



April 12, 2018  
Office of the Compliance Advisor Ombudsman (CAO)

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## COMPLIANCE APPRAISAL: SUMMARY OF RESULTS

*Bujagali Energy Ltd (IFC Projects #24408, #33022, #39102) and World Power Holdings (MIGA Project #6732), Uganda*

*(Bujagali 08)*

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The Bujagali Hydropower Project (“the project”) consists of the development, construction, and maintenance of a run-of-the-river hydropower plant with a capacity of 250 MW and is located in the Republic of Uganda on the Nile River, at Dumbbell Island, approximately 8 kilometers downstream of two existing power plants.

In 2008, IFC invested in the project, providing two loans totaling \$130 million. This investment formed part of a finance package, totaling approximately \$900 million, in which several other development finance institutions, along with four commercial banks, also participated. In parallel, MIGA issued a \$115 million guarantee to World Power Holdings Luxembourg, a subsidiary of Sithe Global Power LLC (USA), covering its investment in the project against possible breach of contract. In September 2017, IFC proposed refinancing the client’s existing debt with a proposed debt investment of up to \$100 million, out of a total package of up to approximately \$500 million. The refinancing was approved in March 2018.

In 2005, Bujagali Energy Limited (“the client”) was awarded the project by the Government of Uganda. Design and construction of the project were conducted between 2007 and 2012. The client engaged an Salini Costruttori (“the EPC contractor”) an engineering, procurement and construction contractor to build the dam.

In June 2017, a complaint was filed with CAO by a former employee (“the complainant”) of the EPC contractor. The complainant alleged that the EPC Contractor failed to compensate him for an injury sustained at work in July 2009. The complaint raise concerns relevant to the application of IFC Performance Standard 1 (Assessment and Management of Environmental and Social Risks) and Performance Standard 2 (Labor and Working Conditions).

This complaint is similar to a March 2011 complaint (Bujagali 04) from workers who were injured while working on the construction of the project for the same EPC contractor. The earlier complaint led to a CAO compliance investigation that was released in December 2017. The Bujagali 04 compliance investigation found that IFC had not assured itself that occupational health and safety conditions on the Bujagali construction site were in accordance with IFC requirements. CAO also found that IFC did not have assurance that workers who sustained serious injuries on the construction site were provided with adequate compensation. CAO has an open monitoring mandate in relation to the Bujagali 04 complaint. As part of this monitoring process CAO will provide annual updates evaluating IFC’s response to its findings.

Considering that CAO already looked into IFC’s analysis of the worker’s compensation structure and safety supervision during the investigation of the Bujagali 04 complaint, CAO determined that no investigation on this matter is merited at this time and decided to merge the two complaints for the purpose of monitoring. CAO expects to produce its monitoring report no later than December 2018.

## **About CAO**

The Office of the Compliance Advisor Ombudsman (CAO) 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 lending arms of the World Bank Group, the International Finance Corporation (IFC) and the Multilateral Investment Guarantee Agency (MIGA). The CAO's mission is to serve as a fair, trusted, and effective independent recourse mechanism and thus to improve the environmental and social performance of IFC and MIGA. CAO consists of three unique and complementary functions, Dispute Resolution, Compliance and Advisory, which together provide a flexible framework for handling people's complaints and addressing systemic concerns about IFC and MIGA projects.

## **About CAO's Compliance Function**

CAO's Compliance function provides oversight of IFC and MIGA investments with the objective of improving environmental and social (E&S) performance of the institutions. The compliance function is activated when either of the parties opt for it following CAO's assessment of the complaint or when the Dispute Resolution process does not lead to an agreement between the parties. The compliance function can also be initiated by the CAO Vice-President, the President of the World Bank Group or IFC/MIGA senior management. Following a compliance investigation, CAO may determine that it is necessary to monitor actions taken by IFC or MIGA until such actions assure CAO that its compliance findings are being addressed.<sup>1</sup>

For more information about CAO, please visit [www.cao-ombudsman.org](http://www.cao-ombudsman.org).

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<sup>1</sup> CAO Operational Guidelines, 2013, para. 4.4.6.

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## Acronyms

<b>Acronym</b>	<b>Definition</b>
AFD	Agence Française de Développement
AfDB	African Development Bank
CAO	Office of the Compliance Advisor Ombudsman
DEG	Deutsche Investitions-und Entwicklungsgesellschaft
E&S	Environmental and Social
EIB	European Investment Bank
EPC	Engineering, Procurement and Construction
ESAP	Environmental and Social Action Plan
ESRS	Environmental and Social Review Summary
FMO	Nederlandse Financierings-Maatschappij voor Ontwikkelingslanden N.V.
IFC	International Finance Corporation
ILO	International Labor Organization
MIGA	Multilateral Investment Guarantee Agency
OSH	Occupational Safety and Health
PROPARCO	Société de Promotion et de Participation pour la Coopération Economique
PS	Performance Standards

## **I. Overview of the Compliance Appraisal Process**

When CAO receives a complaint about an IFC or MIGA project, the complaint is referred for assessment. If CAO concludes that the parties are not willing or able to reach a facilitated solution, the case is transferred to the CAO compliance function for appraisal and potential investigation.

A compliance appraisal also can be triggered by the CAO vice president, IFC/MIGA management, or the president of the World Bank Group.

The focus of the CAO compliance function is on IFC and MIGA, not their client. This applies to all IFC's business activities, including the real sector, financial markets and advisory. CAO assesses how IFC/MIGA assured itself/themselves of the performance of its business activity or advice, as well as whether the outcomes of the business activity or advice are consistent with the intent of the relevant policy provisions. In many cases, however, in assessing the performance of the project and IFC's/MIGA's implementation of measures to meet the relevant requirements, it will be necessary for CAO to review the actions of the client and verify outcomes in the field.

In order to decide whether a compliance investigation is warranted, CAO first conducts a compliance appraisal. The purpose of the compliance appraisal process is to ensure that compliance investigations are initiated only for those projects that raise substantial concerns regarding environmental and/or social outcomes, and/or issues of systemic importance to IFC/MIGA.

To guide the compliance appraisal process, CAO applies several basic criteria. These criteria test the value of undertaking a compliance investigation, as CAO seeks to determine whether:

- There is evidence of potentially significant adverse environmental and/or social outcome(s) now, or in the future.
- There are indications that a policy or other appraisal criteria may not have been adhered to or properly applied by IFC/MIGA.
- There is evidence that indicates that IFC's/MIGA's provisions, whether or not complied with, have failed to provide an adequate level of protection.

In conducting the appraisal, CAO will engage with the IFC/MIGA team working with the specific project and other stakeholders to understand which criteria IFC/MIGA used to assure itself/themselves of the performance of the project, how IFC/MIGA assured itself/themselves of compliance with these criteria, how IFC/MIGA assured itself/themselves that these provisions provided an adequate level of protection, and, generally, whether a compliance investigation is the appropriate response. After a compliance appraisal has been completed, CAO can close the case or initiate a compliance investigation of IFC or MIGA.

Once CAO concludes a compliance appraisal, it will advise IFC/MIGA, the World Bank Group President, and the Board in writing. If a compliance appraisal results from a case transferred from CAO's dispute resolution, the complainant will also be advised in writing. A summary of all appraisal results will be made public. If CAO decides to initiate a compliance investigation as a result of the compliance appraisal, CAO will draw up terms of reference for the compliance investigation in accordance with CAO's Operational Guidelines.

## II. Background

### Investment

The Bujagali Hydropower Project (“the project”) consists of the development, construction, and maintenance of a run-of-the-river hydropower plant with a capacity of 250 MW. The project is located in the Republic of Uganda on the Nile River, at Dumbbell Island, approximately 8 kilometers downstream of two existing power plants.<sup>2</sup>

In 2008, IFC invested in the project, providing two loans totaling \$130 million. This investment formed part of a finance package, totaling approximately \$900 million, in which several other development finance institutions, along with four commercial banks, also participated.

In parallel, MIGA issued a \$115 million guarantee to World Power Holdings Luxembourg, a subsidiary of Sithe Global Power LLC (USA), covering its investment in the Project against possible breach of contract.

The total cost of the project was expected to be approximately \$750 million, including approximately \$126 million in interest during construction, other financing costs, and reserve accounts.<sup>3</sup> Other investors in the project included, the International Development Association (IDA), a public sector arm of the World Bank Group, which provided \$115 million in partial risk guarantee to support commercial financing for the project.<sup>4</sup> The European Investment Bank (EIB), African Development Bank (AfDB), Deutsche Investitions-und Entwicklungsgesellschaft (DEG), Société de Promotion et de Participation pour la Coopération Economique (PROPARCO), KfW Entwicklungsbank – German Development Bank, Agence Française de Développement (AFD) and Nederlandse Financierings-Maatschappij voor Ontwikkelingslanden N.V. (FMO) (the “lenders”) also provided financial support for the project.

In 2005, Bujagali Energy Limited (“the client”) was awarded the project by the Government of Uganda. Design and construction of the project were conducted between 2007 and 2012. The client was required to engage an engineering, procurement and construction contractor to build the dam. Salini Costruttori (“the EPC contractor”) was engaged in this capacity. During the period of the dam construction, the EPC contractor employed up to 3,000 workers at any one time.

In September 2017, IFC proposed refinancing the client’s existing debt with a proposed debt investment of up to \$100 million, out of a total package of up to approximately \$500 million. The refinancing was approved in March 2018.

### Complaint

In June 2017, a former employee (“the complainant”) of the EPC contractor for the project lodged a complaint with CAO. The complainant alleged that the EPC Contractor failed to compensate him for a spinal injury sustained at work that caused him severe chronic backache. The complainant claimed that he has not been able to find employment since 2010, because of the chronic back pain and cannot lift heavy objects. The complainant stated that he did not file a complaint with Salini Costruttori or the client before 2017, because he was not aware that there was a process for injured employees to file claims for medical expenses. CAO’s assessment report<sup>5</sup> indicated that he continues to seek medical assistance from his local clinic, but, as he has

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<sup>2</sup> Further details about the project can be found on the IFC website – IFC Project #24408 <https://goo.gl/Slgpmr>; and IFC Project #39102 <https://goo.gl/kP1ZMg> (accessed March 2018).

<sup>3</sup> IFC. December 2006. Summary of Proposed Investment. <https://goo.gl/Slgpmr> (accessed March 2018).

<sup>4</sup> World Bank. April 2007. Project Appraisal Document. <http://goo.gl/35YUI5> (accessed March 2018).

<sup>5</sup> See CAO Assessment Report at <http://www.cao-ombudsman.org/cases/document-links/documents/CAOBujagali8AssessmentReport-March2018.pdf> (accessed April 2018).

not worked since 2010, the cost of medical treatment has become prohibitive. His last visit to the Jinja local hospital was in June 2017, when he received treatment for the same pain. The report indicated that he is seeking assistance from the client and Salini Costruttori to pay for medical treatment to heal his back pain.

### **Client perspective**

According to CAO's assessment report, the client declined to engage in a CAO facilitated dispute resolution process. The client stated that a) the complainant was not an employee of the client, b) the complainant continued working for the EPC contractor for approximately a year and half, after his alleged injury, c) the client was not party nor privy to the process implemented by the EPC contractor for injured workers, and d) the client 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.

## **III. Analysis and Decision**

The complaint was found eligible in July 2017. CAO undertook an assessment to clarify the issues and concerns raised by the complainant, gather information on the views of different stakeholders, and determine whether the complainants and the client would like to pursue a dispute resolution process facilitated by CAO, or whether the complaint should be transferred to CAO's compliance team.

During this process, the complainant expressed an interest in engaging in a dispute resolution process facilitated by CAO. However, the client declined to engage in such a process citing the abovementioned reasons. Therefore, in accordance with the CAO's Operational Guidelines, the complaint was transferred to the CAO's compliance function.

CAO's compliance team reviewed the complaint, the assessment report, and the perspectives of the complainant and the client. The complainant raised concerns regarding failure to compensate for a back injury sustained during his work on the construction of the project.

This complaint is similar in substance to a March 2011 complaint (Bujagali 04) from workers who were injured while working on the construction of the project for the same EPC contractor. The earlier complaint led to a CAO compliance investigation that was released in December 2017.<sup>6</sup>

The Bujagali 04 compliance investigation found that IFC had not assured itself that occupational health and safety conditions on the Bujagali construction site were in accordance with IFC requirements. CAO also found that IFC did not have assurance that workers who sustained serious injuries on the construction site were provided with adequate compensation. CAO has an open monitoring mandate in relation to the Bujagali 04 complaint. As part of this monitoring process CAO will provide annual updates evaluating IFC's response to its findings.

Considering that CAO already looked into IFC's analysis of the worker's compensation structure and safety supervision during the investigation of the Bujagali 04 complaint, CAO determined that no investigation on this matter is merited at this time and decided to merge the two complaints for the purpose of monitoring. CAO expects to produce its monitoring report no later than December 2018.

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<sup>6</sup> Bujagali 04 and 06: CAO Compliance Investigation Report, <https://goo.gl/KXsQdk> (accessed March 2018).