



**CAO ASSESSMENT REPORT**

**Sixth Complaint (Bujagali Energy-06) regarding the Bujagali Hydro Power Project  
(IFC #24408 & MIGA #6732)  
Buikwe District, Uganda**

*November 2013*

*Office of the Compliance Advisor Ombudsman  
International Finance Corporation/  
Multilateral Investment Guarantee Agency  
[www.cao-ombudsman.org](http://www.cao-ombudsman.org)*

## **About the 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. 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.

For more information, see [www.cao-ombudsman.org](http://www.cao-ombudsman.org).

**Table of Contents**

Table of Contents..... 3

LIST OF ACRONYMS..... 4

1. Overview ..... 5

2. Background..... 5

    2.1. The Project..... 5

    2.2. The Complaint ..... 6

3. Assessment ..... 6

    3.1. Methodology..... 6

    3.2. Findings..... 7

        3.2.1. Summary of Issues..... 7

        3.2.2. Summary of Stakeholder Goals and Interests..... 7

4. Conclusion and Next Steps ..... 7

Annex A. CAO Complaints Handling Process ..... 8

## **LIST OF ACRONYMS**

BEL	Bujagali Energy Limited
CAO	Office of the Compliance Advisor Ombudsman
EPC	Engineering, Procurement & Construction
IFC	International Finance Corporation
MIGA	Multilateral Investment Guarantee Agency

## 1. Overview

In April 2013, CAO received a complaint from former workers who had undertaken work on the Bujagali project site and Salini Costruttori (the EPC Contractor)'s camp site while employed by a Salini sub-contractor, Boschcon Civil and Electrical Construction Limited. The complainants raise labor concerns about unpaid wages and other benefits which they state are due to them. The CAO determined that the complaint met its three eligibility criteria and began an assessment of the complaint. After conducting an assessment, including CAO field visits between May and August 2013, key stakeholders have agreed to participate in a collaborative dispute resolution process facilitated by CAO Dispute Resolution. 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 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 is being developed by Bujagali Energy Limited ("BEL" or the "project Company").

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 listed below:

<b>Lenders</b>	<b>(US\$ mil)</b>
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 Francaise de Developement (AFD)	12.8
Nederlandse Financierings-Maatschappij voor Ontwikkelingslanden N.V. (FMO)	73.0

## 2.2. The Complaint

In April 2013, CAO received a complaint from a group of former workers of Boschcon Civil and Electrical Construction Limited on behalf of themselves and claiming to represent more than 300 other former employees. Boschcon was contracted by Salini Costruttori, the Engineering, Procurement, and Construction (EPC) Contractor for the Bujagali project, to undertake initial works on the dam site as well as to build Salini's camp and other facilities which housed and served Salini staff for the duration of the project. The complainants raise a range of labor concerns during their employment with Boschcon, including unpaid wages and benefits.

## 3. Assessment

### 3.1. Methodology

The purpose of this 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 the company would like to pursue a dispute resolution process under the auspices of CAO Dispute Resolution, or whether the complaint should be appraised by CAO Compliance (see Annex A for CAO's complaint handling process). The CAO does not gather information to make a judgment on the merits of the complaint during its assessment.

The CAO assessment of the complaint consisted of:

- reviewing project documentation as well as documentation in support of the complaint submitted by the former workers;
- conducting meetings with an initial group of 36 former workers who voiced their concerns and later with a smaller representative group of 16;
- holding conversations with the IFC/MIGA project team, as well as with BEL;
- meeting with representatives of Boschcon Construction Limited;
- communicating with Salini Costruttori, who contracted Boschcon Construction Limited; and
- conducting meetings with the Ugandan Ministry of Labour at District and national level, the Ministry of Energy, and with the National Environment Monitoring Agency (NEMA) as Secretariat of the former Bujagali grievance mechanism.

## **3.2. Findings**

### **3.2.1. Summary of Issues**

This section summarizes the issues laid out by different stakeholder group as expressed to CAO.

Based on the original complaint and further stakeholder discussions undertaken as part of the CAO Assessment, the primary issues that would need to be addressed to resolve the complaint are:

1. How can the former workers' allegations of non-payment of wages and benefits be addressed and resolved?
2. How might the former workers' other complaints and concerns be addressed, such as contractual entitlements and workplace accidents, as well as the project's compliance with the project Labor Force Management Plan?

### **3.2.2. Summary of Stakeholder Goals and Interests**

Based on the discussions with key stakeholders described above, the CAO team heard and understood the following shared key goals and interests:

- a desire to reach a durable resolution of the worker claims;
- avoiding or preventing further conflict escalation; and
- respecting all parties' legal rights.

## **4. Conclusion and Next Steps**

The complainants, Boschcon, and the Ministry of Gender and Labour have agreed to work with the CAO Dispute Resolution team to try to resolve the issues raised in the complaint using a collaborative approach. BEL also supports the dispute resolution process and has agreed to continue working with CAO as needed, although they do not intend to participate in direct discussions with the complainants<sup>1</sup>. The complainants are in the process of working with other former workers to coordinate their efforts. They have selected representatives to work with CAO and other stakeholders in trying to resolve the complaint.

During CAO's dispute resolution processes, the CAO provides neutral mediation/facilitation and convenes separate and joint meetings as needed. CAO will work with the parties to assist them in agreeing on a timeline and process and schedule for meetings.

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<sup>1</sup> The original release of this Report contained a typo in this sentence (the word "not" was accidentally omitted) and it was subsequently corrected in this final version.

## Annex A. CAO Complaints Handling Process

The Office of the Compliance Advisor Ombudsman (CAO) is the independent accountability and recourse 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.

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>2</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>3</sup>

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<sup>2</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>3</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 will inform the stakeholders, including IFC/MIGA staff, the President and Board of the World Bank Group, and the public, that CAO Ombudsman has concluded its involvement in the complaint, and that it is being transferred to CAO Compliance for appraisal.



OR

**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 involvement in the project is merited.

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

Step 6: **Conclusion**/Case closure