

Complaints Mechanism - Complaints Mechanism - Complaints Mechanism - Complaints Mechanism

NFC Forestry Project

Complaint MC/E/2011/13

CONCLUSIONS REPORT

20 November 2014

EIB Complaints Mechanism

Prepared by

Complaints Mechanism

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External Distribution

Oxfam

Promoter : New Forests Company

Internal Distribution

Management Committee

Secretary General

Inspector General

EIB services concerned

The EIB Complaints Mechanism

The EIB Complaints Mechanism intends to provide the public with a tool enabling alternative and pre-emptive resolution of disputes in cases whereby the public feels that the EIB Group did something wrong, i.e. if they consider that the EIB committed an act of maladministration. When exercising the right to lodge a complaint against the EIB, any member of the public has access to a two-tier procedure, one internal – the Complaints Mechanism Division (EIB-CM) - and one external - the European Ombudsman (EO).

Complainants that are not satisfied with the EIB-CM's reply have the opportunity to submit a confirmatory complaint within 15 days of the receipt of that reply. In addition, complainants who are not satisfied with the outcome of the procedure before the EIB-CM and who do not wish to make a confirmatory complaint have the right to lodge a complaint of maladministration against the EIB with the European Ombudsman.

The EO was "created" by the Maastricht Treaty of 1992 as an EU institution to which any EU citizen or entity may appeal to investigate any EU institution or body on the grounds of maladministration. Maladministration means poor or failed administration. This occurs when the EIB Group fails to act in accordance with the applicable legislation and/or established policies, standards and procedures, fails to respect the principles of good administration or violates human rights. Some examples, as set by the European Ombudsman, are: administrative irregularities, unfairness, discrimination, abuse of power, failure to reply, refusal to provide information, unnecessary delay. Maladministration may also relate to the environmental or social impacts of the EIB Group activities and to project cycle related policies and other applicable policies of the EIB.

The EIB Complaints Mechanism intends to not only address non-compliance by the EIB to its policies and procedures but to endeavour to solve the problem(s) raised by Complainants such as those regarding the implementation of projects.

For further and more detailed information regarding the EIB Complaints Mechanism please visit our website: <http://www.eib.org/about/cr/governance/complaints/index.htm>

CONCLUSIONS REPORT

Investigation: Own investigation launched at the request of the EIB President.

Date of the request: 21 October 2011.

Subject of the investigation: Alleged forced eviction of more than 20.000 people from their homes and land without proper compensation and/or resettlement.

1. SUBJECT OF THE INVESTIGATION

- 1.1 In a report dated 22 September 2011 Oxfam alleged that, in order to allow NFC to plant and harvest timber in Uganda, the evictions of the more than 20.000 people were carried out between 2006 and 2010. The report stated notably that "the people evicted from the land are desperate, having been driven into poverty and landlessness. In some instances they say they were subject to violence and their property, crops, and livestock were destroyed. They say they have not been properly consulted, have not been offered adequate compensation, and have not received alternative land."
- 1.2 On 21 October 2011 the EIB President requested the EIB-CM to launch a full investigation into Oxfam allegations concerning the forced eviction of more than 20.000 people from their homes and land without proper compensation and/or resettlement in the context of a Bank-financed project in Uganda. The Project Promoter and the Borrower is New Forests Company (NFC).

2. METHODOLOGY OF THE INQUIRY

- 2.1 The EIB-CM set the terms of reference for an own full investigation of this case and identified the following objectives:
- To determine if the EIB has complied with the applicable rules and regulations, and with its policies, standards, guidelines and procedures;
 - To assess if significant harm has been done as a result of the EIB action or omission to the project affected people that has not been adequately compensated for and/or mitigated;
 - If significant and not mitigated harm has been done, to investigate appropriate corrective and/or mitigations measures;
 - To determine if applicable EIB policies, standards, guidelines and procedures are sufficient and adequate to protect the interests of the project affected people.

3. THE PROJECT

- 3.1 The project concerns the financing of the costs of Namwasa, the first plantation of NFC located in Namwasa Central Forest reserve (8,000 ha), 120 km northwest of Kampala in the Mubende District. The project, which consists of planting fast growing trees on degraded forest land, forms part of a larger NFC programme of 3 plantations covering a total of about 20,000 ha. The other plantations are the Luwanga Forest reserve (9,000 ha) and Kirinya (3,000 ha) in the Kiboga and Bugiri districts respectively. In Namwasa and Luwanga the NFC has a license agreement with the Uganda National Forest Authority (NFA).
- 3.2 The Project Promoter as well as Borrower of the direct loan of the EIB is New Forests Company (6.2 million USD), while an indirect participation was made in AGRI-Vie Fund PCC (2 million USD) which holds an equity stake in NFC.

4. SCOPE OF THE EIB-CM

- 4.1 The EIB-CM investigates alleged maladministration of the EIB Group in its actions and/or omissions (article 4.1 of Title IV "Rules of Procedure" of the EIB CMPTR). Maladministration occurs when the EIB Group fails to act in accordance with the applicable legislation and/or established policies, standards and procedures, fails to respect the principles of good administration or violates human rights.
- 4.2 According to the EIB-CM Operating Procedures (article 7, Specific Management requests and CM own initiative), an assessment, investigation or mediation process, as described in Ch. 5 and 6, may be initiated: By a specific request by the President or the Management Committee; By the Inspector General, either on his own initiative, or on the basis of a reasoned proposal from the head of EIB-CM.
- 4.3 Pursuant to article 2.3 of Title IV "Rules of Procedure" – CMPTR, the EIB-CM is not competent to investigate complaints concerning International organisations, Community institutions and bodies, national, regional or local authorities.

5. EIB-CM OWN INVESTIGATION

- 5.1 On 21 October 2011 the EIB-CM opened its own full investigation into the case and informed the Bank's management and Oxfam, as well as the accountability mechanism of IFC, the CAO, (co-financier) that an investigation had been launched.
- 5.2 The EIB-CM started the desk work on the investigation through gathering and analysing of available internal and external information and discussions with relevant internal and external parties.
- 5.3 On 26 October 2011, the EIB-CM put the investigation on hold, at the request of the EIB President, pending the results of different investigation and mediation processes, namely:
 - By the Forest Stewardship Council (FSC) that had decided to proceed with its own re-audit of the Namwasa plantation;
 - By NFC with the input and support of Oxfam;
 - The mediation between NFC and affected communities facilitated by the IFC CAO.
- 5.4 The EIB-CM investigation was kept on hold pending the results of simultaneous processes, notably the on-going mediation in relation to the complaints launched by the representatives of the communities with IFC-CAO (see point 6).

6. HANDLING OF THE COMPLAINT BY THE IFC-CAO

- 6.1 On 24 January 2012 the EIB-CM was informed by the IFC-CAO that two complaints (one concerning the plantation in Kiboga and one concerning the plantation in Mubende) had been submitted to them on 20 December 2011 by representatives of the affected communities, notably Oxfam Uganda, Oxfam International and Uganda Land Alliance and that the IFC-CAO had started its assessment of the case.
- 6.2 The IFC-CAO produced its Assessment Report in April 2012 and subsequently proposed mediation processes, which the parties accepted.
- 6.3 Two simultaneous mediation processes started, one for the Kiboga and the other for the Mubende affected communities, both of which aimed at finding acceptable and workable solutions between the affected communities and NFC. Both communities were supported by Oxfam and legal representatives.
- 6.4 The mediation process with the Mubende community started in mid-2012 and led to the signature of a Final Agreement in July 2013. The mediation process with the Kiboga community started at the same time, and ended with the signature of a Final Agreement in May 2014.

6.5. According to the information available in the IFC-CAO website (http://www.cao-ombudsman.org/cases/case_detail.aspx?id=180), the agreements above represent full and final settlement between the communities and NFC on the set of issues set out in the complaints brought by the communities with the IFC-CAO.

6.6 Furthermore, according to the same source, the parties to the agreements have agreed to disclose the following aspects of the agreements:

- The NFC has undertaken to provide significant support to the MUBENDE BUKAKIKAMA CO-OPERATIVE SOCIETY LTD, representing the affected community of Mubende and to the KIBOGA TWEGATTE CO-OPERATIVE SOCIETY LTD representing the Kiboga community, expanding their social responsibility investment programmes to meet some of the specific needs of the communities. The NFC has also agreed to work closely with the co-operatives and its members to build more solid and lasting mutually beneficial relations with the communities.
- The affected communities have agreed to respect NFC's legal rights to operate with the Namwasa and the Luwunga Central Forest Reserves, and both NFC and the communities have agreed to act lawfully and to engage with each other to develop long term cooperation and good neighbourliness.
- The parties have agreed to work closely together on a range of programmes and projects aimed at the long term sustainable development of the communities.

Oxfam, through its Uganda office, provided on-going support to the affected community throughout the mediation process and will continue to do so.

7. CONCLUSIONS OF THE COMPLAINTS MECHANISM

7.1 Given the signature of the mediation agreements by the communities concerned, the EIB-CM considers that there is no need to proceed with the own full investigation and proceeds to close the case with the agreement of the President.

7.2 The EIB-CM, in collaboration with the relevant EIB services, will keep the case under Follow-up, pending implementation of the Mediation Final Agreements. For this purpose, the EIB-CM will keep close contacts with IFC CAO, with the affected communities and their representatives, e.g. Oxfam, to keep abreast of the successful implementation of the Agreements.

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