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Office of the Compliance Advisor Ombudsman (CAO)

COMPLIANCE APPRAISAL REPORT

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

Complaint 07

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), 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).

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.

The purpose of a CAO compliance appraisal is to ensure that compliance investigations are initiated only for those projects that raise substantial concerns regarding environmental or social outcomes or issues of systemic importance to IFC/MIGA. In deciding whether to initiate an investigation, CAO weighs factors including the magnitude of the E&S concerns raised in a complaint, the results of a preliminary review of IFC’s E&S performance in relation to these issues,

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)

and a more general assessment of whether a compliance investigation is the appropriate response.

IFC Performance Standard 5 (Land Acquisition and Involuntary Resettlement) includes requirements for compensation for loss of assets at full replacement cost. It also includes process requirements related to consultation, disclosure and grievance handling. While CAO does not take a position on the merits of the allegations set out in the complaint, the complainants' claim that IFC requirements for land acquisition were not met in their villages is substantial in nature. Further, following a review of IFC's documentation and preliminary discussions with the IFC team, CAO has questions regarding the adequacy of IFC's application of Performance Standard 5 in relation to the Interconnection Project.

As a result, CAO concludes that an investigation in relation to this complaint is warranted.

CAO has an ongoing compliance investigation of labor issues related to IFC's investment in the Bujagali project. As a result it is practical to issue Terms of Reference which allow for the issues raised in this appraisal to be considered as part of the ongoing compliance investigation.

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).

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

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Acronyms

Acronym	Definition
AFD	Agence Française de Développement
AfDB	African Development Bank
AKFED	Aga Khan Fund for Economic Development
AMR	Annual Monitoring Report
BEL	Bujagali Energy Limited
CAO	Office of the Compliance Advisor Ombudsman (IFC and MIGA)
DEG	Deutsche Investitions-und Entwicklungsgesellschaft
E&S	Environmental and Social
EHS	Environmental, Health and Safety
EIB	European Investment Bank
EIB-CM	European Investment Bank - Complaints Mechanism
ESRS	Environmental and Social Review Summary
ESRP	Environmental and Social Review Procedures
FMO	Nederlandse Financierings-Maatschappij voor Ontwikkelingslanden N.V.
GOU	Government of Uganda
IDA	International Development Association
IFC	International Finance Corporation
IP	Interconnection Project
IPS (K)	Industrial Promotion Services (Kenya) Ltd.
IRM	Independent Review Mechanism
KfW	KfW Entwicklungsbank – German Development Bank
MIGA	Multilateral Investment Guarantee Agency
OP	Operational Policy
PAP	Project Affected Persons
PCDP	Public Consultation and Disclosure Plan
PROPARCO	Societe de Promotion et de Participation pour la Cooperation Economique
PS	Performance Standards
RCDAP	Resettlement and Community Development Action Plan
SEA	Social and Environmental Assessment
SEAP	Social and Environmental Action Plan
SPI	Summary of Proposed Investment
UETCL	Uganda Electricity Transmission Company Ltd

I. Overview of the Compliance Appraisal Process

When CAO receives a complaint about an IFC or MIGA project, the complaint is referred for assessment. If CAO concludes that the parties are not willing or able to reach a facilitated solution, the case is transferred to the CAO compliance function for appraisal and potential investigation.

A compliance appraisal also can be triggered by the CAO vice president, IFC/MIGA management, or the president of the World Bank Group.

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

In order to decide whether a compliance investigation is warranted, CAO first conducts a compliance appraisal. The purpose of the compliance appraisal process is to ensure that compliance investigations are initiated only for those projects that raise substantial concerns regarding environmental and/or social outcomes, and/or issues of systemic importance to IFC/MIGA.

To guide the compliance appraisal process, CAO applies several basic criteria. These criteria test the value of undertaking a compliance investigation, as CAO seeks to determine whether:

- There is evidence of potentially significant adverse environmental and/or social outcome(s) now, or in the future.
- There are indications that a policy or other appraisal criteria may not have been adhered to or properly applied by IFC/MIGA.
- There is evidence that indicates that IFC's/MIGA's provisions, whether or not complied with, have failed to provide an adequate level of protection.

In conducting the appraisal, CAO will engage with the IFC/MIGA team working with the specific project and other stakeholders to understand which criteria IFC/MIGA used to assure itself/themselves of the performance of the project, how IFC/MIGA assured itself/themselves of compliance with these criteria, how IFC/MIGA assured itself/themselves that these provisions provided an adequate level of protection, and, generally, whether a compliance investigation is the appropriate response. After a compliance appraisal has been completed, CAO can close the case or initiate a compliance investigation of IFC or MIGA.

Once CAO concludes a compliance appraisal, it will advise IFC/MIGA, the World Bank Group President, and the Board in writing. If a compliance appraisal results from a case transferred from CAO's dispute resolution, the complainant will also be advised in writing. A summary of all appraisal results will be made public. If CAO decides to initiate a compliance investigation as a result of the compliance appraisal, CAO will draw up terms of reference for the compliance investigation in accordance with CAO's Operational Guidelines.

II. Background

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. The Hydropower Project is located on the River Nile, at Dumbbell Island, 8 kilometers north of the existing Nalubaale and Kiira power plants, in Uganda.³ In 2005, Bujagali Energy Limited (BEL, “the client”) was awarded the Hydropower Project by the Government of Uganda.

The client was also responsible for managing the construction of the Bujagali Interconnection Project (“the Interconnection Project”) for the Uganda Electricity Transmission Company Ltd. (UETCL), 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 Hydropower Project to the national grid⁴.

In 2008, IFC invested in the Hydropower Project, providing two loans totaling US\$130 million.

Project sponsors were identified as Industrial Promotion Services (Kenya) Ltd. (IPS(K)), the industrial development arm of the Aga Khan Fund for Economic Development (AKFED) and SG Bujagali Holdings, Ltd., an affiliate of Sithe Global Power LLC⁵. Recently, Sithe Global Power’s interest in the Hydropower Project was sold to SN Power, a Norwegian firm.⁶

In parallel, MIGA issued a \$115 million guarantee to World Power Holdings Luxembourg, a subsidiary of Sithe Global Power, covering its investment in the Hydropower Project against possible breach of contract. The MIGA guarantee to World Power Holdings Luxembourg was amended in 2012 to include an additional \$5.3 million of coverage⁷. 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 Hydropower Project⁸. Further, in 2016 MIGA disclosed a potential guarantee of up to \$330 million to cover SN Power’s equity investment in the Hydropower Project⁹.

As is commonly the case when IFC and MIGA make investments in the same project, IFC took the lead on E&S issues in relation to the Hydropower Project. As a result, this compliance appraisal focuses on actions taken by IFC.

The total cost of the Hydropower Project was expected to be approximately \$750 million including approximately \$126 million in interest during construction, other financing costs and reserve

³ IFC’s Summary of Proposed Investment, December 20, 2006 - <http://goo.gl/E9jcII> (accessed August 23, 2016)

⁴ Bujagali Interconnection Project Social and Environmental Assessment – Executive Summary, December 2006 - <http://goo.gl/3rkM1j> (accessed August 23, 2016)

⁵ IFC’s Summary of Proposed Investment, December 20, 2006 - <http://goo.gl/E9jcII> (accessed August 23, 2016)

⁶ “Norway Based SN Power to Invest in Transformative Bujagali Hydropower Project”, April 7, 2016 - <http://goo.gl/TQIm2h> (accessed July 25, 2016)

⁷ MIGA’s Summary of Proposed Guarantee to Bujagali Energy Ltd., July 27, 2012 - <http://goo.gl/NBKBYV> (accessed August 23, 2016)

⁸ MIGA’s Summary of Proposed Guarantee to Bujagali Energy Ltd., August 27, 2014 - <http://goo.gl/dmbsWz> (accessed August 23, 2016)

⁹ MIGA’s Summary of Proposed Guarantee to Bujagali Energy Ltd., June 10, 2016 - <http://goo.gl/HvHh5Z> (accessed August 23, 2016)

accounts.¹⁰ Additionally, the International Development Association (IDA), a public sector arm of the World Bank Group, provided \$115 million in partial risk guarantee to support commercial financing for the project.¹¹ Other lenders to the project are European Investment Bank (EIB), African Development Bank (AfDB), Deutsche Investitions-und Entwicklungsgesellschaft (DEG), Societe de Promotion et de Participation pour la Cooperation Economique (PROPARCO), KfW Entwicklungsbank – German Development Bank, Agence Française de Developement (AFD) and Nederlandse Financierings-Maatschappij voor Ontwikkelingslanden N.V. (FMO) (the “Lenders”).

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 E&S review for the Hydropower Project, and required the Interconnection Project to comply with its Performance Standards¹². The AfDB provided financing for the Interconnection Project.

The project was classified as Category A, indicating that it had significant potential E&S risks and impacts.¹³

Complaint and CAO Assessment

In February 2015, four people submitted a complaint to CAO on behalf of 220 community members from at least 10 villages in a district located in the area of influence of the Interconnection Project. The complaint raises issues regarding the adequacy of compensation provided for land and assets during the land acquisition process for the Interconnection Project. A copy of the complaint can be found on CAO’s website.¹⁴

The CAO assessment report in relation to the complaint, completed in April 2016, further describes the main issues raised by the complainants as follows:

- Compensation claims for losses suffered by the complainants (e.g., crop losses and property damage), and for losses of land and amenity as a result of the construction of the transmission lines; and
- Ensuring that compensation schemes offered are fair, equitable, implementable, and understood by all relevant parties.

The CAO assessment report outlines the complainants’ view that they have:

- suffered real and extensive losses as a result of the construction of the transmission line;
- been poorly informed of the mechanisms and processes put in place to deal with grievances and claims for compensation;
- received inadequate attention and compensation for their direct and future losses of land, crops, buildings, amenities, income, and livelihoods; and

¹⁰ IFC’s Summary of Proposed Investment, December 20, 2006 - <http://goo.gl/E9jcll> (accessed August 23, 2016)

¹¹ World Bank’s Project Appraisal Document, April 2, 2007 - <http://goo.gl/35YUI5> (accessed August 23, 2016)

¹² IFC’s Environmental and Social Review Summary (ESRS) - <http://goo.gl/c2LIJt> (accessed August 23, 2016)

¹³ According to IFC’s Sustainability Framework, Category A projects are those with potential significant adverse social or environmental risks and/or impacts that are diverse, irreversible or unprecedented.

¹⁴ CAO’s Case Brief on Bujagali Energy - <http://goo.gl/59FSrX> (accessed July 25, 2016)

- suffered and continue to suffer as a result of long delays in addressing any of their grievances.¹⁵

CAO's assessment report also documents the views of UETCL and the client. During assessment, UETCL indicated that the claims for compensation of many of the complainants were without foundation or exaggerated. The client indicated that they saw no role for themselves, as they consider that they were not involved with the setting or determination of compensation and that these matters were determined by UETCL and the government. As a result, a CAO-led dispute resolution process was not possible.

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.

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 complainants¹⁶:

...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.

Based on agreement between the parties, the Bujagali-05 complaint was handled by CAO's dispute resolution function. As a result, in 2015, a mediation agreement was reached between UETCL and representatives of 557 complainants who had commenced legal action against UETCL¹⁷.

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.¹⁸ Of particular relevance in the context of this compliance appraisal, CAO notes the IRM's finding of inadequate consultation in relation to the development of the resettlement planning framework for the Interconnection Project.

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 delays in finalizing resettlement and compensation issues.¹⁹ 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.²⁰ In its 2011 monitoring report, IRM found progress in

¹⁵ CAO Assessment Report, Bujagali-07, April 2016 - <http://goo.gl/myZMbN> (accessed July 25, 2016)

¹⁶ CAO Assessment Report, Bujagali-05, December 2011 - <http://goo.gl/Ou69CD> (accessed August 23, 2016)

¹⁷ CAO Dispute Resolution Monitoring Report, January 2016 - <http://goo.gl/JWRHDh> (accessed August 23, 2016)

¹⁸ AfDB IRM Compliance Report, June 2008 - <http://goo.gl/0pgxJP> (accessed August 23, 2016)

¹⁹ AfDB IRM 1st Monitoring Report, July 2009 - <http://goo.gl/aX45Hf> (accessed August 23, 2016)

²⁰ AfDB IRM 2nd Monitoring Report, July 2010 - <http://goo.gl/ZBRBxd> (accessed August 23, 2016)

compensating affected people in comparison to 2010²¹. The IRM's most recent monitoring report, from 2012, noted UETCL's advice that the compensation process was substantially complete with 2,755 compensation cases having been finalized and only 43 (in addition to the 557 which were subject to legal action) still pending.²²

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 complainants.²³ Relevantly, however, the Inspection Panel did conclude that the Bank's approach to resettlement for the Hydropower Project should have included the elements of a Resettlement Action Plan as used in the Interconnection Project.

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 findings in relation to this issue noted the importance of an effective, transparent and easily accessible mechanism for addressing compensation disputes and found the project's grievance mechanism to be inadequate.²⁴

In addition, CAO notes that it has an ongoing compliance investigation in relation to labor issues associated with the Hydropower Project. Terms of Reference for the labor investigation were issued in May 2016.²⁵

III. Analysis

This section outlines IFC's Environmental and Social (E&S) policies and procedures as they apply to the Interconnection Project. It then provides a preliminary analysis of IFC's performance against these standards during preparation and implementation of the project and in the context of the issues raised by the complainants.

IFC Policies and Procedures

IFC's investment in the Hydropower Project was made under its 2006 Policy on Social and Environmental Sustainability ("the Sustainability Policy") and Performance Standards (PS), together referred to as the Sustainability Framework.²⁶ Through the Sustainability Policy, IFC seeks to "ensure that the projects it finances are operated in a manner consistent with the requirements of the Performance Standards" (para. 5).

IFC implements the commitments set out in the Sustainability Policy through its Environmental and Social Review Procedures (ESRP), which are updated periodically. The investment was approved under ESRP version 1.0,²⁷ and supervised under subsequent updated versions of the ESRP.

When financing a project, IFC first conducts an appraisal aimed at assessing the full business potential, risks and opportunities associated with the investment. Once the project is approved and IFC has invested, the investment is monitored throughout the project cycle to ensure

²¹ AfDB IRM 3rd Monitoring Report, June 2011 - <http://goo.gl/tMnpXj> (accessed August 23, 2016)

²² AfDB IRM 4th Monitoring Report, September 2012 - <http://goo.gl/94SPQB> (accessed August 23, 2016)

²³ Inspection Panel Investigation Report, August 2008 - <http://goo.gl/M4Cz32> (accessed August 23, 2016)

²⁴ EIB-CM Conclusions Report, August 2012 - <http://goo.gl/VTdJBM> (accessed August 23, 2016)

²⁵ CAO Uganda/Bujagali Energy-06/Bujagali - <http://goo.gl/VqUmOk> (accessed September 10, 2016)

²⁶ IFC Sustainability Framework, 2006 - <http://goo.gl/PXmGlk>

²⁷ ESRP version 1.0, April 2006

compliance with the conditions in the investment agreements and IFC's applicable policies and standards.

Pre-investment Review

At the pre-investment stage, IFC reviews the E&S risks and impacts of a proposed investment and agrees with the client on measures to mitigate these risks in accordance with the Performance Standards. For the purposes of this compliance appraisal, a key question is whether IFC conducted an adequate pre-investment review of the risks associated with its investment in the Hydropower Project and the associated Interconnection Project.

Requirements

As required by the Sustainability Policy, IFC's E&S review should be "appropriate to the nature and scale of the project" and commensurate to risk (para. 13). In conducting the E&S review IFC considers the E&S risks as assessed by the client and the "the commitment and capacity of the client" to manage these risks (para. 15). IFC also considers the client's "track record" in relation to E&S issues.²⁸ A central principle of the Sustainability Policy is that "IFC does not finance new business activity that cannot be expected to meet the Performance Standards over a reasonable period of time" (para. 17).

The Sustainability Policy also requires the IFC to engage with E&S risks that emerge from the performance of third parties such as the operators of associated facilities (para. 24). Where the third party risk is high and the client has control or 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 (para. 25).

For projects with potential significant E&S impacts, Performance Standard 1 (PS1) (Assessment and Management of E&S Risks and Impacts) requires the client to commission a comprehensive social and environmental assessment (para. 9). The assessment should present an "adequate, accurate and objective evaluation and presentation of the issues, prepared by qualified and experienced persons" (para. 7).

Relevant to the issues raised in the complaint, PS1 requires that "risks and impacts will be analyzed in the context of the project's area of influence." This area of influence includes "associated facilities that are not funded as part of the project (funding may be provided separately by the client or by third parties including the government), and whose viability and existence depend exclusively on the project and whose goods or services are essential for the successful operation of the project" (para. 5).

PS1 requires that IFC clients consult with affected communities who may be subject to risks or adverse impacts from a project. Effective consultation: "(i) should be based on the prior disclosure of relevant and adequate information, including draft documents and plans; (ii) should begin early in the Social and Environmental Assessment process; (iii) will focus on the social and environmental risks and adverse impacts, and the proposed measures and actions to address these; and (iv) will be carried out on an ongoing basis as risks and impacts arise" (para. 21).

For projects that involve physical or economic displacement, Performance Standard 5 (Land Acquisition and Involuntary Resettlement) applies. When displacement cannot be avoided, PS5 requires that the client will "offer displaced persons and communities compensation for loss of

²⁸ ESRP 3, para.3.2.3, version 1.0, April 2006

assets at full replacement cost and other assistance to help them improve or at least restore their standards of living or livelihoods” (para. 8).²⁹

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

- Disclose relevant information to, consult with and facilitate the informed participation of affected people in decision making processes related to resettlement (para. 9);
- 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);
- Establish a grievance mechanism to receive and address specific concerns about compensation and relocation, including a recourse mechanism designed to resolve disputes in an impartial manner (para. 10); and
- establish procedures to monitor and evaluate the implementation of resettlement plans and take corrective action as necessary (para. 12).

Resettlement is considered complete once adverse impacts of resettlement have been addressed in a manner that is consistent with the requirements of PS5.

IFC’s Pre-investment Review of the Project

In December 2006, IFC disclosed the Summary of Proposed Investment (SPI) and an Environmental and Social Review Summary (ESRS) for the Hydropower Project and the Interconnection Project. According to the SPI, the Hydropower Project (including the Interconnection Project as an associated facility) was identified as Category “A”, which indicates that the project had potential significant adverse social or environmental risks and/or impacts that are diverse, irreversible or unprecedented. The SPI stated that the key issues going forward included fulfilment of resettlement requirements for both projects. According to the SPI, the IFC recognized the Interconnection Project as an associated facility of the Hydropower Project, though CAO notes IFC’s view that its recognition as such may have gone beyond IFC requirements.

IFC reviewed and disclosed the Social and Environmental Assessment (SEA) and the Resettlement and Community Development Action Plan (RCDAP) Interconnection Project.³⁰

IFC noted that the client would be responsible for preparing the Social and Environmental Action Plan (SEAP) for the construction of the Hydropower Project as well as the Interconnection Project. It further noted that the client would be involved in the actual compensation and resettlement along the transmission line while UETCL would be responsible for long-term outcomes. The client would monitor the implementation of measures under the responsibility of UETCL, and would collaborate with UETCL to ensure their completion. IFC noted having reviewed the RCDAP and having reached the conclusion that it would lead the Interconnection Project to meet PS5 requirements.

The SEA noted that the guidelines and standards of the various lenders, including those of the AfDB, IFC, World Bank and MIGA, as well as the Equator Principles would be applicable to the Hydropower Project and the Interconnection Project. In relation to resettlement for the Interconnection Project, the SEA noted that a key concern among the community was land/asset

²⁹ Assets as defined in PS5 include “crops, irrigation infrastructure and other improvements made to the land” (para. 20).

³⁰ IFC’s Environmental and Social Review Summary (ESRS) - <http://goo.gl/c2LIJt> (accessed August 23, 2016)

valuation and what people should expect to receive as compensation. It was also noted that this was further complicated by the valuation exercise for the previous project (2001). It noted an increase in settlement along the transmission line since the previous project and raised concerns regarding the legitimacy of some of the claimed assets on the affected properties.

The RCDAP³¹ identified that resettlement and compensation of Project Affected Persons (PAPs) would be carried out in compliance with Ugandan legislation, PS5 and the equivalent World Bank Operational Policy (OP 4.12). The preparation of the RCDAP was based on IFC's PS 5. The RCDAP also presented a gap analysis by comparing Ugandan legislation as well as World Bank Group requirements and Equator Principles.

A new survey of affected people and assets was ongoing at the time of release of the RCDAP. It specified August 14, 2006, as the cut-off date for eligibility for compensation. The RCDAP stated that this information was explained to PAPs who were identified and surveyed individually, as well as to the land board and the land committees.

The RCDAP covered key aspects of a resettlement action plan and addressed potential issues in its implementation including previous resettlement actions, speculative activity, risks of cash compensation programs and economic displacement issues. The RCDAP provided information regarding calculations for compensation relating to land, structures and crops.

A plan for consultation with PAPs in relation to compensation at sub-county, village and individual levels was provided in the RCDAP.

The RCDAP also outlined a three tiered grievance and dispute management mechanism. It identified the types of grievances that could be received, a system for management of grievances, different tiers within the grievance mechanism and as well as the role of UETCL within this mechanism. Further, the RCDAP described an approach for monitoring and evaluation of the resettlement process as well as a requirement for compliance reviews and completion audits.

The project was approved by the IFC Board in April 2007. The financing agreements between the Lenders and the client were signed in June 2007. CAO was informed by IFC that it also entered a Direct Agreement in December 2007 which provided for supervision of the Interconnection Project in accordance with the Lenders' E&S standards, including IFC Performance Standards. UETCL, the client, the government of Uganda and the other lenders were all parties to the Direct Agreement, a structure which was designed to provide the Lenders with leverage to ensure implementation of the Interconnection Project in accordance with applicable E&S requirements.

Conclusion

As noted by the Inspection Panel, the RCDAP for the Interconnection Project contained standard elements of a resettlement action plan as provided for in the World Bank policy. In this context, and on the basis of a review of available documentation, CAO concludes that the foundations of a resettlement planning framework were in place at the time of IFC's pre-investment E&S review. Given the issues raised by the complainants, however, CAO has questions as to whether the grievance handling process as described in the RCDAP met IFC's requirements. This was a particularly important issue, given that disputes over valuation were anticipated. Questions also arise as to how IFC assured itself that the approach to compensation proposed met IFC's requirements for compensation for "loss of assets at full replacement cost and other assistance to help [displaced persons] improve or at least restore their standards of living or livelihoods." In this context, CAO notes the IRM's findings that the development of the RCDAP was not based on adequate consultation with project affected people.

³¹ IP SEA Appendix G - RCDAP, December 2006 - <http://goo.gl/67vUYq> (accessed August 23, 2016)

Project Supervision

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, the IFC PS in general and applicable EHS Guidelines..."³²

Project supervision is based on annual monitoring reports (AMR) submitted by the client and reviewed by IFC, discussions with the client, and site visits as required by IFC's ESRP. If the client fails to comply with its E&S commitments, 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).

IFC's approach to supervision is designed to be proactive. In particular, IFC expects its clients to "monitor and measure the effectiveness of [their] management programs...[and] use dynamic mechanisms, such as inspections and audits, where relevant, to verify compliance and progress toward the desired outcomes. ...Monitoring should be adjusted according to performance experience and feedback" (PS1, para. 24).

Discussion and Conclusion

IFC's supervision of the Bujagali Hydropower Project and the Interconnection Project commenced in 2008. Supervision was documented in reviews of the client's quarterly monitoring reports, site supervision visits by IFC staff, joint supervision visits by the Lenders' E&S experts, visits and reviews of reports by a Panel of Experts.

In relation to the Interconnection Project, IFC explained to CAO that AfDB, as the main financier of the transmission line was the primary point of interface with UETCL. As explained by IFC, the overall practice was that AfDB would report to IFC and the other lenders in relation to Interconnection Project issues. However, IFC also explained that IFC staff conducted some direct supervision in relation to resettlement along parts of the transmission line which were considered to be particularly high risk.

While there is a significant volume of supervision material available, CAO's preliminary review gives rise to questions as to whether IFC took reasonable measures to assure itself of compliance with resettlement-related aspects of the Interconnection Project.

Firstly, CAO notes that the RCDAP at the time of review was in draft form and "in need of confirmation/ further definition prior to implementation."³³ From a review of available supervision documentation it is not apparent that IFC reviewed a final version of the RCDAP. In this context, CAO has questions as to whether IFC had assurance that the RCDAP was finalized in accordance with its requirements.

Secondly, CAO has questions as to whether IFC assured itself that the mechanism for resolving resettlement-related disputes under the Interconnection Project was functioning as required. From a review of available supervision documentation it is not apparent that IFC considered the functioning of the grievance and redress mechanism for Interconnection Project related land disputes. This is of particular relevance given concerns raised by the AfDB's IRM in 2008, and the EIB-CRM in 2012, regarding the adequacy of the grievance mechanism for the Interconnection Project.

³² ESRP 6, para. 6.2.7, version 4, August 2009

³³ IP SEA Appendix E - PCDP, December 2006 - <http://qoo.gl/JBhFb7> (accessed August 23, 2016)

Thirdly, CAO has questions as to whether IFC had reasonable assurance that resettlement associated with the Interconnection Project was being monitored, audited and closed out as required. These are standard measures which were provided for in the RCDAP. However, a review of available documentation does not provide assurance that IFC considered whether these elements of the resettlement process were carried out in accordance with its requirements.

In these circumstances CAO finds indications that IFC may not have complied with its supervision requirements in relation to the issues raised by the complaint.

More generally, CAO notes challenges in supervision that were a product of the project structure and the involvement of different banks funding different components of the project.

IV. Decision

The purpose of a CAO compliance appraisal is to ensure that compliance investigations are initiated only for those projects that raise substantial concerns regarding environmental or social outcomes or issues of systemic importance to IFC/MIGA. In deciding whether to initiate an investigation, CAO weighs factors including the magnitude of the environmental and social (E&S) concerns raised in a complaint, the results of a preliminary review of IFC's E&S performance in relation to these issues, and a more general assessment of whether a compliance investigation is the appropriate response in the circumstances.

In this case, the complainants raise concerns regarding payment of compensation for land and assets, particularly crops, which were acquired for purposes of building the Interconnection Project. They also raise concerns regarding difficulties and delays in addressing their grievances.

IFC Performance Standard 5 (Land Acquisition and Involuntary Resettlement) includes requirements for full compensation for loss of assets at full replacement cost. It also includes process requirements related to consultation, disclosure and grievance handling. While CAO does not take a position on the merits of the allegations set out in the complaint, a complaint regarding the adequacy of compensation from 220 people across 10 villages should be considered substantial in nature.

A review of IFC's documentation also raises questions as to the adequacy of IFC's application of its E&S requirements to the Interconnection Project. In particular, CAO has questions as to whether IFC's supervision provided sufficient basis to conclude that land acquisition under the Interconnection Project was being carried out in accordance with the requirements of PS5. In these circumstances, CAO concludes that an investigation in relation to the complaint is warranted.

CAO has an ongoing compliance investigation of labor issues related to IFC's investment in the Bujagali project. As a result it is practical to issue Terms of Reference which allow for the issues raised in this appraisal to be considered as part of the ongoing compliance investigation.

While noting that both IFC and MIGA have exposures to the Bujagali project, because IFC played the lead role on E&S issues, the focus of CAO's compliance investigation will be on IFC. To the extent, however, that MIGA's 2012, 2014 and 2016 guarantees raise distinct issues regarding MIGA's E&S review process, MIGA's performance will also be considered.