

December 5, 2017

Mr. Osvaldo L. Gratacós  
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International Finance Corporation  
2121 Pennsylvania Avenue, N.W.  
Washington DC 20433

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

Dear Mr. Gratacós:

We appreciate the opportunity to review and respond to CAO's investigation report regarding IFC's performance in relation to our investment in Bujagali Energy Limited (BEL). We also acknowledge the important role of CAO's Dispute Resolution team in helping to facilitate, through a variety of mechanisms, the successful resolution of 86 of 93 complaints in the Bujagali-04 case. The remaining concerns expressed in CAO's report are addressed below and via detailed comments in the attached Annex.

The nature of these two complaints relate to *IFC's Performance Standard (PS) 2: Labor and Working Conditions*. The issues cited relate to project construction, which concluded in 2012; the Bujagali-06 events date back even earlier, as far back as 2007. The Bujagali project was one of the first to ever be assessed under the newly adopted PSs, which introduced for the first time at IFC a standard on labor and working conditions. The project was approved before PS application was required. Nonetheless, Management decided to proactively apply the newer standards. In that context, we believe IFC's due diligence on this project was in line with the applicable standards at the time. Since then, IFC has learned from experience in applying the new PSs, with both policy and practice around labor and occupational health and safety (OHS) issues having evolved considerably since the standard was adopted in 2006.

The 2012 PS revision resolved the difficulty in distinguishing core from non-core subcontractors – a decision that was informed by IFC's lessons learned from experience, including from this project. The *subcontracted* workers in the Bujagali-06 complaint would be covered under the current PS2. While IFC's policy interpretations in 2006-07 were aligned with the PS2 requirements applicable at the time, IFC nevertheless did work with the client to address the subcontracted workers' issues, and BEL did assist the affected workers. The primary cause of adverse impacts was not project or construction related. The issues arose from the subcontractor's nonperformance and subsequent commercial failure. BEL assisted affected workers in filing claims under the Ugandan legal system, and the EPC contractor later employed many of these workers in project construction.

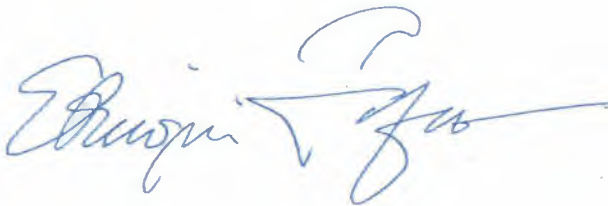
The 2006 PS2 did cover the *contracted* workers in the Bujagali-04 complaint, and we did consider risks related to the EPC contractor. IFC's E&S team, with over 30 years of experience with large construction projects globally, were well-positioned to assess the project according to the policies and procedures in place at the time. We agree that additional OHS expertise could have been beneficial when unexpected circumstances resulted in a significant increase in the number of workers. Even so, IFC did take actions in line with PS2, including raising lender concern over an increase in Lost Time Accident (LTA) rates. This

led to an OHS audit and certification by BEL and its EPC contractor, which in turn led to a significant reduction in LTA rates. No further fatalities took place after March 2010.

IFC takes labor and working conditions seriously, including related to OHS, and remains committed to working with BEL to respond to any employee and community concerns. Bujagali continues to be a critical infrastructure project, which constituted a historical milestone in the private financing of power projects both in Sub-Saharan Africa and Uganda, and greatly contributed to Uganda's development at the time by helping restore the long-term sustainability of its power sector. IFC remains engaged with the client and is working proactively and productively to ensure that it takes seriously environmental and social issues during its current operations phase. This is reflected in the Environmental and Social Action Plan recently disclosed by IFC (on September 15, 2017) in the context of the proposed refinancing for the project, and which benefits from the evolution of IFC's experience and practice in applying the PSs since this project began.

We appreciate this report and look forward to continuing our dialogue with CAO. Please find in the attached Annex our more detailed responses to the key findings raised in the CAO Report.

Sincerely,



Ethiopis Tafara  
Vice President and General Counsel



Stephanie von Friedeburg  
Vice President for New Business

**Annex: IFC Tabulated Management Response: Bujagali 04-06**

	<i>CAO Finding</i>	<i>IFC Response</i>	<i>IFC Actions Taken or Proposed</i>
1.	<p>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.</p>	<p>Staff assigned to this project were amongst IFC's most experienced, with over 30 years of experience with large construction projects globally, and were well-positioned to assess the project according to the policies and procedures in place at the time. IFC acknowledges that specialized OHS expertise could have been beneficial to support IFC's supervision when unexpected circumstances resulted in a significant increase in the number of workers; however, at that time IFC did put some resources in place and take actions in line with PS2, including raising lender concern over an increase in lost time accidents (LTAs). This led to the EPC contractor carrying out an OHS audit. While IFC raised this issue in its engagement with the company and the other lenders, in retrospect we agree that additional emphasis on this issue could have been beneficial.</p>	<p>Since the launch of the IFC PS in 2006, and subsequent update in 2012, IFC has increased its internal capacity on OHS issues, and the ongoing guidance that it makes available to its environmental and social staff at large, including:</p> <ul style="list-style-type: none"> <li>• Taking into account OHS skills among IFC's hiring criteria, and assigning an internal OHS focal point</li> <li>• Internal capacity building, including recurrent internal training sessions on OHS issues, an online Q&amp;A page for OHS questions, and a pilot OHS bulletin</li> <li>• Focused attention on greater engagement with clients on OHS issues</li> <li>• Development of several tools and guidance, such as: <ul style="list-style-type: none"> <li>○ Defined indicators for Lost Time Accidents (LTA) and benchmarks for comparison</li> <li>○ Tip-sheet on monitoring OHS injury rates + excel tool for appraisal / supervision</li> <li>○ Good Practice Note on "Managing Contractors' E&amp;S Performance"</li> </ul> </li> </ul>

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2.	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.	<p>IFC acknowledges that assessment can be particularly challenging for a greenfield project. Our approach is to ensure that adequate policies and procedures were in place. IFC was satisfied that the policies and procedures for the client and the EPC contractor were in line with PS2 and the 2003 Guidelines for Occupational Health and Safety.</p> <p>IFC relies on the company to incorporate good international industry practice at the project level, regardless of national legislation or practice. Project-specific OHS questions were addressed by having the EPC contractor put in place policies and procedures to manage OHS risks specific to the project – this approach is designed to support good OHS practice at the project level even when OHS practice elsewhere in the country is poor and was a typical approach for Multilateral Financial Institutions and others financiers involved in project-finance deals such as Bujagali.</p>	IFC has undertaken a wide range of efforts regarding OHS capacity, as described above.
3.	IFC did not ensure that the labor and OSH related plans of the client and the EPC contractor received appropriate technical review.	The EPC contractor hired a reputable, international firm to prepare the labor and OHS plans. BEL also hired a reputable international firm to review and comment on those plans. IFC assessed both the Health and Safety Management Plan (HSMP) and the specific plans and policies associated with HSMP, and found that they met IFC OHS standards then in place.	IFC’s E&S Specialists currently have access to more support on PS2 and OHS issues compared to these first days of practice under the new PSs. This includes guidance and support on technical review, but also includes frameworks for reporting serious OHS incidents and near misses, root cause analysis and measures to prevent recurrence, etc. While IFC applied the practice in place at the time, this has

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			evolved – and is an area of continuing development for the E&S department.
4.	IFC did not assess the client’s capacity to effectively monitor and manage the OSH performance of the EPC contractor.	IFC assesses the capacity of the main shareholders when a project company is a Special Purpose Vehicle (SPV) created with the sole purpose of developing, constructing, and operating the project. We take note of the lack of documentation in this case, but confirm that IFC did assess the experience of the project shareholders in managing OHS performance. For instance, project staff had decades of experience managing construction of major energy projects across the globe, including major hydro projects and power projects in the US and Sub-Saharan Africa.	N/A
5.	IFC did not ensure that the (Occupational) Health and Safety Management Plan (HSMP) of the EPC contractor was developed following an initial OSH audit.	Given the greenfield nature of the project, an initial OSH audit was not applicable.	N/A
6.	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 considers this to be a legal issue, outside the scope of the PSs. The overall focus of IFC’s approach to OHS remains on removing residual risk through accident prevention. Compensation remains under the authority of the national/local bodies. IFC identified the Ugandan legal requirement for worker’s compensation insurance and incorporated that requirement into the investment agreement with the company. The EPC contractor carried such insurance and the injured workers were covered under it. One reason the Medical Advisory Board (MAB) was seen as an	N/A

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		appropriate means to review the workers' cases is that it can, under Ugandan law, change the level of disability of the worker and thereby require the insurance company to increase the amount paid to the worker. Neither IFC, the company, nor the EPC contractor, had the legal means to do so.	
7.	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.	<p>IFC believes that the pre-investment review of the project was commensurate with the risk. Unforeseen circumstances increased that risk and did put additional pressure on the OHS management systems, as further discussed below.</p> <p>While the CAO Report refers to potential shortcomings to IFC's review, it does not identify any specific inadequacies in the HSMP of the EPC contractor that, had they been corrected, would have improved the project OHS outcomes. Indeed, these outcomes were the result of unexpected circumstances.</p>	N/A
8.	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 staff assigned to the project had substantial experience in large-scale construction projects globally. IFC appreciates that the increase in the number of workers resulted in an increased OHS-related risk, and acknowledges that additional, specialized expertise might have been beneficial to the IFC team at that specific point in time.	IFC has undertaken a range of efforts regarding OHS capacity, as described above. IFC practice related to labor issues more broadly has also evolved along with the evolution and amendments to PS2. In addition, the E&S department has access to "on-call" labor experts to provide assistance in particularly challenging cases.

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9.	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.	The original performance criteria applied to the project were drawn from the 2003 OHS Guidelines, as these were the relevant guidelines at the time of the project appraisal. The performance criteria therefore met the requirements in existence at the time. Nonetheless, when the 2007 EHS Guidelines came into effect, IFC aligned its supervision according to this improved reflection of good international practice (GIIP).	The 2007 General EHS Guidelines better reflect GIIP, and are more flexible in allowing leading indicators – rather than trailing indicators – that might better predict future problems with OHS. The emphasis of both PS2 and the EHS Guidelines remains on avoiding injuries and illness.
10.	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.	<p>The twice-annual site supervision visits were only one of several means by which IFC received OHS data. In addition to these supervision visits, the Panel of Experts and the Independent Engineer also visited the site and made observations on the OHS status of the project. These visits generally took place at times different from the lenders'/IFC's site supervision visits and therefore provided additional data points.</p> <p>IFC also received quarterly E&amp;S reports that included data on OHS. The requirement to report significant incidents, such as fatalities, were also important to tracking OHS performance. IFC did follow up immediately on reports of fatalities to ensure that the client assessed the need to amend the existing OHS procedures, drawing from the lessons learned from these incidents. In all the cases of fatalities, changes were made either in policies and procedures, or in training and enforcement of those policies and procedures. No further fatalities took place after March 2010, even</p>	As discussed above, IFC's efforts to improve practice around OHS include ensuring a range of efforts are made to acquire sufficient OHS information from the project site. This includes, among others, defined indicators for LTA and benchmarks for comparison, a tip-sheet on monitoring OHS injury rates and an excel tool for appraisal and supervision, and a recently published Good Practice Note on "Managing Contractors' E&S Performance."

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		with the increase in the number of workers on site.	
11.	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.	These reports necessarily covered multiple areas. Though not focused solely on OHS issues, when taken collectively, IFC believes that they provided the data required, in particular observations on the actual OHS practices at the project site. The observations of these experienced experts, along with conversations with insurers, were important to IFC's understanding of what was taking place at the site.	N/A
12.	IFC neither received OSH management system audits nor commented on their absence	<p>The policy in effect at the time required audits as part of the OHS management system, but did not specify external, independent audits.</p> <p>The EPC contractor's Health and Safety Management Plan did make the Site Safety Manager responsible for conducting safety audits of the main contractor and the subcontractors, and for undertaking safety inspections, but did not specify that these must be at least yearly. The Risk Assessment Protocol required continuous improvement through reviews of any OHS implications of changed activities or changed risk profiles.</p> <p>IFC does agree that we could have been more diligent in ensuring the Site Safety Manager undertook a review of the project's OHS management systems when appropriate.</p>	IFC has since revised this policy, and the guideline requirement for annual OHS audits no longer exists. Current requirements include management of change procedures that seek to identify potential risks, including OHS risks, prior to changes in the project or the project's risk profile, and reviews of safety events to improve policies and procedures.



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13.	IFC neither received nor commented on the absence of regular root-cause analyses of OSH incidents.	<p>IFC did receive and review analyses of accidents, particularly fatalities.</p> <p>IFC acknowledges shortcomings in documenting staff activities and recognizes that this may have led to a perception of limited due diligence efforts, even though this was not the case.</p>	IFC's E&S management emphasizes the importance of documentation, including reports related to the review of client incident reports. IFC fully supports the importance of root-cause analysis of OHS incidents.
14.	IFC did not assure itself that the Bujagali-04 complainants received appropriate compensation for workplace injuries.	IFC considers this to be a legal issue – the labor agreement between workers, companies, and contractors should be in accord with national law. Assessing the adequacy of such compensation falls beyond IFC's authority, competencies and area of expertise. However, even though this issue falls outside the scope of the PSs, once the workers' compensation issue was raised, IFC staff actively engaged with CAO's Dispute Resolution to identify and support the mechanisms under Ugandan law, the Dispute Resolution mechanism itself, and the EPC contractor's mechanisms for resolving these issues.	N/A
15.	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.	<p>The definition of subcontractors in the 2006 PSs gave rise to some ambiguity in interpretation. While IFC did not consider PS2 to be required for these workers under the applicable standard at the time, discussions around this interpretation in this and other projects informed the revision of this clause in the 2012 PSs.</p> <p>While IFC believes its policy interpretations were aligned with the 2006 PS2 requirements,</p>	IFC has since revised this policy. Recognizing the challenges inherent in making such decisions regarding application to subcontractors, the 2012 update of PS2 revised this clause. This clarification has helped to avoid confusion over what does or does not constitute "core functions." It also requires that the PS2 grievance mechanism be extended to all contractors and subcontractors.

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		<p>IFC did in fact work with the client to address these issues, and BEL did assist the affected workers. The company accepted grievances under the community grievance mechanism required by PS1. We note, however, that the primary cause of adverse impacts was not a project- or construction-related impact, but arose from the nonperformance, and subsequent commercial failure, of the subcontractor. BEL assisted these workers in filing claims under the Ugandan legal system. In addition, the EPC contractor later employed many of these workers in project construction.</p>	
16.	<p>In these respects, IFC's supervision was not sufficient to assess whether project labor and OSH performance met the specific requirements of IFC's Guidelines for Occupational Health and Safety or good international industry practice.</p>	<p>IFC believes that the supervision was managed appropriately, even in the face of unexpected events. Supervision efforts were undertaken twice annually, and included the early identification of potential issues with an accelerated schedule, formulating a joint lender response to a rising accident rate, and follow up on the measures put in place in response. IFC did not have a direct contractual relationship with the EPC contractor, so supervision was through the company. IFC acknowledges it could have raised further questions about the EPC contractor's OHS performance, but it is not clear whether additional questions, given the OHS guidelines at the time, would have materially changed outcomes. The company was responsive to all of IFC's requests and acted expeditiously.</p>	N/A