



OMBUDSMAN CONCLUSION REPORT – BUJAGALI ENERGY-04

This report summarizes the CAO Ombudsman process in relation to a fourth complaint received by the CAO regarding IFC's and MIGA's investment in the Bujagali Energy Project.

BACKGROUND

IFC & MIGA Projects

The Bujagali project consists in the development, construction and maintenance of a run-of-the-river hydropower plant with a capacity of 250 MW on the River Nile in Uganda. The project is being developed by Bujagali Energy Limited (BEL) who engaged Salini Costruttori as the Engineering, Procurement and Construction (EPC) contractor to construct the dam. Throughout the period of the dam construction, Salini Costruttori employed over 4500 workers, according to company figures.

When CAO received this complaint in March 2011, IFC had invested US \$130 million in a combination of A loan and C loans. In parallel, MIGA had issued a \$115 million guarantee to World Power Holdings Luxembourg for its investment in the project. These investments formed part of an approximately \$900 million financing package for the project with the participation of several other multi-lateral and bi-lateral development institutions.

The Complaint

In March 2011, a group of former employees involved in the construction of the power plant filed a complaint with the CAO on behalf of themselves and more than 30 other former employees of the EPC contractor. The complainants stated that in the course of their employment they had suffered work-place accidents and sustained injuries for which they claimed they had received inadequate compensation for permanent disability. Three workers claimed that they had not been paid terminal benefits in line with their contracts. Some of the workers suggested that the medical assessment, compensation and terminal benefits processes had not been transparent.

More information regarding the complaint is available on CAO's website at www.cao-ombudsman.org.



View of the Bujagali power plant under construction

CAO ASSESSMENT

During CAO's initial assessment phase, all the parties agreed to pursue a collaborative dispute resolution process facilitated by CAO in a good faith attempt to address and resolve the complaints. The final number of individual complaints totalled 93¹. CAO worked with the parties to understand and categorize the varied individual cases and their status, as well as explore with the parties the different mechanisms available for reviewing and resolving them.

DISPUTE RESOLUTION PROCESS

Direct settlement

In nine of the individual cases, the outstanding compensation payments were settled immediately and directly by the EPC contractor without any involvement of CAO.

Exchange of Information

One of the first steps of the dispute resolution process was convening information sessions to inform complainants about the CAO process,

¹ This number reflects only those workers who felt their cases were not resolved and wanted CAO assistance. According to IFC and company documents, there were other injury claims over the course of the construction work that were resolved and which were not part of the CAO complaint.

their eligibility for compensation for permanent disability in line with the Uganda Workers Compensation Act, and variations in the final calculations which depended on salary and length of employment. This entailed providing workers with the opportunity to ask questions of the employer as well as the employer's insurance company and the District Labour Office. Ultimately, the former workers came to understand the options available to them in navigating the workers' compensation process. As a result, a number of the complainants accepted that the compensation previously paid, or which was being offered to them, was in accordance with the law.

One of the complainants' other concerns was related to accessing their medical documents. Parties agreed that each worker had a right to information contained within their medical records, and a simple process was set up by which each worker could request and receive a summary of his medical records from the EPC clinic (even if they had been previously provided). When further medical reports were requested by the Medical Arbitration Board, these were provided directly. Having access to medical information was an important first step for complainants to understand how their injuries were being assessed, to make decisions about how they wanted to proceed with their individual claims and to process their claims for disability support from the National Social Security Fund.

Individual Review of Cases

Some cases were reviewed by the individual workers in direct interaction with their former employer in meetings facilitated by the CAO. This provided the parties with an opportunity to share information on an individual basis, look again together at individual records, clarify any misunderstandings and, in several cases, resolve the dispute with existing documentation. Through this process, a number of complainants came to understand better the calculations and settle the matter with their former employer.

Medical Arbitration Board (MAB)

One of the mechanisms available for resolution of individual worker compensation cases under Ugandan Law is the Medical Arbitration Board (MAB), convened under Ugandan law and housed in the Ministry of Labour, to determine

disputes related to work place injury, medical assessment and levels of compensation.

At the time CAO received the complaint, the MAB was suffering operational challenges, including limited funding and a substantial backlog of cases. Furthermore, the workers were not always open to the MAB process, citing concerns about its neutrality and the cost of travelling to and from Kampala for hearings. Once the MAB began to function and the process was better understood by the workers, some chose that as their preferred dispute resolution option. The employer also elected for the MAB in some cases. The MAB was preferred by parties where there was fundamental disagreement over issues such as the integrity of the complaint, the medical assessment of the workers' permanent disability or the compensation process itself. The CAO assisted this process by liaising with the Ministry of Labour officials at the District level as well as the MAB to set aside space for the Bujagali workers - and hear their cases as a priority. CAO was then in a position to help the workers with hearing schedules and preparing their documentation (CAO also offered to assist the employer, if needed).



Former workers attend a CAO information meeting with their documentation on hand

Grievance Mechanism Workshop

In May 2013, CAO convened a workshop with IFC, BEL, 12 project affected community members (including some of the worker complainants, as well as complainants from another CAO case, Bujagali-05²), local

² The Bujagali-05 complaint was filed in May 2011 and raised concerns related to compensation for assets during the transmission line land acquisition process,

government and an NGO that had been involved in handling Bujagali project grievances. The purpose of the workshop was to bring key stakeholders together to:

- listen to the experiences of participants in addressing and seeking to resolve issues arising around the Bujagali project; and
- identify key lessons to inform both the IFC and BEL in planning effectively to reduce and/or manage grievances at Bujagali and in relation to other projects in Uganda and elsewhere in the world.



CAO staff with representatives of Bujagali Energy Limited (the project sponsor) and the EPC contractor

OUTCOMES

Cases Resolved

Out of a total of 93 individual cases, 86 were resolved:

- 55 were settled through the MAB
- 19 were resolved through CAO facilitation/mediation
- 9 were settled directly by the EPC contractor with their former employees
- 3 went to court.

Of the seven unresolved, one worker could not be traced. The six remaining cases will be transferred to CAO Compliance in line with CAO's Operational Guidelines.

damage to houses and impacts to health related to construction blasting, and compensation for informal tourism workers' loss of livelihoods. See also http://www.cao-ombudsman.org/cases/case_detail.aspx?id=172

New Community Based Organization (CBO)

The principal concern of most of the injured workers was their future livelihoods. During their employment on the dam construction, they had received skills training in construction-related activities. Several CAO complainants and other disabled workers came together and founded the Kikubamutwe Disability and Development Organization (KDDO) with the mission of using their own resources and skills to create and sustain livelihood generating activities and in serving their communities.

Strengthened MAB

The MAB was resuscitated in response to increased demand for expeditious settlements by both workers and their employer. Through heightened interaction with the parties, the District Labor Officer (DLO), and CAO, the MAB was strengthened as a viable local mechanism. The number of cases it handled, and parties' acceptance of the results demonstrates its ability to handle workers compensation cases in a manner that was largely viewed as reasonable and credible.

Institutional Learning

One outcome of the May 2013 Grievance Mechanism workshop was a commitment by IFC to use recommendations and ideas from the workshop to help train other IFC staff on designing better grievance mechanisms. As a first step in this regard, in July 2013 CAO and IFC co-sponsored an internal "Master Class" for IFC social and environmental specialists.

BEL and Salini Costruttori have also expressed that through their collaboration in the dispute resolution process with CAO and the complainants, they had learned more about additional options in addressing grievances and disputes, including voluntary mediation.

LESSONS AND INSIGHTS

The challenges of organizing individual cases under one process

When the complaint was lodged with CAO, the complainants were not organized in any visible way. Certainly they had all been employed on dam construction at one time or another, but their cases were disparate: differing by length of employment, severity of injury, amount of

compensation, availability of documentation and status of each case. Trying to contain the range of complaints in one process was a challenge; it involved acting creatively and with flexibility, so that the process was coherent but allowed each complainant to make decisions about how he wanted to handle his own case.

This disparity required the CAO team to invest significant amounts of time organizing cases and case documentation, setting up a tracking and communication system, and engaging in multiple field visits to ensure complainants and the stakeholders were informed and engaged at every step of the process.

Lack of long-term relationship

Sustainable dispute resolution is often predicated on the existence of a long-term relationship that will continue between the parties into the future, and the shared interest the parties have in transforming this relationship into a collaborative and positive one. In this complaint, no such long-term relationship existed with the employer as the EPC contractor was in the final stages of dam construction and preparing to exit the project.

Some workers were from the local community; others lived further afield and returned there on termination. Any longer term relationship would most likely be between the local community (where many of the construction workers live) and BEL, as the project operator, even though the workers had not been employed directly by BEL. This, therefore, required CAO to work expediently to settle the cases before the departure of the EPC, and coordinate closely with BEL to ensure their full understanding of the dispute resolution process, so that they would be prepared for any action or involvement which might have been required on their part.

Use of local mechanisms and professionals

CAO's approach to dispute resolution aims to identify local mechanisms or other conflict management structures that may be useful to the process, rather than creating new and overlapping processes. In this Bujagali complaint, the existence of the MAB was identified early on,

and the CAO team devoted attention and resources to establish how this existing mechanism could present an option for responding to the needs of the parties.

Engagement with the MAB led to productive interactions with Ugandan government officials including the MAB Secretariat, and the District Labour Office, all of whom became assets for successful resolution of multiple cases where employees opted for the MAB process or appealed directly to the District Labor Officers.

Using regional dispute resolution professionals based in Uganda and Kenya to assist with neutral mediation and facilitation was also key to successful management of the dispute resolution process.

Potential Early/Preventive Role for IFC

BEL and the EPC contractor offered the following suggestions to IFC for large infrastructure projects in the future: (1) where national legislation provides injury compensation rates that are too low by international standards, IFC may consider reviewing the standard during the pre-loan period; and (2) IFC should assist its clients (and potentially host governments) in establishing an independent and efficient medical assessment and dispute resolution process for injured worker claims early in the project cycle. The goal would be to provide a fair, credible, and trusted assessment of injured workers to reduce disputes, corruption, and unrealistic expectations.



Kikubamutwe Disability and Development Organization (KDDO)

Other documentation relevant to the case is available on the CAO website – www.cao-ombudsman.org