



**OMBUDSMAN ASSESSMENT REPORT**

**Fifth Complaint (Bujagali Energy-05) 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](http://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
MIGA	Multilateral Investment Guarantee Agency
NAPE	National Association of Professional Environmentalists

## 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,<sup>1</sup> 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 affected<sup>2</sup>.

OR

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<sup>1</sup> 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>

<sup>2</sup> 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 May 2011, several community members residing in the Bujagali affected area submitted a complaint to the CAO. The complainants' concerns related to compensation for assets during the land acquisition process, damage to houses and impacts to health related to blasting during construction, and compensation for lost livelihoods.

In June 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 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:

<b>Lenders</b>	<b>(US\$ mil)</b>
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 May 2011 a group of 29 individuals from different local communities affected by the construction of the hydropower project submitted a complaint to the CAO. 11 of the complainants are from the local Bujagali Swimmers' Group. In summary, the concerns raised in the complaint are as follows:

- **Land compensation** – Several complainants believe that the compensation process undertaken by the project in order to acquire their land for the electric-power transmission lines was flawed. 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 rates paid to each owner and between the early valuations versus the final amount paid. There are also some lands for which they believe the owners were never compensated. The community members also raise wider concerns about the consultative committee that was put in place by the project, and the extent to which it was sufficiently participatory.
- **Blasting during construction** – Several community members contend that blasting during construction has damaged their homes and livestock, and has had a negative impact on their health and that of their families. They allege that compensation for these damages has never been provided.

- **Project benefits** – some community members claim that promises of project benefits – such as schools, piped water, and electricity – have never materialized.
- **Loss of livelihood** – A subset of complainants raised concerns about loss of livelihood due to the project's impact on Bujagali Falls. The claimants make their living by operating small-scale fishing and touristic activities in the Falls, which will be made untenable as part of project construction. The claimants state that they were not identified as an impacted group, and were therefore provided no compensation or livelihood assistance to relocate to another venue. The claimants reported having approached the company regarding the matter, but no action has been taken.

### 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 in order to make a judgment on the merits of the complaint.

Between May and September 2011, meetings and discussions were held with the original complainants as well as with additional community members who came forward claiming to have been affected by the same issues. As of December 1, 2011 the total number of community members requesting CAO assistance is 64.

The CAO assessment of the complaint consisted of:

- Review of project documents and related reports from other investors
- Country missions and site-visits
- Interviews, meetings, and group discussions with the complainants and the project proponent
- Categorization of the complaints so as to establish contextual background.

The CAO team conducted 2 field trips to Jinja between May and September 2011. In preparation for, during, and following these field trips, the CAO Ombudsman team reviewed project documents. The team also met with complainants, IFC and MIGA project teams, representatives of BEL and Salini, and the National Association of Professional Environmentalists (NAPE).

## **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 primary topics and issues that the parties agreed to discuss further are:

1. How can any compensation claims for losses (e.g. fishing, farming, property damages and health complaints) and land disputes related to transmission lines be resolved?
2. How might BEL and local communities work together to identify and address negative impacts on communities from quarry blasting (e.g. impact on homes and buildings, human health, livestock, etc.)?
3. How can community members stay informed on the response to problems/concerns brought to the company's attention?

### **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 shared key goals and interests:

- Working together to try to resolve the issues in a participatory and collaborative manner
- Keeping complainants and community members informed regarding the concerns/complaints lodged and progress on efforts to resolve them
- Going beyond the current complaints to also look at ways to prevent future problems and complaints
- Ensuring compensation schemes are fair and understood by all relevant parties

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 seek ways to resolve the issues related to the complaint from local community members. The CAO will now work with all parties to produce an explicit agreement on a collaborative process for addressing the issues identified in the complaint and this Report.