and Recommendation (IBRD Loan No. 78620) (INSP/R2010-0003) July 29, 2010

Thank you, Mr. Chairman.

Mr. Chairman, Distinguished Members of the Board,

I am pleased to take this opportunity to discuss with you the Panel’s recommendation with respect to the South Africa – Eskom Investment Support Project.

I am joined by Mr. Alf Jerve, Panel Member, Ms. Tatiana Tassoni, Acting Executive Secretary, and staff of our Secretariat.

I would like first to express our thanks for the written Statement of Executive Directors. We appreciate their support for the Panel’s independence and integrity, and also their important questions for discussion. I note that the Statement agrees with the Panel’s recommendation for an investigation and does not question its merits, but raises questions about the scope of a proposed investigation.

The Panel is pleased to provide these clarifications within the context of its founding Resolution. The Panel has also issued a Corrigendum of the recommendation included in Paragraph 80 of the Panel’s Eligibility Report which clarifies that the investigation would focus on the issues raised by the Request “*that relate to allegations of violations of World Bank operational policies and procedures.*”¹

The Panel received this Request from community members living in the Project area in Lephalale, South Africa. Bank Management submitted its Response to the Request on May 27, 2010. The Panel has reviewed these two documents carefully, and has summarized them in the earlier sections of its Eligibility Report.

As the Inspection Panel Chairperson, I personally led a Panel team on an eligibility visit to better understand issues relevant to eligibility. The Panel team met with Requesters, Government officials, members of the Bank country office, and a wide range of members of the local community and interested stakeholders.

¹ Inspection Panel Report and Recommendation: South Africa – Eskom Investment Support Project (IBRD Loan No. 78620) (INSP/R2010-0003)

During this visit, the Panel was struck by the widespread level of concern among Requesters and other local residents about the potential impacts of the Project, especially local social and environmental impacts. The Requesters and other local residents indicated that they are not against development in the area, but are worried about the Project's potential impacts on their lives and livelihoods.

I would like to emphasize that the Panel is satisfied that the Request meets the eligibility criteria listed in the Resolution and subsequent Clarifications. Based on its review of the relevant documentation and its field visit, and taking into account the sharply different views of the Requesters and Management, the Panel considered that the Request raises important issues of compliance and harm that can be addressed only in the context of an investigation.

We understand that some Executive Directors felt that our Eligibility Report could have been more precise on the scope of what the Panel recommends to investigate, and that there was concern as to whether the Panel was recommending an investigation of all the issues raised in the Request -- even though some of these do not raise issues of compliance under Bank policies.

Although at this stage the Panel is not required to suggest a particular scope of the investigation, Paragraph 13 of the 1999 Clarification provides the framework for Panel investigations. It states that the report will “*focus on whether there is a serious Bank failure to observe its operational policies and procedures with respect to project design, appraisal, and/or implementation*”.....and will “*discussonly those material adverse effects, alleged in the request, that have totally or partially resulted from serious Bank failure of compliance with its policies and procedures*”.

That's the overall framework. Now let me clarify specifically the scope of the investigation being recommended by the Panel.

First, I would like to state categorically that the recommendation in our Eligibility Report, as clarified in the Corrigendum, is specifically that “*...an investigation be carried out on the issues raised by the Request that relate to allegations of violations of World Bank operational policies and procedures*”.

Second, let me also clarify that, by summarizing the many issues raised in the Request, the Panel did not intend to suggest that it would investigate each of the issues raised, some of which are clearly not covered by Bank policies and procedures. This summary of the Request, like the detailed summary of the Management Response, is purely descriptive, in order to inform the Board of key issues raised. As provided in the Resolution, both the Request and Management Response are published in their entirety together with the Panel's Report and Recommendation after the Board has considered them.

Third, following past practice, in the section of the Report on “*Observations*”, we enumerated the core topics which, in our view, would be addressed in an investigation. This section highlights three important issues – application of the policy on the use of Country Systems, local socio-economic and environmental impacts, and project externalities at different levels -- as the areas warranting an investigation within the purview of Bank policies.

Let me also clarify that, according to the Resolution, it is not within the mandate of the Panel to question Board decisions or to examine its judgment regarding the objectives of the Project to meet South Africa's energy needs. The Panel also does not investigate the country or the borrower. Under the Resolution, Management must propose to the Board specific actions to address the Panel findings and these actions may include specific recommendations about project implementation, including the disbursement of funds for the project.

In their Statement, some Board members asked the Panel to exclude some elements of the Request from the scope of the investigation.

Let me state for the record that the Panel never intended to investigate issues raised in the Request that do not relate to policy compliance, such as claims about the legacy of World Bank involvement and the Constitution of South Africa.

With respect to climate change, the Panel would be guided by OP 4.00 - Piloting the Use of Borrower Systems. This policy calls for the Bank to consider if the borrower's system is designed to achieve, among other elements, the operational principle to "*assess potential impacts of the proposed project on physical, biological, socio-economic and physical cultural resources, including transboundary and global concerns*". There is also a separate provision of OP 4.00 that addresses "*mitigation measures*" and other actions to prevent or minimize adverse impacts.

The Panel will be guided by this policy provision in assessing, for instance, issues relating to greenhouse gas emissions of the Project, and the potential mitigation actions contained in the Project to address these concerns. The Panel would not, however, investigate other climate change related claims mentioned in the Request that do not raise issues of compliance under Bank policy, such as for example whether the Project meets the requirements of the Bank strategy document on "*Development and Climate Change: A Strategic Framework for the World Bank Group*".

With respect to impacts on the economy, the Panel will similarly be guided by OP 10.04 - Economic Evaluation of Investment Operations, should it need to examine whether the Bank adequately assessed the impacts of the Project on South Africa's economy. Again, the Panel would not investigate other claims mentioned under this heading in the Request that do not raise issues of compliance under Bank policy.

Let me add that we appreciate questions raised in discussions about the Panel's approach to the Use of Borrower Systems. In addition to the information provided in the "*Observations*" section of our Eligibility Report, I wish to note here that the Panel fully appreciates the importance of this Policy and its underlying objectives. We would be highly attentive to these points during an investigation.

I would also like to address the question posed regarding the Panel's ability to deal with issues raised in the Request and covered by operational policies and procedures. In each investigation to date, the Panel has retained internationally recognized experts to analyze technical matters and issue findings on policy compliance. I would like to assure the Board that the Panel is equipped

to engage experts of the highest quality to assist it with investigations, and this particular case will be no exception.

Before I conclude, I would like to reiterate that the Panel is an instrument of the Board and as such, subject to its oversight and guidance. To effectively perform its functions, however, it needs a degree of independence and credibility that up to now has been assured by this Board. If the Panel is to properly assess compliance with operational policies, the scope of its investigations would include all the specific operational policies and procedures currently in effect.

Thank you once again for the opportunity to address the Board to clarify the important questions that have been raised about the investigation we have recommended.

Report No. 55231-ZA

The Inspection Panel 

Report and Recommendation

**SOUTH AFRICA:
Eskom Investment Support Project
(IBRD Loan No. 78620)**

June 28, 2010

The Inspection Panel
Report and Recommendation

On

Request for Inspection

Re: REPUBLIC OF SOUTH AFRICA: Eskom Investment Support Project (IBRD Loan No. 78620)

A. BACKGROUND

1. On April 6, 2010, the Inspection Panel (the “Panel”) received a Request for Inspection (the “Request”) related to the then proposed Republic of South Africa: Eskom Investment Support Project (the “Project” or EISP) to be financed by the International Bank for Reconstruction and Development (IBRD).¹ The Request was submitted by community members living in the Project area in Lephalale in Limpopo Province (the “Requesters”) through groundWork and Earthlife Africa, two Non-governmental Organizations based in South Africa. The Requesters state that they are likely to suffer direct impacts from the Project and its associated facilities. The Requesters have asked that their identities be kept confidential and that groundWork and Earthlife Africa act as their designated representatives.
2. The Panel registered the Request on April 7, 2010 and IBRD’s Board of Executive Directors approved the US\$ 3.75 billion loan to Eskom Holdings Limited (the “Borrower”) on April 8, 2010 with the Government of South Africa acting as a Guarantor. Management received an extension from IBRD’s Board of Executive Directors and submitted its response (the “Management Response”) on May 27, 2010.
3. As provided in paragraph 19 of the 1993 Resolution establishing the Inspection Panel (the “1993 Resolution”),² the purpose of this report is to determine the eligibility of the Request and make a recommendation to the Executive Directors as to whether the matters alleged in the Request should be investigated.

B. THE PROJECT

4. The Project seeks to support the Government of South Africa’s (GoSA) poverty alleviation and economic growth efforts by providing financing to Eskom Holdings Limited, a parastatal agency, so that it can meet the country’s energy needs. The Project also seeks to support the Government’s

¹ For the purpose of this Report, IBRD is sometimes referred to as “the Bank”.

² International Bank for Reconstruction and Development (IBRD), Resolution No. IBRD 93-10, dated September 22, 1993 (the “1993 Resolution”).

efforts to mitigate the effects of climate change by providing concessional financing under the Clean Technology Fund (CTF) for renewable energy projects.³

5. According to the Loan Agreement, the Project objective is *“to enable the Borrower to enhance its power supply and energy security in an efficient and sustainable manner so as to support both economic growth objectives and the long term carbon mitigation strategy of the Guarantor.”*⁴
6. These objectives are to be achieved through three components which are to be implemented by Eskom:⁵
 - **Component A: 4,800 megawatt (MW) Medupi Power Plant and Associated Transmission System (US\$3.04 billion IBRD).** This component supports the construction and commissioning of: (a) Medupi power station located at Eenzaamheidin, Waterberg District, Lephalale Municipality in Limpopo Province approximately 5 kms southwest of the existing Matimba Power Plant. Medupi power plant will be a mine-mouth, 6-unit base-load coal-fired power plant using super-critical technology.⁶ The Plant will include the construction and realignment of access roads to and on-site, emissions control systems, coal conveyor, ash conveyor and disposal infrastructure, and development of a water treatment plant which will include construction of a water pipeline along the ash conveyor; (b) construction, supply and installation of approximately 2,244 kms of 400kV/765 kV transmission lines and five associated substations.
 - **Component B: Investments in renewable energy projects (US\$260 million IBRD).** This component supports the installation and commissioning of the (a) 100 MW Sere Wind Power Project in the Northern Cape Province, including turbines, associated infrastructure, roads (improvement and construction), and transmission lines and substations; and (b) construction of the 100 MW Upington Concentrating Solar Power Project in Northern Cape Province and associated transmission lines.
 - **Component C: Low Carbon Energy Efficiency Investment and Technical Assistance (US\$440.77 million IBRD).** This component supports (a) construction of the Majuba Rail and Transmission Project in Mapumalanga Province. This will be a railway line transporting coal from Ermelo to the existing Majuba power station; (b) provision of technical advisory services to improve efficiencies in the Borrower’s current fleet of coal-fired power stations; and (c) provision of technical advisory services for domestic and cross-border renewable and energy efficiency projects.

³ According to the Project Appraisal Document (PAD), Report No. 53425-ZA, dated March 19, 2010, p. 1, the *“project, as well as the longer term partnership envisaged between the Government of South Africa and the World Bank will enable the country to achieve a low carbon trajectory.”*

⁴ Loan Agreement (ESKOM Investment Support Project) between Eskom Holdings Limited and International Bank for Reconstruction and Development, dated April 16, 2010, Schedule 1, p.6.

⁵ Ibid, Schedule 1, p. 6.

⁶ PAD, p. 114 describes “super-critical” as *“pulverized fuel (PF) technology, where coal is first pulverized, and then blown into a furnace where it is combusted at high temperatures. The resulting heat is used to raise steam, which drives a steam turbine and generator. The proposed supercritical combustion will result in the new power station’s thermal efficiency being up to 37.5 percent (compared to approximately 34 percent for older power stations), resulting in a reduced environmental impact as less coal will be burnt to produce the same amount of energy.”*

7. Also, the PAD states that the Project will provide US\$9.375 million to finance the Front End Fee associated with the IBRD Loan as requested by Eskom Holdings.⁷
8. The total Project cost is US\$ 13.86 billion of which IBRD is providing US\$ 3.75 billion. Co-financiers of the Project include the European Investment Bank, the African Development Bank, other bilateral and commercial lenders, and the Clean Technology Fund (CTF).⁸
9. The loan was approved by the IBRD Board of Executive Directors on April 8, 2010 and became effective on May 31, 2010. The expected Project Closing Date is October 31, 2015. The Request for Inspection was received before Board approval of the Project and thus there had been no disbursement.
10. According to the PAD⁹, the Project has been classified as Category A and triggers the Environmental Assessment (OP 4.01), Natural Habitats (OP 4.04), Physical Cultural Resources (OP 4.11), Involuntary Resettlement (OP 4.12) and Projects on International Waterways (OP 7.50) policies. Except for the policy on Projects on International Waterways, these policies are being addressed through OP/BP 4.00, Piloting the Use of Borrower Systems, for which a Safeguards Diagnostic Review (SDR) has been prepared.
11. The Project is to be implemented by Eskom Holdings Limited. The PAD states that though Eskom has not implemented a Project of this size in the recent past and has thus lost some skills it possessed earlier, it has taken steps to ensure adequate institutional arrangements are in place to implement the Project.¹⁰ These include hiring experienced engineering partners, putting in place a Medupi Leadership Committee comprising Eskom's senior management, a Medupi Project Team, and 38 Medupi Execution Teams (MET) to oversee specific contracts.¹¹
12. The PAD states that no new coal mines will be developed to provide coal to the Medupi power plant. Coal for the Medupi power plant will be supplied for a period of 40 years by expanding the capacity of the existing Grootegeluk Colliery, an open-pit coal mine owned by the Exxaro Group located approximately 3 kms from the power station, and transported via a conveyor system. This expansion is to occur within the existing boundary of the mine, and two new coal processing units will be added to the existing 6 units to cater to the increased production.¹²
13. The Department of Water Affairs (DWA) is responsible for ensuring adequate water supply for the power plant and the Grootegeluk mine. The Medupi power plant will initially require about 6 million cubic meters of water per year to operate its 6 units, and will require an additional 6 million cubic meters of water after the Flue Gas Desulfurization (FGD) technology is installed. The FGD

⁷ PAD, p. 29.

⁸ The Clean Technology Fund (CTF), one of two Climate Investment Funds, promotes scaled-up financing for demonstration, deployment and transfer of low-carbon technologies primarily for projects in the power and transport sectors and energy efficiency. It is administered by the World Bank on behalf of the CTF Trust Fund Committee which comprises other multilateral institutions. For more information, please see <http://www.climateinvestmentfunds.org/cif/>

⁹ PAD, p. ii.

¹⁰ PAD, p. 131.

¹¹ PAD, p. 38.

¹² PAD, p. 72.

technology, a dry cooling system designed to control sulphur emission,¹³ will be sequentially installed in the 6 units between 2018 and 2021.¹⁴

C. THE REQUEST

14. What follows is a summary of the Request for Inspection. The Request is attached to this Report as Annex I.
15. The Request was submitted by community members living in the Project area in Lephalale in Limpopo Province through groundWork and Earthlife Africa, two Non-governmental Organizations based in South Africa. The Requesters wish to keep their identities confidential. The Request states that these communities have concerns about the direct impacts of the Medupi coal-fired power plant and its associated facilities as well as “*broader societal concerns*”.

The following concerns and likely harm are raised in the Request. Some of the harms listed are local in nature and affect the community members in Lephalale directly, whereas others may have wider impacts beyond the immediate vicinity of the local area:

- i. **Health Impacts.** The Request states that communities are seriously concerned about the potential health impacts from the expected “*significant*” emissions from the Medupi power plant. They are particularly concerned about communities that live in the vicinity of the coal-fired plant who will be exposed to “*increased levels of particulates and sulphur dioxide, which already exceed local and international air quality limits*”.
- ii. **Impact on Water.** The Requesters fear that the Medupi power plant and its water-intensive “*sulphur scrubbers*” will put additional strain on existing water sources in an area already suffering from water scarcity.
- iii. **Cultural Impacts.** The Request states that cultural practices in the area could be negatively impacted by the “*destruction*” of grave sites and sources of traditional medicines due to the construction of the Medupi power plant.
- iv. **Livelihood Impacts.** The Requesters believe the Medupi coal-fired power plant will have “*detrimental*” impacts on the livelihood of people living in and around Lephalale as the industrial activity and pollution will negatively affect agriculture, livestock rearing, and eco-tourism.
- v. **Impacts on Economy.** The Request states that South Africa “*regularly experiences currency crashes*” leading to a devaluation of the currency, and that repaying the loan will “*require more exports and higher tariffs*” to allow the economy to endure any future currency devaluation.

¹³ PAD, p. 114. the Medupi power plant will be dry-cooled because of the limited water supply in the Lephalale area since this technology is less water intensive than the conventional wet-cooling systems.

¹⁴ PAD, p. 56.

- vi. **Upstream Impacts.** The Requesters say they are concerned about environmental issues, and in particular acid mine drainage, around the mines from which the Medupi power plant will receive its coal, as they claim the World Bank has not extended the Project's scope to these existing coal mines.
- vii. Moreover, they state that a significant expansion in mining in the area will likely lead to an influx of laborers which could result in environmental and social impacts, and that since mine workers traditionally receive low wages while working under difficult conditions, this could lead to many of them suffering from health problems.
- viii. **Climate Change.** The Requesters believe that the Project will "*compromise the World Bank's commitments on climate change*" and make it more difficult for South Africa to reduce its greenhouse gas emissions and meet its obligations. Moreover, they allege there is no certainty to the claims made by the World Bank that the use of cleaner coal technology or carbon capture and storage will sufficiently control the "*enormous amounts of pollutants*" produced by the Project. Finally, they state that the Bank's support for the Project contradicts the report of the external Expert Panel, appointed in October 2009, which "*raises doubts about the World Bank supporting Medupi without adequately complementing it with renewable energy development*".
- ix. **Involuntary Resettlement.** The Request states that the Project could cause involuntary resettlement due to transmission lines associated with the Medupi coal-fired power plant, and the construction of the wind, solar, and rail projects which are also part of the Project. Moreover, they believe the World Bank has remained "*ambiguous*" about whether South Africa's national legislation on resettlement is equivalent to World Bank policy, and since the World Bank is applying the country systems approach to the Project, they feel this issue of equivalency should be examined in the interest of the potentially displaced persons.
- x. **Human Rights.** The Requesters believe that South Africa's actions related to the Project "*violates the human rights of the communities, and are inconsistent with the South African Constitution and the African Charter on Human and Peoples' Rights*". They state that Article 24 of the South African Constitution recognizes that "*Everyone has the right to an environment that is not harmful to their health or well-being*" and allows for the protection of the environment for the benefit of present and future generations. The Requesters states that actions by South Africa and Eskom are "*harmful to the environment and health and well-being of local communities*" and that these impacts "*outweigh the actual economic and social development impacts of the project*".
- xi. **Cumulative Impacts.** The Requesters believe their concerns are "*compounded by the potential cumulative impacts of the planned and existing generation facilities*" around the Medupi power plant area which include Matimba, the proposed Mmamabula power plant across the border in Botswana, a planned Sasol¹⁵ coal-to-liquid fuels plant, and other planned coal mines and plants. These facilities, according to the Request, will be

¹⁵ Sasol is a South African energy and chemicals company which primarily uses coal-to-liquid and gas-to-liquid technology. According to the PAD (p. 86), Sasol produces 36% of the fuel consumed in South Africa. Sasol is planning to build its Mafutha coal-to-liquid plant in Steenbokpan, Lephale Municipality.

connected by a transmission line to be built by Eskom and have been designated by the World Bank as “*associated facilities*” which have to comply with Bank policies.

- xii. **Project Alternatives.** The Request states that the World Bank did not “*adequately consider alternatives to coal*”, including a Demand Side Management alternative and particularly the ending of Eskom’s Special Pricing Agreements. They allege that “*without considering renegotiating the contract with the largest industries that receive a significant share of South Africa’s electricity at extremely low rates, the Bank did not properly exhaust non-coal options for addressing South Africa’s electricity crisis*”.
- xiii. **Country Systems.** The Requesters are concerned that the Project’s reliance on South African laws, policies, and institutions to implement and monitor the Project will be “*inadequate*” in protecting peoples’ health and well-being. They state that South Africa “*has a problematic track record of actually abiding by and implementing its environmental and social obligations*”.
- xiv. Moreover, the Requesters state that the Bank has made an incorrect determination that South African standards related to pollution prevention and abatement are equivalent to the World Bank’s Pollution Prevention and Abatement Handbook. They also feel that the gap-filling proposal by the Bank “*do not include changes to South African laws and regulations – these proposals reflect only changes that should be made at Eskom with this specific project, and do not appear to be mandatory, long-term improvements to Eskom’s ‘system’*”.
- xv. **Legacy of World Bank Involvement.** The Requesters state that World Bank financed coal-fired power plants during apartheid provided electricity to large industry and white South Africans while all citizens had to repay the loans. They further state that the Bank’s legacy in South Africa’s energy sector, including the issue of reparations, should be examined as part of the Project.
- xvi. **Energy Access for the Poor.** The Requesters believe that the Project will not provide electricity to poor South Africans, as stated by the Bank, but will mainly benefit large industries. They write that the poor suffer from power supply disruptions while consuming less but paying more for electricity than export-oriented industries. Moreover, they believe the World Bank provides no evidence for its claim that the Project will provide electricity to the 20% of South African population that presently does not have access to electricity.
- xvii. They also state that a recently approved 25% annual tariff increase for 3-years is unaffordable for most South Africans who may face disconnection due to non-payment, while large industries are “*exempt*” from bearing the costs of the Project due to the “*still-secret Special Pricing Agreements concluded in a non-transparent manner during the last days of apartheid*”.

16. The Request states that concerns about the Project were communicated to World Bank Management through a letter dated March 11, 2010 and a video conference which took place on March 18, 2010. A letter was received from Management on March 24, 2010 but the Requesters believe it did not “*adequately address*” their concerns which is why they are not satisfied with

Management’s response to their concerns about impacts on communities, the environment, and the South African public in general.

17. Based on the foregoing, the Requesters ask the Inspection Panel to recommend to the Board of Executive Directors that an investigation into the matters described in the Request for Inspection be carried out.
18. The above claims may constitute, *inter alia*, non-compliance by the Bank in relation to the following Operational Policies and Procedures, taking into account that, as stated in the PAD, some of these policies are being addressed under the OP 4.00 *Piloting the Use of Borrower Systems to Address Environmental and Social Safeguard Issues in Bank Supported Projects*¹⁶:

OP 1.00	Poverty Reduction
OP/BP 4.00	Piloting the Use of Borrower Systems to Address Environmental and Social Safeguard Issues in Bank Supported Projects
OP/BP 4.01	Environmental Assessment
OP/BP 4.04	Natural Habitats
OP/BP 4.11	Physical Cultural Resources
OP/BP 4.12	Involuntary Resettlement
OP/BP 7.50	Projects on International Waterways
OP/BP 10.04	Economic Evaluation of Investment Operations
OP/BP 13.05	Project Supervision
OMS 2.20	Project Appraisal

D. MANAGEMENT RESPONSE

19. What follows is a brief summary of the Management Response¹⁷, a complete copy of which is attached to this Report as Annex II.
20. **Context.** World Bank lending to South Africa began in 1951, experienced a lull during 1966-1995, and “*re-engagement*” began in the early 1990s when economic and political transformation began in that country.¹⁸ The Management Response explains that as the dominant regional economic power, South Africa’s economic growth has a spillover effect on countries in Sub-Saharan Africa (SSA) with the former accounting for nearly two-third of SSA’s Gross Domestic Product (GDP). South Africa’s economy grew solidly from 1994 to 2007, with GDP in 2008 being 62% higher than in 1994. During this time, South Africa increased its population’s access to electricity from 34% to 81%. Between 1994-2006, South Africa’s energy intensive economy and high GDP growth also led to a 40% rise in the demand for electricity which was not matched by supply. Peak demand quickly depleted South Africa’s energy reserves, and without any new generating capacity installed since the year 2000, the country experienced severe power shortages in 2007-2008. These black-

¹⁶ PAD, p. 40.

¹⁷ Management Response – Request for Inspection of the Republic of South Africa: Eskom Investment Support Project (IBRD Loan No. 78620), May 27, 2010.

¹⁸ *South Africa- Country Assistance Strategy: Building a Knowledge Partnership*, 1999, World Bank.

outs, coupled with the global financial crises, resulted in the country's first recession in 17 years.¹⁹ Since Eskom also generates more than 60 % of the electricity produced in SSA, the power crisis had a severe negative effect on neighboring countries as well.²⁰ It was at this juncture, when the Medupi power plant was already under construction and its financing needs could not be met by international or domestic markets, that the Government approached the Bank, in its role as “*lender of last resort*”.²¹

21. The Project therefore is intended to “*support the Government’s poverty alleviation efforts by avoiding electricity shortfalls in the medium term*”²² and sustaining both South Africa’s and the region’s economic development. The Management Response states that without the Project, “*South Africa would not be able to embark on the aggressive implementation of its low carbon initiatives*”²³ as the Project will support the Government’s implementation of the climate mitigation scenario endorsed by the Cabinet in 2008.
22. **Use of Country Systems.** Management acknowledges the “*size and complexity of the project, the challenges of working with a new client unfamiliar with IBRD procedures and the arrangements required to support the use of country systems for safeguards.*”²⁴ EISP is a Category A project which the Bank is financing as a “*scaled up pilot project*”²⁵ under OP 4.00 *Piloting the Use of Borrower Systems to Address Environmental and Social Safeguard Issues in Bank Supported Projects*. The Management Response states that the Bank has previously used country systems in one other situation in South Africa, a US\$ 9 million Category B GEF-financed project, the iSimangaliso National Wetland Park Project²⁶, which was approved in December 2009. Management notes that the iSimangaliso SDR found South Africa’s legal and regulatory system to be “*strong*” for the same four safeguards that are triggered by the EISP, “*but with reference to their application to an internationally protected wetlands area with substantial autonomy from the mainstream of the South African administrative framework.*”²⁷
23. Management explains in its Response that though the Panel’s Notice of Registration listed OP 4.01, OP 4.04, OP 4.11, and OP 4.12 as possible World Bank policies which Management may not have complied with, Management believes these policies are “*not applicable*”²⁸ to the Request and has prepared its Response in accordance with OP 4.00 (Use of Country Systems) by analyzing the Requesters’ claims against the safeguard provisions listed in Table A1 of OP 4.00. Thus, in

¹⁹ Management Response, p. 2.

²⁰ Management Response, p. 4, notes that nine of the twelve countries in the Southern Africa Power Pool (SAPP) have experienced energy shortages primarily due to South Africa’s power shortfall.

²¹ Management Response, p. 2.

²² Ibid, p. 4.

²³ Ibid, p. 6.

²⁴ PAD, p. 40,

²⁵ Ibid, p. 205.

²⁶ The project development objective (PDO) of the iSimangaliso National Wetland Park Project “*is to improve access to information needed to select the best feasible option for maintaining the availability of fresh water of adequate quality to the Lake St Lucia System, a wetland of global biodiversity importance, and to increase access among local communities to conservation-compatible economic opportunities*”, Project Appraisal Document on a Proposed Grant From The Global Environment Facility Trust Fund In The Amount Of US\$9 Million To The iSimangaliso Wetland Park Authority For A Development, Empowerment And Conservation In The iSimangaliso Wetland Park And Surrounding Region Project, November 10, 2009, p. 6.

²⁷ PAD, 205.

²⁸ Management Response, p. 7.

accordance with OP 4.00, Management states it carried out a Safeguards Diagnostic Review (SDR) to judge whether South Africa's environmental and social safeguard system was "equivalent" and "acceptable"²⁹ to the Bank, i.e. whether it met the Objectives and Principles of Table A1. However, if South Africa's environmental and social safeguard system was found to be not "equivalent" and "acceptable", then it would have to implement certain "gap filling"³⁰ measures which would either have to be achieved before Project approval or, if these could only be implemented during implementation, "they will have to subject to a time-bound legal agreement between the Bank and the Borrower."³¹

24. Management states that South Africa was selected for the Use of Country Systems (UCS) pilot initiative because "it has an established legal and regulatory system and a favorable reputation for effective implementation of its systems governing environmental assessment and protection of natural habitats, protected areas, physical cultural resources and involuntary resettlement."³² Management had reached this conclusion when it had prepared the SDR for the iSimangaliso Project in which the same four safeguards as the ones in EISP were reviewed, though Management clarifies that in iSimangaliso the context was somewhat different as it was a legally protected wetland area. EISP, according to Management, was considered for a UCS pilot because Eskom Holdings has "demonstrated a substantial corporate commitment to fulfilling and going "beyond compliance" with a range of environmental and social and other legal and regulatory requirements, in addition to embracing a sustainability policy on both a corporate and project level."³³
25. Management writes that it started preparing the SDR for EISP in late 2008 during the Project's concept stage as part of its due diligence to ascertain whether the Project should be processed as a UCS pilot.³⁴ The draft SDR was made publicly available in November 2009 and discussed in consultation meetings with relevant stakeholders in South Africa in December 2009. Management states that it "assessed Eskom's implementation practices, track record, and institutional capacity" during the SDR stage and also identified "aspects of implementation that would need to be improved for acceptability". According to Management, the final SDR of March 2010 concluded that South African systems are equivalent to the Objectives and Operational Policies outlined in OP 4.00 Table A1 with respect to OP 4.01 (Environmental Assessment), OP 4.04 (Natural Habitats), and OP 4.11 (Physical Cultural Resources), but that two gaps needed to be filled with regard to Involuntary Resettlement. The first gap, regarding monitoring of resettlement actions until project completion, was determined not to be a gap

²⁹ OP 4.00 *Piloting the Use of Borrower Systems to Address Environmental and Social Safeguard Issues in Bank-Supported Projects* describes Equivalence and Acceptability as "The Bank considers a borrower's environmental and social safeguard system to be equivalent to the Bank's if the borrower's system is designed to achieve the objectives and adhere to the applicable operational principles set out in Table A1. Since equivalence is determined on a policy-by-policy basis, the Bank may conclude that the borrower's system is equivalent to the Bank's in specific environmental or social safeguard areas in particular pilot projects, and not in other such areas. Before deciding on the use of borrower systems, the Bank also assesses the acceptability of the borrower's implementation practices, track record, and capacity.

³⁰ *Ibid.*, "gap-filling" is described as "If the borrower has to fill gaps in its system to meet the objectives and applicable principles in Table A1 and is committed to doing so, the Bank may, when determining equivalence take account of measures to improve the borrower's system. Similarly if the borrower has to fill gaps in implementation practices and capacity to achieve acceptability and is committed to doing so, the Bank may, when determining acceptability, take account of measures to strengthen borrower implementation practices and capacity. Such measures are to be carried out before the borrower undertakes implementation of the relevant project activities, and may include Bank-supported efforts to strengthen relevant capacity, incentives and methods for implementation."

³¹ Management Response, p. 8.

³² *Ibid.*

³³ *Ibid.*

³⁴ *Ibid.*

in Eskom's practice as Management believes Eskom regularly conducts resettlement monitoring. The second gap was attributable to Eskom and it was filled by disclosing the Resettlement Policy Framework prior to Project appraisal.³⁵ In this context, the Management says that it reviewed the final EIRs prepared by Eskom for the Sere Wind Power, the CSP plant, and the Majuba Rail line and "*came to the conclusion that the safeguard documents for these Eskom investments demonstrate comparable equivalence and acceptability*".³⁶

26. Furthermore, with respect to "gap-filling", Management writes that it is the "*Bank's understanding that the implementation of these gap-filling measures is not limited to EISP, nor is it limited to projects funded by the Bank; it is applicable to all projects undertaken by Eskom, regardless of source of funding.*"³⁷
27. Moreover, the Management Response states that though the Department of Environmental Affairs (DEA) recognizes that "*compliance monitoring and enforcement*" could be improved, "*significant instances of noncompliance are concentrated in particular sectors, including artisanal mining and quarrying, municipal public services, property development and agricultural operations, and are usually small in scale*" and that Eskom Holdings has been "*largely*" compliant.³⁸
28. Management concludes by stating that "*the Bank team was satisfied that South Africa has the enabling legal and regulatory framework and Eskom has the institutional capacity*"³⁹ as required by OP 4.00 to implement the Project.
29. With regard to OP 7.50 *Projects on International Waterways*, Management states that this policy was not treated under the Use of Country Systems and it believes the Requesters do not raise riparian issues in their Request for Inspection.⁴⁰
30. **Climate Change.** The Management Response states that GoSA's commitment to following a low-carbon path has been signaled by several national and international climate change related agreements which it has signed.⁴¹ That said, Management believes presently there are no domestically available alternatives for energy generation other than coal, and that coal will "*dominate*" the energy mix for the next 10-15 years. The only large scale renewable alternative to coal in South Africa, according to the Management Response, would be Concentrating Solar Power (CSP) but the technology for this option is not presently developed enough to make it a viable provider of base load power. Thus, according to Management, the Project allows South Africa to meet its urgent energy security needs through the 4800 MW Medupi power plant and at the same time "*supports interventions to mitigate climate change*"⁴² through the implementation of "*high impact elements*" of the Government's low carbon strategy, such as the "*flagship*" 100 MW CSP plant which will be the largest of its type in the world and the 100 MW Wind Farm which will also have considerable demonstration impact.⁴³ And though the CSP Plant and the Wind Farm are the largest

³⁵ Management Response, p. 9.

³⁶ Ibid, p. 10.

³⁷ Ibid, p. 32.

³⁸ Ibid, p. 14.

³⁹ Ibid, p. 10.

⁴⁰ Ibid, p. 7.

⁴¹ Ibid, p.3.

⁴² Ibid, p. 6.

⁴³ Ibid, p. 7.

renewable energy projects in the Bank's FY10 portfolio, Management recognizes that the Project will "skew"⁴⁴ the ratio of renewable versus non-renewable financing for a year but expects the Bank to regain a healthy share of the portfolio mix in the next 2-3 years.⁴⁵

31. Management believes the Bank's approval of the Project "was based on a clear rationale for the investment, its major development impact, and a long-term plan for partnering with South Africa on the future of its energy sector in the ambit of its low carbon strategy that would form the basis for such communications."⁴⁶ Moreover, Management states the Project meets all six criteria of the *Development and Climate Change: A Strategic Framework for the World Bank Group* which is required before the Bank can consider financing a coal power project. This, according to Management, has been confirmed by an independent Expert Panel which reviewed the Project against the six criteria.⁴⁷
32. **Health Impacts/Cumulative Impacts.** Management explains that South African regulations require air quality impact analysis to examine cumulative impacts. Therefore the cumulative impact of adding the Medupi power plant's emissions to existing ambient air quality conditions has been a key input into the air quality model used in the Medupi power plant EIR (2005-2006) and the predictions of future conditions represent cumulative impacts.⁴⁸ The Management Response states that based on Eskom's "extensive environmental, social and health analyses as part of the EIA process"⁴⁹, the impact of air emissions from the Medupi power plant on human health from particulate matter, mercury emissions and sulphur dioxide will be low. This is mainly because emissions will be reduced by the sequential installation of the FGD technology used in the smokestacks and because the most populated areas of Marapong and Onverwacht are located "normally" upwind of the Medupi power plant, to the north and east respectively. Areas that are downwind of the Medupi power plant are mostly sparsely populated large game farms which, according to the Management Response, will have the highest SO₂ levels as a result of the emissions from the Medupi power plant.⁵⁰ Management states that based on the monitoring data and the modeling exercise of current conditions, the EIR for the Medupi power plant concludes that "little potential exists for... health risks due to sulfur dioxide levels" at present, even in the high-exposure areas downwind of the plant, where population density is low. Moreover, Management writes that human health risk from the cumulative mercury emissions of the Medupi and Matimba power plants is low as emissions are predicted to be "significantly lower than the most stringent guidelines for public exposure."⁵¹
33. The Management Response states that though model predictions of particulate emissions downwind of the Medupi power plant complied with national standards, these at times exceeded European Commission guidelines near the ash dump site; however, the design of the ash disposal system will mitigate against the generation and proliferation of ash dust.⁵²

⁴⁴ Management Response, p. 39.

⁴⁵ Ibid.

⁴⁶ Ibid, p. 21.

⁴⁷ *Recommendations to the World Bank Group on Lending to South Africa for Eskom Investment Support Project that includes a Large Coal Burning Power Station at Medupi power plant*, Report Prepared by Expert Panel, February 18, 2010.

⁴⁸ Management Response, p.16.

⁴⁹ Ibid, p.14.

⁵⁰ Ibid, p.17.

⁵¹ Ibid.

⁵² Ibid.

34. Also, under new emission standards adopted by the GoSA in April 2010, the Medupi power plant will be allowed to operate for five years as an existing plant with respect to emissions and ambient air quality, but then must install within the next three years pollution control equipment that brings the plant into line with the more stringent emissions limits for new power plants. This notwithstanding, Management states that the conclusions and predictions of the Medupi power plant 2005-2006 EIR remain valid even if examined against these newly issued final ambient air quality standards.
35. Moreover, Management states that *“the DEA intends to recommend to the Minister that the region around Medupi -the Waterberg airshed -be designated as a National Priority Area for Air Pollution Control”* so as to deal with the *“cumulative effects of any future development that may occur in the affected airshed.”*⁵³ The action to be proposed, according to Management, *“would be pro-active and designed to avoid the deterioration of ambient air quality that could otherwise occur if, as expected, there is further residential and industrial development (besides Medupi) that would increase emissions of air pollutants generally.”*⁵⁴ However, due to the direction of the wind, Management states that the Waterberg Biosphere Reserve⁵⁵ will not be impacted by emissions from the Medupi power plant as it is not within the Medupi power plant airshed.
36. Management informs us that in addition to the above, assessing cumulative impacts will be the subject of the Waterberg Environmental Management Framework (EMF) whose contract the DEA has recently awarded. This EMF will examine current conditions and long-term management options for biodiversity conservation, air quality, water supply, agricultural development, ecotourism and industrial and population growth and will be prepared in consultation with stakeholders. It will lead to the development of a Strategic Environmental Management Plan for the Waterberg District Municipality.⁵⁶
37. Finally, a transboundary Regional Environmental and Social Assessment (RESA) that includes air quality monitoring and management and covers the Waterberg area is being developed in collaboration between the GoSA, the Government of Botswana, Eskom and the Bank. The Bank is expecting a final report on the first phase in mid-2010 and expects the second phase to be launched in late 2010.
38. **Disclosure and Consultation.** The Bank believes the disclosure and consultation process carried out by South African authorities for the Medupi power station, the Sere Wind farm, the USP plant, and the Majuba Rail Project as part of the Environment Impact Assessment (EIA) was conducted in an open and transparent manner and was well documented.⁵⁷ Management also believes that South Africa has a *“robust and mandatory system”*⁵⁸ of disclosure and consultation which requires disclosure of draft and final environmental and social documents, an arrangement for notifying and updating *“Interested and Affected Parties (I&APs)”*, the holding of public hearings in affected areas, as well as a practice of disseminating information in the print and electronic media in appropriate languages besides English and Afrikaans.⁵⁹

⁵³ Management Response, p. 19.

⁵⁴ Ibid.

⁵⁵ The Waterberg Biosphere is a 15,000 square kilometers expanse of bushveld (grassy plains) and rock formations which is the first region in the northern part of South Africa to be named a Biosphere Reserve by UNESCO. Within the Waterberg there are archaeological finds dating to the Stone Age.

⁵⁶ Management Response, p. 24.

⁵⁷ Ibid.

⁵⁸ Ibid, p.3.

⁵⁹ Ibid, p.10-11.

39. In the case of EISP, Management states that South African authorities had followed the necessary disclosure and public consultation requirements before the Bank became involved with the Project. The Management Response states that 500 individuals registered themselves as I&APs during the EIA for the Medupi power plant, including one of the NGOs representing the Requesters. The Management Response also states that Department of Environment Affairs (DEA) has to ensure that the disclosure and consultation process is done according to law and is well documented. These steps are documented in the “Issues Trail Reports” which were disclosed along with the final Environmental Impact Report (EIR) in May 2006.⁶⁰ Moreover, Management states that as required by the South African EIA system, compliance with transparency requirements during the Medupi power plant’s implementation is being managed by a multi-stakeholder Environmental Monitoring Committee (EMC) which includes representatives from the towns of Marapong and Lephalale.⁶¹ Moreover, Management states that South African law requires disclosure and transparency during project implementation as well, and that the Nedlac process was followed for the preparation of the Project.⁶²
40. **Adequate Availability of Water.** Medupi power plant’s early water needs will be met by extending to Medupi the Exxaro-owned water transmission main which brings water from the Mokolo Reservoir to the Matimba Power Plant⁶³, the Grootegeluk Colliery, and the Lephalale Municipality. This water, according to the PAD, is already available as it is currently not fully used by its other authorized users, and its supply will be augmented by “de-bottlenecking” 9 kms of the water main so that it can serve both the Medupi power plant and the Lephalale Municipality.
41. Subsequently, according to the PAD⁶⁴ and Management Response⁶⁵, the Medupi power plant’s combined water needs as well as the additional needs of an expanded Grootegeluk Mine, will be met by the Department of Water Affairs (DWA) through the implementation of the first two phases of the Mokolo-Crocodile (West) Water Augmentation Project (MCWAP). The MCWAP, according to the Management Response, was “*designed to meet the 25-year planning horizon that anticipates high and growing demand for water for public supply, irrigation, and industrial use in the Steenbokpan-Lephalale corridor in which Medupi is located.*”⁶⁶ The EIA for both phases is underway and is taking place concurrently. Phase 1 of the MCWAP involves laying a new pipeline by 2013 along the right-of-way of the existing pipeline and Phase 2 will transfer water through a new pipeline from the Crocodile River to the Steenbokpan-Lephalale Corridor by 2015.
42. **Coal Supply.** The Management Response states that new mines will not be developed to supply the Medupi power plant. The Medupi power plant’s coal needs will be met by expanding the existing Grootegeluk Colliery, located adjacent to the power plant, within its existing concession and adding two new coal processing units to its existing six units. This expansion will increase Grootegeluk’s capacity by 44 %. Management explains that as per South African law an amendment to the existing

⁶⁰ Management Response, p. 11.

⁶¹ Ibid.

⁶² Management Response, p. 11. According to Management, the “*National Economic Development and Labour Council (Nedlac) law is the vehicle that government, labor, business and community organizations in South Africa often use to cooperate, through problemsolving and negotiations, on economic, labor and development issues, and related challenges facing the country.*”

⁶³ According to the PAD (p. 33), Matimba is a coal-fired power plant currently operated by Eskom.

⁶⁴ PAD, p.73

⁶⁵ Management Response, p. 12.

⁶⁶ Ibid.

Environment Management Programme Report⁶⁷ was received in 2007 from the Limpopo Department of Minerals and Energy which the Bank believes to be of “good quality” and is consistent with OP 4.00 Table A1.⁶⁸

43. **Livelihood Impacts.** The Management Response states the Bank believes that the EIR “adequately” identifies and addresses the impacts of the Medupi power plant on livelihoods and has put in place measures to avoid or mitigate them.⁶⁹ Management further states it does not believe these impacts will be “detrimental”⁷⁰ and the Environment Monitoring Committee, meeting on a bi-monthly basis, is supposed to ensure compliance with the EIR during construction and later phases. Management also states that Limpopo Province and the Waterberg area in particular have been identified by the GoSA as a priority area for industrial development and population growth.
44. **Impact on National Economy.** Management believes the loan will not put undue stress on the country’s foreign exchange situation as the payment on the principal amount will be no more than 0.1% of the country’s total exports in any given year. Management states that according to analysis it undertook in conjunction with the Department of National Treasury, the loan repayment amount is consistent with the country’s prudent debt policy. Moreover, the IBRD loan is the cheapest and longest maturity loan available to Eskom from any financial source, totaling 9% of Eskom’s total liability when the Project is commissioned in 2012.⁷¹
45. **Cultural Impacts.** Management states that the conservation of cultural resources is a key issue in the Record of Decisions (ROD) and that it is satisfied South Africa has the necessary regulations and Eskom the institutional capacity to implement the Project while conserving the natural habitat and physical cultural resources in the area.⁷² Management writes that five graves were discovered during the field survey of the Medupi power plant, four in an informal cemetery outside the plant’s boundary and one within the boundary. The grave site within the site perimeter was exhumed and relocated in November 2007 in accordance with the National Heritage Resources Act (NHRA; Act 25 of 1999) and the Environment Conservation Act (Act 73 of 1989) which, according to Management, is “consistent”⁷³ with the Operational Principles outlined in OP 4.00 Table A1.
46. With respect to access to traditional herbs and medicinal plants used in cultural practices, Management states that the clearing of bushveld in the perimeter of the Medupi power plant will not result in a reduction of medicinal plants as these are commonly found in the surrounding bushveld area, and only a few have been classified as rare, threatened, or endangered species.⁷⁴
47. **Involuntary Resettlement.** Management believes South Africa has the legal and regulatory framework and the institutional capacity to conduct land acquisition and related resettlement activities in accordance with World Bank safeguard policies, as documented in the SDR. With respect to Involuntary Resettlement, the SDR identified two gaps in the South African regulatory framework. One gap related to the monitoring of resettlement actions and reporting on progress until project completion.

⁶⁷ “Amendment to the Grootegeluk Mine Environmental Management Programme Report (EMPR): Matimba Brownfields Expansion Project.”

⁶⁸ Management Response, p.13.

⁶⁹ Management Response, p. v.

⁷⁰ Ibid, p. 23.

⁷¹ Management Response, p. 35.

⁷² Ibid, p. 10.

⁷³ Ibid, p. 25.

⁷⁴ Ibid.

This was found not to be a gap in Eskom's practice as it does this type of monitoring regularly. The second gap was filled when Eskom disclosed the Project's Resettlement Policy Framework.⁷⁵

48. Management writes that involuntary resettlement is not expected in the wind or solar power projects. However, twenty-one households with 152 residents are being relocated as a result of the 67km long Majuba Rail Project due to noise pollution impacts which cannot otherwise be mitigated. Negotiations between Eskom and the families led to an agreement whereby 16 families will be relocated "on-farm" and land has been bought for the relocation of the remaining 5 families.⁷⁶
49. **Energy Access for the Poor.** Management states that South Africa and Eskom have increased overall access to electricity from 34 percent to 81 percent since 1994 and though the Project does not finance new connections, the Government has made provision for connecting the remaining 19 percent of households, the majority of whom are poor, by 2014. The Government has also launched in 2003 the Free Basic Electricity (FBE) policy that provides 50 kWh per month for free to poor households and presently about 25 percent of households benefit from this policy.⁷⁷ Management states that the poor are also sheltered from the full impact of the tariff increases in general by the lifeline tariff based on cross-subsidies for consumers using less than 350 kWh/month of electricity.⁷⁸ With respect to tariff increases, Management states that the Bank has no role in the tariff setting process as the independent National Energy Regulator South Africa (NERSA) sets rates. The Bank has reviewed the tariff structure and "*believes that the announced tariff minimizes the impact on the poor.*"⁷⁹ Moreover, Management does not believe that poor and residential consumers will pay a disproportionate share of the costs for building this Project and also points out that many of the Special Pricing Agreements (SPAs) will be renegotiated as publicly announced by the GoSA.⁸⁰
50. **Human Rights.** Management states that it is "*not within the Bank's mandate to determine compliance of government actions with member government's legislation*"⁸¹ and that "*this allegation can only be tested before a South African court that has jurisdiction to opine on the Constitution of South Africa*". That said, Management believes South African environmental legislation, including NEMA, "*provide for the prevention of harmful impacts on the health of citizens and for compliance with and enforcement of international conventions and agreements in South Africa*".⁸²
51. **Legacy Issues.** Management states its records indicate 4 loans were made to South Africa in the energy sector between 1950s to 1960s, and that there is no connection between these loans which closed over 40 years ago and EISP. Moreover, Management believes the issues the Requesters raise regarding reparations have no basis as the Bank's operational policies did not exist at the time of the earlier loans, nor is there a current policy of law that requires the Bank to examine such a

⁷⁵ Management Response, p. 9.

⁷⁶ Ibid, pp. 29-30.

⁷⁷ According to the Management Response (p. 34), the FBE allocation is enough for the functioning of 3 lights and one small appliance.

⁷⁸ Management Response, p.vi.

⁷⁹ Ibid, p. 34.

⁸⁰ Ibid, p. 35.

⁸¹ Ibid, p. 30.

⁸² Ibid p. 30.

claim. Management clarifies that even so, such a claim could only be investigated if it were raised by a government that was party to such transactions. Furthermore, Management points out that the previous loans were not intended to benefit a certain group over another.⁸³

52. **Management Response and Actions.** Management “believes that extensive due diligence has been carried out during the preparation process and, through such due diligence, compliance with the Bank guidelines, policies and procedures, including those applicable to the matters raised in the Request, has been ensured.” Therefore, Management holds the view that “the Requesters’ rights or interests have not been, nor will they be, directly and adversely affected.” Moreover, Management states that it would like to continue a dialogue with civil society during implementation and supervision and is committed to closely monitoring progress on all the issues mentioned in the Request for Inspection, as well as monitoring of the Borrowers obligations with respect to the Project.⁸⁴

E. ELIGIBILITY

53. The Panel must determine whether the Request satisfies the eligibility criteria set forth in the 1993 Resolution establishing the Panel and the 1999 Clarifications,⁸⁵ and recommend whether the matters alleged in the Request should be investigated.

54. As part of this process, the Panel has carefully reviewed the Request and the Management Response. Moreover, Panel Chairperson Roberto Lenton, together with Executive Secretary Peter Lallas and Operations Officer Mishka Zaman visited South Africa from May 10, 2010 through May 13, 2010. During its visit, the Panel team met with groundWork, Earthlife Africa, Government officials, Eskom Holdings staff, and Bank staff. The Panel team also visited Lephalale in Limpopo Province where the Requesters live, and met with the signatories of the Request for Inspection. Moreover, while in Lephalale, the Panel team met with local councilors, traditional chiefs, representative of local NGOs, business fora, unions, and local residents claiming to be affected by the Medupi power plant. The Panel met with members of national and local NGOs and academics in Johannesburg. The Panel wishes to express its appreciation to everyone mentioned above for sharing their views and exchanging information and insights with the Panel.

55. The Panel also wishes to thank the World Bank Country Office in South Africa for providing relevant information and assisting with logistical arrangements, and the World Bank Project team based in Washington for briefing the Panel team on relevant aspects of the Project prior to the visit.

56. The Panel team flew to Lephalale and observed the Medupi power plant, the Matimba power plant, the Grootegeluk Colliery, and sand mining along the Crocodile River from the air. On its return journey from Lephalale to Johannesburg, the Panel team drove through the Waterberg Biosphere Reserve whose southwestern end is located 40 kms south of the Medupi power plant. This brief visit to the Reserve provided the Panel team an appreciation of the landscape of the area and its flora and fauna.

⁸³ Management Response, p. 33.

⁸⁴ Management Response, p. 21.

⁸⁵ Conclusions of the Board’s Second Review of the Inspection Panel (the “1999 Clarifications”), April 1999.

57. The Panel is satisfied that the Request meets all of the eligibility criteria set forth in the 1993 Resolution and Paragraph 9 of the 1999 Clarifications.
58. During the visit, the Panel confirmed that the Requesters are legitimate parties under the Resolution to submit a Request for Inspection to the Inspection Panel. The Requesters are affected parties who have common interests and common concerns, and reside in the Borrower's territory. The Request therefore satisfies item (a) of the said Paragraph 9.
59. The Panel confirms that the Request "*assert[s] in substance that a serious violation by the Bank of its operational policies and procedures has or is likely to have material adverse effect upon the requesters,*" as per the requirement of Paragraph 9(b).
60. The Requesters assert that the Project will cause a range of significant environmental, social, and economic adverse impacts as noted previously. They state this harm will arise both from the Medupi power plant itself and cumulatively from Medupi, Matimba and other large scale power projects⁸⁶ planned for the area, and would include air pollution, proliferation of ash dust in the area, water contamination and reduction in the availability of water supply for domestic and farm use, harm to local eco-tourism and farming, and other impacts. The Requesters also stated they had not received relevant information about the Medupi power plant and its potential impacts despite having requested it several times. The Requesters further claim that the country systems approach relied upon in this Project by the Bank "*will be inadequate to protect peoples' health and well-being,*" and that these impacts have not been adequately identified and mitigated.
61. The Requesters views and concerns were reiterated and supported by representatives of civic bodies, local and national NGOs, local councilors, and academics whom the Panel met during its visit (see Observations below). The Panel also received supplemental written information which elaborated upon these concerns.
62. The Panel confirmed that the World Bank was aware of the concerns of the Requesters in advance of the Request for Inspection. The Requesters' representatives corresponded with Bank Management prior to the submission of the Request for Inspection. However, the Requesters indicated they were not satisfied with the response received from Management. The Panel is therefore satisfied that the Request "*does assert that the subject matter has been brought to Management's attention and that, in the Requesters' view, Management has failed to respond adequately demonstrating that it has followed or is taking steps to follow the Bank's policies and procedures.*" Hence, the Request meets the requirement of Paragraph 9(c).
63. The Panel notes that the subject matter of the Request is not related to procurement, as required by Paragraph 9(d).
64. The Credit closing date is October 31, 2015. There had been no disbursements at the time the Panel received the Request and the Request therefore satisfies the requirement in Paragraph 9(e) that the related Loan has not been closed or substantially disbursed.

⁸⁶ The Panel was informed that these include the 4800 MW Kuseli power plant in the Mpumalanga Province which is under construction (PAD p. 204) and the Sasol Mafutha coal-to-liquid plant which is in pre-feasibility stage and planned for construction in Limpopo Province (source: Sasol 2009 Annual Report available at http://www.sasol.com/sasol_internet/downloads/sasol_review_2009_1256294725446.pdf).

65. Furthermore, the Panel has not previously made a recommendation on the subject matter of the Request. Therefore, the Request satisfies Paragraph 9(f).

F. OBSERVATIONS

66. During its visit, the Panel met with a range of concerned people and local community members from the Lephallale area in addition to the Requesters and their representatives. These individuals echoed and amplified upon the concerns stated in the Request for Inspection related to environmental, social, and economic harm resulting from the Project, and asked for their concerns to be conveyed to the Bank. On the other hand, Management states that there has been due diligence throughout the Project process to ensure policy compliance and that the Requesters “rights or interests have not been, nor will they be, directly and adversely affected.”⁸⁷

67. **Use of Country (Borrower) Systems.** As noted in the Panel’s Notice of Registration to the Board, the Bank is applying OP 4.00 on Country (Borrower) Systems to this Project. The Panel notes in this regard the June 2004 “*Joint Statement on the Use of Country Systems*”⁸⁸ issued by the then Inspection Panel Chairperson and the Senior Vice President and General Counsel, and supported by the Board and Management, which confirms that the role of the Panel would not change in Use of Country Systems projects and states that the Panel would continue to investigate issues of compliance during project design, appraisal and implementation. Under OP 4.00, the Bank considers, among other things, whether a borrower’s environmental and social safeguard system is “equivalent” to the Bank’s, and also assesses “*the acceptability of the borrower’s implementation practices, track record, and capacity*” before deciding on the use of borrower systems.

68. The Request for Inspection raises specific concerns about the application of OP 4.00 to the Project as noted above. The Requesters and other local people met during the Panel’s eligibility visit echoed these concerns, and highlighted in particular concerns about whether the Bank has properly assessed issues of implementation practices, track record and capacity as required by the policy in light of past experiences with the energy sector.

69. **Local Impacts.** The Panel team was struck by the intensity of concern expressed by a wide range of local residents from very different backgrounds and vocations about the social, environmental, and economic impacts of the Medupi power plant at the local level. Simultaneously, there is concern over inadequate disclosure of information and consultation with local people about these potential impacts, and about potential solutions to them.

70. Almost all residents met by the Panel expressed concern that the water requirements of the Medupi power plant would reduce the availability of water from the nearby Crocodile River for domestic and agriculture use, leading to serious harm. Some contend that the Project was financing a large

⁸⁷ Management Response, p. 21.

⁸⁸ “*Joint Statement on the Use of Country Systems Mexico Decentralized Infrastructure Reform and Development Project (R2004-0077, 0077/3)*”, Issued by the Chairperson of The Inspection Panel and Senior Vice President and General Counsel, June 8, 2004. Available at: <http://siteresources.worldbank.org/EXTINSPECTIONPANEL/News%20And%20Events/20235994/6-10Joint%20StatementInspPanGC.pdf>

pipe system to withdraw water from the River, which would not only infringe on water needed for other uses, but would lead to further large-scale water-withdrawal by other planned power plants in the area.

71. The Panel team was shown sand mining along the Crocodile River allegedly for the construction of the Medupi power plant. Local residents claimed that most of the mining was taking place without proper licenses. They are concerned that this large-scale sand extraction is damaging the river bed, degrading the aquifer, and reducing the availability of water for drinking and irrigation purposes.
72. A number of residents complained that the Medupi power plant would result in significant harm due to air pollution deposition, and cited experiences with the already existing Matimba power plant in support of these claims. Several farmers complained that transmission lines will cross their lands haphazardly, leading to significant harm to their livelihoods which depend on eco-tourism and game-hunting. Residents also contend that municipal services will not be able to cope with the expansion in population and infrastructure which is likely as a result of the Medupi power plant. They noted, for example, that the existing sewerage treatment plant is unable to treat waste generated by the existing population, and showed the Panel team untreated waste water lying in open trenches.
73. The Panel team also met with individuals who said their relatives were buried at the Medupi power plant site. They said that in some instances graves were exhumed without informing relatives, and in others relatives were not provided compensation to meet the expenses of exhumation rites. Poorer area residents also believe that they do not and will not benefit from electricity from the grid, because they cannot afford to pay for the installation of pre-paid meters to access the 50 kilowatt hours (KWh) Free Basic Electricity (FBE) policy.⁸⁹
74. Traditional leaders met during the visit highlighted their concerns about a lack of access to jobs for local residents and that promises made by the Medupi project about local development were not being kept.⁹⁰ Their concern was stressed by other individuals and civic organization representatives in the community, who stated that unemployment was high and believed that a number of actions could be taken by the Project and the Government to train local youth for jobs and support community development. The traditional leaders expressed an overall frustration about not being consulted or kept informed about the Medupi power plant, and conveyed to the Panel team in person their serious concerns.
75. The Requesters and nearly all the other area residents met by the Panel team during its visit expressed concern over the cumulative impacts of the Medupi power plant with other existing and planned power plants in the area (as noted above) and expressed reservations about whether water resources in the region could support these activities. The Requesters also believe water supply for the Medupi power plant will lead to a reduction in water levels in the Limpopo River which is the international boundary between Botswana and South Africa. Many residents clarified that they were not against development or the Medupi power plant *per se*, but are worried that the area is

⁸⁹ This concern was reflected in meetings the Panel had with other people from urban areas who said they were hugely affected by electricity tariff increases and indicated their lack of access to the FBE policy for the same reasons cited earlier by Lephalale residents.

⁹⁰ The Medupi power plant was of concern to the Seleka Traditional Council, Mokuruanyane Traditional Council, and the Shongoane Traditional Council. All three Traditional Councils are said to represent their respective tribes.

industrializing rapidly without a holistic plan or a set of principles which could guide such development. There is broad concern that the potential cumulative impacts of the Medupi power plant and other plants had not been studied adequately, and that significant potential harms will not be adequately planned for and mitigated.

76. **Broader Impacts.** The Panel heard widespread concern that the externalities of the Project at local, national, and international levels, including its climate change implications, had not been properly assessed. The Panel heard skepticism about how the Project could enable South Africa to meet its climate change commitments, particularly when combined with other power sector activities planned in the region.
77. Management, as noted above, believes that it has properly and adequately complied with the relevant Bank policies, and that appropriate mitigation and other measures are in place to address potential negative impacts associated with the construction of the Medupi power plant. Management states in its Response that public consultation and disclosure related to the Project was undertaken by Eskom and the Bank in an open and transparent manner; that extensive analysis of environmental, social, and human health effects carried out in the EIA by Eskom concluded that risk to human health will be low, adverse environmental impacts will be mitigated, water consumption by the Medupi power plant will be as minimal as possible, and cultural heritage discovered in the Project area will be treated in a manner consistent with Bank policy. Management concludes by stating “*extensive due diligence*” has been done during Project preparation and compliance with Bank “*guidelines, policies, and procedures has been ensured*”. Therefore, Management believes the “*Requesters’ rights or interests have not been, nor will they be, directly and adversely affected.*”⁹¹

G. CONCLUSION

78. The Requesters and the Request meet the eligibility criteria set forth in the Resolution that established the Inspection Panel and the 1999 Clarifications.
79. The Panel notes that there are conflicting assertions and differing views on issues of harm and compliance with policies and procedures raised in the Request for Inspection, as evidenced by the various statements made in the Request, in the Management Response, and in the Panel’s meetings with affected people and with Bank staff. In order to ascertain compliance or lack thereof with Bank policies and procedures in the design and implementation of the Project, the Panel must conduct an appropriate review of all relevant facts and applicable policies and procedures. This can be done only in the course of an investigation.
80. In light of the observations noted above, the Panel recommends that an investigation be carried out on the issues raised by the Request that relate to allegations of violations of World Bank operational policies and procedures. The Panel’s investigation will also report on any steps and actions taken by Management during the course of the investigation to address the issues of compliance and the concerns raised by the Requesters.

⁹¹ Management Response, p. 21.