



DISPUTE RESOLUTION CONCLUSION REPORT AGRI-VIE – 02/MUBENDE, UGANDA FEBRUARY 2018

This report summarizes the CAO Dispute Resolution process and outcomes in relation to the Agri-Vie-02/Mubende complaint.

BACKGROUND

IFC's Project

The IFC-supported Agri-Vie Agribusiness Fund is a private equity fund with the purpose of making equity investments in agribusiness companies in Southern and Eastern Africa. In its portfolio, Agri-Vie has invested in the New Forests Company (NFC), an African forestry company planting new, and managing existing, forests in East Africa. NFC was granted a license to plant trees and invest in forestry in 2005 in the Namwasa and Mubende forest areas, demarcated by the Government of Uganda as Central Forest Reserves.

The Complaint

In December 2011, four affected community representatives, Oxfam International, Oxfam Great Britain, and the ULA brought a complaint to the Compliance Advisor Ombudsman (CAO) on behalf of people living around the Central Forest Reserves in Mubende and Namwasa.

The complainants claimed that thousands of community members had been forcibly evicted from their land to make way for commercial forestry plantations, thereby destroying private property, foreclosing livelihoods, and compromising health and education opportunities. The complaints also voiced broader concerns about IFC's due diligence related to the project, including lack of meaningful consultation regarding the evictions.

CAO Assessment

CAO found the complaint eligible in January 2012 and conducted an assessment to discuss options for

addressing the complaint with the relevant parties. The CAO team visited the site and met with the parties in February and March 2012.

During the assessment process, NFC and the complainants indicated a willingness to engage in a dispute resolution process to find mutually acceptable outcomes and solutions to the issues raised in the complaint. The dispute resolution process facilitated by CAO formally started in April 2012. A dispute resolution process does not entail a verification of the issues raised in the complaint. Its primary focus is to provide an opportunity for the parties to resolve the issues through agreement

DISPUTE RESOLUTION PROCESS

Building Trust

Early meetings facilitated by CAO between the complainants' and NFC's representatives were tense. This was the first time the complainants' representatives sat around a table with NFC in a negotiating context. Given the disputed history and the media campaign, there was little trust between the parties, and it was not clear what each party wished to achieve.

Community members also felt unable to engage effectively with NFC because they lacked experience and skills in negotiation. Therefore, CAO provided extensive support over many months to improve the negotiation capacity of the community representatives. CAO also offered training on CAO's dispute resolution methodology to NFC.

The laws of Uganda placed restrictions on what NFC could do. However, through both parties' willingness to listen and engage as equals, with discipline and commitment,

and with help from the mediator, they moved towards mutually acceptable solutions. This reflected the seriousness and willingness of the parties to find common ground.

Identifying Shared Interests

It was important to the complainants that NFC heard their stories and understood their experiences. They wanted NFC to acknowledge that the lives they had built in the forest had been destroyed. The community felt that they had gone from being land-holders to being internally displaced and indigent. They believed that they were entitled to reparation, compensation, and resettlement.

NFC was frustrated by what it felt were false claims made in the media. They reiterated that they believed the government had managed a long process of voluntary movement out of the reserves by people who always knew they were illegally occupying government land and would have to leave one day. This process of voluntary vacation was done strictly in accordance with the laws and constitution of Uganda. The company claimed it had no involvement or responsibility for any evictions. NFC's view was that it was a legal licensee operating within strict government policy, invited by the Government of Uganda to invest in forestry, creating permanent jobs, rural economic development and poverty alleviation while sustainably reforesting forest land in partnership with local communities.

While NFC believed that it had no obligations towards these specific communities, given its stated mission of private sector driven rural development for all of its neighboring communities, NFC was committed to addressing the grievances to establish and maintain good, lasting relationships with their neighbors. They expressed a commitment to seeking just and sustainable outcomes with the complainants.

Preparing the Parties for Effective Engagement

A detailed verification exercise, supported by local government authorities, was conducted to identify and register community members who had a legitimate claim to be a part of the mediation process, and who wanted to participate. The complainants elected and mandated a small group of representatives to negotiate on their behalf and consultative structures were strengthened to ensure that the representatives could both confirm their mandates and provide feedback to community members on a regular basis.

A great deal of time was spent building the capacity of complainants' representatives to effectively engage with NFC on a more equal footing. This capacity building entailed a formal training program, and ongoing meetings between the mediation team and community representatives prior to most joint sessions during which negotiations took place.

Negotiations on the Issues

Several months after the initial joint meetings, where issues were identified and ground rules established, the parties commenced negotiations on the issues. Priority issues were isolated and clarified. These provided a structure and focus for the negotiations, and consisted mainly of the following:

- emotional damage;
- physical harm and injury; and
- loss of homes, land, livelihoods and amenities;
- reputational damage and financial losses that NFC claimed were caused by the media campaign;
- desire for restoration, resettlement, and compensation;
- desire for recognition of NFC's right and social licence to operate, as well as protection of its assets and conservation of the forests.

“... we had just been evicted from our land, we took the case in the courts of law, of the government, we went to Nakawa, paid court fees but we were chased out even before the court read our case, I lost hope... I felt very happy when I saw that the way we are following is the negotiation way since we had seen the mediators and...they were not siding with any one, whenever we would bring our issues they would listen, if it was NFC they would listen too.”

William Bakeshisha,
Affected community member and
Chairperson of the Mubende
Bukakikama Cooperative Society

“As socially responsible investors, we found ourselves in an impossible situation clearly restricted by what we could do by the Government of Uganda, who govern our license to operate, on the one hand, and subject to a false, vitriolic and damaging media campaign by muscular left wing NGOs on the other hand, with devastating impact that almost forced the company to close and lay off 2,000 people. We hoped the CAO mediation process could deliver a fair resolution for everyone that would enable us to build a lasting partnership with the community.”

Alex Kyabawampi, Corporate Social
Responsibility (CSR) Manager, NFC
Uganda

The parties negotiated these priority issues through bilateral and joint meetings facilitated by the CAO team. Oxfam, through its Uganda office, provided support to the complainants throughout the mediation process.

Reaching Agreement

After almost 18 months of mediation, the parties settled on a framework agreement in March 2013. In July that year, it was expanded into a final agreement endorsed by the complainants and NFC, which



Negotiations reaching agreement stage, July 2013.

represents full and final settlement on all issues raised by the parties.

In the agreement, the parties committed to a joint program of sustainable development. They agreed that the complainants would create and become founding members of a community Cooperative that would act on behalf of affected community members. The Cooperative drew its members from five sub-counties in the Mubende district: *Bukuya, Kasanda, Kitumbi, Karwana and Madudu*, and was therefore named the Mubende Bukakikama Cooperative Society (first two letters of each sub-county name). To gain membership, community members provided proof of identity, and proof that they previously settled in Namwasa Central Forest Reserve.

The Cooperative is legally registered, members have adopted a constitution, and it is governed according to the terms of the Ugandan Cooperative Societies Act.

The Cooperative has a Board of nine members and an Executive Committee, elected at each Annual General Meeting. In addition, it has a number of sub-committees: a Land Committee, Women’s Committee, Youth Committee, and a Governance Oversight Committee with audit powers.



The Coop welcoming members to its AGM, 2016.



Community and Company representatives at the signing of the final agreement, 2013

The parties agreed to the following aspects of the agreement being made public:

- NFC undertook to provide significant financial support to the Cooperative, expanding its social responsibility investment programme to meet some of the specific needs of the community. NFC also agreed to work closely with the Cooperative and its members to build more solid and lasting mutually beneficial relations with the community.
- The complainants agreed to respect NFC's legal rights to operate within the Namwasa Central Forest Reserve, and both NFC and the complainants agreed to act lawfully and to engage with each other to develop long term cooperation and good neighborliness.
- The parties agreed to work closely together on a range of programmes and projects aimed at the long term sustainable development of the community. A joint development forum was created to facilitate the decision-making process.

Monitoring Outcomes

During the next four years (2013-2017), CAO monitored the parties' implementation of the terms of the agreement.

As part of this monitoring process, CAO appointed a Community Development Coordinator to work closely with the Mubende Cooperative, primarily on income generation projects. The coordinator provided strategic, planning, and practical support throughout the monitoring period. The CAO team also conducted regular field visits, consulting the parties where needed and monitoring progress.

At the end of September 2017, CAO convened a final closure meeting in Kampindu with over 1,000 cooperative members, NFC leaders, government officials, representatives of all key stakeholders, and local dignitaries. The parties provided feedback to CAO on the process and confirmed that the complaint issues had been resolved to their satisfaction.

Both parties agreed the other had demonstrated goodwill during the implementation period and all commitments in the agreement had been fully implemented. They discussed possible ways to continue building upon the positive, mutually beneficial relationship they had developed through the process.

OUTCOMES OF THE DIALOGUE PROCESS

As a result of the agreement between the parties, and the subsequent work done by NFC, the Cooperative Development Coordinator, and the Cooperative, the following has been achieved:

Land for Resettlement and Small-Scale Farming

The Cooperative was able to purchase 576 acres of productive land in the Mubende district. Four hundred and fifty-three households were carefully selected by the Resettlement Committee, in consultation with members and the Board, and have been resettled on the land, now known as the Kampindu Settlement.

Priority had to be given to households most in need as the Cooperative was not able to purchase enough land to resettle every member. Some members declined assistance as they had already settled elsewhere. Others remain on a waiting list, and will be offered resettlement if the Cooperative is able to secure more land. The Cooperative continues to explore ways to generate revenue, acquire additional land, and support all members.

Each household received a small plot on which to build a home, as well as one acre for agricultural activity. Each household was encouraged by the Cooperative to grow subsistence crops and as soon as possible to start generating surplus for the market. Since 2013, the land has been transformed into a highly productive area for small-scale farming.

The Cooperative has also renovated a building on the site that now serves as their office, and has constructed a business centre (office, storage space, meeting room), a clinic, and dispensary.



Multi-purpose business center and Cooperative offices built by community members.

Development Initiatives and Income Generation Projects

In the terms of the agreement, a Joint Development Forum was established to plan community development initiatives for NFC to implement directly. To date, the following projects have been completed with support from NFC:

- 54 goats were purchased and provided to homesteads on the understanding that each first-born kid would be donated to a next household. To date, 80 goats have been distributed.
- Two boreholes were constructed and hand pumps installed.
- 300 chickens were purchased and distributed to households.
- The road leading to Kampindu was graded and repaired.
- A shed was constructed and one maize milling machine was purchased and installed. Selected members of the Cooperative were trained in the



Powered Maize Mill and Shed at Kampindu Settlement

operation and maintenance of these mills.

- A group of women was selected and trained in the manufacturing of charcoal briquettes from waste vegetation, and a briquette-making machine was provided.
- 69 beehives were provided to the community to produce honey.
- 6000 pine and eucalyptus seedlings were provided reforestation and income generate. NFC guaranteed a market for the wood.
- A double-classroom school building was constructed and basic school supplies were provided, including timber benches.
- Two rain water tanks, and two grain storage silos were provided.



Maize silos and water tank at Kampindu.

- A community clinic has been established at Kampindu, equipped with basic facilities and medicines, and with a medical practitioner on duty a few days per week.



The Clinic at Kampindu

- A large pond was constructed and seeded with tilapia fingerlings for a fish-farming project.



Fish farming with Tilapia at Kampindu

- Passion fruit seedlings were provided for the community to plant a grove.
- School buildings in Kitumbi and Kalwana were upgraded and repaired.
- The roof of a nursery school in Bukaya was replaced.

Livelihood Restoration and Improved Living Conditions

Through the partnership between NFC and the Cooperative significant progress has been made in the restoration of livelihoods and improvement of living conditions for the complainants:

- The complainants have settled onto land legally owned by the Cooperative and a rapidly growing, integrated and cohesive village has emerged. Starting with rudimentary tent-like structures constructed out of local timber and plastic tarpaulin, Cooperative members have built permanent brick-and-clay homes. They have tilled the soil, planted numerous crops, invested in long-term income generating assets, and harvest food each season for their own consumption, with a surplus to sell.
- Childcare groups have formed to care for infants while their mothers and fathers work the land or are employed by NFC. The primary school is in full operation and has graduated its first group of young pupils.

- The Cooperative continues to represent the interests of the community. It engages with its members on a wide range of issues, planning and supporting them to build livelihoods, resolve disputes, and develop new initiatives to the benefit of the whole community.
- After some initial difficulties, local authorities have embraced this new community and are beginning to provide government services as they would to any other community in the district.

“...where I am now, I feel a lot of strength ... we should forget the past and focus on the future...we are working with the company now to make life better for everyone.”

Jane Bazirete, Vice-Chair of the Mubende Cooperative

INSIGHTS FROM THE PROCESS

A Flexible Process

The CAO team and the parties had to adopt a highly flexible approach to the dispute resolution process given the level of mistrust between the parties, fear about the potential consequences of entering negotiations, and imbalance in the parties' negotiation capacity. After an initial engagement where the ground rules and structure for the mediation process were agreed, separate meetings were utilised to move the process forward. When the parties were brought together for the first joint meeting, and throughout mediation, it was a smaller number of representatives who met. These representatives created feedback loops with their constituency to ensure ongoing mandates and sharing of information.

The dispute resolution process would not have been as successful, and may have floundered early on, without the flexibility of adapting and adjusting to the needs of the parties, as well as the parties' willingness to adapt to each other's needs.

Role of Local and International NGOs

Oxfam and the Uganda Land Alliance played a primary role in assisting the community to lodge a complaint with CAO, helping the complainant community prepare for engagement, become well organised, and create structures for mandating their representatives at the negotiating table. The emotional and financial support of the NGOs helped the community representatives to sustain their involvement over the long dispute resolution process.

However, the CAO process started in a tense context. International and local NGOs were running media campaigns blaming NFC for the complainants' circumstances. The campaign generated deep mistrust and it was only when it was suspended by agreement with the NGOs that NFC was prepared to engage with the community to seek solutions.

Ultimately, it was the sustained commitment, trust, and goodwill of NFC and community representatives in the dispute resolution process—in a difficult and testing environment—that contributed to its eventual success.

Value of Building Relationships

According to the complainants, their biggest lesson from the process was the realization that they needed to, and could, build a strong relationship with NFC. This was based on recognition of the company's right to operate, their mutual interests, and respect. The Cooperative and NFC both recognize that they will be neighbors for many years to come, and will both benefit from ongoing cooperation on development initiatives and in protecting NFC's forests.

CAO Reflections Regarding Potential for Early and Preventive Measures

In CAO's discussions with the parties during and after settlement, they expressed a common sentiment that more could, and should, have been done early on to prevent the escalation of the dispute around the project. This could take a number of forms:

- Affected communities and IFC clients could enter discussions at the project design phase about potential social and environmental impacts, and strategies to deal with them. Environmental and Social Impact Assessments should alert clients to potential conflicts, and could recommend early intervention during the pre-funding, loan approval, or planning phases.
- In some instances, it is as important for IFC clients to deal with perceptions regarding their responsibility for environmental and social project impacts as it is dealing with the reality of the situation. Despite the application of the IFC Performance Standards, there may be instances where clients are willing to go beyond what is required or may need to address disputes of fact in the application of those standards.
- Learning from the Mubende process will inform IFC practice moving forward. IFC substantially updated its Resettlement Handbook in 2017 to reflect learning from various CAO cases, including Mubende. The handbook includes detailed guidance on government-led resettlement challenges.

and the Cooperative are committed to an ongoing engagement and finding more opportunities to partner on aligned interests. This will contribute to a thriving and vibrant community that continues to look for ways to strengthen its sustainability.

NFC and the community have created a mutually beneficial partnership that can serve as a model for other companies and communities, demonstrating the value that can be created and shared by working together toward a common goal. CAO is proud of the outcomes achieved through this process and notes the goodwill and commitment demonstrated by the communities and NFC throughout the process, without which these outcomes would not have been possible.

CONCLUSION

CAO concluded its involvement in this case after confirming that all aspects of the agreement between NFC and the Cooperative have been implemented. The Mubende community is restoring livelihoods and maximizing the benefits of owning land, cooperating through established community structures, and having a good working relationship with NFC and the government. There are many challenges that lie ahead, particularly with regard to accessing a sustainable supply of potable water, school supplies, clinic supplies, and primary health care. CAO has informed members of the donor community about these challenges in the hope that they may be able to provide support to the Mubende community. NFC