



OMBUDSMAN ASSESSMENT REPORT

**Fourth Complaint (Bujagali Energy-04) Regarding the Bujagali Energy Ltd. Project
(IFC #24408 & MIGA #6732)
Jinja, Uganda**

December 2011

*Office of the Compliance Advisor/Ombudsman
International Finance Corporation/
Multilateral Investment Guarantee Agency
www.cao-ombudsman.org*

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LIST OF ACRONYMS

BEL	Bujagali Energy Limited
CAO	Office of the Compliance Advisor/Ombudsman
EPC	Engineering, Procurement, Construction
IDA	International Development Association
IFC	International Finance Corporation
MAB	Medical Arbitration Board
MIGA	Multilateral Investment Guarantee Agency

INTRODUCTION

The Office of the Compliance Advisor/Ombudsman (CAO) is the independent recourse mechanism for the International Finance Corporation (IFC) and the Multilateral Investment Guarantee Agency (MIGA) of the World Bank Group. The 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 social and environmental outcomes of those projects.

The CAO assessment is conducted by CAO's Ombudsman 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) to help the CAO Ombudsman and the stakeholders determine whether and how they might be able to resolve the issues raised in the complaint.

This document is a preliminary record of the views heard by the CAO team, and explanations of next steps. *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: **Ombudsman assessment:** Assessment of the issues and provide support to stakeholders in understanding and determining whether a collaborative solution is possible through a facilitated process by CAO Ombudsman, or whether the case should be transfer to CAO Compliance for appraisal of IFC's/MIGA's social and environmental performance. The assessment time can take up to a maximum of 120 working days.

Step 4: **Facilitating settlement:** If the CAO Ombudsman process continues, this phase involves initiation of a dispute resolution process (typically based or initiated by a Memorandum of Understanding and/or a mutually agreed upon ground rules between the parties) through facilitation/mediation, joint fact-finding, or other agreed resolution process, leading to a settlement agreement or other mutually agreed and appropriate goal. The major objective 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 identified during the assessment or the problem-solving process, in a way that is acceptable to the parties affected².

OR

¹ For more details on the role and work of the CAO, please refer to the full Operational Guidelines: <http://www.cao-ombudsman.org/about/whoweare/index.html>

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

Compliance Appraisal/Audit: If a collaborative resolution is not possible, CAO Compliance will initiate an appraisal of IFC's/MIGA's social and environmental due diligence of the project in question to determine whether a compliance audit of IFC's/MIGA's intervention of the project is merited.

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

Step 6: **Conclusion/Case closure**

In March 2011 the CAO received a letter of complaint from eleven persons who had, at one time or another, been employed in the construction of the Bujagali Hydropower project – a run-of-the-river power plant on the River Nile supported by IFC and MIGA. The signatories of the complaint were writing on behalf of themselves and more than 30 other employees who had worked for Salini Costruttori - the EPC contractor in charge of constructing the power plant. The complainants raised concerns about the compensation they received (or lack thereof) and the actions taken by the company in response to work-place accidents.

On March 22, 2011 the CAO determined that the complaint met its three eligibility criteria:

1. The complaint pertains to a project that IFC is participating in, or is actively considering.
2. The issues raised in the complaint pertain to the CAO's mandate to address environmental and social impacts of IFC investments.
3. The complainant (or those whom the complainant has authority to represent) may be affected if the social and/or environmental impacts raised in the complaint occurred.

Subsequently, and in accordance with CAO's Operational Guidelines, the CAO Ombudsman began the assessment of opportunities for resolving the issues outlined in the complaint. As per the CAO guidelines, the assessment period is limited to a maximum of 120 working days, but may be completed more quickly depending on whether the issues are amenable to resolution.

1. The Project

The Bujagali Energy project consists in the development, construction and maintenance of a run-of-the-river power plant with a capacity of 250 MW on a Build-Own-Operate-Transfer ("BOOT") basis on the River Nile, at Dumbbell Island, 8 kilometers north of the existing Nalubaale and Kiira power plants, in Uganda (the "project"). The project is being developed by Bujagali Energy Limited ("BEL" or the "Project Company"). BEL is also responsible for managing the construction of approximately 100 kilometers of 132 kV transmission line on behalf of the Uganda Electricity Transmission Company Ltd. ("UETCL"), Uganda's national transmission company, to evacuate electricity from the facility. As an Independent Power Producer ("IPP"), the project will sell electricity to UETCL under a 30-year Power Purchase Agreement ("PPA"), which was signed on December 6, 2007.

The project Sponsors are: (a) Industrial Promotion Services (Kenya) Ltd. ("IPS(K)"), the Kenya subsidiary of IPS, the industrial development arm of the Aga Khan Fund for Economic Development ("AKFED") which, in turn, is a member of the Aga Khan Development Network; and (b) Sithe Global Power LLC (US) ("Sithe Global"), an international development company formed in 2004 to develop, construct, acquire and operate strategic assets around the world.

BEL's direct shareholders are two Special Purpose Vehicles ("SPVs"): (a) an SPV owned by AKFED, IPS(K) and Jubilee Investment Company SPV (where IPS(K) and Jubilee Investment Company are both AKFED controlled companies); and (b) SG Bujagali Holdings, a company incorporated in Mauritius and an affiliate of Sithe Global, which is ultimately controlled by Blackstone Capital Partners, Reservoir Capital Group LLC and Sithe Global's management.

The total project cost is expected to be approximately \$874.9 million financed by about US\$681.8 million of debt and US\$192.5 million of Equity. The proposed IFC investment is \$130 million in a combination of an A loan and a C loan. MIGA also issued a \$115 million guarantee to World Power Holdings Luxembourg S.à.r.l., a subsidiary of Sithe Global (USA), for its investment in the project while IDA provided US\$115 Partial Risk Guarantee to support commercial bank financing for the project.

The other lenders to the project are highlighted below:

Lenders	(US\$ mil)
European Investment Bank	136.0
Africa Development Bank	110.0
Deutsche Investitions-und Entwicklungsgesellschaft (DEG)	30.0
Societe de Promotion et de Participation pour la Cooperation Economique (PROPARCO)	60.0
KfW Entwicklungsbank – German Development Bank	15.0
Agence Francaise de Developement (AFD)	12.8
Nederlandse Financierings-Maatschappij voor Ontwikkelingslanden N.V. (FMO)	73.0

2. The Complaint

In March 2011, a group of former employees involved in the construction of the power plant filed a complaint with the CAO on behalf of themselves and more than 30 other former employees. The complainants had at one time or another been employed by Salini Costruttori, the Engineering, Procurement, Construction (EPC) contractor in charge of project construction. The complainants stated that in the course of their employment they suffered work-place accidents and sustained injuries varying in degrees of severity. Many were subsequently assessed by a medical practitioner who then determined a commensurate level of compensation. The complainants stated that upon termination injured employees did not receive the assessed level of compensation, and others received no compensation at all. They therefore have concerns about the transparency of the medical assessment and compensation process.

The complainants also raised concerns regarding the calculation of their terminal benefits and what they perceive as inconsistencies and irregularities, in the management and transparency of how the system is managed. The former employees also report a certain level of intimidation against workers requesting their benefits.

The complainants sought to further clarify what procedures and processes were supposed to be followed to determine compensation and terminal benefits, and how these were implemented in

their case. Ultimately, they would like to see a fair and objective process that ensures every worker receives appropriate compensation and terminal benefits for their work on the project.

3. Assessment Methodology

The purpose of the CAO assessment is to clarify the issues and concerns raised by the complainant, to gather information on how other stakeholders see the situation, and to help the CAO Ombudsman and the stakeholders determine whether and how they might be able to resolve the issues raised in the complaint. The CAO Ombudsman does not gather information to make a judgment on the merits of the complaint.

The CAO assessment of the complaint consisted of:

- Review of project documents
- Interviews, meetings, and group discussions
- Country missions and site-visits

The CAO team conducted four field trips to Jinja between May and December 2011. In preparation for and during the field trips, the CAO Ombudsman team reviewed IFC and MIGA project documents, and met with complainants, IFC and MIGA project teams, representatives of BEL and Salini, the National Association of Professional Environmentalists (NAPE), and the Uganda Ministry of Gender, Labour, and Social Development.

Upon CAO's first visit to Jinja in May 2011, some 40 additional people attended the initial meeting claiming to be injured workers and asking to be formally added to the complaint. Small group discussions were held with all the workers present in order to better understand their needs, concerns, and individual circumstances. As of 1 December 2011 the total number of workers (including former and current employees) requesting CAO assistance has risen to 80.

4. Assessment Findings

4.1 Summary of Issues

Based on the original complaint and further stakeholder discussions undertaken as part of the CAO Assessment, the two primary topics that the parties have agreed to discuss further are:

1. How can all outstanding injured workers claims relating to Salini Costruttori and the Bujagali dam construction, be resolved in a fair and timely manner?
2. How will future claims be handled, and how will workers be informed of the claims process?

4.2 Summary of Stakeholder Goals and Interests

Based on the discussions with key stakeholders listed in Section 3 above, the CAO heard and understood the following key goals and interests, most of which were shared by all parties:

- Handling legitimate claims of compensation for workers' injuries in a transparent and fair manner as soon as possible and consistent with Ugandan law
- Giving priority to the most serious and urgent cases

- Engaging with other more recent complainants to try to assist with the resolution of their cases (in addition to the original CAO complainants)
- Ensuring that the process for filing and managing claims is well understood by employer and employees
- Making any agreed-upon payments as quickly as possible
- Designing a mechanism for speedy handling of any future complaints of this nature

In addition, BEL and Salini also expressed to CAO how the complaints have affected them and their employees, and requested to have these additional concerns addressed in some way:

- Restoring/maintaining their respective corporate reputations
- Acknowledging the things the companies and their employees have done well (for example, BEL would like recognition of the contribution it has made to development of community infrastructure; Salini stressed their adherence to stringent safety and health regulations and a strong desire for the hard work and personal commitment of their staff to be recognized)

4.3 Conclusion and Next Steps

The CAO concluded its Assessment and complainants, BEL, and Salini have agreed to continue working with the CAO Ombudsman team to try to resolve the issues related to injured workers' compensation. The CAO will now work with parties to produce an explicit agreement on a collaborative process for addressing the issues identified in the complaint and this Report.