



COMPLIANCE MONITORING REPORT

IFC Investment in Bujagali Energy Ltd., Uganda

IFC Projects #24408 and #39102; MIGA Project #6732

CAO Complaints -04, -06, -07 & -08

Second Monitoring of IFC's Response to: CAO Investigation of IFC's Investment in Bujagali, Uganda

May 13, 2020

Office of the Compliance Advisor Ombudsman (CAO)

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

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Introduction

CAO's compliance function oversees investigations of IFC/MIGA's environmental and social (E&S) performance with a view to ensuring compliance with relevant requirements and improving institutional E&S performance.

Following a compliance investigation, CAO monitors actions taken by IFC/MIGA until it is assured that findings of non-compliance are being addressed.

CAO monitoring considers IFC's response to a compliance process at two levels:

- 1) the project level; and
- 2) the level of IFC/MIGA policies, procedures, practice or knowledge.

The first level of analysis is designed to ensure that CAO's project-specific non-compliance findings are addressed. The second is designed to document institutional improvements to E&S risk identification and management.

This report reviews actions taken by IFC and MIGA since the first monitoring report was issued in February 2019 in response to the findings of two CAO compliance investigations which considered the application of IFC and MIGA E&S standards to the Bujagali Energy Project, a hydropower project on the upper Nile in Uganda.

The information contained in this report draws from:

- a review of IFC and MIGA documentation supplied during the monitoring period (March 2019–February 2020);
- update meetings with IFC and MIGA to CAO;
- meetings with IFC consultants who conducted the IFC assignments; and
- information provided in correspondence with the complainants.

CAO Case Context

Bujagali-04 and -06: Compensation for injuries and lost and unpaid wages

In March 2011, CAO received a complaint—referred to by CAO as the Bujagali-04 complaint—from former employees involved in the construction of the Bujagali hydropower plant. The complainants claimed they have not been properly compensated after suffering injuries in the course of their work. The complainants also raised concerns regarding the transparency of the compensation process and intimidation when requesting their benefits.

In April 2013, CAO received a complaint (Bujagali-06) filed via an informal association of former construction camp and dam site workers. The complainants raised a range of concerns about their employment through a subcontractor. These included complaints regarding unpaid wages and benefits, dangerous working conditions, and lack of compensation for workplace injuries.

The Bujagali-04 and -06 complaints triggered a compliance investigation, which CAO published in December 2017.¹ Regarding issues raised under the Bujagali-04 complaint, CAO found that IFC did not possess or have access to labor and occupational safety and health (OSH) competence that was sufficient to evaluate the capacity of the client or the subcontractor to apply

¹ CAO. 2017. CAO Investigation of IFC/MIGA Social and Environmental Performance in relation to: Bujagali Energy Ltd and World Power Holdings, Uganda (Bujagali-04 & 06). Available on CAO's website: https://bit.ly/Bujagali-04-06_CAO-Compliance_Investigation_Report

Performance Standard 2 (PS2) to a project of this scale and technical complexity. Although IFC acknowledged significant labor and OSH risks, its ability to supervise these issues was constrained by a lack of specialist staff and ineffective oversight. As a result, CAO found that IFC did not have assurance that labor, health, and safety risks associated with the construction of the project were being managed in accordance with its E&S policy requirements. CAO's compliance investigation further found that IFC did not consider whether national workers' compensation requirements provided injured workers with compensation for injuries as required by the Performance Standards.

In relation to the Bujagali-06 complaint, specifically, CAO found that IFC erred in deciding that the employment practices of the subcontractor were beyond the scope of its E&S requirements. As a result, allegations that construction of the project had significant adverse effects on employees of the subcontractor, including non-payment of wages, were not addressed during IFC supervision.

A summary of CAO's compliance investigation findings for Bujagali-04 and -06 is set out in Annex 1.

Bujagali-07: Compensation for lost assets

In February 2015, CAO received a complaint alleging inadequate compensation for crops and other assets impacted by construction of the Bujagali transmission line, an associated facility of the project.

CAO publicly released its compliance investigation report in response to the Bujagali-07 complaint in January 2018.² CAO found that IFC lacked assurance that the compensation framework provided in the Resettlement Action Plan (RAP) met the requirement of compensation for full replacement cost under IFC Performance Standard 5. CAO also found that IFC lacked assurance that the final RAP compensation framework was disclosed or was subject to meaningful consultation with affected communities.

As weaknesses in the RAP manifested during project implementation, the project grievance mechanism as described in the RAP proved ill-equipped to deal with disputes over compensation rates. These disputes persisted throughout the construction period. Despite indications that complaints regarding compensation were systemic in nature, CAO found that IFC and the other financiers supported an ad hoc response rather than requiring a review of the adequacy of the RAP compensation framework.

At the time of writing of the investigation report, CAO found that a required completion audit of the resettlement process had not been conducted. In these circumstances, CAO found that IFC lacked assurance that compensation paid met the full replacement cost requirement or that affected people had been appropriately compensated considering the delays in payment that occurred. As a result, CAO found that significant numbers of households whose land was acquired for the transmission line likely did not receive compensation at full replacement cost.

A summary of findings as presented in the compliance investigation report for Bujagali-07 is also set out in Annex 1.

² CAO. 2017. CAO Investigation of IFC/MIGA Social and Environmental Performance in relation to: Bujagali Energy Limited and World Power Holdings, Uganda (Bujagali-07). Available on CAO's website: https://bit.ly/Bujagali-07_CAO-Compliance_Investigation-Report

Bujagali-08: Compensation for workplace injury

In June 2017, CAO received a complaint (Bujagali-08) relating to an injury sustained by a worker and related compensation issues. As the issues raised in this complaint were substantively similar to those raised in the Bujagali-04 complaint, CAO decided to merge the monitoring of the Bujagali-08 complaint with Bujagali-04 and -06.³

IFC's Management Response and Implementation

IFC's response to the CAO investigations is contained in initial responses dated December 5, 2017,⁴ and January 9, 2018,⁵ as well as an addendum to the IFC Management Response dated May 22, 2018.⁶

Project-level responses

Bujagali-04 and -08

IFC's response included a commitment to: "identify possible institutional arrangements as well as assess the need for capacity building to the client and other identified institutions to address the issue of injured workers effectively" with a scoping mission to be completed by June 30, 2018.⁷

IFC's Advisory Services (AS) completed two donor-funded scoping missions to Uganda (one in June 2018 and a follow-up mission in November 2018).

During the June 2018 mission, the IFC AS team reported that it met with government partners and representatives from NUDIPU, an NGO that advocates for persons with disabilities. During its November mission, the IFC AS team reported that it looked into NUDIPU's work on livelihoods in further detail and also met representatives of Kikubamutwe Disability and Development Organization (KDDO), an association that includes CAO complainants. During their meeting, IFC reported that it provided the association with an update on actions being taken to respond to workplace injuries that occurred during the construction period.

In July 2019, IFC shared an update with CAO noting that the IFC AS team issued a Scoping Report in June 2019, which included recommendations for possible additional support to injured workers. The report also identified local institutional capacity to support disabled workers and ongoing client community support programs that can be accessed by this group. The recommendations identified three areas of support: (1) orientation on disability to all injured workers who remain in Jinja and Buikwe districts; (2) sensitization and capacity building on saving and loan schemes; and (3) supporting income-generating activities that can be considered through Bujagali Energy Limited (BEL)'s CSR program.

³ CAO. 2018. Compliance Appraisal: Bujagali Energy (IFC Project #24408) and MIGA guarantee of World Power Holdings (MIGA Project #6732), Uganda: Complaint 08. Available on CAO's website: https://bit.ly/Bujagali-08_CAO-Compliance_Appraisal-Report

⁴ IFC. 2017. IFC Management's Response to the CAO Investigation Report on Bujagali Energy Ltd and World Power Holdings, Uganda (CAO cases 04 and 06). Available at: <https://bit.ly/3byYdvv>.

⁵ IFC. 2018. IFC Management's Response to the CAO Investigation Report on Bujagali Energy Ltd and World Power Holdings, Uganda (Bujagali-07). Available at: <https://bit.ly/3axMvQr>.

⁶ IFC. 2018. Addendum to IFC Management's Responses to the CAO Investigation Report on Bujagali Energy Ltd. and World Power Holdings, Uganda (Cases 04, 06, and 07). Available at: <https://bit.ly/3atILPW>.

⁷ Ibid.

IFC AS reports implementing further donor-funded capacity-building activities to help the injured workers better access the available support systems. In particular, IFC AS has retained the services of NUDIPU to provide orientation on disability as well as to engage with KDDO and BDO to develop and implement a savings and loan scheme called i-SAVE with their members.

CAO acknowledges IFC's actions to address the issue of injured workers by providing assistance in setting up livelihood support programs. However, CAO notes that AS-supported programming focuses exclusively on injured workers and does not include dependents of injured workers, who died after sustaining injuries related to construction of the project. This is an important gap in IFC's response as the families of the deceased workers are among those most seriously impacted by the workplace safety issues on the construction site. CAO also notes that IFC's response to date does not address CAO's findings regarding the adequacy of compensation paid in cases of workers who were seriously injured or killed in the course of the construction of the project.

This issue remains open for monitoring.

Bujagali-06

IFC's response included a commitment to "appraising, within the context of the complaints to CAO, the workers' claims through an independent third party to determine whether sufficient evidence is available to determine the merits of the workers' claims." Terms of reference (ToR) were to be disclosed by June 30, 2018, with the estimated length of the assignment being three months.

On June 20, 2018, IFC shared with CAO its ToR: Review of Available Information—Underpaid Construction Workers, Uganda Consulting Assignment.⁸ The task involved a detailed review and validation of claims, including associated court records, as a first step to defining a solution to the complaints of the subcontracted workers regarding non-payment of wages. IFC initially estimated this work would be completed in three months (ie. by September 2018). In December 2018, IFC reported that it had contracted a Ugandan law firm that would work closely with an accounting firm to evaluate workers' claims.

The consultant's report was finalized in June 2019. The report concludes that there is insufficient evidence to verify the accuracy of the former workers' claims regarding wages and other benefits potentially due to them for the period from November 1, 2007 to May 21, 2008.

CAO has brought to IFC's attention concerns about the methodology used in reviewing the Bujagali-06 workers' claims. In particular, CAO notes that the review focused on documentation available through the claimant-workers and not on information from other sources or other types of evidence (e.g., oral testimonies). CAO also notes the decision not to request documentation from Boschcon, Salini, or BEL as part of the review. By approaching the task in this manner, IFC is effectively requiring the complainants to provide documentary evidence of underpayment. As set out in CAO's investigation, this approach is at odds with IFC's compliance framework which requires the client to ensure that contractors and subcontractors have in place properly documented human resources systems and records. In this context, it is notable that the IFC consultant included as an annex to their report a statement from the Officer in charge of the Mukono District Labour Office at the time of the Bujagali construction. This statement outlines the role of the Mukono Labour Office in responding to the complaints raised by the Boschcon workers.

⁸ IFC. 2017. Review of Available Information—Underpaid Construction Workers, Uganda Consulting Assignment. Available on CAO's website: https://bit.ly/Bujagali-04-06_ToR

The statement notes a range of shortcomings in terms of Boschcon's human resources practices against Ugandan legal requirements. Relevant to the issues raised by the complainants, these included a failure to properly document employment contracts or payment of wages. The statement also notes that the Mukono Labour Office issued legally binding pay statements to some of the Boschcon workers in lieu of the statements that Boschcon failed to produce. It is unclear to CAO how the Labour Officer's statement regarding Boschcon's inability to produce required documentation was factored into the conclusion that there is insufficient evidence to verify the complainants' claims.

Finally, CAO notes that the claims of the former Boschcon workers regarding compensation for workplace injuries as referenced in the CAO compliance investigation are not being addressed in IFC's response. IFC's consultant report does not address these issues, though the statement of the Mukono Labour Officer, which was included as an annex to the report, notes that occupational safety and health conditions on the Boschcon worksite was poor and contrary to the requirements of the Ugandan law.

As of the writing of this report, IFC noted it is following up with BEL, Salini, and Boschcon.

This issue remains open for monitoring.

Bujagali-07

IFC's response included a commitment to "engage with UETCL to (i) identify and address any relevant gaps in the existing project completion reports vis-a-vis IFC completion report requirements and (ii) close out any associated corrective actions."

In June 2018, IFC shared with CAO its ToR for the work titled *Bujagali Interconnection Project (BIP) Land Acquisition Completion Report Gap Analysis and Supplemental Completion Report Consulting Assignment*.⁹ This entailed: (a) a gap analysis of the project resettlement completion documentation; (b) the preparation of a Supplemental Completion Report addressing any gaps in the project's existing resettlement completion reports; and (c) the preparation of a corrective action plan as needed to address any unfulfilled commitments to impacted households. IFC estimated the duration of this assignment as 5–6 months.

In July 2018, CAO expressed concerns to IFC and MIGA that the ToR, as published, focused on issues of livelihood restoration, and did not appear to address CAO findings regarding the requirement for compensation for impacted assets (including crops) at full replacement cost. CAO noted that a discussion of the adequacy of compensation is a standard part of a completion audit.¹⁰ CAO indicated that there was a need to develop a more detailed methodology for the Supplemental Completion Report in accordance with PS5 requirements and good international industry practice, including plans for consultation. CAO also noted the need to disclose the consultant reports and any corrective action plan once completed.

⁹ IFC. 2018. Bujagali Interconnection Project (BIP) Land Acquisition Completion Report Gap Analysis and Supplemental Completion Report Consulting Assignment. Available on CAO's website: https://bit.ly/Bujagali-07_ToR

¹⁰ See IFC Guidance Note for PS5 (2012), Annex B. A completion audit should include findings regarding: "Types of compensation provided and adequacy of that compensation (e.g., sufficient to cover replacement costs of lost assets, housing conditions, compensation/entitlements, income restoration and livelihood sustainability measures)" (p.30). Available at: <https://bit.ly/IFC-2012-PS5-GN>.

In December 2018, IFC reported to CAO that it had procured the services of a consultant to carry out the ToR. Implementation of the first phase of this action item had been delayed against the July 2018 target date set by IFC.

In July 2019, IFC shared with CAO an update noting that the consultant completed Task 1 of the ToR, *Gap Analysis of Existing Closure Reports*, and submitted a final report of their findings to IFC in February 2019. The Task 1 report was shared with UETCL for comment and approval. IFC received approval of the Task 1 report from UETCL in May 2019 and a go-ahead to initiate Task 2 to address the identified gaps, which was expected to result in a Supplemental External Completion Report. However, in June 2019, IFC reported that UETCL withdrew their support for this process and requested that the IFC contact the Ministry of Energy and Mineral Development for further guidance. IFC indicated that it would seek World Bank support in contacting the Ministry of Energy and Mineral Development and the Ministry of Finance. IFC shared with CAO the Task 1 report *Gap Analysis of Existing Closure Reports*.

The Task 1 report concluded that the three existing completion reports do not constitute a comprehensive project completion report as required by the Resettlement and Community Development Action Plan (RCDAP). As such, it recommended the preparation of Task 2: Supplemental External Completion Report. The Task 1 report identified several gaps in the existing completion reports against the PS5 (2006) requirements, particularly in relation to the determination of whether project-affected people have had their livelihoods restored.

In response to CAO's concerns about the apparent focus of the Task 1 report on livelihood restoration and the lack of attention to the issue of compensation, the IFC consultant noted their finding that there was no evidence that a livelihood restoration assistance program was implemented. In this context, they noted that a key question for non-vulnerable households would be whether the provided cash compensation enabled them to restore their livelihoods and living conditions. The IFC consultant advised that Task 2 should consider the adequacy of the provided compensation and timely disbursement in order to inform whether livelihoods and living standards of all project-affected people were enhanced, in line with PS5 requirements.

CAO notes that no further progress is reported in relation to the preparation and implementation of Task 2. While the Supplemental External Completion Report should have been completed in early 2019, to date, the methodology, work plan, and program have yet to be drafted and agreed. Reaching agreement with government counterparts will be important in moving this task forward.

This issue remains open for monitoring.

Conclusion

As outlined in this report, IFC reports progress in implementing the actions it committed to in response to CAO's Bujagali compliance investigations, albeit with significant delays.

In response to the issues raised in the Bujagali-04 and -08 complaints (injured workers), CAO's ongoing monitoring will review the implementation of the recommended activities that were identified through IFC's scoping process. In this context, it will be important to ensure that IFC's response addresses concerns regarding the adequacy of compensation provided to workers seriously injured and the families of those killed during the construction of the project, in addition to the current program focus on livelihood restoration activities.

In response to the issues raised in the Bujagali-06 complaint (subcontractor working conditions and unpaid wages), the IFC consultant's report found insufficient documentation to be able to

validate the claims of the former Boschcon workers regarding wages and other benefits. CAO expressed concerns about the methodology used to reach the finding and also noted that the report does not address the Boschcon workers' claims regarding compensation for workplace injuries.

In response to the issues raised in the Bujagali-07 complaint (land acquisition), CAO acknowledges the Task 1 report's finding that there are gaps in the existing completion reports against the PS5 (2006) requirements, particularly in relation to the determination of whether project-affected people have had their livelihood restored. The Task 1 report recommended the preparation of Task 2: Supplemental External Completion Report. CAO notes the limited progress in the preparation and implementation of Task 2 and the importance of securing government support for this task.

Given that key items from IFC's response to the CAO investigation are in the process of implementation, CAO will keep these complaints open for monitoring. A subsequent monitoring report is expected in May 2021 or after IFC has completed the actions outlined in its responses to the CAO compliance investigations.

Annex 1. Summary of CAO Investigation Findings

OSH, Workers' Compensation & Unpaid Wages (Bujagali-04, -06, and -08)	
Pre- Investment E&S Review	IFC did not possess or have access to labor and OSH competence that was sufficient to evaluate the capacity of the client or the EPC contractor to apply the provisions of PS2 for a project of this scale and technical complexity.
	IFC did not ensure that the SEA provided adequate assessment of labor and OSH risks- particularly assessment of country and project specific OSH risks during construction.
	IFC did not assess the client's capacity to effectively monitor and manage the OSH performance of the EPC contractor.
	IFC did not ensure that the (Occupational) Health and Safety Management Plan (HSMP) of the EPC contractor was developed following an initial OSH audit.
	IFC did not consider whether national requirements for workers' compensation provided injured workers with access to appropriate compensation as required under the Sustainability Framework.
	IFC's pre-investment review of the project was not commensurate to risk. As a result, IFC did not have assurance the project could meet the labor and OSH related requirements of the PS over a reasonable period of time.
Supervision	IFC did not possess or have access to labor and OSH competence sufficient to monitor the application of its labor and OSH requirements to a construction project of this scale and technical complexity.
	IFC did not establish agreed OSH performance criteria for the client or the EPC contractor or ensure that client reporting provided necessary performance and measurement data to assess the EPC contractor's site OSH performance.
	IFC's Site Supervision Visits did not provide sufficient OSH compliance data regarding the EPC contractor's site performance or the client's capacity to monitor overall project OSH performance.
	Other project monitoring reports such as the Panel of Experts' reports and the reports produced by the independent engineer had insufficient OSH focus to effectively supplement the client's own reporting or IFC's lack of direct supervision of OSH issues.
	IFC neither received OSH management system audits nor commented on their absence.
	IFC neither received nor commented on the absence of regular root-cause analyses of OSH incidents.
	IFC did not assure itself that the Bujagali-04 complaints received appropriate compensation for workplace injuries.
	IFC erred in deciding that the Bujagali-06 Complainants were not covered by its E&S requirements. As a result, allegations that construction of the project had significant adverse effects on employees of the subcontractor were not addressed.

Transmission Line Land Acquisition (Bujagali-07)	
Pre-Investment E&S Review	IFC did not have assurance that the RAPs provided for compensation for land and other assets at full replacement cost. This is not in compliance with PS5 (paras. 8 and 23).
	IFC did not assure itself that the RAP included an assessment of the capacity of the Chief Government Valuer and ultimately measures for the client to bridge the gap in capacity. This is not in compliance with the Sustainability Policy (para. 15) and PS5 (para. 22).
Supervision	Despite IFC considering in November 2008 that land valuation and compensation problems had been solved, it soon became apparent that it was and remains questionable whether compensation at full replacement cost has been achieved. CAO finds that IFC failed to respond to this challenge in a way that would generate corrective actions. This is not in compliance with IFC's Sustainability Policy (para. 26) and PS5 (para. 20), as affected people were neither promptly compensated nor is it demonstrated that they were compensated at full replacement cost.
	The exclusion of the interconnection project from the completion audit undermines IFC's ability to satisfy itself that the adverse socio-economic impacts experienced by the land acquisition and land-use restrictions related to the transmission line were mitigated and livelihood was, at a minimum, restored. This is not in compliance with IFC's Sustainability Policy (para. 26) and PS5 (para. 12).