



April 8, 2015

Office of the Compliance Advisor Ombudsman (CAO)

COMPLIANCE APPRAISAL REPORT

Appraisal of IFC investment in Bujagali Energy (IFC Project #24408) and MIGA guarantee of World Power Holdings (MIGA Project #6732), Uganda.

CAO complaints numbered: 04 and 06.

Summary

Bujagali Energy Limited (“the client”), was established to construct and operate the Bujagali Hydropower Project (“the project”) in the Republic of Uganda. The project is a run-of-the-river power plant with a capacity of 250 MW. The project was approved in 2007 and construction was completed in 2012.

IFC invested in the project, providing two loans totaling \$130 million. In parallel, MIGA issued a \$115 million guarantee to World Power Holdings Luxembourg for its investment in the project. These investments formed part of a finance package totaling approximately \$900 million, in which several other development finance institutions also participated.

The client engaged Salini Costruttori (“the contractor”) to construct the dam. The contractor hired Boschcon Civil and Electrical Construction Limited (“the subcontractor”) to undertake initial works on the Bujagali dam site and build other facilities.

Between March 2011 and April 2013, CAO received two complaints from former employees of the contractor and subcontractor. These complaints are the subject of this compliance appraisal.

- The Bujagali-04 complaint was lodged in March 2011 by a group of former employees of the contractor on behalf of themselves and more than 30 other workers. This complaint raises concerns about injuries sustained by workers on the Bujagali construction site and the adequacy of compensation provided to these injured workers.
- The Bujagali-06 complaint was lodged in April 2013 by the chairman of an informal group of former employees of the subcontractor on behalf of more than 300 other workers. This complaint raises concerns about labor issues, including unpaid wages and benefits as well as workplace accidents.

The purpose of a CAO compliance appraisal is to determine whether an investigation of IFC or MIGA’s environmental and social performance is required in response to a complaint. In deciding whether to initiate an investigation, CAO weighs factors including the magnitude of the environmental and social (E&S) concerns raised by a complaint, results of a preliminary review of IFC/MIGA’s E&S performance in relation to these issues, and a more general assessment of whether a compliance investigation is the appropriate response.

In this case, CAO concludes that the number of complainants and the serious nature of the injuries alleged raise concerns about the environmental and/or social outcomes of the project, in particular as relate to workplace injuries and workers compensation issues. CAO has also

identified questions as to IFC's review and supervision of the requirements of Performance Standard 2 (Labor and Working Conditions) and the extent to which this was sufficient given IFC's commitment to avoidance, mitigation or appropriate compensation of/for project related impacts. (see Policy on Social and Environmental Sustainability and Performance Standard 1).

On the balance of considerations CAO thus decides to conduct a compliance investigation of IFC and MIGA's E&S performance in relation to this project. The CAO compliance investigation will assess whether IFC reviewed and supervised labor related aspects of the project, in particular occupational health and safety issues, as required by Performance Standard 2. The CAO investigation will also consider IFC's approach to the issues of workers' compensation given the commitments to "avoid..., minimize, mitigate prevent or compensate for adverse impacts on workers" set out in in its Policy on Social and Environmental Sustainability and Performance Standard 1. Terms of Reference for this compliance investigation will be issued in accordance with CAO's Operational Guidelines.

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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Acronyms

Acronym	Definition
CAO	Office of the Compliance Advisor Ombudsman
E&S	Environmental and Social
ESRP	Environmental and Social Review Procedures
ESRR	Environmental and Social Risk Rating
IDA	International Development Association
IFC	International Finance Corporation
LFMP	Labor Force Management Plan
MIGA	Multilateral Investment Guarantee Agency
MW	Megawatts
OSH	Occupational Safety and Health
PS	Performance Standard
SEAP	Social and Environmental Action Plan

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 on the Nile River, at Dumbbell Island, approximately 8 kilometers north of the existing Nalubaale and Kiira power plants, in the Republic of Uganda.¹

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.

In 2007, IFC invested in the project, providing two loans totaling \$130 million. In parallel, MIGA issued a \$115 million guarantee to World Power Holdings Luxembourg covering its investment in the project. These investments formed part of a finance package totaling approximately \$900 million, in which several other development finance institutions also participated.

The client engaged Salini Costruttori (“the contractor”) to construct the dam. Boschcon Civil and Electrical Construction Limited (“the subcontractor”) was hired by the contractor to undertake initial works on the Bujagali dam site as well as to build the contractor’s camp and other facilities, which housed and served the contractor’s staff for the duration of the project. Throughout the period of the dam construction, the contractor employed up to 4,500 workers.

Complaints

Between March 2011 and April 2013, CAO received two complaints from former employees of the contractor and subcontractor.² The complaints raise concerns about the adequacy of compensation provided for injuries and disabilities, occupational safety and health (OSH) issues, and unpaid wages and benefits. A brief description of each complaint is provided below.

In March 2011, a group of former employees of the contractor filed a complaint with CAO on behalf of themselves and more than 30 other workers (*the Bujagali-04 complaint*). These complainants alleged that they were not adequately compensated for serious injuries suffered on the project construction site. The complainants also asserted that the process for medical assessment, provision of compensation, and assessment of termination benefits was not transparent. During CAO’s assessment of the complaint, the number of individual complaints under the Bujagali-04 complaint rose to 93. The complainants and the client agreed to participate in a CAO-facilitated dispute resolution process and a Ugandan government dispute resolution process. Together, these processes resolved 86 complaints. Six unresolved complaints were transferred to the CAO compliance function for appraisal.

In April 2013, CAO received a complaint from the chairman of an informal group of former employees of the subcontractor (*the Bujagali-06 complaint*). This complaint raised a range of concerns about labor issues, including unpaid wages and benefits dating back to 2007. As noted in the CAO assessment report, the Bujagali-06 complainants also raised concerns regarding workplace accidents. Following the CAO assessment, the Bujagali-06 complainants, the subcontractor, and the Ugandan Ministry of Gender and Labor agreed to participate in a CAO-facilitated dispute resolution process. In November 2014, CAO brought the dispute

¹ Further details about the project can be found on the IFC website: <http://goo.gl/qbJaLc>

² Details of the complaints (Bujagali-04 & 06) can be found on the CAO website:

Bujagali-04 Complaint: <http://goo.gl/19Mzyq>

Bujagali-06 Complaint: <http://goo.gl/477liJ>

resolution process to a close as the parties were unable to reach consensus on how to move forward. In accordance with CAO's Operational Guidelines, this complaint was also referred to the CAO compliance function for appraisal.

III. Analysis

IFC/MIGA Policies and Procedures

IFC's investment in the project was made under its 2006 Policy on Social and Environmental Sustainability ("the Sustainability Policy") and Performance Standards. Given the issues raised by the complainants, IFC's Performance Standard 2 (PS2) (Labor and Working Conditions) is of particular relevance. Although the 2006 Performance Standards were in draft form at the time IFC conducted its initial review for the project, they were in force before the project was approved, and as such were applied. This represented good practice and was consistent with the Sustainability Policy.

In addition to the Performance Standards, the project documentation references IFC's Occupational Health and Safety Guidelines (June 2003).³

MIGA's Policies on Environmental Assessment and Disclosure were also applied to the project. MIGA's E&S requirements at the time did not cover labor issues. As such, this appraisal focuses on the application of the Performance Standards by IFC.

The Bujagali project was supported by a joint team from the World Bank Group institutions, which comprised the International Development Association (IDA), IFC, and MIGA. IDA and IFC took the primary responsibility for E&S due diligence and project monitoring, with IFC taking the lead in relation to the private sector elements of the project. As a result, this appraisal focuses on IFC's role, rather than that of MIGA.

In addition to the above policies and standards, IFC's approach to the management of project-related E&S risks is set out in its E&S Review Procedures (ESRP).

Pre-investment Environmental and Social Review

This section considers IFC's pre-investment due diligence in relation to this project. It identifies E&S requirements that applied to IFC's preparation of the project, and reviews steps taken by IFC in light of the issues raised in the complaints.

Requirements

As a matter of policy, CAO notes IFC's commitment to carrying out its investment operations in a manner that "do no harm" to people or the environment. More specifically, IFC states that the negative impacts of the projects it finances should be "avoided where possible, and if these impacts are unavoidable ... reduced, mitigated or compensated for appropriately" (Sustainability Policy, para. 8).⁴

³ IFC Occupational Health and Safety Guidelines (June 2003): <http://goo.gl/SFKBJS>

⁴ This commitment is reflected in the objectives section of Performance Standard 1 (para. 1) which include: "to avoid or where avoidance is not possible, minimize, mitigate or compensate for adverse impacts on workers, affected communities and the environment."

Prior to making an investment, IFC reviews the E&S risks and impacts of a project. The key question at this stage is whether IFC's review was "appropriate to the nature and scale of the project, and commensurate with the level of E&S risks and impacts."⁵ IFC bases its E&S review on the client's E&S Assessment as well as its commitment and capacity to manage the expected E&S risks associated with the project.⁶ As set out in PS1, the client's E&S Assessment should consider all relevant E&S risks and impacts of the project, including those identified in PS2 through PS8. Issues related to labor, health, and safety are mentioned specifically.⁷ IFC does not finance new business activity that cannot be expected to meet the requirements of the Performance Standards over a reasonable period of time.⁸

In relation to labor issues, a key requirement of PS2 is that "the client will provide reasonable working conditions and terms of employment that, at a minimum, comply with national law" (para. 8). PS2 further states that "the client will provide the workers with a safe and healthy work environment" and "will take steps to prevent accidents, injury, and disease arising from, associated with, or occurring in the course of work by minimizing, so far as reasonably practicable, the causes of hazards" (para. 16).

In relation to OSH issues under PS2 (para. 16) IFC clients are required to meet standards of "good international industry practice" (GIIP) in addition to national legal requirements.

The requirements of PS2 apply not only to the client's direct employees but also to "non-employee workers" who are engaged by contractors or other intermediaries to perform functions essential to the client for significant periods of time (para. 17). With respect to non-employee workers, PS2 states that the client should use commercially reasonable efforts to: (i) ascertain that these contractors or intermediaries are reputable and legitimate enterprises; and (ii) require that these contractors or intermediaries apply key requirements of PS2 (*Ibid.*).

The Bujagali-04 and 06 complainants are considered to be non-employee workers for the purpose of this compliance appraisal.

IFC's pre-investment review of the project

IFC's E&S review of the project was completed in December 2006. As documented in the E&S Review Summary (ESRS), the process considered technical, social development, environmental, and occupational health and safety information submitted by the client, as well as information gathered during site visits by lenders' social and environmental specialists and consultants.⁹

IFC identified key E&S issues for the project. The issues identified and disclosed in the project's Social and Environmental Assessment Report included labor and OSH issues.

In relation to labor and working conditions, the ESRS noted that the company would be required to develop its own human resources policy and procedures to meet the requirements of PS2. The ESRS also stated that the company would follow national laws, including the Employment Act, 2006 (Act No. 6), which addresses general conditions of employment (wages, working hours, child labor, etc.) and the Occupational Safety and Health Act, 2006 (Act No. 9), which addresses legal protections for worker health and safety.

⁵ 2006 Sustainability Policy, para. 13.

⁶ 2006 Sustainability Policy, para. 15.

⁷ Performance Standard 1, para. 4.

⁸ 2006 Sustainability Policy, para. 15.

⁹ IFC.ESRS (Bujagali Energy): <http://goo.gl/B19I50>

The ESRS further noted that the client had developed plans and programs to address the social, environmental, health, and safety issues covered by IFC's PSs. Following E&S review, IFC, other lenders, and the client agreed on a Social and Environmental Action Plan (SEAP). With regard to labor and working conditions, the SEAP emphasized the company's commitment to ensure that the contractor applied the same standards with respect to national laws, PS2, and international practices. The subcontractors were also contractually required to comply with labor legislation.

The SEAP included a detailed Labor Force Management Plan (LFMP), which was developed to ensure that the company: (a) complied with Ugandan law and met the requirements of the IFC's PSs; and (b) mitigated any negative impacts that might occur as a result of construction employment or subsequent retrenchment, to the extent possible.

The LFMP contains provisions on general conditions of employment (wages, working hours, child labor, etc.) and requires the company to comply with national laws, including the Employment Act, 2006 (Act No. 6). The LFMP also requires contractor and subcontractor to abide by similar requirements. The Employment Act allows workers to file a complaint with a labor officer (Commissioner or a District Labor officer) in cases when an employer neglects or refuses to fulfill the terms of a contract of employment. A labor officer may institute civil or criminal proceedings before the Industrial Court in respect to a contravention or alleged contravention of this Act or regulation made under the Act.

Occupational health and safety issues

In relation to OSH issues, the SEAP provided that the client would ensure the safety of its employees and non-employee workers at the worksite. The subcontractors were also required to comply with health and safety legislation. IFC also expected the company to comply with applicable provisions of the Ugandan Occupational Safety and Health Act, 2006, as well as applicable ILO OSH conventions.¹⁰

Compensation for disability

The LFMP stipulates that the company and the contractor should comply with the Ugandan Workers' Compensation Act (2000) regarding compensation to workers for injuries suffered in the course of employment. The LFMP requires the client to obtain adequate workers compensation insurance covering direct employees and subcontracted workers. The LFMP also notes that, in accordance with the Workers' Compensation Act, each employee is entitled to compensation for any personal injury from an accident or disease arising from or sustained in the course of employment, even if the injury or disease resulted from employee negligence. The Workers' Compensation Act also allows workers who have a dispute about an injury assessed or compensation offered to request that the issue be referred to the Medical Arbitration Board. Workers who are not satisfied with Medical Arbitration Board decisions are able to appeal to the courts.

Approval of the project

The IDA-IFC-MIGA Board approved the Bank Group's investment in the project in April 2007.

IFC signed a loan agreement in December 2007. The loan agreement reflected the E&S requirements outlined above.

¹⁰ ILO requirements include: C155 - Occupational Health and Safety 1981; C167 – Safety and Health in Construction 1988, and ILO Code of Practice on Safety and Health in Construction 1992.

Conclusion

In relation to labor, workplace safety, and compensation issues, CAO notes that IFC required the company to comply with national law as well as the PSs. For a project, such as this one, where occupational health and safety risks were identified, however, CAO has questions as to whether additional measures would have been required to ensure the application of Good International Industry Practice, and more generally to fulfil IFC's commitment that the negative impacts of the projects it finances be avoided, mitigated or compensated for appropriately (Sustainability Policy, para. 8).

Project Supervision

This section considers IFC's supervision of the project. It identifies relevant requirements and reviews steps taken by IFC to supervise the project's E&S performance in light of the issues raised in the complaints.

Requirements

IFC is required to supervise a client's E&S performance in accordance with its Sustainability Policy and ESRP. This includes a requirement to review project performance against the client's commitments in the investment agreement, and the Social and Environmental Action Plan. In instances where a client is not fulfilling its commitments, IFC is required to work with the client to bring it into compliance, and if the client fails to reestablish compliance, to exercise remedies as appropriate.¹¹ PS1 provides that client monitoring should be sufficient to "verify compliance" with project E&S requirements (para. 24). For projects with significant impacts that are diverse, irreversible, or unprecedented, the client is required to "retain qualified and experienced external experts to verify its monitoring information" (*Ibid*). The ESRP further requires IFC to ensure that a root cause analysis is conducted, and appropriate corrective action taken, in relation to fatalities and other serious incidents that occur in the course of project supervision (ESRP v.4.0, para. 6.2.8).

General supervision

IFC's supervision of the Bujagali project is recorded in annual reviews of the client's E&S monitoring reports, commencing in 2009. IFC also participated in joint supervision missions with other lenders commencing in 2008. Further, as part of the supervision structure, the client was required to engage a Panel of Experts to review and report on the E&S performance of the project. IFC considered the reports of the Panel of Experts in the course of supervision.

Supervision of issues related to payment of wages

In 2009 the client informed its lenders of a complaint regarding unpaid wages and benefits received from a group of workers employed by the subcontractor. IFC's 2009 supervision documentation notes the view that these workers did not fall under the category of non-employee workers as defined in PS2, and therefore, that the company was not responsible for resolving the issue. Nevertheless, IFC noted that the company was working with the subcontractor to address the issue. IFC's 2009 supervision documentation further indicates that the workers' complaints against the subcontractor had been referred to the district Labor Board for resolution. The lenders joint supervision documentation from 2010, further notes that this issue was under consideration by the district Labor Board. No further information on this issue is provided in IFC's supervision documentation.

¹¹ 2006 Sustainability Policy, para. 26.

Supervision of occupational health and safety issues

CAO notes that IFC's supervision documentation for 2008 did discuss work-related accidents at the project site and concluded that "health and safety follows good industry practice." Similarly, in 2009, IFC concluded that the project's labor standards were in line with applicable requirements and that the overall situation was acceptable given the "very good occupational health and safety records."

Following two fatalities in early 2010, however, IFC and other lenders became concerned about OSH issues and raised their concerns with the client. One of the concerns of the seventh site visit of the Panel of Experts for the Bujagali Project (June 2010) related to the use of personal protective equipment.¹² Both the company and the contractor were asked to address this issue urgently. As a result, both the contractor and the company reported putting in place additional safety measures to minimize work-related injuries. IFC's 2011 supervision documentation, however, raises continued concerns about the lost-time accident rate on the project site. In this context, CAO notes that IFC's supervision documentation does not include analysis of the root causes of the work-related accidents, or the lost-time accident rate reported on the project site.

Supervision of compensation issues

IFC advised CAO that it first became aware of the concerns about workers' compensation at the project at the time of the Bujagali-04 complaint to CAO (March 2011).

The lenders joint supervision documentation from 2011 references the Bujagali-04 complaint and explains that disputes about the amount of workers' compensation payable to the complainants were being heard by the Medical Arbitration Board, in accordance with Ugandan law. Further supervision documentation from 2012 reports the status of the complaints to CAO. This documentation also notes that remedial actions were being implemented to ensure that workers received documentation needed to process their claims at the Medical Arbitration Board.

Conclusion

CAO acknowledges significant investments in project supervision made by the lenders, including IFC. Given the serious harms raised by the complainants, however, CAO has questions as to whether supervision was adequate, in particular as relates to OSH and workers compensation matters.

¹² Bujagali Energy Limited. Panel of Experts Report (June 2010): <http://goo.gl/Oa0nHU>

IV. Decision

The decision about whether CAO should initiate a compliance investigation requires weighing a number of factors, including the magnitude of the E&S concerns raised by a complaint and a preliminary appraisal of IFC's performance in relation to these issues, as well as a more general assessment of whether a compliance investigation is the appropriate response.

In this case, CAO concludes that the number of complainants and the serious nature of the injuries alleged raise concerns about the environmental and/or social outcomes of the project, in particular as relate to workplace injuries and workers compensation issues. CAO has also identified questions as to IFC's review and supervision of the requirements of Performance Standard 2 (Labor and Working Conditions) and the extent to which this was sufficient given IFC's commitment to avoidance, mitigation or appropriate compensation of/for project related impacts. (see Policy on Social and Environmental Sustainability and Performance Standard 1).

On the balance of considerations CAO thus decides to conduct a compliance investigation of IFC and MIGA's E&S performance in relation to this project. The CAO compliance investigation will assess whether IFC reviewed and supervised labor related aspects of the project, in particular occupational health and safety issues, as required by Performance Standard 2. The CAO investigation will also consider IFC's approach to the issues of workers' compensation given the commitments set out in its Policy on Social and Environmental Sustainability and Performance Standard 1. Terms of Reference for this compliance investigation will be issued in accordance with CAO's Operational Guidelines.