



CAO ASSESSMENT REPORT

**Complaint (Bujagali Energy-07) regarding
the Bujagali Hydro Power Project
(IFC #24408 & MIGA #6732)
Malindi, Uganda**

April 2016

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

About CAO

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), the private sector arms 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 supported projects in a manner that is fair, objective and constructive and to enhance the social and environmental outcomes of those projects.

For more information, see 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 |
| IFC | International Finance Corporation |
| IDA | International Development Association |
| MIGA | Multilateral Investment Guarantee Agency |
| UETCL | Uganda Electricity Transmission Company Limited |

1. OVERVIEW

In February 2015, four community members residing in the vicinity of the Bujagali Energy project submitted a complaint to CAO on behalf of themselves and over 200 other community members. The complainants raise issues regarding inadequate compensation for land and assets during the construction of the project transmission lines. During CAO's assessment, including a number of CAO field visits during May–October 2015, the complainants expressed a desire to pursue a CAO dispute resolution process, while Bujagali Energy Limited (BEL) and the Uganda Electricity Transmission Company Limited (UETCL) did not believe a dispute resolution process would meet their interests at this time. As per CAO's Operational Guidelines and due to the voluntary nature of a CAO dispute resolution process, the complaint will be referred to CAO's Compliance function for appraisal of IFC/MIGA's performance related to the project. This Assessment Report provides an overview of the assessment process, including a description of the project, the complaint, the assessment methodology, and next steps.

2. BACKGROUND

2.1. The Project

The Bujagali Energy project consists of the development, construction, and maintenance of a run-of-the-river power plant with a capacity of 250 megawatts (MW) on a Build-Own-Operate-Transfer basis on the River Nile at Dumbbell Island, 8 kilometers north of the existing Nalubaale and Kiira power plants in Uganda. The project was being developed by Bujagali Energy Limited (BEL).

Although not involved in the specific development or financing of the transmission line, BEL was responsible for managing/supervising the construction of approximately 100 kilometers of a 132 kilovolt (kV) transmission line on behalf of the Uganda Electricity Transmission Company Limited (UETCL), Uganda's national transmission company which is being used to evacuate electricity from the facility. As an Independent Power Producer, the project is selling electricity to UETCL under a 30-year Power Purchase Agreement, which was signed on December 6, 2007. It is noted that BEL's role as project manager for the transmission line was limited to managing the construction.

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.

The total Bujagali project cost is expected to be approximately US\$874.9 million financed by about \$681.8 million of debt and \$192.5 million of equity. IFC's 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. The International Development Association (IDA), a public sector arm of the World Bank Group, provided \$115 partial risk guarantee to support commercial bank financing for the project.

The other lenders to the project are listed below:

| Lenders | (US\$m) |
|--------------------------|----------------|
| European Investment Bank | 136.0 |
| African 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 Française de Developement (AFD) | 12.8 |
| Nederlandse Financierings-Maatschappij voor Ontwikkelingslanden N.V. (FMO) | 73.0 |

2.2. The Complaint

In February 2015, four community members residing in the Bujagali affected area submitted a complaint to CAO on behalf of themselves and over 200 other community members. The complaint raised issues regarding adequate compensation for community members' land and assets during the land acquisition and compensation process undertaken by UETCL for the construction of the project transmission lines. The complaint provides details of each community member and the relevant land plots. A copy of the complaint can be found on CAO's website¹.

3. ASSESSMENT

3.1. Methodology

The purpose of the CAO assessment is to clarify the issues and concerns raised by the complainants, to gather information on how other stakeholders see the situation, and to determine whether the complainants and BEL and/or UETCL, as stakeholders, would like to pursue a dispute resolution process under CAO's auspices, or whether the complaint should be handled by CAO's Compliance function (see Annex A for CAO's complaint handling process). During assessment, CAO does not gather information to make a judgment on the merits of the complaint.

CAO's assessment of the complaint consisted of:

- a review of project documentation as well as documentation in support of the complaint submitted by the complainants;
- conversations with the IFC/MIGA project team;
- a meeting with a large group of complainants (137 individuals) as well as their elected representatives;
- telephonic and email consultations with BEL, UETCL, and the Ugandan Ministry of Energy and Mineral Development;
- a meeting with the Ugandan Director of Energy; and,
- a meeting with the Chief Executive Officer of UETCL.

The 120-day CAO assessment period was extended in this case at the request of the complainants and UETCL, as a separate CAO case also related to transmission line impacts (Bujagali-05) was on-going at the time of the Bujagali-07 assessment. The complainants and UETCL wanted to be able to consider any outcomes in the Bujagali-05 dispute resolution process in their decision-making.

¹ See http://www.cao-ombudsman.org/cases/case_detail.aspx?id=230 (accessed February 18, 2016)

3.2. Findings

3.2.1. Summary of Issues

Based on the original complaint and further stakeholder discussions undertaken as part of the CAO Assessment, the primary topics and issues raised were:

- Compensation claims for losses suffered by the complainants (e.g. crop losses and property damage), and losses of land and amenity as a result of the construction of the transmission lines;
- Ensuring that compensation schemes offered by UETCL are fair, equitable, implementable, and understood by all relevant parties.

3.2.2. Parties' perspectives on the issues

Complainants' perspective

In general, since the inception of the project, the complainants feel that they have:

- suffered real and extensive losses as a result of the construction of the transmission line;
- been poorly informed by UETCL and government of the mechanisms and processes put in place to deal with grievances and claims for compensation;
- received inadequate attention and compensation for their direct and future losses of land, crops, buildings, amenities, income, and livelihoods;
- experienced a lack of understanding and empathy from UETCL; and,
- suffered and continue to suffer as a result of long delays in addressing any of their grievances.

The complainants feel strongly that their claims are legitimate and provable. They have closely observed progress in the Bujagali-05 transmission line mediation, both in process and outcome, and believe that their claims are no different. They insist that a precedent has been set in that case which should equally be applied to them.

During the CAO Assessment, the complainants expressed a strong desire to enter into a facilitated dispute resolution under CAO's auspices in order to resolve all the issues in the complaint.

UETCL and BEL's perspective

From the UETCL perspective, the claims for compensation of many of the complainants are without foundation or exaggerated, as are the numbers of complainants. During the extended assessment period, UETCL considered the Bujagali-05 transmission line mediation process and outcomes and informed CAO that they regard the Bujagali-05 transmission line mediation as unique and singular, and that it should not set any precedent. Ultimately, UETCL indicated that they would not be willing to enter into another dispute resolution process with the Bujagali-07 complainants on these issues, and would rather see the complaint referred to CAO Compliance for appraisal of IFC/MIGA's performance in accordance with CAO's Operational Guidelines.

As BEL was not involved with the setting or determination of compensation as such matters were exclusively determined by UETCL and the government, BEL indicated that they saw no role for

themselves in a dispute resolution process on these matters with the complainants. They believe that this is a matter solely between the complainants and UETCL, and it is up to the complainants and UETCL to agree on a dispute resolution process.

4. CONCLUSION AND NEXT STEPS

While the complainants expressed interest in pursuing a dispute resolution process convened by CAO, BEL and UETCL decided dispute resolution was not appropriate at this time. Given the voluntary nature of CAO's Dispute Resolution processes and in accordance with CAO's Operational Guidelines, the case will be referred to CAO Compliance for appraisal of IFC/MIGA's environmental and social performance related to the project.

Annex A. CAO Complaint Handling Process

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) 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 supported projects in a manner that is fair, objective and constructive and to enhance the social and environmental outcomes of those projects.

The initial assessment is conducted by CAO's Dispute Resolution 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) help stakeholders understand the recourse options available to them and determine whether they would like to pursue a collaborative solution through CAO's Dispute Resolution function, or whether the case should be reviewed by CAO's Compliance function.

This document is a preliminary record of the views heard by the CAO team, and explanations of next steps depending on whether the parties choose to pursue a CAO Dispute Resolution process or prefer a CAO Compliance process. *This report does not make any judgment on the merits of the complaint.*

As per CAO's Operational Guidelines,² 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: **CAO assessment:** Assessing the issues and providing support to stakeholders in understanding and determining whether they would like to pursue a consensual solution through a collaborative process convened by CAO's Dispute Resolution function, or whether the case should be handled by CAO's Compliance function to review IFC's/MIGA's environmental and social due diligence. The assessment time can take up to a maximum of 120 working days.

Step 4: **Facilitating settlement:** If the parties choose to pursue a collaborative process, CAO's dispute resolution function is initiated. The dispute resolution process is typically based or initiated by a Memorandum of Understanding and/or mutually agreed upon ground rules between the parties. It may involve facilitation/mediation, joint fact-finding, or other agreed resolution approaches leading to a settlement agreement or other mutually agreed and appropriate goals. The major objective of these types 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 dispute resolution process, in a way that is acceptable to the parties affected³.

² For more details on the role and work of CAO, please refer to the full Operational Guidelines: http://www.cao-ombudsman.org/documents/CAOOperationalGuidelines_2013.pdf

³ Where stakeholders are unable to resolve the issues through a collaborative process within an agreed time frame, CAO Dispute Resolution will first seek to assist the stakeholders in breaking through impasse(s). If this is not possible, the Dispute Resolution team will inform the stakeholders, including IFC/MIGA staff, the President and Board

OR

Compliance Appraisal/Investigation: If the parties opt for a Compliance process, CAO's Compliance function will initiate an appraisal of IFC's/MIGA's environmental and social due diligence of the project in question to determine whether a compliance investigation of IFC's/MIGA's performance related to the project is merited. The appraisal time can take up to a maximum of 45 working days. If an investigation is found to be merited, CAO Compliance will conduct an in-depth investigation into IFC's/MIGA's performance. An investigation report with any identified non-compliances will be made public, along with IFC's/MIGA's response.

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

Step 6: **Conclusion/Case closure**

of the World Bank Group, and the public, that CAO Dispute Resolution has closed the complaint and transferred it to CAO Compliance for appraisal.