



DISPUTE RESOLUTION CONCLUSION REPORT – UGANDA BUJAGALI-05

This report summarizes the CAO dispute resolution process in relation to the fifth complaint regarding the Bujagali Hydropower Project supported by the International Finance Corporation (IFC) and Multilateral Investment Guarantee Agency (MIGA) (IFC #24408 & MIGA #6732) in Uganda.

OVERVIEW

The Project

The Bujagali Energy Project involves the development, construction, and maintenance of a run-of-the-river power plant with a capacity of 250 megawatts (MW) on the River Nile in Uganda (the 'Project'). Bujagali Energy Ltd (BEL), the project developer and IFC client, also manages the construction of approximately 100 kilometers of 132 kilovolt (kV) transmission line (the 'Interconnection Project') on behalf of the Uganda Electricity Transmission Company Ltd (UETCL)¹, Uganda's national transmission Company. In addition, BEL manages the evacuation of power from Bujagali to the national grid. As an Independent Power Producer, the Project sells electricity to UETCL under a 30-year Power Purchase Agreement, which was signed in December 2007.

Bujagali Energy Ltd. is owned by Industrial Promotion Services (Kenya) Ltd.—the industrial development arm of the Aga Khan Fund for Economic Development and SG Bujagali Holdings, Ltd., an affiliate of Sithe Global Power LLC (US). IFC and MIGA are supporting the \$750 million project along with several other international financial institutions, including the International Development Association, African

¹ UETCL was incorporated in 2001 as a limited Company wholly owned by the Government of Uganda, with two equal shareholders: The Ministry of Finance, Planning and Economic Development, and the Minister of State for Finance in charge of Privatization. It is regulated by the Ministry of Energy and Mineral Development. UETCL is responsible for national grid assets operating above 33kV.

Development Bank and European Investment Bank. IFC's investment comprises \$100 million in A and C loans, and MIGA issued a \$115 million guarantee to World Power Holdings Luxembourg S.à.r.l., a subsidiary of Sithe Global Power, for its investment in the project.



The Bujagali power plant

The Complaint

In May 2011, CAO received a fifth complaint from a group of people representing community members who claimed to be affected by the construction of the Bujagali dam and the interconnection project (the "Complainants"). Their complaint raised the following issues:

- i) **Loss of livelihood** due to the Project's impact on tourism to the Bujagali Falls which were destroyed in the dam construction process. The Complainants sought compensation or livelihood assistance to relocate to another location.
- ii) **Damage caused by blasting during construction**, which had damaged their

homes and livestock and had a negative impact on their health;

- iii) **Land compensation process** undertaken for the Project to acquire land for the power transmission lines was flawed; and the process through which compensation was calculated for the destruction of crops had relied on inconsistent compensation values and lacked transparency.



CAO and the Complainants at a UETCL transmission line

Because the Project was supported by multiple financiers, some affected community members also lodged a complaint with the European Investment Bank Complaints Mechanism (EIB-CM).

The complainants were assisted by a local NGO, National Association of Professional Environmentalists (NAPE), in filing the complaint.

The full complaint is available on CAO's website at: www.cao-ombudsman.org.

CAO Assessment

CAO found the complaint eligible in June 2011 and embarked on an Assessment to gain a better understanding of the issues raised. CAO met with the Complainants, who were organized into an informal association, the Bujagali Affected Community (BAfC); BEL (the "Company"); and other key stakeholders. The meetings enabled CAO to determine from the Complainants and the Company whether

they preferred to address their concerns through a CAO dispute resolution or compliance process.

During Assessment, CAO also consulted with other stakeholders including the Ministry of Energy and Mineral Development; UETCL; local government in Buikwe District; and the National Association of Professional Environmentalists (NAPE), a Ugandan NGO which had helped the Complainants lodge their complaint with CAO.

The Complainants and the Company opted to proceed with a CAO dispute resolution process. UETCL also agreed to join the dispute resolution process because of the role they played in the land acquisition process. CAO published its Assessment Report in December 2011.



Complainants meeting with their representatives in Wagala

DISPUTE RESOLUTION PROCESS

Overview

The dispute resolution process started in December 2011. CAO spent several months in meetings with the BAfC, including one-on-one meetings with more than 800 individuals to identify the Complainants in person, and to understand the specific issues each of them sought to address in the dispute resolution process.

It was agreed by the Complainants and the other key stakeholders to group the complainants' issues into three themes:

1. Loss of livelihoods from destruction of the Bujagali Falls;
2. Impacts of blasting during construction of the Bujagali dam; and
3. Compensation for loss of land, crops, and structures acquired for the construction of the Bujagali hydro site and transmission line; or damaged during survey and construction of the line.



The Complainants endorsing the Mediation Settlement Framework

Outcomes

1. Loss of livelihoods from the destruction of the Bujagali Falls

The Bujagali Falls were one of Uganda's primary tourist destinations. Complainants raised concerns about loss of livelihoods due to the Project's destruction of the falls, and their limited access to the river upstream of the dam. Informal tourism operators complained that their activities had not been recognized as income-generating. Therefore, they had not been considered as an impacted group warranting compensation in the same way as registered businesses.

When the dispute resolution process began, BEL entered into direct negotiations with the informal tourism operators and reached written agreements over compensation, which were implemented during April and May 2012. CAO monitored implementation

of the agreements and, in September 2012, verified with all parties that the agreements had been fulfilled and issues resolved to their satisfaction.

2. Impacts of blasting during dam construction

Complaints were brought to CAO by 103 members of the BAfC stating that blasting during construction had damaged their homes and adjacent structures, harmed their livestock, and had a negative impact on their health, for which they had not been compensated. They identified shortcomings in the Project's complaints process that deterred them from lodging complaints immediately after the incidents.

Some of the Complainants had also submitted complaints to the EIB-CM related to impacts from blasting carried out by BEL and its sub-contractors in order to clear the dam site during construction. The Complainants agreed that, rather than launching two separate, parallel dispute resolution processes, a EIB-CM-led mediation would address complaints related to impacts of blasting, while a CAO-led dispute resolution process would address claims related to the hydro site and transmission line. A mediation process facilitated by the EIB-CM was initiated in March 2012. It culminated in a 'Mediation Solution' in November that identified which complaints would be addressed through repairs to structures.²

The EIB-CM process determined that 2 out of the 103 blasting claims made to CAO were not eligible for consideration: one relating to health and the other to damage from blasting in private quarries. These were returned to CAO; and CAO assisted

² *Outcome of Mediation Process: Complaints on Alleged Effects of Blasting on Buildings During Construction of Bujagali HEP, May 31, 2013.* The report is available on CAO's website: http://www.cao-ombudsman.org/cases/document-links/documents/FINALStatementonMediationconclusion_May2013.pdf (Accessed on June 14, 2018).

the parties in resolving the claims to their satisfaction in April 2014.

The EIB-CM Mediation Solution deemed that 32 of the remaining 101 CAO blasting complaints were eligible for repairs to structures. However, the 32 Complainants were not satisfied with the outcome of the EIB-CM process and considered their complaints unresolved. Along with the 69 ineligible Complainants, they requested CAO to assist them in a further process with BEL to try to resolve their outstanding concerns.

In November 2014, some BAfC members filed a lawsuit against BEL claiming unmet damages from blasting. Because of the pending legal action, BEL advised that they were unwilling to participate in a CAO dispute resolution process. This component of the complaint was therefore referred to CAO's Compliance function for appraisal of IFC's performance related to the Project, in accordance with CAO's Operational Guidelines. CAO issued an appraisal report in March 2017 closing the case as the issues raised were not considered sufficient to justify a compliance investigation.³

3. Compensation for loss of land, crops, and structures acquired for the construction of the Bujagali hydro site and transmission line

The Complainants alleged that the compensation process to acquire their land, crops, and structures for the interconnection project and the hydro site, which had been managed by BEL with UETCL, was flawed⁴.

³ Appraisal of IFC investment in Bujagali Energy (IFC Project #24408) and MIGA investment in World Power Holdings (MIGA Project #6732), Uganda – CAO complaint number 05, March 8, 2017. The report is available on the CAO website: <http://www.cao-ombudsman.org/cases/document-links/documents/AppraisalBujagali-05March8.pdf> (Accessed on June 14, 2018).

⁴ The mechanism entailed assessment and valuation of affected land and crops, carried out by UETCL in collaboration with the Ministry of Lands (in particular the office of the Chief Government Valuer) and District Land Boards and with the assistance of sub-contracted surveyors and assessors. Local Government played a

The Complainants alleged that the mechanism had lacked transparency and that there were inconsistencies in the valuation of crops and application of land rates. They also claimed that some of them had never been compensated for damage to, or acquisition of, their land, crops, and structures. The BAfC also raised wider concerns about the local Consultative Committee, put in place by BEL to manage disputes arising, and the extent to which it was sufficiently participatory.

A total of 557 Complainants had filed suit in the High Court of Uganda in 2009 against UETCL claiming compensation for land, structures, and crops which they claimed had not been paid in accordance with the rates set by the government at that time. An additional 33 Complainants brought 50 separate complaints on identical and related issues. They believed that they were part of the '557' court suit against UETCL, but their names had not been included in the court documents. One other Complainant claimed that he had never been paid for land acquired for the hydro site in 2000.

In consultation with the Complainants and Company, these complaints were split into three sub-categories:

- a) The Civil Suit against UETCL brought by 557 members of the BAfC (the "557") in 2009;
- b) The "Non-557" group of 33 Complainants whose names were not part of the court documents who together raised an additional 50 claims; and
- c) The single land compensation case for land acquired by the hydro site.

Outcomes

- a) Civil suit against UETCL brought by 557 members of the BAfC (the "557")**

critical role in helping to identify bonafide tenants and licensees claiming customary rights over land.

In 2009, 557 members of the BAfC lodged a Civil Suit in the High Court of Uganda against UETCL, claiming inadequate compensation for land acquired and crops destroyed for the construction of the transmission line between Bujagali Hydro Site and Kawanda, on the outskirts of the capital, Kampala.

In 2012, representatives of the Complainants, supported by their legal counsel, requested CAO's assistance in facilitating direct negotiations with UETCL to settle all claims. In response, CAO met with BEL, UETCL, the Ministry of Energy and Mineral Development, NAPE, and local government in Buikwe District to establish their willingness to support an out-of-court settlement. At the request of the parties ("557" and UETCL), the court granted them leave to try to resolve the issues through mediation, which was to be facilitated by CAO, on condition that the parties reported to the court periodically on their progress. From this point, the Ministry of Energy hosted the joint meetings and participated actively in supporting the parties to reach a mutually workable solution.

During this process, CAO worked to build the capacity of the "557" representatives and of UETCL to participate effectively in the mediation process, and guided the "557" in their consultative role with their broader constituency.

The "557" representatives and UETCL embarked on a joint exercise to cross-reference Complainants with the UETCL database of affected plots. In so doing, errors and repeated claims were removed, and a final working list of 514 individual claims was agreed.

CAO facilitated information-sharing sessions for both parties with the original land and crop valuation assessor appointed by UETCL, the office of the Chief

Government Valuer (CGV),⁵ and UETCL Projects Division to gain a better understanding of procedures that had been followed at the time, and the laws and regulations which governed them. At the request of both parties, the CGV confirmed the officially approved rates that should have been applied according to the 2006/7 Mukono District compensation rates, which helped the parties clarify the claims and the Complainants' likely entitlements.

On April 20, 2015, the parties signed a Mediation Settlement Agreement that set out the compensation due to each individual over and above that which had been paid in 2008. The Ministry of Energy was also a signatory to the Agreement.

Throughout the process, CAO observed meetings between the representatives and the complainants where the constituency was updated as to the progress of the mediation and, finally, to confirm their mandate to sign a Settlement Agreement to conclude the matter.

In May 2015, the Mediation Settlement Agreement was adopted by the High Court of Uganda as an Order of the Court and became a public document. Payments were to be completed by July 31, 2015, but it was May 2017 before final compensation was implemented.

In the case of 29 Complainants who had died since the matter was filed in court, their appointed heirs were compensated. Eleven of the initial Complainants could not be traced and it was assumed that they had moved away from the area. Their files remained open for two years before it was agreed by both parties that their claims would be set aside. Seven other individuals acknowledged and signed that they were not due any additional compensation

⁵ The Ministry of Water, Lands and Environment is responsible for policy, regulation, and coordination of matters pertaining to land in Uganda. Within this Ministry, the Chief Government Valuer's Office deals with valuation of assets in connection with the acquisition of land for public interest.

beyond what was paid in 2008; and five rejected the figure calculated, but said that they would not pursue any further claim.

The following summarizes the final status of each of the claims monitored by CAO and agreed by the parties:

Total number of payments due as per 557 Mediation Agreement	514
Total number of Electronic Funds Transfer (EFT) payments processed by UETCL	360
Cash payments completed and confirmed by CAO	131
Zero compensation accepted	7
Compensation rejected	5
Complainants not traced by 557 reps, UETCL, or CAO for payment	11
Total	514

Of the 360 electronic funds transfers (EFT's) made to the complainants by UETCL, CAO was able to confirm 341 payments. 19 ETF's were not confirmed because the complainants could not be reached by CAO.



A community member on his land bought with the compensation from BEL

b) The “Non-557” Complainants

The “Non-557” complaints originally related to 50 different plots of land brought by 33 individuals. CAO initially convened a series of meetings with the individual “Non-557” Complainants to understand the issues they wished to have addressed in the process. The next series of meetings was conducted in conjunction with UETCL to provide information to the Complainants and to help them understand and review the 2006/7 Mukono District compensation rate approved by the Chief Government Valuer, which was to be used to determine compensation. Twenty claims brought by 17 individuals were withdrawn or resolved as a result of this information-sharing process. The individual complaints were then narrowed down to 16.

UETCL declined to add the 16 “Non-557” Complainants to the “557” mediation process for fear of setting a precedent for any other claims relating to the transmission line. They expressed the view that the ongoing 557 court case should be handled separately. The Company further declined any discussion regarding the “Non-557” complaint until the “557” mediation process was concluded, which was accepted by the “Non-557” Complainants.

Upon conclusion of the “557” mediation process in May 2015, CAO met with UETCL and the Ministry of Energy and, separately, with the remaining 16 Complainants. The parties agreed that any valid claims would be compensated in line with terms agreed in the 557 Settlement (above) which had applied the 2006/7 Mukono District compensation rate as approved by the Chief Government Valuer.

In April 2017, a Mediation Settlement Agreement was signed by UETCL and each of the “Non-557” Complainants. Compensation payments were completed

by June 2017 in full and final settlement of all claims.

During this process, an additional 220 members of the BAfC sought to join the “Non-557” group, citing the same issues relating to compensation for crops and rates applied in 2006/7. The Company declined any addition to the already agreed list of Complainants. As a result, the 220 individuals submitted a separate complaint to CAO requesting dispute resolution which CAO found eligible for assessment in February 2015.⁶ However, during assessment, both UETCL and BEL advised CAO that they would not consider additional claims relating to the transmission line. The complaint was thus transferred to CAO’s Compliance function, for review of IFC’s performance related to the project. The compliance investigation⁷, published on December 15, 2017, found IFC non-compliant in particular for: (a) a lack of engagement with public sector institutional capacity in IFC’s review of the Resettlement Action Plan (RAP); and (b) an overreliance on other lenders during supervision of the Project. This group of 220 individuals, along with others, has since filed a civil suit pursuing their claims through the High Court of Uganda.



CAO and the Complainants’ representatives showing the final signed agreement

Single land compensation case

The third category comprised a single claim related to land expropriated by the Bujagali Project in 2000, for which the landowner had not been compensated. At no time did UETCL dispute the Complainant’s claim. After a series of separate meetings, the parties finally came together with CAO in September 2016. A Mediation Settlement Agreement was signed in June 2017 subject to UETCL Board approval, with a view to concluding payment of compensation no later than August 31, 2017. The Minister of State for Energy had previously endorsed settlement negotiations⁸ and his office later confirmed that funds would be made available to UETCL to pay the compensation.

The Settlement Agreement was submitted for UETCL Board approval in November 2017, several months after payment was due. Following their Board approval, UETCL issued full payment to the complainant in April 2018, thereby bringing the dispute to a successful closure.

REFLECTIONS ON THE DISPUTE RESOLUTION PROCESS

After seven years of CAO engaging with the Bujagali Affected Community, most of the Complainants have expressed satisfaction with the outcomes of the dispute resolution

⁶ CAO complaint filed as Bujagali-07. The complaint is available on the CAO website: http://www.cao-ombudsman.org/cases/case_detail.aspx?id=230 (Accessed on June 14, 2018).

⁷ CAO Investigation of IFC/MIGA Social and Environmental Performance in relation to: Bujagali Energy Limited and World Power Holdings, Uganda (Bujagali-07), December 15, 2017. The report is available on the CAO website: <http://www.cao-ombudsman.org/cases/document-links/documents/CAOInvestigationReportBujagaliEnergyLimited-Bujagali07.pdf> (Accessed on June 14, 2018).

⁸ CAO meeting with the Minister of State and UETCL in February 2017.

process. However, there remain some Complainants whose interests were not met, in particular those dissatisfied with the outcome of the blasting mediation process.

From the outset of this complaint, CAO has maintained communication with the Ministry of Energy, local government in Buikwe District, NAPE (local NGO), and IFC and Local Councils. CAO would like to acknowledge their efforts during the dispute resolution process.



CAO team with the Chairman of the Bujagali Affected Community (left) and local government leaders from four of the affected villages.

Parties' Reflections

CAO engaged with the parties during, and on conclusion of the mediation process, to obtain reflections on the CAO process. Below are some of the reflections shared by the parties.

Lack of information and consultation fosters mistrust and misaligned expectations:

The Complainants expressed the view that when there is a lack of adequate information and consultation, they are more inclined to distrust the credibility and intentions of the company or government. This may extend to their perception of a company's commitment to managing issues arising from their activities, including provision of a transparent grievance mechanism.

Furthermore, lack of regular engagement with a company can exacerbate misaligned expectations and misunderstanding of a

company's intention with regard to its relationship with local communities.

Both BEL (the Company) and Complainants expressed that, prior to the CAO process, they had little or strained communication. Each viewed the other as adversarial; and the Complainants believed the Company to be disinterested in their concerns and needs. Both the company and the complainant indicated that the value of the CAO intervention lay in helping to break down barriers by encouraging parties to engage in collaborative negotiations which yielded positive outcomes.

Dispute resolution process can influence and strengthen companies' future business dealings and how they engage with communities:

BEL expressed that the CAO process helped them understand the importance of incorporating stronger safeguards for their community engagement and protection processes. As a result, they will be putting in place stronger safeguards for the re-financing of the next phase of the project, and re-engage with IFC.

They further note that a dispute resolution process that facilitates better understanding between a company and the interest of its neighboring community, can result in a commitment by the company to move beyond the requirements of Environmental and Social Impact Assessments (ESIAs) and environmental and social Performance Standards, to securing firmer future cooperation between the company and the community.

In this case, during the CAO process, the company was also able to initiate its own dialogue process with the informal tourism operators, through its internal Community Affairs Office, without the assistance or involvement of the CAO. This resulted in the company and the informal tourism operators reaching an agreement which resolved the issues in dispute.

Representing diversity in the process:

CAO's dispute resolution process sought to ensure representation of diverse sectors, with regards to age, gender, interests and other factors revealed in the local or complaint context. Women and the families were encouraged to attend public meetings, so that their voices can be heard, rather than relying solely on the 4 representatives selected for the dispute resolution process.



BEL General Manager in front of the Bujagali dam wall with a CAO team member.

CAO's Reflections

Importance of including all key stakeholders in the dispute resolution process:

Inclusion of key stakeholders in the process was critical to resolving the issues raised in this complaint. The multi-layered nature of the various issues required engagement with the Project operator, sub-contractors and partners, as well as government entities. In particular, meetings with local government representatives helped CAO gain a deeper understanding of local capacity within existing dispute resolution mechanisms, and created opportunities for working together to clarify both local land and social issues. Government's endorsement of the dispute resolution process and its various outcomes helped instill confidence in CAO's presence in the community, and facilitated CAO's direct contact with BAfC individuals.

Engaging with active and supportive NGOs such as NAPE, also served to reinforce

CAO's credibility amongst the communities and opened communication channels to Government officials (national and local) who played a strategic role in the dispute resolution process and whose valuable contributions and perspectives might otherwise have been lost.

Cooperation between accountability mechanisms also helped prevent duplication of processes. Where the EIB-CM and CAO had received similar complaints, EIB-CM and CAO were able to offer complainants the opportunity to avoid duplicated processes. It was agreed that EIB-CM could manage the blasting complaint, while CAO would address the Transmission Line Hydro Site claims. On completion of the EIB-CM process, CAO consulted with those who had initially approached CAO to establish whether their complaint had been resolved. Where it was not resolved CAO was able to re-engage with the company to explore other avenues for resolution.

Collaboration with different stakeholders through the CAO process achieved significant benefits for communities, government, and the private sector.

IFC's Reflections

The IFC expressed appreciation for the effort that the CAO put into reaching a mediated settlement on the sub-complaints that made up Bujagali 05. They noted that while some complainants under the blasting case (led by European Investment Bank 's (EIB) complaints mechanism), channeled their grievances into the CAO compliance process, the compliance process concluded that the EIB's mediation effort had effectively addressed the grievance and that a further investigation was not warranted.

The IFC recognized the lessons learned from close coordination between the mediation effort and the IFC investment team. This coordination was particularly significant in a united effort to ensure that

payments agreed in the mediation agreements were ultimately paid in full. IFC further noted the benefits of ensuring that all people who might have an interest in the settlement of a complaint, are made aware of the mediation effort. This may prevent further complaints from those who may have been left out.

CONCLUSION

Absent any outstanding issues in relation to the complaint, CAO's documentation of the process and outcomes in this Conclusion Report marks the closure of the case.

All documentation relevant to this case is available on the CAO website at www.cao-ombudsman.org