



CAO ASSESSMENT REPORT

**Regarding concerns in relation to the Bujagali Energy Ltd. Project
(IFC # 24408 & # 33022 & MIGA #6732) in Jinja, Uganda**

March 2018

Office of the Compliance Advisor Ombudsman
for
the International Finance Corporation and the
Multilateral Investment Guarantee Agency
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. 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

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LIST OF ACRONYMS

CAO	Office of the Compliance Advisor Ombudsman
IFC	International Finance Corporation
MIGA	Multilateral Investment Guarantee Agency
BEL	Bujagali Energy Ltd.

1. OVERVIEW

In June 2017, a complaint was lodged with CAO by a former employee (the Complainant) of Salini Costruttori (Salini), the former construction contractor of Bujagali Energy Ltd. (BEL). This is the eighth complaint received by CAO in relation to this IFC/MIGA project. The Complainant alleged that the Salini had failed to compensate him for an injury he sustained at work in July 2009. The complaint was received in June 2017, and found eligible in July 2017. During CAO's assessment the Complainant expressed an interest in engaging in a dispute-resolution process facilitated by CAO. However, BEL declined to engage in a dispute-resolution process stating that; a) the Complainant was not an employee of BEL, b) BEL was not party to the process implemented by Salini for injured workers, and c) BEL was concerned about the amount of time that had lapsed between the Complainant's alleged injury and the time he filed the complaint with CAO. In keeping with CAO's Operational Guidelines, the complaint will now be handled by CAO's Compliance function.

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 ("BOOT") basis on the River Nile, at Dumbbell Island, 8 kilometres north of the existing Nalubaale and Kiira power plants, in Uganda (the "project"). The project was developed by Bujagali Energy Limited ("BEL"). BEL was also responsible for managing the construction of approximately 100 kilometres 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 sells 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 (where IPS(K) and Jubilee Investment Company are both AKFED controlled companies); and CDC, UK, (b) SG Bujagali Holdings, a company incorporated in Mauritius and an affiliate of Sithe Global, which is ultimately controlled by Blackstone Capital Partners and Sithe Global's management.

The total project cost is approximately \$902 million, financed by US\$702 million of debt and US\$200 million of equity. The in 2007, the IFC invested \$130 million in BEL through 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., also an affiliate of Sithe Global (USA), for its investment in the project, while IDA provided US\$115 million Partial Risk Guarantee to support commercial bank financing for the project. Subsequently, in 2012, MIGA increased its guarantee cover to \$120 million and in 2014, IFC committed an additional investment of \$4 million in the form of Client Risk Management products.

The other lenders to the project are highlighted below:

Lenders	(US\$ mil)
European Investment Bank	136.0
Africa Development Bank	110.0
Deutsche Investitions-und Entwicklungsgesellschaft (DEG)	45.0
Societe de Promotion et de Participation pour la Cooperation Economique (PROPARCO)	59.0
KfW Entwicklungsbank – German Development Bank	15.0
Agence Francaise de Developement (AFD)	12.8
Nederlandse Financierings-Maatschappij voor Ontwikkelingslanden N.V. (FMO)	82.0

2.2 The Complaint

In June 2017, CAO received a complaint from a former employee of Salini, BEL’s former construction contractor. This is the eighth complaint received by CAO in relation to this IFC/MIGA project. The Complainant alleges that, in July 2009, while employed by Salini, he sustained a work-related injury that caused him severe chronic backache and for which he was not compensated.

The issues raised during the assessment are described in more detail below.

3. ASSESSMENT SUMMARY

3.1 Methodology

The aim of the CAO assessment is to clarify the issues and concerns raised by the complainant, gather information on the views of different stakeholders, and determine whether the complainant and the IFC/MIGA project sponsor, would like to pursue a dispute-resolution process facilitated by CAO, or whether the complaint should be handled by CAO’s Compliance function for appraisal of IFC/MIGA performance (see Annex A for CAO’s complaint-handling process).

In this case, CAO’s assessment of the complaint included:

- a desk review of project documentation;
- telephone conversations and in-person meetings with the Complainant in Kampala, Uganda;
- telephone conversations with BEL; and
- telephone conversations with IFC and MIGA project teams.

This assessment report documents the views heard by CAO and explains what step will follow the assessment process. This report does not make any judgment on the merits of the complaint.

3.2 Summary of views

Complainants' perspective

The Complainant explained that he was employed by Salini, the former construction contractor of BEL, from September 2007 to November 2010, as a steel fixer. In July 2009, he sustained injury to his spine whilst working and reported to the Salini clinic for examination. He was prescribed pain medication, booked off work for two days, and referred to the Jinja local hospital for physical therapy treatment.

After he visited the hospital for physical therapy, his back pain improved for a short period, and he returned to work. But the pain resumed after a few weeks. When the pain resumed, he went back to the Salini clinic and was given more medication and an ointment to rub on his back, and told to return to work. He then, of his own accord, went back to the Jinja local hospital for treatment.

He continued to work and take medication prescribed to him by the Salini clinic until November 2010, when his employment was terminated. The reason for termination, stated in the termination letter, is that the work load had decreased and Salini no longer needed his services. The Complainant believes that the real reason for his termination was his back injury and the disruption it caused to his work, because Salini continued to operate for another three years after his contract was terminated. He claims that he has not been able to find employment since 2010, because of chronic back pain.

The Complainant also stated that he did not file a complaint with Salini or the Company before 2017, because he was not aware that there was a process whereby injured employee could file a claim for medical expenses. He explained that, after his employment was terminated, he moved to his village, which is approximately 20 miles from Jinja. He recently learned about the CAO process from a friend who was part of a group that had filed a complaint with CAO in March 2011, after being injured while working with Salini.

He indicated that he continues to seek medical assistance from his local clinic, but that the cost of medical treatment has become prohibitive, as he has not worked since 2010. His last visit to the Jinja local hospital was in June 2017, when he was treated for chronic back pain. He stated that he is unable to find work because of his medical condition and that, because of the back pain, he cannot lift objects that have much weight. He is seeking assistance from the Company and Salini to pay for medical treatment to heal his back pain.

Company's perspective

BEL expressed concerns about the complaint, noting that (i) the Complainant was not an employee of BEL; (ii) the Complainant was able to continue working for Salini for approximately a year and half, after his alleged injury; (iii) BEL was neither a party, nor privy to the alleged injuries and the interaction between the Complainant and his employer; and (iv) BEL was concerned about the significant time delay of eight years, between the Complainant's alleged injury at work and the opportunity to file a complaint with CAO. BEL further noted that Salini followed a procedure to address injuries in the workplace and inquired why the Complainant was not part of the complaint filed by other employees in 2010.

BEL also noted that the medical documents submitted by the Complainant do not link the alleged injury at work in 2009 to the visit to the Jinja hospital in June 2017.

4. NEXT STEPS

While the Complainant expressed an interest in participating in a dispute-resolution process, BEL was of the view that it was impractical to accurately assess the complaint for the reasons

noted in section 3.2 above and declined to participate in the dispute-resolution process. As the dispute-resolution process is voluntary for both sides, and thus mutual agreement must be present before proceeding with such a process, the complaint will now be referred to CAO Compliance for appraisal of IFC and MIGA's role.

Annex A. CAO Complaint Handling Process

Once CAO declares a complaint eligible, an initial assessment is conducted by CAO's Dispute Resolution 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) help stakeholders understand the recourse options available to them and determine whether they would like to pursue a collaborative solution through CAO's Dispute Resolution function, or whether the case should be reviewed by CAO's Compliance function.

As per CAO's Operational Guidelines,¹ 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: **CAO assessment:** Assessing the issues and providing support to stakeholders in understanding and determining whether they would like to pursue a consensual solution through a collaborative process convened by CAO's Dispute Resolution function, or whether the case should be handled by CAO's Compliance function to review IFC's/MIGA's environmental and social due diligence. The assessment time can take up to a maximum of 120 working days.
- Step 4: **Facilitating settlement:** If the parties choose to pursue a collaborative process, CAO's dispute-resolution function is initiated. The dispute-resolution process is typically based on or initiated by a Memorandum of Understanding and/or mutually agreed-upon ground rules between the parties. It may involve facilitation/mediation, joint fact finding, or other agreed resolution approaches leading to a settlement agreement or other mutually agreed and appropriate goals. The major objective of these types 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 dispute-resolution process, in a way that is acceptable to the parties affected.²

OR

Compliance Appraisal/Investigation: If the parties opt for a Compliance process, CAO's Compliance function will initiate an appraisal of IFC's/MIGA's environmental and social due diligence of the project in question to determine whether a compliance investigation of IFC's/MIGA's performance related to the project is merited. The appraisal time can take up to a maximum of 45 working days. If an investigation is found to be merited, CAO Compliance will conduct an in-depth investigation into IFC's/MIGA's performance. An investigation report with any identified non-compliances will be made public, along with IFC's/MIGA's response.

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

Step 6: **Conclusion/Case Closure**

¹ For more details on the role and work of CAO, please refer to the full Operational Guidelines: http://www.cao-ombudsman.org/documents/CAOOperationalGuidelines_2013.pdf

² Where stakeholders are unable to resolve the issues through a collaborative process within an agreed time frame, CAO Dispute Resolution will first seek to assist the stakeholders in breaking through impasse(s). If this is not possible, the Dispute Resolution team will inform the stakeholders, including IFC/MIGA staff, the President and Board of the World Bank Group, and the public, that CAO Dispute Resolution has closed the complaint and transferred it to CAO Compliance for appraisal.