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CAO COMPLIANCE

CAO Investigation of IFC

December 15, 2017

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**CAO Investigation of IFC/MIGA Social and Environmental Performance in relation to:**

**Bujagali Energy Limited and World Power Holdings, Uganda (Bujagali-07)**

Office of the Compliance Advisor Ombudsman (CAO)  
for the  
International Finance Corporation (IFC) and  
Multilateral Investment Guarantee Agency (MIGA)  
Members of the World Bank Group

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## **Executive Summary**

On April 26, 2007, the World Bank Group approved IFC's investment in the Bujagali hydropower project. The hydropower project is a large public-private partnership infrastructure project which was awarded to a private sector entity, Bujagali Energy Limited or BEL ("the client") and supported by IFC and MIGA along with other financiers, and guarantors.

The hydropower project consists of the development, construction and maintenance of a run-of-the-river electricity generation unit with a capacity of up to 250 MW. The design of the power plant prompted the planning and construction of approximately 100 kilometers of a high voltage transmission line, the Bujagali interconnection project ("the interconnection project"). The Interconnection Project comprised a 5 km line from Bujagali switchyard to Nalubaale switchyard, and a 90 km line from Bujagali switchyard to Kawanda switchyard.

This compliance investigation was initiated in response to a complaint about the interconnection project submitted to CAO in February 2015. The complaint was sent on behalf of more than 580 households whose land was impacted by the construction of the transmission line. The complainants claim not to have been adequately compensated for losses of land, crops and other assets. They also raise concerns regarding delays in compensation payments. The issues raised potentially affect a larger community of people impacted by land acquisition for the interconnection project.

This investigation considers IFC's review and supervision of the application of Performance Standard 5 (Land Acquisition and Resettlement) to the issues raised by the complainants.

### **The Interconnection Project: An Associated Facility**

IFC and MIGA properly recognized the interconnection project as an associated facility of the hydropower project, to which the 2006 Sustainability Framework applied. This meant that although IFC and MIGA did not finance the transmission infrastructure, they had a responsibility to apply the Performance Standards to the interconnection project. Supporting this approach, IFC negotiated a Direct Agreement with the Government of Uganda, the Uganda Electricity Transmission Company Limited (UETCL), and IFC's client. The Direct Agreement committed UETCL to work with the client to implement the project in accordance with IFC's Performance Standards. This was consistent with the requirements of IFC's Sustainability Framework.

### **Approach to Land Acquisition**

A key step in any land acquisition process is the development of the Resettlement Action Plan (RAP). A RAP is expected to include: a survey of impacted household assets; a compensation framework; a description of organizational responsibilities and capacities; a process for resolution of grievances; and a framework for monitoring and evaluation. IFC also requires consultation and disclosure with affected households in relation to the resettlement planning process. In order to ensure that the interconnection project RAP met IFC requirements, IFC undertook to review and approve the RAP for the interconnection project. While IFC informed CAO that staff reviewed the final RAP for the interconnection project, and found it compliant with IFC's requirements, CAO was not able to locate documentation of this review. In this context, CAO finds that IFC lacked assurance that the RAP met the requirements of Performance Standard 5.

Considering IFC's review of the RAP, CAO identifies a number of specific concerns. Firstly, CAO finds that IFC lacked assurance that the compensation framework provided in the RAP met IFC's requirements for compensation at full replacement cost. Secondly, CAO finds that IFC lacked

assurance that the final RAP compensation framework was disclosed or was subject to meaningful consultation with affected communities. Thirdly, CAO finds that IFC did not assure itself that the RAP addressed gaps in government capacity that would need to be bridged in order to support effective implementation at the level required by IFC's standards.

These weaknesses in the RAP manifested as challenges during project implementation. Complaints regarding compensation were noted as soon as land acquisition began and persisted throughout the construction period. The project grievance mechanism as described in the RAP, however, was not equipped to deal with these types of complaints. As a result, numerous complaints were referred to UETCL, the CGV and the recourse mechanisms of the project financiers. Despite indications that complaints regarding compensation were systemic in nature, IFC and the other financiers supported an ad hoc response to the grievances being raised rather than requiring a review of the adequacy of the compensation framework provided for by the RAP. To date, a required completion audit of the resettlement process has not been conducted. In these circumstances, CAO finds that IFC lacks assurance that compensation paid meets the full replacement cost requirement or that affected people have been appropriately compensated considering the delays in payment that have occurred. As a result, significant numbers of households whose land was acquired for the transmission line likely did not receive compensation at full replacement cost.

Given the above findings, CAO will keep this investigation open and monitor IFC's response. CAO expects to publish its first monitoring report no later than 12 months from the date of publication of this report.

## **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 the private sector lending and insurance members of the World Bank Group, the International Finance Corporation (IFC) and the Multilateral Investment Guarantee Agency (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 IFC and MIGA.

CAO's compliance function oversees investigations of the environmental and social performance of IFC and MIGA, particularly in relation to sensitive projects, to ensure compliance with policies, standards, guidelines, procedures, and conditions for IFC/MIGA involvement, with the goal of improving IFC/MIGA environmental and social performance.

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

## Acronyms

AfDB	African Development Bank
AfDB-IRM	Independent Review Mechanism (African Development Bank)
BEL	Bujagali Energy Limited
CAO	Office of the Compliance Advisor Ombudsman
CGV	Chief Government Valuer
DCRs	District Compensation Rates
DLB	District Land Board
DSRs	District Statutory Rates
E&S	Environment and Social
EACSV	East African Consulting Surveyors and Valuers
EHS	Environmental, Health and Safety
EIB	European Investment Bank
EIB-CM	Complaints Mechanism (European Investment Bank)
ESAP	Environmental and Social Action Plan
ESRP	Environmental and Social Review Procedures
ESRS	Environmental and Social Review Summary
GoU	Government of Uganda
IDA	International Development Association
IFC	International Finance Corporation
IFI	International Finance Institutions
MIGA	Multilateral Investment Guarantee Agency
MW	Mega Watt
NGO	Non-Governmental Organization
PAD	Project Appraisal Document
PoE	Panel of Experts (Panel of Environmental and Social Experts)
PS	Performance Standards
RAP	Resettlement Action Plan
RCDAP	Resettlement and Community Development Action Plan
SEA	Social and Environmental Assessment
SEAP	Social and Environmental Action Plans
SPI	Summary of Proposed Investment
UETCL	Uganda Electricity Transmission Company Limited
WBG	World Bank Group
WB-IPN	Inspection Panel (World Bank)

## 1. Overview of the CAO Compliance Process

CAO's approach to its environmental and social (E&S) compliance function is set out in its Operational Guidelines (March 2013).

When CAO receives an eligible complaint, the complaint first undergoes an assessment to determine how CAO should respond. If the CAO compliance function is triggered, CAO will conduct an appraisal of IFC's/MIGA's involvement in the project, and determine if an investigation is warranted. The CAO compliance function can also be triggered by the World Bank Group President, the CAO Vice President, or senior management of IFC/MIGA.

CAO compliance investigations focus on IFC/MIGA, and how IFC/MIGA assured itself of the E&S performance of an IFC/MIGA project. The purpose of a CAO compliance investigation is to ensure compliance with policies, standards, guidelines, procedures, and conditions for IFC/MIGA involvement, and thereby improve E&S performance.

In the context of a CAO compliance investigation, at issue is whether:

- The actual E&S outcomes of a project are consistent with or contrary to the desired effect of the IFC/MIGA policy provisions; or
- A failure by IFC/MIGA to address E&S issues as part of the appraisal or supervision resulted in outcomes that are contrary to the desired effect of the policy provisions.

In many cases, in documenting and verifying the performance of the project and implementation of measures to meet relevant requirements, it is necessary to review the actions of the IFC/MIGA client and verify outcomes in the field.

CAO's compliance function oversees investigations of the environmental and social performance of IFC and MIGA. CAO has no authority with respect to judicial processes. CAO is neither a court of appeal nor a legal enforcement mechanism, nor is CAO a substitute for international court systems or court systems in the countries where IFC/MIGA operates.

Upon finalizing a compliance investigation, IFC/MIGA is given 20 working days to prepare a public response. The compliance investigation report, together with any response from IFC/MIGA, is then sent to the World Bank Group President for clearance. It is then made public on the CAO website.

In cases where IFC/MIGA is found to be out of compliance, CAO keeps the investigation open and monitors the situation until actions taken by IFC/MIGA assure CAO that IFC/MIGA is addressing the noncompliance. CAO will then close the compliance investigation.

## 2. Background

### 2.1 Investment

On April 26, 2007, the World Bank Group approved IFC's investment in the Bujagali hydropower project ("the hydropower project"). The hydropower project was established and is operated as a Public Private Partnership between private sector sponsors and the Government of Uganda (GoU) with financing from multilateral financial institutions, bilateral development agencies and commercial lenders. The hydropower project consists of the development, construction and maintenance of a run-of-the-river power plant with a capacity of up to 250 MW. In 2005, the GoU awarded the project to Bujagali Energy Limited or BEL ("the client"), a private sector entity.

The design of the power plant prompted the planning and construction of approximately 100 kilometers of a high voltage transmission line, the Bujagali interconnection project ("the interconnection project" or "the transmission line"). The Interconnection Project comprised a 5 km line from Bujagali switchyard to Nalubaale switchyard, and a 90 km line from Bujagali switchyard to Kawanda switchyard.<sup>1</sup>

The interconnection project was developed for the Uganda Electricity Transmission Company Limited (UETCL), Uganda's national electricity transmission company. It involved the construction of transmission infrastructure needed to connect the hydropower project to the national electrical grid. The client was responsible for managing construction of the transmission line for UETCL.

IFC's investment in the hydropower project consisted of two loans totaling \$130 million which were approved in 2007. In parallel, MIGA issued a \$115 million guarantee to World Power Holdings Luxembourg covering its investment in the hydropower project against possible breach of contract. Lenders included the European Investment Bank (EIB), the African Development Bank (AfDB) and other international financial institutions. The International Development Association (IDA) provided a partial risk guarantee to support commercial financing for the project.<sup>2</sup> The project's total cost was approximately US\$900 million. Construction was completed in 2012.

AfDB and the Japan Bank for International Cooperation provided financing for the interconnection project through loans to UETCL. IFC recognized the interconnection project as an associated facility of the hydropower project. As a result, IFC included the interconnection project in the scope of its Environmental and Social (E&S) review and required that it comply with the Performance Standards (PS).<sup>3</sup>

In September 2017, IFC disclosed a debt investment of up to \$100 million out of a total package of approximately \$500 million to refinance the hydropower project.<sup>4</sup> The refinancing will lengthen the tenor of the client's existing loans and reduce the amount of annual debt service and, in turn, lower the project's tariff under the power purchase agreement with UETCL. This will make electricity in Uganda more affordable and is expected to support the GoU's agenda to increase electricity access. The proposed investment is not expected to result in any change to the project's

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<sup>1</sup> Bujagali Interconnection Project Social and Environmental Assessment – Executive Summary, December 2006 - <https://goo.gl/WZ62xd> (accessed June 2017).

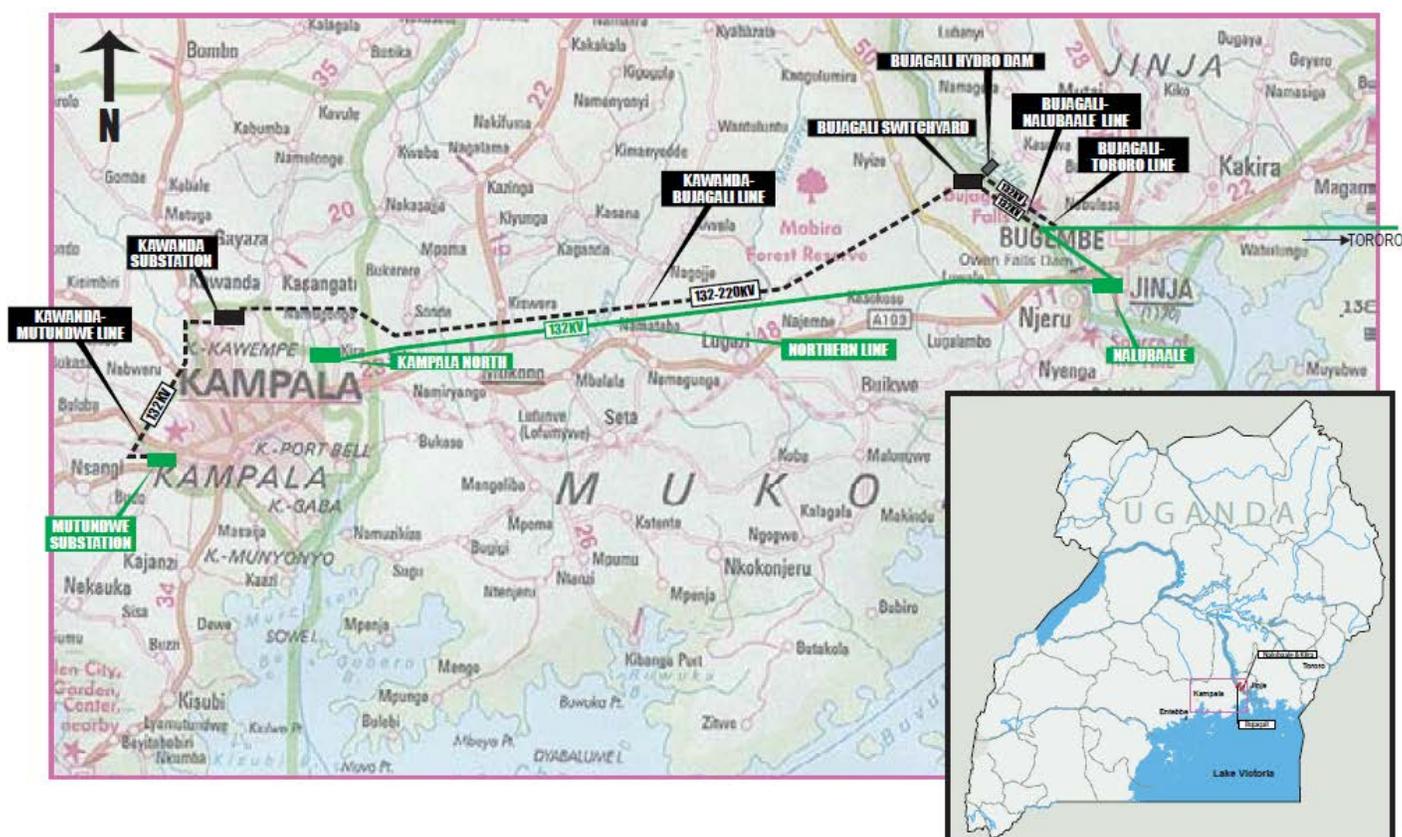
<sup>2</sup> World Bank Group Project Appraisal Document (PAD) for the Bujagali Project, April 2, 2007 - <https://goo.gl/8w19sY> (accessed June 2017)

<sup>3</sup> IFC's Environmental and Social Review Summary (ESRS) - <https://goo.gl/Yc74c6> (accessed June 2017).

<sup>4</sup> IFC, Summary of Proposed Investment (SPI), Bujagali 2 (Refinance) - <https://goo.gl/ebG1Bc> (accessed November 2017).

physical or operational footprint. The proposed refinancing is scheduled to be presented to the World Bank Group Board in November 2017 for approval.<sup>5</sup>

The Environmental and Social Review Summary (ESRS) for the refinancing includes an E&S action plan that reflects actions for the operation and management of the project. It also refers to various open CAO cases. The ESRS states that no future mitigation actions are anticipated by the client in relation to the CAO cases. At the time the ESRS was disclosed, however, two CAO compliance reports were pending completion (this report related to land acquisition and the Bujagali 04/06 report relating to labor issues).<sup>6</sup>



Source: Executive Summary of Bujagali Interconnection Project Social and Environmental Assessment.<sup>7</sup>

## 2.2 Complaint

In February 2015, four people submitted a complaint to CAO on behalf of 220 community members from at least 10 villages affected by the Bujagali interconnection project.<sup>8</sup> The complaint raises concerns regarding the adequacy of valuation of land and assets acquired for the construction of the transmission line under the interconnection project.

<sup>5</sup> Summary of Investment Information Bujagali 2 (Refinance), <https://goo.gl/15uVmW> (accessed October 2017).

<sup>6</sup> ESRS Bujagali 2 (Refinance), <https://goo.gl/TQQgwV> (accessed October 2017).

<sup>7</sup> Bujagali Interconnection Project Social and Environmental Assessment – Executive Summary, December 2006, p. ES-3, <https://goo.gl/WZ62xd> (accessed June 2017).

<sup>8</sup> A copy of the complaint can be found at <https://goo.gl/Qn62KZ> (accessed June 2017).

The complainants claim to have suffered losses as a result of land acquisition and resettlement related to the construction of the interconnection project. They raise concerns regarding: i) the adequacy of compensation provided for loss of land, assets, and crops (including young crops); ii) loss of livelihoods; iii) delays in compensation payments; and, iv) difficulties in addressing their grievances, claiming that they were poorly informed of the mechanism in place.

In January 2017, the four representatives informed CAO that since 2015, more people have joined the complaint and that they presently represent more than 580 affected households from Mukono District (CAO received the compiled list of complainants). CAO notes that the concerns raised in this complaint potentially affect a larger community of people impacted by land acquisition for the interconnection project.

During CAO's assessment of the complaint, CAO documented views of UETCL and the client. UETCL indicated that the claims for compensation were without foundation or exaggerated. The client indicated that they saw no role for themselves in responding to these complaints, as compensation rates were determined by UETCL and the government.

CAO notes that several complaints regarding land acquisition and inadequate compensation for the hydropower project and the interconnection project have been brought to the attention of different recourse mechanisms of the lenders supporting the projects. These include the mechanisms of the AfDB (AfDB-IRM), IDA (WB-IPN) and EIB (EIB-CM) in addition to CAO. These mechanisms made findings of non-compliance regarding the International Finance Institutions' (IFIs) performance in ensuring that compensation, at full replacement cost, was paid to the affected people. A summary of the reports prepared by these recourse mechanisms is provided in Annex B.

### **3. Investigation Framework**

#### **3.1 Scope of a Compliance Investigation**

The focus of this compliance investigation is on IFC, and how IFC assured itself of the environmental and social (E&S) performance of the interconnection project. As set out in CAO's terms of reference,<sup>9</sup> this investigation addresses the following:

- a. Whether IFC's pre-investment due diligence of the interconnection project adequately considered issues around resettlement in relation to the transmission line as per PS5 requirements, including but not limited to valuation, compensation, and grievance handling;
- b. Whether IFC's supervision of the interconnection project was adequate to conclude that resettlement measures were being implemented as per PS5 requirements, resulting in at a minimum the restoration of project-affected peoples' livelihood and the objectives of IFC's PS5 and the Sustainability Policy.

#### **3.2 Methodology**

This investigation was conducted by CAO in accordance with its Operational Guidelines (2013), with inputs from an external expert with extensive experience and knowledge in involuntary resettlement.

The CAO investigation team reviewed a range of relevant documents and conducted informational interviews with representatives of IFC. CAO visited the project site and met with representatives of the client and with complainants. CAO also met with officials of the Ugandan Ministry of Finance, UETCL and AfDB. The CAO investigation team spoke with members of the Panel of Environmental and Social Experts (PoE) assigned by the client to supervise the project and advise on E&S issues.<sup>10</sup>

In considering the adequacy of IFC's E&S performance in relation to this project, CAO is conscious not to expect performance at a level that requires the benefit of hindsight. Rather, the question is whether there is evidence that IFC applied relevant requirements considering sources of information available at the time. CAO's compliance mandate is focused on IFC's E&S performance. CAO makes no findings, adverse or otherwise, in relation to the performance of the client or entities other than IFC.

#### **3.3 Applicable Standards**

As set out in its Operational Guidelines (2013), CAO oversees investigations of IFC's E&S performance by ensuring compliance with IFC policies, Performance Standards, guidelines, procedures, and requirements whose violation might lead to adverse environmental and/or social outcomes (para. 4.3).

When financing a project, IFC first conducts an appraisal aimed at assessing the full business potential, risks and opportunities associated with the investment.<sup>11</sup> Once the project is approved,

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<sup>9</sup> CAO, Revised Terms of reference for Compliance Investigation of IFC, IFC Investment in Bujagali Energy Project (IFC Project #24408) and MIGA guarantee of World Power Holdings (MIGA Project #6732), Uganda, Complaint 07, dated January 3, 2017. Available at <https://goo.gl/KWcVMo> (accessed October 2017).

<sup>10</sup> Reports of the Panel of Environmental and Social Experts are available at <https://goo.gl/XiksB8> (accessed June 2017).

<sup>11</sup> IFC, 2006 Sustainability Policy, para 13.

the investment is monitored throughout the project cycle to ensure compliance with the conditions in the investment agreements and IFC's applicable policies and standards.<sup>12</sup>

IFC's investment in the hydropower project was made under its 2006 Policy on Social and Environmental Sustainability ("the Sustainability Policy") and its 2006 Performance Standards (PS), together referred to as the Sustainability Framework.<sup>13</sup> Central to IFC's development mission are its efforts to "carry out its investment operations (...) in a manner that 'do no harm' to people or the environment."<sup>14</sup> 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."<sup>15</sup> This commitment is reflected in Performance Standard 1, which includes the objective "to avoid or, where avoidance is not possible, minimize, mitigate or compensate for adverse impacts on workers, affected communities and the environment."<sup>16</sup>

In this context, IFC's Performance Standard 5 (PS5) on Land Acquisition and Involuntary Resettlement is of particular relevance. PS5 includes requirements for compensation for loss of assets at full replacement cost. It also includes requirements related to disclosure, consultation and grievance handling. IFC implements the commitments set out in the Sustainability Policy through its Environmental and Social Review Procedures (ESRP). The investment was approved under ESRP version 1.0,<sup>17</sup> and supervised under subsequent versions of the ESRP.

### **3.4 MIGA's Role in World Bank Group Co-Financed Projects**

It is generally MIGA's practice that IFC takes the lead on E&S due diligence and supervision of projects where both institutions are involved. Arrangements of this type are supported by MIGA's Operational Policies, which provide broadly that MIGA will make use of the facilities, personnel and services of the World Bank and IFC "to effect economy and avoid duplication" (OP 5.19).<sup>18</sup>

MIGA's more recent Policy on Environmental and Social Sustainability (2013) provides that "when the International Finance Corporation (IFC) and/or International Bank for Reconstruction and Development (IBRD) or any World Bank Group (WBG) entity is involved with the project, MIGA may rely on and use such entity's environmental standards, environmental and social due diligence and/or monitoring, in accordance with WBG common or shared guidance." This provision is applicable in cases where MIGA "determines it to be of sufficient quality and scope to adequately inform MIGA's approval process" (para. 6).<sup>19</sup>

Nevertheless, as MIGA has its own Board of Executive Directors, distinct from IFC's, the Sustainability Policy provides that certain E&S responsibilities remain with MIGA. These include: i) providing its Board with a "costs and benefits" analysis of the "rationale and specific conditions" for the guarantee (para. 18); and, ii) putting in place contractual E&S obligations to ensure compliance with MIGA's E&S requirements.

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<sup>12</sup> IFC, 2006 Sustainability Policy, para 26.

<sup>13</sup> IFC, 2006 Sustainability Framework - <https://goo.gl/ygXC4R> (accessed June 2017).

<sup>14</sup> IFC, 2006 Sustainability Policy, para. 8.

<sup>15</sup> IFC, 2006 Sustainability Policy, para. 8.

<sup>16</sup> IFC, 2006 Performance Standard 1, Objectives.

<sup>17</sup> ESRP version 1.0, April 2006.

<sup>18</sup> Multilateral Investment Guarantee Agency, Operational Policies, para. 5.19, available at <https://goo.gl/kpnBaJ> (accessed August 2017)

<sup>19</sup> Multilateral Investment Guarantee Agency, Policy on Environmental and Social Sustainability, available at <https://goo.gl/nkt35t> (accessed June 2017).

## 4. Analysis and Findings

### 4.1 IFC's Review of the Interconnection Project's Approach to Land Acquisition

This section considers IFC's role in the development of the E&S framework for the interconnection project. It considers IFC's pre-investment review of the project and IFC's negotiation of E&S obligations with the client, UETCL and the other lenders. Given the issues raised by the complainants, it gives particular consideration to IFC's review of the Resettlement Action Plans (RAPs) for the interconnection project.

In doing so, it answers two key questions. First, whether IFC had a responsibility to ensure that its Performance Standards were applied in the construction of the interconnection project, and second, whether IFC assured itself that the 2006 and 2008 RAPs met the requirements of PS5 including those for compensation at full replacement cost under PS5.<sup>20</sup>

#### Summary of Findings:

IFC properly recognized the interconnection project as an associated facility of the hydropower project and determined that measures would be required to ensure the outcomes of the interconnection project consistent with the Performance Standards. This is in compliance with Performance Standard 1 (para. 5).

IFC, in collaboration with the other lenders, negotiated a Direct Agreement which required UETCL to comply with the lenders' environmental and social requirements, including IFC's PSs. The Direct Agreement established a framework for supervision of the interconnection project in accordance with IFC's Performance Standards. This is in compliance with the Sustainability Policy (paras. 17, 24 and 25).

IFC did not have assurance that the RAPs provided for compensation for land and other assets at full replacement cost. This is not in compliance with PS5 (paras. 8 and 23).

There is no indication that IFC assured itself, once the compensation rates were finalized along with the 2008 RAP, that disclosure and meaningful consultation with affected people took place. This is not in compliance with PS5 (para. 9).

CAO finds that IFC did not assure itself that the RAP included an assessment of the capacity of the Chief Government Valuer and ultimately measures for the client to bridge the gap in capacity. This is not in compliance with the Sustainability Policy (para. 15) and PS5 (para. 22).

Considering all the above, CAO concludes that IFC's review of this land acquisition documentation for the interconnection project did not meet the standard of being commensurate to risk and was thus not in compliance with the Sustainability Policy (para. 13).

#### 4.1.1 Overview of IFC's E&S Review of the Interconnection Project

IFC conducted its E&S review of the hydropower project and the interconnection project between July 2005 and April 2007. IFC E&S staff dedicated significant time to reviewing project documentation and conducted a field visit to the project site in Uganda. MIGA was involved in the pre-investment review of the project, commenting on critical client E&S documentation along with IFC and IDA, and incorporating E&S requirements into MIGA's guarantee agreement.

<sup>20</sup> This report refers to the "2006 RAP" and the "2008 RAP" for convenience. However, the original name of the documents were "Social and Environmental Action Plan Annex G: Resettlement and Community Development Action Plan."

In December 2006, IFC disclosed a Summary of Proposed Investment (SPI) and the Environmental and Social Review Summary (ESRS) for the Bujagali hydropower project and the interconnection project. The project was identified as Category “A”, which indicates that it had potentially significant adverse social or environmental risks or impacts that are diverse, irreversible or unprecedented. IFC’s ESRS discussed application of PS5 to the project. The SPI stated that the key issues going forward included fulfilment of the requirements of PS5.

The ESRS laid out the division of responsibilities between UETCL and the client. It stated that UETCL would be responsible for the implementation of the interconnection project and would contract the client to play a management role in the project’s design, procurement, and construction phases.<sup>21</sup> It added that, while the client would be involved in paying compensation and conducting resettlement activities along the transmission line, UETCL would be responsible for the long-term outcomes.

IFC reviewed the Resettlement Action Plan (RAP) documents for the interconnection project in two phases, prior to investment in 2006 and when the RAP was finalized in 2008.

#### **4.1.2 The Interconnection Project: An Associated Facility to which IFC Standards Apply**

In assessing IFC’s E&S review of the project, CAO considered whether IFC had a responsibility to ensure that Performance Standards were applied to the interconnection project.

The Performance Standards require that project risks and impacts be analyzed “in the context of the project’s area of influence.”<sup>22</sup> A project’s area of influence includes impacts caused by “associated facilities that are not funded as part of the project (...) and whose viability and existence depend exclusively on the project and whose goods or services are essential for the successful operation of the project.”<sup>23</sup> Facilities funded by the government or third parties are specifically included in this definition.<sup>24</sup>

The joint IDA/IFC Project Appraisal Document (PAD) described the hydropower project, noting that evacuation of electricity “will require the construction of about 100 kilometers of transmission line, as well as the construction of a substation.”<sup>25</sup> The PAD described the transmission line as an associated facility to the hydropower project.<sup>26</sup>

IFC’s approach to the management of risk arising from associated facilities is further developed in the Sustainability Policy, under the heading of “Managing Third Party Performance.”<sup>27</sup> Under this heading, the Policy notes that “IFC seeks to ensure that the project’s outcomes are consistent with the Performance Standards even when such outcomes depend upon the performance of the third-party.” The Policy provides that “when the client has influence over the actions and behavior of the third party, IFC requires the client to collaborate with the third party to achieve the outcomes consistent with the Performance Standards.” The Policy further provides that IFC does not finance projects that “cannot be expected to meet the requirements of the Performance Standards over a reasonable period of time.”<sup>28</sup>

Having identified the interconnection project as an associated facility, IFC, together with the other lenders, reviewed the E&S risks and impacts associated with the construction of the transmission

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<sup>21</sup> ESRS December 2006, p. 7.

<sup>22</sup> IFC, 2006 Performance Standard 1, para. 5.

<sup>23</sup> *Ibid.*

<sup>24</sup> *Ibid.*

<sup>25</sup> PAD (April 2007), Project Description, p. 9.

<sup>26</sup> PAD (April 2007), Appraisal Summary, G. Environment, p. 43.

<sup>27</sup> IFC, 2006 Sustainability Policy, paras. 24-25.

<sup>28</sup> IFC, 2006 Sustainability Policy, para. 17.

line. They put in place measures to mitigate these E&S risks and impacts. This included the negotiation of an agreement (“the direct agreement”) between the Government of Uganda, UETCL, and the other lenders. The direct agreement provided for supervision of the interconnection project in accordance with the lenders’ E&S standards, including IFC’s Performance Standards and related action plans. The direct agreement formalized the division of labor between the client and UETCL in the construction of the transmission line. It required UETCL to report to the lenders, including IFC, on progress related to resettlement and land acquisition for the transmission line. The direct agreement also required that a resettlement audit of the interconnection project be prepared and a plan for any corrective actions be formulated in form and substance satisfactory to the lenders’ including IFC.

Considering the above, CAO finds that IFC properly recognized the interconnection project as an associated facility of the hydropower project and determined that measures would be required to ensure the outcomes of the interconnection project consistently with the Performance Standards. This is in compliance with Performance Standard 1 (para. 5).

CAO further finds that IFC, in collaboration with the other lenders, negotiated a direct agreement which required UETCL to comply with the lenders’ environmental and social requirements, including IFC’s PSs. The direct agreement established a framework for supervision of the interconnection project in accordance with IFC’s Performance Standards. This is in compliance with the Sustainability Policy (paras. 17, 24 and 25).

#### **4.1.3 IFC’s Review of the Resettlement Documents for the Transmission Line**

CAO has also considered whether IFC assured itself that the 2006 and 2008 RAPs for the transmission line met the requirements of Performance Standard 5.

Of particular relevance—given the issues raised by the complainants—is whether IFC had assurance that the 2006 and 2008 RAPs provided for compensation at full replacement cost as required by PS5. The complainants raise specific concerns regarding compensation for crops identified as “young” in the 2006 survey. The complainants assert that these crops were legitimate and that they were not compensated for the loss of such crops. They note that the settlement agreement resulting out of the dispute resolution process, conducted in response to a separate CAO complaint, includes payment for young crops (see the Bujagali-05 complaint in Annex B).

##### *IFC Requirements*

Prior to making an investment, IFC reviews the E&S risks and impacts of a project. The requirement is that IFC’s review be “appropriate to the nature and scale of the project, and commensurate with the level of E&S risks and impacts.”<sup>29</sup> As part of the review, IFC is required to consider (a) the client’s E&S assessment; (b) the client’s commitment and capacity to manage these risks; and (c) the role of third parties in meeting IFC E&S requirements. This review helps IFC ascertain whether a project can be expected to meet the Performance Standards. In cases where there are shortcomings in the client’s E&S assessment, IFC requires additional assessment to meet its requirements.<sup>30</sup> IFC does not finance new business activity that cannot be expected to meet the Performance Standards over a reasonable period of time.<sup>31</sup>

For projects that involve physical or economic displacement, Performance Standard 5 (Land Acquisition and Involuntary Resettlement) applies. When displacement cannot be avoided, PS5

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<sup>29</sup> IFC, 2006 Sustainability Policy, para. 13.

<sup>30</sup> IFC, 2006 Sustainability Policy, para. 15.

<sup>31</sup> IFC, 2006 Sustainability Policy, para. 17.

requires that the client will “offer displaced persons and communities compensation for loss of assets at full replacement cost and other assistance to help them improve or at least restore their standards of living or livelihoods” (para. 8). This standard has been developed to ensure that projects do not lead to impoverishment of people whose land or resource rights are impacted by a project.<sup>32</sup>

PS5 also establishes a planning and implementation process. This includes requirements to:

- Carry out a census with appropriate socio-economic baseline data to identify the persons who will be displaced by the project, to determine who will be eligible for compensation and assistance, and to discourage inflow of people who are ineligible for these benefits (para 11);
- develop a RAP or a Resettlement Policy Framework based on a Social and Environmental Assessment that covers the applicable requirements of PS5 to mitigate the negative impacts of displacement, identify development opportunities, and establish the entitlements of all categories of affected persons (para 12); and,
- establish procedures to monitor and evaluate the implementation of resettlement plans and take corrective action as necessary (para. 12).

Resettlement is considered complete when the adverse impacts of resettlement have been addressed in a manner that is consistent with PS5 (para. 12).

#### IFC’s Review of the Resettlement Action Plans

IFC reviewed the 2006 RAP for the interconnection project during project design. As publicly disclosed, IFC’s assessment of the RAP was positive. IFC noted that the RAP would “lead UETCL to meet the requirements of Performance Standard 5.” IFC also noted that its client would “monitor the implementation of measures under the responsibility of UETCL, and collaborate, as necessary, with UETCL to ensure their completion.”<sup>33</sup>

Internally, however, IFC E&S staff acknowledged gaps in the RAP. These included issues related to the completeness of the data and the establishment of compensation rates that reflected full replacement cost. In this context, the responsible E&S specialist cleared the project on the condition that the client would submit an updated RAP prior to Board approval of IFC’s investment in the project. However, due to delays in the approval of compensation rates, this was not done and the project proceeded to the Board, which approved it in April 2007 without an updated RAP.

The RAP for the interconnection project was finalized in 2008. IFC informed CAO that it reviewed the 2008 RAP and found it compliant with IFC’s requirements, however, CAO was not able to locate documentation of this review.

#### Compensation Rates

Both the 2006 and 2008 RAPs reference IFC’s requirement to provide compensation at full replacement cost. In this respect, the RAPs envisaged that cash compensation would be at District Land Board (DLB) rates for land, crops, and structures, with payment of disturbance allowance as per Ugandan law. The RAPs added that an uplift will be added to this compensation

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<sup>32</sup> IFC 2006 PS5, para.2, “Unless properly managed, involuntary resettlement may result in long-term hardship and impoverishment for affected persons and communities, as well as environmental damage and social stress in areas to which they have been displaced.”

<sup>33</sup> IFC’s Environmental and Social Review Summary (ESRS) - <https://goo.gl/Yc74c6> (accessed June 2017).

to meet full replacement cost requirements, as rates established by DLBs usually do not meet this requirement.<sup>34</sup>

A 2002 report of the World Bank Inspection Panel (WB-IPN) into the first and canceled Bujagali Hydropower project identified similar challenges in relation to the valuation of land and crops in Uganda.<sup>35</sup>

The framework for calculating compensation, however, changed between the 2006 and 2008 RAPs. CAO understands that during this period the Chief Government Valuer (CGV) took issue with the proposed DLB rates, in particular those proposed for Mukono District. Based on the review of available documentation, CAO understands that the DLB rates approved by the CGV in 2008 were lower than those proposed by the client's surveyor in 2006.<sup>36</sup> Also during this period the "uplift" was restricted to compensation for land and not crops or structures (see table 1 below). This was explained on the basis that local rates for compensation for structures and crops were considered to meet IFC requirements.

In relation to compensation for young crops, the project documents note concerns regarding attempts to maximize compensation by undertaking speculative activity. The 2006 RAP, for example, indicates that some residents were hastily planting high value crops in the area of the transmission line corridor with a view to securing additional compensation payments. As a result, the RAP raises a concern that crop count may be over-estimated.<sup>37</sup>

In January 2007, the client's surveyor completed the asset inventory for the transmission line corridor. The asset inventory covered all assets found on the land within the 30-40 m corridor of the transmission line, including young crops. Young crops that might or might not have been planted for speculative purposes were categorized as "newly planted crops", "just planted crops" or "placed crops". These asset inventory data were validated by relevant stakeholders (including the local land committees, the client and UETCL) and disclosed to the affected people in a survey form in three copies (one for the asset owner, another for the surveyors, and another for the client).

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<sup>34</sup> RAP (2006) p. 70. The conclusion that national compensation rates are generally lower than full replacement cost is consistent with the findings of the joint analysis by the World Bank and the Government of Uganda from 1995. This joint analysis concluded that compensation rates for land, assets and crops "are very low and the principle of restoring the standard of the person to the standard they had prior to the compulsory acquisition of the property is not observed." See Resettlement Policy and Institutional Capacity for Resettlement Planning in Uganda; March 1995, p. 31.

<sup>35</sup> IP Case 24 Investigation Report 2002: p 90.

<sup>36</sup> CAO reviewed the District Compensation Rates (DCRs) for Mukono District, the district where the complainant's assets are located, and compared them to the draft of EACSV dating September 2006.

<sup>37</sup> RAP (2006) p. 50.

Table 1: Comparison of compensation rates as stated in RAPs (2006 and 2008)

	<b>RAP (2006)</b>	<b>RAP (2008)</b>	<b>Difference</b>
<b>Land</b>	Standard rates defined by District Land Boards. Uplift based on average transaction prices in the area, usually 5%.	Standard rates defined by District Land Boards. Uplift based on average transaction prices in the area, usually 5%.	No difference.
<b>Structures</b>	Valuation based on depreciated cost.  The replacement cost is based on actual cost of construction of an equivalent structure.  The difference is generally 10%. The uplift meets gap between depreciated value per Ugandan regulations and full replacement value per lenders requirements.	The valuation has been done based on full replacement value, as required by lenders policies.  No uplift applicable.	Determination that valuation was at full replacement value.  Elimination of uplift.
<b>Crops</b>	Valuation based on count and official rates.  5% uplift.	Valuation based on count and official rates.  Rates include production lost during the period needed to re-establish the tree meeting full replacement value requirement. Annual crops are valued at market value, which is consistent with the WBG “full replacement value” requirement.  No uplift applicable.	Determination that official rates meet full replacement value.  Elimination of uplift.

The first joint lenders’ supervision report in March 2008, noted that crop compensation payments still needed to be finalized and that conflicting methodologies for estimating crop values had to be urgently resolved. It added that there were problematic cases of differential pricing of crops and disclosure issues that may require reassessment of crop compensation. As a result, the lenders requested the client to ensure that the compensation methodology and approach be consistent with the lenders policies, including IFC’s Performance Standards.

In May 2008, CGV endorsed an amended inventory of assets and DLB rates lowering original survey results and compensation values. Given concerns regarding speculation, it was decided that crops described as “young” and “newly planted” would be excluded from compensation. This approach formed the basis for the 2008 RAP, but is not in line with the provisions of IFC’s PS5.<sup>38</sup>

At the same time, the 2008 RAP recognized that the application of this principle could potentially prejudice households who were not speculators. Therefore, it was later decided that a screening process (including a benchmark derived from typical crop loading in the area) would be established to ensure that legitimate crops were compensated. The RAP further provided that these cases would

<sup>38</sup> EIB-CM Conclusion Report August 2012: 68.

be investigated in more detail at disclosure/grievance to ensure that legitimate crops were not overlooked and would be appropriately compensated.

Considering the above, CAO finds that IFC identified gaps between Ugandan requirements and those of the WBG in relation to the provision of compensation for land and assets acquired. However, IFC did not ensure that adequate measures were proposed to bridge these gaps.

While the RAPs referenced the appropriate IFC standards, they do not include analysis to support the conclusion that the finalized rates would be equivalent to full replacement cost. This is of particular concern given: (a) evidence that DLB rates tended to be below full replacement cost; and (b) that the DLB rates approved by the CGV were lower than those recommended by the client's surveyor in 2006.

An additional gap in the RAPs was the lack of a provision that took into account potential increases in asset or values between the time of survey and the point when compensation was paid. This is of particular concern given that the 2008 RAP was based on a 2006 survey and most compensation payments were made between 2008 and 2009.<sup>39</sup> In these circumstances, CAO finds that IFC did not have assurance that the RAPs provided for compensation for land and other assets at full replacement cost. This is not in compliance with PS5 (paras. 8 and 23).

#### Consultations over Resettlement Action Plans

The complainants state that they have been poorly informed about the mechanisms and processes put in place to deal with grievances and claims for compensation.

PS5 provides for disclosure of all relevant information to people affected by resettlement activities to facilitate the informed participation of communities in decision making processes. Consultation is expected throughout the resettlement process including in relation to "implementation, monitoring and evaluation of compensation payment and resettlement to achieve outcomes that are consistent with the objectives [of PS5]" (para. 9).

The 2006 RAP was publicly disclosed by both the IFC and the client. However, CAO finds no indication that the 2008 RAP was disclosed. Discussion of public consultation in both RAPs is limited. The RAPs note "recent consultations with the potentially affected villages along the routes" but provide no details or specificity on when, where or with whom these consultations took place.<sup>40</sup> The RAPs mention that "disclosure, meetings will be organized [with] all affected villages." The RAPs add that meetings will be held on an individual basis, with each affected head of household whereas the proposed compensation package will be detailed and discussed.<sup>41</sup>

In June 2008, the Independent Review Mechanism at AfDB (AfDB-IRM), considered a complaint which included similar issues. The AfDB-IRM concluded, among other findings, that there was inadequate consultation in relation to the development of the resettlement planning framework for the interconnection project.<sup>42</sup>

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<sup>39</sup> CAO notes that standard practice in such circumstances would be to increase rates to accommodate inflation or to reassess rates based on updated surveys, as suggested in the World Bank Resettlement Sourcebook (2004: 210, 258 etc.). The Bank of Uganda (see <https://goo.gl/edvMnn>) determined that the inflation rate for 2006 was 7.2%, 6.1% for 2007, 12.0% for 2008, and 13.0% for 2009. Since, the inflation rate was 4.0%, 18.7%, 14.0%, 5.5%, 4.3%, and 5.2% each calendar year until 2015 (accessed November 2017)

<sup>40</sup> RAP (2006) p. 12.

<sup>41</sup> *Ibid.* p. 78.

<sup>42</sup> AfDB-IRM Compliance Report, June 2008, p.27 - <http://goo.gl/0pgxJP> (accessed August 2016).

CAO concurs with the AfDB-IRM and notes that there is no indication that IFC assured itself, once the compensation rates were finalized along with the 2008 RAP, that disclosure and meaningful consultation with affected people did in fact take place. This is not in compliance with PS5 (para. 9).

### Government Capacity in Relation to Resettlement

IFC's pre-investment E&S review is required to include a review of the role of third parties (such as government agencies) in a project's compliance with the PS.<sup>43</sup> PS5 provides that where "land acquisition and resettlement are the responsibility of the host government, the client will collaborate with the responsible government agency, to the extent permitted by the agency, to achieve outcomes that are consistent with the objectives of this PS" (para. 22). In addition, PS5 provides that where government capacity is limited, the client will play an active role during resettlement planning, implementation and monitoring" (para 22).

As part of involuntary resettlement preparations, a capacity assessment is typically conducted to review the performance of relevant entities in resettlement processes. This includes a review of institutional capacity and track record of conducting similar resettlement processes.<sup>44</sup>

The RAP acknowledged the role of the CGV which "deals with valuation of assets in connection with acquisition of land for public interest" and who was thus required to clear the asset valuations prior to implementation of the RAP.<sup>45</sup> This gave the CGV a key decision making role in the land acquisition process. CAO finds that IFC did not assure itself that the RAP included an assessment of the capacity of the CGV and ultimately measures for the client to bridge the gap in capacity as needed to meet IFC requirements.<sup>46</sup> Of particular relevance in the context of the project were the CGV's capacity to approve rates in a timely manner and the mitigation of any gaps between the CGV's approach to valuation and PS5 requirements. CAO agrees with the finding of the Inspection Panel from 2008 that there were shortcomings in the project's approach to the assessment and supplementation of country E&S capacity.<sup>47</sup> This is not in compliance with the Sustainability Policy (para. 15) and PS5 (para. 22).

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<sup>43</sup> IFC, 2006 Sustainability Policy, para. 15.

<sup>44</sup> The 2004 World Bank Involuntary Resettlement Sourcebook, Planning and Implementation in Development Projects, pp. 323-324, considers that large-scale resettlement programs can be extremely complex from the institutional perspective. The sourcebook considers the following factors as potential contributors to this complexity: a) multiple administrative jurisdictions; b) weak institutional capacity of government agencies in remote areas; c) complex interface between the project implementing agency; and, d) possible conflict between the project's resettlement entitlement policies and those of local jurisdictions; etc. The Sourcebook considers that project decision-makers need to assess the capacity and commitment of key institutions responsible for resettlement. The Sourcebook is available at <https://goo.gl/oy8Kj> (accessed November 2017).

<sup>45</sup> RAP 2006, p. 40.

<sup>46</sup> The capacity gap at the level of the CGV is further analyzed in a World Bank study, "the CGV's office faces severe capacity gaps which hamper the valuation process. The office has 20 full-time valuers and 14 valuers on contract (2016) working on all land acquisition required for Uganda's ambitious development agenda. The CGV's resources are further stretched by: (i) delays in acquiring land due to budgetary and other constraints (...); (ii) the limited capacity of District Land Boards to set reliable rates (...); (iii) inadequate budgets, the CGV does not have a budget line on every project to facilitate their travel to project implementation sites around the country; (iv) inadequate capacity for the valuation in specialized industries (...); and (vi) the rejection of values by property owners (...)." See, World Bank Report No: ACS22135 - Republic of Uganda Supporting Policy Dialogue on National Resettlement Policy in Uganda, Defending Our Land: An Assessment of the Law, Resettlement Policies and Practices on Land Acquisition in Uganda, June 2017, p. 37

<sup>47</sup> Inspection Panel Investigation Report, August 2008, p.38. <http://goo.gl/M4Cz32> (accessed November 2017)

Considering all of the above, CAO concludes that IFC's review of this land acquisition documentation for the interconnection project did not meet the standard of being commensurate to risk and was thus not in compliance with the Sustainability Policy (para. 13).

#### **4.2 IFC's Environmental and Social Supervision of the Project**

This section covers IFC's supervision of the investment from the initial joint lenders supervision mission in March 2008 to date. It considers the structures IFC put in place to assess the status of the project's compliance with the Performance Standards and other E&S requirements agreed at commitment. In particular, it considers whether IFC's supervision of the interconnection project was sufficient to conclude that resettlement measures were being implemented as per PS5 requirements.

##### **Summary of Findings:**

Although IFC relied on AfDB to take a leading role in relation to the supervision of resettlement activities under the interconnection project, IFC had in place reporting and other oversight structures as required to supervise resettlement activities associated with the interconnection project and to require compliance with the Performance Standards. This is in compliance with IFC's Sustainability Policy (para. 26), PS1 (para. 24), and the ESRP v2 (para. 6.1.1).

CAO finds that despite IFC considering in November 2008 that land valuation and compensation problems had been solved, it soon became apparent that it was and remains questionable whether compensation at full replacement cost has been achieved. CAO finds that IFC failed to respond to this challenge in a way that would generate corrective actions. This is not in compliance with IFC's Sustainability Policy (para. 26) and PS5 (para. 20), as affected people were neither promptly compensated nor is it demonstrated that they were compensated at full replacement cost.

IFC did not have assurance that the grievance mechanism provided for under the RAP was sufficient to provide impartial recourse in case of disputes over the valuation of assets and crops. This is not in compliance with PS5 (para. 10).

CAO notes that the exclusion of the interconnection project from the completion audit undermines IFC's ability to satisfy itself that the adverse socio-economic impacts experienced by the land acquisition and land-use restrictions related to the transmission line were mitigated and livelihood was, at a minimum, restored. This is not in compliance with IFC's Sustainability Policy (para. 26) and PS5 (para. 12).

CAO finds that significant numbers of households whose land was acquired for the transmission line likely did not receive compensation at full replacement cost. Hence, CAO finds that IFC did not assure itself that its investment was carried out in a manner that appropriately compensated households impacted by land acquisition. This is not in compliance with IFC's Sustainability Policy (para. 8).

MIGA was entitled to rely on IFC's supervision of the project. Although information was available indicating significant and continuing problems in valuation and compensation payment in relation to the acquisition of land for the interconnection project, IFC's position was that the project was in compliance. As a result, CAO finds MIGA to be in material compliance with of its Policy on Environmental and Social Sustainability (para. 6).

#### 4.2.1. Requirements

IFC is required to monitor its client's E&S performance throughout the life of the investment. As set out in the ESRP, the purpose of E&S supervision is to develop and retain the information needed to assess the client's performance against the requirements of the investment agreement, and IFC PS in general<sup>48</sup> and applicable EHS Guidelines.<sup>49</sup>

Project supervision is based on periodic monitoring reports submitted by the client and reviewed by IFC, discussions with the client, and site visits as required by IFC's ESRP.<sup>50</sup> IFC expects that its clients "establish procedures to monitor and measure the effectiveness of the management program" and "use dynamic mechanisms, such as inspections and audits, where relevant, to verify compliance and progress toward the desired outcomes." For projects with significant impacts that are diverse, irreversible, or unprecedented, IFC requires the client to retain qualified and experienced external experts to verify the monitoring information (PS1, para. 24).

If the client fails to comply with its E&S commitments as expressed in the Action Plan or legal agreements, IFC is required to "work with the client to bring it back to compliance to the extent feasible, and if the client fails to reestablish compliance, IFC will exercise remedies as appropriate" (Sustainability Policy, para. 26).

#### 4.2.2. IFC Supervision of the Project

##### Supervision Arrangements and Responsibilities

IFC's supervision of the hydropower and interconnection projects commenced in 2008. Supervision was documented in reviews of the client's quarterly monitoring reports,<sup>51</sup> bi-annual reports of the Panel of Environmental and Social Experts (PoE), IFC's site supervision visits on its own and as part of the lenders' joint visits.

IFC informed CAO that it was involved in direct supervision along parts of the transmission line considered to be particularly high risk. IFC also informed CAO that AfDB, as the main financier of the transmission line, was primarily responsible for supervising the interconnection project and sharing its findings with IFC and the other lenders.

IFC informed CAO that, in the view of the team, AfDB had sufficient resources and capacity to ensure compliance of the interconnection project with IFC's PS5 standards.

In relation to this issue CAO notes relevant observations in the investigation of the AfDB-IRM in relation to the interconnection project. The AfDB-IRM found that AfDB staff had been "overly confident in the policies and procedures of co-financiers, in particular the World Bank, and in their supervision and due diligence." The AfDB-IRM was "concerned about the adequacy of the number of staff (and consultants) assigned to work on the social and environmental aspects of a complex operation like the Bujagali projects." In this context, the AfDB-IRM recommended that the AfDB "re-evaluate its human resource needs, paying particular attention to the expertise needed to effectively manage the main and cross-cutting issues involved in its operations."<sup>52</sup> CAO also notes AfDB management's response to the IRM findings, in which AfDB "recognize[s] the serious

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<sup>48</sup> IFC, 2007, ESRP v.2, para 6.1.1.

<sup>49</sup> IFC, 2009, ESRP v.4, para 6.2.7.

<sup>50</sup> IFC, 2006 Sustainability Policy, para 26; IFC, 2007, ESRP v2 para 6.1.1.

<sup>51</sup> The PAD indicated that the client would monitor the implementation of measures under the responsibility of UETCL and will collaborate, as necessary, with UETCL to ensure their completion. PAD 2007, p. 143.

<sup>52</sup> AfDB-IRM Compliance Report, June 2008, pp. 68-69 - <http://goo.gl/0pgxJP> (accessed October 2016).

constraints faced by Bank staff working on environment and social aspects (...).” As a result, AfDB management committed to undertake a wider review of skills and capacity to ensure that skills gaps were appropriately resourced going forward.<sup>53</sup> The AfDB-IRM findings and the AfDB management’s response stand in contrast to IFC’s confidence that AfDB had sufficient resources and capacity to ensure compliance of the project with IFC’s PSs.

While noting concerns about the capacity of the AfDB supervision, CAO also notes that IFC had a range of additional sources of information including the PoE and the joint lenders supervision missions to rely on. The PoE provided an important additional source of information for the lenders during project supervision. The SEA anticipated one PoE to independently oversee both the hydropower and the interconnection project. Hence, the transmission line was included in the scope of work of the PoE which was tasked with reviewing client E&S documentation and confirming “through field and site visits that SEA documentation reflects the projects’ realities ‘on the ground’” paying particular attention to outcomes and implementation activities.<sup>54</sup> The PoE visited the project twice a year during construction and provided the client with guidance on environmental and social issues. PoE reports were published on the client website.<sup>55</sup>

As discussed above, the direct agreement also required UETCL to provide quarterly E&S reports to the lenders including progress on resettlement. Further, the direct agreement required UETCL to commission a resettlement audit for the interconnection project including a corrective action plan satisfactory to the lenders.

Although IFC relied on AfDB to take a leading role in relation to the supervision of resettlement activities under the interconnection project, IFC had in place reporting and other oversight structures as required to supervise resettlement activities associated with the interconnection project and to require compliance with the Performance Standards. This is in compliance with IFC’s Sustainability Policy (para. 26), PS1 (para. 24), and the ESRP v2 para 6.1.1.

### Supervision of RAP Implementation

The initial joint lenders’ supervision report, prepared in March 2008, while the 2008 RAP was yet to be finalized, highlighted that there were urgent compliance concerns relating to crop compensation payments (including payments for young crops), cases of differential pricing of crops, and disclosure. As a result, the client was advised to ensure that a sound compensation methodology and approach for crops was adopted.

Compensation for young crops was discussed in project documents. The 2006 and 2008 RAPs included an appendix listing, as example, the Kampala compensation rates for “young and good” and “young and poor” crops. This appendix noted that different food crops would have different rates and that not all food crops have “young” as a category that would be compensated. The appendix also gave valuation based on acreage. Depending on the crop, a “young crop” could be one that is up to 1-year of age.<sup>56</sup> For the affected community, the crops of concern are mainly those less than 4 months of age. The surveyors considered that a large portion of young crops were placed (stems simply “poked” in the ground) in anticipation of the valuation exercise, and therefore were not considered legitimate for compensation under national standards. However, in order not to prejudice affected people who were not speculating, the surveyors proposed a screening process, derived from crop loading (the capacity of a plot to carry a certain number of

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<sup>53</sup> AfDB-IRM Compliance Report, June 2008, p. 75 - <http://goo.gl/0pgxJP> (accessed October 2016).

<sup>54</sup> The Draft Terms of Reference for the Panel of Experts, covering both hydropower project and interconnection line, are included on page 48 of the Bujagali Project Hydropower Facility EIA, SEA Appendix G.1 Sediment Transport Desk Study, available at <https://goo.gl/Rstght> (accessed July 2017).

<sup>55</sup> Bujagali Hydropower Project and Interconnection Projects Uganda, Panel of Environmental and Social Experts Reports, 2007-2012. <https://goo.gl/hQ2DqZ> (accessed November 2017)

<sup>56</sup> 2006 RAP, Appendix 4 – Kampala District Compensation Rates, pp. 107-114.

the same crop matching agricultural standards and planning characteristics), to ensure that legitimate crops were compensated. According to the 2008 RAP, such cases would be investigated in more detail at disclosure and grievance to ensure that legitimate crops were not missed and were appropriately compensated.

The PoE report from the June 2008 mission noted that the compensation process for the interconnection project was moving slowly. Complaints about compensation rates, particularly about poor compensation for young crops, were observed to be causing delays. The PoE observed that the basis for valuation of crops may not meet the full replacement cost standard and that the project needed to meet this requirement.<sup>57</sup> In response to this recommendation, the client noted that “GoU procedures of valuation are used through the CGV.”<sup>58</sup> The question of whether these valuations met IFC requirements was not addressed. The PoE report also noted complaints regarding lack of compensation for “young crops.”

Joint lender supervision from October 2008 pointed to challenges created by the delays required for the CGV’s approval of rates, the lack of disclosure and ongoing disputes concerning valuation for assets. By way of contrast, in a November 2008 disbursement memo, IFC reported that land valuation and compensation problems associated with the interconnection project had been solved and that compensation for the landowners was progressing slowly but satisfactorily.

Joint lender supervision documentation from April 2009 noted that 59% of the RAP was completed and 58% of compensation was processed, but that there was an ongoing “compensation issue”. This was identified on the basis of 106 unresolved disputes. In this context, supervision documentation noted that high-level discussions between AfDB, UETCL and relevant GoU agencies were planned to resolve the compensation issues. A July 2009 first monitoring report from AfDB-IRM expressed concerns about “serious delays of payment of compensation.” The IRM monitoring report also noted that a number of people had rejected compensation offers due to disputes over the valuation and claimants demanding “to be compensated on the basis of the current market value of their land, while the Government’s Chief Valuator’s offer is far less.”<sup>59</sup>

Joint lender supervision documentation from November 2009 confirmed that disputes related, in most part, to disagreements over compensation rates. At the same time, supervision documentation noted that an agreement had been reached with the CGV, to update compensation rates to reflect current market values (which are generally lower than replacement cost, as required by IFC’s PS5). It was thus expected that a substantial number of outstanding disputes would be expeditiously resolved.

From the supervision record, it appears that when complaints were presented, the CGV reviewed and often re-assessed compensation rates in relation to particular claims and segments of the transmission line. The lenders reported on this process between March 2009 and September 2011 noting that it facilitated the resolution of a significant number of compensation disputes. Supervision reports throughout 2010, 2011, and 2012, reported on the CGV’s progress in re-valuating assets and crops in response to grievances without providing details on whether the re-evaluation was consistent with IFC standards. Nevertheless, claims for unfair compensation continued. While numerous complaints in relation to the adequacy of compensation were noted throughout the supervision process, IFC supervision did not address the compensation question as a systemic one.

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<sup>57</sup> Panel of Environmental and Social Experts, Bujagali Hydropower and Interconnection Projects, 3rd Review, June 2008, dated July 28, 2008, p. 10 <https://goo.gl/z8WKbL> (accessed June 2017).

<sup>58</sup> *Ibid.*

<sup>59</sup> AfDB-IRM 1st Monitoring Report, July 2009 - <http://goo.gl/aX45Hf> (accessed August 2016).

In March 2011, the CGV was advised that land values along the transmission line had, on average, doubled between 2006 and 2011 and that consequently cash compensation based on 2006 rates would not enable affected people to acquire replacement land. Following a site visit in October 2011, the PoE noted that a number of disputes over compensation remained and raised the question as to “whether the compensation rates offered actually represent full replacement value.” The PoE noted the need for UETCL to demonstrate that “compensation offered represents full replacement value.”<sup>60</sup> CAO attempted to verify a sample of the compensation payments and whether they matched the corresponding entitlements, but was informed by IFC and the client that no copies or reports on compensation payment were kept by either the client or IFC.

The AfDB-IRM second monitoring report of July 2010, noted very little progress had been made in resolving the compensation issues.<sup>61</sup> AfDB-IRM’s most recent monitoring report, dated September 2012, found that the compensation process was “substantially complete” while noting that over 600 compensation related grievances remained unresolved.<sup>62</sup> AfDB-IRM monitoring provided no analysis on whether compensation was provided on the basis of full replacement value.

In March 2015, as part of a CAO supported dispute resolution process, an out-of-court agreement was reached between UETCL and representatives of the 557 complainants who brought the Bujagali 05 complaint to CAO. According to this agreement, UETCL undertook, among other things to: (a) rectify all and any errors and omissions which may have arisen in the calculation of compensation previously paid for crops and structures; (b) provide compensation for land not already compensated at 2011/12 rates; and (c) pay compensation based on the actual number of young crops assessed and counted by the client’s surveyor in 2006 together with a 30% disturbance allowance.<sup>63</sup>

CAO compiled information related to the number of affected people compensated, as included in various reports (including reports by the PoE, the client, UETCL, as well as internal IFC documents) and found inconsistencies and contradictions. CAO found no evidence, beyond the slow progress reported in supervision reports, demonstrating that IFC satisfied itself that the finalized rates reflected full replacement cost in accordance with PS5 requirements. To the contrary, until October 2011 supervision documentation noted concerns as to whether compensation rates represented full replacement cost.<sup>64</sup> Subsequent supervision documents were silent in relation to the issue until January 2016, when IFC reported that the client had compensated affected people at full replacement cost and provided them with opportunities for livelihood restoration. The basis on which this conclusion was reached was, however, not presented.

CAO finds that despite IFC considering in November 2008 that land valuation and compensation problems had been solved, it soon became apparent that it was and remained questionable whether compensation was being provided in accordance with IFC’s full replacement cost requirement. While acknowledging the issue, IFC failed to respond in a way that gave assurance that appropriate corrective actions had been taken. This is not in compliance with IFC’s Sustainability

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<sup>60</sup> Panel of Environmental and Social Experts, Bujagali Hydropower and Interconnection Projects, 9th Review, September/October 2011, dated January 3, 2012, pp. 3 and 22 <https://goo.gl/M8icbG> (accessed June 2017).

<sup>61</sup> AfDB-IRM 2nd Monitoring Report, July 2010 - <http://goo.gl/ZBRBxd> (accessed August 2016).

<sup>62</sup> AfDB-IRM 4th Monitoring Report, September 2012 - <http://goo.gl/94SPQB> (accessed August 2016).

<sup>63</sup> CAO Dispute Resolution Monitoring Report, January 2016 - <http://goo.gl/JWRHDh> (accessed August 2016).

<sup>64</sup> Panel of Environmental and Social Experts, Bujagali Hydropower and Interconnection Projects, 9th Review, September/October 2011, dated January 3, 2012, pp. 3 and 22 <https://goo.gl/M8icbG> (accessed June 2017).

Policy (para. 26) and PS5 (para. 20), as affected people were neither promptly compensated nor is it demonstrated that they were compensated at full replacement cost.

### Grievance and Recourse Mechanism for Compensation Claims

PS5 provides for the establishment of a grievance mechanism to receive and address specific concerns about compensation and relocation that are raised by displaced persons or members of host communities, including “a recourse mechanism designed to resolve disputes in an impartial manner” (para. 10). The reference to a “recourse mechanism” is elaborated upon in the IFC Guidance Note on PS5. The Guidance Note states that “timely redress of grievances through an effective and transparent grievance mechanism is vital to the satisfactory implementation of resettlement” (PS5 GN17). It adds that “the grievance mechanism should enable those who feel that their grievances have not been adequately addressed to have recourse to an external, neutral person or body for reconsideration of their case ... so as to minimize the necessity for litigation” (PS5 GN18).

Both RAPs envisaged potential grievances and disputes arising from the resettlement process. Relevant to the issues raised in the complaint, likely types of grievances as described in the RAP included disputes over valuation.<sup>65</sup> To deal with such disputes, the RAP described a grievance mechanism, which followed an escalation process.

First, affected people could present their claims directly to the client or UETCL at several locations along the transmission line. If the grievance or dispute was not resolved, it would be elevated to a mediation committee initially established at the district level (LC5).<sup>66</sup> The mediation committee was envisaged as including a representative of the LC5 administration; three representatives of the affected people (with at least one woman) chosen from among local councilors, community based organizations, elders, customary authorities; one representative of the Witness NGO (InterAid); and a UETCL representative acting as observer.<sup>67</sup> If the grievance remained unresolved, aggrieved parties could resort to the national judicial system. The RAP provided for the documentation of grievances, including the preparation of a technical background on each complaint by UETCL.

The 2008 RAP kept the same approach to grievance handling with the following changes. It envisaged the participation of a community development officer and relegated the mediation committee to the sub-country (LC3)<sup>68</sup> level replacing the representative of the LC5 administration with a representative from the LC3 administration. The 2008 RAP also allowed for the complainants to seek assistance from the Witness NGO in the resolution of grievances.

By July 2008, the grievance mechanism was registering complaints related to different aspects of the project, including compensation for young crops. According to the PoE, such complaints were being investigated, responded to and, those over which the client had control, resolved.<sup>69</sup> In March 2009, lenders’ supervision documentation noted that grievances about compensation related to the transmission line were being referred to UETCL, which had its own dispute resolution system. By that time, the lenders reported that there were 106 unresolved claims, some of which were being reviewed by the CGV.

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<sup>65</sup> RAP (2006) p. 86.

<sup>66</sup> LC5 is the district level local council.

<sup>67</sup> RAP (2006) p. 88. The primary function of the Witness NGO was to independently monitor and audit the implementation of the RAP (see RAP (2006) p. VIII).

<sup>68</sup> LC3 is the sub-county level local council.

<sup>69</sup> Panel of Environmental and Social Experts, Bujagali Hydropower and Interconnection Projects, 3rd Review, June 2008, dated July 28, 2008, p. 9 <https://goo.gl/z8WKbL> (accessed June 2017).

In August 2009, the PoE noted that the role of the Witness NGO was not sufficiently clear to deal with pending complaints. The PoE pointed out that some grievances were made directly to the Witness NGO which made recommendations to resolve these complaints. The PoE also pointed out that, according to the client, “some community members erroneously communicate to the NGO directly [but that] communities are gradually getting to understand the right channel of reporting their grievances.”<sup>70</sup>

In the following internal supervision reports, there is no reference to the Witness NGO dealing with compensation related grievances. In November 2009 and April 2010, it was reported that grievances related to transmission line compensation were referred to UETCL’s own dispute resolution system with approval of the CGV. In April 2011, it was noted that resolution of outstanding issues through the Ugandan court system would be much preferable to UETCL business decisions that effectively remove legal limits on individual compensation cases because of the precedent this would set for other infrastructure projects.

Meanwhile, a 2012 investigation by EIB’s Complaints Mechanism (EIB-CM) into the project described “capacity problems that beset Uganda’s judicial system.” It concluded that the project’s grievance mechanism was inadequate and recommended the establishment of “an effective, transparent and easily accessible mechanism” for addressing appeals over compensation.<sup>71</sup>

Considering the above, CAO finds that the grievance mechanism provided for in the RAPs was not suited to the resolution of complaints regarding valuation because the grievance mechanism, which was situated at the local level of government, was not in a position to influence the CGV approved surveys or valuations. As a result, grievances regarding valuation were channeled to the CGV. This proved effective in resolving numerous individual grievances, however it is unclear whether these grievances were resolved in accordance with the requirements for compensation at full replacement cost under PS5. IFC’s view that it would be preferable to resolve outstanding issues through the Ugandan court system is inconsistent with PS5 guidance to minimize the necessity for litigation.

In summary, CAO finds that IFC did not have assurance that the grievance mechanism provided for under the RAP was sufficient to provide impartial recourse in case of disputes over the valuation of assets and crops. This is not in compliance with PS5 para. 10.

### Completion Audit

IFC guidance notes provide that the conduct of a resettlement completion audit is advisable following a large-scale resettlement project in order to ensure that IFC requirements have been met.<sup>72</sup> In the case at hand, the conduct of a completion audit of the transmission line RAP and a plan for any corrective actions in form and substance satisfactory to the lenders was a requirement under the direct agreement. A completion audit was also required as part of the RAPs. As set out in the RAPs, the Witness NGO was envisaged to carry out the completion audit to verify, inter alia, whether the compensation was fair and adequate and whether livelihood had been restored.<sup>73</sup>

CAO notes that in November 2012, the client commissioned a resettlement completion audit for the hydropower project. The resettlement related to the interconnection project was not included. The client informed CAO that the transmission line RAP was excluded from the hydropower project RAP completion audit as the interconnection project RAP was implemented by UETCL.

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<sup>70</sup> PoE: Fifth Report (Visit – July 2009), August 2009. <https://goo.gl/VZG5PK> (accessed November 2017)

<sup>71</sup> EIB-CM Conclusions Report, August 2012 - <http://goo.gl/VTdJBM> (accessed August 2016).

<sup>72</sup> IFC (2007) Guidance Note 5, G24.

<sup>73</sup> Ref. 2006 RAP, p.90-1.

UETCL shared with CAO a March 2016 draft project completion report for the interconnection project. Relevant to resettlement, the interconnection project completion report concluded that: i) a total of 2,798 households were affected and were compensated in line with government policy; ii) 168 disputes over compensation payment remained outstanding; and, iii) offers based on 2006 rates were made in 2015 to compensate for 'orphan land' – parcels too small to be cultivated.

The exclusion of the interconnection project from the completion audit undermined the client's ability to assess whether the implementation of the RAP for the transmission line, as an associated facility of the hydropower project, had been properly completed or whether potential outstanding issues needed to be addressed. It also undermined IFC's ability to satisfy itself that the adverse socio-economic impacts experienced by the land acquisition and land-use restrictions, related to the transmission line, were mitigated and livelihood was, at a minimum, restored. Particularly given that the completion audit was a specific requirement of the direct agreement, CAO finds that this was not in compliance with IFC's Sustainability Policy (para. 26) and PS5 (para. 12).

CAO finds that significant numbers of households whose land was acquired for the transmission line likely did not receive compensation at full replacement cost. Hence, CAO finds that IFC did not assure itself that the investment was carried out in a manner that appropriately compensated households impacted by land acquisition. This is not in compliance with IFC's Sustainability Policy para. 8.

#### MIGA's Reliance on IFC

When IFC and MIGA are involved in a project, MIGA's Policy on Environmental and Social Sustainability (2013) provides that MIGA may rely on and use IFC's environmental standards, E&S due diligence and/or monitoring.<sup>74</sup> As pointed out in CAO's investigation of Bujagali 04/06,<sup>75</sup> and as per practice, MIGA agreed that IFC would take the lead on E&S supervision of the project and relied on monitoring information provided by IFC. Nevertheless, MIGA would receive all periodic monitoring reports.

Over the course of supervision, MIGA also processed an amendment to the original guarantee for the project to increase the coverage for equity and issued two new contracts of guarantee to cover swaps. In 2012, MIGA amended its original guarantee to World Power Holdings Luxembourg, one of the existing sponsors for the project, to include an additional \$5.3 million of coverage.<sup>76</sup> In 2014 MIGA issued additional guarantees totaling \$9.5 million to Absa Bank Limited of South Africa and Standard Chartered Bank of the United Kingdom, two of the existing senior lenders for the Project.<sup>77</sup> In 2016, MIGA disclosed a potential guarantee of up to \$330 million to cover SN Power's equity investment in the Project. This would translate into ca. \$210 million additional MIGA cover to an existing Project, though at the time of writing this report the transaction had not been completed.<sup>78</sup>

MIGA's board paper for the amended guarantee of 2012 does not mention the active Bujagali complaints with CAO.

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<sup>74</sup> MIGA. 2013. Policy on Environmental and Social Sustainability, para 6,

<sup>75</sup> See CAO Investigation of IFC's investment in Bujagali Energy Ltd. and World Power Holdings (Bujagali 04/06), <https://goo.gl/FrijgK> or <https://goo.gl/VqUmOk> (accessed November 2017)

<sup>76</sup> MIGA. July 2012. Summary of Proposed Guarantee to Bujagali Energy Ltd. <http://goo.gl/NBKBYV> (accessed May 2017).

<sup>77</sup> MIGA. August 2014. Summary of Proposed Guarantee to Bujagali Energy Ltd. <http://goo.gl/dmbsWz> (accessed May 2017).

<sup>78</sup> MIGA. June 2016. Summary of Proposed Guarantee to Bujagali Energy Ltd. <http://goo.gl/HvHh5Z> (accessed May 2017)

Of specific relevance to the issues raised by the complainants, in 2013 MIGA asked IFC whether its E&S covenants were sufficient to ensure compliance with the PSs in relation to the transmission line. IFC referred to the direct agreement and MIGA agreed that there was sufficient leverage through this agreement to address any failures by the client or UETCL to meet their E&S commitments.

MIGA's Board paper for the 2014 guarantees mentions the active Bujagali cases with CAO's dispute resolution function. MIGA's conclusion, based on IFC supervision, was that the project was in compliance, and as a result no significant E&S concerns were raised. Nevertheless, legal agreements for these transactions include E&S conditions beyond those found in the 2007 guarantee agreement. MIGA's Board paper for the 2016 guarantee notes the complaint regarding land acquisition in relation to the interconnection project, which was expected to continue meeting the requirements of the Performance Standards. The 2016 Board paper does not mention CAO's April 2015 decision to refer these cases for compliance investigation.

Though MIGA's disclosure to its Board in relation to CAO's processes was not complete or fully accurate, MIGA was entitled to rely on IFC's supervision of the project. Although information was available indicating significant and continuing problems in valuation and compensation payment in relation to the acquisition of land for the interconnection project, IFC's position was that the project was in compliance. As a result, CAO finds MIGA to be in material compliance with its Policy on Environmental and Social Sustainability (para. 6).

## 5. Conclusion

This compliance investigation was initiated in response to a complaint from households whose land was impacted by the construction of the Bujagali interconnection project. The complainants claim to not to have been adequately compensated for losses of land, crops and other assets. They also raise concerns regarding delays in compensation payments. The complainants represent more than 580 households from one district located along the route of the transmission line, however the issues that they raise potentially affect a larger community of people impacted by land acquisition for the interconnection project.

In response to the issues raised in the complaint, this investigation considers whether IFC's review and supervision of the of the interconnection project led to the proper application of Performance Standard 5 on Land Acquisition and Resettlement. In particular, it considers whether IFC assured itself that compensation for land and assets met IFC's requirement for compensation at "full replacement cost" resulting in at a minimum the restoration of project-affected peoples' livelihoods.

The Bujagali hydropower project is a large public-private partnership infrastructure project which was supported by IFC and MIGA along with other financiers, and guarantors. Although IFC and MIGA did not provide financial support for the transmission infrastructure needed to connect the hydropower project to the national electrical grid, they recognized the interconnection project as an associated facility of the hydropower project in accordance with the requirements of Performance Standard 1. As a result, IFC put in place measures to ensure that the interconnection project would be constructed in accordance with its environmental and social standards. Supporting this approach, IFC, together with the other lenders, negotiated a direct agreement with the Government of Uganda, UETCL, and IFC's client, which committed UETCL to work with the client to implement the project in accordance with IFC's Performance Standards. This was consistent with the requirements of IFC's Sustainability Framework.

A key step in any land acquisition process is the development of the RAP. A RAP is expected to include: a survey of impacted household assets; a compensation framework; a description of organizational responsibilities and capacities; a process for resolution of grievances; and a framework for monitoring and evaluation. IFC also requires consultation and disclosure with affected households in relation to the resettlement planning process. In order to ensure that the interconnection project RAP met IFC requirements, IFC undertook to review and approve the RAP for the interconnection project. While IFC informed CAO that staff reviewed the final RAP for the interconnection project, and found it compliant with IFC's requirements, CAO was not able to locate documentation of this review. In this context, CAO finds that IFC lacked assurance that the RAP met the requirements of Performance Standard 5.

Considering IFC's review of the RAP, CAO identifies a number of specific concerns. Firstly, CAO finds that IFC lacked assurance that the compensation framework provided in the RAP met IFC's requirements for compensation at full replacement cost. Secondly, CAO finds that IFC lacked assurance that the final RAP compensation framework was disclosed or was subject to meaningful consultation with affected communities. Thirdly, CAO finds that IFC did not assure itself that the RAP addressed gaps in government capacity that would need to be bridged in order to support effective implementation at the level required by IFC's standards.

These weaknesses in the RAP manifested as challenges during project implementation. Complaints regarding compensation were noted as soon as land acquisition began and persisted throughout the construction period. The project grievance mechanism as described in the RAP, however, was not equipped to deal with these types of complaints. As a result, numerous complaints were referred to UETCL, the CGV and the recourse mechanisms of the project financiers. Despite indications that complaints regarding compensation were systemic in nature, IFC and the other financiers supported

an ad hoc response to the grievances being raised rather than requiring a review of the adequacy of the compensation framework provided for by the RAP. To date, no completion audit of the resettlement process has been conducted. In these circumstances, CAO finds that IFC lacks assurance that compensation paid meets the full replacement cost requirement or that affected people have been appropriately compensated considering the delays in payment that have occurred.

In analyzing the underlying causes of the non-compliance findings made in this report, CAO notes in particular: (a) a lack of engagement with public sector institutional capacity in IFC's review of the RAP; and (b) an overreliance on other lenders during supervision of the project.

Given the above findings, CAO will keep this investigation open and monitor IFC's response. CAO expects to publish its first monitoring report no later than 12 months from the date of publication of this report.

## Annex A: Project Timeline

Date	Milestones, Events, and Documents
<b>2005</b>	
April	Government of Uganda announces selection of Industrial Promotion Services, a member of the Aga Khan Group, as the sponsor for the project
July	E&S review of Bujagali project commences
<b>2006</b>	
Mar	IFC meets to review Burnside SEA delivered to lenders
March	Joint lenders' site-visit to Kampala and Jinja
May	Back to Office Report for site-visit to Uganda
December	IFC discloses Summary of Proposed Investment (SPI) and Environmental and Social Review Summary (ESRS) disclosed on the IFC website
December	IFC discloses Social and Environmental Assessment (SEA) disclosed on the IFC website including the Resettlement Action Plan (RAP 2006)
<b>2007</b>	
February	IFC reviews the environmental and social issues around the proposed investment
March	IFC reviews and considers the proposed investment
April	IFC gives E&S clearance to the project
April	IFC, along with IDA and MIGA, present the proposed investment to its Board
April	Project receives Board approval
April	First report of the Panel of Environmental and Social Experts (PoE)
June	IFC enters a loan agreement for the project with Bujagali Energy Limited (BEL), the client MIGA issues a \$115 million guarantee coverage to World Power Holdings for its equity in the project
<b>2008</b>	
January	IFC makes its first disbursement into the project
January	Second report of the PoE
March	First joint lenders' supervision visit
May	Resettlement action plan is updated (RAP 2008), including amendments to asset inventory data and amended district statutory rates (DSRs)
June	The African Development Bank's Independent Review Mechanism (AfDB-IRM) released a compliance report that considered various issues including involuntary resettlement around the transmission line
July	Third report of the PoE
August	The World Bank's Inspection Panel (WB-IPN) released an investigation report that considered various issues including involuntary resettlement related to the Bujagali project
October	Second joint lenders' supervision visit
<b>2009</b>	
January	Fourth report of the PoE
February	Representatives of 557 affected community members filed law suit in the High Court of Uganda
March	Bujagali Environmental Monitoring Committee is established
March	Third joint lenders' supervision visit
July	Fifth report of the PoE
November	Fourth joint lenders' supervision visit
<b>2010</b>	
April	Sixth report of the PoE
April	Fifth joint lenders' supervision visit
August	Seventh report of the PoE

<b>Date</b>	<b>Milestones, Events, and Documents</b>
August	Chief Government Valuer approves compensation for affected persons
November	Sixth joint lenders' supervision visit
<b>2011</b>	
April	Seventh joint lenders' supervision visit
May	Eighth report of the PoE
November	Eighth joint lenders' supervision visit
<b>2012</b>	
January	Ninth report of the PoE
May	Ninth joint lenders' supervision visit
July	MIGA amends the guarantee to World Power Holdings to increase coverage by \$5.3 million
August	European Investment Bank's Complaint Mechanism (EIB-CM) released a conclusions report, which included review of involuntary resettlement around the transmission line
September	Tenth report of the PoE
November	The client commissions a resettlement completion audit for the hydropower project without including the transmission line
<b>2013</b>	
February	Resettlement completion audit report for the hydropower plant is issued
<b>2014</b>	
August	MIGA issues guarantees totaling \$9.5 million to Absa Bank Ltd. (South Africa) and Standard Chartered Bank (United Kingdom) to provide coverage in relation to their swap agreement with the client
<b>2015</b>	
February	Bujagali 07 complainants submit complaint to CAO
May	UETCL and the 557 affected community members reached an out of court settlement
<b>2016</b>	
March	UETCL issues a draft project completion report for the transmission line
April	CAO issues its assessment report
June	MIGA proposes issuing a guarantee to cover an investment of up to \$330 million by SN Power
November	CAO issues a compliance appraisal report concluding that an investigation is warranted

## **Annex B: Summary of Related Complaints**

A number of complaints regarding land acquisition for the interconnection project have been brought to CAO and other recourse mechanisms at international finance institutions, including AfDB, World Bank and EIB.

### *Compliance Advisor Ombudsman (IFC/MIGA)*

The Bujagali-05 complaint to CAO includes issues of compensation for land acquired by the interconnection project. As summarized in CAO's assessment of the Bujagali-05 complaint the complainants:

...believe that the compensation process undertaken by the project in order to acquire their land for the electric-power transmission lines was flawed. They contend that there was a lack of transparency in the compensation mechanism, and that there were inconsistencies in the valuation of crops, in the rates paid to each owner and between the early valuations versus the final amount paid. There are also some lands for which they believe the owners were never compensated. The community members also raise wider concerns about the consultative committee that was put in place by the project, and the extent to which it was sufficiently participatory.<sup>79</sup>

Based on agreement between the parties, the Bujagali-05 complaint was handled by CAO's dispute resolution function. As a result, in March 2015, a mediation agreement was reached between UETCL and representatives of 557 complainants who had commenced legal action against UETCL.<sup>80</sup> The settlement agreement for the Bujagali-05 complaint, as published on the CAO website, led to significant additional payments to the complainants. Key provisions of the settlement agreement included the following:

- the 2006/7 Mukono District rates as approved by the CGV would be applied for the compensation of crops and structures;
- UETCL would "rectify all and any errors and omissions which may have arisen in the calculation of compensation previously paid" for crops and structures;
- land not compensated at the time would be compensated at the 2011/12 rates for Mukono District;
- UETCL would pay compensation to each claimant based on the actual number of "young crops" assessed and counted by the client's surveyor in 2006 together with a 30% disturbance allowance;
- no claims for compensation would be paid for crops assessed by the client's surveyor as "newly planted crops," "just planted crops," or "placed crops."<sup>81</sup>

### *Independent Review Mechanism (African Development Bank)*

In June 2008, the Independent Review Mechanism (IRM) at AfDB, considered a complaint which included similar issues. The IRM concluded that though displacement had not yet occurred, there was non-compliance with the requirements of AfDB's Policy on Involuntary Resettlement in terms of resettlement planning. In particular, the IRM found that there was inadequate consultation in

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<sup>79</sup> CAO Assessment Report, Bujagali-05, December 2011 - <http://goo.gl/Ou69CD> (accessed August 2016).

<sup>80</sup> CAO Dispute Resolution Monitoring Report, January 2016 - <http://goo.gl/JWRHDh> (accessed August 2016).

<sup>81</sup> CAO. Settlement Agreement, May 2015. <https://goo.gl/YDbQN2> (accessed November 2017)

relation to the development of the resettlement planning framework for the interconnection project.<sup>82</sup>

The action plan AfDB management developed in response to the IRM review stated that a mechanism to monitor compensation outcomes would be established. A 2009 IRM monitoring report expressed concerns about “serious delays of payment of compensation.” The IRM monitoring report also noted that a number of people had rejected compensation offers due to disputes over the valuation of land with claimants demanding “to be compensated on the basis of the current market value of their land, while the Government’s Chief Valuator’s offer is far less.”<sup>83</sup>

A 2010 monitoring report noted that very little progress had been made in resolving the compensation issues along the transmission line and that this had been complicated by a court case filed by 557 affected people.<sup>84</sup> In its 2011 monitoring report, IRM found some progress in compensating affected people in comparison to 2010.<sup>85</sup> The IRM’s most recent monitoring report, from 2012, notes that the compensation process was “substantially complete.” The IRM also noted UETCL’s advice that 2,755 of the compensation cases had been finalized with 43 (in addition to the 557 which were subject to legal action) still pending.<sup>86</sup>

#### *Inspection Panel (World Bank)*

In an August 2008 report, the World Bank’s independent recourse mechanism, the Inspection Panel, found non-compliance in relation to the application of the Bank’s involuntary resettlement policy to the project, though it did not present findings in relation to the specific concerns regarding compensation raised by the Bujagali-07 complainants. Relevantly, however, the Inspection Panel concluded that there were shortcomings in the project’s approach to the assessment and supplementation of country E&S capacity. At the same time the Inspection Panel noted that the approach to resettlement planning in relation to the interconnection project was preferable to that taken in relation to the hydropower project itself. One specific concern raised by the Inspection Panel related to compensation for crops. On this issue the Inspection Panel noted that compensation for perennial crops could be underestimated, particularly in relation to cash crops such as coffee that have a longer establishment period (i.e. a period before reaching full production). Specifically, the Inspection Panel noted that: “The agro-economics of livelihood restoration is weak, particularly with reference to compensation [and that] [t]he Uganda rates do not compensate farmers for their labor to bring a perennial crop back into production. Underestimates of the establishment periods for coffee and other crops including vanilla and cocoa made it economically unfeasible for the displaced to reestablish their lost incomes.”<sup>87</sup>

#### *Complaints Mechanism (European Investment Bank)*

A 2009 complaint to the EIB’s Complaints Mechanism (EIB-CM) also raised concerns about the adequacy of compensation provided to people whose land was acquired by the interconnection project. The EIB-CM August 2012 investigation report provides a detailed account of the issues regarding assessment of compensation. It describes a number of out of court settlements with project-affected people as a result of which initial offers of compensation were increased three to four times. In this context, EIB-CM noted the “strong impression” that the “majority of requests for revaluation are made with some basis.” The EIB-CM report described “capacity problems that

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<sup>82</sup> AfDB-IRM Compliance Report, June 2008, p.27 - <http://goo.gl/0pgxJP> (accessed August 2016).

<sup>83</sup> AfDB-IRM 1st Monitoring Report, July 2009 - <http://goo.gl/aX45Hf> (accessed August 2016).

<sup>84</sup> AfDB-IRM 2nd Monitoring Report, July 2010 - <http://goo.gl/ZBRBxd> (accessed August 2016).

<sup>85</sup> AfDB-IRM 3rd Monitoring Report, June 2011 - <http://goo.gl/tMnpXj> (accessed August 2016).

<sup>86</sup> AfDB-IRM 4th Monitoring Report, September 2012 - <http://goo.gl/94SPQB> (accessed August 2016).

<sup>87</sup> Inspection Panel Investigation Report, August 2008 - <http://goo.gl/M4Cz32> (accessed August 2016).

beset Uganda’s judicial system,” concluding that the project’s grievance mechanism was inadequate recommending “an effective, transparent and easily accessible mechanism” for addressing appeals over compensation. The EIB-CM also noted allegations that local officials were “using their influence to block project-affected people from seeking redress (...) and in some instances preventing [them] from challenging compensation decisions (...)”<sup>88</sup>

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<sup>88</sup> EIB-CM Conclusions Report, August 2012 - <http://goo.gl/VTdJBM> (accessed August 2016)