



January 3, 2017
Office of the Compliance Advisor Ombudsman (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

About CAO

CAO's mission is to serve as a fair, trusted, and effective independent recourse mechanism and to improve the environmental and social accountability of IFC and MIGA.

CAO (Office of the Compliance Advisor Ombudsman) is an independent post that reports directly to the President of the World Bank Group. CAO reviews complaints from communities affected by development projects undertaken by the two private sector arms of the World Bank Group, the International Finance Corporation (IFC) and the Multilateral Investment Guarantee Agency (MIGA).

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

The focus of CAO Compliance is on IFC and MIGA, not their client. This applies to all IFC's business activities including the real sector, financial markets, and advisory services. CAO assesses how IFC/MIGA assured itself/themselves of the performance of its business activity or advice, as well as whether the outcomes of the business activity or advice are consistent with the intent of the relevant policy provisions. In many cases, however, in assessing the performance of the project and IFC's/MIGA's implementation of measures to meet the relevant requirements, it will be necessary for CAO to review the actions of the client and verify outcomes in the field.

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

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

Background to the investment

The Bujagali Hydropower Project ("the 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, Bujagali Energy Limited or BEL ("the client") was awarded the project by the Government of Uganda.

BEL was also responsible for managing the construction of the Bujagali Interconnection Project ("the Interconnection Project") for the Uganda Electricity Transmission Company Ltd. (UETCL),

Terms of Reference

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

Uganda's national electricity transmission company. The Interconnection Project included the construction of approximately 100 kilometers of a 132 kV transmission line and other transmission facilities, designed to connect the Bujagali Hydropower Project to the national grid.¹

In 2008 IFC invested in the Hydropower Project, providing two loans totaling \$130 million. In parallel, MIGA issued a \$115 million guarantee to World Power Holdings Luxembourg covering its investment in the Hydropower Project. The Interconnection Project was not financed by IFC, though IFC recognized it 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 for the Hydropower Project, and required the Interconnection Project to comply with its Performance Standards.² Financing for the Interconnection Project was provided by the African Development Bank (AfDB).

The complaint

In February 2015, four people submitted a complaint to CAO on behalf of 220 community members from at least 10 villages located in the area of influence of the Interconnection Project. The complaint raises concerns regarding the process of land acquisition for the construction of the transmission line under the Interconnection Project. In particular, the complainants raise concerns regarding the adequacy of compensation provided for crops, buildings, amenities and loss of livelihoods. They also raise concerns regarding difficulties and delays in addressing their grievances.

Scope of the compliance investigation

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

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

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

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

The Compliance Investigation will consider whether IFC's investment in the project was appraised, structured and supervised in accordance with applicable IFC policies, procedures and standards. It will also consider whether IFC's Policy and Performance Standards on Environmental and Social Sustainability and Policy on Disclosure of Information as applied to this project provided an adequate level of protection.

As stated in the appraisal, CAO has an ongoing compliance investigation of labor issues related to IFC's investment in the Bujagali project. As a result, it was earlier considered practical to issue a Terms of Reference allowing for the issues raised in the appraisal to be considered as part of

¹ Bujagali Interconnection Project Social and Environmental Assessment – Executive Summary, December 2006 - <http://goo.gl/3rkM1i>, (accessed August 23, 2016)

² IFC's Environmental and Social Review Summary (ESRS) - <http://goo.gl/c2LIJt>, (accessed August 23, 2016)

the ongoing compliance investigation. In the interest of timing and given the extent of completion of the compliance investigation in relation to labor issues, the issues raised in the appraisal will now be considered in a separate compliance investigation of IFC's investment in Bujagali Energy Limited.

In the context of IFC's E&S policies, Performance Standards and procedures, CAO's outstanding questions in relation to the investment include:

1. Whether IFC's pre-investment due diligence of the interconnection project adequately considered issues around resettlement in relation to the transmission line as per PS 5 requirements, including but not limited to compensation and grievance handling;
2. Whether IFC's supervision of the interconnection project was adequate to conclude that resettlement measures were being implemented as per PS5 requirements.

Compliance Investigation Process and Preliminary Timeline

The preliminary time schedule is for CAO to have a draft compliance investigation report ready for factual review and comment in May 2017.

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

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

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

External Panelists

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

- Significant expertise in the assessment and management of risks around involuntary resettlement in private sector projects in Africa, particularly in the hydropower sector.
- Significant experience and expertise in assessing and managing social impacts of transmission lines.
- Knowledge of IFC's E&S policies, standards and procedures.
- Experience and knowledge relevant to the conduct of compliance investigations.
- Demonstrated ability to analyze policies and practices and develop proposals for reform in complex institutional contexts.