



DISPUTE RESOLUTION CONCLUSION REPORT – BUJAGALI ENERGY-06

This report summarizes the CAO Dispute Resolution process in relation to a sixth complaint received by the CAO regarding IFC's and MIGA's investment in the Bujagali Energy Project.

BACKGROUND

IFC & MIGA Projects

The Bujagali project concerns the development, construction and maintenance of a run-of-the-river hydropower plant with a capacity of 250 MW on the River Nile in Uganda. The project is managed by Bujagali Energy Limited (BEL) who engaged Salini Costruttori (Salini) as the Engineering, Procurement and Construction (EPC) contractor to construct the dam.

When CAO received this complaint in April 2013, IFC had invested US \$130 million in a combination of A and C loans. In parallel, MIGA had issued a \$115 million guarantee to World Power Holdings Luxembourg for its investment in the project. These investments formed part of an approximately \$900 million financing package for the project with the participation of several other multi-lateral and bi-lateral development institutions.

The Complaint

In April 2013, CAO received a complaint from the chairman of an informal group of former employees of Boschcon Civil and Electrical Construction Limited (Boschcon) on behalf of more than 300 other former employees. Boschcon had been contracted by Salini Costruttori to undertake initial works on the Bujagali dam site as well as to build Salini's camp and other facilities which housed and served Salini staff for the duration of the project.

The complainants had raised a range of labor concerns with the Ministry of Gender and Labour during and after their employment with Boschcon, relating to unpaid wages and unpaid benefits dating back to 2007 and this was the primary focus of their complaint to CAO.



View of the Bujagali power plant during construction

CAO ASSESSMENT

After finding the complaint eligible, CAO conducted an assessment of the issues with the parties between April and November 2013. During the assessment, the complainants, Boschcon, and the Ministry of Gender and Labour agreed to engage in CAO-facilitated dispute resolution to try to resolve the issues raised in the complaint using a collaborative approach. CAO informed BEL that the parties were engaging in efforts to resolve the claims through dispute resolution. BEL advised CAO that they did not intend to participate in direct discussions with either party, but that they agreed with the efforts to resolve the issues and would continue to work with CAO as needed.

DISPUTE RESOLUTION PROCESS

CAO initiated a series of separate conversations with each party to define clearly the scope of the dispute resolution process, focusing specifically on the issues between the parties, as well as how they might be represented in the process. Representation was an important element given that the complainants were informally organized and geographically disperse, many having moved away from the Bujagali district.

To prepare the ground for dispute resolution, the CAO team worked with the complainants as they sought to communicate with the larger group of

former employees to clarify their mandate and the individual claims. Similarly, meetings were held with Boschcon to clarify concerns and data relating to the claims.

Convening a dispute resolution process proved difficult due to the dispersal of the complainants and difficulties for both the representatives and CAO in communicating directly with them.

During the discussions on process design, it became apparent that the parties were unable to reach consensus on how to move forward due to challenges such as verifying a clear mandate for the complainants' representatives and a high level of mistrust among the parties and other stakeholders. Given this impasse, CAO brought the dispute resolution process to a close in November 2014. In accordance with CAO's Operational Guidelines, the case has been referred to CAO Compliance for appraisal of IFC's/MIGA's performance with regard to the project.



Complainant group deliberates their recourse options during the CAO assessment

LESSONS & INSIGHTS

Representation

A fundamental component of a dispute resolution process is establishing a credible mandate for complainant representatives to participate. But this is also one of the most challenging aspects of the process. In this case, these challenges were exacerbated by the lack of formal structures for representing the complainants, and difficulties in communicating with a group of former employees no longer connected as a recognizable or cohesive group. Furthermore, the group was geographically dispersed due to their origin or search for employment elsewhere. Differences over leadership and insufficient capacity to communicate effectively or organize the larger group ultimately proved to be an insurmountable obstacle when trying to formalize representation and thus build consensus among the parties as to process. At the same time, even if the representation challenges had been overcome, the high level of mistrust between the parties in this case may have precluded an effective dispute resolution process anyway.

More information about this case, including all relevant documentation, is available on CAO's website at www.cao-ombudsman.org

Other documentation relevant to the case is available on the CAO website – www.cao-ombudsman.org