

To:  
**European Investment Bank - Complaints Office**

From:  
**NAPE (Uganda), Counter Balance (Europe), CLAI (Italy), Association Sherpa (France)**

Subject:  
**Complaint submission**

Project's reference:  
**Bujagali Hydroelectric project**

**20/11/2009**



# COMPLAINT CONCERNING THE BUJAGALI DAM PROJECT

## BACKGROUND

The following complaint concerns the Bujagali Dam project in Uganda. The Bujagali project, which was contested for years in Uganda and internationally, was approved by the World Bank, European Investment Bank and African Development Bank in April-May 2007.

The European Investment Bank (“**EIB**” or “**the Bank**”) participated with a EUR 95 million loan.

The project is being developed by Bujagali Energy Limited., a joint venture between Kenya-based Industrial Promotion Services (IPS) and US-based Sithe Global Power, with construction by Italy’s Salini.

The plaintiff’s engagement with the bank started in 2007. On 5 March 2007, the National Association of Professional Environmentalists (“**NAPE**”) and other Ugandan citizens and local organizations filed a complaint with the World Bank Inspection Panel, raising concerns about potential violations of World Bank policies.

On 2 May 2007, a group of International NGOs requested the board of directors and the EIB president to postpone the vote until the outcome of the Panel’s Eligibility Visit before considering support for the Project. The EIB approved the loan nonetheless. Taking into consideration what the Inspection Panel of the World Bank and African Development Bank will find out and recommend.

The World Bank Inspection Panel (“**the Panel**”) considered the complaint eligible and started its investigation. On 8 September 2008, the Panel released the investigation’s report finding important areas of non-compliance with the World Bank’s policies and guidelines, on the following issues:

- Environmental issues
- Hydrological and climate change Risks
- Involuntary resettlements
- Cultural and spiritual values

In addition, the Panel has identified critical elements on the Economic and Environmental Analysis of Alternatives.

In April 2009, the European coalition Counter Balance, in cooperation with Sherpa (France) and CLAI (Italy), organized a field mission meeting with local communities and organizations. A number of violations of EIB policies were found.

## INTRODUCTION

According to Section 11.4 of the EIB Complaints Mechanism Policy (“**CMP**”), a complaint may concern any alleged maladministration of the EIB Group in its actions and/or omissions. The subject of the complaint may be, in particular, environmental and social impacts of projects, which is the subject of the present complaint.

Pursuant to Section 2.3 of the CMP, maladministration occurs when a member of the EIB Group fails to act in accordance with the applicable legislation and/or internal policies, fails to respect the principles of good administration or violates human rights.

The EIB is a policy driven institution, whose role is to contribute to the implementation of EU policies and objectives<sup>1</sup>. When deciding to finance a project outside the EU, the EIB has to make sure that it is consistent with EU external policies and objectives<sup>2</sup>.

The value added to beneficiaries of the Bank's lending activities is determined based on three pillars<sup>3</sup>:

- the consistency between each operation and the priority objectives of the EU;
- the quality and soundness of the project, focusing on identifying the economic and environmental sustainability of the operation; and
- the contribution made by the EIB, both financial and non-financial.

The EIB seeks value added “*through the careful selection, appraisal, monitoring and evaluation of investment projects and programmes*”<sup>4</sup>. It “*checks the consistency of its lending activities with EU objectives and conducts its appraisals with a view to ensuring that investments are sustainable*”<sup>5</sup>.

Taking into consideration the above outlined policy framework, this complaint raises the following allegations against the European Investment Bank:

- 1. Failure to meet European development objectives**
- 2. Failure to assess the economic and environmental soundness of the project**
- 3. Failure to guarantee fair compensation to affected communities**
- 4. Failure to ensure the implementation of the mitigation measure**

## **1. FAILURE TO MEET DEVELOPMENT OBJECTIVES**

### **1.1. Main Findings**

#### **- The project will benefit less than 5% of the population**

Less than 5 percent of the Ugandan population is currently connected to the electricity grid. The project does not include any transmission line extension that would expand the number of people who have access to electricity, especially in rural areas. The majority of the population will thus not benefit from the project.

In this respect, the World Bank Inspection Panel noted that “*the tariff figures provided in the Economic Study are likely to be based on an underestimate of the cost of electricity with the Project. In addition much of expected direct benefit from Bujagali, especially in the early years, is likely to be experienced by the better-off urban households. Neither the economic study nor the PAD, however, provides estimates of the economic impact of the project on the low-income households*”<sup>6</sup>.

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<sup>1</sup> See Corporate Operational Plan 2008-2010, p.3; Transparency Policy, p.3; EIB Group's Statement on Corporate Social responsibility (2005), p.2; Environmental and Social Practices Handbook (2007), Guidance Note 5; Eligibility Guidelines (2007), p.4; Environmental Statement (2004), pp.1-2.

<sup>2</sup> Eligibility Guidelines, p.4; Corporate Operational Plan 2008-2010, §150.

<sup>3</sup> Eligibility Guidelines, p.4; Corporate Operational Plan 2008-2010, p.10.

<sup>4</sup> EIB Group Statement on Corporate Social responsibility (2005), p.2.

<sup>5</sup> EIB Group Statement on Corporate Social responsibility (2005), p.2.

<sup>6</sup> World Bank Inspection Panel, Investigation Report – Uganda: Private Power Generation (Bujagali) Project, August

Meetings with local authorities during the field mission confirmed that there is no plan for expanding the transmission lines and increasing the access of households to electricity.

**- There is a high risk that the price of the energy produced will not be affordable**

According to the EIB, the project will contribute to make electricity affordable<sup>7</sup>.

Due to overestimation of the dam capacity, together with the terms of the Power Purchase Agreement, however, there is a high risk that the electricity produced will come at a price much higher than expected, and will only be affordable to the wealthiest segments of the Ugandan population.

The World Bank Inspection Panel found that *“the PPA capacity charge is not related to output, so that the payment by the government-owned power purchaser, UETCL, will be the same under low hydrology as high hydrology and also variant to reduced plant availability. [...]the introduction of a cost-based formula in the 2005 PPA, represents a significant shift in risks away from the Project investors and lenders to UETCL. The high allocation of risks to the power purchaser and eventually the GoU increases the possibilities that GoU will have to make payments under its guarantee and/or increase tariff subsidies”*<sup>8</sup>

The World Bank Management Report in response to those Inspection Panel concerns does not give clear corrective actions to solve the outlined problems.

Ugandan Energy Minister Hilary Onok recently recognised that the Bujagali project is a bad one, overdelayed and overpriced<sup>9</sup>. **Not only the Bujagali dam will not lower electricity tariffs but it will lead in higher electricity prices.**

Additional problems concerning development impacts are related to compensation (see section 3) and implementation of the mitigation measures (see section 4).

## **1.2.EIB policies**

EIB's lending for the Bujagali project comes from the Investment Facility managed by the Bank under the Cotonou Partnership Agreement (**“Cotonou Agreement”**), the resources of which are provided by EU Member States through the European Development Fund. The Cotonou Agreement is expressly listed under Annex I of the CMP.

Pursuant to Article 1 of the Cotonou Agreement, economic, cultural and social development is the main objective of the Agreement and includes improving access to productive resources and supporting the conditions for an equitable distribution of the fruits of growth.

Pursuant to the EIB Group's Statement on Corporate Social Responsibility (2005), *“[o]utside the EU, the EIB priority is Community development aid and cooperation policy in the Partner Countries, **helping to fight poverty and improve the living standards of people in the developing world**”*<sup>10</sup>. The Bank *“contributes to meeting the global challenge of development and poverty*

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29 August 2008 (hereinafter **“World Bank Inspection Panel Report”**), page xiii.

<sup>7</sup> Proposal from the Management Committee to the Board of Directors, section 6.

<sup>8</sup> World Bank Inspection Panel Report, p.xiv.

<sup>9</sup> As quoted in « Bujagali dam to raise power costs », The Vision, 25 September 2009.

<sup>10</sup> EIB Group Statement on Corporate Social Responsibility (2005), p.3.

alleviation”<sup>11</sup>. Increasing attention ought to be paid to “*exploring opportunities to enhance social well-being, notably through income-earning opportunities and improved access to social and economic services for the poor.*”<sup>12</sup>

Pursuant to the Social Assessment of Projects outside the EU (2006), “[t]he general approach of the EIB has now evolved **from mitigation of adverse impacts to wider considerations of the social opportunities that its projects might bring to the local communities and wider societies in which they are embedded. This includes such things as income generation and improved access to social and economic services for the poor.**”<sup>13</sup>

With regard to Investment Facility projects – such as the Bujagali project – the Development Impact Assessment Framework of Investment Facility Projects (2005) requires the project appraisal team to provide a development impact assessment. This assessment must include distributional issues – “**when looking at the distribution of project effects and the project social acceptability, it is important to determine who benefits and who pays the costs. Sharing the benefits of economic growth has become a major issue in development**”<sup>14</sup> – as well as social performance and poverty reduction<sup>15</sup>.

As part of his tasks, the Project Directorate carries out an economic analysis which includes an assessment of any significant impacts on income distribution, including the likely impact on poverty alleviation<sup>16</sup>.

A number of other EIB policy documents listed under annex I of the CMP further require the EIB to support development:

- the EIB and its contribution to sustainable development<sup>17</sup>, according to which “*as an international financial institution with activities throughout the world, the EIB aims to promote sustainable development in all regions of operations*”<sup>18</sup>.
- the EU Global Partnership for Sustainable Development, which the EIB aims to support pursuant to the EIB Group's Statement on Corporate Social Responsibility (2005)<sup>19</sup>, presents a series of actions to contribute to global sustainable development, including fighting poverty and promoting social development<sup>20</sup>;
- the Social Assessment of Projects outside the EU (2006) reaffirms the EIB's mandate, as a European Community institution, to finance activities that support sustainable development
- the Staff Code of Conduct (2006) : contribution to development aid cooperation with less favoured third countries<sup>21</sup>

According to *the EIB and its Contribution to Sustainable Development*, it seems that the main

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<sup>11</sup> EIB Group Statement on Corporate Social Responsibility (2005), p.2.

<sup>12</sup> EIB Group Statement on Corporate Social Responsibility (2005), p.7.

<sup>13</sup> Social Assessment of Projects outside the EU (2006), p.3

<sup>14</sup> Development Impact Assessment Framework of Investment Facility Projects (2005), p.6.

<sup>15</sup> Development Impact Assessment Framework of Investment Facility Projects (2005), p.6.

<sup>16</sup> Social Assessment of Projects outside the EU (2006), p.2.

<sup>17</sup> Which is part of EIB Sustainable Development and Environment Documents (2002).

<sup>18</sup> The EIB and its Contribution to Sustainable Development, *in* Sustainable Development and Environment Documents (2002), p.11.

<sup>19</sup> EIB Group Statement on Corporate Social Responsibility (2005), p.2.

<sup>20</sup> “*Towards a Global Partnership for Sustainable Development*”, Communication from the Commission to the European Parliament, the Economic and Social Committee and the Committee of the Regions, COM(2002) 82, 13 February 2002, p.9-11. Also referred to in the EIB and its Contribution to Sustainable Development, *in* EIB Sustainable Development and Environment Documents (2002), p.11.

<sup>21</sup> Staff Code of Conduct (2006), section 1.1.

reason for not directly applying EU standards outside Europe is the need to take into account “*that a very large number of people are affected by absolute poverty, unemployment and exclusion*” and that “*market forces should be harnessed to maintain and increase growth and create jobs*”<sup>22</sup>. Thus true development – that would benefit to the poorest segments of the population – is the only parameter that should justify lowering certain standards.

Development is specifically included in the mandate of the Bank in relation to energy projects:

- as part of the Eligibility Guidelines, one of the proposed objectives of the Bank's action in the energy sector is “*to improve access of the population of [developing countries] to modern sources of energy, particularly the poorest segments of the population*”<sup>23</sup>;
- the EIB Energy Review (2006) reaffirms that “*the main objectives of the EU policy in relation to energy are to promote access to modern sources of energy to the population and to promote the development of sustainable energy solutions*”<sup>24</sup>, the aim being “*to contribute to the Partner countries’ social and economic development*”<sup>25</sup>, and subsequently requires the Bank to focus its energy activities on “*increas[ing] access of the Partner countries populations to modern sources of energy*”<sup>26</sup>;
- the reference to the EU's commitment to the UN Millennium Development Goals<sup>27</sup>, especially improved access to energy services as a means to reduce poverty.

### **1.3. Conclusion**

**In accordance with the above mentioned policies, energy projects in developing countries must support development – through ensuring, in particular, that the whole population will have access to and benefit from the energy produced.**

**The Bujagali project, which only benefits a minority of Ugandans – i.e. the very wealthier ones - , fails to meet the development objectives that are set out by the EU and in the Bank's policies.**

## **2. FAILURE TO ASSESS THE ECONOMIC AND ENVIRONMENTAL SOUNDNESS OF THE PROJECT AND COMPARATIVE ADVANTAGES IN RESPECT OF ENVIRONMENTAL DEGRADATION**

### **2.1. Main findings**

According to the EIB, the Bujagali dam is expected to have a generating capacity of 250 MW, so as to meet the current electricity shortfall and the growing future demand in electricity in Uganda<sup>28</sup>. At the public hearing in April 2007, the Minister of Energy and Mineral Development explained that the Bujagali project “*will be playing a pivotal role in addressing the electricity supply deficit which*

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<sup>22</sup> the EIB and its Contribution to Sustainable Development, *in* Sustainable Development and Environment Documents (2002), p.11.

<sup>23</sup> Eligibility Guidelines (2007), p.46.

<sup>24</sup> EIB Energy Review (2006), pp.6, 27.

<sup>25</sup> EIB Energy Review (2006), pp.6, 27.

<sup>26</sup> EIB Energy Review (2006), p.28.

<sup>27</sup> See the EIB and its Contribution to Sustainable Development, *in* Sustainable development and environment documents (2002).

<sup>28</sup> “*Bujagali Hydroelectric Project, Uganda*”, EIB news, 2 July 2007.

*the country is facing*”<sup>29</sup>.

However, these expectations do not take into account water level and climate changes. There is not enough water to sustain and ensure that the project will generate its designed capacity of 250MW, due to the decline in water of the Victoria Lake resulting in particular from climate change. The same mistake was made in respect with the two existing dams, Nalubaale and Kiira. Together the Nalubaale and Kiira dams were expected to produce up to 380 MW. Yet their current average output ranges between 110 and 135 MW.

Furthermore, the impact of the new dam – together with the existing dams – on the Lake Victoria has not been properly assessed. Kenya and Tanzania have already complained to the East African community about the impact of Ugandan dams – and especially of the new Bujagali project – on the water level of Lake Victoria. Negotiations are still ongoing, but apparently Uganda agreed to reduce the water flow from the lake, which entails even less water than expected and thus reduced generating capacity of the new dam.

The World Bank Inspection Panel Report confirmed in this respect:

- that the project's economic viability has been overestimated in relation to hydrological risks<sup>30</sup>;
- that the impacts of the project on the changing levels of Lake Victoria were not assessed<sup>31</sup>;
- that the project preparation and assessment reports did not address climate change and its possible impact on power production at Bujagali<sup>32</sup>.

No corrective actions have been identified by the World Bank management in response to the Panel's findings.

The Bujagali falls will be completely submerged by the dam's reservoir. By drowning Bujagali Falls – a spectacular series of cascading rapids which Ugandans consider a national treasure – the dam will submerge a place with great cultural and spiritual importance for the Busoga people. The falls site is one of the main national touristic places of the country and represents an important income generating activity in the region.

Against that undisputable environmental and economic loss there is no reliable information on the real generation capacity of the dam. There is no comprehensive cost benefit analysis.

The World Bank Inspection Panel further found, in this respect:

- that the social and environmental assessment was not conducted in a fully adequate manner<sup>33</sup>;
- that the impact of the Project on the Lake Victoria was not assessed<sup>34</sup>;
- that economic and environmental alternatives to the Project were not or not properly analysed and considered<sup>35</sup>.

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<sup>29</sup> Ministry of Energy and mineral development, statement public hearing April 2007 annexed to Report of public officer on public hearing held at Jinja secondary school hall, Jinja, 11 April 2007 (available at NEMA library). Presiding officer: Charles Wana Etyam.

<sup>30</sup> World Bank Inspection Panel Report, p.xxvii.

<sup>31</sup> World Bank Inspection Panel Report, p.xxviii.

<sup>32</sup> World Bank Inspection Panel Report, p.xxix.

<sup>33</sup> World Bank Inspection Panel Report, pp.xxi-xxii.

<sup>34</sup> World Bank Inspection Panel Report, p.xxviii.

<sup>35</sup> World Bank Inspection Panel Report, pp.xxxi-xxxv.



## **2.2.EIB policies**

Quality and soundness of a project are one of the three pillars for determining the value added of EIB participation to a project<sup>36</sup>. All projects financed by the EIB must be viable in economic, technical and environmental terms<sup>37</sup>.

In developing countries, priority is given to support modern and **efficient** uses of energy and **sustainable energy solutions**<sup>38</sup>.

Pursuant to the Environmental and Social Practices Handbook, it is the duty of the Project Directorate to “*signal, as early as possible in the appraisal cycle, if [...] [the project] might be seriously adversely affected by the results of climate change*”<sup>39</sup>. Projects must be screened to identify the need to take appropriate measures to adapt to climate change, “*it being recognized that for reasons of inertia in the climate change system a degree of climate change is now inevitable*”<sup>40</sup>.

According to the EIB Environmental Statement (2004), protection and improvement of the environment is of central concern to the Bank, and the EIB applies the highest environmental standards<sup>41</sup>.

In regions outside the EU, projects must comply with the principles and standards set by EU policies, subject to local conditions and law (taking into account issues such as income per head, institutional capacity and the costs and benefits of alternative standards)<sup>42</sup>.

Environmental protection and improvements is one of the lending objectives for regions outside the EU in which the EIB operates<sup>43</sup>.

All projects selected by the EIB have to be acceptable in environmental terms<sup>44</sup>. To determine whether a project is acceptable in environmental terms, the Bank carries out an environmental assessment of each investment, based on its in house knowledge and expertise, information provided by the promoter and other evidence from informed opinion and affected parties<sup>45</sup>. A multi-disciplinary EIB team is supposed to visit the site to consult the promoter and local interests and to review the physical circumstances of the project<sup>46</sup>.

In measuring the quality and soundness of a project under pillar 2 of value added, the Bank must assess the environmental soundness of the project<sup>47</sup>, with “[a]dditional emphasis [...] on the issue of environmental sustainability of all projects to benefit from the Bank’s support”<sup>48</sup>. According to the EIB Group’s Statement on Corporate Social Responsibility (2005), “*the EIB carefully assesses the environmental impact of all projects that it finances, ensuring that the necessary mitigating measures are in place*”<sup>49</sup>.

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<sup>36</sup> Eligibility Guidelines, p.4; Corporate Operational Plan 2008-2010, p.10.

<sup>37</sup> Environmental Statement (2004), p.5.

<sup>38</sup> EIB Energy Review (2006), pp.6, 27; Eligibility Guidelines (2007), p.46.

<sup>39</sup> Environmental and Social Practices Handbook (2007), p.44.

<sup>40</sup> Environmental and Social Practices Handbook (2007), p.44.

<sup>41</sup> Environmental Statement (2004), p.1.

<sup>42</sup> Environmental Statement (2004), p.4.

<sup>43</sup> Corporate Operational Plan 2008-2010, p.2.

<sup>44</sup> Environmental procedures (2002), p.3.

<sup>45</sup> Environmental procedures (2002), p.3.

<sup>46</sup> Environmental procedures (2002), p.3.

<sup>47</sup> Corporate Operational Plan 2008-2010, §176.

<sup>48</sup> Corporate Operational Plan 2008-2010, §177.

<sup>49</sup> EIB Group Statement on Corporate Social Responsibility (2005), p.4.

In 2002, the EIB acknowledged that medium and large scale hydroelectric plants – such as the Bujagali dam – often have adverse impacts on the local environment<sup>50</sup>, and expressed the need to shift to small-scale hydro<sup>51</sup>. Despite the Bank's commitment to expand its lending for truly renewable energy project, in 2007 the EIB decided to invest in yet another controversial large scale hydroelectric project.

Pursuant to the EIB Support to Renewable Energies “[e]ach individual project design should [...] be screened against the alternatives (including renewable energy ones) on the basis of defined criteria [...]. The principal and widely recognised selection criteria – without being exhaustive – to be applied to individual projects [...] are:

- quality and reliability of the primary energy source;
- compatibility with existing generation and transmission systems;
- promising potential for demonstration effects and future developments;
- attractive lifecycle energy balance;
- environmental acceptability, including public participation in the decision-making process;
- sound financial and economic returns, taking account of the external benefits of renewable energy whenever it makes sense.”<sup>52</sup>

Projects financed by the EIB must safeguard biodiversity<sup>53</sup>. In support of the general approach described in the sixth Environmental Action Programme and the principles of Directive 92/43 (Habitats), the Bank requires an appropriate assessment of the biodiversity effects of a project, including a detailed assessment of any likely significant effect on protected sites and/or species<sup>54</sup>. The EIB requires that all projects likely to have a significant effect on the environment be subject to an environmental impact assessment (“**EIA**”)<sup>55</sup>.

The Bujagali dam falls within the project categories for which and EIA is required – as listed in Annex I of the EIA Directive<sup>56</sup>. While the EIA is the responsibility of the promoter, the Bank must ensure that the requirements set in the Directive have been met.

According to the EIB Environmental Procedures, each project is rated at appraisal according to its environmental acceptability in terms of<sup>57</sup>:

- its characteristics, size and location (especially with respect to areas of nature conservation and cultural heritage sites)
- the presence/absence of any legal compliance issues
- the quality of the EIA including the nature/extent of public participation
- the environmental management capability of the promoter
- expected environmental impact of the project (land, air, water, humans, flora, fauna, natural assets, cultural heritage)
- appropriateness of the proposed mitigation and/or compensation measures
- presence/absence of any major environment-related project risks for the Bank
- any environmental issues that may arise during construction and operation of the project

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<sup>50</sup> EIB Support to Renewable Energy, in EIB Sustainable Development and Environment Documents (2002), p.20.

<sup>51</sup> EIB and Climate Change, in EIB Sustainable Development and Environment Documents (2002), p.17.

<sup>52</sup> EIB Support to Renewable Energies, in Sustainable Development and Environment Documents (2002), p.24.

<sup>53</sup> Environmental Statement (2004), p.4.

<sup>54</sup> Environmental Statement (2004), p.4.

<sup>55</sup> Environmental Statement (2004), p.4.

<sup>56</sup> Council Directive of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment (85/337/EEC), Article 4(1) and Annex I.

<sup>57</sup> Environmental Procedures (2002), pp.3-4.

The Bank does not accept a project for financing that is likely to have a significant negative environmental impact and/or be of high risk for the environment<sup>58</sup>.

Finally, the Bank is bound by the precautionary principle as set out in Article 174 of the Treaty establishing the European Community and reiterated in the EIB Environmental Statement (2004)<sup>59</sup>.

### Bujagali Project

The Projects Directorate's Appraisal Report<sup>60</sup> and its annexes give little information as to how the Bank carried its own assessment of the environmental and social impact and the general soundness of the project. It seems that the Bank relied largely on the assessments carried out under the supervision of the promoter and national authorities. While the report addresses the above raised concerns, it dismisses all of them and finds the environmental social impact assessment satisfactory and the project sound and acceptable. These conclusions are, however, contradicted by the findings of the World Bank Inspection Report – which suggests that the Bank failed to check and make a proper assessment of the soundness and the acceptability of the project in environmental and economic terms.

## **2.3. Conclusion**

**Economic and environmental soundness of the project were not properly assessed. In particular, neither the effect of climate change on the project nor the impact of the project on the environment and on biodiversity were subject to proper assessment and due consideration. The project thus violates the principles stated in the EIB Environmental Statement and the climate change provisions outlined in the internal procedures summarized in the Environmental and Social Practices Handbook and other EIB Policies.**

## **3. FAILURE TO GUARANTEE FAIR AND ADEQUATE COMPENSATION TO AFFECTED COMMUNITIES**

### **3.1. Main findings**

#### **3.1.1. Naminya resettlement area : resettlement of displaced people was not done in accordance with EIB policies and conditions agreed upon by AES and/or BEL**

Over 150 families were evicted due to the project. 38 of them were resettled in Naminya. The rest chose to be compensated and settle elsewhere.

38 families – that we met during our field mission in April 2009 – were thus resettled in Naminya in

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<sup>58</sup> Environmental Statement (2004), p.5.

<sup>59</sup> Environmental Statement (2004), p.3.

<sup>60</sup> Appraisal Report Bujagali Hydroelectric Project (construction of a 250 MW power plant), Projects Directorate, Energy, Telecoms and Waste Management Department, PJ/ENERCOM/2007-227, 22 March 2007, section 9.1.

2002.

Each family received a piece of land the size of which in proportion to what they owned in Bujagali.

As part of the compensation process, AES had agreed on providing them with the following:

- houses
- electricity
- underground tapwater
- underground water conservation tank
- 2 boreholes
- plastic tanks for collecting water: done – almost each home has one
- electricity
- an allowance
- a school
- a hospital
- a trading market place
- their own legal council
- 12 chickens per family
- 2 goats per family and 3 rams for the whole village

When AES retired from the project, the camp was left unfinished, until BEL came to them and presented itself as the new developer. On taking on the project, BEL agreed on fulfilling AES promises (except for the allowance).

However, still today, more than 7 years after the resettlement took place, many of the obligations that AES then BEL agreed upon have still not been implemented.

- Housing

The houses in which people were resettled were poorly constructed and their structures are not durable on a long-term period.

- Water and electricity

People still have no electricity and no running water. The 2 boreholes have not been dug yet. The only water tank they have was donated by the civil society organisation NAPE. And following those tanks which NAPE donated, BEL also now has provided a water tank per household.

- School

The nursery was only completed early 2009 – and only thanks to pressure from civil society organisations such as NAPE.

The primary school has still not been built. In the meantime and since 2006, two small cramped houses are hosting 142 kids.

Furthermore, BEL refuses to pay for material, books or teachers (whereas the Government of Uganda considers it a private school, thus not subject to public funding).

- Income

Prior to resettlement, all of the families drew their income from fishing. Due to the resettlement, the

people lost their main source of both food and income. AES had promised to build a fish pound, but BEL refused to do so. Women are especially affected by this new state. They used to sell the fish brought in by men. Now they have no jobs and no income.

They grow some beans and vegetables, but given the size of their land, most of the vegetables they grow are for their own consumption. Furthermore, since the market place that was promised to them has still not been built, they do not have a place where to sell them anyway.

- Employment on the construction site

Men were promised jobs on the construction site, but in the end only 2 men from the resettlement camp got a job there.

Finally, AES had promised them that they would have their own local council (which is the official representative at district level). Yet, upon resettlement, they were included into another existing local council. Since the resettled people did not elect any of the members of that council, the council does not represent their interests and they do not have anyone to represent their interests at district level, and thus they have no proper forum to channel their complaints. The people from Naminya feel segregated within the community. Furthermore, as contacts with BEL are supposed to be channelled through council authorities, their lack of representatives within the local council prevents them from implementing their rights. For instance, the fact that they have no representative at the local council makes it more difficult for them to obtain local authorities' signatures that are necessary for getting a job on the construction site.

### 3.1.2. Evictions : affected people were not granted fair and adequate compensation

Most of the people were evicted in 2001, at the time when AES was still involved in the project. In addition to fair and adequate compensation, AES – then BEL – promised people whose land was affected by the Project improved living conditions through access to electricity, water, employment on the construction site, a new market place, new schools, as well as boats and nets (for fishermen).

However, compensation only took place – when it took place – years later. The time in between the moment of their eviction and the moment when they received the compensation was never compensated or taken into account in any way.

Most of the people we met are dissatisfied with the evaluation process and with the amount of compensation granted.

A first evaluation took place in 2000 (conducted by UETCL). People whose land was affected were then shown where on their land the transmission line would pass and told not to grow anything more on those parts. After that nothing happened for 6 years. In the meantime, they stopped using the affected pieces of land, as told, where the evaluators had shown them the line would pass. In 2006 evaluators came back, stating that the evaluation made in 2000 was no longer valid, and conducted a new one. However, during the second evaluation, they considered that those parts of their land that were no longer cultivated – following the 2000 evaluation – were considered abandoned and thus worth nothing.

There was no proper consultation. In 2006 there was some meeting with evaluators, where the evaluators gave them a few oral guidelines and asked them copies of their land titles. But it was not

a consultation, as people were not given any opportunity to express any comments or opinions. That same year, they received an evaluation form (listing what was on their lands) from UETCL, and they were asked to sign it.

Many people signed the evaluation receipt and accepted the money nonetheless, out of ignorance, financial or political pressure. Evaluation forms were written in English and not translated into any of the local languages. Furthermore, many people are illiterate. UETCL made them sign without them knowing what they were signing. Finally, people were not allowed to see the whole document and get a copy of the evaluation form unless they agreed to sign it. Some people feared that if they did not accept, they would get nothing in the end. Some people we met further claim that UETCL tried to intimidate them, threatening them that if they refused UETCL's terms, they would not be compensated at all. In fact, people who have refused to sign did not get access to their files and do not have a copy of their evaluation.

Many people feel they have been cheated and that their property has been undervalued. District rates were not applied. The evaluation makes a distinction between mature/average/young crops. Young crops were not compensated at all.

Further, a number of evicted people were never compensated at all.

As a result of this situation, 557 people decided to file a complaint in court (class action) against UETCL, on the basis of the Constitution and the Land Act which provide for fair and adequate compensation. They applied for a temporary injunction, and the injunction was granted.

In addition to lack of fair and adequate financial compensation, there again, many of the promises that were made by BEL have not been fulfilled, in terms of access to electricity and water, employment, market, construction of new schools, boats and nets supply.

Finally, a number of houses in the area around the construction site – for those were not evicted – have started to crack due to the excavation works. Furthermore, many people in that area are affected by the ongoing blasting coming from the construction site, affecting the health and well being of the people and the cattle in the area. These negative consequences of the project have not been compensated at all.

### 3.1.3. Violation of domestic law

The first thing to consider when analyzing the main claims of the people resident in the area affected by the project is that less than 5% of the population of the entire country is currently connected to the electricity grid and that due to the lack of any transmission line extension the majority of the population not to receive benefits from the project especially in the rural areas.

According to the **Electricity Act (1999)** anyone who wants to present an **application for the license** (in order to create a project concerning the electricity) must carry on and present appropriate studies about the adaption to the landscape, the environmental impact assessments and the impacts of the project on private interests including the ones of affected landowners and holders of their rights (art. 33). Again, according to article 37 of the Act, the **Authority** (The Electric Regulatory Authority – see articles 10, 11 Act) **must take into consideration**, as far as is adequate for the project applied for, the energy needs of the country, region of community, the impact of the operations of the undertaking on the social, cultural and recreational life of the community, and the need to protect the environment and to conserve the natural resources.

Also of great importance is the provision within **Article 62** on “Rural electrification”. It says

that there is a proper obligation of the Government to undertake to promote, support and provide **rural electrification** programs through public and private sector participation in order to a) achieve equitable regional distribution access to electricity, b) maximize the economic, social and environmental benefits of rural electrification subsidies, c) promote expansion of the grid and development of off-grid electrification and d) stimulates innovations within suppliers.

It seems to be clear that **these two rules have not been taken into consideration** considering the amount of population (5% - even rural!!) which can benefit from the project and the strong environmental impact which is easy to appreciate.

Even if a license has been given considering the possibility of preventing these problems strictly following all the rules and the studies of the impact contained in the documents, it is important to consider that if the Authority is of the opinion that a **licensee is contravening a condition** of a license or a requirement under the Act or other laws, it shall **direct the licensee to comply with that condition or requirements** (art. 40) **even acting immediately if necessary** in order to protect public health, safety, environment or to prevent the dissipation of property or assets.

The **Electricity Regulatory Authority** has all the main functions concerning the matter to which it is dedicated and, in particular, the function of issuing licenses for the generation, transmission, distribution or sale of electricity and the ownership or operation of transmission systems and to make and enforce directions to ensure compliance with licenses issued under the Act (art. 10). **It has to exercise its power in a manner that is open and objective, fair and reasonable, nondiscriminatory and promoting fair competition** (art. 11). So it has the power and the duty of acting if the rules are violated, even immediately with the specific urgent procedure defined above. We must remember that the Authority must also control the **price of electricity** in the country, another great problem related to the considered project, as already mentioned above.

Another important rule to consider is the one provided for in **Article 35** which says that “the authority shall, within forty-five days after receiving the application, cause a notice of the application to be published in the Gazette and in at least one national newspaper of wide circulation in Uganda which must contain a **direct invite to the affected parties and local authorities in areas affected by the project** who object to the granting of the license, whether on personal, environmental or other grounds, to lodge with the authority an objection within a specified time, being not less than thirty days of the notice”. This rule underline the importance of the participation of the local community to the discussions concerning the impact of the project on the environment and the life of the people of the area which have complaint about the lack of discussions about the considered problem.

We also must say that any question as to the entitlement of any person to **compensation for right of use** as to the sufficiency of compensation shall be determined as if the land has been acquired under the Land Act and the Land Acquisition Act and every claim shall be lodged with the authority within one year (art. 70).

There is a special tribunal for the matter which is the **Electricity Dispute Tribunal** (art. 93) which has jurisdiction to hear and determine all matters referred to it relating to the electricity sector (art. 109) and it is possible to make an appeal to the High Court (art. 110.3).

Furthermore, it is important to consider the situation with respect to the rules contained in the “**Land Act**”. After having considered if the way of occupying the land has been made in accordance with all the provisions of the Land Act and with all the authorizations required to correctly use the land (art. 2 and following and art. 40.4 specific for non-citizens which textually affirm that “a non-citizen shall not acquire or hold mailo or freehold land”) it is mainly important to read the Part III entitled “Control of Land use”. At the article 42 the Act says that **the Government or a local government may acquire land** in accordance with articles 26 and 237 of the Constitution; in order to acquire the land it is necessary to give a **proper compensation**; and every dispute in this matter is decided under the jurisdiction of the District Land Tribunal – art. 76, 77; also the **article 43** says that “a person who owns or occupies land shall manage and utilize the land **in accordance with the**

Forests Act, the Mining Act, the National Environment Act, the Water Act, the Uganda Wildlife Act **and any other law** “– i.e. even the Electricity Act. According to this matter we have already underlined **how many people have not received a proper compensation and a number of evicted people were not compensated at all!**

In order to continue in the analysis of the Land Act, we must say that the **article 45** also affirms that the Government or a local government shall hold into trust for the people and **protect natural resources for the common good of the citizens of Uganda**, that the Government or a local government shall not lease out or otherwise alienate any natural resource and may grant concessions or licenses or permits in respect of a natural resource subject to any law and also, that “**Any use of the land shall conform to the provisions of the Town and Country Planning Act and any other law**”. We also have to say that the Uganda Land Commission, according to the art. 49 of the Act shall “hold and manage any land in Uganda which is vested in or acquired by the Government in accordance with the Constitution”. It is also important to remember the **Article 70** entitles “**Water rights**” which says at .1 that “*all rights in the water on any natural spring, river, stream, watercourse, pond or lake on or under land, whether alienated or unalienated, shall be reserved to the Government; and no such water shall be obstructed, dammed, diverted, polluted or otherwise interfered with, directly or indirectly, except in pursuance of permission in writing granted by the Minister responsible for water or natural resources in accordance with the water act*”.

For any dispute concerning the land, we must have, for each district, a Tribunal named “**district land tribunal**” (art. 74) which has the jurisdiction (art. 76) and many subcounty land tribunals (art. 80 and following) with a right of appeal up to the High Court (art. 87).

#### 3.1.4. Cultural and spiritual resettlement

The Bujagali Falls are an important cultural and spiritual site. Jajja Bujagali is the 39<sup>th</sup> cultural and spiritual leader, with tens of thousands of followers, including people from other areas (Kampala, Jinja, Mukono).

No proper consultation ever took place with Jajja Bujagali and the spiritual community of Bujagali Falls. Instead, Jajja Bujagali was marginalised from the process, and a fake resettlement ceremony was organised with the complicity of the Government of Uganda.

As a result, no proper spiritual resettlement ever took place.

#### 3.1.5. World Bank Inspection Panel findings

The World Bank Inspection Panel found many policy violations with regard to the resettlement process<sup>61</sup>, including:

- improper consultation of affected communities and inaccurate assessment of social impacts and mitigation measures;
- lack of communication with affected people to address the concerns of the displaced persons with regard to commitments made by AES;
- failure to provide adequately for loss of livelihood associated with the loss of fishing and agriculture;
- absence of focus on vulnerable people;
- physical problems and deterioration of some of the houses and structures within Naminya

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<sup>61</sup> World Bank Inspection Panel Report, pp.xlii-lvi.



- resettlement camp;
- existence of an outstanding controversy of high importance to the affected people, as AES made statements which may have been reasonably interpreted as a promise to deliver electricity connections to affected households;
- failure to achieve sharing in project benefits and community development;
- failure to identify culturally and spiritually affected people and to address their concerns.

### **3.2.EIB Policies**

According to the *EIB and its Contribution to Sustainable Development*, the EIB must “ensur[e] **that poor groups in society are at least no worse off after an EIB project than before**”.

Pursuant to the *EIB Group's Statement on Corporate Social Responsibility* (2005):

*“The EIB’s approach to social issues in developing countries aims to **ensure that projects protect the interests of affected people**. The Bank is required by its external mandates to take social issues into account in its project financing. Attention is also increasingly being paid to **exploring opportunities to enhance social well-being, notably through income-earning opportunities and improved access to social and economic services for the poor**. Linked to its environmental responsibilities, the Bank’s Projects Directorate is responsible for the social assessment of EIB projects in developing countries.”*<sup>62</sup>

In its Guidance Notes on *Taking Social Issues into Account in Projects Outside the EU*<sup>63</sup>, the Bank acknowledges that among the key social issues are<sup>64</sup>:

- population movements and resettlement as a direct result of the project
- the rights and livelihoods of vulnerable groups affected by the project
- potential local conflicts associated with rising inequality attributable to the project
- cultural heritage issues associated with historically significant and sacred sites

The Bank also recognised that projects can have cumulative impacts associated with changes in land values, land invasions, changes in the provision of social amenities and in local political arrangements, and it is part of the role of the Bank to ensure that adverse impacts are mitigated where possible<sup>65</sup>. It further emphasised that projects will impact men and women in different ways, and the needs to ensure that women's interests are addressed<sup>66</sup>.

In assessing investment opportunities in countries outside the EU, the Bank has an obligation of due diligence to look at social issues so as to understand better the likely effects of a project on people and as part of its “*fiduciary responsibilities*”<sup>67</sup>. This is part of its task to determine the suitability of projects for Bank financing.

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<sup>62</sup> EIB Group's Statement on Corporate Social Responsibility (2005), p.7.

<sup>63</sup> Taking Social Issues into Account in Projects Outside the EU, ENVU Guidance Notes, July 2006, Annex 12 of the Environmental and Social Practices Handbook (2007), pp.98-132.

<sup>64</sup> Taking Social Issues into Account in Projects Outside the EU, ENVU Guidance Notes, July 2006, Annex 12 of the Environmental and Social Practices Handbook (2007), pp.102-103.

<sup>65</sup> Taking Social Issues into Account in Projects Outside the EU, ENVU Guidance Notes, July 2006, Annex 12 of the Environmental and Social Practices Handbook (2007), p.103.

<sup>66</sup> Taking Social Issues into Account in Projects Outside the EU, ENVU Guidance Notes, July 2006, Annex 12 of the Environmental and Social Practices Handbook (2007), p.103.

<sup>67</sup> Taking Social Issues into Account in Projects Outside the EU, ENVU Guidance Notes, July 2006, Annex 12 of the Environmental and Social Practices Handbook (2007), p.103.

Bank staff will assure themselves that the Promoter has adequate capacity to handle the various social issues that may arise during project preparation and implementation<sup>68</sup>. The Bank needs to assess the overall approach and ability of the Promoter to address environmental, social and governance issue, including (i) respect for national and international legal instruments and the individual civil and political rights associated with them and (ii) respect for the social, economic and cultural rights of the communities in or adjacent to which the Promoter operates<sup>69</sup>.

In addition to ensure compliance with minimum standards, the EIB must encourage the pursuit of positive social outcomes<sup>70</sup>.

Guidance Note 1, *Dealing with Population Movements and Resettlements*, provides the following objectives:

- avoid or minimize development-induced displacement of people;
- mitigate negative social impacts of those losing assets, through the provision of appropriate compensation and/or employment opportunities regardless of the legality of existing land tenure arrangements;
- provide adequate information to and opportunities for informed participation by those affected;
- assist displaced persons to improve their former living standards and income earning capacity

In projects such as the Bujagali project, where the Bank is not the leading international investment partner and where other IFIs are involved which have developed their own resettlement and relocation policies, the Bank must at least ensure that those policies are adequate and are being implemented<sup>71</sup>.

Prior to approval Bank staff should be in receipt of a satisfactory resettlement plan<sup>72</sup>. Arrangements for implementation of the plan should be agreed with the Bank and incorporated into the project agreement. It is important during the early phases of implementation to review progress and make early corrections if necessary<sup>73</sup>.

Guidance Note 4, *Addressing Occupational and Community Health and Safety*, provides the following objectives<sup>74</sup>:

- avoiding or minimizing risks and impacts to the health and safety of workers employed in enterprises supported by the Bank's investment projects;
- avoiding or minimizing risks and impacts to the health and safety of communities in the vicinity of projects supported by Bank investments;
- ensuring that employees and company property are safeguarded in a legitimate manner;
- supporting the promotion of programmes to promote community health and reduce the

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<sup>68</sup> Taking Social Issues into Account in Projects Outside the EU, ENVU Guidance Notes, July 2006, Annex 12 of the Environmental and Social Practices Handbook (2007), p.105.

<sup>69</sup> Taking Social Issues into Account in Projects Outside the EU, ENVU Guidance Notes, July 2006, Annex 12 of the Environmental and Social Practices Handbook (2007), p.106.

<sup>70</sup> Taking Social Issues into Account in Projects Outside the EU, ENVU Guidance Notes, July 2006, Annex 12 of the Environmental and Social Practices Handbook (2007), p.107.

<sup>71</sup> Taking Social Issues into Account in Projects Outside the EU, Guidance Note 1, *Dealing with Population Movements and Resettlement*, Annex 12 of the Environmental and Social Practices Handbook (2007), p.114.

<sup>72</sup> Taking Social Issues into Account in Projects Outside the EU, Guidance Note 1, *Dealing with Population Movements and Resettlement*, Annex 12 of the Environmental and Social Practices Handbook (2007), p.115.

<sup>73</sup> Taking Social Issues into Account in Projects Outside the EU, Guidance Note 1, *Dealing with Population Movements and Resettlement*, Annex 12 of the Environmental and Social Practices Handbook (2007), p.115.

<sup>74</sup> Taking Social Issues into Account in Projects Outside the EU, Guidance Note 4, *Addressing Occupational and Community Health and Safety*, Annex 12 of the Environmental and Social Practices Handbook (2007), p.122.

spread of major communicable diseases (esp. HIV/AIDS, tuberculosis and malaria)

The Bank team should normally screen any project proposal to ensure that appropriate health and safety standards are in place. The Bank recognised that project activities can increase exposure to risks and negative impacts, which can arise from such things as equipment failure, increased environmental pollution, the spread of communicable diseases through increased in-migration and unplanned and informal settlement development<sup>75</sup>.

In this respect, initial screening should determine how the Promoter deals with the prevention of negative project impacts, including changes in population composition through in-migration (e.g. exposure to communicable diseases, pressure on existing natural resources, increased vulnerability of local populations) and resource use related impacts (e.g. through modification of water courses) and structural components impacts (e.g. from failure of dams)<sup>76</sup>.

Bank staff should ensure that the Promoter is aware that the precautionary principle is the overriding principle guiding action to minimize environmental degradation and health impact. This shifts the burden of proof from one of proving environmental harm to one of proving environmental safety<sup>77</sup>.

When it comes to physical cultural heritage, these issues are already assessed by the EIB within its existing environmental assessment framework and may form part of a formal EIA<sup>78</sup>. The Bank also refers to the requirements laid down in the Council of Europe Framework Convention on the Value of Cultural Heritage for Society<sup>79</sup>.

### Bujagali Project

According to both the Projects Directorate's Appraisal Report<sup>80</sup> and the proposal from the Management committee to the Board of Directors on Bujagali Hydroelectric Project<sup>81</sup>:

***“The social impact of the project is expected overall to be positive – first of all in general by improving power supply on a national scale thereby supporting economic development – but also by creating direct and indirect local employment during construction, and improving water supply and health care for the project-affected people. Other initiatives are also being developed by the borrower in coordination with the local communities, e.g. improved fisheries, education, public health related programmes to combat malaria, HIV/AIDS and other sexually transmitted diseases.”***

With regard to employment, the Appraisal Report states that “[p]roject implementation is expected to create temporary employment equivalent to 3400 person-years, to a large extent drawn from the local population.”<sup>82</sup>

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<sup>75</sup> Taking Social Issues into Account in Projects Outside the EU, Guidance Note 4, Addressing Occupational and Community Health and Safety, Annex 12 of the Environmental and Social Practices Handbook (2007), p.122.

<sup>76</sup> Taking Social Issues into Account in Projects Outside the EU, Guidance Note 4, Addressing Occupational and Community Health and Safety, Annex 12 of the Environmental and Social Practices Handbook (2007), p.123.

<sup>77</sup> Taking Social Issues into Account in Projects Outside the EU, Guidance Note 4, Addressing Occupational and Community Health and Safety, Annex 12 of the Environmental and Social Practices Handbook (2007), p.123.

<sup>78</sup> Social Assessment of Projects outside the EU (2006), p.4.

<sup>79</sup> Social Assessment of Projects outside the EU (2006), p.4.

<sup>80</sup> Appraisal Report Bujagali Hydroelectric Project (construction of a 250 MW power plant), Projects Directorate, Energy, Telecoms and Waste Management Department, PJ/ENERCOM/2007-227, 22 March 2007, section 9.1.

<sup>81</sup> Bujagali Hydroelectric Project – Proposal from the Management Committee to the Board of Directors, CA/406/07, Document 07/160, 9 May 2007, section 3.6.

<sup>82</sup> Appraisal Report Bujagali Hydroelectric Project (construction of a 250 MW power plant), Projects Directorate, Energy, Telecoms and Waste Management Department, PJ/ENERCOM/2007-227, 22 March 2007, section 6.3.

Annex D1 of the Appraisal Report (environmental summary sheet – overall impact assessment) notes: “*Power supply unfortunately not guaranteed to project affected people, but is being considered*”.

Annex D2 of the Appraisal Report (environmental summary sheet – residual impact assessment) specifically provides for a number of mitigation measures:

- compensation of land owners (affected either by the dam or by its operation) at market terms
- proper resettlement of cultural heritage (spirits)
- hiring of local workers

This information was taken into account by the Bank when assessing the overall acceptability of the project, and thus due implementation of the mitigation measures described a condition for the bank’s financing<sup>83</sup>.

### **3.3.Conclusions**

**People affected by the project were not compensated in a fair and adequate way, in violation of the Bank’s most basic policies.**

**Many promises made by the promoter (AES and/or BEL), which created legitimate expectations in the minds of affected people were never fulfilled.**

**The project not only failed to improve the livelihoods of the affected people, as provided for in the above mentioned policies, but it had negative social and economic impacts that were not or not fully mitigated. While most affected people consented to the project on the promise that their lives would be better off, many of them have seen their living conditions worsen due to the implementation of the Bujagali project, in clear violation of EIB policies.**

## **4. FAILURE TO ENSURE THE IMPLEMENTATION OF MITIGATION MEASURES: KALAGALA OFFSET**

### **4.1.Main findings**

The Project requires the flooding of important natural habitats including the Bujagali Falls, the riverbank portions of the Jinja Wildlife Sanctuary and the Nile Bank Central Forest Reserve, a protected area, and the island between the sections of the Bujagali rapids. In addition, the associated transmission lines would run through the important and valuable Mabira forest, and an area of important and productive wetlands.

Furthermore, the Bujagali Falls which are to be inundated is an important tourist site – involving activities such as camping, rafting, etc. – and a main source of income for many of the local population and for Uganda in general<sup>84</sup>.

As a mitigation measure, the Government of Uganda committed to establishing the Kalagala falls as

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<sup>83</sup> Environmental and Social Practices Handbook (2007), §§170-171.

<sup>84</sup> Entrance fees are 3000 Ugandan shillings for non-Ugandan citizens, 2000 for Ugandan citizens. When we visited the site, we could see that the site attracted many people, even during a week day, including local and foreign tourists, school trips.

an appropriate offset for the natural habitats that would be inundated by the Project as well as for tourism. This offset was initially agreed upon in 2002 – at the time of the first project – and is now provided for in the Indemnity Agreement between the World Bank and the Government of Uganda. At the public hearing held in April 2007, BEL reiterated its promise that Kalagala offset will be established.

Uganda's undertakings to fulfil its obligations to the Kalagala offset are specified in the Indemnity Agreement<sup>85</sup>:

- setting aside the Kalagala Falls site exclusively to protect its natural habitat and environmental and spiritual values in conformity with sound social and environmental standards
- carry out tourism development activities at the Kalagala Falls site in conformity with sound social and environmental standards
- not to develop power generation that could adversely affect the ability to maintain the Kalagala Falls
- conserve through a sustainable management programme and budget the ecosystem of Mabira central forest reserve, Kalagala central forest reserve and Nile Bank central forest reserve

The plan shall set specific actions to implement these goals.

The International Union for Conservation of Nature (“IUCN”), Kampala office, became involved in December 2008, when it was put in charge of facilitating the planning and monitoring the whole process.

At the time the field mission met people from IUCN, in April 2009, they were still working on establishing a Sustainable Management Plan for Kalagala offset, and were expecting to complete the plan within the next few months. There is now a draft and the process is on-going.

Once the Sustainable Management Plan is finalised, the Government of Uganda will be responsible for implementing the plan, under monitoring by IUCN.

However, there exist serious concerns – amongst IUCN and civil society organisations both within and outside Uganda – as to the seriousness of the Government’s commitment with respect to Kalagala offset.

Indeed, while the Project is moving forward, expected mitigation measures are still way behind schedule. Evictions and the first preparatory measures for the dam started as early as 2001-2002. The construction of the dam started mid-2007 and is progressing at a steady pace, expecting to be finished in 2011-2012. Yet, with regard to Kalagala offset, the sustainable Management Plan has still not been adopted, and while tourism facilities are being constructed, there is still no certainty as to what will happen to Kalagala. This raises doubts as to the Government’s intentions, as there is no legally binding, long term commitment on its part not to use Kalagala for yet another hydroelectric power project.

With regard to the Kalagala offset, the World Bank Panel made the following findings:

*“there is evidence that the offset site is not being subject to appropriate conservation and mitigation measures in conformity with sound social and environmental standards [...] the Kalagala offset may not achieve the purpose for which it was set aside [...] the proposed environmental mitigation and*

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<sup>85</sup> According to information provided by the IUCN office in Kampala - IUCN brochure “Development of sustainable management plan for Kalagala offset”.

*monitoring plan is silent on the need for monitoring of enhancement and offset plantings. Also, monitoring of replacement plantings has not been included in the terms of references of the witness NGO that has been appointed to monitor Project compliance with IDA conditionalities”<sup>86</sup>*

#### **4.2.EIB Policies**

Adequacy of mitigating measures is part of the assessment of the quality and soundness of a project in terms of its value added<sup>87</sup>. The Bank must assess the environmental impact of all projects that it finances, ensuring that the necessary mitigating measures are in place<sup>88</sup>. Pursuant to the EIB Environmental Procedures, each project is rated at appraisal according to its environmental acceptability, including appropriateness of the proposed mitigation measures<sup>89</sup>.

In its appraisal report, the EIB Projects Directorate noted:

*“Part of a small wildlife sanctuary (16 ha) along the river, mainly known for its birdlife, will be partly inundated. This will be mitigated by enhancement planting in surrounding areas and by similar additional measures 10 km downstream of Bujagali, at the so-called Kalagala Offset site that previously has been considered for hydropower development, but which the Government in agreement with the lenders has earmarked for development of eco-tourism. Future hydropower development on the Nile shall instead take place further downstream, initially at Karuma (with up to 250 MW).”<sup>90</sup>*

Annex D2 of the Appraisal Report (environmental summary sheet) specifically provides, as part of mitigation measures *“Enhancement planting in other places, and reserve Kalagala Off-set Site”*. Amongst the Project risks, it is emphasised that *“Kalagala could otherwise be developed for hydropower”*.

#### **4.3.Conclusion**

**There exist serious doubts as to the Government of Uganda’s commitment to implement the Kalagala offset as expected. At the moment, there is still no clear and legally binding commitment that Kalagala Falls will be developed in a appropriate manner so as to compensate for the environmental and economic impacts of the project on the Bujagali Falls and its surroundings. Furthermore, there is nothing to prevent the Government, in the future, to use Kalagala Falls as a potential hydropower project. This lack of adequate and effective mitigation measures is in violation of the Bank’s policies.**

### **5. PLAINTIFS’ REQUESTS**

It is the role of the Bank to determine and check whether the social and environmental conditions for its financing are met. There are three stages where these checks can be made and thus three

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<sup>86</sup> World Bank Inspection Panel Report, pp.xxiv-xxv.

<sup>87</sup> Corporate Operational Plan 2008-2010, §177.

<sup>88</sup> EIB Group Statement on Corporate Social Responsibility (2005), p.4.

<sup>89</sup> Environmental Procedures (2002), p.4.

<sup>90</sup> Appraisal Report Bujagali Hydroelectric Project (construction of a 250 MW power plant), Projects Directorate, Energy, Telecoms and Waste Management Department, PJ/ENERCOM/2007-227, 22 March 2007, section 9.1, p.7.

different types of control by the Bank: signature of finance contract, disbursement and particular undertakings<sup>91</sup>.

With regard to the Bujagali project, the finance contract was signed with BEL in December 2007. According to the information granted by the EIB communication office, on 3 June 2009, the EIB had disbursed USD 42.5 million Euros, thus almost half of the total amount of the loan.

**The plaintiffs request that the Bank should not disburse any more money until:**

- the Bank undertakes an independent study on the impact of the project on fisheries and on the water level of the Lake Victoria, as well as an additional, independent assessment of the electricity expected to be produced, taking into account all relevant factors including climate change risks<sup>92</sup>;
- The various legal cases concerning the compensations (the complaint filed by 557 on the transmission line compensation and the *caveat* issues) filed in domestic courts are settled;
- Measures are taken so as to guarantee and ensure that the Kalagala offset will be promptly and effectively implemented.

More specifically, with regard to the **impacted communities**, the plaintiffs' requests are that before any new disbursement is made, the following actions are taken and fully implemented:

- the Bank's staff meet with representatives of affected people and civil society interests, including NGOs, listed below, so as to develop a constructive dialogue with all stakeholders<sup>93</sup>;
- the compensation process is reviewed so that all people affected by the construction of the dam as well as the transmission line are compensated in a fair and adequate manner;
- new unexpected impacts, such as cracks resulting from excavation works, material and psychological nuisance caused by repetitive blasting, are also subject to compensation;
- all people affected by the construction of the dam and/or of the transmission line are granted access to electricity;
- with regard to the people resettled in Naminya, the promises made by BEL are fulfilled, including : construction of a primary school; provision of running water and electricity, construction of a market place; expansion of the land granted so as to compensate the loss of their former income; organisation of a training in microsaving finance;
- affected people are granted equal access to jobs on or related to the construction site;
- cultural and spiritual impacts are mitigated and compensated in a fair and adequate manner.

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<sup>91</sup> See Environmental and Social Practices Handbook (2007), §193.

<sup>92</sup> Environmental Statement (2004), p.6. "At all stages the EIB mainly works with information provided by the promoter. This will be supported by information and analysis requested and even financed by the Bank. It may also be supplemented by information and analysis obtained from third parties and complemented by on the spot visits."

<sup>93</sup> Environmental Statement (2004), p.6. "The EIB works with national and regional authorities. It also seeks to develop a constructive dialogue with the public, including representatives of civil society interests, such as NGOs and industry and consumer organisations, on its general approach on the environment, as well as, usually at the local level, on the environmental aspects of individual projects."

## 6. LIST OF PLAINTIFFS

### Affected communities

Wakisi: (Jinja area - affected by both dam and transmission line)

George Kirimungo (Malindi village – Wakisi sub-county) 0715 509 597

Muyinda Muzahamu (Malindi village – Wakisi sub-county) 0775 547 864

Kigenyi Yusufu (Malindi village – Wakisi sub-county) 0752 375 520

(representing the 557 persons who filed the complaint before Ugandan courts)

Jaja Bujagali (cultural and spiritual leader) and his wife Lukowe Bujagali 0772 484 704

Naminya resettlement camp executive committee:

Jeol Mukisa (chairman) - 0775 291 535

Grace Nafuna (secretary) - 0782 599 892

Francis Nyobi (advisor) - 0782 947 405

Teddolah Nakamya (member)

Kaloli Oyete (member) - 0777 091 989

Lukiya Kawuma (member) - 0779 841 089

### Civil society organisations

CSO	Country	Contact
NAPE	Uganda	<a href="mailto:nape@nape.or.ug">nape@nape.or.ug</a> ; <a href="mailto:napeuganda@yahoo.com">napeuganda@yahoo.com</a> ; +256 (0) 414 530180 +256 (0) 414 534453
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