

DISPUTE RESOLUTION CONCLUSION REPORT AGRI-VIE – 01/KIBOGA, UGANDA OCTOBER 2018

This report summarizes the CAO Dispute Resolution process and outcomes in relation to the Agri-Vie-01/Kiboga complaint.

High on a hillside in Kiboga, a small town just over 120 kilometers (km) west of Kampala, Uganda, stands the office of the Kiboga Twegatte Cooperative Society (KTCS). It is a proud symbol of what can be achieved when community representatives and the private sector work together to secure a better future.



KTCS Offices and banking hall in Kiboga.

This story begins in 2005, when the New Forests Company (NFC) was granted a license to plant trees and operate a commercial forestry enterprise in the Luwunga forest area, gazetted long before as a Central Forest Reserve (CFR) by the Government of Uganda. Uganda's National Forestry Authority (NFA) had the responsibility of keeping the reserves clear of settlement and people. As a result of granting this legal occupancy right, a large number of households who had been living and working within the boundaries of the Luwunga reserve for many years, were eventually compelled to uproot and leave in 2009.

After being displaced, the community faced serious challenges, lacking land to live on and cultivate. However, with their and NFC's commitment to finding mutual solutions, and their clear vision and hard work over many years, much has been

achieved to ensure better and sustainable futures for the community and the company. After reaching agreement in 2014, the company and community have implemented a number of joint development projects benefitting community members, on land the KTCS was able to secure for its members and elsewhere where members are residing.

This report captures the conclusion of CAO's engagement with the community and the NFC, and aims to tell the story of transformation from **conflict to cooperation**, and loss to development, made possible through the parties' collaboration. This story shows what can be achieved through a CAO mediation when parties engage and stay the course.

The Complaint

In December 2011, representatives of a Ugandan community, supported by Oxfam International, Oxfam Great Britain, and the Uganda Land Alliance, brought a complaint to the Compliance Advisor Ombudsman (CAO) on behalf of its members.

The Complainants claimed that thousands of community members had been forced to move from their land to make way for commercial forestry plantation, thereby destroying their property and livelihoods, and compromising health and education opportunities. The Complaint also voiced broader concerns about the **International Finance Corporation's** due diligence related to the project, including lack of meaningful consultation regarding the removals.

CAO Assessment

A CAO team visited the site and met with the community and the NFC in February

and March 2012, to assess the Complaint and explain and discuss options for addressing the complaint with the relevant parties.

During this assessment process, the NFC strongly asserted that the Company had not initiated nor was it involved in the removal of Complainants from the Luwunga CFR. According to the NFC, it was granted a license to operate and unencumbered access to the CFR by the Ugandan government. The removal of people from the reserve was the responsibility of, and conducted by, the government, through the National Forestry Authority (NFA).

Both sides agreed that the impact of the removals on the community, and the ongoing need for the NFC and the community to live and work in harmony, needed to be addressed. Notwithstanding their deep initial differences, the NFC and Complainants made the choice to engage in a dispute resolution process to find mutually acceptable outcomes and solutions to the issues raised in the complaint.

The dispute resolution process facilitated by CAO formally started in April 2012. The focus of this process was to provide an opportunity for the parties to resolve issues through consensus. It never intended to verify claims or issues raised in the complaint, nor pass judgement regarding their merits.

DISPUTE RESOLUTION PROCESS

Building Trust

Early meetings facilitated by CAO between the complainants' and NFC's representatives were tense. It was the first time the complainants' representatives sat around a table with NFC in a negotiating context. Given the disputed history and a media campaign, there was little trust between the parties and it was not clear what each party wished to achieve.

Community members felt unable to engage effectively with NFC because they lacked experience and skills in negotiation. Therefore, CAO provided extensive support over many months to improve the negotiation capacity of the community representatives. CAO also offered training on CAO's dispute resolution methodology to NFC.

The laws of Uganda placed restrictions on what NFC could do: they could not offer compensation to individuals, nor could they make land available for resettlement. However, through both parties' willingness to listen and engage as equals, with discipline and commitment, and with the help of the mediation team, they moved towards finding mutually acceptable solutions. This steadfastness reflected the seriousness and willingness of the parties to find common ground.

Identifying Shared Interests

It was important to the complainants that NFC heard their stories and understood their experiences. They wanted NFC to acknowledge that the lives they had built in the forest had been destroyed. The community felt that they had gone from being land-holders to being internally displaced and indigent. They believed that they were entitled to reparation, compensation, and resettlement.

NFC was frustrated by an ongoing media campaign, and what it felt were false claims and accusations made in the media. They reiterated their belief that the government had managed a process of voluntary movement out of the reserves, by people who always knew they were illegally occupying government land and would have to leave one day. According to NFC, this process of voluntary movement was done strictly in accordance with the laws and constitution of Uganda by the relevant government agencies. NFC claimed it had no involvement or responsibility for any forced removals. NFC's view was that it was a legal licensee operating within strict government policy, invited by the Government of Uganda to invest in forestry, creating permanent jobs, rural

economic development and poverty alleviation while sustainably reforesting forest land in partnership with local communities.

According to NFC, it believed that it had no obligations towards these specific communities. However, the company was committed to a high level of socially responsible investment and private sector driven rural development for all of its neighbouring communities. NFC therefore committed to addressing the grievances to establish and maintain good, lasting and mutually beneficial relationships with their neighbors.

“As socially responsible investors, we found ourselves in an impossible situation clearly restricted by what we could do by the Government of Uganda, who govern our license to operate, on the one hand, and subject to a false, vitriolic and damaging media campaign by muscular left wing NGOs on the other hand, with devastating impact that almost forced the company to close and lay off 2,000 people. We hoped the CAO mediation process could deliver a fair resolution for everyone that would enable us to build a lasting partnership with the community.”

Alex Kyabawampi, Corporate Social Responsibility (CSR) Manager, NFC Uganda

Preparing the Parties for Effective Engagement

The complainants elected and mandated a small group of representatives to negotiate on their behalf, and consultative structures were strengthened to ensure that the representatives could both confirm their mandates and provide feedback to community members on a regular basis. It proved extremely difficult to identify, verify and register community members who had a legitimate claim to be a part of the affected group represented in the mediation process, and determine who

wanted to participate and be subject to its outcomes.

A great deal of time was spent building the capacity of complainants’ representatives to effectively engage with its constituents and NFC on a more equal footing. This capacity building entailed a formal training program, and ongoing meetings between the mediation team and community representatives prior to most joint sessions during which negotiations took place.

“Me, as a woman, to be honest when we had just started the negotiation I used to feel inferior, I feared to speak in public, but as I can say now I am able to speak in public, ask questions to important people and I get answered. Now I have learnt to talk what is in my mind with all confidence.”

**Tasiana Nansaba,
Community Representative**

Negotiations on the Issues

Several months after the initial joint meetings, where issues were identified and ground rules established, the parties commenced negotiations on the issues. Priority issues were isolated and clarified. The issues list, even if contested, provided a structure and focus for the negotiations, and consisted mainly of the following:

- Emotional damage;
- Physical harm and injury;
- Loss of homes, land, livelihoods and amenities;
- Reputational damage and financial losses that NFC claimed were caused by the media campaign;
- Desire for restoration, resettlement, and compensation; and
- Desire for recognition of NFC’s right and social licence to operate, as well as protection of its assets and conservation of the forests.

The parties negotiated these priority issues through bilateral and joint meetings facilitated by the CAO team. Oxfam,

through its Uganda office, provided support to the complainants throughout the mediation process.

Jennifer Nakibirige, Community Representative



Representatives on the day of signing the Agreement.

Reaching Agreement

After almost two years of mediation, the parties signed an Agreement representing full and final settlement in May 2014 on all issues raised by the parties.

In the agreement, the parties committed to a joint program of sustainable development. They agreed that the complainants would create and become founding members of a community Cooperative Society that would act on behalf of affected community members. The Cooperative drew its members from five sub-counties in the Mubende and Kiboga districts: *Kiboga, Kyankwanzi, Mubenze, Mityana, and Nakaseke*, and was named the Kiboga Twegatte Cooperative Society (Twegatte means “we join together” in Luganda). To gain membership, community members provided proof of identity, and proof that they previously lived or cultivated land in Luwunga Central Forest Reserve.

“After signing the agreement, I stopped getting worried and started hoping for the good days coming ahead. Signing the agreement helped us achieve what we had longed for, for a long time.”



Signboard for KTCS offices.

The Cooperative is legally registered, members have adopted a constitution, and it is governed according to the terms of the Ugandan Cooperative Societies Act.

The Cooperative has a Board of nine members and an Executive Committee, elected at each Annual General Meeting. In addition, it has women and youth representatives, and Finance and Planning-, SACCO-, Projects- and Supervisory Committees. Once established, the Cooperative alone spoke and acted on behalf of the affected community.

The parties agreed to the following aspects of the agreement being made public:

- NFC undertook to provide significant financial support to the Cooperative, expanding its social responsibility investment programme to meet some of the specific needs of the community. NFC also agreed to work closely with the Cooperative and its members to build more solid and lasting mutually beneficial relations with the community.
- The complainants agreed to respect NFC’s legal rights to operate within the Luwunga Central Forest Reserve, and both NFC and the complainants agreed to act lawfully and to engage with each other to develop long term cooperation and good neighbourliness.

- The parties agreed to work closely together on a range of programmes and projects aimed at the long term sustainable development of the community. A **joint development forum** (JDF) was created to facilitate the decision-making process.



Community consultation.

Unexpected Results of the Agreement

The parties acknowledged that the Agreement was the foundation for further development but was unable to address all the needs of the affected community and would fall short of restoring access to land. Therefore, they approached the National Forestry Authority (NFA) for support. As a result of the achievements of the parties in reaching their ground-breaking agreement, they were able to negotiate a remarkable Memorandum of Understanding with the NFA, delivering a substantial financial contribution from the Presidency towards the acquisition of land by the Cooperative. This purchase of land allowed the Cooperative to start resettling their members and rebuilding livelihoods. While not part of the main agreement mediated by the CAO, it contributed greatly to the subsequent progress of the Cooperative.

NFC say that they have benefitted from the process mostly in terms of resolving what was a serious threat to peace and security from the conflict by the involvement of credible international mediators. The mediation process was well received by NFC and NFC's relationship with the relevant communities has been considerably strengthened by the process. NFC substantially reviewed its own processes for voluntary land acquisition

based on much wider community involvement and shared value models. However, NFC also claims that the reputational damage done by a negative media campaign – and the subsequent loss of investor sentiment – has not been addressed and continues to undermine the NFC.

Monitoring Outcomes

Over the next four years (2014-2018), CAO closely monitored the parties' implementation of the terms of the agreement.

As part of this monitoring process, CAO appointed a Community Development Coordinator (CDC) to work with the Cooperative, primarily on resettlement planning and income generation projects. The CDC provided strategic, planning, and practical support throughout the monitoring period. The CAO team also conducted regular field visits, consulting the parties where needed and monitoring progress.

At the end of August 2018, CAO convened a final closure meeting and celebration at the Cooperative's newly completed office building in Kiboga, with over 1,000 cooperative members, NFC leaders, government officials, representatives of all key stakeholders, and local dignitaries in attendance. The parties provided feedback to CAO on the process and confirmed that the complaint issues had been resolved to their satisfaction.

Both parties agreed that goodwill had been demonstrated during the implementation period, and that despite many difficulties and challenges, all commitments in the agreement had been fully implemented. They discussed possible ways to continue building upon the positive, mutually beneficial relationship they had developed through the process.

OUTCOMES

As a result of the agreement between the parties, and the subsequent work done by

NFC and the Cooperative, the following has been achieved:

Land for Resettlement and Small-Scale Farming

The Cooperative was able to purchase four parcels of land with the aim of resettling their members and restoring their livelihoods. Unfortunately, due to the vast complexities of land tenure and transfer in Uganda, only one of these has been successfully settled to date. Some 383 households (approximately 1568 individuals at the time) have settled on 900 acres of productive land in the Kyakatebe parish (Mubende District). These households were carefully selected by the KTCS's Resettlement Committee, in consultation with members and the Cooperative Board.

Priority was given to households most in need as the Cooperative was not able to purchase enough land to resettle every member. Some members declined assistance as they had already settled elsewhere. Others remain on a waiting list and will be offered resettlement once the Cooperative is able to secure the other parcels of land. The Cooperative continues to explore ways to generate revenue, acquire additional land, and support all its members.

Each household at Kyakatebe received a small plot on which to build a home, as well as two acres for agricultural activity. Each household was encouraged by the Cooperative to grow subsistence crops and as soon as possible to start generating surplus for the market. Since 2014, the land has been transformed into a highly productive area for small-scale farming.

The Cooperative continues to work at securing full title, transfer and access to the other parcels of land they purchased and legally own. These comprise of: *Gomba*, 984 acres; *Rwensololo*, 200 acres; and *Kansera*, 20 acres.

Once these other lands have been secured, the Cooperative should be able to

settle a total of more than a thousand-member households.

Joint Development Forum (JDF) Projects

Through the JDF, the NFC implemented a range of projects aimed at benefitting members of the Cooperative. Over the four years, as verified by the Cooperative Board and the JDF, these projects included:

- Boreholes at Kyakatebe – the NFC had to make two attempts to finally establish a successful borehole to serve the settlement (383 families). This borehole was fitted with a hand-operated pump;
- Motorised wells at Kiziga, Ntwetwe and Nakayaga, serving at least 150 households each;
- Roads were graded at Kyakatebe to grant people easy access to their land and homes;
- A double classroom school block was constructed at Kayindiindi Primary School;
- The JDF received ongoing logistical, secretarial and financial support to enable it to meet regularly and operate functionally;



Clinic and Primary Health Care Centre.

- A multi-purpose Community Hall was built at Kyakatebe, also housing a primary school;

- A double classroom block was built at Kamirampango where many Cooperative members live;
 - Clinic Buildings at Kikwatambogo were renovated and upgraded, it serves as a day clinic and dispensary manned by a local medical practitioner;
 - A large pond was constructed at Kampindu and seeded with tilapia fingerlings for a fish-farming project co-managed by a sister cooperative on behalf of the KTCS;
 - A large Office Block and Banking Hall was constructed on Cooperative-owned land in Kiboga, to serve as Cooperative Offices, and to house the KTCS Savings and Credit Cooperative. (SACCO).
 - The NFC provided the finances and initial expertise to establish a Cooperative-run *Agrovet*, an agricultural inputs store, also providing extension services, training and capacity building to small farmers.
- generating assets, and harvest food each season for their own consumption, with a surplus to sell.
- Childcare groups have formed to care for infants while their mothers and fathers work. The primary schools at Kyakatebe and Kamirampango are in full operation and continue to graduate groups of young pupils.
 - The Cooperative continues to represent the interests of the community. It engages with its members on a wide range of issues, planning and supporting them to build livelihoods, resolve disputes, and develop new initiatives to the benefit of the whole community.
 - After some initial difficulties, local authorities are now providing government services as they would to any other community in the district.
 - The Cooperative office and banking hall mentioned earlier provides a number of commercial and enterprise opportunities for the Cooperative and its members. The Cooperative will establish SACCO operating from this central location, it may rent out rooms, it can house small businesses, it can offer training and capacity building, and many other income-generating activities.

Livelihood Restoration and Improved Living Conditions

Through the partnership between NFC and the Cooperative, significant progress has been made in the restoration of livelihoods and improvement of living conditions for the complainants:

- Some 383 complainant households have settled onto land legally owned by the Cooperative at Kyakatebe and a rapidly growing, integrated and cohesive village has emerged. For the first time these members have security of tenure for as long as the Cooperative owns the land on their behalf. Starting with rudimentary tent-like structures constructed out of local timber and plastic tarpaulin, Cooperative members have built permanent brick-and-clay homes, shops and amenities. They have tilled the soil, planted numerous crops, invested in long-term income

INSIGHTS FROM THE PROCESS

A Flexible Process

The CAO team and the parties had to adopt a highly flexible approach to the dispute resolution process given the level of mistrust between the parties, fear about the potential consequences of entering negotiations, and imbalance in the parties' negotiation capacity. After an initial engagement where the ground rules and structure for the mediation process were agreed, separate meetings were utilised to move the process forward. When the parties were brought together for the first

joint meeting, and throughout the mediation, it was a smaller number of representatives who met. These representatives created feedback loops with their constituency to ensure ongoing mandates and sharing of information.

The dispute resolution process would not have been as successful, and may have floundered early on, without the flexibility of adapting and adjusting to the needs of the parties, as well as the parties' willingness to adapt to each other's needs.

Role of Local and International NGOs

Oxfam and the Uganda Land Alliance played a primary role in assisting the community bring attention to their plight, and to lodge a complaint with CAO. They helped the complainant community prepare for engagement, become well organised, and create structures for mandating their representatives at the negotiating table. The emotional and financial support of the NGOs helped the community representatives to sustain their involvement over the long dispute resolution process.

However, the CAO process started in a tense context. International and local NGOs were running media campaigns blaming NFC for the complainants' circumstances. The campaign generated deep mistrust and it was only when it was suspended by agreement with the NGOs that NFC was prepared to engage with the community to seek solutions.

Ultimately, it was the sustained commitment, trust, and goodwill of NFC and community representatives in the dispute resolution process – in a difficult and testing environment – that contributed to its eventual success.

Value of Building Relationships

According to the complainants, their biggest lesson from the process was the realization that they needed to, and could, build a strong relationship with NFC. This was based on recognition of the company's right to operate, their mutual interests, and

respect and was made possible by the company's commitment to social responsibility. The Cooperative and NFC both recognize that they will be neighbors for many years to come, and will both benefit from ongoing cooperation on development initiatives and in protecting NFC's forests.

The Cooperative leadership have taken these lessons further, building relationships with local authorities, government offices and institutions where these were previously lacking.

CAO Reflections Regarding Potential for Early and Preventive Measures

In CAO's discussions with the parties during and after settlement, they expressed a common sentiment that more could, and should, have been done early on to prevent the escalation of the dispute around the project. This could take a number of forms:

- Affected communities and IFC clients could enter discussions at the project design phase about potential social and environmental impacts, and strategies to deal with them. Environmental and Social Impact Assessments should alert clients to potential conflicts, and could recommend early intervention during the pre-funding, loan approval, or planning phases.
- In some instances, it is as important for IFC clients to deal with perceptions regarding their responsibility for environmental and social project impacts as it is dealing with the reality of the situation. Despite the application of the IFC Performance Standards, there may be instances where clients are willing to go beyond what is required or may need to address disputes of fact in the application of those standards.
- IFC is in the process of developing a new Resettlement Handbook which will be released in 2019 to reflect the various CAO cases and IFC's experience since the roll-out of the

2012 Performance Standards. According to IFC, the handbook will be a detailed practitioner guide and includes guidance on government-led resettlement challenges.

CONCLUSION

CAO concluded its involvement in this case after confirming that all aspects of the agreement between NFC and the Cooperative have been implemented. The Cooperative leadership group, assisted by the Kiboga District Commercial Officer and local authorities, in a workshop facilitated by CAO, was able to review and assess each JDF project, and confirmed that they had been properly implemented in terms of the agreement.

The affected community is restoring livelihoods and maximizing the benefits of owning land, cooperating through established community structures, and maintaining a good working relationship with NFC and the government. There remain many challenges, particularly with regard to securing unencumbered ownership and access to the land purchased by the Cooperative. Other challenges remain as well: access to sustainable supplies of potable water at settlement sites; decent and safe sanitation; school and clinic supplies; teaching and health services staff; and access to primary health care.

The Cooperative and its members continue to face great livelihood and sustainability challenges as do many other rural communities in Uganda. Opportunities in agriculture (small scale and commercial), trade and enterprise, and employment need to be aggressively pursued and developed.

CAO has informed members of the donor community about these challenges in the hope that they may be able to provide support to the Cooperative Society and its members. The NFC and the Cooperative are committed to an ongoing engagement and finding more opportunities to partner on aligned interests. This will ultimately

contribute to a thriving and vibrant Cooperative and communities.

An NGO working in the field of water clean water and sanitation, *Drink Local Drink Tap*, has already made a significant contribution by constructing a borehole, pump and toilet block at the Kyakatebe settlement. Hopefully they will continue to work with the Cooperative on developing appropriate local technologies.

NFC and the community have created a mutually beneficial partnership that can serve as a model for other companies and communities, demonstrating the value that can be created and shared by working together toward a common goal. CAO is proud of the outcomes achieved through this process and notes the goodwill and commitment demonstrated by the communities and NFC throughout the process, without which these outcomes would not have been possible.