



DISPUTE RESOLUTION CONCLUSION REPORT – UGANDA BIDCO-03/KALANGALA

This report summarizes the CAO dispute resolution process in relation to a complaint regarding the IFC-supported Bidco Project (#33385) in Uganda.

OVERVIEW

The Project

IFC has an active project with Bidco Africa Limited, a Kenyan private company that generates revenue 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.

The Complaint

In January 2017, CAO received a complaint regarding Bidco Africa Limited's operations in Uganda through its subsidiary, Oil Palm Uganda Ltd (OPUL). This is the third complaint received by CAO in relation to IFC's investment in Bidco Africa Limited. The complaint was filed by the National Association of Professional Environmentalists (NAPE), representing a group of 38 smallholder farmers (Bugala Farmers Association) living in Kalangala, Bugala Island ("the complainants"). NAPE alleged 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" or "the company"). Bidco Africa Limited is a substantial shareholder in Bidco Uganda, which, in turn, owns 90 percent of OPUL. NAPE further alleged that Bidco Africa

Limited intended to use the palm oil processed by OPUL in its production in Kenya.

In the complaint, the complainants claimed that Bidco cleared 18,000 acres of pristine forest and appropriated land without compensation, for the purpose of growing palm oil plantations. The farmers were subsequently forced to resettle elsewhere and were left without resources to sustain themselves and their families. The complaint also raised concerns about environmental degradation caused by the palm oil project and the working conditions of Bidco's workers.

The full complaint is available on CAO's website at: www.cao-ombudsman.org.

CAO's Assessment

CAO found the complaint eligible in February 2017 and completed an assessment of the issues in June 2017. CAO's assessment included a desk review of the project documentation, individual and joint phone calls and meetings with all the involved stakeholders (the complainants, Bidco and OPUL, the Government of Uganda, CSOs, and community members), and a field visit to the project site on March 24-31, 2017. During the assessment, the complainants and the company agreed to engage in a voluntary dispute-resolution process facilitated by CAO, to address the issues raised in the complaint.

The parties informed the CAO of a pending court case filed with the high court in Masaka on the same issues. They informed the court

of the CAO process and requested time to try and resolve the matter amicably. The court granted their request.

Pre-dispute-resolution sessions



Complainant, company government and landlord representatives

CAO convened the first joint meetings in July 2017, during which time the parties reached agreement on a set of guiding principles that would govern the dispute-resolution process. They further identified priority issues to be resolved during the mediation process, including:

1. compensation for appropriated land; and
2. resolution of multiple claims over the same land.

Other issues that had been raised in the initial complaint and during the assessment, regarding environmental degradation and the working conditions of Bidco's employees, were dropped by the complainants, as they were deemed by the complainants as no longer being an issue.

During the pre-mediation process, the complainants selected six individuals to represent the interests of the community during the dispute-resolution process. The representatives included four men and two women. It was agreed that NAPE would participate in the dispute-resolution process as an advisor to the community. The company also selected representatives for the process.

The Government of Uganda and the landowner of the contested land, were also brought into the dispute-resolution process, due to the role they played in the land-acquisition process. The government was responsible for acquiring land from the landlord, for the purposes of providing unencumbered land to Bidco for the oil palm project. Observer status was granted by the parties to the representatives of the Uganda National NGO Forum which is an independent national platform for NGOs in Uganda.

In an effort to level the playing field and equip parties with the necessary tools to effectively engage in the dispute-resolution process, CAO conducted capacity-building sessions with the complainants and their representatives, as well as with Bidco, the Landlord and the Government of Uganda. Training sessions were held with each party to sensitize them on what dispute resolution entails, the role of each party in the process and communication and negotiating skills.

DISPUTE RESOLUTION PROCESS

The dispute-resolution process commenced in July 2017. All meetings were conducted in English and Luganda to ensure that both the complainants and the company can conduct themselves in a language which they feel most comfortable with. On August 25, 2017, after a series of bilateral and joint meetings facilitated by CAO as part of the dispute-resolution process, the parties reached final agreement on all the issues subject to the dispute. CAO provided support during the negotiation process to help the parties address their respective concerns about the terms of the settlement. Each party consulted with its broader constituency prior to making final decisions and agreeing on the settlement. CAO met with the complainants and their six representatives, prior to the agreement being signed., to ensure that all the complainants understood the terms of

settlement. The draft settlement agreement was translated, line by line, into Luganda using an interpreter, so that all the six representatives and the rest of the complainants understood the content of the agreement, prior to signing the agreement.



CAO team meeting with the complainants to go over the terms of the offer prior to the agreement being signed.

Outcomes

As a result of the mediation process, the parties agreed to the following actions:

- **Providing compensation**

36 of the 38 members of the BFA would be compensated for appropriation of land that was acquired by the government and given to Bidco for its oil plantations. Two of the original 38 could not be traced. It was agreed that the BFA would receive a lump sum from the landlord working in collaboration with the company, which they would then allocate to each complainant based on a formula they devised. After much negotiation, the parties agreed on the lump sum to be paid. The complainants consulted among themselves to clarify how the formula would be applied and how much each individual complainant would receive. During the consultation among the complainants, only one out of 36, was not happy with the amount to be paid and the application of the formula. However, because the majority were happy with the lump sum amount, the complainants agreed to accept the offer. The complainants also agreed among themselves that prior compensation would not be taken into

account when allocating funds to each complainant.

- **Providing land transfer forms to Complainants**

It was further agreed that the complainants who remained on a portion of the contested land would receive land title for the portions they currently occupy, and that the land would be surveyed and formally transferred to them with the cooperation of the landowner. The local government committed to coordinate the survey and to facilitate the issuing of the new land titles from the landlord to the complainants.

- **Resolving multiple claims**

The parties agreed on 36 as the final number of BFA members, eligible for compensation. All other claimants who were not part of this complaint and who were previously compensated by the government for the loss of land, were not considered to be parties to the settlement agreement.



Representative of the BFA signing agreement



Representative of the company signing agreement

MONITORING IMPLEMENTATION AND CLOSURE

After the parties reached settlement, the CAO dispute resolution team began monitoring the implementation of the agreement as per the timeline agreed to by the parties (see Annex 1). The parties agreed that the monitoring function would continue for a few months, after which CAO would convene a closure plenary meeting to review the implementation and to handle any unresolved issues. It was also agreed that CAO would provide a one-day workshop for the parties to reflect on challenges and lessons learned during the process.

On October 1-6, 2017, CAO undertook a field visit to finalize the implementation of the agreement and conduct a closure session. At the time of the visit, both sides had fully implemented their obligations under the agreement, in accordance with the agreed schedule (Annex 1). However, 15 of the 36 members of the BFA expressed dissatisfaction with the amount paid in compensation, despite it being the agreed sum. Some also refused to take the land transfer forms provided by the landlord.

Attempts were made by the CAO team to re-engage the parties regarding the compensation amount. However, the landlord and the company were reluctant to re-engage, given the extensive consultation that took place among the complainants, with the guidance of their advisors, prior to the settlement agreement being signed.

At the end of the field trip, eight of the 36 complainants (BFA 8) decided not to proceed with the terms of the agreement, but rather to keep the money already paid as compensation and proceed with the court case. None of the BFA 8, indicated their dissatisfaction with the proposed compensation amount until after the compensation was paid. The other 28 complainants (BFA 28) finalized outstanding issues with the landlord, the government and

the company, including incorrect banking details and charting a way forward on how they could work with the company to initiate economic development in the community. The parties asked that the closure of the CAO process be postponed, to allow all parties an opportunity to reflect and review their situation, given the eight complainants who decided not to proceed with the terms of the agreement.



Discussion between the parties to try and re-negotiate compensation after the agreement was signed.

In December 2017, CAO returned to finalize the process. The position of the BFA 8 had not changed. They maintained that they would rather proceed to court, but refused to return the compensation paid as part of the settlement agreement. The landlord and company were satisfied that they had complied with all the obligations of the settlement agreement and further indicated their desire to work with the rest of the BFA 28 members to facilitate economic development in the community. It suggested, among other things, providing bursaries, access to its health facility, and assistance with agricultural technical skills.

The BFA 28 also spent some time deliberating on a structure and process that they could use to engage with the company going forward. They selected representatives who would be tasked with engaging with the company. They further expressed hope that the BFA 8 would review their position so that they could all move

forward together with economic development on the island.

CHALLENGES AND LESSONS LEARNED

As part of the closure meeting, the CAO team solicited views on the challenges and lessons learned from all parties involved in the process, including the including the BFA 28, the BFA 8, the company, the Government of Uganda (both at the local and national levels), NAPE, and the NGO Forum.

There was general sentiment from all parties that they learned a lot from the process conducted by the CAO. Despite the fact that some complainants were dissatisfied with the outcome, they felt that, overall, things changed because of the process.

Challenges identified by the parties:

- The complainants were divided and did not all want the same outcome from the onset.
- There were external influences on the community that attempted to derail the dispute-resolution process.
- There was very little trust between the complainants and the company.
- Parties were negotiating in bad faith.
- Some complainants did not trust the CAO process.



Mr. David Balironda from the Kalangala District Local Government Office identifying lessons learned from the process: “The CAO has provided a superb process. The process of the mediation has helped government learn how to better deal with communities.”

Lessons Identified by the parties:

- The parties identified the capacity building received prior to the mediation process, as a very useful process which helped them to be solution-oriented in the dispute resolution process. They felt that the mediation process itself was helpful and conducted with empathy and fairness taking into account each party’s views.
- Parties noted that the lessons they learnt from the process were not just at stakeholder level but also on a personal level. There was an understanding that a party does not have to be wrong to engage in a dispute-resolution process and that patience, will yield better results when dealing with communities.
- There was further recognition that people process information at different paces and therefore, may not always reach the same conclusion at the same time. Furthermore, parties to mediation sometimes have different needs, even if they are on the same side. They may reach different conclusions within one group and even change their minds after reaching agreement. But no one is forced to accept outcomes that they do not agree with and ultimately money does not always solve the problem.
- The parties acknowledged that the process had some positive outcomes. These include: a considerable reduction in the negative publicity received by the company and the Palm Oil project; the complainants felt that the company had become more accessible since the beginning of the process; and that the process was able to uncover truths, which were brought to light.

CONCLUSION

On conclusion of the CAO process in December 2017, Bidco and the BFA 28, agreed to meet in January 2018 to start working on economic development

initiatives. The BFA 8 indicated their intention to proceed to court in February 2018.

The conclusion report was circulated to all parties involved in the process to for factual review. The BFA 8 refused to engage in a factual review of the report. However, all the other parties reviewed the report and their

comments and amendments have been incorporated into this report.

ANNEX 1: Timeline for Implementation

ACTION	TIMELINE	RESPONSIBLE	COMMENT
DEMARCATIION OF LAND BY BFA	AUG 28 – 1 SEPT 2017	JOHN MUYISA CHAIR OF BFA ASSISTED BY BFA EXECUTIVE COMMITTEE	All 38 BFA members to be involved in the process; completion status to be reported to David Balironda, District Agricultural Officer. NAPE to communicate to CAO.
SURVEY OF BFA	4 – 8 SEPT 2017	DAVID BALIRONDA WITNESSED BY DAVID KUREEBA & EMMANUEL	All 38 BFA members to be present. Copies of survey report to be given to all parties.
PERSONAL ACCOUNTS FOR BFA MEMBERS & APPORTIONMENT OF MONEY TO BFA	11- 15 SEPT 2017	NSAMBA DESIRE & EXECUTIVE COMMITTEE OF BFA	Each BFA member advised to open an account with a bank & produce a list of names, bank account numbers and apportioned monies. This list to be given to Boaz Sserunanga agent for the landlord & copied to CAO, BIDCO, David Balironda and LC5 Willy Lugolobi.
ACTUAL DISBURSEMENT & DELIVERY OF LAND TRANSFER FORMS AS PER SURVEY REPORT	18 - 22 SEPT 2017	LANDLORD in the presence of BIDCO, Government representative, CAO, NAPE, Kalangala NGO Forum	All concerned members to sign the transfer forms and to acknowledge receipt of compensation.
PLENARY REVIEW & FOLLOW UP SESSION	2 – 6 OCT 2017	CAO	CAO to brief stakeholders in Kampala and Kalangala, review implementation, handle any unresolved issues.
LESSONS LEARNS WORKSHOP	2 - 6 OCT 2017	CAO	CAO to convene a one day workshop on lessons learnt with the relevant stakeholders except BFA. CAO will circulate a questionnaire on the process to all stakeholders

All documentation relevant to this case is available on CAO's website at www.cao-ombudsman.org