



COMPLIANCE MONITORING REPORT

IFC Investment in Bujagali Energy Ltd., Uganda

IFC Projects #24408 and #39102; MIGA Project #6732

CAO Complaints -04, -06, -07 & -08

Monitoring of IFC's Response to: CAO Investigation of IFC's Investment in Bujagali, Uganda

February 27, 2019

Office of the Compliance Advisor Ombudsman (CAO)

About CAO

CAO's mission is to serve as a fair, trusted, and effective independent recourse mechanism and to improve the environmental and social accountability of IFC and MIGA.

CAO (Office of the Compliance Advisor Ombudsman) is an independent post that reports directly to the President of the World Bank Group. CAO reviews complaints from communities affected by development projects undertaken by the two private sector arms of the World Bank Group, the International Finance Corporation (IFC) and the Multilateral Investment Guarantee Agency (MIGA).

For more information about CAO, please visit www.cao-ombudsman.org

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Introduction

CAO's compliance function oversees investigations of IFC/MIGA's environmental and social (E&S) performance with a view to ensuring compliance with relevant requirements and to improving institutional E&S performance.

Following a compliance investigation, CAO monitors actions taken by IFC/MIGA until it is assured that findings of non-compliance are being addressed.

CAO monitoring considers IFC's response to a compliance process at two levels:

- 1) the project level, and
- 2) the level of IFC/MIGA policies, procedures, practice or knowledge.

The first level of analysis is designed to ensure that CAO's project-specific non-compliance findings are addressed. The second is designed to document institutional improvements to E&S risk identification and management.

This report reviews actions taken by IFC and MIGA in response to the findings of two CAO compliance investigations which considered the application of IFC and MIGA environmental and social standards to the Bujagali Energy Project, a hydropower project on the upper Nile in Uganda.

The information contained in this report draws from:

- a review of IFC and MIGA documentation supplied during the monitoring period;
- update meetings with IFC and MIGA to CAO;
- information provided in correspondence with the complainants;
- publicly-available information, including media articles.

CAO Case Context

Bujagali 04 & 06: Compensation for injuries & lost and unpaid wages

In March 2011, CAO received a complaint from former employees involved in the construction of the Bujagali hydropower plant: referred to by CAO as the Bujagali-04 complaint. The complainants claimed they have not been properly compensated after suffering injuries in the course of their work. The complainants also raised concerns regarding the transparency of the compensation process and intimidation when requesting their benefits.

In April 2013, CAO received a complaint filed via an informal association of former construction camp and dam site workers: Bujagali-06. The complainants raised a range of concerns about their employment through a sub-contractor. These included complaints regarding unpaid wages and benefits, dangerous working conditions and lack of compensation for workplace injuries.

The Bujagali Energy-04 & -06 complaints triggered a compliance investigation, which CAO published in December 2017.¹ Regarding issues raised under the Bujagali-04 complaint, CAO found that IFC did not possess or have access to labor and occupational safety and health (OSH) competence that was sufficient to evaluate the capacity of the client or the subcontractor to apply Performance Standard 2 (PS2) to a project of this scale and technical complexity. Although IFC

¹ CAO. 2017. *CAO Investigation of IFC/MIGA Social and Environmental Performance in relation to: Bujagali Energy Ltd and World Power Holdings, Uganda* (Bujagali-04 & 06). Available on CAO's website: http://bit.ly/Bujagali-04-06_CAO-Compliance_Investigation_Report

acknowledged significant labor and OSH risks, its ability to supervise these issues was constrained by a lack of specialist staff and ineffective oversight. As a result, CAO found that IFC did not have assurance that labor, health and safety risks associated with the construction of the project were being managed in accordance with its E&S policy requirements. CAO's compliance investigation further found that IFC did not consider whether national workers' compensation requirements provided injured workers with compensation for injuries as required by the Performance Standards. In relation to the Bujagali 06 complaints, specifically, CAO found that IFC erred in deciding that the employment practices of the subcontractor were beyond the scope of its E&S requirements. As a result, allegations that construction of the project had significant adverse effects on employees of the subcontractor, including non-payment of wages, were not addressed during IFC supervision.

A summary of CAO's compliance investigation findings for Bujagali-04 & -06 is set out in Annex 1.

Bujagali 07: Compensation for lost assets

In February 2015, CAO received a complaint alleging inadequate compensation for crops and other assets impacted by construction of the Bujagali transmission line, an associated facility of the project.

CAO publicly released its compliance investigation report in response to the Bujagali Energy-07 complaint in January 2018.² CAO found that IFC lacked assurance that the compensation framework provided in the RAP met the requirement of compensation for full replacement cost under IFC Performance Standard 5. CAO also found that IFC lacked assurance that the final RAP compensation framework was disclosed or was subject to meaningful consultation with affected communities.

As weaknesses in the RAP manifested during project implementation, the project grievance mechanism as described in the RAP proved ill-equipped to deal with disputes over compensation rates. These disputes persisted throughout the construction period. Despite indications that complaints regarding compensation were systemic in nature, CAO found that IFC and the other financiers supported an *ad hoc* response rather than requiring a review of the adequacy of the RAP compensation framework.

At the time of writing, CAO found that a required completion audit of the resettlement process had not been conducted. In these circumstances, CAO found that IFC lacked assurance that compensation paid met the full replacement cost requirement or that affected people had been appropriately compensated considering the delays in payment that occurred. As a result, CAO found that significant numbers of households whose land was acquired for the transmission line likely did not receive compensation at full replacement cost.

A summary of findings as presented in the compliance investigation report for Bujagali-07 is set out also in Annex 1.

² CAO. 2017. CAO Investigation of IFC/MIGA Social and Environmental Performance in relation to: Bujagali Energy Limited and World Power Holdings, Uganda (Bujagali-07). Available on CAO's website: http://bit.ly/Bujagali-07_CAO-Compliance_Investigation-Report

Bujagali 08: Compensation for workplace injury

In June 2017, CAO received a complaint relating to an injury sustained by a worker and related compensation issues: Bujagali-08. As the issues raised in this complaint were substantively similar to those raised in the Bujagali-04 complaint, CAO decided to merge the monitoring of the Bujagali-08 complaint with Bujagali-04 and Bujagali-06.³

IFC's Management Response & Implementation

IFC's response to the CAO investigations is contained in initial responses dated December 05, 2017 and January 09, 2018, as well as an addendum to the IFC Management Response, dated May 22, 2018.

Project- Level Responses

Bujagali-04 & 08

IFC's response included a commitment to: "identify possible institutional arrangements as well as assess the need for capacity building to the client and other identified institutions to address the issue of injured workers effectively" with a scoping mission to be completed by June 30, 2018.⁴

IFC's Advisory Services department completed two missions to Uganda (one in June 2018 and a follow-up mission in November 2018).

During the June 2018 mission the IFC Advisory Services team reported that it met with government partners and representatives from NUDIPU, an NGO that advocates for persons with disabilities. During its November mission, the IFC Advisory Services team reported that it looked into NUDIPU's work on livelihoods in further detail and also met representatives of Kikubamutwe Disability and Development Organization (KDDO), an association that includes CAO complainants. During their meeting, IFC reported that it provided the association with an update on actions being taken to respond to workplace injuries that occurred during the construction period.

At the time of writing, IFC had not completed nor made available to CAO the outcomes of its scoping process or any recommendations to address the claims of injured workers. This represents a delay against the timeline IFC committed to in May 2018 which anticipated that scoping would be completed, with recommendations for implementation presented to the client by June 2018.

This issue remains open for monitoring.

Bujagali-06

IFC's response included a commitment to: "appraising, within the context of the complaints to CAO, the workers' claims through an independent third-party to determine whether sufficient evidence is available to determine the merits of the workers' claims." Terms of reference (ToR)

³ CAO. 2018. *Compliance Appraisal: Bujagali Energy (IFC Project #24408) and MIGA guarantee of World Power Holdings (MIGA Project #6732), Uganda: Complaint 08*. Available on CAO's website: http://bit.ly/Bujagali-08_CAO-Compliance_Appraisal-Report

⁴ IFC. 2018. *Addendum to IFC Management's Responses to the CAO Investigation Report on Bujagali Energy Ltd. and World Power Holdings, Uganda (Cases 04, 06, and 07)*. Available at: http://bit.ly/Bujagali-04-06-07_IFC-Management-Response-Addendum

were to be disclosed by 30 June 2018 with the estimated length of the assignment being three months.

On June 20, 2018, IFC shared with CAO its Terms of Reference: *Review of Available Information – Underpaid Construction Workers, Uganda Consulting Assignment*.⁵ The task involved a detailed review and validation of claims, including associated court records, as a first step to defining a solution to the complaints of the sub-contracted workers regarding non-payment of wages.

In December 2018, IFC reported that it had contracted a Ugandan law firm that would work closely with an accounting firm to evaluate workers' claims. IFC noted that the procurement documents were finalized in December 2018 with work to be completed through January and February 2019. IFC reported that evaluation of workers' claims would be based on document review, including review of court proceedings and other relevant sources of information. CAO is aware that the law firm conducting the review contacted representatives of the affected workers. IFC also reported that it had met with representatives of the complainants to keep them updated on this process, and that findings would be shared with them once available.

In summary, at the time of writing, an IFC commissioned review of the Bujagali-06 workers' claims for unpaid wages was ongoing. No information on the qualifications of the consultants engaged, details of the methodology to be used for the review, nor preliminary findings were available to CAO. Implementation of this action plan item has been delayed against the September 2018 target date for completion set by IFC.

This issue remains open for monitoring.

Bujagali-07

IFC's response included a commitment to: "engage with UETCL to (i) identify and address any relevant gaps in the existing project completion reports vis-a-vis IFC completion report requirements and (ii) close out any associated corrective actions."

On June 20, 2018, IFC shared with CAO its Terms of Reference, *Bujagali Interconnection Project (BIP) Land Acquisition Completion Report Gap Analysis and Supplemental Completion Report Consulting Assignment*.⁶ This work entailed: (a) a gap analysis of the project resettlement completion documentation, (b) the preparation of a Supplemental Completion Report addressing any gaps in the project's existing resettlement completion reports, and (c) the preparation of a corrective action plan as needed to address any unfulfilled commitments to impacted households. IFC estimated that the duration of this assignment as 5-6 months.

CAO expressed concerns to IFC and MIGA that the ToR as published focused on issues of livelihood restoration, while CAO had also made findings regarding the requirement for compensation for impacted assets (including crops) at full replacement cost. CAO noted the need to develop a more detailed methodology for the Supplemental Completion Report in accordance with Performance Standard 5 requirements and good international industry practice, including plans for consultation. CAO also noted the need to disclose the consultant reports and any corrective action plan once completed.

⁵ IFC. 2017. *Review of Available Information – Underpaid Construction Workers, Uganda Consulting Assignment*. Available on CAO's website: http://bit.ly/Bujagali-04-06_ToR

⁶ IFC. 2017 *Bujagali Interconnection Project (BIP) Land Acquisition Completion Report Gap Analysis and Supplemental Completion Report Consulting Assignment*. Available on CAO's website: http://bit.ly/Bujagali-07_ToR

In December 2018, IFC reported to CAO that it had procured the services of an international consultancy to carry out the TOR. CAO notes that implementation of the first phase of this action item has been delayed against the July 2018 target date set by IFC.

This issue remains open for monitoring.

Responses at the Level of IFC Policies, Procedures, Practice or Knowledge

Labor and Working Conditions

IFC reports its continuous building of labor and OHS competence and capacity to supervise clients in the application since the adoption of PS2 in 2006. IFC notes specifically that it has augmented its hiring criteria to prioritize OHS skills, assigned an internal OHS focal point, undertaken capacity building on OHS issues, and created internal resources and discussion forums for project teams. IFC notes that it has developed additional tools and guidance, including defining indicators and benchmarks for lost time accidents, a tip-sheet on monitoring OHS injury rates, an excel tool for appraisal / supervision, and a public *Good Practice Note on Managing Contractors' E&S Performance*.⁷ IFC notes its E&S department has access to "on-call" labor experts that can assist with particularly challenging cases which was not the case at the time the Bujagali investment was processed.

In response to CAO's finding that IFC supervision failed to account for labor and OSH risks, particularly at the country level, IFC states that institutional practices related to labor issues more broadly have also evolved, as reflected by the 2012 updates to PS2.

Regarding CAO's findings that IFC did not establish OSH performance criteria with the client or the EPC contractor and the resulting lack of information on OHS compliance available for supervision, IFC notes that the 2007 *General EHS Guidelines* better reflect good international and industry practice and are more flexible in allowing leading indicators (rather than trailing indicators) that might better predict future problems.⁸ IFC notes that its efforts to improve OHS practices have focused on ensuring sufficient access to information from the project site.

In response to CAO's findings that IFC should have determined that the Bujagali-06 Complainants were covered by its E&S requirements, IFC notes that this issue has been addressed by the 2012 updates to PS2, which are clearer in terms of client the responsibility for sub-contractor performance.

Resettlement

Relevant to CAO's findings on resettlement and compensation for assets impacted by construction of the transmission line, IFC advised that it is in the process of updating its resettlement good practice guide.

⁷ IFC. 2017. Good Practice Note: Managing Contractors' Environmental and Social Performance. Available at http://bit.ly/IFC-Good-Practice-Note_2016_Managing-Contractor-Environmental-and-Social-Performance

⁸ IFC. 2007. *Environmental, Health, and Safety General Guidelines*. Available at: http://bit.ly/IFC-EHS-General-Guidelines_2007

Conclusion

As outlined in this report, IFC reports progress in implementing the actions it committed to in response to CAO's Bujagali compliance investigations, albeit with significant delays. CAO's ability to comment substantively on the work carried out to date is limited by a lack of available documentation from IFC.

In response to the issues raised in the Bujagali-04 & 08 complaints (injured workers), CAO's ongoing monitoring will review the outcomes of IFC's scoping process once available. In this context, it will be important to ensure that IFC's response addresses concerns regarding the adequacy of compensation provided to workers seriously injured and the families of those killed during the construction of the project, considering the requirements of Ugandan law and the IFC Performance Standards.

In response to the issues raised in the Bujagali-06 complaint (subcontractor working conditions and unpaid wages), CAO awaits the report of the consultants IFC has tasked with reviewing documentation to determine whether the complainants' claims for lost wages can be validated.

In response to the issues raised in the Bujagali-07 complaint (land acquisition), CAO awaits completion of the IFC-commissioned gap analysis and resettlement completion report. Given the issues raised in the complaint, it will be important to ensure that these outputs address both: (a) livelihood restoration, and (b) compensation for impacted assets, including crops, at full replacement cost in accordance with the requirements of Performance Standard 5.

CAO appreciates IFC's commitments to continuous improvement in its E&S performance and notes measures reported by IFC at the level its policies, procedures and practice that are relevant to CAO's findings.

Given that key items from IFC's response to the CAO investigation are in the process of implementation, CAO will keep these complaints open for monitoring. A subsequent monitoring report is expected in February 2020 or after IFC has completed the initial actions outlined in its responses to the CAO compliance investigations.

Annex 1 – Summary of CAO Investigation Findings

OSH, Workers' Compensation & Unpaid Wages [Bujagali-04, 06 & 08]	
Pre-Investment E&S Review	IFC did not possess or have access to labor and OSH competence that was sufficient to evaluate the capacity of the client or the EPC contractor to apply the provisions of PS2 for a project of this scale and technical complexity.
	IFC did not ensure that the SEA provided adequate assessment of labor and OSH risks- particularly assessment of country and project specific OSH risks during construction.
	IFC did not assess the client's capacity to effectively monitor and manage the OSH performance of the EPC contractor.
	IFC did not ensure that the (Occupational) Health and Safety Management Plan (HSMP) of the EPC contractor was developed following an initial OSH audit.
	IFC did not consider whether national requirements for workers' compensation provided injured workers with access to appropriate compensation as required under the Sustainability Framework.
	IFC's pre-investment review of the project was not commensurate to risk. As a result, IFC did not have assurance the project could meet the labor and OSH related requirements of the PS over a reasonable period of time.
Supervision	IFC did not possess or have access to labor and OSH competence sufficient to monitor the application of its labor and OSH requirements to a construction project of this scale and technical complexity.
	IFC did not establish agreed OSH performance criteria for the client or the EPC contractor or ensure that client reporting provided necessary performance and measurement data to assess the EPC contractor's site OSH performance.
	IFC's Site Supervision Visits did not provide sufficient OSH compliance data regarding the EPC contractor's site performance or the client's capacity to monitor overall project OSH performance.
	Other project monitoring reports such as the Panel of Experts' reports and the reports produced by the independent engineer had insufficient OSH focus to effectively supplement the client's own reporting or IFC's lack of direct supervision of OSH issues.
	IFC neither received OSH management system audits nor commented on their absence.
	IFC neither received nor commented on the absence of regular root-cause analyses of OSH incidents.
	IFC did not assure itself that the Bujagali-04 complaints received appropriate compensation for workplace injuries.
	IFC erred in deciding that the Bujagali-06 Complainants were not covered by its E&S requirements. As a result, allegations that construction of the project had significant adverse effects on employees of the subcontractor were not addressed.

Transmission Line Land Acquisition [Bujagali-07]	
Pre-Investment E&S Review	IFC did not have assurance that the RAPs provided for compensation for land and other assets at full replacement cost. This is not in compliance with PS5 (paras. 8 and 23).
	IFC did not assure itself that the RAP included an assessment of the capacity of the Chief Government Valuer and ultimately measures for the client to bridge the gap in capacity. This is not in compliance with the Sustainability Policy (para. 15) and PSS (para. 22).
Supervision	Despite IFC considering in November 2008 that land valuation and compensation problems had been solved, it soon became apparent that it was and remains questionable whether compensation at full replacement cost has been achieved. CAO finds that IFC failed to respond to this challenge in a way that would generate corrective actions. This is not in compliance with IFC's Sustainability Policy (para. 26) and PSS (para. 20), as affected people were neither promptly compensated nor is it demonstrated that they were compensated at full replacement cost.
	The exclusion of the interconnection project from the completion audit undermines IFC's ability to satisfy itself that the adverse socio-economic impacts experienced by the land acquisition and land-use restrictions related to the transmission line were mitigated and livelihood was, at a minimum, restored. This is not in compliance with IFC's Sustainability Policy (para. 26) and PS5 (para. 12).