



Complaints Mechanism - Complaints Mechanism- Complaints Mechanism- Complaints Mechanism

**Bujagali Hydroelectric Project**  
Jinja, Uganda

**Complaint SG/E/2009/09**

# **CONCLUSIONS REPORT**

30 August 2012

---

Prepared by

**Complaints Mechanism**

[Redacted]  
[Redacted]  
[Redacted]

**External Consultants**

[Redacted]  
[Redacted]  
[Redacted]  
[Redacted]

---

[Redacted]  
[Redacted]  
[Redacted] ts M [Redacted]

External Distribution  
Complainants  
Borrower  
Government of Uganda

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).

If complainants are unhappy with the reply they may, on a pure voluntary basis, within 15 days of the receipt of the EIB-CM's reply, submit a confirmatory complaint. Furthermore 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 may also 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 violated human rights. Some examples, as set by the European Ombudsman, are: administrative irregularities, unfairness, discrimination, abuse of power, failure to reply, refusal of 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>

### **Acknowledgements**

The EIB-CM would like to thank all people and organisations with whom they have interacted during the investigation of this complaint, in particular it wishes to express gratitude to those that have made themselves available during our missions, such as the complainants and the project affected people, legal counsel, the Borrower, representatives of the Government of Uganda and experts.

The EIB-CM expresses its appreciation to the EIB staff, in particular those that assisted in the field missions. Furthermore the EIB-CM is grateful to the staff from co-financing institutions, as well as to its counterparts within the World Bank Inspection Panel and the Independent Review Mechanism of the African Development Bank.

The EIB-CM thanks the experts Graham Hadley, Dennis Creamer, Eric van der Elst & Associates, Alex Muhweezi from Futures Dialogues International Limited, and Control Risks for providing valuable specialist information.

Without the support and valuable contributions of everybody concerned, the preparation of this report would not have been possible.

**TABLE OF CONTENTS**

**EXECUTIVE SUMMARY ..... 6**

**PART I..... 13**

1. SUMMARY OF ALLEGATIONS ..... 13

2. CLAIM..... 14

3. BUJAGALI HYDROELECTRIC PROJECT ..... 15

4. BACKGROUND INFORMATION ON PREVIOUS COMPLAINTS ..... 17

5. COMPLAINT HANDLING ..... 19

6. WORK PERFORMED ..... 20

7. COMPLIANCE ISSUES ..... 21

    7.1. The EIB role and mandate ..... 21

    7.2. Failure to Meet EU Development Objectives ..... 22

    7.3. Assessment of the economic and environmental soundness of the project ..... 23

    7.4. Failure to guarantee fair and adequate compensation to affected communities ..... 24

    7.5. Kalagala Offset..... 25

8. FINDINGS AND CONCLUSIONS..... 27

    8.1. Lake Victoria water levels ..... 27

    8.2. Climate change risks ..... 27

    8.3. Economic prospects, affordability and sustainability ..... 28

    8.4. Resettlement Action Plan (Naminya Community)..... 29

    8.5. Compensation of T-line affected people ..... 31

    8.6. Blasting effects ..... 32

    8.7. Spiritual matters ..... 34

    8.8. Kalagala Offset..... 36

9. RECOMMENDATIONS ..... 38

    9.1. Economic feasibility and affordability ..... 38

    9.2. Resettlement issues..... 38

    9.3. Compensation of T-line affected people ..... 38

    9.4. Blasting effects ..... 38

    9.5. Spiritual matters ..... 38

    9.6. Kalagala Offset..... 39

10. SUSPENSION OF DISBURSEMENTS ..... 40

LIST OF ACRONYMS ..... 41

**PART II – SUPPORTING INFORMATION ..... 42**

1. ECONOMIC PROSPECTS, AFFORDABILITY AND SUSTAINABILITY ..... 42

    1.1. Scope of review ..... 42

    1.2. Background ..... 43

    1.3. Update of project costs ..... 45

    1.4. Analysis ..... 50

    1.5. Concluding observations ..... 54

    1.6. Rural Poverty and Diversification ..... 55

2. COMMUNITY AND RESETTLEMENT ISSUES ..... 57

    2.1. Background ..... 57

    2.2. The Community Development Action Plan ..... 58

    2.3. Implementation issues ..... 60

    2.4. General resettlement conditions ..... 65

    2.5. BEL Newsletter ..... 66

3.	COMPENSATION OF T-LINE AFFECTED PEOPLE .....	67
3.1.	Background information.....	67
3.2.	Position by UECTL.....	67
3.3.	The Compensation Strategy .....	70
3.4.	Disputes and Complaints.....	72
3.5.	Grievance Resolution.....	76
3.6.	Court Cases.....	78
4.	BLASTING EFFECTS.....	88
4.1.	Allegations.....	88
4.2.	Borrower's views .....	88
4.3.	EIB-CM site visits.....	89
4.4.	Follow-up by the Borrower .....	90
4.5.	Status of Information available.....	91
4.6.	Assessment of the blasting damages on local constructions .....	91
4.7.	Other impacts of blasting activities.....	95
4.8.	Draft report by the Witness NGO on blasting effects.....	95
4.9.	Notes on the MONITORING SHEET.....	96
4.10.	Review of the SALINI STUDY.....	97
4.11.	The Revey Study.....	99
5.	SPIRITUAL ISSUES.....	103
5.1.	Background information .....	103
5.2.	Responsibility for cultural issues.....	104
5.3.	Bujagali Environmental Monitoring Committee .....	104
5.4.	Busoga Kingdom views .....	106
5.5.	Conclusions .....	106
6.	THE KALAGALA OFFSET SUSTAINABILITY MANAGEMENT PLAN (KSMP) .....	108
6.1.	The assessment.....	108
6.2.	Background .....	109
6.3.	Financing the implementation.....	109
6.4.	Relationship with other plans.....	110
6.5.	Coordinating KMSP implementation .....	110
6.6.	Institutional structures .....	111
6.7.	Performances, collaboration and supervision .....	111
6.8.	Information management and reporting.....	112
6.9.	Monitoring and Evaluation.....	112
6.10.	Non- state actors engagement .....	112
6.11.	International Waters .....	112
6.12.	Biodiversity conservation.....	113
6.13.	Ecotourism developments .....	113
6.14.	Community development .....	113
6.15.	Management of Cultural resources.....	114
6.16.	Recommendations .....	115
7.	BACKGROUND INFORMATION.....	118
7.1.	Timeline of events.....	118
7.2.	Bujagali Environmental Monitoring Committee (BEMC) .....	121
7.3.	Panel Of Environmental and Social Experts (PoESE).....	122

## CONCLUSIONS REPORT

### EXECUTIVE SUMMARY

#### The complaint

On 2 December 2009 NAPE (Uganda), Counter Balance (Europe), CLAI (Italy), Sherpa (France), and legal representatives of locally affected people launched a complaint with the EIB-CM. The complainants alleged non-compliance with a substantial number of the Bank's policies, standards, guidelines and procedures, leading to:

- Failure to meet European development objectives
- Failure to assess the economic and environmental soundness of the project
- Failure to guarantee fair compensation to affected communities
- Failure to ensure the implementation of the mitigation measures

On that basis the complainants claim to suspend disbursements until above issues were correctly addressed.

#### Work performed by the EIB-CM

The EIB-CM work aims at identifying possible maladministration by the EIB. In doing so, the EIB-CM (i) assessed if significant harm has been done by the financed project, which was not appropriately mitigated, (ii) reviewed the Bank's due diligence process in assessing compliance with applicable rules, regulations, Bank's policies, standards and procedures, and (iii) assessed if current Bank's policies, standards and procedures failed to provide adequate protection.

On the basis of an Initial Assessment, the EIB-CM identified the major areas of concern, including negative environmental, social and developmental impacts, mostly regarding the project implementation, for which specific investigation work was undertaken:

- Economical feasibility and affordability
- Resettlement Action Plan (Naminya Community)
- Compensation of T-line affected people
- Spiritual matters
- Blasting effects (mainly Malindi Community)
- Kalagala Offset

In doing so, the EIB-CM took stock of the large number of issues/allegations, of the unresolved complexity/controversial nature of some of the issues (e. g. climate change impacts) and of the resources available, and concentrated its work on practical implementation issues and in ensuring effective addressing of related negative impacts. In particular, the EIB-CM took the outcome of past investigations by the World Bank's Inspection Panel (WB-IP) and by the African Development Bank's Independent Recourse Mechanism triggered by a similar complaint into account.

## Bank's Compliance

Although the Bank has been found to be broadly compliant with its mandate and applicable policies, it must be noted:

In some cases the negative environmental and social impacts found on the ground have not been adequately mitigated which suggests that these impacts and related mitigation measures may have not been fully assessed ex-ante, although they were correctly identified at appraisal time. Indeed, local complexities - relating to the land expropriation and compensation processes, to the implementation of the Resettlement Action plan, to the implementation of the Kalagala offset and to the spiritual/cultural issues - seem to have been under-estimated.

In addition, the monitoring and follow-up of the above and any further consequential concerns related to the implementation of the project, such as the blasting effects and the spiritual matters, seem not to have taken sufficiently seriously the concerns expressed by the project affected people.

## Development Objectives

The EIB does not have a clear development mandate and is 'only' involved at project level, having no influence in shaping the Country policies. This has been fully recognised in the past tripartite discussion (with the European Council, Parliament and Commission) regarding the EIB external mandate. The recent clarification of, and the on-going discussions on the EIB's developmental role may contribute to determine the Bank's capacity to act in this respect in the future. In this context, it is fully recognised that, being grid-connected, the Bujagali Hydroelectric project does little in the short/medium term to provide affordable electricity to an increasing part of Uganda's population and to alleviate rural poverty.

However, one has to take into consideration that (i) it is key to alleviate a serious power crisis in Uganda, that has been a constraint on the economic growth in that country and (ii) its objective is to develop the least cost option for power generation and can therefore not be considered as a distribution project. In such a project, the affordability is not the major driver. However, the review of affordability of electricity shows that the Bujagali Hydroelectric project will probably exert downward pressure on tariffs.

## Lake Victoria water levels

Since the Bujagali HPP is downstream, it will reuse the water coming from the upstream complex. The water flow arriving at the Bujagali Hydropower Facility is fully controlled by discharges at the Nalubaale/Kiira hydropower dam complex, upstream of the Bujagali dam site. In consequence, the Bujagali facility will have no control on releases from Lake Victoria. Specifically, the water passing through Nalubaale and Kiira and subsequently through Bujagali will produce more than twice the amount of energy that Nalubaale and Kiira would produce alone, and this is expected to lead to a more efficient use of water for power generation in line with the Agreed Curve<sup>1</sup>.

Recognising Uganda's command of the lake outflow through the existing dams the Bank has required the Government of Uganda (GoU) to prevent any possible overuse of Lake Victoria waters. Under the Bank's finance contract, the GoU is committed to the sustainable operation of the combined Kiira-Nalubaale and Bujagali hydropower generation system in compliance with the Agreed Curve or with an equivalent (optimised) hydrological regime with a view to protecting Lake Victoria against water overuse.

---

<sup>1</sup>The "Agreed Curve"<sup>1</sup>, which has the objective of allowing the same flow from the Lake that would have occurred prior to the construction of the original Owen Falls Dam in the 1950s, was part of an agreement signed by Egypt and Great Britain (acting on behalf of Uganda) by that time. Operation of Kiira-Nalubaale is based on water releases consistent with current lake levels. As lake levels increase the discharge correspondingly increases. The Agreed Curve is thus a moving reference.

### **Climate change risks**

Regarding climate change risks, it is clear that the Bank has relied extensively on the analysis performed in the project's Economic Study and the SSEA (Strategic/Sectorial Environmental Assessment). These studies conclude that there will be no significant adverse impacts on water release due to climate change during the life of the proposed project. However, the SSEA appraisal appears to be the result of a complex and detailed study that draws on its own analysis and a range of other international studies. These studies assess, in detail, the potential impacts on hydro generation of power, examining whether such impacts might affect new power options being evaluated and drawing attention to the important variability of models used and the potential risk thereof in making operational decisions.

Given the current technological limitations, unresolved complexities, important and unresolved gaps in evaluating climate change scenarios, existing uncertainties and controversies, the Bank's conclusion was that the project is robust to 25% lower hydrology. It appears therefore that climate change risks have been adequately addressed, at the time of the Board approval.

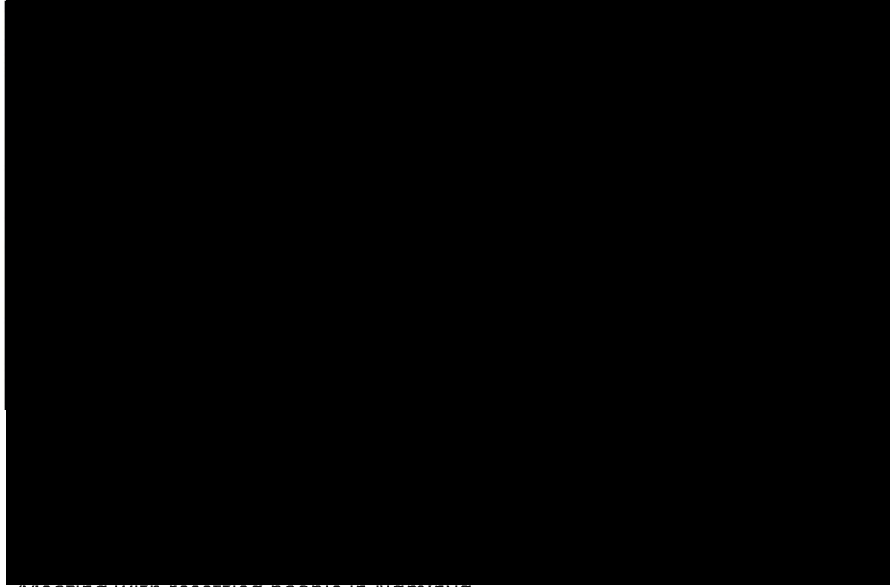
### **Economic prospects, affordability and sustainability**

EIB's appraisal of the project in 2007 was comprehensive, against the twin objectives of security for the Bank's investment and achievement of wider benefits – social, economic and environmental - for Uganda. The risks were recognised, but it was concluded that the project should on balance have an affordable impact on tariffs.

The strategic case for Bujagali, as recognised by EIB and other co-financiers, remains strong. Its addition to the Ugandan power resources represents a massive increase, to end load – shedding and meets future demand growth decades ahead of time, without increasing pollution or additional use of Nile water. However: (i) as a main grid-connected project, it will only indirectly benefit the rural poor, and could pre-empt resources which might be used otherwise; (ii) although it does not require a new water supply, its addition to the system will proportionately increase dependency on increasingly scarce Nile water.

### **Resettlement Action Plan (Naminya Community)**

All the components of the updated Resettlement Action Plan - water supply, medical centre, primary school, nursery, market, business centre, fish ponds and micro credit fund - have now been completed, with one exception – the provision of electricity to the households of resettled people. This part is more complicated as the funding and budget is not only dependent on the Borrower (BEL) but also on the local Rural Electrification Agency (REA). Different scenarios have been discussed between BEL, REA and the Agence Française de Développement, a potential financier for this component, but not yet finalised.



*Meeting with resettled people in Naminya*

Therefore, the EIB-CM recommends the Bank to start discussions with the GoU together with the other lenders, to, provide the necessary funds and to work proactively with BEL in order that the electrification project is completed before the commissioning of the Bujagali Project. Additionally, BEL should continue to work with the Mukono Lands Office to ensure that the still missing 8 titles for agricultural land in the Naminya resettlement site are finally processed before the final commissioning of the project, at the latest.

### **Compensation of T-line affected people**

The complainants raise the issue of compensation regarding the transmission line (T-line) project. This associated project with a different borrower is not financed by the EIB and therefore not under the direct responsibility of the Bank, but it was part of the EIB's due diligence. As the EIB-CM considers that the transmission line is an integral part of the electrification project - consisting of both the BHP and T-line - considered it appropriate to also look into that situation.

Currently there is an ongoing class action of 577 cases relating to the project, as well as one unsettled case for a five people action. According to information received, the class action relates primarily to the mechanism under which the value of land owned by PAPs was calculated, and whether the company used rates set by the Mukono District.

Given the prevailing capacity problems that beset Uganda's judicial system, judicial redress appears to be pursued only as a genuine last resort. It is EIB-CM's strong impression that the majority of requests for revaluation are made on some grounds. In the opinion of the EIB-CM, it is the inadequacy of the project grievance mechanism (which should have given the plaintiffs an opportunity to redress the situation) and the lack of support from local government officials that has been the principal trigger behind the decision of 557 claimants to seek redress through the court system.

The EIB-CM is of the opinion that it might be opportune to pursue an out of court settlement and to establish a committee comprising of the legal counsels of the 557 plaintiffs, lawyers from UECTL, representatives of relevant national authorities and with possible observation by an independent neutral witness NGO. Such committee could examine, on a case by case basis, all compensation issues in order to reach an acceptable solution for each case, by all parties involved.

### **Blasting effects**

The specifications established for the Project were prepared by the Government of Uganda; The Borrower, as well as its sub-contractors, followed such specifications and the standard used for the blasting specification was intended to establish the expected safety level. However, such a vibration limit of 50mm/s for avoidance of blasting damage is broadly used (e.g. US and Germany) but for western-like, solid concrete constructions. Although this may be correct on a purely legal or contractual basis, a less narrow viewpoint would simply declare that the construction activities at Bujagali should have been carried out in a manner so as to avoid damages to the neighbourhood, or in the event that such damage occurred, to properly provide compensation.

More than 800 hundred complaints regarding effects of blasting have been mostly dismissed by the subcontractor. In a context of a very low revenue population and substandard and sometimes degraded constructions, unsubstantiated claims can surely occur. However, the dismissal of 100% of complaints raises serious doubts regarding the monitoring of blasting and the complaints management. Indeed, after the fact and in the absence of an adequate baseline survey, it is virtually impossible to assess whether damages, as reported, have been caused by the blasting activities.



*Houses in Malindi, village closest to the Bujagali Dam*

It seems that blasting effects have been seriously under-estimated and a threshold lower than 50mm/s should have been used to determine possible damages. Also, it appears that the assumption of a direct correlation between scaled distances and PPVs (Peak particle velocities), for the current blasting operations of the Bujagali project is flawed. Given the features of the affected buildings in the project area (very weak constructions), retrospectively it seems appropriate to have used a much more stringent standard, such as the German standard applicable to historical buildings which sets the upper limits to 3mm/s, at a 10Hz frequency, and 10mm/s, at 50Hz frequency, for non damaging PPVs. In terms of lesson learned and for future projects involving blasting operations, it is recommended to the Bank to ensure that appropriate vibration standards are used in line with the human and natural environment, as well as with the type constructions, likely to be affected.

The issue of compensation and/or reparation of real blasting effects need to be appropriately addressed by the Borrower and the local authorities, with the help of project financiers if necessary. The EIB-CM recognised that there is room for dialogue facilitation and/or mediation and has offered a collaborative resolution process to the parties involved, in cooperation with IFC CAO. This offer has been agreed by the parties concerned – the borrower, the government agencies involved in the project and the Uganda complainants.

### **Spiritual matters**

In line with discussion held with the EIB-CM in January 2011, a tripartite “Agreement for the Final Relocation and Appeasement of Bujagali Spirits” was signed between the Busoga Kingdom, the Government of Uganda and BEL. This agreement defines the roles and responsibilities of the different parties involved in terms of the (i) construction of shrines and (ii) organisation of the appeasement ceremonies and ensure the involvement of all key spiritual mediums, including [REDACTED] and [REDACTED]. The agreement also accounts for undertakings to avoid any future claims regarding spirits relocation and appeasement. Subsequently, the EIB-CM has been informed that one of the mediums - [REDACTED] – has not responded to the formal invitations by the Busoga Kingdom to participate to the appeasement ceremonies and insist on additional and separate ceremonies. The ceremonies, as per in the tripartite agreement, have now taken place and the shrines are finished.

The EIB-CM underlines the importance of [REDACTED] as a recognized spiritual leader over the last decades and notes that the appeasement ceremonies as requested by [REDACTED] stand as an unresolved issue regarding the Bujagali Hydropower project.

### **Kalagala Offset**

The Kalagala Offset Sustainable Management Plan (KSMP) (2009 – 2018) was finalised in November 2009 and sent to the various GoU authorities for approval. The document's preparation was facilitated by the IUCN and supported by the World Bank. During the EIB-CM fact finding mission in February 2010 the document had not yet been approved by the GoU and during meetings with the responsible and involved GoU authorities the EIB-CM urged them to not only approve it as soon as possible but also to allocate sufficient funds to its implementation. The KSMP was approved in April 2010 and appropriate budget allocated in 2011.

The KSMP derives its legality from the Indemnity Agreement for partial Risks Guarantee for the Private Power Generation (Bujagali) Project between the International Development Association (the Association) and the Republic of Uganda (Uganda) in July 2007. The Agreement was formulated in order to commit Uganda to be a Guarantor to the "IDA Guarantee Facility Agreement" between Bujagali Energy Limited and financing institutions ("IDA Guarantee lenders") and ABSA Bank Limited as the Agent for the IDA Guarantee lenders to support a portion of the financing of the Bujagali Hydroelectric Project (BHP). The Indemnity Agreement provides for preparation and implementation of a Sustainable Management Plan for the Kalagala Offset, which includes the Mabira Central Forest Reserve and commits the GoU to a series of actions.

Potential gaps related to the implementation of the KSMP have been identified and appropriate recommendations are formulated, namely regarding the availability of appropriate budget resources.

## CONCLUSIONS REPORT

### PART I

#### ***Bujagali Hydroelectric Project, Jinja, Uganda***

**Complainants:** NAPE (Uganda), Counter Balance (Europe), CLAI (Italy), Sherpa (France), and others (hereinafter called "the complainants")

**Date received:** 2 December 2009

Project Status: partially disbursed

Board Report 09.05.2007

Contract amount: EUR equivalent of up to 130 M USD

### 1. SUMMARY OF ALLEGATIONS

#### **Failure to meet European development objectives**

"... 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."

#### **Failure to assess the economic and environmental soundness of the project**

"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."

#### **Failure to guarantee fair compensation to affected communities**

"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."

#### **Failure to ensure the implementation of the mitigation measure**

"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 an 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."

## 2. CLAIM

The complainants request that the EIB should not disburse any more money until: (*quoted from complaint*)

- *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;*
- *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;*
- *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 micro saving 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.*

### 3. **BUJAGALI HYDROELECTRIC PROJECT**

- 3.1. The Bujagali Hydroelectric project consists of building and operating a dam and hydro-electricity station on the Nile under Public Private Partnership, creating 250 MW of generating capacity for 30 years. The site is located 10 km from the outflow of Lake Victoria where two dams and hydro-stations are already in use. Load will be taken off the plant switchyard by the national transmission company using its own infrastructure. The project has been developed since the late 1990s. It is part of a comprehensive power sector reform and upgrading programme undertaken by the Government of Uganda with World Bank support. Its cost is estimated at USD 786 m (EUR 596 m). Co-financing is considered by Uganda's major development partners.
- 3.2. The Bujagali project (BHP) was originally presented to the Bank in 2001 by the previous sponsor, AES Nile Power. Following the withdrawal of AES in 2003, as a result of strategic re-orientation independent of the project, the Government of Uganda in cooperation with the World Bank put the project out for international tender in 2006. The scope of the project has remained largely unchanged since the original feasibility study of 1998.
- 3.3. The promoter of this PPP project is the Government of Uganda. The borrower is Bujagali Energy Limited (BEL), a special purpose vehicle created and owned by Industrial Promotion Services (Kenya) Ltd, majority owned by Aga Khan Fund for Economic Development, and Sithe Global Power, a USA based power development company, and other affiliated firms (the sponsors).
- 3.4. The purpose of the project is to increase cost-efficient power supply in Uganda by building and operating a 250 MW greenfield hydropower station for 30 years, using water storage equivalent to 5 hours of full load operation (pondage plant). The reservoir will occupy an area of 3.9 km<sup>2</sup>, of which approximately 20% only will be newly inundated land and the rest is already occupied by the Nile River. The plant will be connected to the existing power system in Uganda via three 132 kV overhead transmission lines. The lines are not part of the project but will be built and financed by the Government-owned utility, Uganda Electricity Transmission Company Ltd (UETCL). The dam will be located some 70 km east of Kampala, on the Nile, 8 km downstream of the existing Nalubaale-Kiira hydro complex near Lake Victoria, formerly known as Owen Falls – Owen Falls Extension.
- 3.5. The Kiira-Nalubaale dam, which is the first dam on the Nile River after the Lake Victoria and before the BHP, controls the flow of water from Lake Victoria. The project will re-use the water released from the existing Nalubaale-Kiira hydro complex, doubling the amount of power generated from the same volume of water. The volume of water released for hydro electric generation is the subject of an international agreement between Uganda and Egypt, the so-called "Agreed Curve"<sup>2</sup>, which has the objective of allowing the same flow from the Lake that would have occurred prior to the construction of the original Owen Falls Dam in the 1950s.
- 3.6. The project consists of the design, supply, installation, testing, training, commissioning and operation of a new hydro power plant near Bujagali Falls on the Nile River, with a total installed capacity of 250 MW and the following main characteristics: a 28 m high earth-filled dam, a powerhouse with five 50 MW turbine-generators, various other buildings and structures including spillways and a 132 kV outdoor substation. Construction of site roads is also included and a quarry will be developed at the site to produce the necessary aggregates and rock fill material. Compared to other hydro-power plants, the project does not entail major civil works (such as tunnels or a larger dam).

---

<sup>2</sup>Part of an agreement signed by Egypt and Great Britain (acting on behalf of Uganda) in the early 1950s. Operation of Kiira-Nalubaale is based on water releases consistent with current lake levels. As lake levels increase the discharge correspondingly increases. The Agreed Curve is thus a moving reference.

- 3.7. The plant will be connected to the power grid via a 93 km long 132 kV double circuit overhead line to the existing Mutundwe substation via a new substation at Kawanda, both located near Kampala. The lines and substations are not the responsibility of the borrower, but of UETCL, and are therefore not part of the project. As associated facilities they have, however, been included in the Bank's due diligence.
- 3.8. At mean hydrology conditions, the plant is expected to produce 1400 GWh per year, equivalent to a load factor of 64%. At low and high hydrology, respectively, the annual generation will be 1200 and 2130 GWh.
- 3.9. The Bujagali area is rural, with small-scale or labour-intensive subsistence agriculture being the predominant land use. Between Nalubaale-Kiira and Bujagali the Nile flows within a deeply incised, steeply sloped valley, and drops in a series of rapids. The width varies from 200 to 600 m. The reservoir will occupy an area of 3.9 km<sup>2</sup>, of which approximately 20% will be inundated land and the rest is already occupied by the Nile. While the reservoir size is limited, corresponding to some 5 hours of full load operation, the project is defined as a large dam scheme and – in line with current international practice – a dam safety review panel of independent experts will be appointed by the borrower prior to the start of works.
- 3.10. The location of the project at Bujagali leads to the least possible environmental and social footprint compared to alternative sites further downstream on the Nile. Based on the flooded surface and number of resettled persons per MW of power generated, the project compares favourably with other large dams around the world. By virtue of substituting alternative fossil fuel-fired generation the project contributes to reducing atmospheric emissions, including greenhouse gases.
- 3.11. The social impact of the project is expected to be overall positive – first of all in general by improving power supply on a national scale and so 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. Further initiatives are 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. Also electrification is a possibility, requiring the cooperation of the Government and the private distribution company.

#### 4. BACKGROUND INFORMATION ON PREVIOUS COMPLAINTS

4.1. The Bujagali Hydroelectric project (BHP) has been subject of various complaints in the past, regarding its environmental, social and developmental impacts:

- World Bank Inspection Panel (IP) 2002 Investigation, filed in 2001 but due to financial problems of the promoter the project was halted in September 2003;
- The Compliance Advisor and Ombudsman, CAO (IFC), filed in November 2000, "In the Assessment Report, completed in September 2001, CAO stressed its limitation to the issues raised and accepted in its Ombudsman role, however reiterated its awareness of the broader concerns that relate to the Bujagali Hydropower project. It was found that despite the project remaining in the pre-Board approval stage, it believed that IFC had been diligent in ensuring compliance with IFC Safeguard Policies. CAO noted a number of outstanding issues, amongst which were the lack of conclusive economic analysis of the project, the question of affordability of electricity to poorer sectors and the lack of a comprehensive management plan for the Nile raising long term-management issues. Finally, CAO determined that it failed to see a role for facilitation or mediation at this stage given that IFC had not yet made a final decision concerning its participation. The complaint was closed in January 2005". Text quoted from CAO website.
- CAO, filed in July 2001, "CAO concluded, in its Assessment Report of September 2001, that the evidence provided to CAO by IFC contradicted the issues raised by the complainant. Despite recommending that the complainant present individuals who could corroborate the information he provided, CAO later concluded that the evidence provided by the complainant could not be verified. Accordingly, the complaint was closed in January 2005". Text quoted from CAO website.
- World Bank Inspection Panel (IP), filed March 2007, final report issued in September 2008. "The Panel also found several instances of non-compliance with several policy provisions, such as in the assessments of Project alternatives and cumulative impacts, excluding Lake Victoria from the Project's area of influence, and in the assessment of Project costs, risks, and impacts on electricity tariffs. The Panel found that the Project did not meet Bank policy requirements to achieve livelihood restoration for people displaced several years ago in the first Bujagali project, and that it followed an inadequate approach to address and mitigate the flooding of a significant cultural property of high spiritual value to the Basoga people, a local community." Quote from World Bank Press Release 12 December 2008
- African Development Bank, Independent Review Mechanism (IRM), filed in May 2007, final report issued in June 2008. July 9, 2008 the Board of Directors decided: "first, to accept and adopt the Compliance Review Report including its findings and recommendations. Second, the Board instructed the Bank's Management to prepare two action plans. The first one responds to the Panel's recommendations on the Bank's policies and procedures. The second one deals with the Report's actionable project-specific findings on non-compliance and areas of concern. Finally, the Board approved the Panel's recommendation that the Independent Review Mechanism monitor the implementation of the project-specific action plan". Quote from AfDB website.

4.2. In particular the latest 2 investigations undertaken by the World Bank Inspection Panel (IP), and the African Development Bank Independent Review Mechanism (IRM) are of interest in this context due to their in-depth review and acceptance by the World Bank and African Development Bank's Boards respectively. The EIB-CM decided that it will inform the complainants thereof, to use both reports as well as the monitoring reports from both institutions as a basis for its investigation. The current report will try to not repeat historical issues and data found but will attempt to concentrate on the current situation. For those interested in reading the IP and IRM reports, please visit their respective websites: <http://web.worldbank.org/WBSITE/EXTERNAL/EXTINSPECTIONPANEL/0,,contentMDK:22511928~pagePK:64129751~piPK:64128378~theSitePK:380794,00.html> and <http://www.afdb.org/en/about-us/structure/independent-review-mechanism/requests-register/rq-20071/>

- 4.3. In February 2009, the “Association Sherpa” lodged a complaint with the EIB Complaints Mechanism alleging that the EIB would have failed to disclose requested documents pertaining to the Bujagali Hydroelectric Project. The complainant required information in order (1) to understand the rationale for the Bank’s involvement in this project and most important (2) to ascertain whether the EIB has taken any specific action plan or any other steps to address the issues raised in the Report of the World Bank’s Inspection Panel of 29 August 2008. On the basis of the Complaints Mechanism recommendations, the EIB disclosed the vast majority of the documents requested.
- 4.4. Later, in 2011 two other complaints have been lodged by project affected people with the IFC Compliance Advisor Ombudsman:
- 4.5. In March 2011, eleven former employees involved in the construction of the plant filed a complaint with the CAO on behalf of themselves and more than 30 former employees. The complainants believe they have not been properly compensated by the plant’s sub-contractor after they suffered injuries sustained in the course of their work. The complainants also raise concerns regarding the transparency of the compensation process and intimidation against workers requesting their benefits. The CAO Ombudsman team has completed its Assessment and a public report is forthcoming.
- 4.6. In May 2011, several community members residing in the Bujagali affected area submitted a complaint to the CAO. The complainants’ concerns relate to compensation for assets during the land acquisition process, damage to houses and impacts to health related to blasting during construction, and compensation for loss of livelihoods. A CAO Ombudsman assessment is underway.

## 5. COMPLAINT HANDLING

- 5.1. On 2 December 2009 the complainants lodged a complaint with the EIB by letter to the complaints inbox concerning the Bujagali Hydroelectric Dam (BHP) project in Uganda. The complainants allege a number of violations of EIB policies. The project promoter is the Government of Uganda (GoU) whilst the final beneficiary/borrower Bujagali Energy Limited (BEL) is developing the Bujagali project. BEL is a joint venture between Kenya-based International Promotions Services and the US-based Sithe Global Power. The construction company is Salini, an Italian company.
- 5.2. On 16 December 2009, the EIB Complaints Mechanism (EIB-CM) acknowledged receipt of the complainants' letter, and simultaneously informed the complainants that the EIB-CM was carrying out a review of their complaint as well as of the date by which they may expect an official reply from the EIB. Due to the complexity of the inquiry and in line with article 11.10.02 of the EIB Complaints Mechanism Policy already incorporated the extended maximum deadline for reply.
- 5.3. Following a preliminary analysis on the admissibility of the complaint, the EIB-CM deemed it appropriate to carry out further inquiries with a view to gathering additional information on the complaint. In this context, the EIB-CM reviewed the project documentation, the information provided by the complainant as well as the submissions by the competent services of the EIB. Finally, it conducted an inter-services consultation on the issue raised by the complainants.
- 5.4. On 14 January 2010 the EIB-CM met with the EU-based complainants in Paris in order to get a better understanding of the issues raised in the complaint.
- 5.5. After having reviewed all available information, the EIB-CM launched an Initial Assessment, which included a fact-finding visit to Bujagali that took place from 6-11 February 2010. The EIB-CM met with the complainants, the promoter, the Borrower, national authorities and agencies, and other relevant people such as representatives from the World Bank and the African Development Bank as well as with consultants/experts. The Head of the EIB Regional Office (Nairobi) as well as a representative of the EIB Civil Society Unit participated in some of the meetings.
- 5.6. As a result of the first assessment, the EIB-CM identified major areas of concern into which it conducted an investigation. This investigation included a site visit and field work in June 2010. This visit was coordinated with the African Development Bank Independent Review Mechanism, conducting its follow-up mission by the same dates. An EIB Social Development Sector Specialist participated in some of the meetings held.
- 5.7. Subsequently, the EIB-CM has extensively liaised with the Borrower, relevant national authorities, EIB and World Bank operational services in order to ensure that issues identified were given due consideration. In February 2012, all the project stakeholders involved in the handling of the complaint have been given the opportunity to discuss the current Conclusions Report in final draft form and to take a view on recommendations put forward.

## 6. WORK PERFORMED

- 6.1. The EIB-CM work aimed at identifying possible maladministration by the EIB. In doing so the EIB-CM(i) assessed if significant harm was done by the financed project, which was not appropriately mitigated, (ii) reviewed the Bank's due diligence process in assessing compliance with applicable rules, regulations, Bank's policies, standards and procedures, and (iii) assessed if current Bank's policies, standards and procedures failed to provide adequate protection.
- 6.2. The EIB-CM Initial Assessment regarding the project implementation included: desk review of all available documentation; interviews and meetings with EIB (and other financiers) staff/services; on-site fact-finding mission in Uganda; meetings with the complainants; meetings with the project affected people (PAP); meetings with the Borrower (BEL); meetings with the representatives of the different government authorities/agencies involved in the project.
- 6.3. On that basis, the EIB-CM identified the major areas of concern, including negative environmental, social and developmental impacts, for which specific investigation work was undertaken:
  - Economic feasibility and affordability
  - Resettlement Action Plan (Naminya Community)
  - Compensation of T-line affected people
  - Spiritual matters
  - Blasting effects (mainly Malindi Community)
  - Kalagala Offset
- 6.4. In doing so, the EIB-CM took stock of the current resource limitations and of the unresolved complexity / controversial nature of some of the issues (e. g. climate change impacts), and concentrated its work on practical implementation issues and in ensuring effective addressing of related negative impacts.
- 6.5. Moreover, the EIB-CM took into account the outcome of the investigations by the World Bank's Inspection Panel and by the African Development Bank's Independent Recourse Mechanism triggered by a similar complaint (detailed findings in Part II, Chapter 2).

## 7. COMPLIANCE ISSUES

This part is intended to highlight the main elements of the analysis of the allegations made by the complainants regarding possible non-compliance and maladministration by the EIB.

*EIB Policies and documents quoted:*

- EIB's Investment Facility according to the "Cotonou Agreement"
- EIB and its Contribution to Sustainable Development, EIB and Climate Change and EIB Support to Renewable Energy in Sustainable Development and Environmental Documents (2002)
- Environmental Procedures (2002)
- Environmental Statement (2004)
- EIB Group Statement on Corporate Social Responsibility (2005)
- Development Impact Assessment Framework of Investment Facility Projects (2005)
- Social Assessment of Projects outside the EU (2006)
- Staff Code of Conduct (2006)
- The EIB Energy Review (2006)
- Environmental and Social Practices Handbook (2007)
- Eligibility Guidelines (2007)
- Guidance Notes (2006), Annexes of the Environmental and Social Practices Handbook (2007)
- Environmental and Social Practices Handbook (2007)
- Proposal from the Management Committee to the Board of Directors, CA/406/07, Document 07/160, 9 May 2007, section 6: "the project will contribute to make electricity affordable:
- 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
- "Bujagali Hydroelectric Project, Uganda", EIB news, 2 July 2007
- Corporate Operational Plan 2008-2010

### 7.1. **The EIB role and mandate**

7.1.1. The EIB is the European Union's financing institution created by the Treaty of Rome in 1958 to provide long-term finance for projects promoting European integration. In addition to its core activity within the EU, the EIB has been increasingly active in support of EU external policies since 1963 covering most of the regions of the world. The role of the EIB outside the EU is to support EU external policies (including enlargement, neighbourhood and development cooperation policies) through its financing operations, in support of the economic, social and environmental sustainable development of the partner countries.

7.1.2. The report of the Steering Committee MidTerm Review of EIB external mandate dated February 2010, observes that: *"The EIB is different from the Multilateral Development Banks (MDBs) in a number of ways:*

- (i) *it operates both in all EU countries and in developing countries;*
- (ii) *it does not have a pure development mission, but as regards its external activities it works under mandate of the Parliament and Council and/or its Board of Governors;*
- (iii) *it operates in support of EU external policies and promotes EU standards;*
- (iv) *it operates outside the EU under a mandate from the EU which provides for a Community guarantee for a significant part of the EIB activity;*

- (v) *it is primarily focused on investment / project financing with limited involvement in upstream work (e.g. country and sector strategies, policy support) which is led by Commission in the EU institutional framework;*
- (vi) *the beneficiary countries outside the EU are not shareholders of the Bank and the existing EIB institutional setup does not cater for beneficiary countries' ownership;*
- (vi) *its access to concessional funds in support of its operations notably in developing countries is small in relation to its own resources for lending (except in ACP); the availability of such funding is organised differently by region, rather than through a single process;*
- (vii) *in its external operations it has much lower staff resources per unit of financing compared to other MDBs."*

7.1.3. The fact that the EIB has not a full development mandate and that its resources are not in line with those of a development bank has been the object of discussions at EU institutional level at the time of the definitions of the new EIB external mandate. The EIB-CM takes the view that the nature of the actual EIB role and mandate needs to be taken into account when examining some of the complainants' allegations regarding more developmental aspects and impacts of the Bujagali Hydroelectric project.

7.1.4. The project is financed under the Investment Facility of the "Cotonou Agreement". According to this agreement, the Investment Facility shall operate in all economic sectors and support investments of private and commercially run public sector entities, including revenue generating economic and technological infrastructure critical for the private sector. The Investment Facility shall endeavour to have a catalytic effect by encouraging the mobilisation of long-term local resources and attracting foreign private investors and lenders to projects in the ACP States.

7.2. **Failure to Meet EU Development Objectives**

<p><i>Allegations:</i></p> <p>The project will benefit less than 5% of the population</p> <p>There is a high risk that the price of the energy produced will not be affordable</p> <p>Energy projects in developing countries must support development – through ensuring, in particular, that the whole population will have access to and benefit from energy produced.</p> <p>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."</p>
-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

7.2.1. As far as the EIB does not have a clear development mandate and is only involved at project level having no influence in shaping the Country policies, it is difficult to argue for an EIB duty to strongly support development through the financing of (energy) projects. This has been fully recognised in the past tripartite discussion (with the European Council, Parliament and Commission) regarding the EIB external mandate and the recent clarification of the EIB's developmental role may contribute to determine the Bank's capacity to act on this respect in the future.

7.2.2. In this context, it is recognised that, being grid-connected, the Bujagali Hydroelectric project does little in the short/medium term to provide affordable electricity to an increasing part of Uganda's population and to alleviate rural poverty.

7.2.3. Notwithstanding the above, one has to take into consideration that (i) the project is key to alleviate a serious power crisis in Uganda that has been constraining economic growth and (ii) the objective of the project was to develop a least cost option for power generation and can therefore not be considered as a distribution project. In a power generation project, the affordability is not the major driver. However, the review of affordability of electricity shows that the Bujagali Hydroelectric project will exert downward pressure on tariffs.

### 7.3. Assessment of the economic and environmental soundness of the project

*Allegations:*

The Bujagali Dam is expected to have a generating capacity of 250 MW. 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 250 MW.

Impact of the new dam – together with the existing dams – on the lake Victoria has not been properly assessed.

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.

There is no comprehensive cost benefit analysis.

The Projects Directorate's Bujagali Appraisal Report 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 soundness and the acceptability of the project in environmental and economic terms.

*Complainant Conclusions:*

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.

7.3.1. A retrospective view of the Bank's appraisal of the project shows that most benefits and impacts were identified and assessed effectively, although there was some under-estimation of environmental and social risks.

7.3.2. Economic soundness of the project:

The EIB's financial and economical appraisal of the project was comprehensive and related risks were recognised. The project's economic feasibility and affordability is reviewed in detail in Part II, Chapter 1. Sustainability risks have been identified in terms of long-term affordability and on hydrology. Absent these risks, the project offers affordable long-term power supplies once debt repayment is complete, as well as environmental advantages.

As regards the impact of climate change and of Lake Victoria water level in the project's affordability, the analysis performed show that such risks have been considered by the Bank. The depth and extent of such analysis may always be questioned by external observers. In this context it is worth to note that 250 MW is the nominal maximum production capacity and hydropower projects usually run at 60-80% of their maximum capacity.

7.3.3. Environmental soundness of the project:

On the basis of available documentation, it appears that the EIB’s environmental and social analysis has been less comprehensive than that performed by the World Bank. This has probably lead to some reliance on the World Bank work. In this context, the EIB-CM cannot take a position regarding World Bank compliance, but takes note of the findings and conclusions by the World Bank Inspection panel. Although such reliance aims at an optimal use of resources, it may in certain cases put the compliance with the Bank’s own policies and standards at risk.

The negative environmental and social impacts found on the ground which in some cases have not been adequately mitigated, lead to believe that such impacts and related mitigation measures, although correctly identified at appraisal time, may have not been fully assessed ex-ante. Indeed, local complexities - relating to the land expropriation and compensation processes, to the implementation of the Resettlement Action Plan, to the implementation of the Kalagala offset and to the spiritual/cultural issues - seem to have been under-estimated.

7.4. **Failure to guarantee fair and adequate compensation to affected communities**

<p><i>Allegations:</i></p> <p>Naminya resettlement area: resettlement of displaced people was not done in accordance with EIB policies and conditions agreed upon by AES and/or BEL</p> <p>Evictions: affected people were not granted fair and adequate compensation</p> <p>Violation of domestic law</p> <p>Cultural and spiritual resettlement: 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.</p> <p>World Bank Inspection Panel findings / Complainant Conclusions:</p> <p>People affected by the project were not compensated in a fair and adequate way, in violation of the World Bank’s most basic policies.</p> <p>Many promises made by the promoter (AES and/or BEL), which created legitimate expectations in the minds of affected people were never fulfilled.</p> <p>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.</p>
-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

7.4.1. The Borrower for the BHP is BEL and not AES. As a result previous commitments made by AES, either in writing or verbally, which have not been taken into account in the final EIA and Resettlement Plan of the approved and signed BHP, cannot be considered. Consequently the EIB-CM compliance review concentrated on the legally binding commitments. The physical resettlement of project-affected people (PAP) was conducted by AES and when BEL was awarded the international tender for the BHP it inherited this situation. As the co-financing institutions project approvals and the permits issued by NEMA for AES, were no longer valid, BEL was required to prepare and submit for approvals new Social and Environmental Assessment (SEA) documentation. Part of the SEA Documentation is a Community Development Plan.

- 7.4.2. The EIB “The Social Assessment of Projects outside the European Union: the Approach of the European Investment Bank” of 2 October 2006 describes the Role of the EIB and makes specific reference to co-financed projects, Page 4: *“Outside Europe, the EIB often co-finances large complex projects with either other IFIs and/or a major international European corporation. In such cases, the task of social assessment can be shared with these institutions to the extent that such partners are committed to the application of international good practices on social issues”*. The BHP is such a co-financed project, in 2006, and the original studies and plans have been reviewed and updated by an international group of environmental and social experts in compliance with all relevant IFC Performance Standards.
- 7.4.3. The references made by the complainants to the Inspection Panel Report (IPR) refer to detailed policy and operational procedures of the World Bank and the IP conclusions were made at a time when some of the issues raised were still undergoing implementation. The actual issues raised, which can be seen as possible implementation failures, -Communities and resettlement conditions, Compensation of T-line affected people, Blasting effects and Spiritual issues - are treated in the detailed assessment sections (Part II).
- 7.4.4. In view of the fact that the EIB services legitimately relied on the work performed by the WB and IFC, the EIB-CM notes that some of the concrete and factual findings (not compliance oriented) of the WB IPR also apply to the EIB. In particular, it is noted that the monitoring and follow-up of the above and any further consequential concerns related to the implementation of the project, such as the blasting effects and the spiritual matters, seem not to have taken sufficiently seriously the concerns expressed by the project affected people.

7.5. **Kalagala Offset**

*Allegations:*

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 an 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.

- 7.5.1. At the time of the appraisal and approval of the BHP the issues relating to the Kalagala Offset were known by the EIB. Although the process of design and implementation of the Kalagala Offset has been fully driven by the World Bank, the confirmation of the GoUs commitment in relation to the conservation of the Kalagala Offset was one of the conditions to be fulfilled as part of the EIB approval process. This with a view to protect Kalagala’s natural habitat and environmental and spiritual values, to develop it for tourism and not for power generation. The GoU commitment was evidenced by the signature of the Indemnity Agreement in June 2007 and the EIB Finance Contract was signed in December 2007.
- 7.5.2. The implementation of the Kalagala Offset is being closely monitored by the World Bank and it is a recurring item on the agenda of the co-lenders monitoring missions and well as being part of the remit of the Bujagali Monitoring Committee. The co-lenders monitoring as well as the EIB-CM investigation have been instrumental to lead to the approval of the Kalagala Offset Sustainable Management Plan (SMP) by the Government of Uganda in April 2010.

7.5.3. However, it is fully recognised that there have been substantial delays in approving the Kalagala Offset SMP and the consequent implementation, which can be attributed to the difficult and complex contextual framework. Indeed, the gap analysis of the Kalagala Offset SMP performed by the EIB-CM reveals some areas of concern that require close attention by the co-financiers.



*Kalagala Offset*

## **8. FINDINGS AND CONCLUSIONS**

### **8.1. Lake Victoria water levels**

- 8.1.1. Given the environmental, social and economic importance of Lake Victoria, the prolonged period of regional drought, and significant hydropower shortfalls throughout the region, management of Lake Victoria water levels is a very complex issue. Countries in the Lake Victoria region have established regional mechanisms for more effective transboundary water management. However, the functioning of those mechanisms, its compliance and enforcement, is outside of the scope of the Bank's overall remit, as well as the Complaints Mechanism's remit.
- 8.1.2. Water levels in Lake Victoria are determined by inflow from upstream rivers, rainfall, evaporation, and the releases at the Nalubaale/Kiira dam complex (previously known as the Queen Falls Dams). The Nalubaale and Kiira dams constructed in the 1950s and 1990s respectively, control the flow of water from Lake Victoria into the Nile, are the lake's only outflow. The volume of water released for hydro electric generation is subject to the so-called "Agreed Curve" defined in an agreement between Uganda and Egypt signed in the 1950s. The "Agreed Curve" has the objective of replicating the flow from the Lake that used to occur naturally, prior to the construction of the original Owen Falls Dam in the 1950s.
- 8.1.3. Since the BHP is downstream, it will reuse the water coming from the upstream complex. Water flow arriving at the Bujagali Hydropower Facility is fully controlled by discharges from the Nalubaale/Kiira hydropower dam complex, upstream of the Bujagali dam site. Therefore the Bujagali facility will have no control on releases from Lake Victoria. The Nalubaale/Kiira hydropower dam complex shows an average historical production 150 MW and the average firm capacity of Bujagali dam is estimated at 160 MW. Specifically, the water passing through Nalubaale and Kiira and subsequently through Bujagali will produce more than twice the amount of energy than Nalubaale and Kiira would produce alone, and this is expected to lead to a more efficient use of water for power generation in line with the Agreed Curve.
- 8.1.4. To prevent any possible overuse of Lake Victoria waters, given Uganda's command of the lake outflow through the existing dams (which has already occurred in the past), the Bank has required the Government to commit to a sustainable operation of the combined Kiira-Nalubaale and Bujagali hydropower generation system in compliance with the Agreed Curve or with an equivalent (optimised) hydrological regime with a view to protecting Lake Victoria against water overuse.

### **8.2. Climate change risks**

- 8.2.1. The Bank's Board Report states that "...the least cost nature of the project by comparison to all possible alternative sources of electric energy (priority 2) has been reliably demonstrated by independent experts under various scenarios, including permanently low hydrology such as possibly resulting from climate change (although no scientific evidence on the impact of climate change is available)."
- 8.2.2. Regarding climate change risks, it is clear that the Bank has relied extensively on the analysis performed in the project's Economic Study and SSEA. This analysis concluded that there will be no significant adverse impact due to climate change on the release of water during the life of the proposed project. However, the SSEA appraisal appears to be the result of a complex and detailed study that draws on its own analysis and a range of other international studies, assessing in detail the potential impacts on hydroelectric generation, examining whether such impacts might affect new power options being evaluated and raising attention to the important variability of models used and the potential risk thereof in making operational decisions.
- 8.2.3. Although the WBIP concluded that the hydrologic data sets used in the Project Design constitute a reliable data series and found that this provides an appropriate baseline for analysis of environmental and economic issues, the EIB-CM shares the observations made by the Panel regarding identification of risks.

8.2.4. Indeed, given the current technology limitations, unresolved complexities and important and unresolved gaps in evaluating climate change scenarios, existing uncertainties and controversies and the Bank's conclusion was that the project is robust to 25% lower hydrology, it appears that climate change risks have been adequately addressed, at the time of the Board approval.

### 8.3. Economic prospects, affordability and sustainability

8.3.1. EIB's appraisal of the project in 2007 was comprehensive, against the twin objectives of security for the Bank's investment and achievement of wider benefits – social, economic and environmental - for Uganda. The risks were recognised, and it was concluded that the project should, on balance, have an affordable impact on tariffs.

8.3.2. The WBIP report of September 2008 was more critical of the economics of the project. In that report the approach to project selection, the appraisal, the management and the structure were criticised. The report expressed doubts as to whether the project would achieve the objectives of poverty reduction and sustainable development. However, the fact that contracts had already been signed and work had started left little opportunity for remedial action.

8.3.3. Delay and further cost increase since 2007 have underlined the criticisms made by WBIP<sup>3</sup>. However, current cost increase regarding the EIB's appraisal represents less than 10%. Indeed, total BEL costs are now estimated at \$860m and are considered reliable. Commissioning Units 1 and 2 took place in Feb and April respectively, Unit 3 in May and the rest is expected by August 2012, a 14 month delay.

8.3.4. Being by far the least-cost option, the replacement of other generation sources (such as thermal plants) by Bujagali will either result in tariffs that are lower than they would otherwise have been, and/or a reduction in subsidies. However, it is important to note that: this does not constitute a forecast that tariffs will fall below their present level, they may well have to rise. The actual tariff path will depend on how much of the gap between sector costs and revenues (at present tariff levels) is bridged by Government subsidies, and how much by tariff increases. As the Bank has noted in its appraisal, selection of a least-cost option does not itself guarantee affordability.

8.3.5. Ignoring Government subsidisation, Bujagali, despite its cost increases, still appears narrowly intra-marginal in its current tariff impact, provided there is no further deterioration in its terms. Thus, it will exert downward pressure on tariffs.

8.3.6. The strategic case for Bujagali, as recognised by EIB and other co-financers, remains strong. Its addition to the Ugandan power resources represents a massive increment, to end load – shedding and to meet future demand growth decades ahead of time, without increasing pollution or use of Nile water.

However:

- as a main grid-connected project, it will only indirectly benefit the rural poor, and could pre-empt resources which might be used otherwise;
- although it does not require a new water supply, its addition to the system will increase proportionate dependence on increasingly scarce Nile water.

8.3.7. Indeed, affordability remains at risk, mainly from uncertainty as to whether current average tariffs – internationally very high - are themselves affordable, especially for the rural poor, and from depreciation of the US\$ against the dollar.

8.3.8. Sustainability depends both on long-term affordability and on hydrology. A further risk to sustainability is represented by the large foreign currency demands of the project.

---

<sup>3</sup>In particular, that the EPC cost to the power purchaser has increased from \$447m at the bid stage in 2000 (initial AES Sonel project), to \$786m in 2007 (at the time of the Bank's appraisal): a 76% increase.

8.3.9. Absent these risks, the project offers affordable long-term power supplies, once debt repayment is complete, as well as environmental advantages. A retrospective view of the Bank's appraisal of the project shows that most of the benefits and risks were identified and assessed effectively. Extending the repayment period for the Bank's loan showed sensitivity to the risk to affordability in the peak years.

#### 8.4. **Resettlement Action Plan (Naminya Community)**

8.4.1. During its visit to the villages of the resettled people, the EIB-CM took note of the progress made in the implementation of some of the initiatives agreed by the Project and the stakeholders (e.g. livestock and poultry farming). During the visit to the resettled people in Naminya, the EIB-CM asked whether they felt that they were better off before or after the resettlement. All people present replied that they were doing better now than before and that the quality of their lives had improved.

8.4.2. The PAPs were happy with the nursery and the additional building for the primary school. There seems to remain, a lack of communication and understanding despite proof of regular contact between the PAPs and BEL. A number of important concerns were expressed with regard to the implementation of the Water Pipe Connection, the Electricity Connection, the Market Place, the Fish Ponds and the issue of three missing Land titles.

8.4.3. Water - The EIB-CM was provided with evidence of a call for tender and project documentation for providing running water to PAPs. The contract was scheduled to be signed by the mid-June 2010 and should take 26 weeks to complete. On 18 August 2010 the groundbreaking ceremony for the construction of a 37 km pipeline was held whereby the Jinja District vice-chairperson Mr Fred Kyangwa operated an excavator. This US\$ 2.2 billion water project, implemented by BEL in conjunction with the National Water and Sewerage Corporation will cover the villages of Kikumbamutwe, Malindi, Naminya, Kiira, Buloba and Naminya in Buikwe and Namizi West, Kyabirwa, Bujagali and Ivunamba in Jinja District. (Source: Daily Monitor, 20 and 21 August 2010). The extension of the piped water network to the nine project affected villages and targeting 36 kms both on the East and West banks of the river, led by National Water and Sewerage Corporation (NWSC) in partnership with BEL was progressing well. By the end of December 2010, about 65 % of the pipe network was complete. Over 50 public yard taps were under construction, and the booster station and reservoir to serve Naminya were under construction as well. BEL expected that the program would be completed before the end of 2011.

8.4.4. The electricity part is more complicated as the funding and budget is not only dependent on BEL but also on the Rural Electrification Authority (REA). BEL informed the EIB-CM that despite all the earlier discussions and despite follow-up calls and communications between the REA and Agence Française de Développement (AFD), REA had not responded yet to their April requests on their level of participation with the electrification. AFD and BEL met with REA in early September 2010. In this meeting REA had informed that detailed engineering proposals need to be provided before presenting a request to their board in order to determine a possible participation. This is a different scenario of what was envisaged a few years ago. BEL is currently undertaking this engineering work and is approaching it from two sides. One, that BEL will solicit REA supplemental funding and the second, that BEL will simply undertake doing as much electrification work as possible with the approximate 300,000 USD fund. BEL is well aware and acknowledges that this amount will not enable them to extend the electrical service too far. In case REA cannot provide any funds BEL will look at alternatives.

8.4.5. Subsequently, REA has informed BEL that it will not commit financing for the electrification of Naminya Resettlement Village. BEL will thus finance 100% of the cost of electrifying Naminya Resettlement Village from the loan provided by AFD. For the remaining communities, BEL proposes the following approach: (i) REA would fund 70% of the works, (ii) BEL would contribute the remaining 30% for the local communities, (iii) UMEME would realise the works and would be responsible for operation and maintenance of the schemes, and (iv) power users would pay the connection fees. REA had agreed to examine the requested budget and get it approved by REA Board. Upon signature of a MoU with REA, BEL could then launch the works by the beginning of July 2011. Without REA approval, BEL would finance 100 % of electrification works, but due to lack of budget, a reduction of the numbers of connections in each village should be considered.

8.4.6. The primary school building was almost completed in February 2010, and has been inaugurated in March 2010. The complainants allege the GoU considers it a private school, thus not subject to public funding and that BEL refuses to pay for material, books or teachers. According to BEL, the responsibility for the daily running of the school, including provision of teachers and materials lies therefore with the GoU. The 10 classroom block constructed by BEL was not occupied yet in September 2010 awaiting blessings from the Bishop. This was expected to take place during the month of October. According to the last quarterly report from BEL over 2010 this has now happened and the classrooms are being fully used. The landscaping was completed and the compound is maintained by the school.



Primary school



Children at school

8.4.7. The EIB-CM was not able to find any mention of fish ponds in any of the BHP project relevant documentation. Nevertheless, BEL recognised that the resettled people of Naminya are too far removed from the Nile river to go fishing daily and addressed this issue after the first EIB-CM visit. In this context, BEL concluded a Memorandum of Understanding with a local NGO named SOUL. BEL is coordinating the creation of the fish ponds and both SOUL and BEL are funding the work. The first 2 ponds have been completed and have been stocked in early September 2010 with the first fingerlings (catfish and tilapia). According to BEL the local people who principally dug the pond were very excited. The digging of the third pond has been started and a fourth is planned in the same area. These are all in Naminya. BEL started a program that will help train the people from Naminya to work with other communities for similar ponds. BEL and SOUL are considering sponsoring fish ponds for other communities.

8.4.8. The EIB-CM was provided with a copy of the MoU between BEL, Wakisi Sub-county Local Council, Property Consultants Limited, Mr Sevume and Mr. Bukonya dating back to 20 May 2009. According to the MoU, BEL commits to acquire the market land and to donate it to the Wakisi Sub-county for the benefits of its residents, who are not only project affected persons (PAP). The market was handed over to the PAP through the Wakisi and Budondo Sub county local governments during the month of December 2010. AMoU specifying the responsibilities of BEL and the respective sub-counties was signed and a committee representing all the project affected communities was formed to assist in the management of the market.

8.4.9. The latest situation in terms of land titles, according to BEL, is that over 90 titles have now been processed, all house titles have been given and some 8 titles for agricultural land are still lacking. BEL appointed a lawyer to facilitate the processing of the titles with the Ministry of Lands and district land boards, and is committed to obtain these titles and is communicating frequently with the responsible authorities.

8.4.10. The micro credit fund for the PAPs has become operational. During the 2<sup>nd</sup> quarter of 2010 BEL went into partnership with Uganda Finance Trust and the institution was given US\$ 212,000,000 to loan on to the PAPs. To date (end of 2010), US\$ 238,470,000 were disbursed in the project affected villages to 384 PAPs, with US\$ 26,470,000 as the amount that had revolved by Q4 2010.

8.4.11. According to BEL reporting the Wakisi Sub-county hired staff to operate the business centre renovated and equipped by BEL. The facility is now fully operational. Operation of the Budondo Sub-county business centre was delayed by electricity connection which was achieved in December 2010 and was fully operational early 2011.

#### 8.5. **Compensation of T-line affected people**

8.5.1. The complainants raised the issue of compensation regarding the transmission line (T-line) project. This project is associated with the main project but carried out by a different promoter. It is not financed by the EIB and therefore does not fall under the direct responsibility of the Bank. However, it was part of the EIB's due diligence. In this context, the EIB-CM did consider it necessary to look into the situation as it considers that the transmission line is an integral part of the electrification project consisting of both the BHP and T-line.

8.5.2. There is currently a class action of 577 cases relating to the project, as well as one unsettled case for a five people action. According to information received, the class action relates primarily to the mechanism under which the value of land owned by PAPs was calculated, and whether the company used rates set by the Mukono District.

8.5.3. Ugandan legislation leaves the calculation of compensation rates as something of a grey area; although the Land Acquisition Act states that the Minister of Lands should make regulations for the assessment and payment of compensation. However, no such regulation has ever been made. Ultimately there is no official formula for the valuation of assets, and as such appeals or disputes are relatively common.

8.5.4. The key problems which have arisen in the BIP are not dissimilar from those that have occurred on other large-scale projects in Uganda. These include, for instance, bureaucratic bottlenecks that delay compensation payments and problems around speculation, where individuals pre-emptively buy up land that can subsequently be sold on or compensated at a higher value. For instance, the CEO of UETCL claimed that the number of PAPs had increased from 297 when the first consultation process happened in 2000, to a current figure of 2,700.

8.5.5. It has been widely reported that, following the consultation process conducted in the project affected villages during 2006, there was a widespread effort by PAPs to plant high value crops on project affected land as a speculative effort to increase the ultimate compensation payment. This led to a decision by the Chief Government Valuer to exclude all plants defined as 'young' from the compensation process. This appears to have caused widespread disquiet in project affected villages and has led to allegations of arbitrary decision making by district government valuers and a lack of transparency in the overall valuation process.

8.5.6. Notwithstanding that there have been significant problems in the valuation process, with many PAPs alleging that they received significantly lower compensation payments than anticipated, it seems that this is not a result of an intentional and systematic pay of low compensation rates on the part of UETCL, but rather a reflection of the inadequacy of the regulations governing land compensation in Uganda.

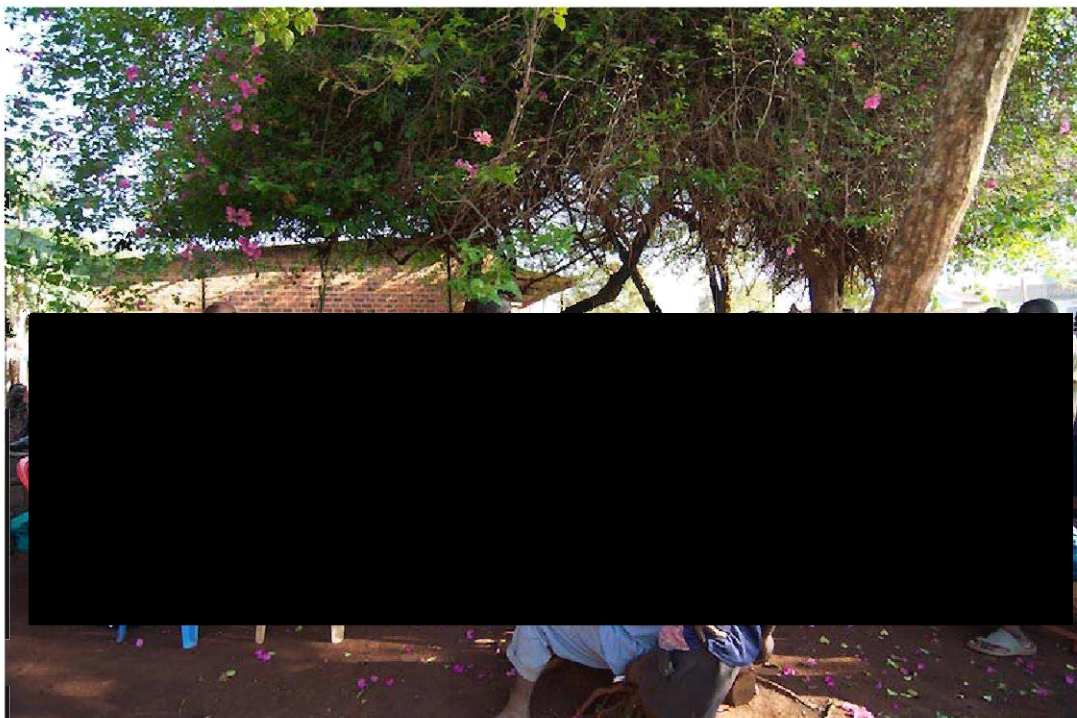
8.5.7. As there is a widespread recognition in Uganda that disputes and appeals are a relatively common feature of large-scale land compensation programmes, the key importance of an effective, transparent and easily accessible grievance mechanism for addressing appeals is paramount. This is highlighted in the BIP project documents which state that UETCL is committed to apply the IFC social and environmental policies which in turn state that an effective grievance mechanism should be set up. However, in the opinion of the EIB-CM the mechanism set up, under the BIP, for addressing complaints by PAPs has been entirely inadequate to the point that an employee of the Bujagali Implementation Project Unit (BIP) said that the decision had been taken to disband the Grievance Resolution Committee (GRC).

- 8.5.8. The grievance mechanism set up under the BIP was designed around a GRC that granted a key role to village-level Local Council Chairmen (LC1), the lowest administrative level of local government. This decision was rationalised through the fact that LC1s should *'know the individual PAPs and have the political and social responsibility for community members.'* The grievance mechanism appears to have given the Local Council Chairmen the role of 'gatekeepers' of complaints coming from PAPs, as they are responsible for channelling grievance forms to the other members of the GRC.
- 8.5.9. However, given the strong priority that the government accords to development activities, with the Bujagali project being a flagship project, there is significant pressure on local politicians and officials that may impede their ability to genuinely represent community interests. Widespread allegations were identified in Malindi and Buloba Villages. These allegations all amounted to the Local Council Chairmen using their influence to block PAPs from seeking redress through the intended grievance channels and in some instances preventing PAPs from challenging compensation decisions at the disclosure process. This meant that going to court became the first and sole recourse for addressing grievances in some areas. As one PAP in Buloba Village said *"the grievance committee was never effective, that is why even project company employees were simply telling us to go to court."*
- 8.5.10. Given the prevailing capacity problems that beset Uganda's judicial system, judicial redress appears to be pursued only as a genuine last resort. It is the EIB-CM's strong impression that in most cases the majority of requests for revaluation are made with some basis. In the opinion of the EIB-CM, it is the inadequacy of the grievance mechanism and the lack of support from local government officials that has been the principal trigger behind the decision of 557 claimants to seek redress through the court system. Although a series of allegations were made that the complainant and local NGO National Association of Professional Environmentalists (NAPE) were behind the court case, enquiries suggest that NAPE's involvement has been restricted to providing support to the claimants and their lawyers after the action was initiated. This was confirmed by the legal counsel who informed the EIB-CM that it was the leaders of the PAPs who had contacted them and that they deal with them directly without any involvement from NAPE.
- 8.5.11. In one court case UETCL recently reached an out of court settlement with four of five claimants, with the out-of-court settlement granting each individual between three and four times the initial compensation offer. Though UETCL has strongly expressed its intention to fight the other court case involving 557 claimants, it is facing considerable pressure from the Ugandan government, through the Ministry of Energy, to urgently settle the matter out of court.
- 8.5.12. During the visit in June 2010 the legal counsel, [REDACTED], representing the 557 people of the class action, informed the EIB-CM that representatives from BEL contacted them to obtain the list of plaintiffs held by the counsel. Furthermore the EIB-CM was told that these representatives allegedly told the local leaders and PAPs that they better accept the compensation offered and to drop the class action or risk being seen as anti-government and/or saboteurs. The legal counsel believes such behaviour is unethical as many PAPs are vulnerable people and have no understanding of the legal system and their rights, are easily intimidated and illiterate, which is exactly the reason why he is representing them. As a result the legal counsel wrote to BEL with the Judge and the EIB in copy, complaining of this. At the time of the EIB-CM visit there had been no response from BEL or UECTL.
- 8.5.13. Currently there remain uncertainties regarding the next hearing date.

## 8.6. **Blasting effects**

- 8.6.1. The specifications established for the Project were prepared by the Government of Uganda; The Borrower, as well as its sub-contractors, followed such specifications. The British Standard used for the blasting specification was intended to establish the expected safe level. However, such vibration limit of 50mm/s for avoidance of blasting damage is broadly used (e.g. US and Germany) but for western-like, solid concrete constructions.

- 8.6.2. Although this may be correct on a purely legal or contractual basis, a less narrow viewpoint would simply declare that the construction activities at Bujagali should have been carried out in a manner so as to avoid damages to the neighbourhood, or in the event that such damage occurred, to properly provide compensation.
- 8.6.3. Having established blasting standards is a very positive move for Uganda as a developing country. Indeed, there are no de-facto blasting standards applicable to the type of constructions surrounding the Bujagali site. In some respects the absence of such 'standards' maybe used as an excuse, effectively accepting some potential adverse consequences attributable to blasting.
- 8.6.4. More than 800 hundred complaints regarding effects of blasting have been mostly dismissed by Salini, the subcontractor. In a context of a very low revenue population and substandard and sometimes degraded constructions, unsubstantiated claims can surely happen. However, the dismissal of close to 100% of complaints raises serious doubts regarding the monitoring of blasting and the complaints management.
- 8.6.5. . Monitoring of all the blasts was conducted by the contractor and from the data provided, the blasting did not substantial exceeds the established standard (with some exception.) To a large extend, vibrations experienced was substantially below the 50 mm/s standard.
- 8.6.6. The detailed analysis (in Part II) has shown that the report by the consultant engaged by the sub-contractor (the [REDACTED] STUDY) of blasting complaints is flawed and unreliable due to data errors and inconsistencies. Moreover, the [REDACTED] STUDY is based on two contested assumptions: 1) that 50mm/s is a valid limit for avoidance of blasting damage, & 2) that PPVs can be derived from knowledge of the characteristics of the blast plus the distance from the building in question.
- 8.6.7. Subsequently, an independent evaluation report by [REDACTED] STUDY), hired by the Borrower, reached essentially the same conclusions, i.e that complaints of the blasting damage are largely unfounded, but reported substantial air-overpressure as a potential source of damage. It is understood that on the basis of the [REDACTED] STUDY the Borrower and its Contractor, undertook the necessary steps to reduce the air-overpressure generated during blasts by mid 2010, as a way to reduce/avoid some of the impacts due to blasting operations.
- 8.6.8. It was on the basis of the first assumption of the [REDACTED] STUDY that the subcontractor has made an initial census within a radius of 500 meters of the blasting point. However, it must be noted that most of the village houses are located further away. Indeed the [REDACTED] STUDY indicates that *"The distance between blast areas and nearest villages is typically 500 m."*
- 8.6.9. Therefore, it appears that impacts of blasting operations for the Bujagali project have not been fully anticipated and that potential impacts on constructions, on humans and on animals have not been fully considered.
- 8.6.10. The Bujagali Environmental Monitoring Committee has raised the blasting effects issue repeatedly during their site visits and requested the Government of Uganda to perform an independent audit. InterAid Uganda, acting as the Witness NGO in the context of the project, has addressed the World Bank representation and the EIB CM, expressing concerns regarding the way blasting complaints have been handled, challenging the independency of the consultancy reports above and requesting an independent view on the matter.
- 8.6.11. After the fact and in the absence of an adequate baseline survey, it is virtually impossible to assess whether the reported damages were caused by the blasting activities. However, it seems that blasting effects have been seriously under-estimated and a threshold lower than 50mm/s should have been used to determine possible structural and cosmetic damages to substandard constructions, in poor repair conditions. Also, it appears that the assumption of a direct correlation between scaled distances and PPVs, for the current blasting operations of the Bujagali project is flawed.



*Meeting in Malindi with project affected people*

- 8.6.12. Given the features of the affected buildings in the project area, retrospectively it seems appropriate to have used a much more stringent standard, such as the German standard which sets the upper limits to 3mm/s, at a 10Hz frequency, and 10mm/s, at 50Hz frequency, for non damaging PPVs. This standard is somewhat more severe than that of the US Bureau of Mines and applies in Germany to historical buildings.
- 8.6.13. Using this standard and on the basis of the data provide by the sub-contractor an area over which the PPV are below 10mm/s, and so blasting are “presumably” not affecting constructions, has been established. In this context construction distant more than 1.800 meters from the blasting points are very unlikely to be affected by the blasting operations.
- 8.6.14. The issue of compensation and/or reparation of real blasting effects need to be appropriately addressed by the Borrower and the local authorities, with the help of project financiers if necessary. The EIB-CM recognises that there is room for dialogue facilitation and/or mediation and is explord options for collaborative resolution of the issues, together with the IC CAO Ombudsman.
- 8.6.15. A full mediation process has been agreed by the parties involved – the borrower, the Ministry of Energy, NEMA, NAPE (as representative of the complainants affected by the blasting) and the EIB-CM (supported by a local Mediator). A first formal high-level meeting on 2 April 2012 has confirmed such agreement and agreed on the terms of reference for the mediation. Field work has proceeded and a second high level meeting took place on the 26 June 2012. The process is expected to conclude before the final commissioning of the project.
- 8.7. **Spiritual matters**
- 8.7.1. The EIB-CMacknowledges the full responsibility of the Kingdom of Busoga in identifying the appropriate actions to be taken in order to give due consideration and properly manage cultural matters of the Busoga people. The EIB-CMhas gathered evidence of the early involvement of Nabamba Budhagali (a.k.a [REDACTED] in cultural rites relating to the area concerned since the construction of Owen Falls, including the first rounds of consultation carried out by AES NILE with spiritual leaders for the Bujagali Dam.

- 8.7.2. Notwithstanding all the complexities surrounding the spiritual issues it is clear to the EIB-CM that [REDACTED] was recognised before as the rightful spiritual leader and that somehow he needs to be taken into consideration in order to progress with the BHP in the best possible way.
- 8.7.3. The behaviour of BEL can be considered as very positive and accommodating in providing funds and BEL is in fact the only party to do so regardless of the fact that BEL is not directly responsible for these issues.
- 8.7.4. The EIB-CM took the view that in line with past and official recognition of Nabamba Bujagali as a traditional spiritual caretaker of Bujagali spirits, Nabamba Bujagali should be integrated into the process for the appeasement / resettlement of spirits, at the same level as [REDACTED] in providing the same level of recognition and funding. Given the cultural context and complexities and the role played by the project in the settling of the spiritual and cultural issues, BEL should ensure such “pari passu” treatment between Nabamba Bujagali and [REDACTED]



Meeting [REDACTED] and one of his wives

- 8.7.5. In line with discussion previously held with the EIB-CM, in January 2011, a tripartite “Agreement for the Final Relocation and Appeasement of Bujagali Spirits” was signed between the Busoga Kingdom, the Government of Uganda and BEL. This agreement defines the roles and responsibilities of the different parties involved in terms of the (i) construction of shrines and (ii) organisation of the appeasement ceremonies and ensure the involvement of all key spiritual mediums, including [REDACTED] and [REDACTED]. The agreement also accounts for completion undertakings to avoid any future claims regarding spirits relocation and appeasement.
- 8.7.6. The ceremonies, as per the Tripartite agreement, have now taken place and the shrines have been finished.
- 8.7.7. Subsequently, the EIB-CM has been informed that one of the mediums - [REDACTED] – has not responded to the formal invitation by the Busoga Kingdom to participate to the appeasement ceremonies. [REDACTED] refused the invitation by the Kingdom to participate in the ceremonies, in spite of the venue of the prime-minister to his place to invite him. We can understand the reasons for doing so, the point of view of [REDACTED] that he did not want to be treated at the same level as Nfudu. However, the EIB-CM has evidence that, at the time of AES more than 10 years ago, the Government of Uganda signed Memorandums of Understanding with each of the mediums [REDACTED], [REDACTED] and [REDACTED], recognising both as the spiritual caretakers of Bujagali spirits.

8.7.8. The ceremonies requested by [REDACTED] involve a large number of spiritual leaders and people from around the Uganda with an important cost. However, it was impossible to ascertain the links and connections of [REDACTED] with the people to be invited as well as the means used to communicate in practice.

8.7.9. The EIB-CM underlines the importance of [REDACTED] as a recognized spiritual leader over the last decades and notes that the appeasement ceremonies as requested by [REDACTED] stand as an unresolved issue regarding the Bujagali Hydropower project.

## 8.8. Kalagala Offset

8.8.1. The Kalagala Offset Sustainable Management Plan (KSMP) (2009 – 2018) was finalised in November 2009 and sent to the various GoU authorities for approval. The document's preparation was facilitated by the IUCN and supported by the World Bank. During the EIB-CM fact finding mission in February 2010 the document had not yet been approved by the GoU and during meetings with the responsible and involved GoU authorities the EIB-CM urged them not only to approve as soon as possible but also to allocate sufficient funds to its implementation. The KSMP was approved in April 2010.

8.8.2. The KSMP derives its legality from the Constitution of Uganda of 1995 which provides the basis for the GoU to enter into financing agreements such as the one covering the borrowing of funds from the World Bank/IDA or similar financing institutions. Article 159 (1) provides that subject to the provisions of this Constitution, the government may borrow from any source. In this regard, the GoU entered into the Indemnity Agreement No. B-0130-UG (Indemnity Agreement (partial Risks Guarantee for the Private Power Generation (Bujagali) Project between the International Development Association (the Association) and the Republic of Uganda (Uganda) in July 2007. The objective of the Agreement was to commit Uganda to be a Guarantor to the "IDA Guarantee Facility Agreement" between Bujagali Energy Limited and financing institutions ("IDA Guarantee lenders") and ABSA Bank Limited as the Agent for the IDA Guarantee lenders to support a portion of the financing of the Bujagali Hydroelectric Project (BHP).



*Fishermen at Kalagala Offset*

8.8.3. The Indemnity Agreement provides for preparation and implementation of a Sustainable Management Plan for the Kalagala Offset, which includes the Mabira Central Forest Reserve and commits the GoU to:

- a) Set aside the Kalagala Falls site exclusively to protect its natural habitat and environment and spiritual values in conformity with sound social and environmental standards acceptable to the Association;
- b) Guarantee that any tourism development at the Kalagala Falls site will be carried out only in a manner acceptable to the Association and in accordance with the aforementioned standards;

- c) Not to develop power generation that could adversely affect the ability to maintain the above stated protection at Kalagala Falls Site without prior agreement of the Association;
- d) Conserve through a sustainable management programme and budget mutually agreed by Government and the Association, the Mabira Central Forest Reserve as well as the Kalagala Central Forest Reserve and Nile Bank Central Forest Reserve on the banks of Kalagala Falls (as such reserves are included within Kalagala falls site).

8.8.4. The legal provision for the implementation of the KSMP is derived from the Indemnity Agreement. Article III sections 3.06 (b) and (c) state that Uganda shall carry out promptly, or cause to be carried out promptly, any action required to be performed by it, or by any Public Sector Entity including (UETCL), under the Environmental Management Plans and the Resettlement Action Plans, to enable the Company (i) to obtain any required approval or environmental or social authorisation for BEL to perform its obligations under the Environmental Management Plans and the Resettlement Action Plans (as long as BEL has properly applied for such approval authorisation in accordance with the Laws of Uganda and/or any applicable Transaction Document provision), and (ii) to perform all of its obligations under the IDA Agreements and the Transaction Documents respectively.

8.8.5. The current political support for the KSMP implementation cannot be guaranteed over the long term, especially after the lapse of the Indemnity agreement. This comes along with potential requirements to accommodate future changes in policy regarding land, forests, wetlands and water uses. This could be addressed by planning for a period longer than the Indemnity agreement and by considering the KSMP as a framework for guiding all developments that would have bearing on Kalagala Falls and Itanda Falls.

8.8.6. Whilst the Indemnity agreement recognises that the BHP would lead to negative environmental impacts, the Kalagala Offset was designed, among other mitigation measures, to address these negative environmental impacts, at the same time promoting sustainable development principles and objectives. Hence, the Kalagala Offset is one among other programmes and initiatives implemented to address environmental management in the Mabira Ecosystem. Therefore, its implementation requires integration with ongoing programmes and activities. Potential Gaps:

- a) The description of Kalagala offset in the Indemnity Agreement seems inconsistent with the map attached to the Indemnity Agreement. The map does not include Mabira Central Forest Reserve. This confuses the geographical coverage of the "Offset".
- b) The Obligations focus on the Central Forest Reserves, Kalagala and Itanda falls, the Itanda and Muyanja islands and the cultural values therein. This statement potentially excludes the adjacent landscape as captured by the KSMP.
- c) The Obligations omit the requirement for management strategies for addressing Islands and riverbanks and the Islands as these two were presumed to be part of the Forest Reserves but are not.
- d) The Indemnity Agreement is tenable for 30 years whereas the sustainable management of the resources it seeks to constitute the Offset to the impacts of BHP should be managed in perpetuity.

8.8.7. The Ministry of Water and Environment, Commissioner for Wetlands, has been given the responsibility for the implementation of the KSMP. In order to ensure timely implementation, it is important that sufficient financial resources are made available.

## **9. RECOMMENDATIONS**

### **9.1. Economic feasibility and affordability**

- 9.1.1. Although the strategic case for Bujagali, as recognised by the EIB and other co-financiers, remain strong, for future similar projects additional attention could be given during appraisal to the additional strategic benefits for the country.
- 9.1.2. Bujagali, being grid-connected, will do little in the short/medium term to directly alleviate rural poverty. For this purpose, support could be given to a parallel policy in Uganda of investment in off-grid distributed generation at affordable prices. The clarification of the EIB's developmental role is an important determinant for the Bank's capacity to act in this respect.
- 9.1.3. Different financial structures to use private sector, and public/private partnership options, in line with the Government of Uganda Renewable Energy Policy, could be considered for Karuma and other future large projects in Uganda.

### **9.2. Resettlement issues**

- 9.2.1. BEL should continue to work with the Mukono Lands Office to ensure that the 8 titles for agricultural land in the Naminya resettlement site are finally processed before the final commissioning of the project at the latest.
- 9.2.2. The EIB-CM recommends the Bank, in co-ordination with the other providers, to have discussions with the GoU, via the Rural Electrification Agency (REA), MEMD/ REA to provide a budget for the necessary funds and to work proactively with BEL to ensure that the electrification project is completed before the full commissioning of the Bujagali Project.

### **9.3. Compensation of T-line affected people**

- 9.3.1. The EIB-CM is of the opinion that it might be opportune to pursue an out of court settlement and to establish a committee comprising of the legal counsels of the 557 plaintiffs, lawyers from UECTL, representatives of relevant national authorities and with NAPE as an observer. Such a committee could examine, on a case by case basis, all compensation issues in order to reach an acceptable solution for each case, by all parties involved.
- 9.3.2. The establishment of such a committee could be done through a collaborative resolution process, as the one offered by the IFC-CAO, handling similar complaints.

### **9.4. Blasting effects**

- 9.4.1. As the impacts of blasting become a major public concern in the area, allegedly affecting hundreds of people, while acknowledging the absence of legally binding standards, it is necessary to correctly and substantially address this issue - structural and cosmetic damages to constructions within the area as well as to other alleged impacts of the blasting operations - as soon as possible, preferably before project completion. The EIB-CM offered the possibility of a collaborative resolution process, in cooperation with IFC CAO, which has been agreed with all the relevant stakeholders and has now started.
- 9.4.2. In terms of lesson learned and for future projects involving blasting operations, it is recommended to the Bank to ensure that appropriate vibration standards are used in line with the human and natural environment, as well as with the type constructions, likely to be affected.

### **9.5. Spiritual matters**

- 9.5.1. None

## 9.6. Kalagala Offset

9.6.1 The Kalagala SMP has been approved by the Ministry of Water and Environment, demonstrating government commitment to the implementation of the SMP and to the fulfilment of the requirement for a sustainable management plan and budget. The following priority actions are recommended:

- (i) Establish and equip the SMP Implementation Unit in the Ministry of Water and Environment with personnel and facilities, including technical support as appropriate.
- (ii) Carrying out capacity needs assessment and developing and implementing capacity development plan.
- (iii) Establishing a Steering Committee to oversee the implementation.
- (iv) Develop and operationalise the following implementation tools:
  - SMP Implementation manual
  - SMP implementation monitoring and reporting system and procedures
  - Delegation of Authority by Ministry of Water and Environment to lead agencies and districts
- (v) Approve Ecotourism development activities within Kalagala and Nile bank Central Forest Reserves.
- (vi) Enforce policies (for forestry and Environment) and restore degraded areas in the Central Forest Reserves, river bank and islands, including removal of illegal structures and termination of illegal developments.
- (vii) Develop and implement formula for benefit sharing among districts and with communities.
- (viii) Resolve conflicts regarding ownership and management/control of Cultural resources within Kalagala and Nile Bank Central Forest Reserves (through the recommended Process Framework).
- (ix) Develop and implement SMP Financing Strategy, including securing budget allocation for SMP within MoWE, MTTI, MGLD, NEMA, NFA and Districts.

9.6.2. In order to ensure a swift implementation of the KSMP, in full compliance with EIB applicable Policies, it is recommended that the Bank endeavour that:

- Sufficient financial resources are made available to ensure the full and timely implementation of the KSMP.
- The findings of the Gap Analysis of the KSMP implementation issues, as well as relevant recommendations above, are given due consideration by the GoU.

## 9.7. Follow-up

9.7.1. The EIB Complaints Mechanism in collaboration with other relevant EIB services will ensure follow-up on further developments regarding the recommendations issued no later than 12 months after the date of this Conclusions Report.

**10. SUSPENSION OF DISBURSEMENTS**

(CLARIFICATION)

- 10.1. The automatic suspension of the project cycle upon receipt of an admissible complaint would undermine the operational efficiency of the EIB as well as its capacity to manage its funds rationally to the ultimate detriment of the public interest and of the objectives the EU attributes to this institution. In its Conclusions Report, the EIB-CM may recommend the suspension of the EIB project cycle when the EIB-CM's investigation of the allegations provides sufficient grounds to do so. During the handling of the complaint, if deemed necessary, the EIB-CM may also produce an internal interim report for the attention of the Management Committee, with specific recommendations in this respect, if applicable.
- 10.2. However, any EIB-CM recommendation is subject to the final acceptance by the EIB governing bodies. Indeed, the tension between the preventive function exercised by the internal tier of the EIB Complaints Mechanism on one hand (its pre-emptive nature as well as the problem-solving and mediation function that it is sometimes called to exercise) and – on the other hand - its focus on compliance (i.e. on the assessment whether administrative actions/omissions within the framework of the project cycle were compliant with EIB policies and standards) is governed by the overall responsibility of the EIB governing bodies which ultimately decide upon the adoption of a specific recommendation, including those requesting the adoption of interim, restrictive measures on a contested project.
- 10.3. If applicable, recommendations regarding suspension of disbursements can only be issued in the context of existing contractual arrangements, when the problem found presents a breach of contractual conditions and, as its resolution, is under the responsibility of an EIB borrower and/or project promoter.



F. Alcarpe  
Head of Division  
Complaints Mechanism  
30 August 2012



E. de Kruijff  
Senior Complaints Officer  
30 August 2012

**LIST OF ACRONYMS**

AfDB	African Development bank
BEL	Bujagali Energy Limited
BHP	Bujagali Hydropower Project
BIP	Bujagali Implementation Project unit
CAO	Compliance Advisor Ombudsman
CBD	Convention on Biological Diversity
CDAP	Community Development Action Plan
CFR	Central Forest Reserve
DDP	District Development Plan
EIA	Environment Impact Assessment
EIB	European Investment Bank
EIB-CM	EIB Complaints Mechanism
EO	European Ombudsman
EU	European Union
GoU	Government of Uganda
GRC	Grievance Resolution Committee
IDA	International Development Association
IGAs	Income Generating Activities
IFC	International Finance Corporation
IFI	International Finance Institution
IP	Inspection Panel
IRM	Independent Recourse Mechanism
IUCN	International Union for Conservation of Nature
MEMD	Ministry of Minerals and Energy Development
MoGLSD	Ministry of Gender, Labour and Social Development
MoLG	Ministry of Local Government
MoWE	Ministry of Water and Environment
MTTI	Ministry of Tourism Trade and Industry
NEMA	National Environment Management Authority
NFA	National Forestry Authority
NGO	Non-Government Organization
PAP	Project Affected People
PMA	Plan for Modernizing Agriculture
PPV	Peak Particle Velocity
REDD	Reducing Emissions from Forest Deforestation and Degradation
REA	Rural Electrification Authority
SEA	Strategic Environmental Assessment
SMP	Sustainable Management Plan
SSC	SMP Steering Committee
UETCL	Uganda Electricity Transmission Company Limited
WB	World Bank
WB IP	World Bank Inspection Panel
WB IPR	World Bank Inspection Panel Report