



Uganda: Bujagali Energy-05

Interim Ombudsman/Dispute Resolution¹ Monitoring Report

January 2016

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 social and environmental outcomes of those projects.

I. The Complaint

In May 2011, CAO received a complaint from a number of people residing in communities affected by the construction of the Bujagali hydroelectric dam and project transmission lines in Uganda. Their concerns related to compensation for land, structures, and crops acquired by the project; damage to houses and impacts to health related to blasting during dam construction; and compensation for lost livelihoods.

In June 2011, CAO determined that the complaint met its eligibility criteria, and proceeded to assess possibilities for resolving the issues in collaboration with all stakeholders.

II. The Project

The Bujagali Energy project involves the development, construction, and maintenance of a run-of-the-river power plant with a capacity of up to 250 megawatts (MW) on the River Nile in Uganda. Bujagali Energy Limited also manages the construction of approximately 100 kilometers of a 132 kiloVolt (kV) transmission line on behalf of the Uganda Electricity Transmission Company Ltd. to improve transfer of electricity from the plant. Bujagali Energy Ltd is owned by Industrial Promotion Services (Kenya) Ltd., the industrial development arm of the Aga Khan Fund for Economic Development, and SG Bujagali Holdings, Ltd., an affiliate of Sithe Global Power LLC (US). IFC and MIGA are supporting the US\$750 million project along with several other international financial institutions, including the International Development Association, African Development Bank, and European Investment Bank. IFC's investment comprises \$100 million in A and C loans, and MIGA issued a \$115 million guarantee to World Power Holdings Luxembourg S.à.r.l., a subsidiary of Sithe Global Power, for its investment in the project

More information about the IFC and MIGA Bujagali projects can be found on their respective websites:

IFC: http://ifcext.ifc.org/ifcext/spiwebsite1.nsf/ProjectDisplay/SPI_DP24408

MIGA: <https://www.miga.org/pages/projects/project.aspx?pid=1372>

¹ Under CAO's 2013 Operational Guidelines, the previous "Ombudsman" function was renamed "Dispute Resolution".



Bujagali Energy Limited (BEL), the IFC and MIGA client, also has their own website dedicated to the Bujagali Hydropower Project:

BEL: http://www.bujagali-energy.com/bujagali_aboutUs1.htm

III. CAO Action

1. Assessment of the Complaint

During CAO's assessment of the complaint, BEL and the complainants chose to undertake a collaborative dispute resolution process facilitated by CAO to address issues in the complaint. To participate in the CAO dispute resolution process, the complainants organized affected community members into an informal association known as the "Bujagali Affected Community" or BAfC.

The issues raised during the assessment that the parties agreed to address through dispute resolution related to compensation for assets during the land acquisition process for the transmission line and hydro site; damage to houses and impacts to health related to blasting during construction; and compensation for loss of livelihoods. CAO completed an assessment report in December 2011 documenting the assessment process and next steps, which is available in English and Luganda on CAO's website².

2. Dispute Resolution

The stakeholders agreed to three separate, parallel processes around the major issues: (i) loss of livelihoods; (ii) damage caused by construction blasting; and (iii) transmission line and hydro site land compensation.

i. Loss of livelihoods

One group of complainants raised concerns about their alleged loss of livelihoods due to the project's destruction of the Bujagali Falls, which was a tourist destination, and limitation of access to the river upstream of the dam. The complainants, who made their living by operating small-scale fishing and informal tourist businesses, maintain that, because of the informal nature of their activities, they were not compensated as formal, recognized enterprises.

This group of complainants and BEL entered into direct negotiations and were able to achieve written settlement agreements. CAO was in communication with the parties throughout the process to monitor if progress was being made. In September 2012, CAO verified with the complainants and BEL that the agreements had been implemented and the complaint issues related to livelihood impacts were resolved to all parties' satisfaction. Parties provided copies of the agreements to CAO and requested that those agreements remain confidential.

ii. Damage caused by blasting during construction ("Blasting mediation")

A total of 105 community members complained to CAO that blasting during construction had damaged their homes and adjacent structures, affected their livestock and, in one case, had a negative impact on their health, for which they had not been compensated.

A complaint raising the same issues, as well as some others, was also submitted to the European Investment Bank Complaints Mechanism (EIB-CM). The CAO complainants agreed to see

² See http://www.cao-ombudsman.org/cases/case_detail.aspx?id=172 (accessed July 23, 2015)



whether the EIB-CM-led mediation would resolve their complaints, rather than launching a separate, parallel CAO dispute resolution process. The EIB-CM-led process resulted in what was termed a “Mediation Solution” to the blasting-related complaints, which was implemented during 2014 and early 2015. A 2013 summary of the process outcomes provided by EIB-CM, including criteria to be applied in ascertaining which of the individual complaints would be addressed, is available on the CAO website³.

Under the terms of the Mediation Solution, 32 CAO complainants were eligible for repair work on their homes and/or other structures. However, none of these complainants was satisfied with the work carried out and they consider their complaint unresolved. Some have complained that the repairs were not completed; and others that their structures were not repaired at all. Furthermore, they reported to CAO that they did not understand that forms they signed were intended as acceptance of work carried out. These 32 complainants, along with the 73 who were excluded from the EIB-CM Mediation Solution, requested CAO to assist them in a further dispute resolution process with BEL to try and resolve their outstanding concerns. Two of the complaints which were not eligible under the terms of the EIB-CM agreement, including the single case regarding negative health impacts, have been resolved with CAO’s assistance (see Table 1).

In addition, in November 2014, a lawsuit against BEL was filed by community members, including some CAO and EIB-CM complainants, claiming damages from blasting. Based upon the pending legal suit, BEL has indicated to CAO that it is unable to participate in an additional mediation process, and CAO has advised the complainants accordingly. In accordance with CAO’s Operational Guidelines, the outstanding complaint issues related to blasting will be transferred to CAO Compliance for an appraisal of IFC’s and MIGA’s environmental and social due diligence related to the project.

Table 1. Summary of blasting complaints

105 affected community members complained to CAO	32 eligible for repairs under EIB-CM mediation	Transfer to CAO Compliance for appraisal of IFC/MIGA
	73 not eligible for repairs under EIB-CM mediation	<ul style="list-style-type: none"> • Transfer to CAO Compliance for appraisal of IFC/MIGA • 2 individual complaints resolved with CAO assistance • 1 individual case withdrawn when property sold

iii. Transmission line and hydro site land compensation (“T-line mediation”)

Some complainants alleged that the compensation process undertaken to acquire their land for the electric power transmission lines and the dam hydro site was flawed, particularly in 2006-2007. They contend that there was a lack of transparency in the compensation mechanism, and that there were inconsistencies in the valuation of crops, in the compensation rates paid, and between the early valuations versus the final amount paid. They also claim that some land, crops, and structures were never compensated. The community members also raise wider concerns about

³ See http://www.cao-ombudsman.org/cases/document-links/documents/FINALStatementonMediationconclusion_May2013.pdf (accessed July 23, 2015)



the grievance mechanism that was put in place by UETCL, and the extent to which it was sufficiently accessible or responsive.

BAfC T-line complainants fell into two categories, which came to be known as the “557” (referring to the reported number of original court case plaintiffs) and the “non-557” (CAO complainants who were not part of the civil suit in court). The 557 are members of the BafC who brought the representative Civil Suit Number 38 of 2009 in the High Court of Uganda against the Uganda Electricity Transmission Company Ltd (UETCL) claiming compensation for land, structures, and crops, which they claimed were either not paid at all, or not paid in accordance with the prevailing rates of compensation set by the Government of Uganda at that time. The “non-557” comprise 51 individual complaints which had not been included in the court suit.

“557”

At a meeting on April 25, 2013 facilitated by CAO, four representatives of the 557, including the Chairman of the BafC, and UETCL senior management, along with their respective legal counsel, agreed to request the High Court of Uganda to grant the parties leave to try to resolve the issues in the civil suit through mediation, facilitated by CAO. Such leave was duly granted and the mediation proceeded. Legal counsel for both parties kept the judge informed of progress throughout the mediation process.

Over two years, CAO conducted extensive bilateral, plenary, and private caucus meetings with the parties, the content of which is, by agreement, confidential. CAO worked consistently with the parties, particularly the representatives of the 557, to help build the requisite capacity to participate effectively in the mediation process.

The representatives consulted thoroughly at the community level, identifying plot numbers and designations of the various complainants, and feeding this information back into the mediation process. The complainant representatives and UETCL worked together, removing errors and repeated claims, such that they were able to agree a working list of 514 valid claimants against verified properties. The office of the Chief Government Valuer and the Ministry of Energy and Mineral Development (hereafter, “the Ministry of Energy”) participated actively in sharing information regarding the land and crop valuation process. The Ministry of Energy hosted and participated in the meetings.

In January 2015, the parties signed a Framework Agreement capturing a range of agreed principles to guide the process of ongoing negotiations. On April 20, 2015, the parties reached consensus and signed a Mediation Agreement, terms of which had been shared and agreed with a representative number of the 557 complainants in community meetings observed by CAO. In May 2015, the Mediation Agreement was adopted by the High Court of Uganda as a Judgment of the Court and, as such, became a public document. The signed Agreement is attached as Annex 1 which, for reasons of confidentiality, excludes Schedule 2: the actual compensation paid to the individual complainants.

Following signature of the Mediation Agreement, CAO observed a disclosure process whereby UETCL convened meetings with individual complainants in the community, and at which the compensation offered under the Agreement was disclosed and explained. Complainants were at liberty to review their own files containing details of the calculations of compensation offered as well as full survey maps, and decide whether to accept the offer. In the case of the 35 complainants who have died since the case was filed in court, the appointed heirs were invited to attend in their place.



As of June 30, 2015, 433 of the 514 claims had been disclosed and agreed by the complainants with payment due no later than July 31, 2015, in accordance with the terms of the Court Judgment. A further 23 claims were agreed in principle by heirs of deceased complainants, pending completion of revised documentation by UETCL.

As of July 31, 2015 no payments had been made by UETCL. CAO held a number of meetings with the parties to assist in troubleshooting implementation issues. As of early October 2015, less than half of the agreed compensation payments had been processed. In late October 2015, CAO held meetings with BAfC representatives and UETCL senior management, including the Chief Executive Officer, to discuss the breach of the Mediation Agreement and how all parties might work together to expedite the remaining payments due. UETCL committed to complete disclosure of outstanding compensation and to process the remaining payments by November 25, 2015. As of January 1, 2016, no further payments had been released by UETCL since October 2015.

For those individual plaintiffs who signed their acceptance of the compensation offered to them by UETCL under the Mediation Agreement (through the disclosure process in the community observed by CAO), the Agreement represents full and final settlement of the issues set out in the initial complaint to CAO.

“Non-557”

The non-557 originally comprised complaints regarding 51 different plots of land. In 2012 CAO facilitated two meetings in the field with the non-557 complainants and UETCL as part of an initial information-sharing process to both review the 2006-7 compensation process and to understand the individual claims. CAO held further meetings with the complainants to clarify their individual claims. This period of information sharing and clarification of process resulted in a number of individual complaints being withdrawn or otherwise resolved. For instance, some complainants had received compensation in 2000 from AES Nile Power Ltd (developers of the Bujagali dam at that time) so were not eligible for additional compensation for the same property under the 2006-7 valuation.

Once the 557 mediation process was underway, UETCL declined any further discussion regarding the non-557 until such time as the mediation process concluded. The non-557 complainants accepted that their cases would be reviewed at that time. On conclusion of the 557 mediation process, CAO met with the stakeholders and the remaining 17 complainants separately (regarding 31 plots of land, as some have interest in more than one plot) who all agreed that the complaints would be reviewed on a case-by-case basis with a view to addressing their outstanding issues in line with the 557 mediation settlement (see Table 2).



Table 2. T-line Mediation Summary

“557” civil suit	514 claims agreed as eligible for compensation	CAO monitoring agreement implementation
“Non-557” CAO complainants who were not part of civil suit (34 people, 51 plots of land)	Resolved: 17 people, 20 plots of land	Complaints resolved/closed
	Remaining to be addressed through mediation: 17 people, 31 plots of land	Parties to resolve through CAO mediation

3. Monitoring

In line with its Operational Guidelines, CAO will continue to monitor progress on implementation of the T-line Mediation Agreement.

As noted above, outstanding complaint issues related to blasting will be transferred to CAO Compliance for appraisal of IFC’s and MIGA’s due diligence.

More information on this CAO case, including the full text of the complaint, can be found at: <http://www.cao-ombudsman.org>