



May 10, 2016
Office of the Compliance Advisor Ombudsman (CAO)

Terms of reference for Compliance Investigation

IFC Investment in Bujagali Energy Ltd. (IFC Project #24408) and MIGA Guarantee of World Power Holdings (MIGA Project #6732), Uganda

Complaints 04 and 06

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).

If CAO concludes that the parties are not willing or able to reach a facilitated solution, the case is transferred to the compliance function of CAO, to appraise whether the concerns raised in the complaint merit a compliance investigation of IFC/MIGA.

The focus of CAO Compliance is on IFC and MIGA, not their client. This applies to all IFC's business activities including the real sector, financial markets, and advisory services. 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.

CAO discloses the findings of its compliance investigation in an investigation report to inform the President and Board of the World Bank Group, senior management of IFC/MIGA, and the public about its decision.

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

Background to the 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

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

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.

The Complaint

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 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.

Scope of the Compliance Investigation

The focus of this CAO compliance investigation is on IFC, and how IFC assured itself of the environmental and social performance of its investment at appraisal and during supervision.

The approach to the compliance investigation is described in the CAO Operational Guidelines (March 2013), and states that the working definition of compliance investigations adopted by CAO is as follows:

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>

An investigation is a systematic, documented verification process of objectively obtaining and evaluating evidence to determine whether environmental and social activities, conditions, management systems, or related information are in conformance with the compliance investigation criteria.

As set out in CAO's appraisal report, CAO will conduct a compliance investigation of IFC's investment in Bujagali Energy Ltd in relation to the issues raised in the complaints.

The Compliance Investigation will consider whether IFC's investment in Bujagali Energy Ltd. was appraised, structured and supervised in accordance with applicable IFC policies, procedures and standards. It will also consider whether IFC requirements as applied to this project provided an adequate level of protection.

In particular, the investigation will address the following issues:

1. Whether IFC's pre-investment due diligence adequately considered issues relating to Occupational Safety and Health (OSH) and workers compensation.
2. Whether IFC adequately supervised the project in relation to OHS issues and incidents, compensation for workplace injuries and claims regarding non-payment of wages.

Compliance Investigation Process and Preliminary Timeline

The preliminary time schedule is for CAO to have a draft compliance investigation report ready in August 2016.

A draft Investigation Report will be circulated to IFC senior management and all relevant IFC departments for factual review and comment. IFC comments should be submitted in writing to CAO within 20 working days of receipt by IFC.

Upon receiving comments from IFC on the consultation draft, CAO Compliance will finalize the report. The final report will be submitted to IFC senior management for official response. A notification will be posted on CAO's website. IFC has 20 working days to submit a written response to CAO. CAO will forward the Investigation Report and the IFC response to the President of the World Bank Group. The President has no editorial input as to the content of the compliance Investigation Report, but may take the opportunity to discuss the investigation findings with CAO.

Once the President is satisfied with the response by IFC senior management, the President will provide clearance for the Investigation Report and the response. The President retains discretion over clearance. After clearance, CAO will disclose the Investigation Report and the IFC response to the Board. CAO will also alert relevant stakeholders of the disclosure of both documents on CAO's website, and share the documents with the complainants.

External Panelists

As per its established practice, CAO will engage one or more external experts to work with it on this task. For this compliance investigation, CAO considers the following as necessary for the compliance investigation panel:

- Significant expertise in the assessment and management of risks around occupational safety and health in private sector projects in Africa, particularly in construction of large scale hydropower projects.
- Knowledge of IFC's E&S policies, standards and procedures.

Terms of Reference

CAO Compliance Investigation of IFC's Investment in Bujagali Energy Ltd and MIGA Guarantee in World Power Holdings, Uganda

- Experience and knowledge relevant to conducting compliance investigations.
- Demonstrated ability to analyze policies and practices and develop proposals for reform in complex institutional contexts.