



March 8, 2017
Office of the Compliance Advisor Ombudsman (CAO)

COMPLIANCE APPRAISAL: SUMMARY OF RESULTS

Appraisal of IFC investment in Bujagali Energy (IFC Project #24408) and MIGA investment in World Power Holdings (MIGA Project #6732), Uganda.

CAO complaint number 05.

The Bujagali Hydropower Project (“the Project”) consists of the development, construction and maintenance of a run-of-the-river hydropower plant with a capacity of up to 250 MW. In 2005, Bujagali Energy Limited or BEL (“the Client”) was awarded the Project by the Government of Uganda. The Project was approved in 2007.

IFC’s investment included two loans totaling \$130 million. In parallel, MIGA issued a \$115 million guarantee to World Power Holdings Luxembourg for its investment in the Project. These investments formed part of a financing package totaling approximately \$900 million, in which several other financial institutions also participated. The Project required about 113 hectares of temporary land-take for the Project’s ancillary facilities (including rock quarries). Construction was completed in 2012.

The Client engaged Salini Costruttori as the Engineering, Procurement and Construction Contractor (“the EPC Contractor” or “Salini”) for the Project to construct the dam. Salini operated a quarry about 2 kilometers upstream or south of the dam (near Buloba village on the west bank), where it blasted rocks used for the construction. The EPC Contractor conducted additional blasting activities on the site for the dam in order to clear the location for the dam’s powerhouse.

In May 2011, CAO received a complaint from a group of people representing community members who claimed to be affected by the construction of the Project. They raised concerns related to: i) compensation for loss of land acquired by the Project, as well as any affected structures and crops on such land; ii) damages to houses and impacts to health related to blasting during dam construction; and, iii) compensation for the loss of livelihood. As detailed below, the issues related to loss of livelihood were resolved in September 2012, and the issues concerning land-taken, and related compensation, for the construction of the transmission line and the dam are currently under monitoring by CAO’s dispute resolution team. On January 12, 2017, the outstanding issues concerning blasting impacts were transferred to the CAO compliance function for appraisal. CAO’s dispute resolution monitoring report issued at the time of the transfer to compliance noted that 102 blasting related complaints remained unresolved. This compliance appraisal deals with the blasting related complaints.

The purpose of a CAO compliance appraisal is to determine whether a complaint raises substantial concerns regarding environmental or social outcomes or issues of systemic importance to IFC/MIGA. In deciding whether to initiate an investigation, CAO weighs factors including the magnitude of the environmental and social (E&S) concerns raised by a complaint, results of a preliminary review of IFC/MIGA’s E&S performance in relation to these issues, and a more general assessment of whether a compliance investigation is the appropriate response.

In this case, CAO reviewed documents produced by IFC and the Client. CAO considered documents produced as a result of a mediation process undertaken by the European Investment Bank Complaints Mechanism (EIB-CM) as they related to the blasting impacts. The CAO compliance team also benefited from a field visit conducted in the context of the ongoing investigations for the Bujagali 04 and 06 complaints (related to labor issues and working conditions and non-payment of wages) and the Bujagali 07 complaint (concerning compensation for loss of assets and crops) to meet with representatives of the Client and the complainants raising concerns about blasting impacts. Finally, CAO met with IFC staff to discuss their understanding of the issues raised by the complaint.

On the basis of the above, CAO has questions as to the adequacy of IFC's review and supervision of blasting related risks of this project. In particular, CAO has questions as to whether IFC took appropriate steps to ensure that blasting related risks had been assessed and mitigation planned for in accordance with good international industry practice prior to the commencement of construction. CAO also has questions as to IFC's supervision of the effectiveness of the client's grievance mechanism in handling the blasting related complaints.

Concerns regarding blasting impacts on public health and structures could, unmitigated, raise substantial concerns regarding social impacts, such as would justify a CAO compliance investigation. In this case, however, the complaints resulted in additional studies, changes in blasting practices, and the development of a program to assess and repair damage to structures within a defined area. While the CAO complainants remained unsatisfied by the quality of repairs and possible impacts outside the 1800-meter radius, CAO does not consider that these outstanding issues rise to the level of raising substantial concerns regarding the social impacts of the Project such that would justify a compliance investigation.

CAO also notes the complainants' allegations regarding blasting impacts on human health and animal productivity. However, these issues were secondary to the complaints regarding impacts on structures and are not considered sufficiently substantial to justify a compliance investigation.

As a result, CAO has decided to close this case.

About CAO

CAO's mission is to serve as a fair, trusted, and effective independent recourse mechanism and to improve the environmental and social accountability of IFC and MIGA.

CAO (Office of the Compliance Advisor Ombudsman) is an independent post that reports directly to the President of the World Bank Group. CAO reviews complaints from communities affected by development projects undertaken by the two private sector arms of the World Bank Group, the International Finance Corporation (IFC) and the Multilateral Investment Guarantee Agency (MIGA).

For more information about CAO, please visit www.cao-ombudsman.org.

Table of Contents

About CAO.....	3
Acronyms.....	5
I. Overview of the Compliance Appraisal Process	6
II. Background	7
Investment.....	7
Complaint and CAO Assessment	8
III. Analysis.....	9
IFC Policies and Procedures	9
Pre-investment Environmental and Social Review.....	9
<i>Requirements</i>	9
<i>IFC's pre-investment review of the Project</i>	11
<i>Client Assessment of Blasting-related Risk</i>	11
<i>Conclusion</i>	12
Project Supervision.....	12
<i>Requirements</i>	12
<i>General supervision</i>	13
<i>Supervision of Blasting Related Risk</i>	13
<i>Conclusion</i>	14
IV. Decision	14

Acronyms

Acronym	Definition
BEL	Bujagali Energy Limited
CAO	Office of the Compliance Advisor Ombudsman (IFC and MIGA)
E&S	Environmental and Social
EHS	Environmental Health and Safety
EIB	European Investment Bank
EIB-CM	European Investment Bank - Complaints Mechanism
EPC	Engineering, Procurement and Construction
EPRP	Emergency Preparedness and Response Plan
ESRS	Environmental and Social Review Summary
ESRP	Environmental and Social Review Procedures
IDA	International Development Association
IFC	International Finance Corporation
MIGA	Multilateral Investment Guarantee Agency
NEMA	National Environmental Management Authority
PS	Performance Standards
SEA	Social and Environmental Assessment

I. Overview of the Compliance Appraisal Process

When CAO receives a complaint about an IFC or MIGA project, the complaint is referred for assessment. If CAO concludes that the parties are not willing or able to reach a facilitated solution, the case is transferred to the CAO compliance function for appraisal and potential investigation.

A compliance appraisal also can be triggered by the CAO vice president, IFC/MIGA management, or the president of the World Bank Group.

The focus of the CAO compliance function is on IFC and MIGA, not their client. This applies to all IFC's business activities, including the real sector, financial markets and advisory. CAO assesses how IFC/MIGA assured itself/themselves of the performance of its business activity or advice, as well as whether the outcomes of the business activity or advice are consistent with the intent of the relevant policy provisions. In many cases, however, in assessing the performance of the project and IFC's/MIGA's implementation of measures to meet the relevant requirements, it will be necessary for CAO to review the actions of the client and verify outcomes in the field.

In order to decide whether a compliance investigation is warranted, CAO first conducts a compliance appraisal. The purpose of the compliance appraisal process is to ensure that compliance investigations are initiated only for those projects that raise substantial concerns regarding environmental and/or social outcomes, and/or issues of systemic importance to IFC/MIGA.

To guide the compliance appraisal process, CAO applies several basic criteria. These criteria test the value of undertaking a compliance investigation, as CAO seeks to determine whether:

- There is evidence of potentially significant adverse environmental and/or social outcome(s) now, or in the future.
- There are indications that a policy or other appraisal criteria may not have been adhered to or properly applied by IFC/MIGA.
- There is evidence that indicates that IFC's/MIGA's provisions, whether or not complied with, have failed to provide an adequate level of protection.

In conducting the appraisal, CAO will engage with the IFC/MIGA team working with the specific project and other stakeholders to understand which criteria IFC/MIGA used to assure itself/themselves of the performance of the project, how IFC/MIGA assured itself/themselves of compliance with these criteria, how IFC/MIGA assured itself/themselves that these provisions provided an adequate level of protection, and, generally, whether a compliance investigation is the appropriate response. After a compliance appraisal has been completed, CAO can close the case or initiate a compliance investigation of IFC or MIGA.

Once CAO concludes a compliance appraisal, it will advise IFC/MIGA, the World Bank Group President, and the Board in writing. If a compliance appraisal results from a case transferred from CAO's dispute resolution, the complainant will also be advised in writing. A summary of all appraisal results will be made public. If CAO decides to initiate a compliance investigation as a result of the compliance appraisal, CAO will draw up terms of reference for the compliance investigation in accordance with CAO's Operational Guidelines.

II. Background

Investment

The Bujagali Hydropower Project (the “Project”) consists of the development, construction, and maintenance of a run-of-the-river hydropower plant with a capacity of 250 MW. The Project is located on the Nile River, at Dumbbell Island, approximately 8 kilometers north of the existing Nalubaale and Kiira power plants, in the Republic of Uganda.¹ In 2005, Bujagali Energy Limited (“BEL”, “the Client”) was awarded the Project by the Government of Uganda.

In 2008, IFC invested in the Project, providing two loans totaling \$130 million. Project sponsors were identified as Industrial Promotion Services (Kenya) Ltd. (IPS(K)), the industrial development arm of the Aga Khan Fund for Economic Development (AKFED) and SG Bujagali Holdings, Ltd., an affiliate of Sithe Global Power LLC.²

In parallel, MIGA issued a \$115 million guarantee to World Power Holdings Luxembourg, a subsidiary of Sithe Global Power, covering its investment in the Project against possible breach of contract. The MIGA guarantee to World Power Holdings Luxembourg was amended in 2012 to include an additional \$5.3 million of coverage.³ In 2014 MIGA issued additional guarantees totaling \$9.5 million to Absa Bank Limited of South Africa and Standard Chartered Bank of the United Kingdom, two of the existing senior lenders for the Project.⁴ Further, in 2016 MIGA disclosed a potential guarantee of up to \$330 million to cover SN Power’s equity investment in the Project.⁵

As is commonly the case when IFC and MIGA make investments in the same project, IFC took the lead on E&S issues. As a result, this compliance appraisal focuses on actions taken by IFC.

The total cost of the Project was expected to be approximately \$750 million including approximately \$126 million in interest during construction, other financing costs and reserve accounts.⁶ Additionally, the International Development Association (IDA), a public sector arm of the World Bank Group, provided \$115 million in partial risk guarantee to support commercial financing for the Project.⁷ Other lenders are the European Investment Bank (EIB), African Development Bank (AfDB), Deutsche Investitions-und Entwicklungsgesellschaft (DEG), Société de Promotion et de Participation pour la Coopération Economique (PROPARCO), KfW Entwicklungsbank – German Development Bank, Agence Française de Développement (AFD) and Nederlandse Financierings-Maatschappij voor Ontwikkelingslanden N.V. (FMO). These institutions, in addition to IDA, IFC, and MIGA, are jointly referred to as “the Lenders”.

¹ Further details about the Project can be found on the IFC website: <http://goo.gl/qbJaLc>.

² IFC’s Summary of Proposed Investment, December 20, 2006 - <http://goo.gl/vqymTH> (accessed March 3, 2017).

³ MIGA’s Summary of Proposed Guarantee to Bujagali Energy Ltd., July 27, 2012 - <http://goo.gl/NBKBYV> (accessed March 3, 2017).

⁴ MIGA’s Summary of Proposed Guarantee to Bujagali Energy Ltd., August 27, 2014 - <http://goo.gl/dmbsWz> (accessed March 3, 2017).

⁵ MIGA’s Summary of Proposed Guarantee to Bujagali Energy Ltd., June 10, 2016 - <http://goo.gl/HvHh5Z> (accessed March 3, 2017).

⁶ IFC’s Summary of Proposed Investment, December 20, 2006 - <http://goo.gl/vqymTH> (accessed March 3, 2017).

⁷ World Bank’s Project Appraisal Document, April 2, 2007 - <http://goo.gl/qhcZfG> (accessed March 3, 2017).

The Project was classified as Category A, indicating that it had significant potential E&S risks and impacts.⁸ The Project included the development and operation of a quarry to produce the necessary aggregates and rock-fill material needed for the construction of the dam.⁹ The IDA-IFC-MIGA Joint-Board approved the Bank Group's investment in the Project in April 2007 and IFC signed a loan agreement with the Client in December 2007.

Complaint and CAO Assessment

In May 2011, CAO received a complaint from a group of 29 individuals from different local communities affected by the construction of the Project.¹⁰ The complaint raised concerns relating to compensation for lost livelihoods; and damage to houses and impacts to health related to blasting during dam construction.

During CAO's assessment of the complaint, the stakeholders agreed to pursue a collaborative dispute resolution approach, and agreed to three separate, parallel processes around the major issues: (i) loss of livelihoods; (ii) land-taken, and related compensation, for the construction of the transmission line and the dam; and (iii) damage caused by construction blasting. The first set of issues were resolved in September 2012¹¹ and the second set of issues are currently under monitoring by CAO's dispute resolution team.¹²

In relation to the issues around harms from blasting activities, CAO's Assessment Report, completed in December 2011, states that "several community members contend that blasting during construction has damaged their homes and livestock, and has had a negative impact on their health and that of their families. They allege that compensation for these damages has never been provided."¹³ Salini conducted blasting activities between 2007 and 2011.

The complainants affected by blasting activities agreed to pursue a mediation led by the European Investment Bank Complaints Mechanism (EIB-CM), which had received a similar complaint earlier on December 2, 2009. The process led by EIB-CM resulted in what was termed a "Mediation Solution" and was implemented during 2014 and early 2015. CAO complainants were not satisfied with this process and considered the complaint unresolved. The Client indicated that given several processes were underway, including a legal process, it would be unable to participate in further mediation.¹⁴

On January 12, 2017, due to the voluntary nature of CAO's dispute resolution process, and in accordance with CAO's Operational Guidelines, this complaint was referred to the CAO

⁸ According to IFC's Sustainability Framework, Category A projects are those with potential significant adverse social or environmental risks and/or impacts that are diverse, irreversible or unprecedented.

⁹ Bujagali Hydropower Project Social and Environmental Assessment – Executive Summary, December, 2006, p. ES-28.

¹⁰ Details of the complaint (Bujagali-05) can be found on CAO's website: <https://goo.gl/q6vQ5G> (accessed March 3, 2017).

¹¹ Interim Ombudsman/Dispute Resolution Monitoring Report, January 2016 - <https://goo.gl/zyRdt7> (accessed March 3, 2017).

¹² Details of CAO Dispute Resolution's Monitoring Report and the Settlement Agreement regarding the Transmission Line issues can be found on CAO's website: <http://goo.gl/NzV3U6> (accessed March 3, 2017).

¹³ CAO Assessment Report, Bujagali-05, December 2011 - <https://goo.gl/xXeolc> (accessed March 3, 2017).

¹⁴ Details of CAO Dispute Resolution's Monitoring Report and the Settlement Agreement regarding the Transmission Line issues can be found on CAO's website: <http://goo.gl/NzV3U6> (accessed March 3, 2017).

compliance function for appraisal. CAO's dispute resolution monitoring report issued at the time of the transfer to compliance noted that 102 blasting related complaints remained unresolved.¹⁵

While the original complaint and CAO assessment report note alleged impacts from blasting on structures as well as impacts on human health and animal productivity, this appraisal focusses on the alleged impacts of blasting on structures. CAO has taken this approach because impacts on structures were the main point of concern in the original complaint and subsequent dispute resolution processes. Impacts on structures were also the focus of the blasting complainants' concerns during the CAO compliance team's field visit to the project site in January 2017.

III. Analysis

IFC Policies and Procedures

IFC's investment in the Project was committed under its 2006 Policy on Social and Environmental Sustainability ("the Sustainability Policy") and Performance Standards together referred to as the Sustainability Framework. Given the issues raised by the complainants, IFC's Performance Standard 4 (PS4) (Community Health, Safety and Security) is of particular relevance. Although the 2006 Performance Standards were in draft form at the time IFC conducted its initial review of the Project, they were in force before it was approved, and as such were applied. This represented good practice and was consistent with the Sustainability Policy.

The Project was supported by a joint team from IDA, IFC, and MIGA. IDA and IFC took the primary responsibility for E&S due diligence and project monitoring, with IFC taking the lead in relation to the Project's private sector elements.

IFC implements the commitments set out in the Sustainability Policy through its Environmental and Social Review Procedures (ESRP), which are updated periodically. The investment was approved under ESRP version 1.0, and supervised under subsequent updated versions of the ESRP.

Pre-investment Environmental and Social Review

At the pre-investment stage, IFC reviews the E&S risks and impacts of a proposed investment and agrees with the client on measures to mitigate these risks in accordance with the Performance Standards. For the purposes of this compliance appraisal, a key question is whether IFC conducted an adequate pre-investment review of the risks associated with the Project's related blasting operations.

Requirements

As a matter of policy, CAO notes IFC's commitment to carrying out its investment operations in a manner that "do no harm" to people or the environment. More specifically, IFC states that the negative impacts of projects it finances should be "avoided where possible, and if these impacts

¹⁵ Interim Ombudsman/Dispute Resolution Monitoring Report, January 2016 - <https://goo.gl/zyRdt7> (accessed March 3, 2017).

are unavoidable (...) reduced, mitigated or compensated for appropriately” (Sustainability Policy, para. 8).¹⁶

Prior to making an investment, IFC reviews the E&S risks and impacts of a project. The key question at this stage is whether IFC’s review was “appropriate to the nature and scale of the project, and commensurate with the level of E&S risks and impacts.”¹⁷ IFC bases its E&S review on the client’s E&S Assessment as well as its commitment and capacity to manage the expected E&S risks associated with the Project.¹⁸ As set out in PS1, the client’s E&S Assessment should consider all relevant E&S risks and impacts of the Project, including those identified in PS2 through PS8. Issues related to health and safety are mentioned specifically.¹⁹

PS4 (para. 1) addresses the client’s responsibilities as they relate to community health, safety and security. In line with IFC’s Sustainability Policy, one of the objectives of PS4 is to “avoid or minimize risks to and impacts on the health and safety of the local community during the project life cycle from both routine and non-routine circumstances.”

PS1 (para. 16) also requires that the client prepare an action plan to mitigate identified risks. Such action plan “may range from a brief description of routine mitigation measures to a series of specific plans” including, as a matter of example, Emergency Preparedness and Response Plans or Community Health and Safety Plans.

In general terms, PS4 (Para. 4) requires the client to evaluate risks and impacts to the health and safety of affected communities “during the design, construction and operation of a Project.” It requires the client to “design, construct, and operate and decommission the structural elements or components of the project in accordance with good international industry practice” (Para. 6).²⁰

PS4 also requires the Client to establish preventive measures “in a manner commensurate with the identified risks and impacts.” Such measures are expected to favor prevention or avoidance over minimization and reduction. A key requirement of PS4 is that the client disclose any Action Plan containing these measures (and any other relevant project-related information) to enable the affected communities to understand the risks and impacts. In this context, the Client is expected to engage the affected communities and agencies on an ongoing basis (Para. 5).

Relevant to the issues raised in the complaint, PS4 requires the client to assess the potential risks and impacts and to inform affected communities of potential significant hazards. The client’s emergency “preparedness and response activities, resources, and responsibilities,” are to be documented and disclosed as part of the Action Plan or other relevant document (Para. 12).

IFC does not finance activities that cannot be expected to meet the requirements of the Performance Standards over a reasonable period of time.²¹

The Project was also required to meet the World Bank Group’s 1998 Environmental Health and Safety (EHS) guidelines. However, these did not include specific measures relevant to blasting

¹⁶ This commitment is reflected in the objectives section of Performance Standard 1 (para. 1) which include: “to avoid or where avoidance is not possible, minimize, mitigate or compensate for adverse impacts on workers, affected communities and the environment.”

¹⁷ 2006 Sustainability Policy, para. 13.

¹⁸ 2006 Sustainability Policy, para. 15.

¹⁹ Performance Standard 1, para. 4.

²⁰ PS4 defines Good International Industry Practice (GIIP), as “the exercise of that degree of skill, diligence, prudence and foresight that would reasonably and ordinarily be expected from skilled and experienced professionals engaged in the same type of undertaking under the same or similar circumstances globally.”

²¹ 2006 Sustainability Policy, para. 15.

risks and impacts. In April 2007, IFC adopted new EHS Guidelines which included specific guidelines for Construction Materials Extraction.²² The IFC guidelines address stand-alone projects and extraction activities supporting construction, civil works, and cement projects. The guidelines note that blasting activities may affect surrounding populated areas and recommend, among other things, raising community awareness and emergency preparedness measures as well as monitoring measures (such as preconstruction surveys of buildings, infrastructure, and structures, including photographic and video image recording) to ensure that potential household damages caused by the project activities can be adequately identified and managed.

IFC's pre-investment review of the Project

The Social and Environmental Assessment Report (SEA) considered that the Project would need a total of 1,000,000 m³ of fresh rock. The dam itself would require 700,000 m³, while the remaining 300,000 m³ would be used for other facilities, such as cofferdams and access roads. Four potential sources of rock-fill materials were identified, including the main rock quarry site, which operation has given rise to this complaint.²³

IFC's E&S review of the Project was completed in December 2006. As documented in the E&S Review Summary (ESRS), the process considered technical, social development, environmental, and occupational health and safety information submitted by the Client, as well as information gathered during site visits by the Lenders' social and environmental specialists and consultants.

In relation to Community Health, Safety and Security, the ESRS noted that BEL would implement an Emergency Preparedness and Response Plan (EPRP) that will set out "the methods for dealing with emergencies arising during both construction and operation, and particularly those with potential effects on the neighboring and wider communities."²⁴ It was also envisaged that the EPRP would set out the means by which these measures will be communicated to affected communities. The document adds that BEL and the EPC Contractor would establish procedures to respond to grievances.

The ESRS does not refer to blasting risks specifically, nor does it discuss the preventative requirements of PS4. These issues were, however, addressed in some detail in the Client's SEA.

Client Assessment of Blasting-related Risk

The SEA identified noise and dust generated by the quarry-related blasting operations as impacts on the surrounding communities. Neither noise or dust from blasting were seen as significant impacts.²⁵ Nevertheless, the SEA identified mitigation measures to be implemented by the EPC contractor. These included:

²² See, Environmental, Health, and Safety Guidelines for Construction Materials Extraction, p. 9, available at: <http://www.ifc.org/wps/wcm/connect/d6bb0e80488551afa93cfb6a6515bb18/Final%2B-%2BConstruction%2BMaterials%2BExtraction.pdf?MOD=AJPERES&id=1323162191491> (accessed March 7, 2016).

²³ Social and Environmental Assessment – Main Report, December, 2006, p. 226.

²⁴ *Ibid.*

²⁵ Bujagali Hydropower Project Social and Environmental Assessment – December, 2006, p. 224 & 381. The Social and Environmental Assessment describes the likely noise from blasting as falling within relevant limits, and likely to be "of a comparatively low level and heard as a series of low frequency 'thuds' or 'rumbles' in the background."

- Developing a Blasting Notification Procedure to be used to inform local persons about the blasting schedule.²⁶
- Putting in place site-specific measures at the quarry, such as securing equipment, demarcating excavations and fencing areas with warning signs to keep non-authorized persons away.²⁷

The SEA referred to vibration as a construction related impact in general terms, but did not discuss specific risks related to vibration or air-overpressure caused by blasting.²⁸ Nevertheless, the SEA did require the EPC Contractor to prepare appropriate “safety and adjacent structure stability monitoring protocols,” which would be approved by the appropriate government and lender agencies.²⁹

Conclusion

The Project SEA identified risks related to blasting and required the design of safety and preparedness measures. At the same time, CAO notes the lack of discussion of potential impacts on local communities from blasting related vibration or air overpressure. Given that there were people living in close proximity to the Project site, CAO has questions as to whether IFC should have required additional analysis of blasting related risks and impacts in the SEA.

On the other hand, it was clear at the time SEA was written that detailed E&S management plans for construction related activity would need to be developed by the EPC contractor. In response to blasting risk, the SEA envisaged that these would include safety and adjacent structure stability monitoring protocols, subject to approval by the appropriate government authority and the Lenders.

As a result, IFC had an additional opportunity to review the Project’s approach to the management and monitoring of blasting related risks and impacts. However, CAO was not able to locate these protocols in IFC’s records, nor was it able to locate IFC’s review of such protocols. In this context, CAO has questions as to the adequacy of IFC’s E&S review of the Project.

Project Supervision

This section considers IFC’s supervision of the Project. It identifies relevant requirements and reviews steps taken by IFC to supervise the project’s E&S performance in light of the issues raised in the complaint.

Requirements

IFC is required to supervise a client’s E&S performance in accordance with its Sustainability Policy and ESRP. This includes a requirement to review project performance against client commitments in the investment agreement, and the social and environmental commitments (often referred to as action plans). In instances where a client is not fulfilling its commitments, IFC is required to work with the client to bring it into compliance, and to exercise appropriate remedies

²⁶ Social and Environmental Assessment – Main Report, December, 2006, p. 224.

²⁷ Social and Environmental Assessment – Main Report, December, 2006, p. 462.

²⁸ Air overpressure (or blast overpressure) is the pressure caused by a shock wave over and above normal atmospheric pressure.

²⁹ Social and Environmental Assessment – Main Report, December, 2006, p. 248.

if the client fails to reestablish compliance.³⁰ PS1 provides that client monitoring should be sufficient to “verify compliance” with project-related E&S requirements (para. 24).

General supervision

IFC’s supervision of the Bujagali Project is recorded in annual reviews of the Client’s E&S monitoring reports, commencing in 2009. IFC participated in joint supervision missions as part of the group of Lenders commencing in 2008. The Client also engaged a Panel of Experts to review and report on the Project’s E&S performance. IFC considered the reports of the Panel of Experts in the course of supervision. In addition, starting in the second half of 2007, the Client was providing a quarterly monitoring reports on the management of the social and environmental aspects of the Project, including the implementation of mitigation measures.

Supervision of Blasting Related Risk

As early as 2007, as part of project supervision, IFC was aware that residents and local businesses had alleged damages from blasting activities. In relation to these issues, it was noted that the EPC Contractor was enforcing a blasting safety radius of 300 meters, which constituted an exclusion zone. It was also noted that the EPC Contractor had produced a pre-construction Property Status Confirmation Exercise which included pictures of the properties within 500 meters of the blasting zone, identifying the state of all structures including cracks.

Throughout 2008, 2009, and 2010, the Client, the Panel of Experts, and the Lenders’ joint supervision missions noted complaints related to impacts from blasting activities. Such impacts mainly focused on cracks in houses. IFC’s supervision documentation from 2008 noted that the EPC Contractor and NEMA were separately undertaking investigations to establish if houses were in fact affected by the blasting at the construction site.

IFC’s’ supervision documentation from 2009 noted that the Client had a satisfactory system put in place for recording grievances and resolving them in a timely and fair or transparent manner. Nevertheless, complaints continued. In April 2010, the Panel of Environmental and Social Experts reported that the EPC Contractor had retained the services of an independent international firm to study the effect of blasting on communities, and that the Client was to review the results of this study.³¹ In the same period, IFC was informed that the Client had received no new complaints from people within a 500-meter radius from the blasting site. Subsequently, IFC was informed that none of the alleged damages were due to Project related blasting activities and forwarded the claims to its insurance and legal service for handling.

In July 2012, IFC’s review of its Client’s monitoring noted that NEMA had identified possible compromises for resolving the blasting claims. IFC noted that NEMA suggested that the cut-off distance for the consideration of blasting-related claims should be 3000 meters. NEMA also suggested that redress should be in the form of repairing cracks and not paying cash compensation. IFC’s review of the Client’s monitoring documentation also noted that the Client and NEMA were in on-going discussions to bring this matter to a resolution and that the EIB-CM was seeking a mediated settlement between the communities and the EPC Contractor.

In May 2013, over five years after the first blasting related complaints emerged, affected community members, the Client and NEMA (among others) reached an agreement through EIB-CM’s mediator to address concerns raised by complainants whose impacted structures were

³⁰ 2006 Sustainability Policy, para. 26.

³¹ Panel of Environmental and Social Experts, Sixth Review, January 2010, report dated April 2010, p. 12.

within a radius of 1800 meters from where the blasting site and complainants who had submitted claims within 1 month of the last date of blasting. As per this agreement, the mediator was tasked with hiring a surveyor to identify the damaged structures and prepare bills of quantities to estimate the cost of repair for each of these structures. The CAO complainants were not satisfied with this outcome, either because they rejected the Client's offer of repairs (demanding cash compensation instead), or because they did not meet the criteria for making a claim.

Conclusion

As noted above, IFC's supervision did not include the envisaged review of the Project's approach to the management and monitoring of blasting related risks and impacts before construction commenced.

IFC was aware of blasting related complaints from shortly after construction commenced in 2007, however, it is unclear whether IFC took appropriate measures to ensure that the project was responding to blasting related risks in accordance with the community health and safety requirements under PS4. Questions as to the adequacy of IFC's supervision of the effectiveness of the client's grievance mechanism also arise in this context.

At the same time, CAO notes additional studies commissioned by the Client and EIB-CM in response to the complaints regarding blasting impacts. CAO notes the steps taken by the client to resolve the blasting related complaints through the EIB-CM process, while at the same time acknowledging that a significant number of people are not satisfied with the outcomes of that EIB-CM process.

IV. Decision

The decision as to whether CAO should initiate a compliance investigation requires weighing a number of factors, including the magnitude of the E&S concerns raised by a complaint and a preliminary appraisal of IFC's performance in relation to these issues, as well as a more general assessment of whether a compliance investigation is the appropriate response.

In this case, CAO reviewed documents produced by IFC and the Client. CAO considered documents produced as a result of a mediation process undertaken by the European Investment Bank Complaints Mechanism (EIB-CM) as they related to the blasting impacts. The CAO compliance team also benefited from a field visit conducted in the context of the ongoing investigations for the Bujagali 04 and 06 complaints (related to labor issues and working conditions and non-payment of wages) and the Bujagali 07 complaint (concerning compensation for loss of assets and crops) to meet with representatives of the Client and the complainants raising concerns about blasting impacts. Finally, CAO met with IFC staff to discuss their understanding of the issues raised by the complaint.

On the basis of the above, CAO has questions as to the adequacy of IFC's review and supervision of blasting related risks of this project. In particular, CAO has questions as to whether IFC took appropriate steps to ensure that blasting related risks had been assessed and mitigation planned for in accordance with good international industry practice prior to the commencement of construction. CAO also has questions as to IFC's supervision of the effectiveness of the client's grievance mechanism in handling the blasting related complaints.

Concerns regarding blasting impacts on public health and structures could, unmitigated, raise substantial concerns regarding social impacts, such as would justify a CAO compliance

investigation. In this case, however, the complaints resulted in additional studies, changes in blasting practices, and the development of a program to assess and repair damage to structures within a defined area. While the CAO complainants remained unsatisfied by the quality of repairs and possible impacts outside the 1800-meter radius, CAO does not consider that these outstanding issues rise to the level of raising substantial concerns regarding the social impacts of the Project such that would justify a compliance investigation.

CAO also notes the complainants' allegations regarding blasting impacts on human health and animal productivity. However, these issues were secondary to the complaints regarding impacts on structures and are not considered sufficiently substantial to justify a compliance investigation.

As a result, CAO has decided to close this case.