



The Independent Accountability Mechanism for IFC & MIGA

**Third Compliance Monitoring Report:
Bujagali Hydropower Project in Uganda**

**IFC Project 24408 and 39102
MIGA Project 6732**

September 14, 2022

About CAO

The Office of the Compliance Advisor Ombudsman (CAO) is the independent accountability mechanism of the International Finance Corporation (IFC) and Multilateral Investment Guarantee Agency (MIGA), members of the World Bank Group. We work to facilitate the resolution of complaints from people affected by IFC and MIGA projects in a fair, objective, and constructive manner, enhance environmental and social project outcomes, and foster public accountability and learning at IFC and MIGA.

CAO is an independent office that reports directly to the IFC and MIGA Boards of Executive Directors. For more information, see www.cao-ombudsman.org.

About the Compliance Function

CAO's compliance function reviews IFC and MIGA compliance with environmental and social policies, assesses related harm, and recommends remedial actions where appropriate.

CAO's compliance function follows a three-step approach:

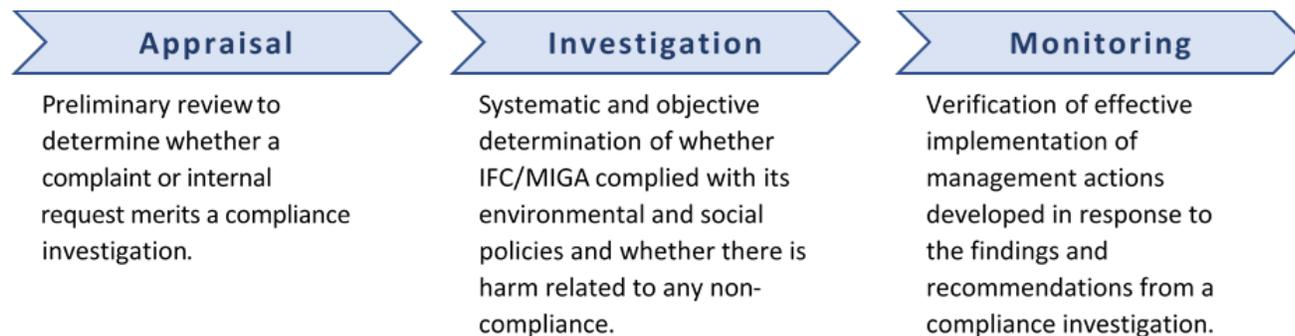


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Executive Summary

This compliance monitoring report, the third in a series, focuses on actions the International Finance Corporation (IFC) has taken since May 2020, when CAO issued its last monitoring report concerning IFC's investment in the Bujagali hydropower project in Uganda. This report documents IFC's actions in response to two CAO compliance investigations, which addressed complaints from workers and local farmers about adverse environmental and social impacts of the construction of the project and an associated high-voltage transmission line. CAO issued reports about these investigations in 2017 and 2018. This compliance monitoring report summarizes CAO's findings of IFC's non-compliance with various of its environmental and social policies in relation to each complaint. It then describes the commitments IFC has made and the actions it has taken to address CAO's findings, in accordance with CAO's Operational Guidelines under which this report was completed. Finally, the report analyzes whether IFC has adequately addressed CAO's non-compliance findings. This report builds on CAO's two earlier monitoring reports issued in February 2019 and May 2020.

CAO's compliance investigations found IFC to be in non-compliance in relation to complaints about:

- a. lack of *adequate compensation for workers* who were seriously injured or killed during construction of the project;
- b. *wages and benefits owed to workers* who were engaged in the construction of the project through a subcontractor; and
- c. *lack of adequate compensation for farmers* who lost land and crops because of the construction of the project transmission line.

With respect to the first set of findings, IFC is initiating an Advisory Services program to support skills and capacity development for some workers injured during project construction. This action, once implemented, should partially address CAO's findings in relation to the impacts of the project on injured workers. However, the remaining non-compliances identified by CAO and associated impacts on workers and farmers remain substantively unaddressed, including for dependents of workers who were killed.

Given that the Bujagali hydropower project is an active IFC project that remains in material non-compliance with IFC's environmental and social requirements, CAO will keep these cases open in monitoring. CAO will continue to monitor IFC's actions to ensure that IFC is addressing the non-compliances. CAO expects to issue its next monitoring report in relation to this project no later than August 2023.

1. Introduction

This compliance monitoring report relates to two CAO compliance investigations concerning IFC’s investment in the Bujagali hydropower project, a 250 MW run-of-the-river hydropower plant on the upper Nile in Uganda.^{1,2}

The investigations, published in 2017 and 2018, respond to a series of complaints related to the Bujagali hydropower plant and associated transmission line in Uganda. This third monitoring report focuses on actions IFC has taken in the period since CAO’s last monitoring report, building on CAO’s first monitoring report (issued in February 2019) and second monitoring report (issued in May 2020).³

The information in this report draws from:

- a review of IFC and MIGA project-related documentation available during the monitoring period (March 2020–May 2022);
- written updates from IFC to CAO in June 2021 and April 2022; and
- a meeting with IFC in May 2022 to discuss the status of the complaints and IFC actions to date.

The Bujagali project was co-financed⁴ by IFC in 2008 and refinanced by IFC in 2018. The project also benefits from guarantees issued by the Multilateral Investment Guarantee Agency (MIGA) in 2007 and 2014, and again, after IFC’s refinance, in 2018 and 2019. While both IFC and MIGA have provided support to the project, CAO’s investigations and this monitoring report focus on IFC’s role because MIGA delegated responsibility for supervision of environmental and social aspects of the project to IFC.

The Bujagali hydropower project and its transmission line involve several actors important to the issues examined in the CAO investigations and monitoring process. They are listed in table 1.

Table 1. Key actors related to the Bujagali hydropower project and transmission line	
Bujagali Energy Limited (BEL)	IFC client. Owner and operator of the Bujagali hydropower project.
Salini Costruttori (Salini)	Engineering Procurement and Construction (EPC) contractor for the Bujagali project.

¹ The CAO compliance investigation of two of the complaints (Bujagali-04 and Bujagali-06) is summarized in a 2017 report, “CAO Investigation of IFC/MIGA Social and Environmental Performance in relation to: Bujagali Energy Ltd and World Power Holdings, Uganda.”

² The CAO compliance investigation for another complaint (Bujagali-07) is summarized in another 2017 report, which was published in 2018: “CAO Investigation of IFC/MIGA Social and Environmental Performance in relation to: Bujagali Energy Ltd and World Power Holdings, Uganda (Bujagali-07).”

³ The first CAO monitoring report issued in 2019 is titled “Monitoring of IFC’s Response to: CAO Investigation of IFC’s Investment in Bujagali, Uganda.” The second CAO monitoring report issued in 2020 is titled “Second Monitoring of IFC’s Response to: CAO Investigation of IFC’s Investment in Bujagali, Uganda.”

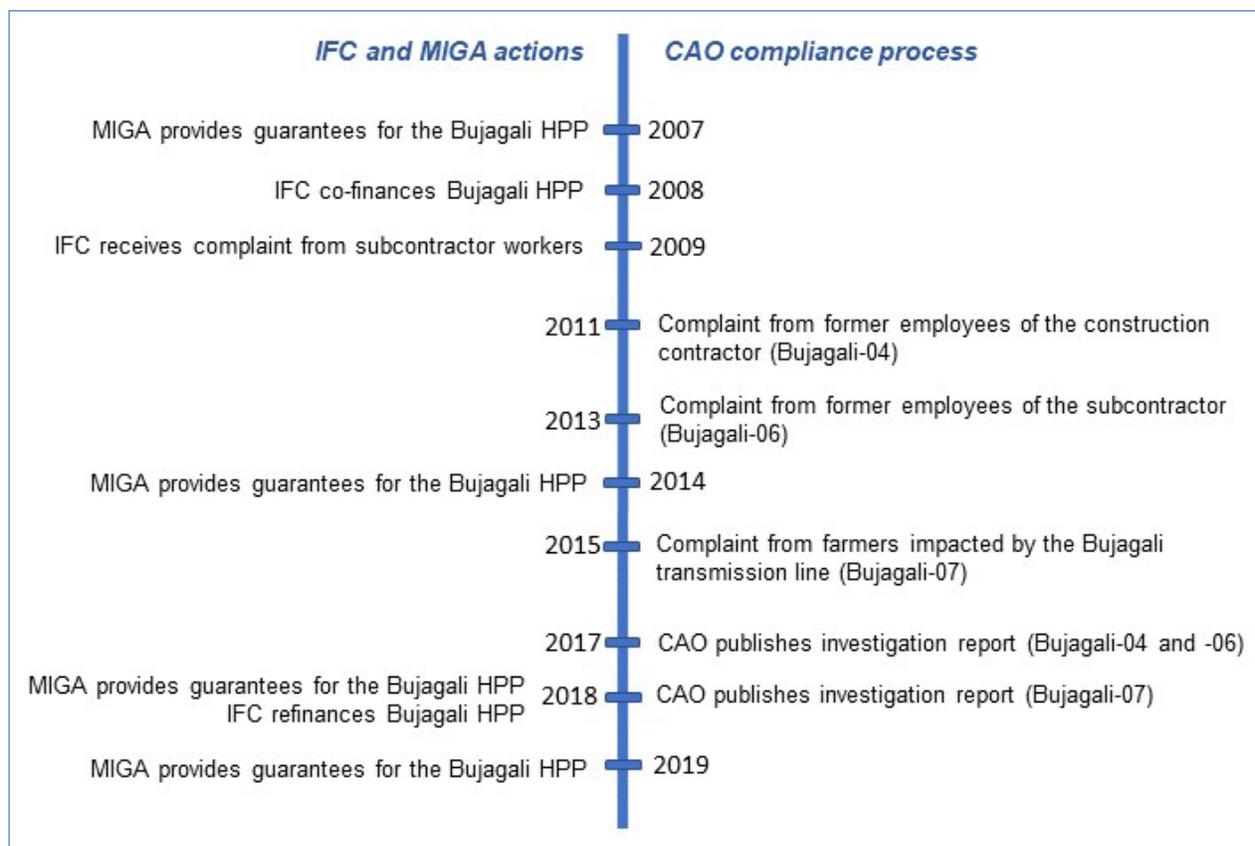
⁴ Other investors in the project include the International Development Association (IDA), a public sector arm of the World Bank Group, European Investment Bank (EIB), African Development Bank (AfDB), Deutsche Investitions-und Entwicklungsgesellschaft (DEG), Société de Promotion et de Participation pour la Coopération Economique (PROPARCO), KfW Entwicklungsbank – German Development Bank, Agence Française de Développement (AFD) and Nederlandse Financierings-Maatschappij voor Ontwikkelingslanden N.V. (FMO).

Boschcon Civil and Electrical Construction Limited (Boschcon)	Subcontractor of the EPC contractor.
Uganda Electricity Transmission Company Limited (UETCL)	Responsible for implementation of the interconnection project (transmission line), an associated facility of the hydropower project.

In accordance with transitional arrangements⁵ agreed to support implementation of the new CAO Policy issued in 2021,⁶ this monitoring report was prepared following CAO’s 2013 Operational Guidelines. Under the Operational Guidelines, after a CAO compliance investigation is completed, IFC/MIGA management provides a response and CAO monitors the case until actions taken by IFC/MIGA assure CAO that IFC is addressing any non-compliances identified in the investigation.⁷

Key dates referenced throughout this report are presented in the timeline that follows.

Figure 1. Timeline of IFC and MIGA actions and CAO compliance process, 2007–19



⁵ See Transitional Arrangements for CAO Cases on CAO website.

⁶ World Bank Group. 2021. IFC/MIGA Independent Accountability Mechanism (CAO) Policy.

⁷ CAO. 2013. CAO Operational Guidelines, para. 4.4.6.

2. The Complaints and CAO Findings

a). Complaints from Construction Workers Regarding Workers’ Compensation for Workplace Injuries and Unpaid Wages and Benefits (Bujagali-04 & -06)⁸

In March 2011, CAO received a complaint (Bujagali-04)⁹ from 93 former employees involved in the construction of the Bujagali hydropower project. This group claimed that they were not properly compensated after suffering serious injuries while working on the project.

In April 2013, CAO received another complaint (Bujagali-06)¹⁰ that was filed via an informal association representing 360 former construction camp and dam site workers. This group raised a range of concerns about their employment through a subcontractor, including unpaid wages and benefits, dangerous working conditions, and lack of compensation for workplace injuries.

In response to the Bujagali-04 and Bujagali-06 complaints, CAO conducted an investigation and issued a report in December 2017.¹¹ With regard to the Bujagali-04 complaint, the investigation found that the project E&S requirements specified that IFC’s labor standards should be applied to subcontractors working on the construction of the project.¹² In addition, CAO found that the complainants’ work should have been classified as a core function following IFC’s Performance Standard 2 (PS2) on non-employee workers, given the nature and extended duration of their work on the construction of the project.¹³ As a result, CAO concluded that the subcontractor workers were entitled to the protections of PS2.

CAO’s investigation found that IFC did not have sufficient competence in labor and occupational safety and health (OSH) matters to evaluate the capacity of the client or subcontractor to apply PS2 to a project of this scale and technical complexity. As a result, IFC did not have assurance that labor, health, and safety risks associated with the construction of the project were being managed in accordance with its E&S policy requirements. The investigation also found that IFC did not consider whether national workers’ compensation requirements provided injured workers

⁸ In June 2017, CAO received a complaint (Bujagali-08) relating to a back injury sustained by a worker and related compensation issues. Because the issues raised in this complaint were substantively similar to those raised in the Bujagali-04 complaint, CAO decided to merge the monitoring of the Bujagali-08 complaint with Bujagali-04 and Bujagali-06. See CAO. 2018. Compliance Appraisal: Summary of Results–Bujagali Energy Ltd (IFC Projects #24408, #33022, #39102) and World Power Holdings (MIGA Project #6732), Uganda (Bujagali 08).

⁹ For a summary and relevant documents, see the Bujagali-04 case page on CAO website.

¹⁰ For a summary and relevant documents, see the Bujagali-06 case page on CAO website.

¹¹ CAO. 2017. CAO Investigation of IFC/MIGA Social and Environmental Performance in relation to: Bujagali Energy Ltd and World Power Holdings, Uganda (Bujagali-04 & 06).

¹² As noted in CAO’s compliance investigation, IFC identified compliance at the subcontractor level as a risk and secured undertakings that IFC’s labor standards would be extended to contractors and subcontractors working on the construction of the project (see Investigation Report, p. 33ff). Requirements for BEL to ensure compliance with IFC’s E&S requirements, including through contractors and subcontractors, were thus agreed in the project loan documentation, including the Common Terms Agreement. Additional references to the application of IFC’s E&S standards to subcontractors are included in the project Environmental and Social Impact Assessment (ESIA) and Labor Force Management Plans.

¹³ As defined in PS2, IFC’s labor standards extend to workers who are “contracted through contractors or other intermediaries” and “performing work directly related to core functions essential to the client’s products or services for a substantial duration” (2006, para. 17). As elaborated in IFC Guidance Notes specifically in relation to construction workers employed in core functions, this would include “[w]orkers performing functions under a turn-key or an engineering, procurement and construction (EPC) contract,” whereas a non-core function would be “[d]ay laborers hired for a short duration for limited construction activities” (PS2, GN63). The Boschcon workers were hired full time for periods of five to nine months to carry out construction work that was part of the EPC contract, during a period when construction was the core business of the client. As a result, PS2 should be considered applicable to these workers.

with appropriate compensation for injuries, as required under IFC’s Sustainability Framework.¹⁴ In this respect, CAO noted concerns that injured workers had not been appropriately compensated.

In relation to the Bujagali-06 complaint, the investigation found that IFC did not follow up on requirements in its investment agreements for the project to ensure that IFC labor standards were applied to contractors and subcontractors. As a result, IFC neglected grievances from employees of the subcontractor during project supervision. These included complaints regarding non-payment of wages that were first brought to IFC’s attention in 2009, before the complaints were lodged with CAO. CAO’s investigation concluded that non-compliances in IFC’s project supervision contributed to the non-payment of subcontractor workers. IFC was responsible for monitoring compliance with its E&S requirements as set out in its investment agreements.¹⁵ Both the IFC client (BEL) and the EPC contractor (Salini) committed to apply IFC’s labor standards to subcontractors working on the project.¹⁶ These standards include requirements to document payment of wages consistent with national law.¹⁷ The project’s Labor Force Management Plan also required the EPC contractor to maintain records of wages and hours worked for each employee, including subcontractors.¹⁸

Appendix A includes a full summary of CAO’s findings from the Bujagali-04 and Bujagali-06 investigation.

b). Complaint from Farmers Regarding Compensation for Assets Lost Due to Construction of the Transmission Line (Bujagali-07)

In February 2015, CAO received a complaint (Bujagali-07)¹⁹ alleging inadequate compensation for crops and other assets lost due to construction of the Bujagali transmission line, an associated facility of the project.

In response to the complaint, CAO released a second compliance investigation report in January 2018.²⁰ The investigation found that IFC lacked assurance that the compensation framework provided in the Resettlement Action Plan (RAP) for the transmission line met the requirement under Performance Standard 5 (PS5) for compensation at full replacement cost. The report also found that IFC lacked assurance that the final RAP compensation framework was disclosed or that the affected communities were consulted in decision-making processes related to compensation in a meaningful way.

Weaknesses in the RAP became apparent as the project was being implemented. The project grievance mechanism was not equipped to deal with disputes concerning compensation rates.

¹⁴ This finding was made on the basis of the Sustainability Policy (2006, para. 8) and Performance Standard 1 (2006, paras. 1 and 14), which establish general requirements for appropriate compensation when there are residual project impacts. CAO’s investigation references commentary from the International Labour Organization (ILO) that consistently identified shortcomings in Uganda’s workers’ compensation law in terms of the adequacy of workers’ compensation.

¹⁵ IFC. 2006. Policy on Social and Environmental Sustainability, para. 26.

¹⁶ See Bujagali HPP Common Terms Agreement and discussion in CAO Investigation of IFC/MIGA Social and Environmental Performance in relation to: Bujagali Energy Ltd and World Power Holdings, Uganda (Bujagali-04 & 06), pp. 33–35.

¹⁷ IFC. 2006. Performance Standard 2, paras. 6–8.

¹⁸ See EPC Contractor LFMP as discussed in CAO. 2017. CAO Investigation of IFC/MIGA Social and Environmental Performance in relation to: Bujagali Energy Ltd and World Power Holdings, Uganda (Bujagali-04 & 06), p. 33.

¹⁹ For a summary and relevant documents, see the Bujagali-07 case page on CAO website.

²⁰ CAO. 2017. CAO Investigation of IFC/MIGA Social and Environmental Performance in relation to: Bujagali Energy Limited and World Power Holdings, Uganda (Bujagali-07).

These disputes persisted throughout the construction period. Despite indications that complaints regarding compensation were systemic in nature, the CAO investigation found that IFC and the other financiers supported an ad hoc response rather than requiring a review of the adequacy of the RAP compensation framework.

Regarding resettlement that resulted from the project, at the time of writing the investigation report, the client had not conducted the required completion audit of the resettlement process. This meant that IFC did not have assurance that the compensation paid met the full replacement cost requirement under PS5 on Land Acquisition and Involuntary Resettlement or that affected people had been appropriately compensated, considering the delays in payment that 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.

CAO's findings from the Bujagali-07 investigation are summarized in Appendix A.

3. IFC's Implementation of Actions to Address CAO Findings

IFC issued responses to the CAO investigations on Bujagali-04 and Bujagali-06 on December 5, 2017,²¹ and on Bujagali-07 on January 9, 2018,²² and issued an addendum to the responses on Bujagali-04, Bujagali-06, and Bujagali-07 on May 22, 2018.²³

a). Compensation for Workplace Injuries

IFC's response to the investigation on workplace injuries noted their view that issues of compensation for workplace injuries are “a legal issue outside the scope of the Performance Standards”—contrary to CAO's findings.²⁴ Nevertheless, IFC included a commitment to “identify possible institutional arrangements as well as assess the need for capacity building to the client and other identified institutions to address the issue of injured workers effectively.” It set out a scoping mission to be completed by June 30, 2018.²⁵

Progress as reported by IFC across the monitoring periods is summarized next. More detailed information is included in Appendix B.

Summary of actions taken by IFC

In June and November 2018, IFC's Advisory Services unit completed two scoping missions to Uganda and issued a Scoping Report in June 2019. The report provided recommendations on three areas of support for injured former workers:

- orientation on disability to increase awareness of the social implications and available support to all injured workers who remain in Jinja and Buikwe Districts;
- sensitization and capacity building on savings and loan schemes which have worked well in other districts for disabled people; and

²¹ IFC. 2017. IFC Management's Response to the CAO Investigation Report on Bujagali Energy Ltd and World Power Holdings, Uganda (CAO cases 04 and 06).

²² IFC. 2018. IFC Management's Response to the CAO Investigation Report on Bujagali Energy Ltd and World Power Holdings, Uganda (Bujagali-07).

²³ IFC. 2018. Addendum to IFC Management's Responses to the CAO Investigation Report on Bujagali Energy Ltd. and World Power Holdings, Uganda (Cases 04, 06, and 07).

²⁴ IFC. 2017. IFC Management's Response to the CAO Investigation Report on Bujagali Energy Ltd and World Power Holdings, Uganda (CAO cases 04 and 06). Annex, p. 5.

²⁵ Ibid.

- supporting income-generating activities that can be considered through BEL’s Corporate Social Responsibility program.

In June 2021, IFC informed CAO that the Advisory Services unit had developed a work program and secured financing to implement the measures recommended in the Scoping Report. However, this program had not been implemented because of circumstances related to COVID-19. IFC also noted that as part of its COVID-19 response, IFC’s Advisory Services unit had provided livelihood support activities (training on improved farming techniques and agricultural inputs) to communities in the project area, including 55 of the injured former workers.

In April 2022, IFC reported that the Advisory Services work program was being implemented, following the easing of COVID-19 restrictions. The program is being developed based on two assessments conducted by an IFC consultant in August 2021: a collection of socio-economic baseline data and a baseline survey on the capacity and skills of the injured former workers. IFC reported that it was in the process of recruiting a partner to design and implement a program to develop the skills and capacity of injured former workers. IFC also reported that 68 of the 93 injured former workers who complained to CAO had been identified with the assistance of a local disability association, with efforts continuing to locate the remaining workers.

During a meeting between IFC and CAO in May 2022, CAO raised concerns that dependents of deceased former workers were not included in the IFC’s Advisory Services work program. IFC expressed their openness to including such dependents in the program if they could be identified.

Monitoring conclusions

IFC has made progress in developing a livelihood support program for the injured former construction workers, albeit with significant delays. IFC has also been open to expanding the program to include dependents of deceased former workers. This is a positive step in IFC’s response given that the families of the deceased former workers are among those most seriously affected by the workplace safety shortcomings on the construction site.

While these efforts are welcome, they do not address CAO’s findings regarding:

- the adequacy of compensation for workers seriously injured or dependents of those fatally injured during the construction of the project; and
- the adequacy of compensation for former subcontractor workers who sustained workplace injuries (as opposed to those who were injured while working for the project’s main construction contractor).

Considering that the proposed IFC Advisory Services program to support injured workers is in the early stage of implementation and given the gaps in IFC’s response, these complaints will remain open in monitoring pending the findings being satisfactorily addressed.

b). Compensation for Unpaid Wages and Benefits

IFC’s response to the claims from subcontractor workers regarding unpaid wages and benefits included a commitment to “appraising, within the context of the complaints to CAO, the workers’ claims through an independent third party to determine whether sufficient evidence is available to determine the merits of the workers’ claims.”²⁶

²⁶ IFC. 2018. Addendum to IFC Management’s Responses to the CAO Investigation Report on Bujagali Energy Ltd. and World Power Holdings, Uganda (Cases 04, 06, and 07).

Summary of actions taken by IFC

IFC hired a consultant in 2018 to conduct a detailed review and validation of claims, including of associated court records.²⁷ The consultant completed a report in June 2019 concluding that there was insufficient evidence to verify the accuracy of the former workers’ claims regarding wages and other benefits potentially due to them for the period from November 1, 2007, to May 21, 2008.

CAO raised concerns with IFC about the methodology used in reviewing the former workers’ claims. The review focused on documentation that the complainants could provide without requesting documentation from Boschcon (the subcontractor), Salini (the EPC contractor), or BEL. IFC’s approach effectively required the complainants to provide documentary evidence of non-payment. CAO noted that this methodology is not consistent with IFC’s E&S requirements, which require the client to ensure that contractors and subcontractors have in place properly documented human resources systems and records.

CAO also questioned the review’s conclusion given that it included a statement from a Mukono District labor officer, who was responsible for the project site at the time the project was being constructed. The statement noted that the District Labor Office had issued official pay statements for the workers because Boschcon did not have adequate human resources systems and pay records. It is unclear how the Labor Office’s statement was factored into the review’s conclusion that there is insufficient evidence to verify the complainants’ claims.

In March 2021, CAO received copies of the pay statements issued by the former Mukono District labor officer and shared them with IFC. The pay statements were for 426 workers dated between March 18–24, 2010, and showed the itemized and total unpaid remuneration due to each worker. The total unpaid remuneration of these pay statements amounted to more than 3 billion Ugandan shillings (approximately US\$1.6 million paas of March 2010).²⁸

In May 2022, IFC re-engaged its consultant to investigate these pay statements and reported to CAO that the consultant confirmed the authenticity of the pay statements with the Mukono Labor Office in an official letter.

While IFC has now verified that the complainants are owed wages, it does not propose any further action on the following grounds:²⁹

- Boschcon is out of business and its owners cannot be reached.
- BEL does not have any contractual obligations toward these workers, who were employed by a subcontractor. BEL considers the matter closed and has no information or documentation regarding the subcontractor workers.
- IFC disagrees with CAO’s investigation finding that PS2 (2006) applies to the workers employed by the subcontractor because IFC maintains that they provided “non-core functions” related to the construction of office buildings and expatriate housing.

²⁷ IFC. 2017. Review of Available Information–Underpaid Construction Workers, Uganda Consulting Assignment, terms of reference.

²⁸ According to the Uganda Employment Act (2006), section 50(3), “[a] labour officer, following a complaint made under this section shall have the power to issue one or more written statements which shall take the place of any pay statements the employer has failed to issue.”

²⁹ IFC Presentation to CAO (May 2022) Bujagali: Update on CAO Cases.

- IFC commitment at the time of refinancing the Bujagali project in 2018 was to review the workers’ claims through an independent consultant. IFC has fulfilled this commitment. IFC has not committed to any further action.

CAO notes that while Boschcon was legally obliged to pay the wages of subcontractors they hired, BEL and Salini also had contractual obligations to ensure that project workers (including workers employed by subcontractors) were employed following IFC’s labor standards, including payment of wages. IFC was required to supervise compliance with these obligations. Non-payment of the subcontractor workers, as well as IFC, BEL, and Salini’s contributions to this non-payment, remain unaddressed to date.

Monitoring conclusions

While evidence of the amount owed the former subcontractor workers has become available and IFC has verified this evidence, IFC does not propose any further action to address this issue.

The legally binding commitments made by BEL as a condition of IFC’s investment (requiring subcontractor compliance with IFC’s labor standards) remain unfulfilled given that the project construction workers remain unpaid. This case remains open for monitoring.

c). Compensation for Assets Lost Due to Construction of the Transmission Line

IFC’s response to the issue of compensation for assets (buildings and crops) lost to resettlement or otherwise affected by construction of the project transmission line included a commitment to “engage with UETCL to: (1) identify and address any relevant gaps in the existing project completion reports vis-à-vis IFC completion report requirements; and (2) close out any associated corrective actions.”³⁰

Summary of action taken by IFC

In December 2018, IFC hired a consultant to conduct a review of the situation and prepare:

- a gap analysis of the project resettlement completion documentation (Task 1);
- a Supplemental Completion Report addressing any gaps in the project’s existing resettlement completion reports (Task 2); and
- a corrective action plan as needed to address any unfulfilled commitments to affected households (Task 3).³¹

In February 2019, IFC’s consultant completed Task 1, *Gap Analysis of Existing Closure Reports*, and recommended the preparation of Task 2, *Supplemental External Completion Report*. The gap analysis concluded that three existing completion reports did not satisfy the requirement for a comprehensive project completion report following the Resettlement Action Plan. The gap analysis also identified several gaps in the existing completion reports concerning requirements for compensation at full replacement cost to meet Performance Standard 5 (PS5) (2006), particularly in relation to the assessment of whether project-affected people have been able to restore their livelihoods. The consultant noted there was no evidence that a livelihood restoration

³⁰ IFC. 2018. Addendum to IFC Management’s Responses to the CAO Investigation Report on Bujagali Energy Ltd. and World Power Holdings, Uganda (Cases 04, 06, and 07).

³¹ See IFC. 2018. Bujagali Interconnection Project (BIP) Land Acquisition Completion Report Gap Analysis and Supplemental Completion Report Consulting Assignment, terms of reference.

assistance program was implemented to support households adversely affected by construction of the transmission line.

As reported by IFC, UETCL initially gave the go-ahead to start the Supplemental Completion Report for the resettlement process. However, IFC reported that UETCL then withdrew their support for this task in June 2019, following the closure in March 2019 of the monitoring process of a compliance review by the African Development Bank’s Independent Review Mechanism (IRM). This closure report states that the resettlement action plan for the transmission line had been “successfully implemented.”^{32,33} At that point, UETCL requested that IFC contact the Ministry of Energy and Mineral Development for further guidance. Since June 2019, there has been no further progress in completing Task 2 (Supplemental Completion Report) or Task 3 (Corrective Action Plan, as needed) under IFC’s consultancy.

In June 2021, IFC informed CAO that they approached the government of Uganda and the World Bank for support to advance the preparation and implementation of the Supplemental Completion Report. However, IFC was unable to re-establish cooperation with UETCL, which was deemed necessary to move forward with this task. IFC indicated to CAO that UETCL considers most of the issues to have been addressed, given the African Development Bank IRM’s closure of their complaint. This status had not changed as of May 2022, and no further action is proposed by IFC in relation to this issue.

However, CAO notes that the IRM closure report does not address two outstanding issues. The first concerns the open compliance questions identified in CAO’s investigation report: namely, whether support provided was consistent with IFC PS5 requirements for “compensation for loss of assets at full replacement cost and other assistance to help [displaced persons and communities] improve or at least restore their standards of living or livelihoods.”³⁴ The second concerns the issues confirmed by IFC’s own resettlement consultant in relation to the gaps in the documentation of the completion of the transmission line resettlement. As a result, the IRM closure report cannot be seen as resolving the non-compliance issues for IFC as identified in CAO’s investigation report.

Monitoring conclusions

CAO acknowledges IFC’s intent to conduct a review of the resettlement process for the Bujagali transmission line and its impacts on affected communities consistent with the project investment agreements and the IFC Performance Standards. Notwithstanding the position of UETCL that a Supplemental Completion Report or Corrective Action Plan is no longer needed due to the findings of the AfDB’s IRM, the project continues to remain out of compliance with IFC’s Performance Standards. If IFC does not implement the commitments it made to address CAO’s findings at the time it refinanced the project in 2018, the likely underpayment of compensation to

³² The African Development Bank (AfDB), along with the Japan Bank for International Cooperation (JBIC), provided financing for the transmission line (interconnection) project. IFC recognized the interconnection project as an associated facility of the hydropower project. Thus, IFC included the interconnection project in the scope of its E&S review and required that it comply with the IFC Performance Standards.

³³ The AfDB’s IRM closure report states that, based on the project completion report of the Bujagali Interconnection Project, the resettlement action plan was “successfully implemented,” including compensation to the project-affected peoples for the loss of their property and assets. It further notes that 2,798 affected households were compensated in line with national law. As of June 2018, of the 557 cases settled out of court as part of the CAO-supported dispute resolution process, IRM notes that payment for 17 were pending.

³⁴ Performance Standard 5, para. 8.

households adversely affected by the construction of the transmission line as identified by CAO will remain unaddressed.

Without the Supplemental Completion Report concerning the resettlement that resulted from the construction of the transmission line, the social conditions of IFC’s investment in the Bujagali project have not been met. IFC’s investment contracts for the project included an agreement with UETCL (“the Direct Agreement”) that required the resettlement to be conducted in accordance with PS5. The Direct Agreement also required UETCL to compel BEL to conduct a final resettlement audit of the interconnection project and develop a plan for any corrective actions in form and substance satisfactory to the lenders. IFC’s commitments to prepare a Supplemental Completion Report and a Corrective Action Plan, as needed to address shortcomings in the resettlement process, were designed to address CAO’s non-compliance findings regarding the lack of the required resettlement completion audit for the transmission line.

While the Direct Agreement requirements for a final resettlement audit are binding and enforceable by arbitration, IFC has taken no actions to enforce this requirement. IFC acknowledges that the Direct Agreement is a binding contract under English law. However, IFC’s view is that the lenders, including IFC, have limited leverage to enforce the requirements of the Direct Agreement related to the transmission line resettlement. IFC states that it has limited leverage because compliance by UETCL was not a condition of disbursement and failure to do so was not an event of default under the Bujagali financing documents. This situation, however, leaves commitments made by UETCL as a condition of IFC’s investment unfulfilled, with likely adverse impacts on project-affected people.

This case remains open for monitoring.

d). Systemic Actions

With respect to resettlement, IFC has been updating its resettlement good practice handbook. This draft handbook includes guidance on ensuring that compensation is provided at the required levels. In March 2019, IFC conducted an external peer review process for their *Draft Good Practice Handbook on Land Acquisition and Involuntary Resettlement*, to which CAO provided inputs.³⁵ As of the date of writing this report, IFC had not yet published the updated handbook.

4. Conclusion

CAO acknowledges steps taken by IFC to address the non-compliance findings identified in CAO’s 2017 and 2018 investigation reports related to the Bujagali project. At the same time, CAO’s non-compliance findings and associated adverse impacts on the complainants remain largely unaddressed. Given that this is an active project that remains in material non-compliance with IFC’s E&S requirements, CAO will keep the case open in monitoring. Addressing these impacts on workers and affected communities will improve the development outcomes of the project and help mitigate any reputational risk by ensuring that the project is in compliance with IFC’s E&S requirements.

CAO expects to issue its next monitoring report in relation to this project no later than August 2023.

³⁵ CAO. 2019. CAO Advisory: Comments on IFC Draft Good Practice Handbook on Land Acquisition and Involuntary Resettlement.

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Resources on the CAO website

Bujagali-04 case page: <https://www.cao-ombudsman.org/cases/uganda-bujagali-energy-04bujagali>

Bujagali-06 case page: <https://www.cao-ombudsman.org/cases/uganda-bujagali-energy-06bujagali>

Bujagali-07 case page: <https://www.cao-ombudsman.org/cases/uganda-bujagali-07bujagali>

Transitional Arrangements for CAO Cases: <https://www.cao-ombudsman.org/sites/default/files/downloads/CAOPolicy-TransitionalArrangements.pdf>

Appendix A. Summary of CAO Investigation Findings

OSH, Workers' Compensation & Unpaid Wages (Bujagali-04, -06, and -08)	
Pre- Investment E&S Review	IFC did not possess or have access to labor and OSH competence that was sufficient to evaluate the capacity of the client or the EPC contractor to apply the provisions of PS2 for a project of this scale and technical complexity.
	IFC did not ensure that the SEA provided adequate assessment of labor and OSH risks- particularly assessment of country and project specific OSH risks during construction.
	IFC did not assess the client's capacity to effectively monitor and manage the OSH performance of the EPC contractor.
	IFC did not ensure that the (Occupational) Health and Safety Management Plan (HSMP) of the EPC contractor was developed following an initial OSH audit.
	IFC did not consider whether national requirements for workers' compensation provided injured workers with access to appropriate compensation as required under the Sustainability Framework.
	IFC's pre-investment review of the project was not commensurate to risk. As a result, IFC did not have assurance the project could meet the labor and OSH related requirements of the PS over a reasonable period of time.
Supervision	IFC did not possess or have access to labor and OSH competence sufficient to monitor the application of its labor and OSH requirements to a construction project of this scale and technical complexity.
	IFC did not establish agreed OSH performance criteria for the client or the EPC contractor or ensure that client reporting provided necessary performance and measurement data to assess the EPC contractor's site OSH performance.
	IFC's Site Supervision Visits did not provide sufficient OSH compliance data regarding the EPC contractor's site performance or the client's capacity to monitor overall project OSH performance.
	Other project monitoring reports such as the Panel of Experts' reports and the reports produced by the independent engineer had insufficient OSH focus to effectively supplement the client's own reporting or IFC's lack of direct supervision of OSH issues.
	IFC neither received OSH management system audits nor commented on their absence.
	IFC neither received nor commented on the absence of regular root-cause analyses of OSH incidents.
	IFC did not assure itself that the Bujagali-04 complaints received appropriate compensation for workplace injuries.
	IFC erred in deciding that the Bujagali-06 Complainants were not covered by its E&S requirements. As a result, allegations that construction of the project had significant adverse effects on employees of the subcontractor were not addressed.

Transmission Line Land Acquisition (Bujagali-07)	
Pre-Investment E&S Review	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).
	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).
Supervision	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.
	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).

Appendix B. IFC's Implementation of Actions to Address CAO Findings from January 2018–February 2020

1. Compensation for Workplace Injuries

a). First CAO monitoring period (January 2018–February 2019)

IFC's Advisory Services staff completed two donor-funded scoping missions to Uganda (one in June 2018 and a follow-up mission in November 2018).

During the June 2018 mission, the IFC Advisory Services team reported it met with government partners and representatives from a local NGO that advocates for persons with disabilities (NUDIPU). During its November mission, the IFC Advisory Services team reported it looked into NUDIPU's work on livelihoods in further detail and also met representatives of Kikubamutwe Disability and Development Organization (KDDO), an association that includes CAO Complainants. During their meeting, IFC reported it provided the association with an update on actions being taken to respond to workplace injuries that occurred during the construction period.

b). Second CAO monitoring period (March 2019–February 2020)

In July 2019, IFC shared an update with CAO noting that the IFC Advisory Services team issued a Scoping Report in June 2019, which included recommendations for possible additional support to injured workers. The report also identified local institutional capacity to support disabled workers and ongoing client community support programs that can be accessed by this group. The recommendations identified three areas of support: (1) orientation on disability to all injured workers who remain in Jinja and Buikwe Districts; (2) sensitization and capacity building on saving and loan schemes; and (3) supporting income-generating activities that can be considered through BEL's corporate social responsibility program.

2. Compensation for Unpaid Wages and Benefits

a). First CAO monitoring period (January 2018–February 2019)

On June 20, 2018, IFC shared with CAO the terms of reference for a consultancy to conduct a review titled *Review of Available Information—Underpaid Construction Workers, Uganda Consulting Assignment*.³⁶ The task involved a detailed review and validation of claims, including associated court records, as a first step to defining a solution to the complaints of the subcontracted workers regarding non-payment of wages. IFC initially estimated this work would be completed in three months (i.e., by September 2018). In December 2018, IFC reported it had contracted a Ugandan law firm that would work closely with an accounting firm to evaluate workers' claims.

b). Second CAO monitoring period (March 2019–February 2020)

The consultant's report was finalized in June 2019. The report concluded that there was insufficient evidence to verify the accuracy of the former workers' claims regarding wages and other benefits potentially due to them for the period from November 1, 2007, to May 21, 2008.

CAO brought to IFC's attention concerns about the methodology used in reviewing the former workers' claims. In particular, CAO noted that the review focused on documentation that the

³⁶ IFC. 2017. *Review of Available Information—Underpaid Construction Workers, Uganda Consulting Assignment*, terms of reference.

Complainants were able to provide and did not give weight to other types of evidence (e.g., oral testimonies). CAO also noted the decision of the consultant not to request documentation from Boschcon (the subcontractor), Salini (the EPC contractor), or BEL as part of the review. By approaching the task in this manner, CAO noted that IFC was effectively requiring the Complainants to provide documentary evidence of underpayment. As set out in CAO's investigation, this approach goes against IFC's compliance framework which requires the client to ensure that contractors and subcontractors have in place properly documented human resources systems and records.

In addition, CAO questioned the consultant's conclusion that there was insufficient evidence to verify the Complainants' claims. In this context, CAO noted a statement from a Mukono District Labor Officer which was included as an annex to the IFC consultant's report. The statement from the Labor Officer, who was responsible for the project site at the time of construction, noted a range of shortcomings in terms of Boschcon's human resources practices against Ugandan legal requirements, including the subcontractor's failure to properly document employment contracts and payment of wages. As a result, the statement noted that the Labor Office had issued legally binding pay statements in lieu of the pay records that Boschcon failed to produce.

As noted in CAO's second monitoring report, IFC informed CAO it was following up with BEL, Salini, and Boschcon on these issues.

3. Compensation for Assets Lost Due to Construction of the Transmission Line

a). First CAO monitoring period (January 2018–February 2019)

In June 2018, IFC shared with CAO its terms of reference (ToR) for a consultant review titled *Bujagali Interconnection Project (BIP) Land Acquisition Completion Report Gap Analysis and Supplemental Completion Report Consulting Assignment*.³⁷ This consultancy entailed: (a) a gap analysis of the project resettlement completion documentation (Task 1); (b) the preparation of a Supplemental Completion Report addressing any gaps in the project's existing resettlement completion reports (Task 2); and (c) the preparation of a corrective action plan as needed to address any unfulfilled commitments to impacted households (Task 3). IFC estimated the duration of this assignment as five to six months.

In July 2018, CAO expressed concerns to IFC and MIGA that the ToR, as published, focused on issues of livelihood restoration and did not appear to address CAO findings regarding the requirement for compensation for impacted assets at full replacement cost. CAO noted that a discussion of the adequacy of compensation is a standard part of a completion audit.³⁸ CAO indicated that there was a need to develop a more detailed methodology for the Supplemental Completion Report in accordance with PS5 requirements and good international industry practice, including plans for consultation. CAO also noted the need to disclose the consultant reports and any corrective action plan once completed.

³⁷ IFC. 2018. Bujagali Interconnection Project (BIP) Land Acquisition Completion Report Gap Analysis and Supplemental Completion Report Consulting Assignment, terms of reference.

³⁸ See IFC Guidance Note for PS5 (2012), Annex B. A completion audit should include findings regarding: "Types of compensation provided and adequacy of that compensation (e.g., sufficient to cover replacement costs of lost assets, housing conditions, compensation/entitlements, income restoration and livelihood sustainability measures)" (p.30).

In December 2018, IFC reported to CAO that it had procured the services of a consultant to carry out the ToR. Implementation of the first phase of this action item had been delayed against the July 2018 target date set by IFC.

b). Second CAO monitoring period (March 2019–February 2020)

In February 2019, IFC's consultant completed Task 1 of the ToR, *Gap Analysis of Existing Closure Reports*. IFC then shared the Task 1 report with the owner of the transmission line, UETCL, for comment and approval. IFC received approval of the Task 1 report from UETCL in May 2019. At the same time, UETCL provided the go-ahead to start Task 2, which was expected to result in a Supplemental External Completion Report for the resettlement process. However, IFC reported that UETCL withdrew their support for Task 2 in June 2019 and requested that IFC contact the Ministry of Energy and Mineral Development for further guidance. IFC indicated it would seek World Bank support in contacting the Ministry of Energy and Mineral Development and the Ministry of Finance.

The Task 1 report (*Gap Analysis of Existing Closure Reports*) recommended the preparation of Task 2: Supplemental External Completion Report. It concluded that the three existing completion reports do not constitute a comprehensive project completion report as required by the Resettlement and Community Development Action Plan. The Task 1 report identified several gaps in the existing completion reports against the PS5 (2006) requirements, particularly in relation to the determination of whether project-affected people have had their livelihoods restored.

In response to CAO's concerns about the apparent focus of the Task 1 report on livelihood restoration and its lack of attention to the issue of compensation, the consultant noted that there was no evidence that a livelihood restoration assistance program was implemented to support households impacted by the transmission line construction. In addition, the IFC consultant clarified two points regarding Task 2. The IFC consultant noted that Task 2 should consider: (i) whether non-vulnerable households who received cash compensation were able to restore their livelihoods and living conditions; and (ii) the adequacy of the provided compensation and timely disbursement in order to inform whether livelihoods and living standards of project-affected people were enhanced, in line with PS5 requirements.