



CAO ASSESSMENT REPORT

Complaint regarding IFC's Bidco Bev. & Det. Project (#33385)

Kalangala, Uganda

June 2017

Office of the Compliance Advisor Ombudsman
for the
International Finance Corporation and
Multilateral Investment Guarantee Agency,
Members of the World Bank Group
www.cao-ombudsman.org

About CAO

The Office of the Compliance Advisor Ombudsman (CAO) is the independent accountability mechanism for the International Finance Corporation (IFC) and the Multilateral Investment Guarantee Agency (MIGA), members of the World Bank Group. CAO reports directly to the President of the World Bank Group, and its mandate is to assist in addressing complaints from people affected by IFC/MIGA projects in a manner that is fair, objective, and constructive, and to enhance the environmental and social outcomes of those projects.

For more information, see www.cao-ombudsman.org.

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LIST OF ACRONYMS

BFA	Bugala Farmers Association
Bidco	Bidco Africa Limited, Bidco Uganda and Oil Palm Uganda Limited
CAO	Office of the Compliance Advisor Ombudsman
GoU	Government of Uganda
FAO	Food and Agriculture Organization of the United Nations
IFAD	International Fund for Agricultural Development
IFC	International Finance Corporation
KDLG	Kalangala District Local Government
KOPGA	Kalangala Oil Palm Growers Association
KOPGT	Kalangala Oil Palm Growers Trust
MIGA	Multilateral Investment Guarantee Agency
NAPE	National Association of Professional Environmentalists
OPUL	Oil Palm Uganda Ltd.

1. OVERVIEW

In January 2017, CAO received a complaint related to IFC's investment in Bidco Africa Limited (Kenya) ("project sponsor"). Bidco Africa has an operation in Uganda through Bidco Uganda, a refinery plant located in Jinja, Uganda. Bidco Uganda currently refines palm oil from crude oil produced by Oil Palm Uganda Ltd (OPUL), a subsidiary of Bidco Uganda. OPUL is responsible for managing the plantations in Kalangala, and for receiving raw produce and initial processing before transporting the produce, by water, to Bidco Uganda's refinery in Jinja. Bidco Uganda refines, brands, and distributes for sale all final products.

The complaint was filed against Bidco-Africa Limited by the National Association of Professional Environmentalists (NAPE) on behalf of approximately 40 farmers belonging to the Bugala Farmers Association (BFA), located on Bugala Island, Kalangala District, Uganda (the complainants). The complaint raises concerns of environmental damage due to deforestation for the purposes of growing oil palm plantations, lack of compensation for expropriated land, impacts of the project on out-growers, and loss of livelihood.

NAPE alleges that there is a direct link between the IFC project sponsor Bidco Africa Limited, Bidco Uganda and OPUL in Uganda (together referred to as "Bidco"). Bidco Africa Limited is a substantial shareholder in Bidco Uganda, who in turn, owns 90% of OPUL. NAPE alleges that Bidco Africa Limited intends to use the palm oil produced by OPUL, in the production of its products in Kenya.

In February 2017, CAO found the complaint eligible and commenced the assessment of the complaint, which included a field visit to Uganda, where the complainants are based, and Kenya, where the IFC project sponsor is situated. CAO's assessment concluded with both the project sponsor and the complainants opting for a dispute-resolution process. This CAO Assessment Report provides an overview of the assessment process, including a description of the project, the complaint, the assessment field visit, and the next steps.

2. BACKGROUND

2.1 The Project

IFC has an active project with Bidco Africa Limited, a Kenyan private company that generates revenues from the sale of edible oils, cooking fats, personal care and beauty products, detergents and laundry soaps, animal feeds, and baking products. IFC's investment in Bidco Africa Limited consisted of an A-loan of up to US\$23 million and a syndicated B-loan of up to US\$13.5 million, to support the construction and operation of an extension of Bidco Africa Limited's detergent facility in Thika and a new beverage facility in Tatu City, Kenya. The total project was estimated at US\$46 million.

2.2 The Complaint

In January 2017, CAO received a complaint regarding Bidco Africa Limited's operations in Uganda. NAPE who filed a complaint on behalf of BFA, alleges that there is a direct link

between the IFC project sponsor, Bidco Africa Limited, Bidco Uganda and OPUL in Uganda (together referred to as “Bidco”).

The complainants claim that Bidco, appropriated land from smallholder farmers, providing little or no compensation, and cleared 18,000 acres of pristine forest, forcing farmers to resettle and leaving them without resources to sustain themselves and their families. The complaint also raised concerns about working conditions of Bidco workers. The complainants produced newspaper articles, videos, and research conducted by NAPE, Friends of the Earth International, and academics in support of the complaint. A more detailed description of the issues raised in the complaint and during the assessment is outlined in Section 3.1 below.

3. ASSESSMENT SUMMARY

3.1. Methodology

The aim of the assessment is to obtain a better understanding of the issues and concerns raised by the complainants, through gathering of information from different stakeholders without making judgement on the merits of the complaint. The assessment also seeks to establish which CAO process the complainants and the IFC project sponsor would like to pursue, the Dispute Resolution process or the Compliance function for appraisal of IFC’s performance (see Annex A for CAO’s complaint-handling process).

The assessment of the complaint was conducted through:

- a desk review of project documentation;
- meetings with the IFC project team in Nairobi, Kenya;
- meetings with Bidco Africa representatives in Nairobi, Kenya;
- meetings with OPUL representatives in Bugala Island, Uganda;
- meetings with the complainants in Bugala Island, Uganda and their representatives NAPE;
- a meeting with representatives of the Government of Uganda (GoU) in Kampala and Bugala Island, Uganda;
- a meeting with representatives of civil society organizations and community members in Bugala Island; and
- site visits to the alleged affected areas in Bugala Island, Uganda.

3.2. Summary of Issues

This section of the report provides a summary of all the issues relevant to the complaint that were reported to CAO during the assessment phase, without judgment by CAO on the merits of the issues raised.

Complainants’ perspective

The issues raised by the complainants fell into four broad categories;

- I. Expropriation of land with inadequate or no compensation;
- II. environmental degradation;
- III. challenges faced by the out-growers; and

IV. poor working conditions of Bidco workers.

I. Expropriation of land with inadequate or no compensation

The complainants allege that Bidco, together with the GoU, are responsible for taking land from more than 100 smallholder farmers in Bugala Island, Kalangala District, for the purposes of palm oil production, in contravention of IFC Performance Standard 5 (Land Acquisition and Involuntary Resettlement). The complainants reported that the land was surveyed and cleared without the consent of the land occupants. The results of the valuations were not disclosed to the occupants. However, some farmers were coerced into accepting the proposed compensation rate which were allegedly inequitable, as they did not consider the value of the houses and the crops that were on the land prior to the appropriation or resettlement.

Another group of farmers claimed not to have received any compensation, because of an ongoing dispute about the size of the land they occupied. One occupant alleged that he occupied 49 acres of land, whereas the offer for compensation was for only seven acres. The aggrieved farmers, formed the BFA and filed a lawsuit against Bidco for inequitable and/or lack of compensation. The claim is currently before the Ugandan High Court. The BFA indicated that they represent approximately 40 farmers. However, due to the long delay in resolving this matter, the number of farmers still pursuing compensation has dropped to approximately 20 farmers.

The complainants also asserted that the expropriation of land resulted in landlessness and food insecurity. Those who received compensation for land could not afford to buy alternative land, because the land prices were higher than the compensation received. Without land, most of them were left with no source of income to provide for their families. Farmers alleged that when the palm oil project began on the island, many farmers were compelled to switch from growing coffee, cassava, and banana (matoke), to growing palm trees, and had to sell their crops to Bidco at prices lower than the market rate. As a result, more food had to be imported from the mainland, making the cost of food on the island higher.

II. Environmental Degradation:

The complainants stated that Bidco is engaging in environmentally destructive practices that violate IFC Performance Standard 6 (Biodiversity Conservation and Sustainable Management of Living Natural Resources). The complainants reported that 18,000 acres (between 30 and 50 percent) of pristine rainforest have been cleared on Bugala Island, to make way for the company's palm oil plantation and processing facility. This has resulted in decreased rainfall. Farmers were not given the option to sell timber cleared for the plantation, nor to use it as charcoal.

Further, the complainants alleged that in the process of planting oil palm, Bidco also failed to observe the 200-meter buffer zone required by the Environmental Impact Assessment. In places where the buffer zone was in place, due to landlessness and food insecurity, the buffer zone was used by local farmers to plant food.

The complainants stated that the uncontrolled use of fertilizer and pesticides, coupled with the inadequate buffer zone, has caused the chemicals to flow into the lake. This has reduced the number of fish in the lake and impacted the livelihood of the local fishing community. The

complainants also claim that the chemicals have had detrimental effects on the health of the people who use the lake for drinking and on cattle grazing near the plantations. Furthermore, the use of fertilizer and pesticides negatively impact the growth rate of other crops.

Complainants alleged that Bidco is using a poisonous cover crop on new palm plantations to protect the palms. This cover crop allegedly prevents anything planted alongside it, from growing. The cover crop tends to spread very fast into other areas that are not part of the plantation, further preventing any other crop from growing near the plantations. The complainants also claim that the poisonous cover crop has resulted in the death of animals.

III. Challenges faced by the out-growers

The complainants feel that Bidco is not keeping their end of the agreement with regards to treatment of out-growers. The price they pay the farmers for their crop is below international standards. The price also fluctuates, with no clarity on the causes of the fluctuation. Because of the exclusivity agreement between Bidco and the farmers, the farmers are precluded from selling their produce to any other company in Uganda or processing the oil themselves. In instances where the quality of the crop is poor, Bidco does not return the unused crop, nor do they pay the farmers for the bad crop. Bidco also does not pay for the white inner seed of the palm fruit which they use to make soap. Payment to out-growers for their produce is often late. Farmers are also required to purchase fertilizer from Bidco at allegedly overpriced rates. It is also alleged that the agreement requires farmers to make exorbitant loan repayments, including additional interest over and above the amount stated in the loan agreement.

iv. Labor-related complaints

The complainants stated that Bidco employees working on the palm oil plantations were almost exclusively from outside of Bugala Island, leading to an influx of migrant workers. This influx has resulted in the spread of various infectious diseases, such as HIV, and a spike in the crime rate. The complainants also state that the workers are poorly paid; are forced to provide their own safety equipment; work long hours without overtime payment; have no benefits, and live in poor conditions.

Bidco's perspective

Bidco's perspectives on the complaint were obtained from a series of meetings with Bidco Africa Limited in Kenya, as well as national and district government representatives and OPUL in Uganda. Bidco expressed concerns about the legitimacy of the complaint and the intentions of the complainants. Given the ongoing media campaigns against the company, there was concern that the purpose of the complaint was to ensure that Bidco's access to international funding is curbed. However, Bidco indicated its openness to hear concerns and issues if they are legitimate and raised by legitimate complainants. Bidco also provided contacts of relevant people in the GoU and OPUL in Uganda who are more directly involved with the situations in Kalangala and could give a better perspective on the complaint.

According to Bidco, the palm oil project is a GoU project, assigned to Bidco through an open tender and funded by the International Fund for Agricultural Development (IFAD), with initial support from the UN Food and Agriculture Organization (FAO). The GoU earmarked 11,200 ha of land on the island for the project. Of this, 7,700 ha were given to Bidco, which planted

palm trees on 6,440 of those hectares. The remainder was left for the mandatory 200m buffer zone between the lake and the plantations. A further 4,000 ha were set aside for smallholders. Since processing began in 2011, 1,110 small holders have participated in the project, 600 of whom are women.

In response to the specific components of the complaint, Bidco's perspective was as follows:

I. Expropriation of land with inadequate or no compensation

Bidco explained that all the land acquired and given over to them by the GoU, was unencumbered, except for a claim by one farmer in Bumanji where land ownership is disputed. Because of the complex land ownership history in Uganda, the claimant in Bumanji was not aware that the land had a landlord. When the project commenced, the GoU purchased the land from the landlord and resettled the people who were living on the land to a demarcated area on the plot. Farmers were offered land titles and compensation for their crops and property. All of these farmers were moved to the demarcated area and compensated, except for one who refused to accept the compensation, but continues to live in the demarcated area.

Bidco is of the view that there is only one outstanding issue of compensation. However, the farmer who was not compensated has mobilize support from others who now claim that their compensation was also inadequate. This group of claimants formed the BFA and initiated the court case against Bidco. Bidco reported that several attempts were made by Bidco and the GoU to resolve the issue amicably. However, since the amounts claimed by the complainants were very high, no settlement was reached. Although the responsibility to acquire land rests with the GoU, Bidco was willing to engage with the BFA to ensure a peaceful environment for its operations.

I. Environmental degradation

Bidco stated that, in 2007, a court case was filed against Bidco for environmental degradation and destruction of the forest reserves. The court dismissed the case after ruling that there was insufficient evidence of environmental degradation and that Bidco had no hand in clearing forest reserves. Bidco also informed us that they committed 50 million UGX (about USD 13,800) per annum to safeguard forest reserves on the island. With regards to the cover crop, Bidco stated that it is not poisonous and it serves the purpose of preventing the growth of weeds and also ensuring that soil or fertilizers do not run into the lake. Once the palm grows, the cover crop dies naturally because of too much sunlight.

Bidco also stated that the reduction in the number of fish in the lake has nothing to do with the fertilizers, but rather with illegal fishing methods. The Ugandan Army has been deployed to the area to monitor illegal fishing. Every quarter, Bidco conducts tests of the lake water for consumption quality. The results are posted at the district government offices and have not shown any problems with the water.

II. Challenges faced by the out-growers and project organization

Bidco informed us that they do not deal directly with the out-growers. The KOPGT deals with the farmers through the Kalangala Oil Palm Growers Association (KOPGA), which currently has a membership of nearly 2,000 farmers. The loan received by the farmers was an initiative of the GoU. The funds were received from IFAD and are administered by the GoU through

KOPGT, which is responsible for loan recovery. The loans are repayable, after a four-year period, with a third of the produce. As part of the deal, farmers are also provided with seedlings and fertilizer. Bidco is not involved in the loan process but referred us to KOPGT and KOPGA for more detail on the operation of the out-growers.

Bidco stated that the price paid for the palm produce is not arbitrarily set, but is set by a pricing committee that uses a formula based on international oil palm prices. Although farmers were not initially part of the pricing committee, in December 2016, following protests, it was decided that they would be represented on the pricing committee to promote transparency. The farmers, GoU, and Bidco meet on a monthly basis to resolve any problems in relation to the project. There is also a local radio program that broadcasts weekly and gives the farmers, the district officials, and Bidco an opportunity to air their views. The radio program does not yet have a call-in service, but serves as a means of providing information about the project. Bidco affirmed that the project is working well and farmers are receiving 1.5 billion UGX per month for the produce sold to Bidco. With regards to fertilizer, Bidco stated that they import good-quality fertilizer and sell it to KOPGT, which then sells it on to the farmers, to ensure quality crops.

III. Poor working conditions of Bidco workers

Bidco indicated that the workers get paid an above-average wage based on Ugandan standards. Bidco also provides housing and health care for all its employees. The health care facilities provided by Bidco are not exclusively for staff, and can be utilized by other members of the community. Bidco also indicated that the district government has a labor office where workers can file complaints. Once a complaint is filed, the company will meet with the employee and the district government to resolve the issues.

4. NEXT STEPS

Both the complainant and Bidco are open to engaging in a dispute-resolution process to try to resolve the matter. The GoU indicated its willingness to participate in the process, if the disputants gave consent, because it was the GoU's responsibility to acquire land for the project. Both parties have given consent for the GoU to participate in the process. However, both Bidco and the GoU expressed reservations about engaging with parties who had already received compensation.

The CAO dispute resolution process is scheduled to commence in June 2017.

ANNEX A. CAO COMPLAINTS HANDLING PROCESS

The Office of the Compliance Advisor Ombudsman (CAO) is the independent accountability mechanism for the International Finance Corporation (IFC) and the Multilateral Investment Guarantee Agency (MIGA), members of the World Bank Group. CAO reports directly to the President of the World Bank Group, and its mandate is to assist in addressing complaints from people affected by IFC/MIGA-supported projects in a manner that is fair, objective, and constructive, and to enhance the environmental and social outcomes of those projects.

The initial assessment is conducted by CAO's Dispute Resolution function. The purpose of CAO's assessment is to: (1) clarify the issues and concerns raised by the complainant(s); (2) gather information on how other stakeholders see the situation; and (3) help stakeholders understand the recourse options available to them and determine whether they would like to pursue a collaborative solution through CAO's Dispute Resolution function, or whether the case should be reviewed by CAO's Compliance function.

This document is a preliminary record of the views heard by the CAO team, and explanations of next steps, depending on whether the parties choose to pursue a Dispute Resolution process or prefer a CAO Compliance process. *This report does not make any judgment on the merits of the complaint.*

As per CAO's Operational Guidelines,¹ the following steps are typically followed in response to a complaint that is received:

Step 1: **Acknowledgement** of receipt of the complaint

Step 2: **Eligibility:** Determination of the complaint's eligibility for assessment under the mandate of the CAO (no more than 15 working days)

Step 3: **CAO assessment:** "Assess the issues and provide support to stakeholders in understanding and determining whether they would like to pursue a consensual solution through a collaborative process convened by CAO's Dispute Resolution function, or whether the case should be handled by CAO's Compliance function to review IFC's/MIGA's environmental and social due diligence. The assessment time can take up to a maximum of 120 working days."

Step 4: **Facilitating settlement:** If the parties choose to pursue a collaborative process, CAO's dispute resolution function is initiated. The dispute resolution process is typically based on or initiated by a Memorandum of Understanding and/or mutually agreed-upon ground rules between the parties. It may involve facilitation/mediation, joint fact finding, or other agreed resolution approaches leading to a settlement agreement or other mutually agreed and appropriate goal. The major objective of these types of problem-solving approaches will be to address the issues raised in the complaint, and any other significant issues relevant to the complaint that were

¹ For more details on the role and work of CAO, please refer to the full Operational Guidelines: http://www.cao-ombudsman.org/documents/CAOOperationalGuidelines_2013.pdf

identified during the assessment or the dispute resolution process, in a way that is acceptable to the parties affected.²

OR

Compliance Appraisal/Investigation: If the parties opt for a Compliance process, CAO's Compliance function will initiate an appraisal of IFC's/MIGA's environmental and social due diligence of the project in question to determine whether a compliance investigation of IFC's/MIGA's performance related to the project is merited. The appraisal time can take up to a maximum of 45 working days. If an investigation is found to be merited, CAO Compliance will conduct an in-depth investigation into IFC's/MIGA's performance. An investigation report with any identified non-compliances will be made public, along with IFC's/MIGA's response.

Step 5: **Monitoring** and follow-up

Step 6: **Conclusion/Case closure**

² Where stakeholders are unable to resolve the issues through a collaborative process within an agreed time frame, CAO Dispute Resolution will first seek to assist the stakeholders in breaking through impasse(s). If this is not possible, the Dispute Resolution team will inform the stakeholders, including IFC/MIGA staff, the President and Board of the World Bank Group, and the public, that CAO Dispute Resolution has closed the complaint and transferred it to CAO Compliance for appraisal.